Bird & Bird

EU Data Act

& the Aviation Sector

2025

What is the Data Act?

During the operation of an aircraft, a large amount of data is generated. This data is used to provide air navigation services and support internal airline analytics and processes related to aircraft maintenance, operational improvements, safety management, and reducing environmental impact of flying.

The Data Act is a new cross-sectoral horizontal EU Regulation designed to enhance the EU's data economy and foster a competitive data market. It aims to make data generated by the Internet of Things (IoT) more accessible and usable, encourage data-driven innovation and increase data availability, particularly in the industrial sphere.

The Data Act seeks to address the dominant position of manufacturers and providers by putting the owners, renters and lessors in control of their data. It also facilitates data access for aircraft operators and maintenance, repair, and operations (MROs) organisations, enabling new business opportunities. For example, it promotes competition in B2B relations within the aviation industry. However, it also introduces new obligations.

What products and services fall under the scope of the data sharing obligations?

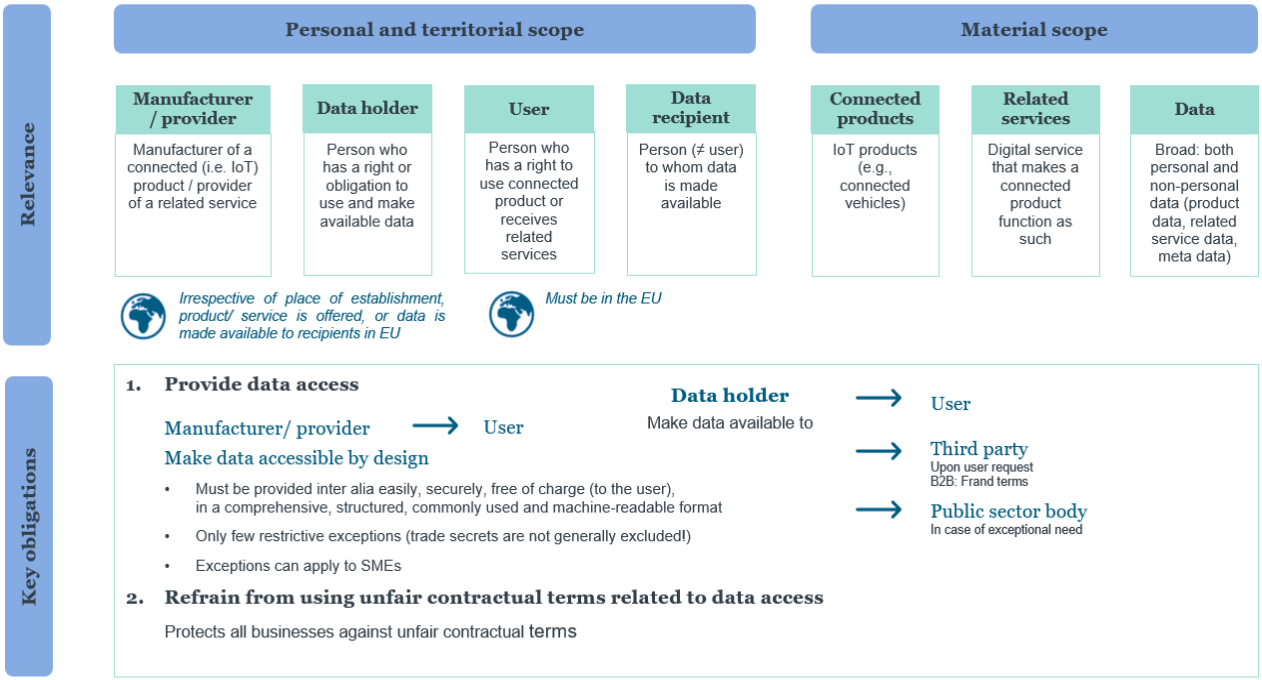
Connected products are items that can generate, obtain, or collect data about their use, performance, or environment and can communicate this data via an electronic communications service, physical connection or on-device access (i.e. IoT products). Aircrafts are expressly mentioned as being within the scope of these obligations.

Related services are digital services linked to the operation of a connected product that affects its functionality. Examples include software that adjusts brightness of lights or regulates temperature, flight operations optimisation tools or systems for remote configuration and update systems.

Who is subject to the Data Act's data sharing obligations?

The Data Act generally applies to manufacturers, suppliers of data-generating components, providers of related services, holders of product data, as well as sellers, renters, and lessors of products placed on the EU market, regardless of their place of establishment. This means that most aircraft and engine manufacturers, aircraft leasing companies, and aerospace & avionics suppliers are within scope. In contrast, beneficiaries -

the users (owners, lessees, and renters of aircrafts) and third-party recipients appointed by users, such as airlines, aircraft leasing companies, and MRO providers - must be established in the EU.



What are the main implications of the data sharing obligations?

Aircraft must be designed and manufactured in such manner that relevant data is, by default available to EU user(s). If data cannot be directly accessed, data holders must make the data readily available without undue delay. Users are granted the right to access a wide range of data generated by their use of IoT products and related services and may even request that this data be made available to third parties of their choice. This may also require the **disclosure of data** considered **trade secrets**.

The EU Commission will publish non-binding model contractual terms. Manufacturers and data holders must ensure such access is provided under fair, reasonable and non-discriminatory terms (FRAND). Data holders are permitted to make available data to non-EU public sector bodies under certain conditions. This necessitates *inter alia,* the **conclusion of data sharing agreements** with users and third parties (including competitors).

For manufacturers and data holders, these new obligations pose significant technical and commercial challenges, requiring adjustments on the technical, contractual and operational fronts. The large number of stakeholders involved in aircraft operation (e.g., flight operation, maintenance, ground operations) introduces new challenges regarding security measures for data and operational processes within a tight timeframe. Furthermore, the interplay with sector specific legislation, such as the Single European Sky Framework (SES), remains unclear.

The Data Act, however, also offers opportunities, such as obtaining data from third-party products and related services, either as a user or via users. Although the Data Act prohibits using product and related service data to develop competing products, it allows that data to be used for the development of novel (competing) services. This may, for example include the provision of aftermarket services, such as auxiliary consulting, analytics or financial services, as well as regular repair and maintenance services.

How we can support your business

To ensure compliance with the Data Act, we can support you in:

- **Getting an overview** about the existing legal landscape, upcoming legislation, developments and the market practice
- **Undertaking a scoping exercise** to determine the applicability of the Data Act to your products and data
- **Conducting an impact analysis** to identify which (new) rules apply to your organisation and what it means for your business
- **Implementing the Data Act**, including:
  - Advising on **changes to product design, manufacturing** and **information requirements** to comply with data access obligations and how to **protect against unlawful use or disclosure of data**
  - Advising on **compliance with existing obligations** (esp. GDPR, SES, etc.) when implementing the Data Act
  - **Designing processes and procedures** for handling data access requests from users including:
    - Analysing which data to share with others
    - Balancing the requests against the protection of trade secrets, IP and personal data
    - Managing requests from public sector bodies in cases of exceptional need
  - **Drafting and revising your contracts** and supporting documentation such as:
    - Data sharing agreements
    - Cloud computing contracts
    - Confidentiality, non-disclosure agreements (NDAs)
    - Notices providing users with transparent information
  - **Developing template agreements** for making data available to third-party businesses, ensuring the data is made available under FRAND terms
  - Adopting a **pricing policy** on how third-party businesses compensate for accessing in-scope data
  - Advising on potential FRAND disputes regarding **data access & licensing agreements**
  - Advising on the **potential benefits of the Data Act** (e.g. access to third-party data)

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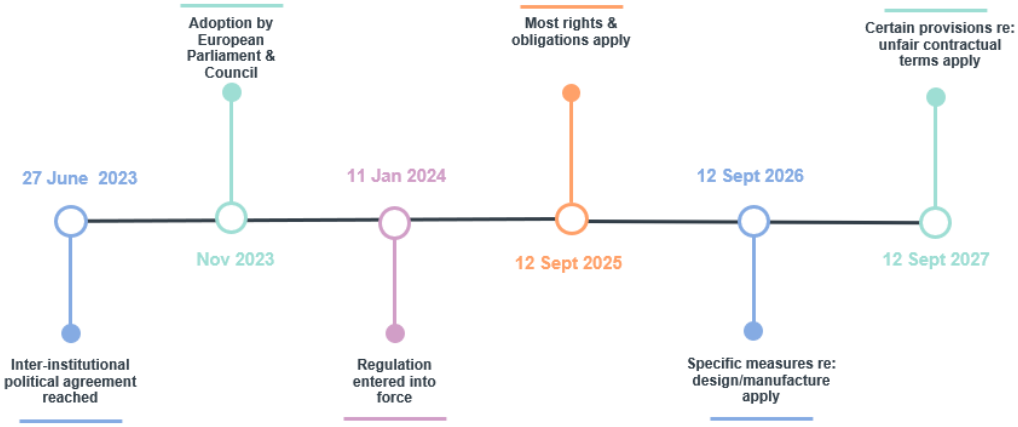
What is most urgent?

The Data Act has been in force since **11 January 2024**. Most rights and obligations will apply from **12 September 2025**, while certain measures regarding design & manufacturing will only apply from **12 September 2026**. A staggered approach is provided for legacy contracts.



Enforcement

Member States are required to designate the competent authorities and establish effective, proportionate and dissuasive penalties in their local law. If personal data is involved, such fines may align with Regulation (EU) 2016/679 (GDPR) up to **20,000,000 EUR** or **4 % of the total worldwide annual turnover** of the preceding financial year, whichever is higher. It is currently unclear how the competence of the authorities and the number of fines will be defined in detail.

More information

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