

WE ARE SHAPING THE INTERNET.  
YESTERDAY.TODAY.BEYOND TOMORROW.



## DEBRIEFING

REGULATION (EU) 2023/2854 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Regulation)

Berlin, 14.03.2024

**Law / Legal Act:** REGULATION (EU) 2023/2854 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Regulation)

**Publication Date:** 22.12.2023

**Entry into Force:** 11.01.2024

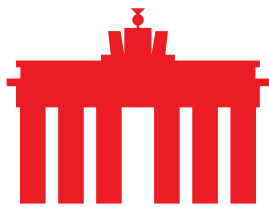
**Reference:** [Regulation \(EU\) 2023/2854](#)

**Applies to:** Manufacturers of connected products and related services, their users and data holders, in accordance with the Data Act, as well as data recipients and public sector bodies. It also applies to providers and users of cloud services.

**Content:** The Data Act introduces a new legal framework for the access and use of non-personal and personal data generated by IoT devices and connected services during their use. Additionally, the Data Act contains a prohibition on unfair contractual terms in contracts for data usage between enterprises and provisions, relating to switching terms between cloud providers.

### What does the law regulate?

The purpose of the Data Act, as part of the European Data Strategy, is to specifically enhance the use of non-personal data. According to the EU Commission, the Regulation is intended to address the lack of incentives among data holders to enter voluntarily into data sharing agreements, uncertainties about rights and obligations in relation to data, as well as the high level of fragmentation of information in data silos. The Data Act therefore includes provisions regarding the transfer of data from businesses-to-consumers (B2C), businesses-to-businesses (B2B) and business-to-government (B2G) in cases of an "exceptional need". The Regulation applies additionally to the [GDPR](#), which shall prevail where personal data is also affected, as outlined in Recital 34. The Data Act also



WE ARE SHAPING THE INTERNET.  
YESTERDAY.TODAY.BEYOND TOMORROW.



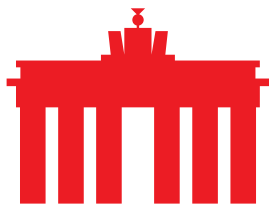
contains a prohibition on unfair contractual clauses for data usage between enterprises and provisions on contractual arrangements to facilitate switching between cloud providers.

The Regulation was published in the Official Journal of the European Union on 22 December 2023 and has been in force since 11 January 2024. Below is a list of the key rules for the Internet industry and the deadlines to be observed.

## I. Provisions for manufacturers of connected products and related services and data holders

The provisions listed under Section I apply in particular to manufacturers of connected products and related services and data holders. In particular, this concerns provisions on the sharing of data in the B2C, B2B and B2G context.

- 1) Obligation to make product data and related service data accessible to the user, in accordance with Article 3:
  - a. In accordance with Article 3, manufacturers of connected products as defined in Article 2(5), and providers of related services as defined in Article 2(6), are required to design their products and services in such a way that the product data generated by their use – as defined in Article 2(15) and the related service data as defined in Article 2(16) – are easily, securely, and free of charge accessible to users in a comprehensive, structured, commonly used, and machine-readable format, and, where relevant and technically feasible, directly accessible to the user. If direct access is not feasible, access must be provided through electronic means, as far as technically feasible, in accordance with Article 4(1). As described in Recital 15, data generated by proprietary, complex algorithms that are the outcome of additional investments are not within the scope of this Regulation.
  - b. Before concluding a purchase or leasing contract, manufacturers, lessors or sellers are also responsible for providing purchasers/lessees with the information referred to in Article 3(2). Providers of a related service are subject to the information requirements set out in Article 3(3).
  - c. **The requirements for connected products and related services in Article 3 will become applicable 32 months after entry into force, i.e. from 12 September 2026. Exceptions apply in accordance with Article 7 for products and services of micro and small enterprises.**



WE ARE SHAPING THE INTERNET.  
YESTERDAY.TODAY.BEYOND TOMORROW.

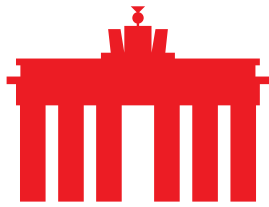


## 2) Right for data sharing to third parties

- a. Users of a connected product or a related service may request that data holders share product and service data generated during use to third parties, if this is necessary for the provision of a service requested by the user. In accordance with Articles 8 and 9, the data must be made available continuously and in real time to the data recipients, with this including the relevant metadata necessary to interpret. "Gatekeepers" as defined in Article 3 of the [Digital Markets Act](#) are exempted as third parties under Article 5 as data recipients.
- b. Making data available may also include data containing trade secrets if this is necessary for the provision of a service. In accordance with Article 4(6), trade secrets may be disclosed if the data holder and the user have taken all necessary measures prior to the disclosure to preserve their confidentiality of the trade secrets. In accordance with Article 4(8), exceptions exist in cases where there is a risk of serious economic damage in the event of disclosure. This must be justified on a case-by-case basis and notified to the designated competent authority, in accordance with Article 37.
- c. Possible compensation between a data holder and a data recipient must be based on the criteria set out in Article 9 for compensation in making data available. In the case of SMEs, the compensation referred to in Article 9(2a) shall be limited to deployment costs.
- d. In accordance with Article 6(1), a data recipient may only process the data provided in accordance with Article 5 for the purposes agreed with the user, including the rights of the data subject where personal data are concerned. The data should be erased once it is no longer needed. It is also prohibited to use the data received for the purposes specified in Article 6(2).
- e. **For micro and small enterprises, exemptions from the obligations are provided for in Article 7.**

## 3) Provisions for the transfer of data between enterprises and public bodies

- a. Article 14 establishes an obligation for data holders to share certain data in some cases with public sector bodies. These cases include an "exceptional need", as defined in Article 15, as well as in the event of a national emergency, provided



that the required data cannot be obtained by other means. The request must be justified by the public sector body and fulfil the requirements set out in Article 17.

- b. For the transfer of data to public bodies, the data holder may in some cases request a compensation, which must be based on the requirements of Article 20.
- c. Public sector bodies are obliged under Article 19 to preserve the confidentiality of trade secrets and to delete the data received if their use is no longer justified under Articles 14 and 15. Exemptions apply in accordance with Article 21 for the disclosure of data received in connection with exceptional needs among research organisations or statistical bodies.

4) Regulation of contracts relating to data usage

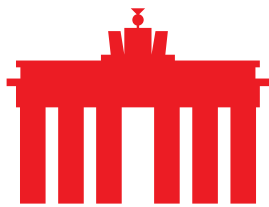
- a. Contractual terms concerning access to and the use of data which have been unilaterally imposed on an enterprise shall not be binding on the enterprise if it is unfair, in accordance with Article 13(1). In particular, the provisions referred to in Article 13(4) and (5) that deviate from good commercial practice, in accordance with Article 13(3), shall be deemed unfair.
- b. The provisions relating to contractual terms shall apply in accordance with Article 50 to contracts concluded after 12 September 2025. For contracts concluded before this date, the provisions shall apply from 12 September 2027, provided that they are of indefinite duration or are due to expire at least 10 years after 11 January 2024.

## II. Provisions for providers of data processing services

Provisions under Section II concern providers of data processing services, in accordance with Article 2(8). The Data Act provides for provisions for these services that are intended to facilitate switching between providers and prevent lock-in effects for customers.

1) Deadlines for the switch

- a. Deadline periods for contract switches may not exceed two months, in accordance with Article 25(2d).
- b. In accordance with Article 2(2a), a transition period of 30 days after expiry of the notice period shall also apply in the event of a switch, during which the data transfer must be fully completed.



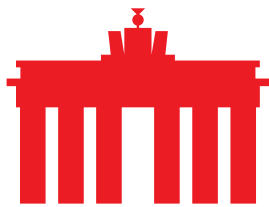
- c. Providers of data processing services must also fulfil the transparency obligations to their customers set out in Article 26 with regard to the available procedures for switching and porting to the data processing service.
- d. In addition, data processing services must fulfil the information obligations towards their customers, as set out in Article 26.

## 2) Withdrawal of switching charges

- a. In accordance with Article 29(1), from 12 January 2027, providers of data processing services shall not impose any switching charges on the customer for the switching process.
- b. From 11 January 2024 to 12 January 2027, providers of data processing services may, in accordance with Article 29(2), impose reduced switching charges on the customer for the switching process. These may not exceed the direct costs incurred by the service provider when switching.
- c. In accordance with Article 29(4), before entering into a contract with a customer, providers of data processing services must inform their prospective customer, inter alia, of any standard service fee that might be imposed.
- d. Article 29(7) empowers the Commission to adopt delegated acts in accordance with Article 45 to supplement this Regulation by establishing a monitoring mechanism for the Commission to monitor switching charges, imposed by providers of data processing services on the market.

## 3) Technical aspectings of switching

- a. In accordance with Article 30(1), providers of data processing services must ensure functional equivalence in the event of a switch, as defined in Article 2(37). To this end, the source provider must provide capabilities, adequate information, documentation, technical support and, where appropriate, the necessary tools.
- b. In accordance with Article 35(4), the Commission may request standardisation organisations to draft harmonised standards which, in accordance with Article 35(1), enhance portability of digital assets between different services, facilitate functional equivalence and meet the criteria set out in Article 35(2). In accordance with Article 35(5), the Commission may also adopt common specifications based on open interoperability specifications.



WE ARE SHAPING THE INTERNET.  
YESTERDAY.TODAY.BEYOND TOMORROW.



#### 4) State access and transfer to third countries

- a. Providers of data processing services are obliged under Article 32 to prevent the transfer of non-personal data to third countries if this would create a conflict with Union law or with the national law of the relevant Member State. Exceptions may apply in accordance with Article 32(2) and (3).

### III. **Implementation and enforcement**

The provisions listed under Section III concern the implementation and enforcement of the Data Act, as well as the governance of the Regulation.

#### 1) Implementation

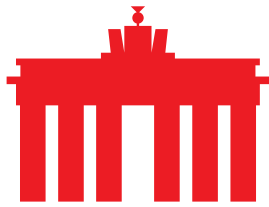
- a. In accordance with Article 50, the provisions of the Data Act shall apply from 12 September 2025, i.e. after a transitional period of 20 months, with the exception of the provisions on the design of connected products and the related services. A review of the Regulation is planned by 12 September 2028, in accordance with Article 49.

#### 2) Enforcement

- a. The penalties provided for are based on the GDPR. Infringements of the obligations to provide data to users, data recipients or public bodies may be subject to fines of up to 4% of annual turnover or Euro 20 million, depending on the infringement, in accordance with Article 40.

#### 3) Governance

- a. In accordance with Article 37, Member States must designate one or more competent authorities for enforcement. In Germany, there will be a transposition law for this purpose. If several authorities are designated, a data coordinator must also be designated from among them to coordinate the work of the authorities. If personal data is affected, the competent authorities will be determined by the GDPR. In addition, at EU level, the European Data Innovation Board, an expert group created by Article 29 of the [Data Governance Act](#), will also be included in the governance structure of the Data Act, in accordance with Article 42.



WE ARE SHAPING THE INTERNET.  
YESTERDAY.TODAY.BEYOND TOMORROW.



- b. A dispute settlement body will be created for mediation between data holders, users and data recipients, in accordance with Article 10.

---

**About eco:** With approximately 1,000 member companies, eco ([international.eco.de](https://international.eco.de)) is the leading Association of the Internet Industry in Europe. Since 1995, eco has been highly instrumental in shaping the Internet, fostering new technologies, forming framework conditions, and representing the interests of its members in politics and international forums. eco has offices based in Cologne, Berlin and Brussels. In its work, eco primarily advocates for a high-performance, reliable and trustworthy ecosystem of digital infrastructures and services.