

## Key aspects of the Data Act

### *How does this Regulation affect you?*

Regulation (EU) 2023/2854 on harmonised rules on fair access to and use of data (the “**Data Act**”) entered into force in January 2024, but the Regulation established that the obligations would not apply until 12 September 2025. In this Legal Briefing, we outline the key aspects of the Data Act and provide a roadmap for the various obligated or interested parties.

#### DEFINITION

What is the Data Act?

The Data Act is a Regulation designed to regulate access to and the use of data generated by **connected devices**. It is **directly applicable** in all Member States of the European Union.

The Data Act is **cross-sectoral**, meaning it affects all types of entities (e.g. the banking, automotive, technology, and pharmaceutical sectors, etc.).

The Regulation is based on a **new principle**: the user of a device (whether an individual or a company) has the right to access the data they generate and share it with third parties.

This Regulation is intended to **complement the GDPR**<sup>1</sup>, which established the protection of personal data as a fundamental right, but now focuses on data as an economic asset.

#### PILARS

What are the pillars of the Data Act?

##### 1. Access by design

Connected products must be designed and manufactured, and related services must be designed and provided, in such a way that the data is easily accessible, secure, free of charge, in a complete, structured, commonly used, and machine-readable format.

##### 2. User rights

If users cannot directly access data from connected products or related services, data holders must provide users with access to readily available data and corresponding metadata without undue delay. This access must be of the same quality as that available to data holders, and must be easy, secure, free of charge, and in a complete, structured, commonly used, and machine-readable format. Where appropriate and technically feasible, this must be carried out continuously and in real time.

##### 3. Data portability

At the request of a user, the data holder must make the corresponding data and metadata readily available to a third party, free of charge to the user, in a complete, structured, commonly used, and machine-readable format.

##### 4. Fair conditions

Data holders must make data available under fair, reasonable, and non-discriminatory conditions and in a transparent manner.

#### AFFECTED

Who is affected by the Data Act?

##### 1. Manufacturers of connected products and providers of related services

Companies that manufacture or market products that generate data (e.g. vehicles, household appliances, machinery, and medical devices, among others) and the providers of software or applications that enable their operation.

##### 2. Users of connected products

Individuals and companies that use these connected products or related services.

##### 3. Data holders

Third parties who receive the data - usually because the user authorises it or because of a legal obligation.

##### 4. Data recipients

Third parties who receive the data, either because the user authorises it or because of a legal obligation.

##### 5. Public sector bodies

European institutions and public administrations may request private data in cases of emergency or public interest.

##### 6. Providers of data processing services

Cloud, edge, and other data storage and processing service providers.

##### 7. Participants in data spaces and vendors of applications using smart contracts and persons whose trade, business or profession involves the deployment of smart contracts for others

Sectoral data exchange platforms and developers that work with smart contracts in these environments.

<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

# Key aspects of the Data Act

## How does this Regulation affect you?

### TRADE SECRETS

How does the Data Act affect trade secrets?

The Data Act<sup>2</sup> strikes a complex balance. It does not force companies to disclose their trade secrets indiscriminately, but neither does it allow them to refuse access to data simply on the grounds that it constitutes a trade secret.

The Data Act establishes a mechanism that allows trade secrets to be protected based on a proactive approach where the data holder and data user – or the holder of trade secrets, when they are not the same person – must identify and mark secrets in advance – even in metadata – and agree with the user on specific technical and organisational measures prior to any disclosure, such as standard contractual clauses, confidentiality agreements, restricted access protocols and codes of conduct, thus ensuring that confidentiality is preserved vis-à-vis third parties through safeguards implemented in advance.

In exceptional circumstances, a company may refuse to share data if it can demonstrate that its disclosure would cause serious and irreparable economic damage. However, this decision must be very well justified, based on objective elements, and notified to the competent national authority.

### SUPERVISION

Which authorities will supervise compliance with the Data Act?

Each Member State must designate one or more competent national authorities to ensure the application and enforcement of this Regulation. Spain is one of many Member States that has not yet officially designated the competent authority, which creates considerable legal uncertainty for companies.

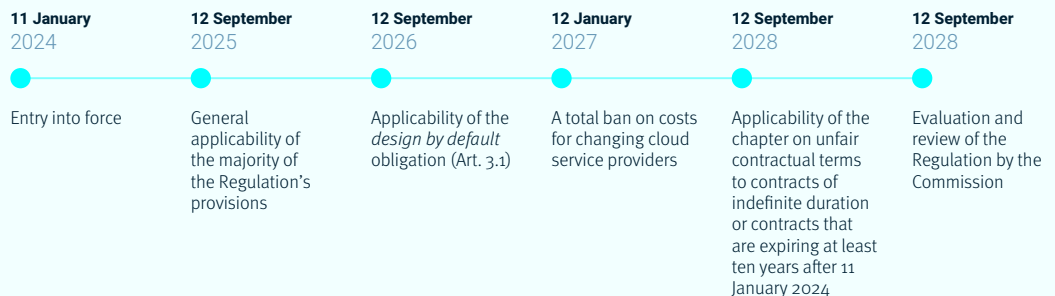
However, the Regulation is already directly applicable, meaning that non-compliance may result in liability for companies, for example, through claims before the ordinary courts.

Similarly, as has been the case with the application of the Artificial Intelligence Act, other supervisory authorities may apply the Data Act on a subsidiary basis when the Data Act's system comes into contact with their own areas of jurisdiction (e.g., the AEPD could analyse the connection between the two laws in circumstances involving personal data).

### PENALTIES

The penalties for non-compliance with the obligations established in the Data Act are severe, reaching up to €20 million or 4% of global turnover.

### KEY DATES



### RELEVANT INFORMATION

- For entities capable of identifying **strategies for generating value and monetising user data from connected products**, the Data Act could represent a major strategic opportunity.
- For manufacturers of connected products and related service providers, proactive management of the Regulation can help them mitigate negative impacts and identify potential business areas.
- The potential value of the market that could be created by the Regulation is currently estimated to reach **€815 billion in 2030** (5.6% of European GDP).<sup>3</sup>
- Organizations must identify both the **information they wish to protect** in order to safeguard their competitive position in the market and **the data in their environment that they can leverage** to develop new business models, optimize operations, and create value-added services.

<sup>2</sup>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.

<sup>3</sup>The European Data Market Study 2024-2026, prepared by the European Commission in August 2024. Available [here](#).

### CONTACT

Pérez-Llorca's digital team is available to help you develop a legal and regulatory strategy that protects your data and capitalises on the opportunities offered by the Data Act.

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