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Data Act: A Guide for Technology Manufacturers

Use cases, flowcharts and checklists for manufacturers of connected devices to comply with Chapters II and III of the EU Data Act 2023/2854

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April 2025

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Table of Contents

INTRODUCTION	5
1. The EU Data Act	5
2. Outline of Orgalim's data act guide	6
3. Disclaimer	7
4. Acknowledgments	7
SECTION I - SCOPE	8
1. CONNECTED PRODUCTS	8
1.1. Definition of a 'connected product' (Article 2.5)	8
1.2. Exclusions	8
1.3. The specific case of 'connected components'	9
2. RELATED SERVICES	10
2.1. Definition of a 'related service' (Article 2.6)	10
2.2. Key criteria for a 'related service'	10
2.3. Exemptions	11
3. DATA IN SCOPE	12
Classification of data relevant for Chapter II of the Data Act (B2B and B2C data sharing)	12
4. TIMELINE OF THE OBLIGATIONS	18
5. ECONOMIC OPERATORS AND TERRITORIALITY CONSIDERATIONS	19
5.1 The 'placing on the market'	19
5.2 Exclusions	19
5.3 The economic operators in the Data Act scope	20
6. TRADE SECRETS PROTECTION AND IPRs	21
6.1 Trade secrets	21
6.2 Intellectual Property Rights	24
7. INTERPLAY BETWEEN THE DATA ACT AND OTHER EU REGULATIONS	24
7.1 Interaction with the General Data Protection Regulation (GDPR) 2016/679	24
7.2 Interaction with the Cyber Resilience Act (CRA) regulation 2024/2847	25
7.3 Interaction with the Data Governance Act (DGA) regulation 2022/868	25
7.4 Interaction with the Digital Markets Act (DMA) regulation 2022/1925	26
7.5 Interaction with the Network and Information Systems Directive (NIS 2) 2022/2555	26
7.6 Interaction with EU competition law	26

7.7 Interaction with Machinery Regulation 2023/1230.....	27
SECTION II – DATA ACCESS: LOGIC, USE CASES AND ROLES	29
1. DATA HOLDERS	29
2. DATA USER: RIGHTS AND OBLIGATIONS	30
Rights:.....	30
Obligations:.....	31
3. WHO IS WHO IN THE DATA ACT: USE CASES	32
USE CASE 1: OEM is the Data Holder for all the data generated	32
USE CASE 2: OEM and Component Manufacturer are both Data Holders	33
USE CASE 3: OEM is the only Data Holder and the Component Manufacturer acts as a Third Party ..	34
USE CASE 4: OEM and Service Provider are both Data Holders.....	35
USE CASE 5: Related Service Provider acting as the only Data Holder	36
USE CASE 6: Rental companies - Different data holders and different users	37
4. THE LOGIC OF THE NEW DATA ACCESS RIGHTS	38
SECTION III - CHECKLISTS	42
1. Manufacturer (e.g. original equipment manufacturer).....	42
1b. Manufacturer as data holder	45
2. Supplier of components	50
3. Manufacturer as a Third Party	52
Annex – List of figures	56

INTRODUCTION

1. The EU Data Act

The advent of the digital era has brought about a significant transformation in the industrial landscape, particularly with the integration of Internet-of-Things (IoT) devices. As manufacturers across Europe leverage IoT technology to enhance productivity, efficiency and innovation, the importance of a robust data governance framework becomes increasingly crucial. At the heart of the nascent IoT data economy is the recognition that data is a key asset. The ability to collect, process, and analyse vast amounts of data can drive innovation, improve services, and create new business models. For manufacturers, particularly those involved in IoT devices for consumers or industrial uses, data is not just a by-product of their operations but a valuable resource that can inform decision-making, optimise processes, help businesses to meet sustainability targets, train artificial intelligence models and enhance customer experiences.

In this context, the [European Union's regulation 2023/2854¹ \("Data Act"\)](#) emerges as a turning point in the development of Europe's future data economy. European Commission President Ursula von der Leyen stated in her State of the European Union speech² in 2020 that *"80% of industrial data is still collected and never used"* and a European Commission public consultation³ found that 80 percent of the respondents mentioned problems in the fairness of IoT data flows. Against this background, the European data strategy⁴ of 2020 aimed at creating a single market for data to ensure Europe's global competitiveness and data sovereignty. As an essential pillar of this strategy, the Data Act was intended to ensure that more data becomes available for use by consumers, businesses and governments, while maintaining control for those who generate the data.

More specifically, the Data Act provides for rights and obligations for a range of different stakeholders in the various situations and segments of data value chains. This is a brief overview of the different situations the Data Act regulates, with reference to the chapters of the regulation:

- Mandatory sharing in Business to Consumer (B2C) and Business to Business (B2B) of data concerning the performance, use and environment of connected products (IoT devices) and their related digital services (Chapters II and III).
- Unfair contractual terms related to data access and use in B2B contracts (Chapter IV).
- Mandatory Business to Government (B2G) data sharing in cases of exceptional public need (Chapter V).
- Measures to enable switching between data processing services free of charge (Chapter VI).
- Measures for data processing services to prevent unlawful access to data by third country governments (Chapter VII).
- New essential interoperability requirements for vendors of smart contracts and participants in European common data spaces (Chapter VIII).

The Data Act entered into force on 11 January 2024, while most of the rights and obligations it stipulates will apply as of 12 September 2025 (cf. section I.4 of this guide for more details).

¹ [Regulation \(EU\) 2023/2854 \(Data Act\)](#) 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

² [State of the Union Address by President von der Leyen](#), 2020.

³ [Impact assessment report](#) accompanying the proposal of the Data Act, 2022.

⁴ European Commission, [European Strategy for Data](#), 2020.

2. Outline of Orgalim's data act guide

This guide focuses especially on Chapters I, II and III of the Data Act, addressing mandatory data sharing B2B and B2C. It was developed mostly taking into account B2B use cases (Industrial Internet of Things - IIoT), but some B2C examples are also included and it can provide some support for B2C compliance too, as the Data Act applies the same regime for both.

This guide aims to support technology manufacturers in navigating the complexities of the Data Act, visualising its logics, offering practical use cases and actionable checklists to facilitate compliance and leverage the opportunities presented by the evolving data landscape. Its content has been aligned with the guidance of the European Commission available to date, but goes into much further detail specifically for the technology manufacturers in the sectors of mechanical engineering, electronics, electrical engineering, ICT and metal technology. Representatives of all these sectors representing different steps of the IoT value chain have contributed to the guide to the best of their knowledge at the time of writing, ensuring a balanced and broadly acceptable view on its content.

- **Section I "Scope"** provides an overview of the legal references and definitions relevant to the scope of Chapter II of the Data Act. It explains which entities, products, services, and types of data are subject to the B2B and B2C data sharing obligations. It also outlines exclusions, such as prototypes and products from micro and small enterprises, and discusses the specific cases of connected components and related services.
- **Section II "Data Access: Logic, Use Cases and Roles"** delves into the roles and responsibilities of data holders, users, and third parties under the Data Act using visual representations of practical use cases. Through flowcharts, it explains the logic behind the new data access rights, including direct and indirect access to data. It also covers the obligations of data holders to make data accessible to users and third parties, and the protections in place for trade secrets and intellectual property.
- **Section III "Checklists"** offers practical checklists for manufacturers, data holders, suppliers of component, and third parties to ensure compliance with the Data Act. It includes steps for assessing whether a product meets the definition of a connected product, determining which data is in scope, ensuring compliance with design and manufacturing obligations, providing transparency to users, and protecting trade secrets. It also covers the contractual agreements required for data sharing and the preservation of the confidentiality of trade secrets.

As part of its effort to help businesses comply with the Data Act and ensure the regulation reaches its intended objectives, the European Commission publishes non-binding recommendations and guidance documents. This Orgalim guide takes such documents into account, although the only binding text remains the Data Act regulation (and the possible CJEU rulings that will follow). At the time of this guide's publication, the relevant Commission's documents are:

- [Data Act FAQ](#) v 1.2, 3 February 2025
- [Data Act explained](#), 6 September 2024

At the time of writing, the European Commission is expected to publish non-binding recommendations on Model Contractual Terms (MCTs), as provided by the Data Act, Article 41, to help businesses comply with the contractual obligations under the Data Act. Orgalim has been involved in the relevant stakeholder expert sub-group officially consulted to prepare these MCTs. The Commission's official recommendation is not publicly available yet.

3. Disclaimer

This Orgalim guide reflects the best knowledge of industry experts from all over Europe and the state of the art at the time of its publication. It remains responsibility of the individual stakeholders to identify the precise compliance measures to be taken for their specific products and situation. Subject to new information, this document may be modified to accommodate new developments. The stakeholders covered by the obligations of the Data Act remain responsible for their compliance with the regulation.

This guide does not replace in any circumstances the legally binding text of this or other regulations. Nothing in this guide is binding and the examples given are not prescriptive in any way. The flowcharts and checklists in this guide show a possible way of dealing with the Data Act rights and obligations, but other decision flows and methods are possible. Europe's technology industries have a wide (and growing) range of application cases for IoT data sharing, which could not be completely represented in the framework of this guide. It remains up to each stakeholder responsible for the implementation of the obligations of the Data Act in such cases to ensure that their model complies with the regulation.

A binding interpretation of Union legislation is within the exclusive competence of the Court of Justice of the European Union.

4. Acknowledgments

This guide was developed by Orgalim's Digital Transformation Working Group and Legal Affairs Working Group. For their proactive engagement in its development, special thanks go to:

- Klaus-Dieter Axt, EUnited
- My Bergahl, Teknikföretagen
- Brend De Brauwer, Honda (on behalf of EGMF)
- Dominic Doll, ZVEI
- Laura Fiumara, CECE
- Francesco Guerzoni, Orgalim – Europe's Technology Industries
- Christian Kranemann, AL-KO (on behalf of EGMF)
- Victoria Ferrera Lopez, Verisure (on behalf of Euralarm)
- Joonas Mikkila, Technology Industries of Finland
- Marie Poidevin, EVOLIS (on behalf of CECE)
- Roxana Turcanu, FIM

SECTION I - SCOPE

The main legal references to understand the scope of the Data Act's B2C and B2B data sharing obligations (Chapter II) are Article 1, Article 2 and Article 7.1 (plus related recitals). The subsections below aim to explain and exemplify which entities, products, services and types of data are in scope.

It is useful to remind the reader that the Data Act does not affect in any way the competences of Member States regarding public security and defence. This means that if an entity or product falls under specific national regimes pertaining to public security and defence, it might be out of scope of the regulation (as per Article 1.6). This assessment must be carried out on a case-by-case basis. Guidance may be sought from relevant national authorities.

1. CONNECTED PRODUCTS

1.1. Definition of a 'connected product' (Article 2.5)

A connected product is any item capable of:

- a. Generating, obtaining or collecting data about its use or environment; **and**
- b. Transmitting this data outside the product by means of an electronic communication system, a physical connection, or on-device access. Please note that all types of data communication/transmission are covered, including one-off or ad-hoc communication (e.g. in the context of maintenance operations).

Please note also that a product that can communicate the data it generates via a cable (e.g. USB or OBD socket) meets the criteria of a 'connected product' as defined under the Data Act. Similarly, if a product is designed for connectivity, even if this is not yet activated at the time of the placing on the market, it falls within the scope of the Data Act.

1.2. Exclusions

The following connected products do not fall in the scope of the B2B and B2C data sharing obligations of the Data Act (Chapter II):

- Prototypes (Recital 14).
- Products placed on the market by micro and small enterprises in the sense of Article 2 of the Annex to Recommendation 2003/361/EC⁵ (less than 50 employees, turnover less than €10 million), provided that (Art 7.1):
 - that enterprise does not have a partner enterprise or a linked enterprise within the meaning of Article 3 of the Annex to Recommendation 2003/361/EC that does not qualify as a microenterprise or a small enterprise, or
 - where the microenterprise or small enterprise are not subcontracted to manufacture or design a connected product or to provide a related service.

⁵ [Commission Recommendation 2003/361/EC](#) of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

3. WHO IS WHO IN THE DATA ACT: USE CASES

USE CASE 1: OEM is the Data Holder for all the data generated

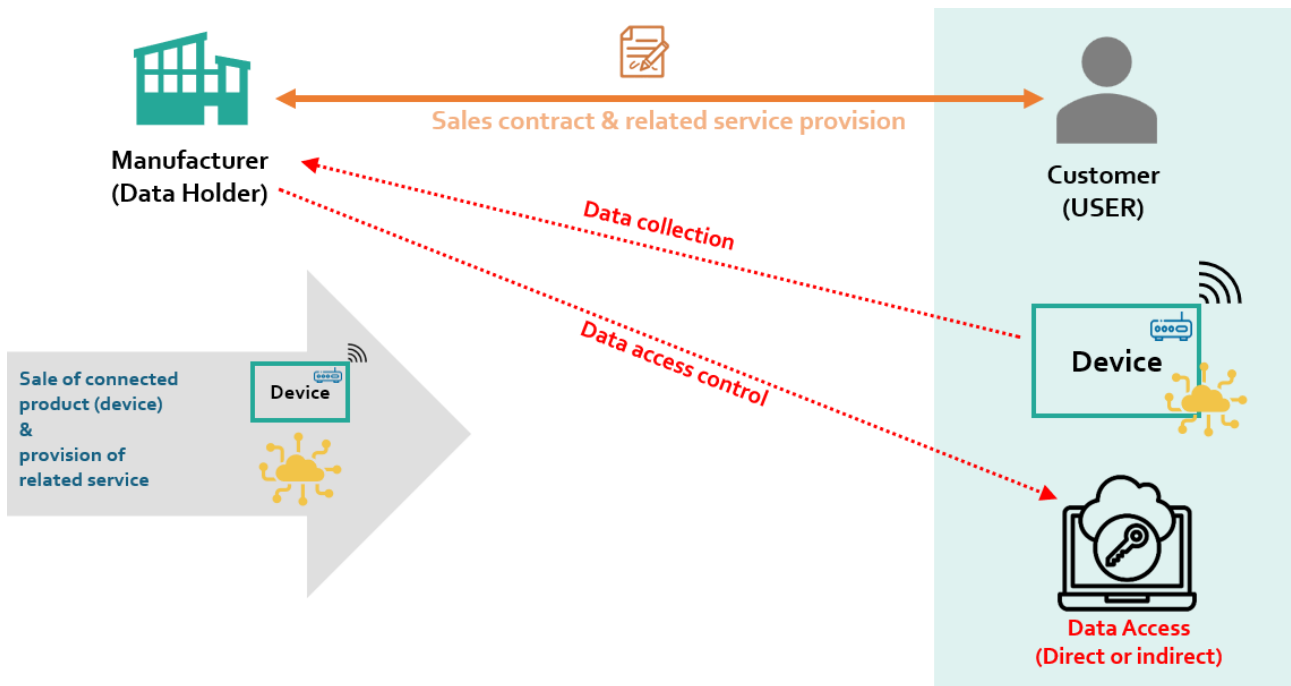


Figure 5 – Use case 1: OEM as data holder of all data generated

Use case 1 describes a data sharing business model where the manufacturer of the machine (Original Equipment Manufacturer – “OEM”) is the data holder for both product data and related service data.

- Sale of a connected product with a connectivity component installed/integrated at the time of the purchase (factory fitted). This enables data communication without requiring any additional installation, as the machine is pre-equipped for connectivity.
- In addition, the OEM also offers a related service within the meaning of the Data Act, thus becoming also a related service provider.
- The OEM qualifies as data holder for both product data (generated by the connected machine) and related service data (generated during the provision of the related service) towards the user.
- In the event the OEM is not the related service provider, the access to, and control over, related service data is governed by the contractual agreement in effect with the service provider.

Annex – List of figures

Figure 1 – Flowchart on the data in scope

Figure 2 – Timeline of Data Act obligations

Figure 3 – Economic operators and territoriality

Figure 4 – Flowchart on Trade secrets handbrake

Figure 5 – Use case 1: OEM as data holder of all data generated

Figure 6 – Use case 2: OEM and components manufacturers as data holders

Figure 7 – Use case 3: OEM as data holder and component manufacturer as third party

Figure 8 – Use case 4: OEM and related service provider as data holders

Figure 9 – Use case 5: related service provider as only data holder

Figure 10 – Use case 6: case of rental companies

Figure 11 – Flowchart on direct access (Art 3.1)

Figure 12 – Flowchart on data access through data holders by request (Art 4.1)

Figure 13 – Flowchart on mandatory data sharing to third parties (Art 5)

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