EUROMOT

FAQ
DATA ACT

MAY 2025

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 Act).

DISCLAIMER

This document reflects the view of EUROMOT, with regards to the legal provisions of the 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 Act)[1].

This FAQ must be intended as a living document; its content could be modified or updated by EUROMOT, based on updates of the legislation, and according to its understanding on the matter.

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Accordingly, in case of discrepancies between the content and interpretation of this FAQ and the text of the 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 Act)[1], the legislation must be applied.

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1 INTRODUCTION

The **Data Act** is a regulation designed to enhance the EU's data economy and foster a competitive data market by making data, particularly industrial data, more accessible and usable. It aims to encourage data-driven innovation and increase data availability. To achieve this, the Data Act ensures fairness in the allocation of the value of data among the actors in the data economy, clarifying who can use what data and under which conditions.

The Data Act gives users of connected products—whether businesses or individuals who own, lease, or rent such products—greater control over the data they generate, while maintaining incentives for those who invest in data technologies. Additionally, it lays down general conditions for situations where a business has a legal obligation to share data with another business.

The regulation includes measures to increase fairness and competition in the European cloud market and protect companies from unfair contractual terms related to data sharing imposed by stronger players. It establishes a mechanism through which public sector bodies can request data from businesses in exceptional circumstances, such as public emergencies, and provides clear rules on how such requests should be made. Furthermore, it introduces safeguards to prevent government bodies from third countries from accessing non-personal data in ways that would contravene EU or national law.

The Data Act also defines essential requirements regarding interoperability to ensure that data can flow seamlessly between sectors and Member States, facilitated by Common European Data Spaces, as well as between data processing service providers.

Published in the Official Journal of the EU on December 22, 2023, the Data Act will become applicable on September 12, 2025. It complements the Data Governance Act, which became applicable in September 2023. While the Data Governance Act increases trust in voluntary data-sharing mechanisms, the Data Act provides legal clarity regarding access to and use of data.

Together with other policy measures and funding opportunities, these two regulations will contribute to establishing an EU single market for data, making Europe a leader in the data economy by harnessing the potential of the ever-increasing amounts of data, particularly industrial data, for the benefit of the European economy and society.

ABOUT EUROMOT

EUROMOT, the European Association of Internal Combustion Engine and Alternative Powertrain Manufacturers, represents the key manufacturers of internal combustion engines and alternative powertrains installed in industrial non-road mobile machinery, marine and stationary applications that are operating in Europe and worldwide.

Founded in 1991, we provide an unparalleled heritage and hub of expertise for businesses, authorities, regulators, and public stakeholders worldwide. In partnership with major sector associations and institutions, it is our mission to drive smart regulation and sustainable innovation.

2 SCOPE & DEFINITIONS

2.1 Does the Data Act apply to a supplier if the component is a standalone product or integrated into an application connected through another system, and will there be a contract between the user and the component manufacturer?

Powertrain and engine manufacturers supply their components to vehicle manufacturers, who then place the final product on the market and establish contracts with the end users. In this context, the vehicle manufacturer is considered the data holder. Consequently, the engine manufacturer (supplier) has no direct contact with the end user and is typically unaware of whom the OEM supplies the vehicle to.

2.2 What types of data are typically covered by the Data Act?

Please refer to question 4 of the European Commission's Data Act FAQ[8]:

> *Several factors determine which data are covered by the data access rights provided for in Articles 3, 4 and 5 of the Data Act. Generally speaking, raw and pre-processed data (simply put, 'raw but usable' data) that are readily available to a data holder as a result of the manufacturer's technical design are subject to mandatory data-sharing obligations that are regulated by Chapter II.*

Access and use of IoT data – Chapter II of the Data Act

Factor	Explanation	Reference in the legal text
Product data	Data obtained, generated, or collected by a connected product and which relates to its performance, use or environment. Purely descriptive data that accompanies the connected product (e.g. in user manuals or on the packaging) is not product data. The only situation in which information 'about' the connected product is relevant is the pre-contractual transparency obligation under Article 3.	Recital 15, Article 2(15)
Related service data	Data representing user action, inaction and events related to the connected product during the provision of a related service.	Recital 15 and 17, Article 2(16)a
Readily available data	Product data and related service data a data holder can obtain without disproportionate effort going beyond a simple operation. The definition of 'readily available' does not include a reference to the time of their generation or collection. Only data generated/collected after the entry into application of the Data Act should be considered as falling within the scope of Chapter II.	Recitals 20 and 21, Article 2(17)
Level of enrichment of the data	In scope: raw data and pre-processed data, accompanied by the necessary metadata to make it understandable and usable. For example, data collected from a single sensor or a connected group of sensors for the purpose of making the collected data comprehensible for wider use-cases by determining a physical quantity or quality or a change in a physical quantity (e.g. temperature, pressure, flow rate, audio, pH value, liquid level, position, acceleration, or speed). Out of scope: highly enriched data, meaning inferred or derived data that result from additional investments (including by way of proprietary, complex algorithms). In addition, content that is often covered by intellectual property rights (e.g. textual, audio or audiovisual content).	Recital 15
Personal vs. non-personal data	Users are entitled to access all data generated by the connected product or related service, whether personal or non-personal. However, personal data processing is governed by GDPR rules, so the user's rights provided by the Data Act have to be exercised in compliance with the GDPR. Users that are not data subjects or data holders must have a valid legal basis under Article 6 of the GDPR for processing personal data. Question 25 examples in further detail non-personal data access, use and sharing.	Recitals 25 and 35
Trade secrets	The Data Act does not modify the relevant legal protections for protection of trade secrets. The 2016 Trade Secrets Directive, for example, continues to apply. The Data Act establishes a new mechanism to protect trade secrets. This mechanism is known as the 'trade secrets handbrake' and is explored further in Question 20.	Recital 31, Articles 4(6), 5(9)

Reference: European Commission (2024) Data Act - Frequently Asked Questions[8]

2.3 Is the data stored in an engine or powertrain covered by the Data Act?

Yes, the data stored in an engine or powertrain is covered by the Data Act if the products have any form of connectivity, whether electronic or physical, and include digital memory.

As defined in the in Article 2.5 of the Data Act:

> *"'connected product' means an item that obtains, generates or collects data concerning its use or environment and that is able to communicate product data via an electronic communications service, physical connection or on-device access, and whose primary function is not the storing, processing or transmission of data on behalf of any party other than the user;".*

This also applies in cases where a company shares emission information with an agency:

- Electronic Communications Services typically involve data transmission over the internet or other digital networks.
- Physical Connection means a direct, tangible link, such as a wired connection, between the product and another device or system.
- On-Device Access refers to when data can be accessed directly from the device itself without needing an external connection.

Reference: 2.5 (Definitions) and 1.3 and 1.A (Subject matter and scope), 3A, 3E and 3F (Obligation to make product data and related service data accessible to the user)

2.4 Does aggregated data in an ECU become personal data when retrieved from the engine and is this data covered by the Data Act? What types of data recorded by an ECU fall under the scope of the Data Act? For example, if a farmer is using a powertrain and data which is transmitted from where it is stored to the data holder for monitoring purposes—or if the powertrain is used in a construction environment—would data transmitted for monitoring purposes be considered personal data or fall under the scope of the Data Act?

This depends on the user's discretion and choice. Personal data is defined as data that can specifically identify an individual. In other words, if the data received by the data holder can directly or indirectly identify a person, it qualifies as personal data.

The Data Act strengthens consumers' rights to access and transfer any data generated by connected products, regardless of whether it is personal or non-personal. The term "data" is broadly defined in Article 2, Paragraph 1 of the EU Data Act as follows:

> " 'data' means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording;"

The EU Data Act also defines terms such as "non-personal data" (Article 2, paragraph 4), *"readily available data"* (Article 2 paragraph 17), *"product data"* (Article 2, paragraph 15), *"related service data"* (Article 2, paragraph 16), and "metadata" (Article 2, paragraph 2).

All data obtained by the data holder in sectors such as agriculture or construction falls under the scope of the Data Act. The distinction between personal and non-personal data is not subject to our discretion.

Reference: Recital 7; Art. 1.2.A (Subject matter and scope)

2.5 Does a product connected only for servicing purposes qualify as a connected product? Does the Data Act cover servicing, diagnostics, and uploads? Is access to powertrain data via a service tool covered by the Data Act?

According to Article 1, point (a), the regulation lays down harmonised rules on:

> *"The making available of product data and related service data to the user of the connected product or related service."*

Recital 15 defines "product data" as:

> *"data generated by the use of a connected product that the manufacturer designed to be retrievable, via an electronic communications service, physical connection or on-device access, by a user, data holder or a third party, including, where relevant, the manufacturer;"*

Reference: Recital 15; Article 1 (Subject matter and scope)

2.6 What is the definition of a "related service" under the Data Act? Can you provide examples of services considered under its scope?

According to Article 2.6 of the Data Act:

> "'related service' means a digital service, other than an electronic communications service, including software, which is connected with the product at the time of the purchase, rent or lease in such a way that its absence would prevent the connected product from performing one or more of its functions, or which is subsequently connected to the product by the manufacturer or a third party to add to, update or adapt the functions of the connected product;"

In this context, a software function provided as a sole subscription is considered a related service. Similarly, when an update is performed to modify or adapt the function of a connected product, it is also regarded as a related service.

Question 8 of the European Commission's FAQ states:

> *"Most but not all digital services will fall under the category of related services. The following digital services cannot be considered as related services: connectivity, power supply and aftermarket services (e.g. auxiliary consulting, analytics and financial services, and regular repair and maintenance) (cf. recital 17). To offer a related service, a provider must first receive product data. Once a contractual relationship is established between the user and the provider and a related service is rendered that leads to the creation of data, the provider becomes a data holder."*

Article 2.16 defines related service data as:

> *"data representing the digitisation of user actions or of events related to the connected product, recorded intentionally by the user or generated as a by-product of the user's action during the provision of a related service by the provider;".*

Recital 17 outlines what is not considered a related service and provides examples:

> *"Services which do not have an impact on the operation of the connected product, and which do not involve the transmitting of data or commands to the connected product by the service provider should not be considered to be related services. Such services could include, for example, auxiliary consulting, analytics or financial services, or regular repair and maintenance."*

This means that regular repair and maintenance are out of scope.

As referred to in the European Commission's (European Commission) FAQ (2024)[8] question 8, for related services:

> *"Most but not all digital services will fall under the category of related services. The following digital services cannot be considered as related services: connectivity, power supply and aftermarket services (e.g. auxiliary consulting, analytics and financial services, and regular repair and maintenance) (cf. recital 17)."*

Reference: Recital 15 and 17; Article 2.16 (Definitions); European Commission (2024) Data Act – Frequently Asked Questions[8]

3 PLACING ON THE MARKET

3.1 What are the Data Act requirements for engine products placed on the market before its entry into force, and for those currently in production? Does Article 3(1) apply to connected products and related services placed on the market after 12 September 2026, or to those designed from that date? Will the Data Act apply retrospectively to data from an existing engine, powertrain, or a product that was already on the market when the Data Act comes into effect?

According to Article 50 of the Data Act:

> *"The obligation resulting from Article 3(1) shall apply to connected products and the services related to them placed on the market after 12 September 2026."*

The requirements of the Data Act apply from the moment the product is placed on the market. According to the Blue Guide[2] definition, a product is considered "placed on the market" when a manufacturer or importer supplies it to a distributor or end user for the first time.

Any subsequent transactions, such as from one distributor to another or from a distributor to an end user, are classified as 'making available' (Blue Guide 2023[2], clause 2.3). Any machine delivered to a distributor or end user within the EU after the compliance deadline of 12 September 2026 must meet the requirements of the Data Act.

The Data Act does not apply retrospectively. The product's design date is irrelevant; what matters is the date the product is placed on the market. In other words, the Data Act will be applicable to products placed on the market starting from 12 September 2025, regardless of the date they were initially placed on the market. Article 1 of the Data Act does not indicate any scope for data generated or handled before this date.

If a manufacturer produces a product before the Data Act comes into force but places an engine or powertrain on the market on or after 12 September 2026 without meeting the Data Act's requirements, the product will need to be redesigned to ensure compliance before it can be placed on the market.

According to Articles 4 and 5.1, a company can be considered a data holder retrospectively. The data holder – defined as the entity with access to the data – is required to make any data they have access to available, regardless of when the product was placed on the market. As a data holder, you are responsible for finding a solution to share data with the user.

Reference: Blue Guide 2022[2] Clause 2.3; Article 1 (Subject matter and scope); Article 3 (Obligation to make product data and related service date accessible to the user); Article 4 (The rights and obligations of users and data holders with regard to access, use and making available product data and related service data); Article 5 (Right of the user to share data with third parties); Article 50 (Entry into force and application).

3.2 What are the Data Act requirements for products already placed on the market without over-the-air connectivity after their entry into force? Do engines or powertrains with over-the-air connectivity placed on the market before the Data Act need to comply in 2025?

Whether the product is connected or not is irrelevant. The Data Act applies to data holders only if data is being stored. For example, data obtained by the data holder for a specific engine or engine family, a customer has the right to request access to that data from the 12 September 2025. For further details, refer to questions 6, 7, and 9 of the European Commission FAQ from 2024.

Question 6: Placing on the Market:

> *"What determines whether a connected product falls in scope of the Data Act?*
>
> *A connected product falls within the scope of the Data Act if it has been 'placed on the Union market' (Article 2(22)). 'Placing on the market' concerns the transfer of ownership, possession, or any other property right between two economic actors that occurs after the manufacturing stage. A connected product is 'placed on the market' only once. All subsequent operations are considered as 'making available on the market' (Article 2(21)). The concept of placing on the market refers to each individual product, not to a type of product. The requirements laid out in the Data Act are therefore applicable only to individual products that have been placed on the EU market, and not to all products of that type. The Commission notice 'The "Blue Guide" on the implementation of EU product rules' (2022) served as inspiration for the Data Act's rules on products and provides comprehensive guidance on this topic. For instance, the Blue Guide identifies situations where a product is not considered to be 'placed on the market'. These include situations where (i) the product is purchased by a consumer in a third country while they are physically present in that third country and brought by that consumer into the EU for their personal use, and (ii) when the product is manufactured in a Member State with a view to exporting it to a third country."*

Question 7: Over-the-air connectivity – related to mobile connections:

> *"What happens if a connected product that is placed on the EU market generates data when it is used abroad?*
>
> *If a connected product is placed on the market in the EU and then used outside the EU, the data generated by that connected product both inside and outside the EU should be made available to the user in accordance with the Data Act. As explained in the answer to Question 6, a connected product falls within the scope of the Data Act if it has been placed on the market in the EU. This means that 'mobile' connected products (e.g. ships, airplanes, trains, and cars) should be treated in the same manner as other connected products. The mere circulation of a ship, airplane, train, or car on EU territory or in EU waters is not sufficient for a connected product to be considered as having been 'placed on the EU market' because there has been no transfer of ownership. The rules of the Data Act build on civil law relations of ownership and lease between a person or entity and an object. The fact that connected products such as cars, rail vehicles or planes are registered in a Member State is an indicator that the connected product in question was placed on the EU market."*

Question 9: Resale of a product:

> *"What happens if a connected product is resold ('second-hand connected products')?*
>
> *When it comes to the user's right to access data generated by the use of a connected product, the Data Act does not distinguish between 'first-hand' and 'second-hand' connected products. If a connected product is being (re)sold, the seller must comply with the 'transparency obligation' outlined in Article 3. This requires the seller to provide the necessary information for the future owner to exercise their new data access rights under the Data Act. As a result, the future owner will be informed as to who the data holders are as well as the modalities to accessing and using the generated data. Other sections of this FAQ address related issues, such as how data holders can identify legitimate users."*

Reference: European Commission (2024) Data Act - Frequently Asked Questions[8]

4 SUBSTANTIAL MODIFICATION

4.1 Will a substantially modified product (software/hardware) already on the market be covered by the Data Act? Are there considerations for replacing engines or powertrains if the equipment has already been placed on the market?

The Data Act requirements apply from the moment the product is placed on the market. According to the Blue Guide[2] definition of substantial modification is:

> *"A product, which has been subject to important changes or overhaul after it has been put into service must be considered as a new product if: i) its original performance, purpose or type is modified, without this being foreseen in the initial risk assessment; ii) the nature of the hazard has changed or the level of risk has increased in relation to the relevant Union harmonisation legislation; and iii) the product is made available (or put into service if the applicable legislation also covers putting into service within its scope). This has to be assessed on a case-by-case basis and, in particular, in view of the objective of the legislation and the type of products covered by the legislation in question.*
>
> *Where a modified product is considered as a new product, it must comply with the provisions of the applicable legislation when it is made available or put into service. This has to be verified by applying the appropriate conformity assessment procedure laid down by the legislation in question."*

In the context of engine or powertrain replacements, the applicability of the Data Act depends on whether the replacement constitutes a new product. If a manufacturer replaces a component within an engine or powertrain and can demonstrate that no substantial modifications have been made, it can be argued that the Data Act does not apply, as the product is not considered newly placed on the market.

4.2 Are there any considerations for the replacement of an engine or powertrain in the equipment it's installed into if the equipment has already been placed on the market?

When it comes to engines and powertrains, it's important to remember that engines are never used in isolation; they always operate in conjunction with the equipment they are installed in.

It depends on whether a new engine has been considered already placed on the market or not. If an engine/powertrain is replaced as original, i.e. a replacement engine/powertrain is produced identical to the previous one, there is no mention of such a case in the Data Act, as this scenario was not foreseen. There are exemptions for such cases in other regulations such as RoHS[4] or Stage V[3].

For example, Stage V[3] regulations allow non-road mobile machinery engine manufacturers to produce replacement engines only if they are direct replacements for the original engine. Any other modifications are considered a substantial modification[1], and the product must comply with the legislations in effect on the date it is placed on the market.

Similarly, the RoHS[4] Directive permits the replacement of components in products that were already on the market before the directive came into force, using parts that were not subject to RoHS at the time. However, the Data Act does not account for such exceptions.

If the replacement of an engine or powertrain constitutes a substantial modification, the product is considered a new product and must comply with all applicable regulations as of the date it is placed on the market.

For instance, if an older generator set is upgraded with a full-authority engine[2] and a new controller to improve fuel efficiency, this would be classified as a new product. If it is put into service after the Data Act's implementation, the Data Act would apply.

Reference: Blue Guide 2022[2] Article 3 (31) (Substantial Modification); Blue Guide[2] Clause 2.3 (Placing on the market)

[1] Blue guide 20222 Article 3 (31) (substantial modification) means a change to the product with digital elements following its placing on the market, which affects the compliance of the product with digital elements with the essential requirements set out in Section 1 of Annex I or results in a modification to the intended purpose for which the product with digital elements has been assessed.

[2] A full authority engine is equipped with an Engine Control Module (ECM). The Full Authority Digital Engine Control (FADEC) system is a sophisticated computer system that manages all aspects of an aircraft engine's performance. It consists of a digital computer, known as an Electronic Engine Controller (EEC) or Engine Control Unit (ECU), along with its related accessories.

5 DATA HOLDER AND ACCESS TO DATA

5.1 If a powertrain manufacturer places an engine on the market before September 2026 and an OEM places a machine on the market after September 2026, who is considered the data holder?

The data holder can be designated through a contractual agreement between the engine or powertrain manufacturer and the machine manufacturer (i.e. the OEM integrating the engines or powertrains). This agreement should clearly specify the data holder's identity in the contract with the end consumer – the buyer of the machine or product containing the engine or powertrain. This ensures that the final user knows who to contact to access the generated data.

The data holder can vary depending on the agreement; it could be the machinery manufacturer, another integrator, the engine manufacturer, a component producer, or a service provider. As an engine manufacturer, this means you may assume different roles depending on the specific context. Chapter III of the Data Act details the obligations that apply to manufacturers in relation to data access and management.

Reference: Article 3 (Obligation to make product data and related service data accessible to the user); Chapter III (Obligations for data holders obliged to make data available pursuant to Union Law)

5.2 Are there types of non-personal data that cannot be provided to users, data holders, or data recipients? What is considered intellectual property, and who can access it? When can a data holder claim data as a trade secret or IPR and refuse to share it?

The Data Act includes a broad definition of data within its scope. According to Article 2, paragraph 1 of the EU Data Act:

> *" 'data' means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording;"*

The EU Data Act also defines terms such as "non-personal data" (Article 2, paragraph 4), "readily available data" (Article 2, paragraph 17), "product data" (Article 2, paragraph 15), "related service data" (Article 2, paragraph 16) and "metadata" (Article 2, paragraph 2).

Article 4 outlines the rights and obligations of users and data holders regarding access, use, and availability of product data and related service data. Specifically,

- Article 4 points 1, 2, 5 and 6 detail what data can be shared and made available.
- Article 4 points 7 and 8 outline the cases where data cannot be shared with the user due to the absence of a confidentiality agreement.

Data holders can claim that certain data are trade secrets or intellectual property (IPR) and cannot be shared if:

- The data is secret, has commercial value because it is secret, and reasonable steps have been taken to keep it secret.
- Necessary measures to preserve the confidentiality of the trade secrets are not agreed upon or implemented.

Reference: Article 2 (Definitions); Article 4 (The rights and obligations of users and data holders with regard to access, use and making available product data and related service data)

5.3 Are shipyards, as data holders of data generated by onboard systems, contractually obligated to provide this data free of charge to shipowners or operators, or should shipowners or operators establish direct contracts with system suppliers to access the data?

Shipyards act as integrators of systems, such as engines or powertrains, on board ships. While shipyards are users of the data generated by these onboard systems – primarily for purposes like maintenance scheduling - the same data may also be utilized by ship owners or operators for operational purposes.

According to Article 2 paragraph 13 of the EU Data Act, the term "data holder" is defined as follows:

> *" 'data holder' means a natural or legal person that has the right or obligation, in accordance with this Regulation, applicable Union law or national legislation adopted in accordance with Union law, to use and make available data, including, where contractually agreed, product data or related service data which it has retrieved or generated during the provision of a related service;"*

The *"data holder"* can therefore be an individual, a company, or an organization. Data can be defined as all raw and pre-processed data generated from the use of a connected product or a related service that is readily available to the data holder. The Data Act allows users (i.e., any legal or natural person who owns, rents or leases a connected product) to access the data that they generate through their use of the connected product or related service. If the user wishes to share this data with another entity or individual ('third party'), they can either do so directly or ask the data holder to share it with a third party of their choice.

The data holder is typically the company that manufactures the connected product or provides the related service. A data holder must have a contract with the user – such as sales agreement, rental contract, or related service agreement – outlining the rights and obligations regarding the access, use, and sharing of the data generated by the connected product or related service. It is important to note that the data holder cannot use any non-personal data generated by the product without the user's consent.

For example, if a company operates a bulldozer, the data holder would typically be the bulldozer manufacturer, while the user would be the company operating the equipment.

In the case of a seagoing vessel with a slow-speed engine manufactured under license, the following parties may be involved:

- Equipment Designer (e.g. engine designer) => Data holder
- Equipment Licensee/Builder (e.g. engine manufacturer) => Data holder
- System Integrator (e.g. shipyard) => Data holder
- Ship Owner => User
- Ship Operator => User

The vessel owner (user) holds ownership of the raw data and must have access to it. Data holders *"may request reasonable compensation for making the data available to a data recipient"* (Recital 46), meaning data sharing is not free of charge. Additionally, data holders must have a contractual agreement with the user to lawfully use the data.

A key challenge is that data transfer arrangements need to be agreed upon during the ship contracting phase. However, at this stage, the specific suppliers for ship systems are often not yet determined, making compliance with the Data Act particularly complex.

5.4 Is there a cost associated with requesting data, or is it provided free of charge?

The data holders *"may request reasonable compensation for making the data available to a data recipient"* (Recital 46), therefore, it is not free of charge. The data holders need a contractual agreement with the user to be able to use the data.

For more information on compensation for making the data available please refer to the question 36 of the European Commission's FAQ (2024)[8]:

> *"Is there an upper limit to reasonable compensation?*
>
> *No. There is no upper (nor lower) limit to compensation as such. Rather, the Data Act imposes certain transparency requirements in order to ensure that calculation of compensation is based on certain objective criteria (e.g. costs incurred, or the volume of data being made available). Reasonable compensation cannot include a profit margin if the recipient is an SME or a non-profit research organisation."*

The question of compensation was also addressed in the European Commission's guidance on the Data Act dating June 2023,

> *"Will companies lose control on the data generated by their products?*
>
> *Companies' capacity to use data of objects they manufacture remains unaffected. Furthermore, the third party selected by the user compensates the manufacturer for the costs of granting access, i.e. of technical arrangements to make the data available, such as application programming interfaces. In addition to that, safeguards provided for in the regulation prevent situations where the data is used in any manner that would negatively impact on the manufacturer's business opportunities. This includes using it to develop a product or related service that would compete with the original data generating product, or where the data is used by parties without an appropriate basis for the use, through the appropriate technical protection measures."*

Reference: Article 2 (Definitions); European Commission (2024) Data Act – Frequently Asked Questions[8]; European Commission (2023) Questions and answers[9].

5.5 If a manufacturer of a partly completed machine (such as a powertrain) logs data within the powertrain and can remotely track or download this data during service, is there an obligation to design a solution that enables users to easily download all data directly from the powertrain?

Article 3 outlined the mandatory requirements effective from 12th September 2026. Products must be designed and manufactured to ensure that metadata is easily and directly accessible to the user. According to Recital 42 of the Data Act,

> *"The non-binding model contractual terms for business-to-business data sharing to be developed and recommended by the Commission may help parties to conclude contracts which include fair, reasonable and non-discriminatory terms and conditions and which are to be implemented in a transparent way."*

Data can be uploaded to a webpage or another platform; it doesn't need to be displayed directly.

Reference: Recital 42; Article 3 (Obligation to make product data and related service data accessible to the user)

5.6 If a diagnostic tool is required to access data from a connected product, should this tool be provided for free of charge to the user, given that Article 3(1) mandates that data should be free to the user?

The Data Act does not mandate a specific data format, the data must be readable by commonly used tools. There is no obligation to provide diagnostic tools - only provide the raw data must be made available. If users wish to utilize the data, they may need to develop their own tools.

According to the European Commission's FAQ[8] (question 4), readily available data is:

> *"Product data and related service data that a data holder can obtain without disproportionate effort going beyond a simple operation. The definition of 'readily available data' does not include a reference to the time of their generation or collection. Only data generated/collected after the entry into application of the Data Act should be considered as falling within the scope of Chapter II."*

In the agricultural sector manufacturers faced a similar situation in 2016 when they were required to harmonise data and hardware to connect diagnostic tools under Regulation 167/2013[10], specifically the RVCR Annex V for access to Repair and Maintenance (RMI). This led to development of standards such as ISO 22172-1[6] and ISO 22172-2[7], which required diagnostic tools and proprietary data to be accessed through contractual agreements with the OEM.

Reference: Regulation (EU) No 167/2013[10]; ISO 22172-1[6]; ISO 22172-2[7]; European Commission (2024) Data Act – Frequently Asked Questions[4].

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