



**Data Act en
Data Governance Act
binnen de Europese
datastrategie**

What is the Data Governance Act?

First legislation tabled as part of the EU's data strategy

4 main elements:

- Reuse of public sector data
- Neutral data intermediaries
- Standard consent to 'donate' data for public good
- Competent authorities

Entered into force in September 2023

What is the Data Act?

The Data Act is a **Game Changer – we think**

Main objective: Create a fair Data economy by ensuring a fair access and use of the Data

3 most important chapters:

- BtoC and BtoB data sharing
- Unfair contractual terms related to Data access and use
- Switching between Data Processing Services

B_toB and B_toC Data Sharing

The Data Act takes a radically new perspective ...

Example: You buy a car

The car is a connected product that sends data to the manufacturer

You are a careful driver and want your insurer to know how you drive

How can you do this today ???

- Are you the owner of the data ?
- Is the manufacturer the owner of the data ?... And so what ?

... Nobody is the owner of the Data

Art 3: Obligation to make connected products data and related services data accessible to the user

You drive a car. It is a connected product that sends data to the manufacturer

User

Data Holder

When you buy a car you will have to sign 3 contracts:

- Purchase order
- GDPR addendum
- **Data Act addendum** about the use of the **data produced by the car over the years** and how you can access or retrieve them... free of charge

This is really new and it will change the game

Art 5: Right of the user to share data with 3rd parties

You drive a car. It is a connected product that sends data to the manufacturer

User

Data Holder

You are a careful driver and want your insurer to know how you drive

User

3rd party
= Data Recipient

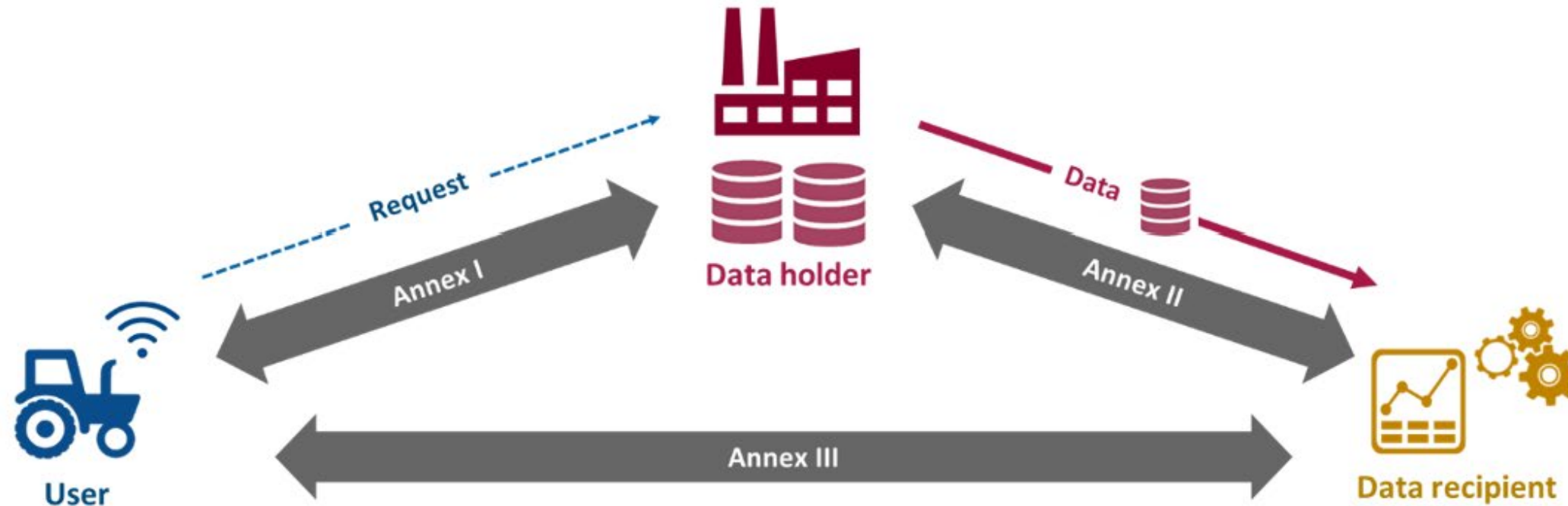
Upon request of a user, the Data Holder shall make available **readily available data** to a 3rd party ...with a reasonable and non-discriminatory compensation...

This is also a game changer... but

- Security requirements must be agreed
- The manufacturer wants to protect the trade secrets embedded in the data

Trilateral Data Sharing scenario

Trilateral data sharing scenario (mandatory for data holder)



It is a market in the making

- a lot of new aspects to analyse and a lot of new rules must be defined
- Balancing trade secrets with open access to data is complex and must be explicitly managed

Trilateral Data Sharing scenario

What is already clear ? The principles

- The Data Holder is obliged to share the data
- Security requirements must be agreed
- Trade secrets shall be preserved
- A reasonable and non-discriminatory compensation must be calculated

Trilateral Data Sharing scenario

What can we expect for implementation (best guess) ?

“Voluntary Data sharing” :

Data holder and Data recipient find a common interest to share data for giving service to the user

“Mandatory Data sharing”:

Data holder and Data recipient have conflicting interests

The definition and the process to share the Data (and definition of trade secrets) will be difficult to set up in the contract and to implement in practice

Art 34: The Commission shall recommend non-binding Model Contractual terms (MCTs) including reasonable compensation and the protection of trade secrets

→ An expert group will prepare and propose contract clauses to the Commission

BtoB and BtoC Data Sharing

Conclusion

Each and every contract for purchase, rent or lease a connected product must have a Data Act addendum

When ?

20 months after the official publication → **09/2025**

Eventually, **contracts** must be setup between the User and the Data Recipient

Eventually, **contracts** must be setup between the Data holder and the Data Recipient

Unfair contractual terms related to Data access and use

The EU Commission wanted to protect SMEs from unfair contractual terms imposed by large players.

Good News: Article 13 is changed to cover ALL enterprises:

“Unfair contractual terms unilaterally imposed on ~~a micro, small or medium sized~~ another enterprise”

« A contractual term, concerning the access to and use of data or the liability and remedies for the breach or the termination of data related obligations which has been unilaterally imposed by an enterprise on another enterprise, shall not be binding on the latter enterprise if it is unfair. »

This is GOOD NEWS, it should be a game changer, but

Unfair contractual terms

What can we expect for implementation (best guess) ?

- **Interpretation will remain difficult**

- « unilaterally imposed » *if it has been supplied by one contracting party and the other contracting party has not been able to influence its content despite an attempt to negotiate it*
- Not all unfair practices are covered
- Interdependency of clauses

Ex: The Customer data are considered Confidential ...

But the liability of the Provider who breaches the Confidentiality of Customer Data is limited to 1 year of fee

- ...

- **Implementation will take time**

- 20 months after the official publication → **09/2025**
- Only new contracts ?
- Time to setup “Dispute settlement bodies” in each country
- Time to go to court

Switching between Data Processing Services

Today:

- Only 5% of Cloud Services agreements include a switching and exit clause
- The cost of switching is a big obstacle

So the customers are locked-in.

The Data Act has explicitly addressed these issues:

- Article 23: **Removing obstacles to effective switching between providers of data processing services**
- Article 25: **Gradual withdrawal of switching charges including data egress charges**

From [date X+3yrs] onwards, providers of data processing services shall not impose any charges on the customer for the switching process, including data egress charges.

Thank you!

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