



# Digitalisation - European Strategy for Data: Data Act and Data Governance Act

## ■ Why does it matter to intermediaries?

The European Strategy for Data, which aims to create a Single Market for data in order to ensure that more data becomes available for use in the economy and society while keeping the people and companies who generate that data in control, materialises through two pieces of legislation: the **Regulation on European data governance (Data Governance Act)** and the **Regulation on harmonised rules on fair access to and use of data (the Data Act)**. While the Data Governance Act creates the processes and structures to facilitate data, the Data Act clarifies who can create value from data and under which conditions. **Both acts will apply across sectors and could impact insurance and financial intermediaries insofar as they receive and share data.**

## ■ State of play

### The Data Governance Act

It was adopted on 30 May 2022 and entered into force on 23 June 2022. It started applying on 24 September 2023. Its objective is to make more data available and facilitate data sharing across sectors and EU countries in order to leverage the potential of that data for the benefit of European citizens and businesses. The Act contains four broad sets of measures:

- 1) Mechanisms to facilitate the reuse of certain public sector data that cannot be made available as open data.
- 2) Measures to ensure that data intermediaries will serve as trustworthy organisers of data sharing or pooling within the common European data spaces.
- 3) Measures to make it easier for citizens and businesses to make their data available for the benefit of society.
- 4) Measures to facilitate data sharing (especially cross-border and cross-sector) and to enable the right data to be found for the right purpose.

### The Data Act

The Data Act entered into force on 11 January 2024 and will become applicable in September 2025.

As explained in a memo sent to BIPAR members, the Data Act lays down rules on the use of and access to data generated by connected objects. It also creates consistency between rules on data access which are often developed for specific purposes, in a disorganised manner. As such, the Data Act is an important basis for the proposal for a Regulation on a framework for financial data access (FIDA).

The Data Act aims at laying down harmonised rules on making products or related data service data available to users of connected products or devices. It also aims at ensuring fairness by setting up rules regarding the use of data generated by Internet of Things (IoT) devices and by allowing data holders to require compensation for making data available to third parties. Lastly, the Data Act ensures consistency between data access rights and makes more

data available for the benefit of companies, citizens and public administrations.

#### The Data Act applies to the following entities:

- Manufacturers of connected products and providers of related services placed on the EU market,
- Users of such connected products or related services in the EU,
- Data holders that make data available to EU recipients,
- Data recipients in the EU,
- Public sector bodies, the EU Commission, the EU Central Bank and other Union bodies that request access to data from data holders,
- Providers of data processing services, providing such services to EU customers,
- Participants of data spaces and vendors of applications using smart contracts and persons whose trade, business or profession involves the deployment of smart contracts.

The Data Act's obligations apply to both business to consumer and also business to business relationships. **The Data Act applies to the following types of data:**

- Product data, i.e. data generated by the use of connected products,
- Related service data, i.e. data representing the digitalisation of user actions or events related to the connected product.

The Data Act applies to **both personal and non-personal data**.

Because of its interactions with the FIDA proposal that concerns large intermediaries and some investment firms, the Data Act is of importance to insurance and financial intermediaries.

The overall objective of the Data Act is to establish a Single Market for data, where data from public bodies, businesses and citizens can be used safely and fairly for the common good. This may add a compliance burden on organisations such as insurance and financial intermediaries that hold,



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share or provide data to customers and/recipients in the EU. **BIPAR believes that the limited activities which are most likely to be of relevance to insurance and financial intermediaries are “user of a product or related service”, “data holder” and “data recipient”.**

### **Obligation to make product and related service data available to users**

Connected products must be designed and manufactured in a manner that ensures product data and related service data (including relevant metadata) are, by default, easily, securely and free of charge, made available to users of such products and devices.

### **Data sharing with third parties**

Upon request of a user, data holders shall make readily available data available to a third party (acting as a data recipient), without undue delay and free of charge for the user. “Gatekeepers” (such as big platforms and fintechs) cannot be considered to be third parties. Therefore, they cannot solicit or commercially incentivise a user to make data available to them under the Data Act. “Gatekeepers” cannot receive any data made available to a user or to third parties.

### **Obligations of third parties receiving data**

Third parties can only access data made available to them under the Data Act for the purposes and under the conditions agreed with the user. The third party shall delete the data when it is no longer necessary for the agreed purpose. When legally obliged to make data available to a third party, data holders may require a reasonable compensation.

### **SMEs and microenterprises**

SMEs and microenterprises acting as data holders are not subject to the obligation to make data available to users or third parties under the Data Act. They can, however, act as a data recipient.

### **Contractual terms**

The Data Act includes some safeguards against unfair contractual terms regarding contracts on access to and use of data. The point of this provision is to address the risk of unfair contractual terms imposed by one party with a significantly stronger bargaining position.

## ■ **BIPAR’s position/key messages**

BIPAR focuses on the importance for the European Strategy for Data (and especially the Data Act) to achieve a level playing field between different players and to ensure a fair and equal access to data across all sectors. BIPAR also emphasizes the importance of considering data sharing in the context of competition law. BIPAR insists on the need for proportionality with regard to smaller entities that should not be subjected to unreasonable added burden or costs as not to put them at a significant disadvantage when compared to bigger entities.

## ■ **Next steps**

The Data Act entered into force on 11 January 2024, and it will become applicable in September 2025.

## ■ **Links**

- [Data Governance Act](#)
- [Data Act](#)