

# EU developments in IP, Data & Technology

## Highlighting: smart devices & data

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With the rise of the network of smart devices connected to the Internet (also known as the Internet of Things (IoT)), smart devices can analyze personal data to personalize and optimize their operation. The European Commission (EC) adopted the delegated act to the [Radio Equipment Directive 2014/53/EU \(RED\)](#) in October 2021, which ensured the regulation of IoT devices. In February 2022, the EC also established a proposal of the [Data Act](#), which provides additional privacy and security requirements for manufacturers of IoT devices. This factsheet sets out a summarized overview of the aim, the applicability, and the main elements of both the proposed Data Act and the RED manufacturers and suppliers of IoT devices should consider when manufacturing or selling IoT devices in the EU.

### Glossary

**Data holders** means a natural or legal person, who has (i) the right or obligation or (ii) the ability, to make certain data available.

(the latter only in the case of non-personal data and through control of the technical design of the product and related services)

**Data processing** service means digital services, excluding online content service as defined in Regulation (EU) 2017/1128, that are provided to a customer which facilitate remote access and on-demand administration.

**Data recipient** means a natural or legal person to which the personal data are disclosed by the data holders.

**Products** means tangible items which can collect data of its use and communicate data via a publicly available electronic communications service and whose primary function is not the storing and processing of data.

**Related services** means a digital service incorporated or interconnected with a Product (i.e. if there is no Related services the Product is not able to perform one of its functions).

### Data Act, a proposal for a regulation on harmonized rules on fair access to and use of data

Adopted by the European Commission on February 23, 2022. Feedback from stakeholders is currently presented to the European Parliament and Council with the aim of feeding into the legislative debate.

#### Aim:



- Providing a harmonized framework for data sharing and using.
- Removing barriers to access data for both private and public sector bodies.

#### Applicable to:



- Manufacturers of **Products** and suppliers of **Related services** placed on the market in the EU and the users of such products or services.
- **Data holders** that make data available to EU **Data recipients**.
- EU Data recipients to whom data are made available.
- Public sector bodies and EU institutions, agencies, or bodies that request data holders to make data available where necessary for the performance of a task carried out in the public interest.
- Providers of data processing services offered to EU customers.

#### Main elements for businesses (not exhaustive):



- Facilitating access to and use of data:
  - generated via the IoT products and services to the user of the respective product or service without undue delay, free of charge, and, where applicable, in real-time;
  - held by enterprises for exceptional circumstances, particularly in the case of a public emergency (i.e., floods or wildfires); and
  - between sectors to remove barriers to data sharing across domain-specific common EU data spaces.
- Design IoT products and services so that users can easily access any generated data.
- Providers of data processing services must protect non-personal data held in the EU to prevent any international access or transfer where such transfers of non-personal data would create a conflict with EU or Member State law.
- Allow customers to switch between different cloud-data processing services providers.
- Making data available if required under the Data Act and/or subsequently adopted EU or Member State legislation.
- If access to non-personal data must be provided based on a court decision or government order, this is only allowed if based on an international agreement between the requesting third country and the EU/ Member State.
- Improving network resilience by ensuring that the covered products have appropriate technical features to mitigate cybersecurity threats (e.g., prevent these devices are used to disrupt website functionality).
- Implement new measures to prevent unauthorized access or transmission of personal data.
- Ensuring better authentication control for wireless devices to avoid fraudulent payments and reduce the risk of monetary fraud.
- Manufacturers will have to assess conformity before placing their products on the EU market, either by:
  - a. performing a self-assessment, or
  - b. relying on an independent third-party assessment body.

### Radio Equipment Directive (RED)

European Commission adopted a delegated regulation supplementing the Radio Equipment Directive 2014/53/EU in October 2021.

- Making sure all wireless devices are safe before being sold on the EU market under the new legal requirements for cybersecurity safeguards.

Any manufacturer intending to place the following products on the EU market:

- Devices capable of communicating via the Internet.
- Toys and childcare equipment.
- Wearables such as smartwatches and fitness trackers.

### KEY CONTACTS

Dentons helps companies grow, protect, operate and finance their business through digital transformation. The Amsterdam IP, Data & Technology team is one of the largest in the Netherlands and is very experienced in coordinating Europe-wide and global IP, data and tech projects. It stands out for its pragmatic data protection advice, technology contracting, trademark portfolio management, international IP transactions, and complex cross border IP litigation.

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