

**Regulation (EU) 2023/2854 of the European Parliament and of the Council on
harmonised rules on fair access to and use of data and amending Regulation (EU)
2017/2394 and Directive (EU) 2020/1828 (Data Act)**

SME Test

February 2025

Introduction

The EU Data Act (Regulation 2023/2854) entered into force on 11 January 2024 and became applicable across the EU from 12 September 2025.

The EU Data Act is a key pillar of the EU Data Strategy, which aims to make the EU a leader in a data-driven society, including by creating a single market for data. The Act aims to foster a competitive data market by making data more accessible and usable and by clarifying who can create value from data and under which conditions.

The Act establishes rules on data access and usage across all economic sectors in the EU. It aims to ease the switching process between providers of data processing services, puts in place safeguards against unlawful data transfers and provides for the development of interoperability standards for data to be reused between sectors.

The EU Data Act (Regulation) comprises four main elements:

- **Connected products/internet-of-things:** data holders will be required to ensure that data generated by connected products can be readily accessed by users and transferred to third parties at their request. The contracts by which such data sharing takes place will be regulated to prevent unfair practices.
- **Cloud services:** the Data Act is designed to promote competition in the cloud services market by enabling customers to switch between data-processing service providers. The Data Act is intended to facilitate “interoperability”, whereby the data-processing services offered by different providers can be used in a simultaneous and integrated way.
- **Business to Government data sharing:** the Data Act requires data holders to share information with the public sector in cases of exceptional need (for example national or regional emergencies).
- **Data transfer outside the Union:** the Data Act requires data holders to take measures to prevent illegal international and third-country governmental access and transfer of non-personal data, and sets out certain conditions

pursuant to which data holders should determine whether they can under Union law comply with third country orders requiring them to transfer non-personal data.

Potential Effect on SMEs

EU Approach

In 2022 the European Commission conducted an in-depth impact assessment on the proposal for the EU Data Act¹. The impact assessment included a comprehensive SME test to evaluate the potential effects on small and medium-sized enterprises (SMEs). This assessment was driven by the EU's commitment to the 'Think Small First' principle, ensuring that legislation is crafted with consideration for smaller businesses.

The impact assessment recognised that the EU Data Act is highly relevant for SMEs. In today's digital economy, data is one of the most valuable assets for smaller businesses. The vast majority of both data supplier and data user companies in the EU are SMEs. In order to innovate, it's crucial that SMEs have access to data. A 2019 survey indicated that 40% of SMEs struggle to access the data they need to develop data-driven products and services, notably because they lack the bargaining power to negotiate with large data holders.²

The EU Data Act introduces new rules that will bring more data resources within the reach of SMEs by re-balancing the distribution of data across market sectors. Incentivising the development of connected products and services based on new flows of data, is of particular value to smaller companies and reinforces their ability to compete. In addition, micro and small companies, as manufacturers or providers of related services, are not subject to the same obligations as larger companies.

The current lack of a clear legal framework means that larger enterprises are often in a stronger bargaining position than SMEs who cannot afford the necessary legal advice to draft and negotiate contracts. Clearer rules on data rights along with fairer data contracts will benefit SMEs proportionately more.

Regulatory adaptation costs for SMEs will be low in comparison to the expected high benefits due to the fairer access to data, the provisions to prevent unilateral imposition of an unfair contractual term, and innovation opportunities.

¹ [Impact Assessment report and support studies accompanying the Proposal for a Data Act | Shaping Europe's digital future](#)

² 204 European Commission (2019). SME panel consultation B2B data sharing - Final Report.

National approach

The EU Data Act is a harmonised EU Regulation with direct legal effect in all Member States. The obligations it places on regulated entities, including SMEs, are settled EU law, which is directly applicable in Ireland. There is no scope for Member States to amend these obligations.

The Act requires Member States to provide for the supervision and enforcement of the Act at national level. Member States must designate one or more competent authorities to enforce the EU Data Act. Member States are also responsible for defining the rules on penalties applicable to infringements of the EU Data Act. The enabling piece of legislation needs to be place by 12 September 2025.

Primary legislation is required to give full effect to the supervision and enforcement provisions of the Regulation. National legislation will neither add to, nor alter, the obligations placed on the regulated entities by the Regulation.

SME Test - EU Data Act

Screening question

Is the new policy, primary or secondary legislation, or regulatory compliance requirement relevant for SMEs³?

The following questions must be answered:

- Are SMEs within the scope of the measure? Yes No
- Does the measure specifically target SMEs? Yes No
- Will or could SMEs be impacted directly or indirectly by the measure? Yes No
- Are SME impacts likely to be more substantial than on other companies, for example, in terms of adverse effects? Yes No

Step 1. Consultation

- 1. What consultation will/has taken place to capture input from the SME community, particularly those most impacted by this measure?**

Public consultation

Online consultation

³ Medium <250 employees, Small < 50 employees, Micro SME <10 employees
As per EU definition of an SME: https://single-market-economy.ec.europa.eu/smes/sme-definition_en

Consultation with SME representative bodies	<input checked="" type="checkbox"/>		
Notifications of consultation to database of interested stakeholders	<input type="checkbox"/>		
Interviews and panels with experts	<input checked="" type="checkbox"/>		
Webinars			<input checked="" type="checkbox"/>
Roundtables		<input checked="" type="checkbox"/>	
Public meetings	<input type="checkbox"/>		
Other		<input type="checkbox"/>	

If Other, please provide details:

A consultation was carried out at national level by the Department of Enterprise, Trade and Employment. A prior consultation was carried out by the European Commission.

European Commission Consultation

The European Commission conducted a comprehensive public consultation during the drafting of the EU Data Act, gathering input from various stakeholders, including SMEs.⁴ The consultation aimed to assess the challenges and opportunities in the data economy, particularly for SMEs, and to help shape a regulatory framework that promotes fair access to data while ensuring competition and innovation. The feedback gathered informed the scope of the EU Data Act, addressing concerns about data access, contract fairness, data portability, and regulatory compliance.

The European Commission launched its public consultation on the EU Data Act in June 2021, seeking input over a 12- week period. A subsequent feedback period of 8 weeks ran from March 2022. This process involved targeted questionnaires, workshops, position papers, and bilateral discussions with stakeholders across industries. SMEs were a key focus group given their role in the digital economy and their dependence on data access from larger companies. The consultation aimed to understand the barriers SMEs face in accessing and utilising data, the potential risks associated with mandatory data-sharing obligations, contractual imbalances when dealing with larger companies, and the impact of regulatory changes on their competitiveness.

National Public Consultation

Further to the Commission’s public consultation on the Data Act, the Department of Enterprise, Trade and Employment issued a public consultation on 1 April 2022 seeking views from stakeholders on the EU Data Act proposal. This ‘call for views’ ran until 13th of May 2022. Stakeholders were invited to submit their perspectives to inform Ireland’s position on the proposed regulation. The consultation was posted across the Department’s social media profiles to encourage submissions to the consultation

⁴ [Public consultation on the Data Act | Shaping Europe’s digital future](#)

Findings

In the European Commission's consultation, a significant portion of SMEs expressed concerns that they lack the bargaining power to negotiate fair access to data generated by connected devices and digital services. Many SMEs argued that large companies, particularly in manufacturing, cloud services, and digital platforms, create monopolistic data environments that restrict smaller companies from competing on equal terms. Another key finding was that unfair contractual terms were a widespread issue. SMEs reported that large companies impose one-sided data sharing agreements that limit how SMEs can use data, often restricting them from developing competing products or services. These unfair terms were cited as a major obstacle to data driven innovation.

Cloud computing and data portability emerged as another area of concern. SMEs often struggle with vendor lock-in, making it difficult and expensive to switch between data processing service providers. The consultation revealed that many cloud contracts contain restrictive terms that limit SMEs ability to migrate their data to alternative providers, leading to higher long-term costs and reduced market competition. SMEs also raised concerns about mandatory data-sharing obligations which could strain their limited resources. There were also reservations about data security and confidentiality, especially regarding sensitive information like trade secrets. Most SMEs supported the principles of fair access to data, they also called for safeguards to prevent the forced disclosure of sensitive business information that could harm their commercial interests.

Outcomes

The European Commission incorporated several key provisions into the final version of the EU Data Act to support SMEs.

The EU Data Act provides exemptions for SMEs to ease the burden of data-sharing obligations. These exemptions aim to protect smaller businesses from excessive compliance costs while still allowing them to benefit from fairer access to data.

The regulation introduced fair, reasonable, and non-discriminatory (FRAND) terms. This means data holders must make data available under FRAND conditions, ensuring that no party is unfairly advantaged or disadvantaged. SME and non-profit organisations cannot be charged more than the costs incurred by the data holder for making the data available. This will mean that SMEs can access industrial and IoT data without being subjected to exploitative contracts.

To ensure a competitive market in the EU, the regulation mandates that providers of data processing services (including cloud and edge services) must facilitate seamless switching from provider to another. The EU Data Act will make switching free, fast and

fluid. This means SMEs can move their data and applications to different providers without facing excessive costs or technical barriers. The act also prohibits unfair contractual terms that could hinder this process, such as excessive termination fees or restrictive clauses. These measures aim to prevent vendor lock-in, reduce costs and provide SMEs with more flexibility and control over their data.

The EU Data Act includes safeguards to protect trade secrets and sensitive business information. SMEs must identify any trade secrets before sharing data, and data-sharing agreements must include measures to preserve confidentiality. The Act also mandates robust security measures to protect sensitive data during transfer and storage. These provisions aim to balance the need for data sharing with the protection of SMEs' sensitive business information, ensuring they can participate in the data economy without compromising their valuable assets.

The EU Data Act addresses unfair contractual terms to protect smaller businesses from being exploited by larger entities. Contracts that impose excessive restrictions on data use or grant disproportionate advantages to one party can now be legally challenged. It also promotes transparency and fairness by requiring clear and understandable terms, preventing larger companies from imposing complex and disadvantage conditions on SMEs. These measures will help ensure SMEs can engage in data-sharing agreements on more equitable terms.

Findings from the National Public Consultation

The Department of Enterprise, Trade and Employment received five submissions from stakeholders to its national consultation which ran for 6 weeks. The submissions received were published on the Department's website.⁵

Stakeholders welcomed the overarching aim of the EU Data Act to increase sharing and reuse of data in the digital economy. Although there were no submissions received from SMEs, stakeholders were broadly supportive of measures such as increased fairness and competition in the European cloud market, as well as protecting companies from unfair contractual terms related to data sharing imposed by stronger players, which are all beneficial to SMEs.

There was also some support expressed for the Commission's proposal for alignment of the Digital Markets Act (DMA) with the objectives of the EU Data Act, where companies designated as Digital Gatekeepers under the DMA would not be direct beneficiaries of the new data access rights under the EU Data Act.

⁵ [Call for views in response to the European Commission's public consultation on the Data Act - DETE](#)

Conclusion

The European Commission's public consultation played an important role in shaping the EU Data Act, ensuring that the regulation balances the need for data accessibility, innovation and fair competition while addressing concerns of SMEs. The final provisions reflect the feedback received from SMEs, providing them with greater access to industrial and IoT data, stronger protection against unfair contracts, and improved cloud portability. It assisted the European Commission's development of the Act's aims to create a more level playing field in the data economy, fostering competition and innovation.

Although there were no submissions received from SMEs from the National Public Consultation, there was support for some of the measures benefiting SMEs. Submissions received informed the Irish approach and input into negotiations at the Transport, Telecommunications and Energy Council meetings in the EU.

Step 2. Identification of affected businesses

2a: Please identify the type of SMEs that will be directly or indirectly (i.e. SMEs not in scope, but potentially affected indirectly, for instance through impacts on supply chain) affected by proposed policy change -

- | | | |
|---------------------------|--------------------------|-------------------------------------|
| Micro (1-9 employees) | <input type="checkbox"/> | |
| Small (10-49 employees) | | <input type="checkbox"/> |
| Medium (50-249) employees | <input type="checkbox"/> | |
| All of the above | | <input checked="" type="checkbox"/> |

2b: Has an estimate been carried out of the numbers of micro, small and medium companies affected directly or indirectly by the measure?

Yes No

2c: Will the proposed policy change have a greater impact on SMEs in any particular economic sector?

Yes No

If Yes, please specify.

The proposed policy changes will have a greater impact on data-intensive sectors, particularly, manufacturing, technology, finance, healthcare, telecommunications, automotive and energy.

2d: Will the proposed policy change have a greater impact on SMEs in any particular region?

Yes No

Effect on SMEs

The greatest impact on SMEs will be in the data-intensive sectors, particularly manufacturing, technology, finance, healthcare, telecommunications, automotive and energy. These sectors generate and use significant amounts of data, making them more directly affected by the data-sharing obligations and interoperability requirements of the Act. While the Act aims to create a fair and competitive data economy, SMEs in these sectors will need to adapt to the new data-sharing practices and ensure compliance with the regulation. The Act also includes exemptions for micro, small and medium enterprises to reduce the compliance burden. Overall, the impact will be more pronounced in sectors where data plays a critical role in operations and innovation.

Step 3 - Assessment of the impacts on SMEs

3a: What are the expected positive impacts of the policy change on SMEs ?

- Improved regulatory framework Yes No
- Improved working conditions Yes No
- Cost savings Yes No

3b: Will the proposed changes result in any of the following impacts for SMEs?

- Administrative costs, including the obligation to provide information on the activities or products of the company, including one-off and recurring administrative costs?
Yes No
- Compliance costs, including the obligation to pay fees or duties; and costs created by the obligation to adapt the nature of the product/service and/or production/service delivery process to meet economic, social or environmental standards.
Yes No
- Other impacts, including on business entry and exit; competition and competitiveness?
Yes No
- Discourage entrepreneurship or innovation? Yes No
- Impacts of any proposed exemption thresholds on business growth? Yes No
- Impacts on SME population composition and location? Yes No

- Additional reporting requirements?

Yes No

Assessment of the impacts on SMEs

The EU Data Act is expected to achieve many positive impacts for SMEs, including in relation to cost savings and from improvements to the regulatory framework around data sharing. The Act seeks to improve data access, encourage innovation and create a more competitive data economy which will all be beneficial to SMEs. The Act incentivises the development of connected products and services based on new flows of data, which is of particular value to smaller companies and also provides encouragement for those who invest in data technologies by compensating for data made available.

The regulation will provide both opportunities and challenges for SMEs. SMEs will benefit from the removal of barriers to cloud switching and from increased data sharing which should promote innovation. SMEs will also have greater protections against unfair contractual terms when acquiring data, and from measures to provide safeguards for trade secrets and intellectual property.

SMEs in the affected sectors, such as manufacturing, will need to adapt to the new data-sharing practices and obligations to ensure compliance with the regulation which may result in additional costs. However, micro and small companies, as manufacturers or providers of related services, are not subject to the same obligations as larger companies.

The Act acknowledges the additional burden that could be placed on microenterprises and small enterprises such as when making data available in public emergency situations, and therefore, permits them to claim compensation in the context of a public emergency response, which doesn't apply to other enterprises.

Overall, the costs for SMEs to adopt the regulatory requirements should be low in comparison to the expected high benefits due to the provisions to prevent unilateral imposition of an unfair contractual term, wider data reuse, cross-selling, and the possibility to offer added-value services which should provide innovation opportunities.

Step 4 - Assessment of alternative options and mitigating measures

Mitigating Measures

Under the EU Data Act, there are some exemptions for micro and small enterprises from data sharing obligations, with some limited exemptions for medium-sized enterprises.

These should ensure that compliance is not overly burdensome, and that compliance costs and administrative efforts are proportional to the size and capacity of the business.

The EU Data Act recognises the limited resources of smaller companies and introduces safeguards to avoid disproportionate impacts.

1. Data Sharing Obligations: Micro and small enterprises⁶, are exempt from the business-to consumer, and business-to-business, data sharing obligations under the Act, with some limited exemptions for medium-sized enterprises. This should ensure that compliance is not overly burdensome for them.
2. Protection Against Unfair Contractual Terms: The EU Data Act aims to protect all European businesses seeking to acquire data, in particular SMEs, against unfair contractual terms through its measures to intervene in situations where, for example, one of the businesses is in a stronger bargaining position (e.g. due to its market size) and imposes a non-negotiable term ('take-it-or-leave-it') related to data access and use on the other.
3. Data Portability: The Act makes it easier for businesses, including SMEs, to switch between cloud and data service providers without excessive fees or technical barriers. This encourages competition and reduces vendor lock-in, a major issue for smaller businesses.
4. Affordable Access to Data: SMEs will have more affordable and equitable access to data collected by smart devices or services they use. This will allow them to use data for innovation, optimisation and competitiveness without high costs.
5. Simplified Legal & Technical Framework: The EU Data Act aims to create a clear and simplified legal framework for data access and sharing, which should reduce administrative burdens on SMEs. Technical standards for interoperability are being developed to ensure that SMEs can participate in data ecosystems without needing expensive custom solutions.

Conclusion

⁶ A micro enterprise is defined as an enterprise that employs fewer than 10 people and whose annual turnover/annual balance is less than €2 million. A small enterprise is defined as an enterprise that employs fewer than 50 people and has an annual turnover/annual balance of less than €10 million.

Throughout the development of the EU Data Act, significant consideration has been given to the unique circumstances of SMEs. The Act aims to ensure that SMEs can benefit from the data economy without being overwhelmed by regulatory burdens.

Through extensive stakeholder engagement, the European Commission identified key barriers that SMEs face in the data economy, including limited access to industrial data, unfair contractual terms, and data processing services vendor lock-in. These insights led to targeted provisions aimed at creating a more balanced and competitive data economy.

Strong feedback from SMEs during the consultation process led to the inclusion of exemptions for micro, small and medium enterprises. It was recognised that imposing the same obligations on all businesses would be counterproductive. These exemptions are designed to reduce the regulatory burden and help smaller businesses focus on growth and innovation without being overwhelmed by compliance requirements.

In conclusion, the public consultation process was instrumental in ensuring the EU Data Act reflects the practical needs and circumstances of SMEs. By incorporating stakeholder feedback, the final legislation balances the need for greater data accessibility, fair competition, and reduced regulatory burdens. As a result, SMEs stand to benefit from a more open, competitive, and innovation friendly data economy.

Department of Enterprise, Trade and Employment