

EUROPEAN COMPLIANCE SUITE

EU AI Act Compliance Evidence Templates

EXPLANATORY NOTICE AND TEMPLATE**Role Determination and Chapter Applicability Assessment under Regulation (EU) 2023/2854
(Data Act)**

Template reference	ECS-DA-SCOPE
Version	1.0
Issued	July 2026
Obligation addressed	Determination of the roles held under the Data Act and of which chapters of the Regulation apply
Addressee	Manufacturers and suppliers of connected products and related services, data holders, data processing service providers, and recipients of data
Position in the pack	Entry document. Completed before the other records; its determinations identify which of them are required
Companion templates	ECS-DA-ACCESS — connected product data access and sharing record; ECS-DA-SWITCH — data processing services switching record; ECS-DA-TERMS — contractual terms, compensation and trade secrets record

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1. Background and purpose

- (1) Regulation (EU) 2023/2854 on harmonised rules on fair access to and use of data (the ‘Data Act’) entered into force on 11 January 2024 and has applied since 12 September 2025. It establishes rules on access to data generated by the use of connected products and related services, on the terms on which data is made available, on switching between data processing services, and on safeguards against unlawful international access to non-personal data.
- (2) The Data Act is structurally unlike the sectoral instruments with which it is often grouped. It does not impose a single obligation on a single category of actor. It creates a set of roles — data holder, user, data recipient, third party, provider of data processing services — and attaches different obligations to each, in different chapters, with different dates of application. An organisation of any size commonly holds several of these roles simultaneously, and holds different roles in relation to different products, services and counterparties.
- (3) The consequence is that the first compliance question under the Data Act is not ‘what must we do’ but ‘what are we, and in relation to what’. An organisation that has not answered that question has no way of knowing which chapters bind it, and the most common failure in Data Act readiness is an organisation assessing itself against Chapter II as a manufacturer while overlooking that it is also a provider of data processing services subject to Chapter VI, or a data recipient subject to Article 6.
- (4) This Assessment establishes the roles held, the products, services and relationships in relation to which each is held, and which chapters of the Regulation follow. It is the entry document of the Data Act pack and identifies which of the remaining records are required.

RELEVANT LEGAL TEXT

Article 2 Data Act (extracts — definitions).

‘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; ‘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; ‘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; ‘user’ means a natural or legal person that owns a connected product or to whom temporary rights for the use of that connected product have been contractually transferred, or that receives related services; ‘data processing service’ means a digital service that is provided to a customer and that enables ubiquitous and on-demand network access to a shared pool of configurable, scalable and elastic computing resources of a centralised, distributed or highly distributed nature that can be rapidly provisioned and released with minimal management effort or service provider interaction.

Article 1(1) Data Act.

This Regulation lays down harmonised rules, inter alia, on: (a) the making available of product data and related service data to the user of the connected product or related service; (b) the making available of data by data holders to data recipients; (c) the making available of data by data holders to public sector bodies, the Commission, the European Central Bank and Union bodies, where there is an exceptional need for those data for the performance of a specific task carried out in the public interest ...

2. The chapters and whom they bind

- (5) The Regulation is organised by chapter, and each chapter binds a different set of actors. The following table is the map on which this Assessment is built.

Chapter	Subject-matter	Whom it binds
II	Access to and use of data generated by connected products and related services, including access by design, the user's right to access, and the user's right to have data shared with a third party.	Manufacturers and suppliers of connected products and related services; data holders; third parties receiving data.
III	Obligations on data holders legally obliged to make data available, including fair, reasonable and non-discriminatory terms, transparency, compensation, and dispute settlement.	Data holders under an obligation to make data available.
IV	Unfair contractual terms concerning data access and use unilaterally imposed on another enterprise.	Any enterprise imposing such terms unilaterally.
V	Making data available to public sector bodies and Union institutions on the basis of an exceptional need.	Data holders receiving such a request.
VI	Switching between data processing services, including contractual, technical and commercial conditions and the withdrawal of switching charges.	Providers of data processing services.
VII	Safeguards against unlawful third-country governmental access to and transfer of non-personal data held in the Union.	Providers of data processing services.
VIII	Interoperability of data, data sharing mechanisms and data processing services.	Participants in data spaces; providers of data processing services; providers of smart contracts.

- (6) Chapters IV, VI and VII deserve emphasis because they capture organisations that do not consider themselves within the Data Act at all. Chapter IV applies to any enterprise that unilaterally imposes contractual terms on another enterprise concerning access to and use of data, irrespective of whether it makes or sells a connected product. Chapters VI and VII apply to providers of data processing services, a definition wide enough to capture many software-as-a-service offerings and not confined to the large infrastructure providers at which the provisions are popularly assumed to be directed.

3. The roles

3.1. Connected product and related service

- (7) The threshold question for Chapter II is whether the organisation makes, sells, rents or leases a connected product, or supplies a related service. A connected product obtains, generates or collects data concerning its use or environment and can communicate that data, and its primary function is not the storage, processing or transmission of data on behalf of a party other than the user. A related service is a digital service connected with the product such that its absence would prevent the product from performing one or more of its functions, or which is subsequently connected to add to, update or adapt those functions.
- (8) The scope is wider than the industrial machinery and consumer devices that dominate discussion of the Regulation. Vehicles, medical and agricultural equipment, building systems, domestic appliances, wearables and connected consumer goods all fall within it where the definitional elements are met. The exclusion of products whose primary function is data storage, processing or transmission is directed at general computing infrastructure, not at products that happen to transmit data as an incident of their function.

3.2. Data holder

- (9) A data holder is a person with the right or obligation to use and make available data, including product data or related service data it has retrieved or generated during the provision of a related service where

that is contractually agreed. In practice the manufacturer is frequently the data holder, but not invariably: the role can sit with a service provider, a fleet operator, a dealer or an aftermarket provider, depending on the contractual arrangements and on who holds the data.

- (10) The determination should be made per product line and per data category rather than for the organisation as a whole. Different data generated by the same product may be held by different entities, and an organisation may be the data holder for telemetry while another entity is the data holder for data generated through a related service.

3.3. User, third party and data recipient

- (11) A user owns the connected product or has been granted temporary rights of use, or receives related services. Users hold rights under Chapter II rather than obligations, but an organisation that is a user of others' connected products should identify that position, because those rights are commercially valuable and are frequently unexercised.
- (12) A third party receiving data at the user's request is subject to the obligations in Article 6, which constrain what the third party may do with the data received. An organisation whose business model depends on obtaining data from others' connected products — an aftermarket service, a maintenance provider, an insurer, an analytics business — is likely to be in this position and should assess itself against Article 6 as carefully as a manufacturer assesses itself against Article 3.

3.4. Provider of a data processing service

- (13) A data processing service is a digital service enabling ubiquitous and on-demand network access to a shared pool of configurable, scalable and elastic computing resources. The definition is functional and covers services across infrastructure, platform and application layers. An organisation supplying software as a service should assess whether it falls within the definition rather than assuming that Chapter VI is directed only at hyperscale infrastructure providers.
- (14) Where the definition is met, Chapters VI and VII apply and bring substantial obligations: contractual terms permitting switching, information about the process, assistance with transition, functional equivalence in defined cases, the progressive withdrawal of switching charges, and safeguards against unlawful third-country governmental access. These are among the most operationally demanding requirements in the Regulation and require lead time.

4. Application dates and phasing

- (15) The Regulation has applied since 12 September 2025, but several provisions are phased and the phasing is material to planning.
- (16) The access-by-design obligation in Article 3(1) — that connected products and related services be designed and manufactured so that product data and related service data are, by default, easily, securely and, where relevant and technically feasible, directly accessible to the user — applies to connected products and related services placed on the market after 12 September 2026. Products already on the market before that date are not required to be redesigned, although the data access obligations owed by data holders apply to them.
- (17) The provisions on switching charges are also phased: switching charges are subject to progressive reduction and then withdrawal, with the withdrawal taking effect from 12 January 2027. Providers of data processing services should plan the commercial consequences of that change rather than treating it as a distant obligation.
- (18) The obligations in Chapter IV concerning unfair contractual terms apply to contracts concluded after 12 September 2025, with transitional treatment for certain contracts of indefinite duration or long fixed duration concluded before that date. Contract remediation programmes should be scoped against those transitional provisions, and the applicable dates verified against the consolidated text.

5. Interaction with other Union law

- (19) The Data Act operates alongside data protection law and does not displace it. Where data generated by a connected product includes personal data, the Regulation does not itself provide a lawful basis for processing, and a data holder responding to an access or sharing request must satisfy itself of the position under Regulation (EU) 2016/679. Where the user is not the data subject, the data holder must have a valid legal basis before making personal data available, and the Regulation is explicit that it does not affect data protection law.
- (20) The Regulation also interacts with the protection of trade secrets. Data holders may, in defined circumstances and subject to conditions, agree measures to preserve confidentiality and may in limited cases withhold or suspend sharing where the conditions are met. That analysis is documented in ECS-DA-TERMS, and should be prepared in advance rather than improvised in response to a request.
- (21) Sector-specific Union law may apply in parallel, and the AI Act, the Digital Markets Act and the Free Flow of Non-Personal Data Regulation each touch adjacent ground. Where the organisation is subject to those instruments, the interfaces should be identified.

6. Outcome, review and enforcement

- (22) The Assessment produces a role map: the roles held, the products, services and relationships to which each relates, the chapters that follow, and the records required. Where no role is held, the Assessment is the retained evidence of that conclusion.
- (23) The Assessment is repeated on the introduction of a connected product or related service; on a change in contractual arrangements bearing on who holds data; on entry into a new relationship as data recipient or third party; on the launch or material change of a service that may constitute a data processing service; and on approach of the phased application dates. In the absence of a trigger it is reviewed at intervals of no more than twelve months.
- (24) Member States lay down rules on penalties for infringement of the Regulation, which are to be effective, proportionate and dissuasive, and infringements concerning personal data may additionally engage the penalty regime under data protection law. Because the penalty regime is national, the organisation should record the competent authority and the applicable national provisions in each Member State in which it operates.

7. What follows

- (25) Where the Assessment identifies a role under Chapter II or III, the organisation completes the connected product data access and sharing record (ECS-DA-ACCESS). Where it identifies a provider of data processing services, it completes the switching record (ECS-DA-SWITCH), which also covers the Chapter VII international access safeguards. Where it identifies contractual terms concerning data access or use imposed on other enterprises, compensation arrangements, or reliance on trade secret protection, it completes the contractual terms record (ECS-DA-TERMS). An organisation holding several roles completes several records, and the role map produced here identifies which.

Annex

Template for the Role Determination and Chapter Applicability Assessment under Regulation (EU) 2023/2854 (Data Act)

Version of the Assessment	<i>Version identifier, with references to previous versions where applicable.</i>
Last update	<i>DD/MM/YYYY</i>
Prepared by	<i>Name, role and function responsible for the accuracy of this Assessment.</i>
Classification	<i>Internal / disclosable to authorities / disclosable to customers.</i>

1. Organisation

Organisation name and establishment	<i>Legal name, registered address, and country of establishment.</i>
Member States of operation	<i>Where the organisation offers connected products, related services or data processing services in the Union.</i>
Enterprise size	<i>Whether the organisation qualifies as a micro, small or medium-sized enterprise. Certain obligations are modulated by size, so record the basis.</i>
Date of assessment	<i>DD/MM/YYYY.</i>
Consolidated text verified at	<i>Date on which the applicable provisions and phased dates were verified against the consolidated text of the Regulation.</i>

2. Connected products and related services

Complete one row per product line or service. Assess each against the definitional elements rather than by general impression.

Product or service	Generates or collects data on use or environment?	Can communicate that data?	Primary function is data storage or processing for another party?	Connected product / related service / neither

Placed on the market after 12 September 2026?	<i>Identify which products and related services are or will be placed on the market after that date, since the access-by-design obligation in Article 3(1) applies to them.</i>
Products in scope but pre-dating that date	<i>Identify products already on the market. Access-by-design does not apply, but data holder obligations do.</i>

3. Data holder determination

Determine per product line and per data category. Different data from the same product may be held by different entities.

Product or service	Data category	Who holds the data	Basis (contract, law, factual control)	Organisation is data holder?

4. Other roles held

Role	Held?	In relation to what	Chapter engaged
User of others' connected products			Ch II (rights)
Third party receiving data at a user's request			Art 6

Data recipient			Ch III
Enterprise imposing terms on other enterprises			Ch IV
Recipient of a public sector body request			Ch V
Provider of a data processing service			Ch VI, VII
Participant in a data space / smart contract provider			Ch VIII

5. Data processing service determination

Complete where the organisation supplies any digital service that may fall within the definition. Do not assume the definition is confined to infrastructure providers.

Services assessed	<i>List each service assessed against the definition.</i>
On-demand network access to configurable, scalable and elastic resources?	<i>Assess each element against the service as supplied.</i>
Conclusion per service	<i>Whether each service is a data processing service within the meaning of the Regulation.</i>
Consequences identified	<i>Where the definition is met, confirm Chapters VI and VII apply and that ECS-DA-SWITCH is required.</i>
Switching charge exposure	<i>The commercial exposure arising from the phased reduction and withdrawal of switching charges, and who owns the planning for it.</i>

6. Interaction with other Union law

Personal data involved?	<i>Whether data generated by the products or services includes personal data, and for which categories.</i>
Lawful basis position	<i>How the organisation will establish a lawful basis when responding to access or sharing requests, in particular where the user is not the data subject. Cross-refer to the relevant data protection documentation.</i>
Trade secrets	<i>Whether the organisation will rely on trade secret protection in relation to any data category. Cross-refer to ECS-DA-TERMS.</i>
Other instruments	<i>AI Act, Digital Markets Act, sectoral legislation or other, and the interface identified.</i>

7. Role map and records required

Summary of roles held	<i>In one short paragraph, the roles held and in relation to what.</i>
Chapters applicable	<i>List.</i>
Records required	<i>Which of ECS-DA-ACCESS, ECS-DA-SWITCH and ECS-DA-TERMS are required, and for which products, services or relationships.</i>
Competent authorities	<i>The competent authority in each Member State of operation, and the applicable national penalty provisions.</i>
Owner and target dates	<i>Who is responsible for each consequential action and by when.</i>

8. Review

Next scheduled review	<i>DD/MM/YYYY, no more than twelve months from the date of assessment.</i>
Trigger events registered	<i>New connected products or services; changes to contractual arrangements bearing on data holding; new data recipient relationships; launch or change of a data processing service; approach of a phased application date.</i>

9. Version history and declaration

Version	Date	Nature of the change or review	Approved by
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Declaration

The determinations recorded above are made in good faith and, to the best of the knowledge of the person signing, are accurate and complete as at the date of signature. Where a determination could not be made on the information available, the gap and the reason for it have been recorded in the relevant field.

Name	
Role	
Date	
Signature	