

Session 2

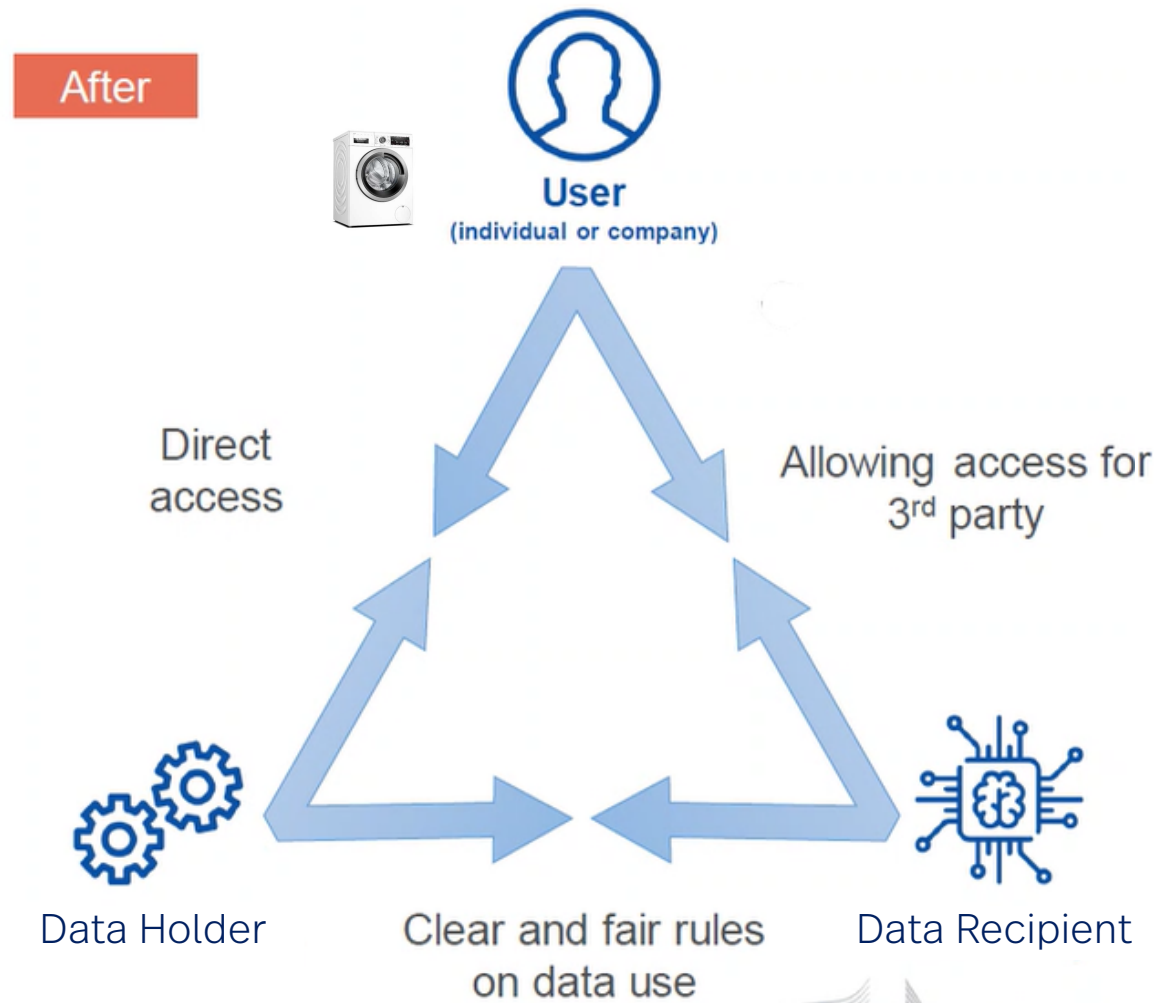
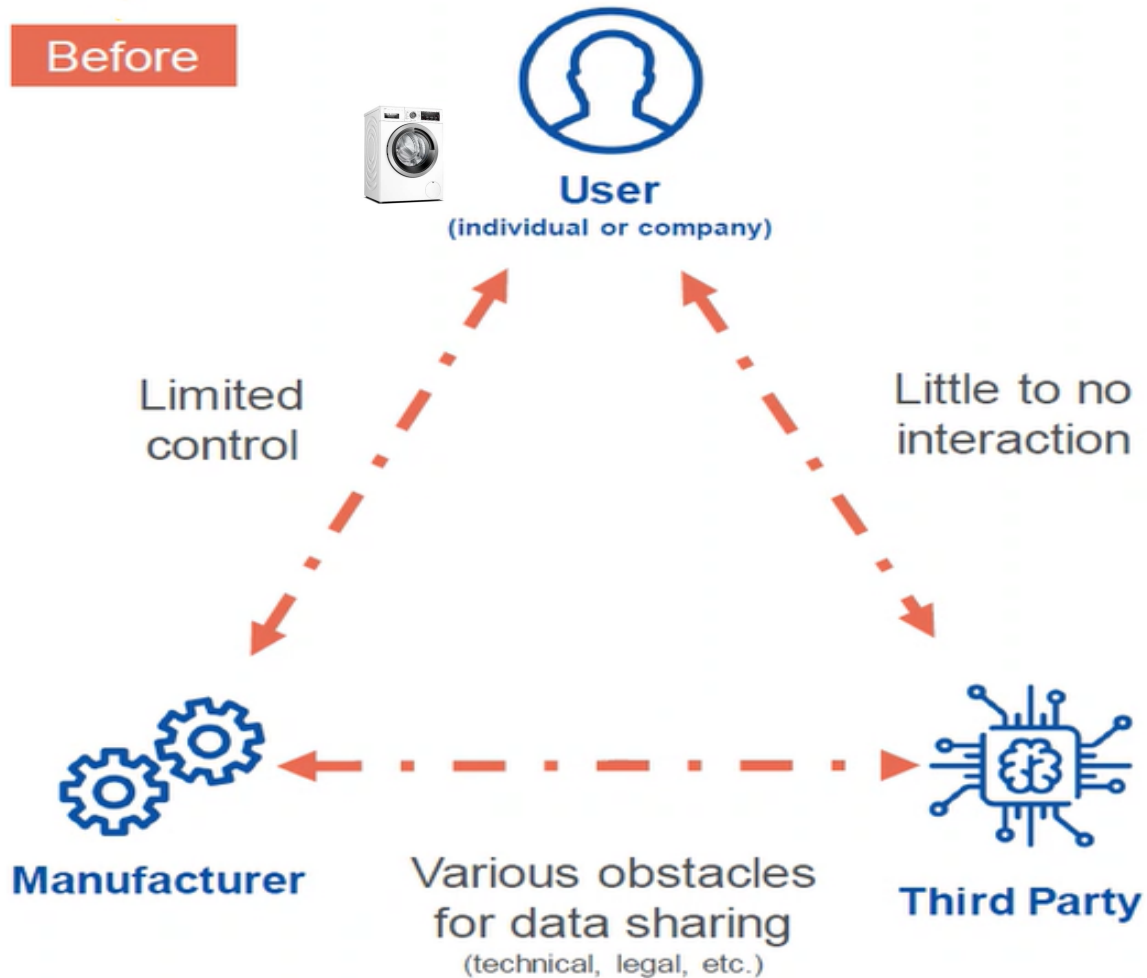
Connected Products & the EU
Data Act – What Manufacturers
Must Prepare For.



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Why is there a Data Act?



Looking Back: current market reality since 09/2025*

Existing tasks and how they are relevant by now

Awareness is high, but implementation is fragmented

Related tasks

- **Know and classify your data (data management):** 20% of survey participants voted for completed / 51% in progress / 29% not even started.
- **Prepare pre-contractual information (Art. 3. paras. 2 and 3 Data Act (“DA”)):** User requests for such data: 26% yes, 74% none.

Data access requests: still limited

Related tasks

- **Set up a process for user requests (Art. 4 para. 1/5 para. 1 DA):** 68% ‘no requests so far’/ 29% report ‘some requests’ only 3% ‘many requests’.
- **Calculate compensation in the case of sharing with data recipients:** Compensation requests of data holders: 46% no compensation requested vs. 54% compensation requested (→ disputed in 42% of the cases / 12% accepted without discussion).
→ Participant calculated compensation based on e.g. effort;

No market standard for data license agreements yet

Related task

Draft data license agreements:

- **No market standard** for data license agreements yet.
- **Model Contractual Clauses** of EU Commission (“MCT”) only partly used (33 % no specific agreement / 27% own draft / 33% own draft based on MCT/ 7 % MCT without adjustments).

Trade secrets: protect what matters to you

Related task

Provide, but protect trade secrets:

- Topic that matters as 46% identified trade secrets in their data.
- Use of the **trade secret „handbrake“ mechanism** (Art. 4 para. 8/ Art. 5 para. 11 DA) 51% not relevant / 49% relevant (of which 3% already used)
→ Participants protected through e.g. NDA (with penalties); processing on device; usage of data trustee; or complex data access.

Looking Ahead: What's coming and to be expected?

Further relevance of data license agreements

- Also necessary for the use of non-personal data.
- Key topics for data license agreements:
 - Purpose of data use (e.g. in agreements with users).
 - Definition of the data to prevent scope discussions.
 - Way of access.
 - Security & confidentiality: TOMs, encryption, audits, trade secret safeguards.
 - Compensation (on FRAND level) (final version of EU Commission guidelines to be expected soon).
 - Consider the specific law on T&Cs (Art. 13 DA).

Implementing Act (DADG-E); final reading on 8th May 2026)

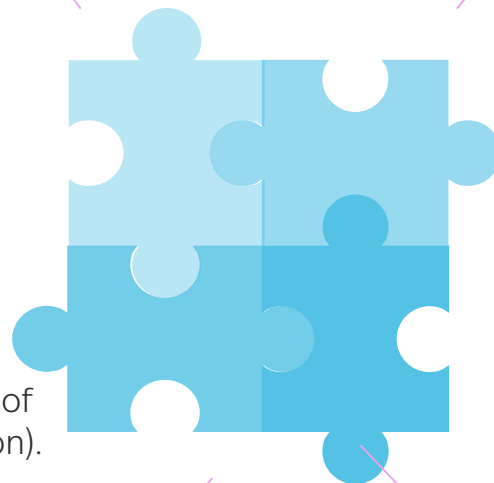
- Bundesnetzagentur ('BNetzA') as lead supervisory authority; BfDI for data protection (§ 2/3 DADG-E).
- Trade secrets protected in proceedings via formal labeling (no file inspection) (§ 10 DADG-E).
- Graduated fines: up to EUR 50k (standard) / 100k / 500k for core Data Act violations (up to EUR 250m or 2% of global turnover for Gatekeepers (limited cases)) (§ 15 DADG-E).

Design obligations ('access by design')

- Applies to units placed on the market from 12th September 2026.
- Connected Products shall be designed and manufactured to make product data - **where relevant and technically feasible** - directly accessible to the user (Art. 3 para. 1 DA).
- Right of manufacturer to choose between direct access (Art. 3 para. 1 DA) and making available indirectly (Art. 4 para. 1/Art. 5 para. 1 DA) (cf. FAQ 22 of EU Commission).
- As uncertainty remains, document the decision.

Digital Omnibus of the EU Commission regarding the Data Act

- Current discussions of draft (likely to be expected in autumn 2026).
- Consolidation of other data laws in the Data Act (e.g. Data Governance Act and the Open Data Directive).
- Changes regarding data sharing obligations are minor.
- Main change (adding the transfer to unsafe third countries as reason for the trade secret handbreak mechanism) not practically feasible.



Summary



- Awareness of the Data Act is high, but not as high as the EU might have expected and implementation still on the way.
- If not done yet: manufacturers must complete the existing tasks (e.g. data classification; preparation of pre-contractual information; set up Data Act request processes; draft data license agreements incl. compensation).
- Prepare for what is coming, in particular design obligations (either by re-designing or documentation of the decision for indirect making available) and further changes.

Questions?

05 Questions



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