

Table of Contents

I.	Executive Summary	15
II.	Introduction	19
	1. General Setting and Goals	23
	2. From a Reaction to Market Failures to a new Market Design	25
	3. “Contractualisation” of Data (Economy) Law	26
	4. User Activation	28
	5. Monetatisation of Data?	29
	6. Enforcement	30
	7. Trade Agreements / Other Union Legal Acts Governing Rights and Obligations on Data and Use (Art. 44) / Options for Member States	31
	8. Evaluation and Review (Art. 49)	33
	9. Entry into Force and Application (Art. 50)	33
	10. Competence	34
III.	Regulatory Scope (Art. 1-2, Art. 43)	35
	1. Scope (Art. 1 paras. 1-3)	35
	2. Interplay with Existing Rules (Art. 1 paras. 5 and 6, Art. 43)	38
	3. Definitions (Art. 2)	45
IV.	SME-Exemption (Art. 7), Product Design, Service Design, and Informational Duties (Art. 3)	49
	1. Exemption of Micro and Small Enterprises; Mandatory Nature (Art. 7)	49
	2. Product Design, Service Design (Art. 3(1))	51
	3. Information Duties	56

V.	Data Licence Agreement and User’s Right of Access (Art. 4)	71
1.	Data Licence Agreement; Use by the Data Holder (Art. 4(13) and (14))	74
2.	The Right to Access according to Art. 4(1))	80
3.	Limitations of and Defences to the User’s Right of Access	92
VI.	Right to Share Data with Third Parties (Art. 5-6) and FRAND Obligations for Data Holders When Providing Access (Art. 8-12)	103
1.	The Right to Share Data with Third Parties (Art. 5)	103
2.	Obligations of Third Parties (Art. 6)	110
3.	Conditions between Data Holder and Data Recipient	113
4.	Compensation	119
5.	Dispute Settlement	124
6.	Technical Protection	131
7.	Common Standards for Smart Contracts (Art. 36)	135
8.	Scope of Obligations	139
VII.	Unfair Terms for Data Access and Use between Enterprises (Art. 13)	141
VIII.	Making Data Available to Public-Sector Bodies based on Exceptional Need (Art. 14-22)	151
1.	Obligation to Make Data Available to Public-Sector Bodies (Art. 14)	151
2.	Definition of Exceptional Need (Art. 15)	154
3.	Relationship with Other Obligations to Make Data Available (Art. 16)	157
4.	Requirements for the Request to Make Data Available (Art. 17 paras. 1 and 2)	158
5.	Reuse of the Data Made Available (Art. 17 (3) and (4))	161
6.	Compliance with Requests for Data (Art. 18)	163

7. Obligations of Public Sector Bodies Receiving Data (Art. 19)	166
8. Compensation in Cases of Exceptional Need (Art. 20)	167
9. Contribution of Research Organisations or Statistical Bodies (Art. 21)	169
10. Mutual Assistance and Cross-Border Cooperation (Art. 22)	170
11. Interplay with Art. 6 GDPR	171
12. Legal Remedies and Liability	174
IX. Switching and Interoperability between Data Processing Services (Art. 23-31, Art. 33-35)	177
1. Surveying the Range of Data Processing Services (Art. 2(8), Art. 31)	180
2. The Terminology of Customer Activation: Switching, On-Premises Transfers and Multi-Homing (Art. 25(3), Art. 34(1))	187
3. Guiding Principles and Legal Status of the Switching-related Rights and Duties	190
4. Removing Obstacles to ‘Switchability’ (Art. 23)	196
5. Contractual Enablers of Switching (Art. 25)	200
6. Transparency Obligations next to the Contract (Art. 26 and 28)	208
7. Commercial Enablers of Switching – Reduced Switching Charges (Art. 29)	210
8. Functional Equivalence across IaaS Environments (Art. 30(1))	213
9. Interoperability Requirements Aimed at Data Processing Services other than IaaS (Art. 30(2)-(5), Art. 35)	216
10. Interoperability Requirements within Data Spaces (Art. 33)	222

X.	International Governmental Access and Transfer (Art. 32)	229
1.	Preventing International and Third-Country Governmental Access and Transfer of Non-Personal Data (Art. 32(1))	230
2.	Enforcement of Foreign Judgements and Decisions (Art. 32 paras. 2 and 3)	232
3.	Minimisation and Informational Duty (Art. 32 (4) and (5))	234
XI.	Implementation and Enforcement (Art. 37-42)	237
1.	Competent Authorities (Art. 37)	237
2.	Right to Lodge a Complaint with a Competent Authority (Art. 38)	240
3.	Right to an Effective Judicial Remedy (Art. 39)	241
4.	Penalties (Art. 40)	241
5.	Model Contractual Terms (Art. 41)	243
6.	Role of the European Data Innovation Board (Art. 42)	244
XII.	Final Provisions (Art. 45-48)	247
1.	Exercise of the Delegation (Art. 45)	247
2.	Committee Procedure and Implementing Powers (Art. 46 and Rec. 114)	248
3.	Amendments (Art. 47 and 48)	248
	Data Act Bibliography	249