BarentsKrans

# The Data Act
## Switching between data processing services

The Data Act became applicable on 12 September 2025 and creates rights and obligations regarding access to and use of data. The Data Act contains provisions that facilitate the switching between data processing services such as cloud and edge services, ICT infrastructure such as *servers* and *dedicated networks*) and aims to counter *vendor lock-in* from Data Processing Service Providers.

This Data Governance Update provides an overview of the main obligations for providers of data processing services when their customers want to switch to another, comparable and/or competing data processing service

### Duty to cooperate

Data processing service providers must assist their customers in switching to a comparable data processing service. Data processing service providers may not impose obstacles complicating the termination of data processing service agreements by customers. Additionally, data processing service providers may not impede customers from entering into an agreement with, or providing their data to, competitors.

The conditions and procedures involved in the switching must be added in writing, usually done in an *exit plan*. The *exit plan* must contain the following elements:

1) An overview of all transferable data and digital assets;
2) A list of data that is not transferable, for example because their transfer creates a risk for the protection of trade secrets of the data processing service provider;
3) A duty for the data processing service provider to support customers in switching process;
4) Any switching charges which the data processing service provider may charge until 12 January 2027; and
5) The date upon which the contract is terminated. This can either be (i) the date upon which switch has been completed; or (ii) if the customer does not want to switch but instead wants to delete all exportable data, the date upon which the switch should have been completed.

### Switching deadlines and terms

Customers must be able to switch to another, comparable and/or competing data processing service within 30 days following termination of the agreement with their data processing service provider. The maximum termination period is 2 months following notification, meaning a switchover must in principle be completed within a period of 90 days from moment of notification by a customer.

In case of technologically complex switching requests, the data processing service provider may propose an extended switchover term not exceeding 7 months on the condition that it communicates and duly motivates this reasoning within 14 working days following the customer's notification.

### Duty to provide precontractual information

Data processing providers must provide information on:

a) The available switching procedures, including the switching and transfer methods, formats and known (technical) limitations;
b) An online register managed by the data processing service provider containing details of all exportable data, data structures and data formats;

c) The standard fees, any premature termination penalties, and any cost-covering switching charges;
d) The jurisdiction under which the ICT infrastructure falls; and
e) A general description of the technical, organisational and contractual measures taken by the data processing service provider to prevent access by international authorities to non-personal data stored in the EU.

## Abolition of switching charges

the Data Act abolishes the charging of switching charges. Switching charges include costs related to data extraction.

- Until **12 January 2027**, only switching charges that cover the costs incurred by them and which are directly related to the switching by a specific customer may be levied.
- From **12 January 2027** onwards, switching charges may no longer be levied at all.

## Enforcement

### Supervisory authorities

The Dutch Consumer and Markets Authority (**DCAM**) is the supervisory authority monitoring compliance with the obligations for providers of data processing services.

As data coordinator the DCAM also acts as a central contact point for all issues related to data processing services and may cooperate with other competent authorities, such as the Dutch Data Protection Authority.

### Penalties

The DCAM can issue a fine of up to **€ 1,030,000** or 10% of the annual turnover (whichever is higher) for violations of the Data Act. The DCAM can also impose orders under the sanctions of penalties.

## Access to product data and related services

in addition to regulations on data processing services, the Data Act also provides specific access rights for users of connected products and related services.

See our Data Governance Update for connected products and related services for more information.

## QUESTIONS?

BarentsKrans offers support in drawing up exit plans and negotiating cloud contracts. Please contact Marc Elshof for more information.

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