

DA.034 Compensation: right to demand a margin

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Art. 9 Data Act - Triologue Agreement

Compensation for making data available

1. Any compensation **agreed upon** between a data holder and a data recipient for making data available in business-to-business relations shall be **non-discriminatory** and **reasonable** and may include a **margin**.

1a. The data holder and the data recipient shall take into account in particular:

(a) the **costs** incurred **for making the data available**, including, in particular, the costs necessary for the formatting of data, dissemination via electronic means and storage;

(b) the **investment in the collection and production of data**, where applicable, taking into account whether other parties contributed to the obtaining, generating or collecting the data in question.

1b. Such compensation may also depend on the **volume, format and nature of the data**.

2. Where the data recipient is a **micro, small or medium enterprise**, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, and also non-profit research organisations, provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC, which do not qualify as a micro, small or medium enterprise, any compensation agreed **shall not exceed the costs** set out in paragraph 1a, point (a).

2a. The Commission shall adopt **guidelines on the calculation** of reasonable compensation, taking into account the opinion of the European Data Innovation Board established under Regulation (EU) 2022/868.

3. This Article shall **not preclude other** Union law or national legislation adopted in accordance with Union law from excluding compensation for making data available or providing for lower compensation.

4. The data holder shall provide the data recipient with **information setting out the basis for the calculation** of the compensation in sufficient detail so that the data recipient can assess whether the requirements of paragraph 1 and, where applicable, paragraph 2 are met.