

## DA.005 Contractual information obligations

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Last update: 2023-08-06 19:54:21 | By: Winfried Veil

Created at: 2022-02-22 09:15:32

### Art. 3 (2) Data Act - Trialogue Agreement

2. Before concluding a contract for the purchase, rent or lease of a connected product, the seller, the rentor or the lessor, which can be the manufacturer, shall provide at least the following information to the user, in a clear and comprehensible format:

- (a) the type, format and estimated volume of product data, which the connected product is capable of generating;
- (b) whether the connected product is capable of generating data continuously and in real-time;
- (ba) whether the connected product is capable of storing data on-device or on a remote server, including the intended duration of retention;
- (c) how the user may access, retrieve, or where relevant, delete those data, including the technical means to do so, as well as their terms of use and quality of service;

2a. Before concluding a contract for the provision of a related service, at least the following information shall be provided to the user in a clear and comprehensible format:

- (a) the nature, estimated volume and collection frequency of product data that the prospective data holder is expected to obtain and, where relevant, the modalities for the user to access or retrieve such data, including the prospective data holder's data storage and retention policy.
- (b) the nature and estimated volume of related service data to be generated, as well as the modalities for the user to access or retrieve such data, including the prospective data holder's data storage and retention policy;
- (d) whether the prospective data holder expects to use readily available data itself and the purposes for which those data will be used, and whether it intends to allow one or more third parties to use the data for purposes agreed upon with the user;
- (e) the identity of the prospective data holder, such as its trading name and the geographical address at which it is established and where applicable, other data processing parties;
- (f) the means of communication which make it possible to contact the prospective data holder quickly and communicate with that data holder efficiently;

- (g) how the user may request that the data are shared with a third party, and, where applicable, end the data sharing;
- (h) the user's right to lodge a complaint alleging a violation of the provisions of this Chapter with the competent authority referred to in Article 31;
- (i) whether a prospective data holder is the holder of trade secrets contained in the data likely to be accessed from the connected product or generated during the provision of related service, and, if not, the identity of the trade secret holder;
- (j) the duration of the agreement between the user and the prospective data holder, as well as the modalities to terminate such an agreement.

### **Recital 23 Data Act - Trialogue Agreement**

Before concluding a contract for the purchase, *rent, or lease* of a connected product, clear and sufficient information should be provided by the seller, the rentor or the lessor, which can be the manufacturer, to the user, with regard to the product data which the connected product is capable of generating, including the type, format and the estimated volume of such data. This could include information on data structures, data formats, vocabularies, classification schemes, taxonomies and code lists, where available, as well as clear and sufficient information relevant for the exercise of the user's rights on how the data may be stored, retrieved or accessed, including terms of use and quality of service of application programming interfaces or, where applicable the provision of software development kits. This obligation provides transparency over the product data generated and enhances the easy access for the user. The information obligation could be fulfilled, for example by maintaining a stable uniform resource locator (URL) on the web, which can be distributed as a web link or QR code, pointing to the relevant information, which could be provided by the seller, the rentor or the lessor, which can be the manufacturer, to the user before concluding the contract for the purchase, rent or lease of a connected product. It is, in any case, necessary that the user is enabled to store the information in a way that is accessible for future reference and that allows the unchanged reproduction of the information stored. The data holder cannot be expected to store the data indefinitely in view of the needs of the user of the product, but should implement a reasonable data retention policy that allows for the effective application of the data access rights under this Regulation. **This obligation to provide information does not affect the obligation for the controller to provide information to the data subject pursuant to Article 12, 13 and 14 of Regulation (EU) 2016/679.** The information obligation before concluding a contract for the provision of a related service should be on the prospective data holder, independently of whether it concludes a contract for the purchase, rent or lease of a connected product. In case any information changes during the lifetime of the connected product or the contract period for the related service, including when the purpose for which those data will be used changes from the originally specified purpose, this should also be provided to the user.