



The Data Act enables customers to use data processing services more flexibly and switch cloud service providers more easily by eliminating technical and contractual barriers to switching, laying down clear rules on contractual terms and conditions and promoting interoperable solutions.

Who do the rules apply to?

- **Customers** using data processing services under a contract and wanting to switch provider or use more than one service at the same time.
- **All providers of data processing services**, irrespective of their size.

What are the objectives?

The objectives are to make it technically and contractually **easier** for customers to **use more than one** data processing service at the same time, **switch to a different provider** or move to on premises IT infrastructure and to **eliminate any existing barriers**.

What do the exemptions cover?

There are **exemptions** for **data processing services** that have been **individually designed** and that are not offered on a broad commercial scale via a provider's service catalogue and for data processing services that are provided as a test or beta version. These services are not fully exempt, however, but still subject to certain obligations such as in relation to open interfaces, data exports and information.

Which contracts are covered?

The rules apply to both **existing and new contracts**.

Which cloud models do the rules apply to?

The rules apply to all standard cloud models (IaaS, PaaS and SaaS) and to combinations or variations of these models:

- **Infrastructure as a Service (IaaS):** Providers must enable their customers to achieve **functional equivalence** when switching to a provider offering the **same service type**, for example by providing information, documentation and technical support.
- **Platform as a Service (PaaS) and Software as a Service (SaaS):** Providers must make **open interfaces** available **free of charge** when their customers switch the necessary documentation and guarantee **interoperability for data portability on the basis of common standards**.

Phasing out of switching charges

Switching charges are being phased out. As of 11 January 2024, providers may only charge the costs that are directly linked to the switching process and must inform customers in advance about these charges. **From 12 January 2027, no switching charges may be imposed.**

Switching process and deadlines

Providers must give clear information about switching and inform customers about their rights at an early stage. All of the parties involved must work together to ensure a smooth switching process. The **Data Act distinguishes** between two **switching scenarios** with **different levels of technical complexity**:

Scenario A – low level of technical complexity:

When a customer notifies their provider that they want to switch, the provider has a **maximum of two months** to make the technical preparations. The switching process must then be completed within a **maximum transitional period of 30 calendar days**, which the customer may extend once. The customer's original service must still be accessible during this period. The data must remain **retrievable for at least 30 calendar days** after the switching process has been completed and must be erased after this period, unless there is a legal requirement to retain the data.

Scenario B – high level of technical complexity:

If a customer notifies their provider that they want to switch but switching is not feasible within 30 calendar days, the provider must inform the customer **within 14 working days and tell them why**. The transitional period can then be extended to a **maximum of seven months**. The customer can voluntarily extend the transitional period in this case as well. The retrieval period of **at least 30 calendar days** applies accordingly.

Support for implementation in cloud contracts

The **European Commission's standard contractual clauses (SCCs)** make it easier to put the rights and obligations under the Data Act into practice. They consist of **modular standard clauses for all cloud models** that providers can include in their individual contracts. Use of the SCCs is voluntary.

Further information:

[bundesnetzagentur.de/1080692](https://www.bundesnetzagentur.de/1080692)

