#3 Decoding the Data Act

Welcome to the third post in the Decoding the Data Act series.

Now that you know that you are a data holder and what your obligations are, it is time to find out what data from a connected product/related service ("Data") and to what extent you will be required to disclose to users and third parties.

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What Data is covered by the Act?

The Act applies to data, i.e. any digital representation of actions, facts or information and any compilation of such actions, facts or information, including in the form of sound, visual or audiovisual recordings, relating to the operation, use and environment of connected products and related services, with the exception of the content of the data itself.

Exception:

- Purely descriptive Data accompanying a connected product (e.g. a user manual or data on packaging);
- content covered by intellectual property rights, e.g. text, audio or audiovisual content that is recorded, transmitted or reproduced using a connected product.

Types of Data described in the Act

- **Raw Data** – Source Data, primary Data.
- **Pre-processed Data** – Data processed in such a way as to be understandable and usable before further processing, e.g. standardised data from temperature sensors in an industrial machine.
- **Processed Data** – Data derived or inferred from raw and pre-processed Data, which has been created as a result of additional investment, e.g. using proprietary algorithms, or has been inferred through sensory fusion, which derives or infers data from multiple sensors.

Processed Data includes, for example, Data indicating the very precise location and movement of a vehicle, also in relation to other vehicles or infrastructure elements, e.g. thanks to data from GPS and cameras, as well as Data on user behaviour and intentions, inferred from the analysis of movement patterns, gestures and voices in interaction with a connected product.

Data subject to disclosure is raw and pre-processed Data to which the user does not have direct access on the device or application.

When sharing Data, remember about metadata – it is necessary for the Data to be useful and connectable with other information. Shared Data should be reformatted into a commonly used format.

Processed Data is not subject to the sharing obligation.

How to distinguish between pre-processed and processed Data?

This is one of the more complex issues and is likely to be the subject of much discussion. This decision will be made individually by the data holder after assessing whether, in light of the provisions of the Act and the Q&A guidelines issued by the EC, the Data in question is pre-processed or already processed. When making this assessment, it is necessary to take into account the extent of any modifications made to the Data, the investment in cleaning and transforming it, and the complexity of the algorithms used to process it. Performing a simple mathematical operation may not mean that the Data has been processed (e.g. calculating the average speed of a vehicle).

How can easily accessible Data be distinguished from difficult to access Data?

- **Easily accessible data** is data that the data owner obtains without much effort or investment, i.e. without having to invest in additional systems, data cleaning or processing. Most often, raw or pre-processed data is automatically generated by a connected product (e.g. sensors in a vehicle) or is available from a computer system.
- **Hard-to-access data** is data that is difficult for the data owner to access, requiring effort or investment to make it available, e.g. it is not intended for standard downloading (it is stored but not downloaded) or requires additional investment to obtain or transform it.

In the next post in the Decoding the Data Act series, you will learn how to share data. Stay tuned!

Feel free to contact us!

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