

XSYS Data Act Procedure

Policy Name:	XSYS Data Act Procedure		Scope:	XSYS Global	
Version:	1.00	Valid:	12.09.2025	Reviewed:	
Related Documents:	XSYS Data Act Notice , Data Act - XSYS Assessment Questionnaire				

	Responsible	Job title
Prepared by:	Magdalena Kulesza	Compliance and GDPR Specialist
Reviewed by:	Agnieszka Jaworska - Kubacka	Compliance and GDPR Specialist
Approved by:	Przemysław Gładkowski	XSYS Global Head of Legal

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1. OBJECTIVE AND PURPOSE

This Procedure has been introduced for the purpose of an implementation of the Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (the "Data Act").

This Procedure ensures that the Users (customers of XSYS) of a Connected Product or Related Service within the European Union can access, in a timely manner, the Data generated by the use of that Connected Product or Related Service and that those Users can use the Data, including sharing such Data with third parties of their choice.

XSYS also ensures that Data is available to Data Recipients under fair, reasonable and non-discriminatory terms and conditions and in a transparent manner.

This Procedure also ensures that XSYS shall make available to public sector bodies, the Commission, the European Central Bank or European Union bodies, where there is an exceptional need, the Data that is necessary for the performance of a specific task carried out in the public interest. The Data Act applies to Data generated by Connected Products and Related Services, including the Internet of Things and the industrial machinery.

2. DEFINITIONS:

- a. **DATA** means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording;
- b. **METADATA** means a structured description of the contents or the use of Data facilitating the discovery or use of that Data;
- c. **PERSONAL DATA** means personal data as defined in Article 4, point (1), of Regulation (EU) 2016/679;
- d. **NON-PERSONAL DATA** means data other than Personal Data;
- e. **CONNECTED PRODUCT** means an item that obtains, generates or collects Data concerning its use or environment and that is able to communicate product Data via an electronic communications service, physical connection or on-device access, and whose primary function is not the storing, processing or transmission of Data on behalf of any party other than the User;
- f. **RELATED SERVICE** means a digital service, other than an electronic communications service, including software, which is connected with the product at the time of the purchase, rent or lease in such a way that its absence would prevent the Connected Product from performing one or more of its functions, or which is subsequently connected to the product by the manufacturer or a third party to add to, update or adapt the functions of the Connected Product;
- g. **PROCESSING** means any operation or set of operations which is performed on Data or on sets of Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or other means of making them available, alignment or combination, restriction, erasure or destruction;
- i. **SAME SERVICE TYPE** means a set of Data processing services that share the same primary objective, Data processing service model and main functionalities;
- k. **DATA SUBJECT** means data subject as referred to in Article 4, point (1), of Regulation (EU) 2016/679;
- l. **USER** means legal person that owns a Connected Product or to whom temporary rights to use that Connected Product have been contractually transferred, or that receives Related Services;

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- m. **XSYS** means data holder that has the right or obligation, in accordance with Data Act, to use and make available Data, including, where contractually agreed, Product Data or Related Service Data which it has retrieved or generated during the provision of a Related Service;
- n. **DATA RECIPIENT** means a legal person, acting for purposes which are related to that person's trade, business, craft or profession, other than the User of a Connected Product or Related Service, to whom the data holder makes Data available, including a third party following a request by the User to the data holder or in accordance with a legal obligation under Union law or national legislation adopted in accordance with Union law;
- o. **PRODUCT DATA** means Data generated by the use of a Connected Product that the manufacturer designed to be retrievable, via an electronic communications service, physical connection or on-device access, by a User, data holder or a third party, including, where relevant, the manufacturer;
- p. **RELATED SERVICE DATA** means Data representing the digitization of User actions or of events related to the Connected Product, recorded intentionally by the User or generated as a by-product of the User's action during the provision of a Related Service by the provider;
- q. **READILY AVAILABLE DATA** means Product Data and Related Service Data that a data holder lawfully obtains or can lawfully obtain from the Connected Product or Related Service, without disproportionate effort going beyond a simple operation;
- r. **MAKING AVAILABLE ON THE MARKET** means any supply of a Connected Product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;
- s. **PLACING ON THE MARKET** means the first making available of a Connected Product on the Union market.

3. OBLIGATION TO MAKE PRODUCT DATA AND RELATED SERVICE DATA ACCESSIBLE TO USER

Connected Products shall be designed and manufactured, and Related Services shall be designed and provided, in such a manner that Product Data and Related Service Data, including the relevant Metadata necessary to interpret and use such Data, are, by default, easily, securely, in a comprehensive, structured, commonly used and machine-readable format.

All Connected Products and Related Services will be defined by XSYS in *the Data Act - XSYS Assessment Questionnaire* that supports this Procedure and will be kept and updated by XSYS R&D Department.

Before entering into a purchase, rental, or lease agreement for a Connected Product, XSYS provides the User with the following information (if relevant) in a clear and understandable manner:

- a. the type, format, and estimated amount of Product Data that the Connected Product can generate;
- b. whether the Connected Product is capable of generating Data continuously and in real time;
- c. whether the Connected Product is capable of storing data on a device or remote server, including, where applicable, the expected retention period;
- d. the method by which the user can access, retrieve, or, where applicable, delete the data, including the technical means to do so, as well as the terms of use and quality of service.

All above mentioned information will be provided to the User as XSYS Data Act Notices.

4. DATA REQUEST AND TRADE SECRETS OF XSYS

- a. XSYS has the right to verify whether the legal entity requesting access to device Data has the right to access such Data. XSYS will not require User to provide any information other than that which is strictly necessary.
- b. XSYS will not store any information, in particular event log data, about the User's access to the requested Data, other than information necessary to properly fulfil the User's access request and to ensure the security and maintenance of the Data infrastructure.
- c. XSYS protects trade secrets and discloses them only if the User, before disclosing such Data, has taken all necessary measures to protect their confidentiality, in particular with respect to third parties.
- d. XSYS identifies protected Data, including relevant Metadata, as trade secrets and agrees with the User on proportionate technical and organizational measures necessary to protect the confidentiality of the Data being shared, in particular with respect to third parties, such as model contractual provisions, confidentiality agreements, strict access protocols, technical standards, and the application of codes of conduct.
- e. If the necessary technical measures have not been agreed upon, or if User fails to implement the agreed measures or jeopardizes the confidentiality of the trade secret, XSYS may withhold or, where appropriate, suspend the sharing of Data identified as trade secrets. In such a case, XSYS will duly justify its decision and communicate it to the User in writing without undue delay. XSYS will then be obligated to notify the competent authority.
- f. In exceptional circumstances, if XSYS demonstrates that despite the technical and organizational measures implemented by the User, disclosure of the trade secret is likely to result in a significant economic harm, XSYS may, in that specific case, reject the request for access to that specific Data. The limitation of the information provided will be duly justified by XSYS based on objective factors, in particular the enforceability of trade secrets in third countries, the nature and level of confidentiality of the requested Data, and the uniqueness and novelty of the communicated product, and will be presented in writing without undue delay. XSYS will then be obligated to notify the competent authority.

- g. XSYS will only use readily available Non-Personal Data pursuant to an agreement with User. XSYS will not use such Data to obtain information about User's economic situation, assets, production methods, or use, which could otherwise prejudice User's commercial position in the markets in which it operates.
- h. XSYS does not share Non-Personal Data from the product with third parties for commercial or non-commercial purposes other than the performance of the agreement with the User. Where appropriate, XSYS will contractually obligate third parties not to further share Data received from XSYS.

This Procedure is supported by the Data Request Chart (available below).

5. OBLIGATIONS FOR XSYS TO MAKE DATA AVAILABLE

XSYS shall establish with the Data Recipient the arrangements for making the Data available and shall do so under fair, reasonable and non-discriminatory terms and conditions and in a transparent manner.

6. COMPENSATION FOR MAKING DATA AVAILABLE

- a. XSYS is entitled to compensation for the provision of Data (in business-to-business relationships) and shall ensure that the compensation will be non-discriminatory, reasonable. The compensation may include a margin.
- b. While setting up any compensation, the following shall be taken into account, in particular:
 - i. the costs incurred in providing the Data, including, in particular, the costs necessary for formatting the Data, disseminating the Data by electronic means, and storing it;
 - ii. the investments made in collecting and producing the Data, where applicable, taking into account whether other parties contributed to the acquisition, generation, or collection of the Data in question.
 - iii. compensation may also depend on the amount, format, and nature of the Data.

7. TECHNICAL PROTECTION MEASURES

- a. XSYS may apply appropriate technical protection measures, including smart contracts and encryption, to prevent unauthorized access to Data, including Metadata.
- b. Technical protection measures will not result in different treatment of Data Recipients, nor will they restrict User's right to obtain a copy of the Data, to download or use the Data, to access the Data, or to provide the Data to third parties, or any third party's right under Union law or national law adopted in accordance with Union law. Users, third parties, or

Data Recipients shall not alter or remove such technical protection measures unless XSYS has given its explicit consent to do so.

- c. If a third party, User or Data Recipient:
- i. for the purposes of obtaining Data, provided false information to XSYS, deployed deceptive or coercive means or abused gaps in the technical infrastructure of XSYS designed to protect the Data;
 - ii. used the Data for unauthorised purposes, including the development of a competing Connected Product,
 - iii. unlawfully disclosed Data to another party;
 - iv. did not maintain the technical and organizational measures,
 - v. altered or removed technical protection measures applied by XSYS,
 - vi. alters or removes technical protection measures applied by XSYS without XSYS approval or does not maintain the technical and organizational measures taken by XSYS.

XSYS may request the following actions from a third party, Data Recipient or User, and the third party, Data Recipient or User will be obliged to comply with such XSYS' requests without undue delay:

- A. to erase the Data made available by XSYS and all copies thereof;
- B. to end the production, offering, placing on the market or use of goods, derivative Data or services produced with the knowledge obtained through such Data, to end the importation, export or storage of infringing goods for those purposes, and to destroy any infringing goods, where there is a serious risk that the unlawful use of the Data will cause significant harm to XSYS, the trade secret holder or User, or where such a measure would not be disproportionate in light of the interests of XSYS, the trade secret holder or User;
- C. to inform the User about the unauthorised use or disclosure of the Data and of the measures taken to put an end to the unauthorised use or disclosure of the Data;
- D. to compensate the party suffering from the misuse or disclosure of such unlawfully accessed or used Data.

8. MAKING DATA AVAILABLE TO PUBLIC SECTOR BODIES, THE COMMISSION, THE EUROPEAN CENTRAL BANK AND UNION BODIES ON THE BASIS OF AN EXCEPTIONAL NEED

Where a public sector body, the Commission, the European Central Bank or a Union body demonstrates an exceptional need to use specific Data, including relevant Metadata necessary to interpret and use such Data, for the fulfilment of its statutory duties in the public interest, XSYS shall make the Data available upon duly justified request according to Data Act Regulation.

9. ACCOUNTABILITY MATRIX

Activity	Initiator	Activity Lead	Consultant / Support	Activity result to be reported to
Collecting and updating the technical information in the <i>Data Act - XSYS Assessment Questionnaire</i>	R&D Department	R&D Department	Legal & Compliance Department	Legal & Compliance Department
Collecting and updating the technical information in the <i>Data Act Notices</i>	R&D Department	R&D Department	Legal & Compliance Department	Legal & Compliance Department
Processing of the Data Act request, including verification of the User's identity and making the Data available to the User (if required)	Service Department	Service Department with potential assistance of R&D Department	Legal & Compliance Department	Legal & Compliance Department

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