



EU Data Act – Cloud Switching

Speakers



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Context of the Data Act

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Overview of the current status of the Data Act and the accompanying material

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Martin Geber

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Time for questions

1 | **European Data Strategy**

Context of the Data Act



EU Data Strategy and Data Act

Large-scale and ambitious regulation

EU Digital Strategy – Pillar II – A fair and competitive digital economy

The EU Data Strategy forms part of the Digital Strategy

EU Data Strategy (COM(2020) 66 final, February 2020)

Objectives:

- ‘**Single European Data Space**’ and ‘**a genuine single market** for both personal and non-personal data, including sensitive business data’.
- **Improving value creation and data usage**. Market participants will gain access to a “virtually unlimited amount of high-quality industrial data”. Breaking down data silos.
- **Data spaces** are also planned (e.g. mobility data space, health data space).

Regulation (EU) 2023/2854 – Data Act

- The Data Act has been directly applicable since **12 September 2025**.
- Further provisions to apply in stages from 12 September 2026.
- Aims to reorganise access to and the **use of data in the digital economy** and create **a level playing field**.

2 | **Data Act**

Overview of the current status of the Data Act and the accompanying material



Data Act

Overview of 11 chapters

Comprehensive changes
expected through the
Omnibus Directive

Data Sharing

Cloud Switching

CHAPTER I GENERAL PROVISIONS

CHAPTER II BUSINESS TO CONSUMER AND BUSINESS TO BUSINESS DATA SHARING

CHAPTER III OBLIGATIONS FOR DATA HOLDERS OBLIGED TO MAKE DATA AVAILABLE PURSUANT TO UNION LAW

CHAPTER IV UNFAIR CONTRACTUAL TERMS RELATED TO DATA ACCESS AND USE BETWEEN ENTERPRISES

CHAPTER V MAKING DATA AVAILABLE TO PUBLIC SECTOR BODIES (...) ON THE BASIS OF AN EXCEPTIONAL NEED

CHAPTER VI SWITCHING BETWEEN DATA PROCESSING SERVICES

CHAPTER VII UNLAWFUL INTERNATIONAL GOVERNMENTAL AND TRANSFER OF NON-PERSONAL DATA

CHAPTER VIII INTEROPERABILITY

CHAPTER IX APPLICATION AND ENFORCEMENT

CHAPTER X SUI GENERIS RIGHT UNDER DIRECTIVE 96/9/EC

CHAPTER XI FINAL PROVISIONS

Data Act

Voices from the market...

“Regulation much broader than public perception suggests”

“the EU’s weakest piece of legislation on digital law”

“

*The Data Act **affects virtually every business**, but most have not yet given it serious consideration.*

Dr Ralf Wintergerst
Bitkom President

”

An end to lock-in: cloud switching is becoming easier

*“Milestone”
“Paradigm shift”
“Revolution”*

“The new EU rule that is destroying business models”

[Welt online](#), 3 November 2025

Data Act

Digital Omnibus Regulation

Digital Omnibus (COM(2025) 837 final)



- The Digital Omnibus is one of **ten omnibus packages** currently under consideration.
- The Commission's proposal of 19 November 2025 contains **comprehensive amendments to the Data Act**, the GDPR and other legal acts, and forms part of a legislative simplification programme.
- **The Data Act is intended to become the central piece of digital legislation governing data.**
 - Integration into the Data Act: Data Governance Act, Open Data Directive, Free Flow of Non-Personal Data Regulation
- The **Digital Omnibus** is currently **under negotiation**. The latest update is that the proposal was submitted to the Council on 21 November 2025. The timetable for adoption is still unclear.



Source: (OpenAI / Dall-E)

Data Act

Supplementary material: Standard contractual clauses and FAQs

“SCCs, MCTs, FAQs”

- On 19 November 2025, the draft **Standard Contractual Clauses** (SCCs) for cloud computing contracts were approved.
- SCCs include additional appendices, such as a template form for the notice of termination or the notice regarding an alternative transition period.
- **Model Contractual Terms** (MCTs) are also included in the document.
- Both MCTs and SCCs are primarily aimed at B2B scenarios.
- **FAQ** – latest version 1.4 dated 22 January 2026.
- Consultations and presentations by the European Commission are taking place – including on other topics related to the Data Act (e.g. MCTs on data sharing or on compensation for the provision of data under Article 9 of the Data Act).

NON-BINDING CONTRACTUAL CLAUSES

ANNEX VI: STANDARD CONTRACTUAL CLAUSES
on Switching and Exit

52. Which services are excluded from the scope of Chapter VI?
Articles 23-32 and 34-35 of the Data Act apply to providers of data processing services. The definition of a data processing service is laid down in Article 2(8) and mirrors common definitions of cloud computing services. The concept is designed to cover the popular delivery models - Infrastructure as a Service (IaaS), Platform as a Service (PaaS) and Software as a Service (SaaS) - while also remaining open to technological innovation.

Appendix 3 – Switching notice

[Provider's name and address for communication]
[Date]

Switching notice

Name of Customer: [...]

Contract: *(name and details of Contract, e.g. name of contract, its number, date of execution, as required by the Contract)*

Switched services: *[All covered by the Contract] or [provide explicit services or Digital Assets subject to switching if only part of the services are to be covered by switching]*

3 | Data Act

Cloud Switching



Data Act

Cloud Switching in Chapter VI

Cloud Switching

CHAPTER I GENERAL PROVISIONS

CHAPTER II BUSINESS TO CONSUMER AND BUSINESS TO BUSINESS DATA SHARING

CHAPTER III OBLIGATIONS FOR DATA HOLDERS OBLIGED TO MAKE DATA AVAILABLE PURSUANT TO UNION LAW

CHAPTER IV UNFAIR CONTRACTUAL TERMS RELATED TO DATA ACCESS AND USE BETWEEN ENTERPRISES

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CHAPTER XI FINAL PROVISIONS

Data Act

Cloud switching

The concept of cloud switching



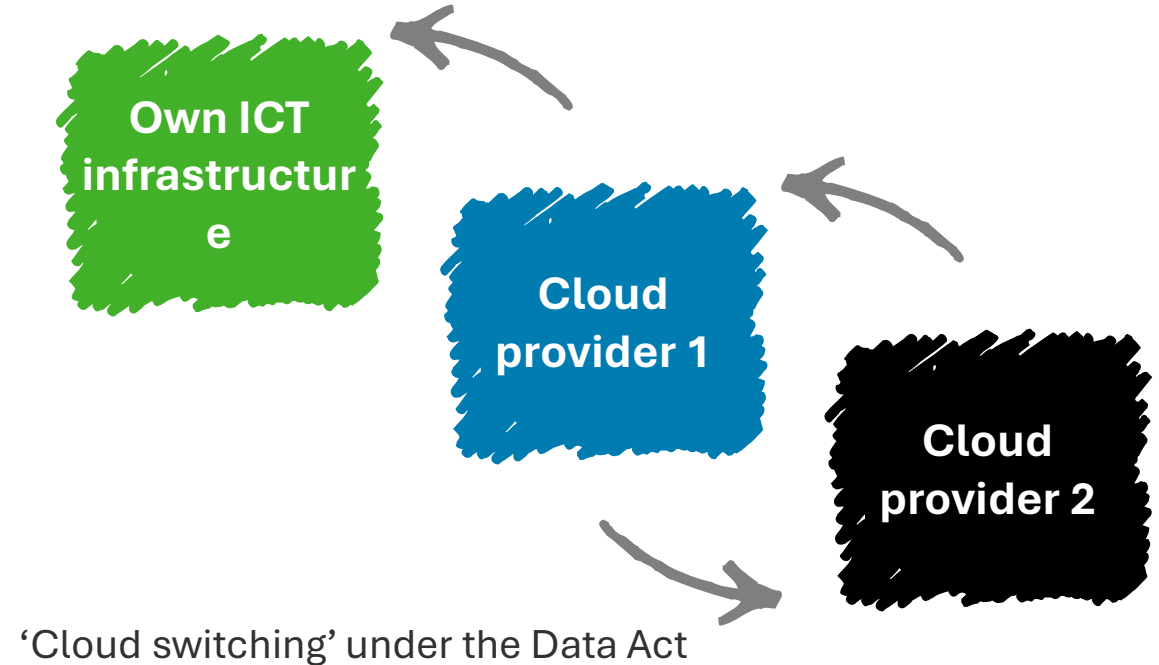
The term cloud switching refers to the **switching between ‘data processing services’**. This covers

- switching to a data processing service covering the same type,
- switching to on-premises ICT Infrastructure and
- multi-cloud deployment.

The aim is to **remove the obstacles to effective switching** (commercial, business, technical, contractual, organisational).

Avoiding vendor lock-in

Very broad scope of application due to the broad definition of a data processing service. **This is intended to cover SaaS, PaaS and IaaS** (Recital 81 of the Data Act).



Data Act

Definition of a data processing service

1. Legal definition of data processing service pursuant to Article 2(8) of the Data Act

*“A digital service that is provided to a customer that enables **location-independent** and **on-demand network access** to a **shared pool of configurable, scalable and elastic** computing resources of a centralised, distributed or highly distributed nature, which can be rapidly provisioned and released with **minimal management effort** or **service provider interaction**.”*



A very **cumbersome** and **controversial** definition. There is an urgent need for clarification by the European Commission.

2. Interpretative possibilities discussed to date

- **Technical:** The sole determining factor is **the technology** or hardware **used by the provider**. It is therefore sufficient for the service to be technically operated on **cloud infrastructure**, even if the customer cannot make use of the cloud functions.
- **Contractual-functional:** The **cloud functions** must have been **contractually** granted to the customer. From **the customer’s perspective**, it must be assessed whether the possibility exists, in particular, for configurability, scalability and elasticity.



A **hybrid solution** is conceivable, i.e. both elements must be present **cumulatively**.



The Cloud Switching regulations also apply to SMEs



Step 1: Is this a data processing service?

Three criteria in particular are decisive and must be determined on a case-by-case basis:

1. Is a **digital service** involved?
2. Is the digital service provided **regardless of location** and does it allow different users to **access a shared pool of resources**?
3. Can the customer **easily scale** and configure computing resources **themselves with minimal interaction**? (“Self-service”)

This questionnaire is intended to provide an initial assessment and does not replace the necessary examination of each individual case.

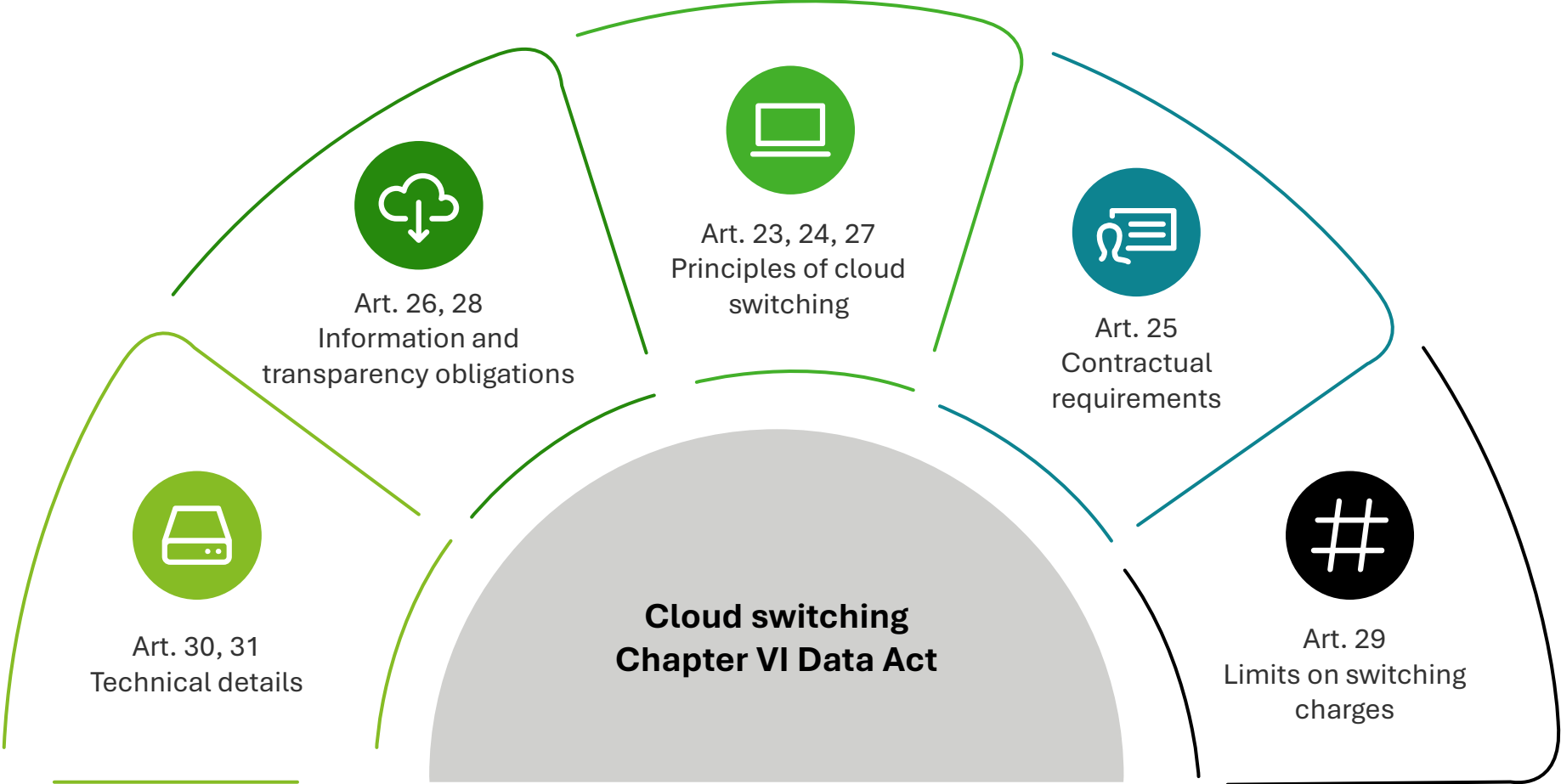


Step 2: Is there a sector-specific exemption?

A sector-specific exemption may either completely exclude the applicability of the cloud switching requirements or result in a limited set of obligations.

Data Act

Overview of the catalogue of obligations for data processing services



Data Act

Overview of the catalogue of obligations for data processing services

Principles of cloud switching

Art. 23 Removing obstacles to effective switching

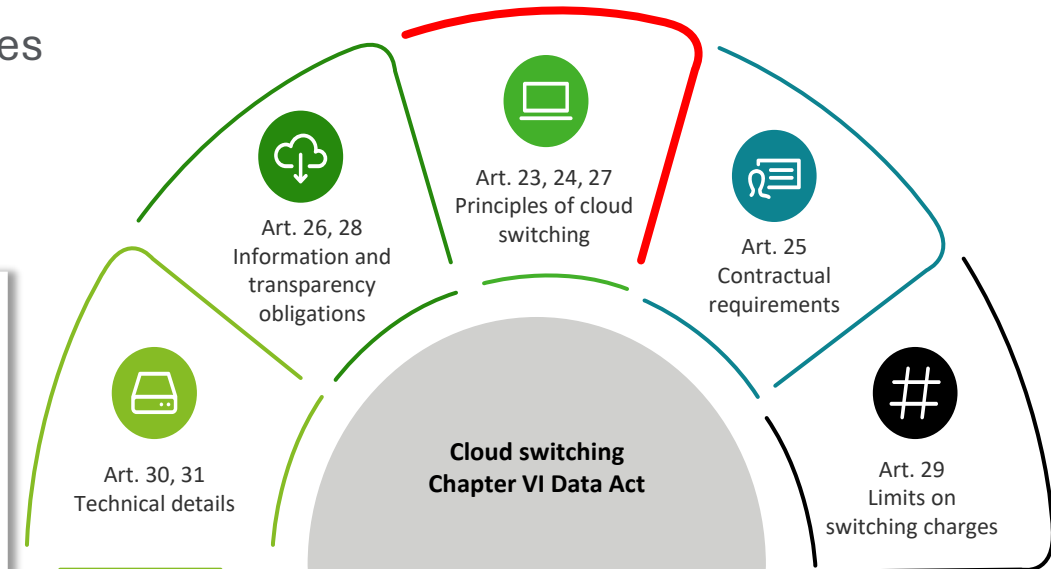
- Facilitation of cloud switching, in particular by **prohibiting** pre-commercial, commercial, technical, contractual and organisational **obstacles**
- **Prevention of vendor lock-in**

Art. 24 Scope of technical obligations

- Allocation of responsibilities by areas of responsibility

Art. 27 Obligation of good faith

- Obligation of all parties involved (existing and new providers, customers, third parties) to cooperate
- The new provider may be obliged to actively support migration



Data Act

Overview of the catalogue of obligations for data processing services

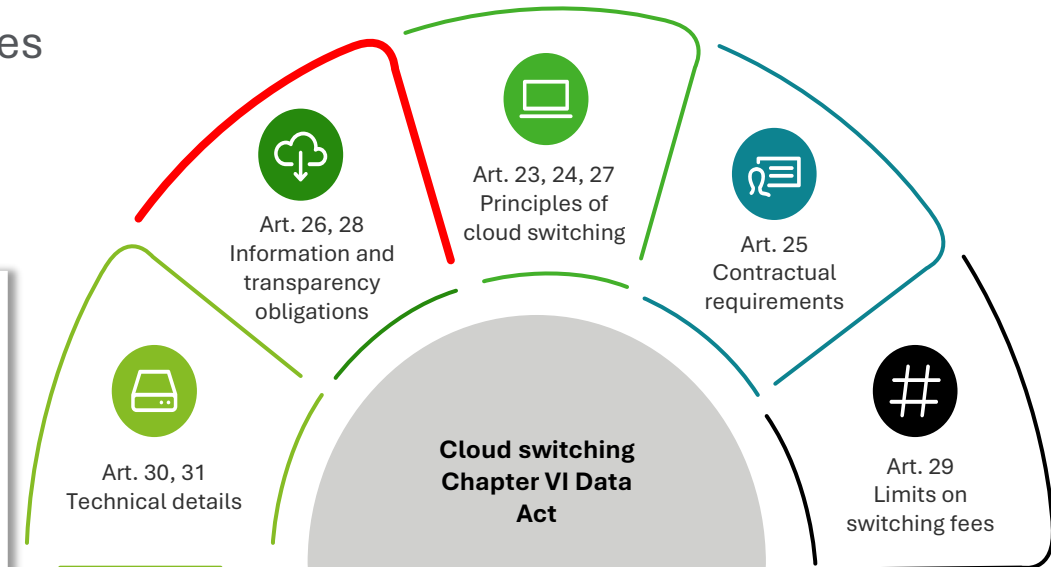
Information and transparency obligations

Art. 26 Information obligations

- **Information**, in particular, on available procedures for switching and (on) technical limitations
- **Reference to an up-to-date online register** containing details of all data structures and data formats, as well as the relevant standards and open interoperability specifications

Art. 28 Transparency obligations

- Transparency obligations to make certain information available on their **website**:
 - **the jurisdiction** to which the ICT infrastructure is subject
 - general description of the provider's measures against **third-country access** to non-personal data stored in the Union

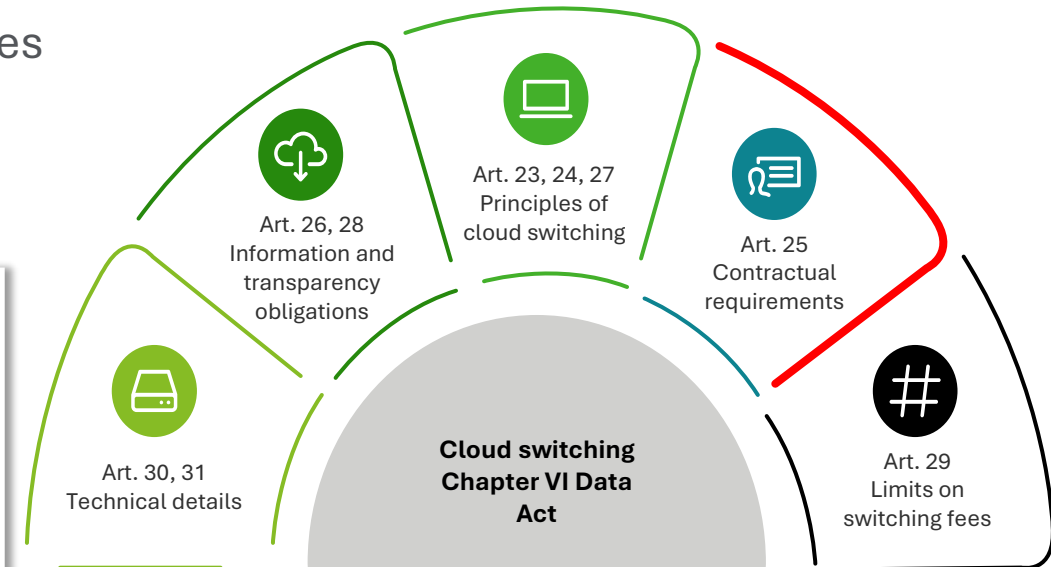


Data Act

Overview of the catalogue of obligations for data processing services

Art. 25 Contractual terms concerning switching

- **Minimum requirements** for the contractual clauses, in particular:
 - The customer must be able to switch cloud providers at any time / deadlines for switching
 - Obligations for the provider to provide appropriate support to the customer and third parties authorised by the customer
 - Duty of care on the part of the provider to ensure business continuity
 - Duty to disclose known risks to the uninterrupted provision of functions or services
- **Termination option:** A clause is required stipulating that the **contract** shall be deemed **terminated** either upon completion of the switch or after two months have elapsed, provided the customer wishes to delete their exportable data and digital assets
- Exhaustive **list of transferable data categories** and of data that will not be exported if there is a risk of breaching the provider's trade secrets
- **Switching charges:** A clause is required specifying any switching charges or penalties that may be charged in accordance with Article 29 of the Data Act



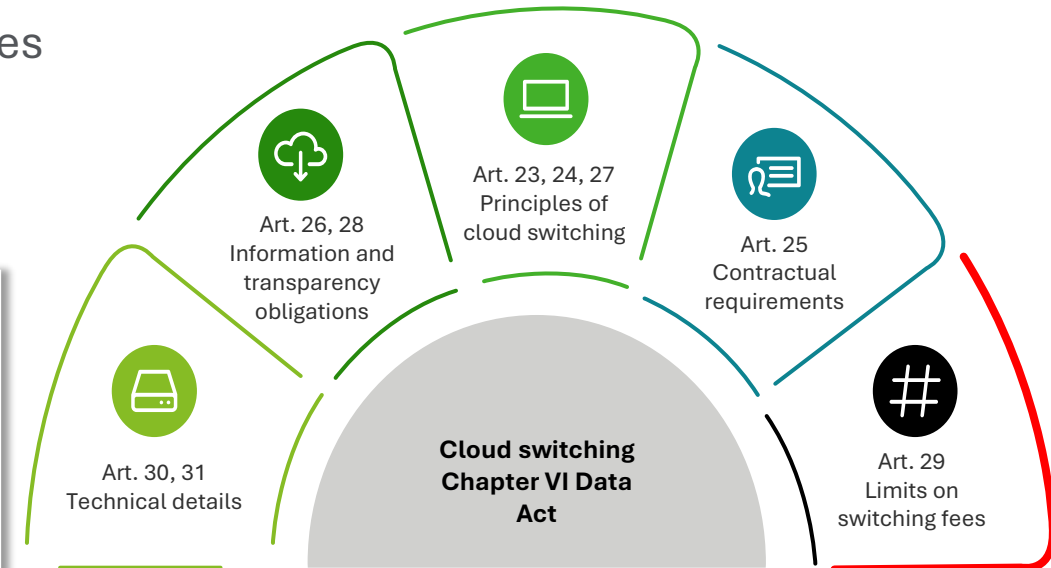
Controversial applicability to existing contracts. This leads to significant **accounting issues**. The Commission has **not** addressed this point in the Digital Omnibus proposal.

Data Act

Overview of the catalogue of obligations for data processing services

Art. 29 Restriction on switching charges

- **From now until 12 January 2027, only reduced (cost-covering) switching charges apply.** This means that these charges must not exceed the provider's costs directly associated with the switch
- **From 12 January 2027, no switching charges will apply**
- However, penalties for early termination (**early termination fees**) are permitted
- **(Pre-contractual) information requirements** regarding standard service charges, possible penalties, reduced switching charges and increased costs due to switching barriers



Data Act

Overview of the catalogue of obligations for data processing services

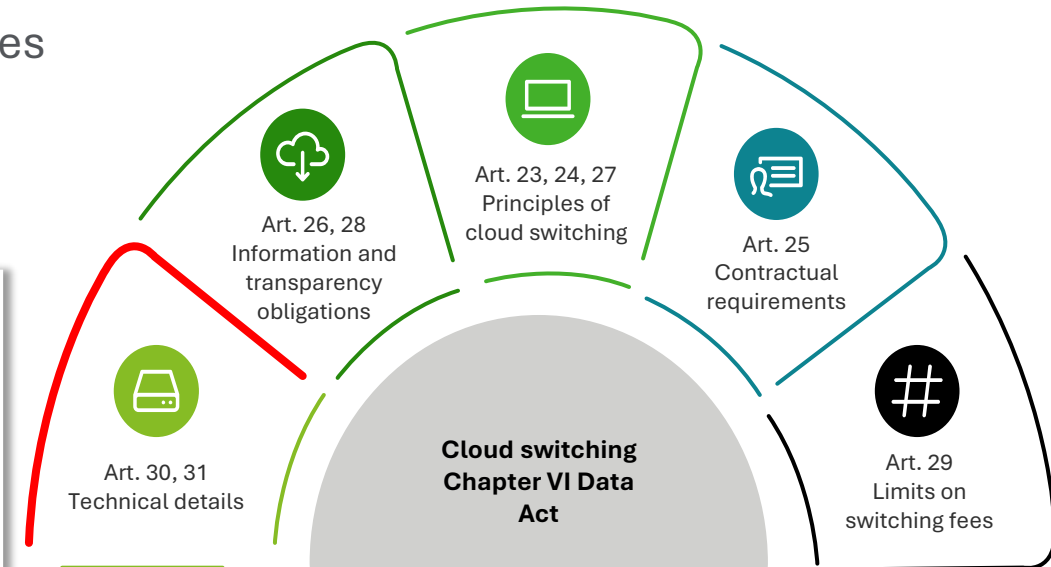
Technical details

Art. 30 Technical aspects of switching

- **Distinction between IaaS services and non-IaaS services**
- **For IaaS:** Ensuring **functional equivalence** after the switch, Art. 30(1) Data Act
- For non-IaaS (e.g. SaaS, PaaS, etc.), the requirements under Art. 30(2)-(4) of the Data Act apply, in particular:
 - **Provision of open interfaces free of charge**
 - Under the **SCCs**, the switch takes place via an individual switching plan (Option A) or via 'self-service' tools (Option B)
 - **Providers must ensure compatibility with common specifications** based on **open interoperability specifications** (further details on interoperability in Chapter VIII of the Data Act)

Article 31 Specific regime for certain data processing services

- **Exceptions** for *custom-built* solutions and for data processing services for testing and evaluation purposes



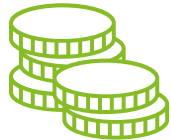
Data Act

Summary: Cloud Switching

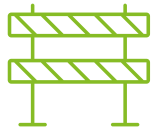
Customised Cloud Switching



- ⇒ Cloud switching must be regulated **by contract**.
- ⇒ The customer is granted a **flexible option** to terminate contracts covered by cloud switching.



- ⇒ **Switching charges** are being **phased out**.
- ⇒ However, **penalties** / early termination fees are **possible**.



- ⇒ The Data Act contains a number of **open and unresolved issues** that are open to interpretation.
- ⇒ Clarification is needed, particularly regarding the definition of **data processing services**.
- ⇒ The issue of **existing contracts**. The Commission has not clearly addressed this and many other issues in the Omnibus!



4 | **Technical aspects and willingness to change** Practical experience

Provision for special termination rights: Understanding cloud switching as a permanent capability

Special termination rights only apply if IT operations can be migrated technically: Cloud switching is not a one-off event, but a capability that is continuously developed across technology, processes and people

Continuous cloud switching capability

Cloud switching is a continuously maintained capability and not a one-off process upon termination.

Technological independence

Systems and data must be designed in such a way that they are not tied to a single cloud provider.

Organisational flexibility

Responsibilities and decision-making processes operate independently of specific platforms.

Legal freedom of action

Early preparation enables the effective use of special termination rights without operational disruption.



Technology: Cloud-enabled, but not cloud-locked

The use of open, cross-cloud standards (e.g. CNCF-compatible technologies), the separation of application logic from cloud-specific services, and the deliberate management and limitation of proprietary dependencies make a switch technically feasible.

Portability through open standards

Open cloud standards enable application portability across different providers without a complete overhaul.

Separation of logic and infrastructure

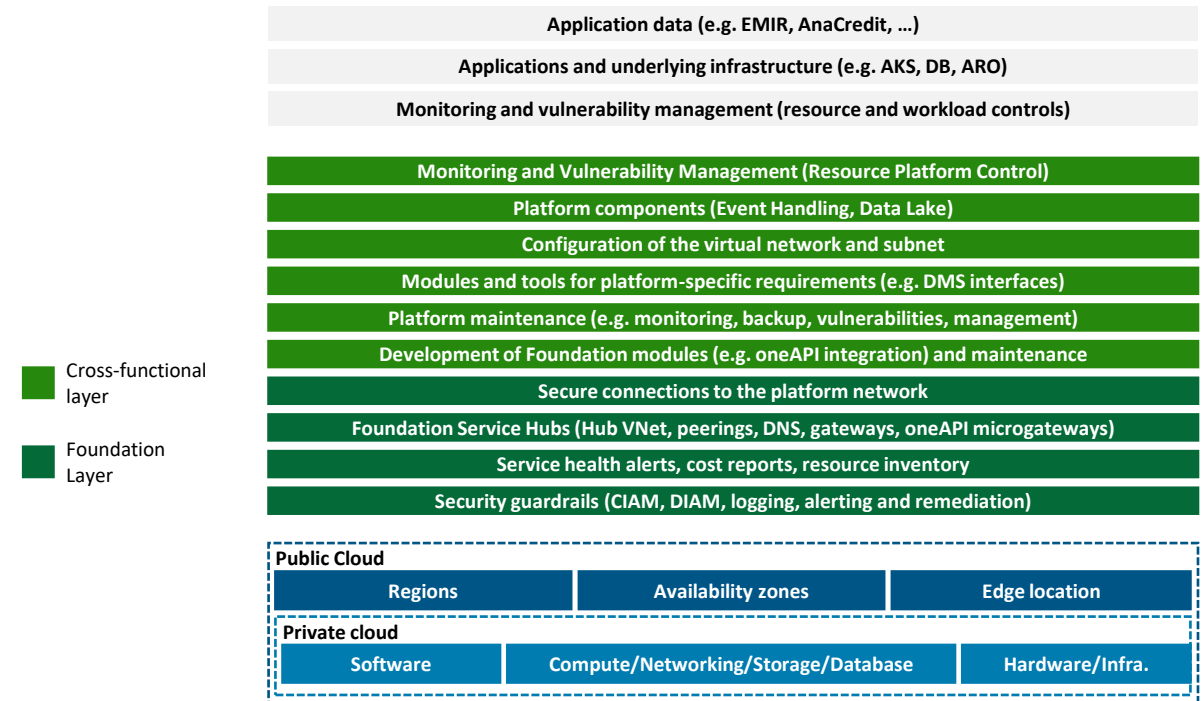
Application logic remains independent of cloud-specific services through a clear separation of infrastructure and function.

Control over proprietary dependencies

The deliberate use of proprietary cloud services ensures added value without creating critical dependencies.

Legal provider independence

The architecture prevents irreplaceability and safeguards the enforceability of termination rights.



Processes & People: Changing providers as a manageable operational state

Cloud-agnostic operational and management processes (FinOps, ITSM, security), centralised compliance and governance requirements across all clouds, a small number of highly specialised cloud experts, and the widespread use of *abstracted* platforms enable an organisational exit.

Cloud-agnostic processes

Processes must function independently of the cloud provider and be uniformly defined to ensure controllability.

Specialised cloud roles

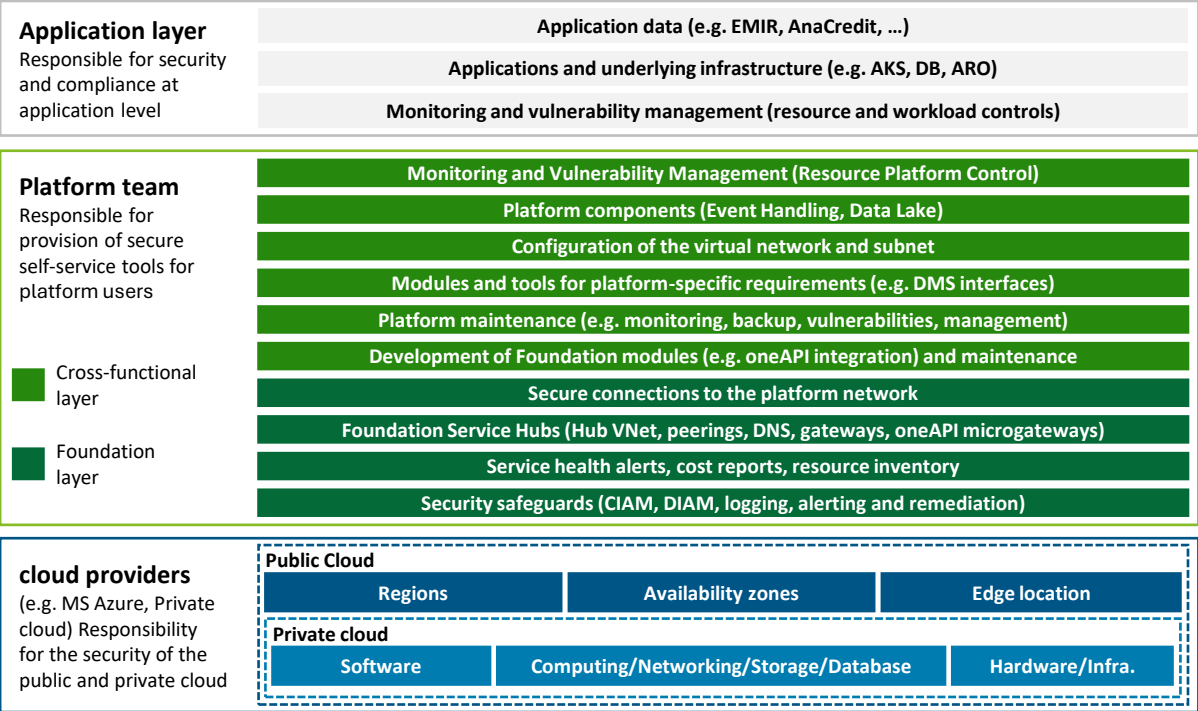
In-depth cloud expertise is concentrated in a few specialised roles to promote efficiency and stability.

Abstracted platforms

Subject matter and operations teams work with abstracted platforms, thereby reducing retraining efforts and risks.

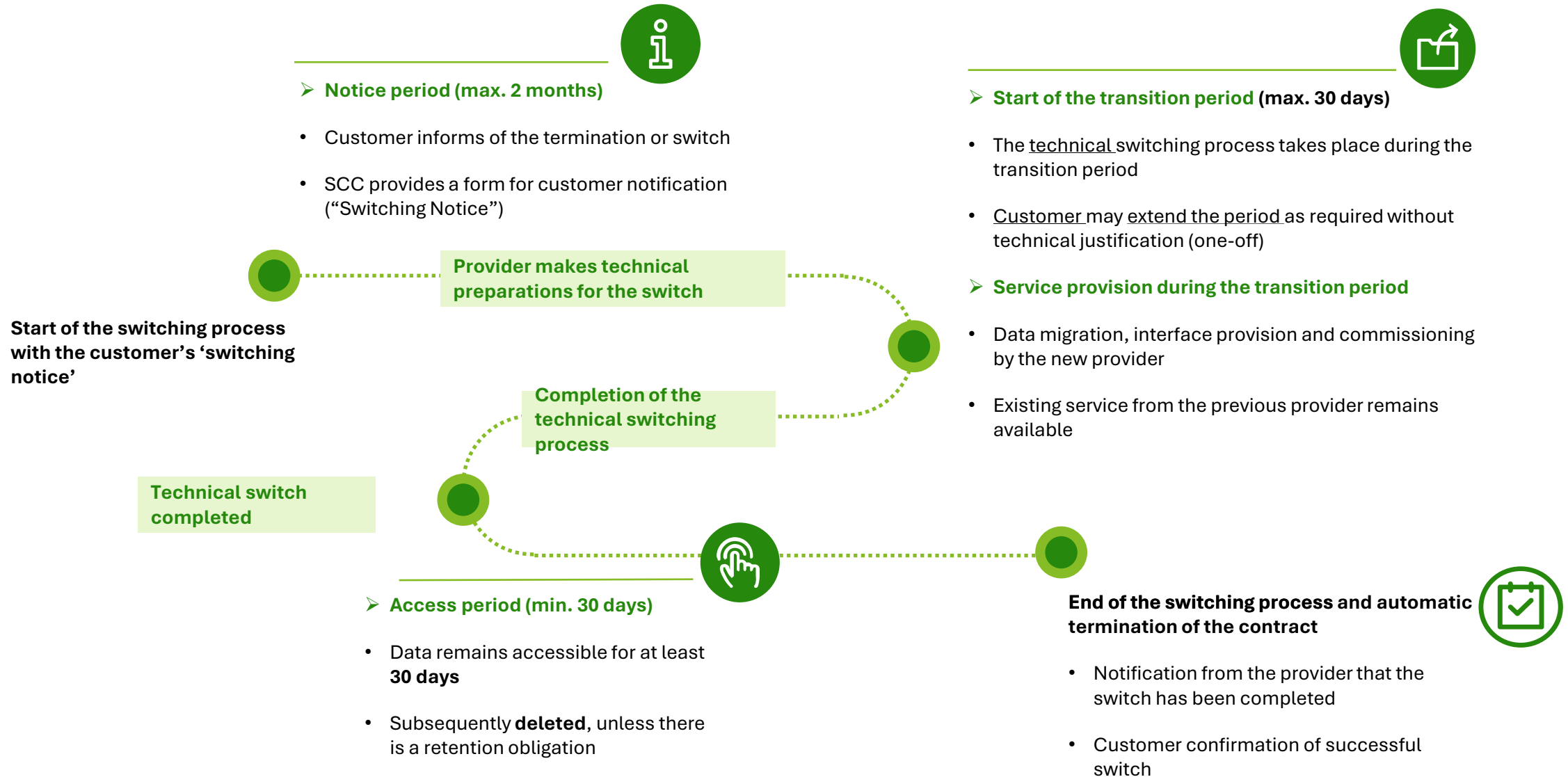
Legal and organisational security

Changing providers does not jeopardise compliance or operational capability and remains legally manageable.



Switching process– Scenario A

Low technical complexity



Switching process – Scenario B

High technical complexity



➤ Notice period (max. 2 months)

- Customer informs of the termination or switch
- SCC provides a form for customer notification (“Switching Notice”)
- If the switch cannot be carried out within 30 days for technical reasons: notification and explanation within **14 days**

Start of the switching process with the customer’s ‘switching notice’

Provider makes technical preparations for the switch

Completion of the technical switching process

Technical switch completed

➤ Access period (min. 30 days)

- Data remains accessible for at least **30 days**
- Subsequently **deleted**, unless there is a retention obligation



➤ Start of the alternative transition period (max. 7 months)

- Extended transition period of max. 7 months if the provider can demonstrate technical unfeasibility
- The technical switching process takes place during the transition period
- Extension by the customer according to their own needs possible without technical justification (one-off)

➤ Services during the transition period

- Data migration, provision of interfaces and commissioning by the new provider
- Existing service from the old provider remains available

End of the switching process and automatic termination of the contract

- Notification from the provider that the switch has been completed
- Customer confirmation of successful switch





Current exceptions under Article 31 of the Data Act

- 1. Test – Beta version:** Not ready for production and made available only for a limited period. Article 31(2) of the Data Act. ⇒ In this case, Chapter VI is entirely excluded.
- 2. Custom-built:** Customer-specific data processing services. Art. 31(1) Data Act.
*“Data processing services where the **majority of the core functions** (i.e. more than 50%) have been **tailored** to the specific needs of a single customer, or where **all components** have been developed for the purposes of a single customer and where these data processing services are **not offered on a larger commercial scale via the service catalogue of providers of data processing services.**”*
⇒ Limited scope of obligations.
Article 23(d), Article 29 and Article 30(1) and (3) do not apply. **This means:**
 - Certain requirements regarding functional equivalence (for IaaS) and interoperability do not apply.
 - Furthermore, there is the possibility of charging switching charges. The accounting issue remains.



Planned under the Digital Omnibus (current status)

Extended relief for EXISTING CONTRACTS (concluded before or on 12 September 2025)

1. Existing ‘custom-made’ contracts: Individualised adaptation of an existing service. The exemption applies only to ‘**non-*laaS*** services’, e.g. SaaS, PaaS.

Existing contracts “in which **most features and functions** have been **adapted** to the specific needs of the customer”.

2. Existing contracts of SMEs* and small mid-cap** companies

*Reference to 2003/361/EC: fewer than 250 employees and a maximum annual turnover of €50 million or an annual balance sheet total of €43 million

New term introduced by the Omnibus Directive with reference to 2025/3500/EC: employing **fewer than 750 people and with an annual turnover not exceeding €150 million or an annual balance sheet total not exceeding €129 million.”

The following is planned for both new categories:

- ⇒ Existing contracts do not need to be renegotiated. The cloud switching requirements do not apply.
- ⇒ However, any contractual provision in this contract that conflicts with Article 29(1), (2) or (3) shall be deemed null and void.

Key takeaways

What should you bear in mind when switching cloud providers?

As a customer:

- Review **existing contracts** and assess whether early termination or switching offers advantages.
- Assess **potential savings**: Customers of data processing services where the Data Act has been implemented late or inadequately can use this to their advantage.
- Technical readiness **to** switch


As a provider:

- Assessing the need for adjustments to **existing and new contracts**.
- Assessing the need to adapt the **business and pricing model**, as well as agreeing on a course of action regarding contracts terminated early.
- Comply with **disclosure requirements** in contract documents and on the website.
- **Operational and technical adjustments** to enable cloud switching.

5 | Q&A

Any questions?





**Thank you very
much**
for your attention

Q&A

Let's work together to drive forward the Data Act and cloud switching!

Any further questions or suggestions? Please feel free to get in touch!



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***Further information
on the EU Data Act***



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