ADPA
Automotive Data Publishers' Association

ADPA.EU

Data Act Guidelines for reasonable compensation

ADPA position paper

SAFETY - SUSTAINABILITY - AFFORDABILITY

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Notice

This document is the detailed position from ADPA with a view to the European Commission's draft Guidance for reasonable compensation under the Data Act.

ADPA remains of course available to discuss it further with relevant institutions and fellow stakeholders.

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Executive summary

- ADPA welcomes the initiative of the European Commission to provide much needed Guidance for the calculation of reasonable compensation from data recipients to data holders as set out in Article 9 of Regulation (EU) 2023/2854 (the Data Act).
- Data holders (such as vehicle manufacturers) are gatekeepers of their data and have no incentive to enable access by third parties (data recipients), in particular the aftermarket with which they compete. Accordingly, any scope for placing obstacles in the way of the right of access to data, i.e. the right to compensation, must be construed narrowly and in line with the principles and objective set out in the recitals of the Data Act, i.e. "In making the data available to the third party, a data holder should not abuse its position to seek a competitive advantage in markets where the data holder and the third party may be in direct competition"[1].
- ADPA Members have been experiencing for years how stakeholders which have a structural advantage (a monopoly) on their brand-specific data can impair competition and prevent innovation from other stakeholders acting as their competitors, in particular in the aftermarket, by misusing insufficiently clear provisions on fees or compensation[2], despite some legal provisions framing such fees[3].
- With this practical experience on the efficiency of provisions on fees and compensation, in particular with regards to the objectives of the European Union to support competition, innovation and competitiveness, ADPA has a number of comments on the draft proposal. Some proposals are very welcome clarifications, while others would seriously undermine, in practice, the principles and objectives of the Data Act.
- It should also be noted that this guidance will fully deliver its objectives if and only if negotiations between data holders and data recipients is made as easy as possible. Explaining how remuneration should be calculated and justified when data holders charge for making data available is also dependent on the existence of fair and lawful contracts for data access and use. The related Recommendation of the European Commission on non-binding model contractual terms on data access should in that perspective be regularly assessed to ensure it remains fit for purpose in light of the market reality and practices.

[1] Recital (33) of the Regulation (EU) 2023/2854

[2] See Annex 1

[3] Article 63 of the Regulation (EU) 2018/858 (Type Approval Regulation) foresees that fees for repair and maintenance information should be "reasonable and proportionate"

Preliminary remarks

- ADPA underlines that the Data Act is not conceived as a regulatory tool for data holders to monetize their already privileged position, but to enable competition by ensuring that users can grant access to data generated by the products belonging to them to the third parties of their choice as data recipients.
- Data recipients should in no case be considered as free-riders. ADPA Members for example are willing to pay a compensation to vehicle manufacturers against the cost arising for them from having to comply with their legal obligations. In other terms, ADPA considers that it is legitimate for vehicle manufacturers to be compensated against the cost occurring from a legal obligation that is placed on them against their interests. While they can be put under an obligation to share their information for the sake of competition, and they should not be asked to do so at a financial loss, there is no reason to make them profit from it (which would undermine the objective of better competition), either. This has been well explained by the European Commission[4].
- The argument that data recipients would be free-riders (as voiced in the European Commission's webinar on the 10th of February 2026) is even more incomprehensible coming from data holders, which:
    - Invest in data for their own benefits, not for that of third parties. They are not acting in an altruistic or charitable way but out of positive economic profit expectations.
    - Benefit from the data without any legal ownership in it, without paying the user for it, and without having to provide additional benefits to the users in exchange of it.
    - Can be compensated against their costs linked to their legal obligation to not impair competition.
- Moreover, in sectors where data holders compete directly with data recipients (such as vehicle manufacturers operating repairer networks that compete with independent repairers), there is a structural incentive to use compensation mechanisms to disadvantage competitors. This makes clear, prescriptive guidance on compensation calculation essential to prevent abuse.
- ADPA fully supports the cost-based approach to determine compensation and agrees that it should cover all legitimate costs incurred to the data holders. However, the very useful clarification and framing under chapter 4.1 ("indicative elements for the calculation of compensation under Article 9(2)(a)") of these cost items might be void if data holders can apply on top of it a margin. The concept of a margin is in direct opposition to the one of compensation, and it remains extremely vague and permissive for data holders.
- The notion of "reasonable" compensation is as unprecise. Several lawsuits have been filed, going up to the European Court of Justice, and yet there is still no additional Guidance as what it means, resulting in largely divergent and conflicting understandings[5].
- For these reasons, the compensation should be purely cost-based, and not include vague notions (such as "reasonable" compensation) or undermining principles (such as a profit margin). Considering that a margin is foreseen in the current text of the Data Act, then this margin should be as limited and as clearly framed as possible.

[4] European Commission, *Commission Staff Working Document SEC(2005) 1745*, 21 December 2005, p. 27 last paragraph

[5] See Annex 1

Summary of main points to consider

1. The very concept of "margins" undermines the principle that the compensation should be cost-based (which is the very meaning of "compensation"). It also invites basically limitless setting of fees, rendering the boundaries on costs and investments set in Article 9 moot. Unless the Data Act itself would be amended through the Digital Omnibus in a way which would prevent the imposition of a "margin", this Guidance should frame very carefully the potential amount of this margin. Paragraph 40 should specify that the margin can only be a fraction of the costs, and that the margin can never be higher than the amount of the costs.
2. The principle of non-discrimination is essential and, from experience, should be further clarified. In particular, it should be made clear that non-discrimination implies that compensation cannot be based on the individual success of data recipients but must be linked to measurable parameters of their relationship with data holders (e.g. volume of data, number of requests…). In parallel, this principle should cover not only competitors to the data holders' own affiliated partners, but also intermediaries acting on behalf of such competitors. Paragraphs 12 and 13 should include additional clarifications in that regard.
3. Enforcement is always a difficult method for smaller players to defend their rights against larger stakeholders. This Guidance should help streamlining the process and prevent retaliation of data holders against data recipients, in particular when it comes to compensation. Paragraph 57 should include trade associations representing data recipients as legitimate and recognized parties, and clarify roles and responsibilities of enforcement authorities.
4. The draft Guidance is unnecessarily increasing the power of data holders over data recipients, in a way which is not proportionate to the Data Act. In particular, it gives them way too much control over their business model, for example by rejecting "a strict obligation to provide mechanisms allowing for data recipients to pick and choose any possible combination of data points" (Paragraph 17) and by enabling them to collect valuable intelligence on the use cases of the data recipients (Paragraph 42). These paragraphs should be amended in a way that the business secrets of the data recipients remain safe from monitoring from data holders acting as their competitors. The separate Guidance on trade secrets should also reflect that protection applies to both parties, in a proportionate manner.
5. It is unlikely that data holders would "minimize", to their own detriment, the cost factors they can take into account when calculating the compensation they will ask to data recipients. Yet this compensation should be as low as possible in order to sustain the very objectives of the Data Act (competition, innovation, competitiveness). The Guidance should therefore not offer reasons to increase the compensation unnecessarily (if the costs are legitimate, the data holders will have no issue in proving it and including them). Some items in Paragraph 14, and Paragraph 35 in its entirety, are in that sense unhelpful.
6. The draft Guidance (Paragraph 34) seems to imply that data holders could charge more to guarantee that the data they provide is of the same quality as that available to them. This seems to be completely against the very idea of the Data Act, and the data holder's obligation to provide that same quality. The cost of warranties for enhanced quality should be passed on to data recipients only if these data recipients have explicitly requested such additional warranties.

Points to support and strengthen

Paragraph 12

ADPA considers that the principle of a non-discriminatory treatment should apply to all stakeholders belonging to a similar category. Data holders shouldn't take into account parameters which are linked to the individual performance of companies building successful business models not only thanks to the data they have access to, but also to their know-how, their processes and their experience. In other words, in our case, when providing the same set of data to two publishers of automotive technical data, vehicle manufacturers should not operate a differentiation based on the turnover of these publishers or the number of their customers. Otherwise, it would amount to a "tax on success".

Based on the fact that the fee should be reasonable for the smallest legitimate operator (in order to not foreclose competition because of too high entry-fees onto the market), all operators within a same category should pay the same amount, which is the one affordable (not-discouraging) the smallest competitor.

12. The interpretation of the "non-discriminatory" element can build on a body of non-discrimination legislation and case-law, which reflects the principle of equal treatment, except if justified by objective reasons. The difficult element is to consider which entities are in comparable categories for them to have a right to receive equal treatment. Certain distinctions are easier to make, such as whether an entity is for profit or not-for-profit. **The principle of non-discrimination implies that distinctions should never be based on the individual success of data recipients (e.g. turnover or number of customers), but merely on objective and measurable parameters (e.g. volume of requests).**

Paragraph 13

ADPA supports the European Commission approach that a data holder should not discriminate between its affiliated/ partner and that partners' competitors. However, it is important to include the full supply chain in this concept. In the automotive sector, affiliated repairers are competing with independent, multi-brand repairers. Independent repairers, whether SMEs or larger repairers or repairers networks, usually rely on intermediaries upstream the value chain (such as publishers of technical information, multi-brand tool providers, remote service providers and suppliers of spare parts), rather than receiving these necessary inputs directly from the vehicle manufacturers, as the sheer burden of having contractual relations with vehicle manufacturers is often unpractical, uneconomical and therefore deterrent to them. While not being on the same market level as workshops, they are supplying them with the required data, enabling a functioning market, and should therefore have access to data under the same conditions (including fees) as affiliated repairers.

13. Differentiating between data recipients is not justified where access is refused or penalised simply because a recipient is a current or potential competitor (e.g. in the product market or in services), where criteria are applied selectively or opaquely, or where a vague justification (e.g. "public interest") is invoked. In addition, if a data holder (e.g. the manufacturer of a connected product) has a statutory (i.e. linked enterprises) or contractual relationship with a data recipient for the provision of a related service for which the data may be used (for instance, 'affiliated/partner' repairers for the repair of a car or aeroplane manufactured by the data holder), the data holder should not discriminate between its affiliated/partner and that partner's competitors**, or third parties enabling them (e.g. , even if at a different level of the value chain. For example, repairers often rely on intermediaries such as multibrand publishers of technical information, tool providers and remote diagnostic service providers, for practical and economic reasons, and they should not face discriminatory pricing simply because they operate through such intermediaries.**

Paragraph 23

ADPA very much welcomes the clarification that "where a data holder stores data in an uncommon or proprietary format, and where a structured, commonly used and machine-readable format exists, the costs of reformatting to ensure compliance with a request under Article 5(1) cannot be included in the calculation of the compensation", as it prevents potential abuses.

However, other legislation contains a similar wording[6], which has proven to be open to interpretation and thus litigation between parties[7]. ADPA therefore strongly supports further clarification to avoid similar disputes in this area. In particular, the clarifications made by the European Court of Justice should be included.

> 23. Formatting the data: Article 5(1) of the Data Act requires data holders to make data available, inter alia, in a "structured, commonly used and machine-readable format". This means that where a data holder stores data in an uncommon or proprietary format, and where a structured, commonly used and machine-readable format exists, the costs of reformatting to ensure compliance with a request under Article 5(1) cannot be included in the calculation of the compensation. **In line with recital 35 of Directive 2019/1024, in order for a document to be regarded as being in machine-readable format, it must be presented in a file format structured in such a way that software applications can easily identify and recognise and extract specific data from it. It should not be necessary for the data recipient to perform any intermediate steps such as conversion into another file format.** Where the data recipient requires another specific format other than what would satisfy the abovementioned obligation, the costs of such reformatting can be included in the calculation of the compensation.

Paragraph 28

ADPA strongly supports the adoption by the European Commission of additional Guidance on the protection of trade secrets, in particular with a view to prevent data holders from abusing its principles to avoid sharing data requested by data recipients.

Paragraph 31

ADPA welcomes the clarification brought on the cost of storage, and in particular the differentiation between a dedicated IT environment and an IT environment that the data holders also use for their own purposes.

However, ADPA would like to highlight that there are also specific risks associated with access to any IT environment (whether that is dedicated to data recipients or not). Recently, a vehicle manufacturer ran a software update on its server (which provided access to dealers and the independent aftermarket), which caused access to be suspended to remote service providers(and therefore independent repairers who rely upon those remote service providers). This severely disrupted the operations of the independent aftermarket, limited its ability to work on vehicles of that specific brand and caused significant disruption to motorists. During this time, the vehicle manufacturers' dealers were unaffected. The data holder should propose a minimum service level agreement with back-up options to ensure continuity of the service (except of course regular, foreseeable and announced maintenance operations).

[6] Article 61(2) of the Regulation (EU) 2018/858 (Type Approval Regulation) foresees that "the information shall also be given in a machine-readable format that is capable of being electronically processed with commonly available information technology tools and software"; Recital 50 adds that information should be provided "via a standardized format that can be used to retrieve the technical information"

[7] European Court of Justice, decision of 9 November 2023, Gesamtverband Autoteile-Handel / Scania, Case C-319/22, ECLI:EU:C:2023:837; see in particular paragraphs 39, 40, also 22

31. Data storage: The data holder may choose to store the data in a dedicated IT environment (on premise or cloud solution) for the purpose of making it available to user and data recipients, independent of the IT environment that the data holder uses for its own purposes. In such case, storage costs linked to making data available to data recipients may be included in the calculation of the compensation. Storage costs not linked to making data available to users, on the other hand, should not be included in the calculation of the compensation. If the data holder stores the data in an environment that they also use for their own purpose, storage costs should only be part of the cost calculation to the extent that the environment is used for storing data with a view to make it available to data recipients. If there is no additional cost of data storage, there is no reason to charge data recipients for such costs. **The data holder, when using an IT environment for data recipients (whether dedicated or shared with the data holder's own operations), shall ensure the continuity of operations by guaranteeing at least a minimum monthly uptime and maximum recovery time objective, and cannot claim compensation while this IT environment is not operational. Where disruption disproportionately affects data recipients compared to the data holder's own operations or those of its affiliated partners, this shall constitute discriminatory treatment.**

Paragraphs 32 to 34

ADPA considers these paragraphs to be the core element of the Guidance. In no case should they be watered down. They are rightfully highlighting that the calculation for compensation should be:

- Cost-based;
- Auditable;
- Comparable;
- Proportionate.

However, ADPA would like to emphasize that ensuring the quality of the data is a core obligation of the data holders, who must provide the data in the same quality as is available to them (cf. Art. 5(1)). They should therefore not be able to charge additional fees for ensuring that same quality (which the data has anyways since it is available to the data holder). The data collection and dissemination method should therefore always be of sufficient quality; data holders should not be allowed to charge extra for legal warranties that are considered "objectively necessary" because their methods are insufficient. Allowing data holders to charge for that kind of warranty legitimizes the assumption that they would be allowed to deliver low-quality data in the first place. Otherwise, data holders might as well propose two options to data recipients: a cheaper one with poor quality, unreliable data (preventing them from developing a quality use-case) and a more expensive one with accurate data under the cover of a "legal warranty".

The items to be considered when calculating costs should also not cover costs related to the overall compliance of the data holders (e.g. in terms of cybersecurity and data privacy) and which incur irrespectively of a potential request from a data recipient.

34. It would be illegitimate for data holders to pass on overhead, sunk costs, speculative risks or ordinary business expenses as access-related charges, as this would undermine the FRAND principles. Other examples of unnecessary costs would be broad data cleaning, enhancement, or quality initiatives not necessary for a specific request. **Data holders must ensure they provide the data in the same quality as is available to them without additional charge for quality enhancement. Additional legal ~~W~~w**arranties for the quality of the data should only be included if they were requested by the data recipient ~~**and in any event only if objectively necessary (the data collection and dissemination method may be of sufficient quality to make additional legal warranties unnecessary)**~~. **Baseline security, privacy and compliance obligations that the data holder must meet irrespective of any access request (including trade secret governance) shall not be itemised into compensation. Only incremental costs demonstrably triggered by the specific access request may be included.**

Paragraph 43

ADPA warmly welcomes the clarification that data holders should not require data recipients to pay a compensation for the costs of investments which have already been covered by the sale or the lease of the connected product.

ADPA however considers that additional Guidance could help avoid an abuse of the exemption foreseen for the case investments are done for the collection of data that the manufacturers/data holders don't use as such, as this might evolve over time.

43.b. Under Chapter II of the Data Act, investment decisions to fit data collection or production technologies into connected products are made based on a purpose defined by the manufacturer (who is also, typically, the data holder). When the data holder itself uses the data, e.g. to monitor the connected product's performance, the margin is decreased (Recital 47). However, in situations where the manufacturer does not use the data and rather makes investments solely to enable additional data collection and production features, this can be included in the calculation of the margin. This may especially arise once Chapter II data sharing matures, and data recipients request data that is not needed for the functioning of the connected product or the manufacturer's or data holder's services. **However, should the situation evolve over time and the manufacturer or data holder start using this data as well, the cost of the investment shall be proportionally decreased for the calculation of the compensation.**

Paragraph 49

ADPA welcomes the possibility offered in the Guidance to have different payment arrangements. However, the draft Guidance seems to leave the choice of pricing model up to the data holder, which can lead to different issues undermining the objectives of the Data Act. The pricing model may become deterrent to the use of data, if it does not fit with the business model of the data recipient. In the automotive aftermarket for example, operators at different level of the value chain might have different needs. For instance, in the case of roadside assistance, the service provider (as data recipient) only needs data when an event occurs. It will not be financially viable to pay a monthly service fee when the data may only be required once every 5 years. In this case, the ability to pull data on demand and only pay at that moment (an event driven model) is needed. For a fleet management solution on the contrary, the service provider will charge a monthly service fee to their customer. The service will be based on regular access to a fixed set of data. For this provider as data recipient, a subscription model will be needed, so it can align with its own pricing scheme. Therefore, data holders should offer both transaction and time-based fees, as foreseen for similar cases in other European Union's legislations[8].

49. Besides the eligible cost and investment elements, the data holder and data recipient must also agree on the arrangements for paying compensation. **To build a viable service the data recipient needs a pricing model which aligns with its own business. Potential pricing models include transaction-based models and subscription-based models.** ~~**The data holder may prefer a payment for each transaction or deploy subscription models – or both.**~~ Chapter III of the Data Act does not prescribe which model to use. **These guidelines suggest that the data holder should offer both models. The compensation payment model should not deter potential data recipients from accessing and using data.** Subscription models enable the distribution of onboarding and contracting costs across a larger number of transactions, making such models more cost-effective compared with per-transaction pricing. **In some instances, transaction based pricing, where the data recipient pays to access data at the moment it is required, might be more economically viable for the data recipient as it aligned better with their particular business model. It is up to the data recipient to determine which model is better tailored to its needs.**

[8] Article 63(2) of the Type Approval Regulation (EU) 2018/858 foresee that "The manufacturer shall make available vehicle repair and maintenance information, including transactional services such as reprogramming or technical assistance, on an hourly, daily, monthly, and yearly basis, with fees for access to such information varying in accordance with the respective periods of time for which access is granted. In addition to time-based access, manufacturers may offer transaction-based access for which fees are charged per transaction and not based on the duration for which access is granted. Where the manufacturer offers both systems of access, independent repairers shall choose systems of access, which may be either time-based or transaction-based."

Paragraph 55

ADPA very much welcomes the wording of the guidance ensuring a certain level of transparency regarding the calculation methods, which is essential for data recipients to be able to determine the economic viability of their potential use cases.

55. Data holders must provide information that sets out the basis for the calculation of the compensation in sufficient detail. Article 9(7) does not directly oblige data holders to disclose confidential information. Such information includes cost items protected by non-disclosure-agreements (e.g. on the cost of technology necessary for cloud storage or data transmission) or qualifying as trade secrets. Disclosure of such costs/prices may have unintended market effects and may adversely affect the data holder's business interests. For this reason, the data holder should provide information with the appropriate level of granularity, striking a balance between the protection of confidential information and the necessary transparency. A solution could be the creation of summaries, cost categories, or standard templates with example calculations, to show the logic of pricing and aggregated ranges rather than sensitive internal details (e.g. salaries, unit prices, supplier contracts). Where such information is not sufficient for the data recipient to assess whether the conditions of Article 9(1) to (4) have been met, or where there are grounds to challenge the calculation, the parties should strive for third-party intermediary solutions (e.g. independent auditors, dispute settlement bodies bodies) or other suitable measures (e.g. non-disclosure agreements) to allow for data recipients to challenge cost calculations while protecting commercially sensitive data. **Compensation shall be expressed in simple, auditable units (e.g., X €/product/month for standing access and/or Y €/1,000 API calls for consumption). A data holder must publish a cost allocation template detailing (i) allocable incremental costs to make data available, (ii) excluded costs (cf. paragraph 34), and (iii) the unit price derivation.**

Paragraph 57

ADPA very much welcomes the envisaged option of relying on multiple enforcement channels, including national administrative authorities. However, in several EU Member States, the competent authorities apparently haven't yet been designated. This creates a lack of enforceability of the legislation, which can only be to the detriment of the data recipients, which by nature are already more fragile than data holders. The European Commission should encourage Member States to speed up the process, and make available a full list of competent national authorities (as it does for example for national competition authorities[9]).

These authorities should also closely cooperate and, where needed, pass on the complaint to the most appropriate of their peers and follow-up, to ease the enforcement burden laying with the data recipients, and be equipped with sufficient resources and investigative powers. Deadlines should be foreseen as well, to ensure a speedy enforcement. It should also be foreseen that trade associations can submit complaints on behalf of their members. This would serve to prevent those members from being subject to retaliation measures from the data holders as their business partners (and thus potentially refraining from enforcing their rights in the first place), as foreseen for example in other legislations[10].

[9] https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network/national-competition-authorities_en

[10] Regulation (EU) 2018/858 (Type Approval Regulation), Article 65(3)

57. When it comes to the resolution of disputes arising from the calculation of the reasonable compensation under Article 9 of the Data Act, data holders and data recipients**, and trade associations representing them,** have three options:

a. They can seek redress before a court or tribunal of a Member State. The right to do so is not affected by having access to a dispute settlement body or by having filed a complaint with a national competent authority.

b. The parties can also agree to refer the dispute to a dispute settlement body certified by Member States in accordance with Article 10 of the Data Act. Dispute settlement bodies should offer a simple, fast, and low-cost solution to the parties in addressing disputes relating to FRAND terms and conditions and transparently making the data available. Parties can address a dispute settlement body in any Member State.

c. They can file a complaint with the competent authority designated by a Member State to carry out the tasks listed in Article 37 (5) of the Data Act. **A list of such authorities will be made public on the European Commission's relevant webpage.** Data holders and data recipients should lodge their complaints with the relevant competent authority in the Member State of their habitual residence, place of work or establishment, including with respect to cross-border matters. **In case a complaint is not addressed to the appropriate authority, the authority receiving the complaint should transmit it to the appropriate one and inform the applicant accordingly.** The competent authorities have a duty to cooperate and assist each other not only within the same Member State but also across borders. **The results of that investigation shall be communicated to the applicant concerned within three months of the request.**

Points to reconsider and improve

Paragraph 10

The inclusion of a margin is fundamentally undermining the very objective of the Data Act. ADPA understands that this is the current status of the legislation, but it would make sense, under the Digital Omnibus, to revise accordingly Article 9 (1) of the Data Act and to remove entirely the reference to a potential margin.

Paragraph 14

ADPA considers that the mention that additional costs might be charged to "reflect objective technical burdens" is creating a dangerous precedent. If the costs linked to certain technical requirements are higher than those linked to other technical methods, then this is already covered by this draft Guidance under various points, and for sure data holders will reflect it in their pricing policy (and it should be transparent and auditable).

Additional "excuses" to increase the prices are therefore unnecessary and are even dangerous. There is no objective indication that providing access to data in real time rather than with a delayed access should be more expensive. Similarly, there is no Guidance to assess whether an effort is out of the ordinary or not to prepare certain datasets, leaving it to the discretion of the data holders, which can therefore easily misuse or abuse it, ultimately distorting competition.

14. By contrast, differentiation can be justified when it is tied to objective requirements. Such objective requirements include, for instance, additional costs that

- are necessary to meet security, compliance or confidentiality standards,
- stem from measures to protect or maintain the confidentiality of data of a sensitive nature , including safety-critical data, personal data, or trade secrets, or
- reflect objective technical burdens related to, for instance, the data format, volume or frequency~~, real-time versus delayed access, or the effort to prepare certain datasets~~.

Paragraph 16

ADPA is extremely concerned with the reference to "reasonable" fees. A similar provision exists under Type Approval Regulation 2018/858 (Article 63), which is subject to a wide scale of interpretation and dispute between the vehicle manufacturers and the independent aftermarket. Several lawsuits and even a decision by the European Court of Justice[11] haven't clarified yet what it means. Additional confusion might ensue due to the equalization of "reasonable" and "non-deterrent" in paragraph 16.

Rendering the fees subject to an individual, case-by-case assessment will also render enforcement much more difficult in particular for data recipients. ADPA therefore recommends the Guidance to base the fees on cost, which is an objective, verifiable metric, to frame the potential margin in an absolutely unequivocal way, and to foresee more protective enforcement mechanisms[12].

16. The "reasonable" element seeks to ensure that the amount of the compensation should not be economically prohibitive and deter potential data recipients from accessing and using data. It should adequately compensate the data holder for the obligations the Data Act imposes, but not allow for windfall profits. **It should therefore essentially be cost-based.** ~~**It evaluated on a case-by-case assessment of the specific terms and conditions that underpin the agreement between the data holder and data recipient.**~~

[11] Decision of 27 October 2022, ADPA and Gesamtverband Autoteile-Handel, Case C-390/21, ECLI:EU:C:2022:837

[12] See also comments on Paragraph 40

Paragraph 17

ADPA is extremely concerned about the option to leave to the data holders the possibility to decide by themselves which data points could be bundled. In the automotive sector, previous real-life examples show that:

- Vehicle manufacturers sometimes bundle data points which are completely unrelated;
- Vehicle manufacturers sometimes unlawfully force independent operators to purchase more information than what they need (as it is bundled), and therefore at a higher cost.

It is also in direct opposition to essential competition principles under existing European legislation also addressing access to vehicle-generated data and foreseeing that a vehicle manufacturer "should not oblige independent operators to purchase more than the information necessary to carry out the work in question". Proposing only a bundle of data points is in direct violation of this essential principle.

More generally, this point is a dangerous limitation to innovation and competition. It shouldn't be up to the data holder to decide which data points should be bundled for third parties' use cases. Datasets should be one possibility to retrieve data among others, next to the possibility to "pick and choose".

17. Unless otherwise provided by law, data holders should have room to design bundles of data and calculate the compensation accordingly, ~~rather than~~ **on top of** a strict obligation to provide mechanisms allowing for data recipients to pick and choose any possible combination of data points. In this context, data bundling refers to the practice by which a data holder groups or aggregates multiple data items or datasets together and makes them available as a single package to a data recipient. ~~Such bundles prevents data holders from incurring unnecessarily high upfront implementation costs for itemised contracting per data point.~~ The bundle design needs to reflect actual or reasonably expected demand (e.g. based on common sector specific use-cases such as fleet management services in the automotive sector), and serve the lawful, intended use by the data recipient. A data holder may not condition access to a specific dataset on the acceptance of additional datasets the data recipient did not request or need. The design should not be structured in a way that distorts or discourages data recipients' choices. It should not make the exercise of the data access right difficult in practice.

Paragraph 35

ADPA is concerned that data holders do not have to necessarily use the most economical solutions. It is enabling them to raise artificially costs which are then passed upon to data recipients, especially if they are acting as their competitors, either squeezing them or deterring them from accessing the data. While it is of course difficult to estimate what is the most economical solution (in particular in relation to the quality of the solution), having this principle in the Guidance could be used as an argument to not use the most economical solution of several options of same or similar quality.

ADPA is concerned that data holders may on the contrary impose unnecessary technical requirements that artificially increase costs or restrict access. In the automotive sector, some vehicle manufacturers require server connections and secure gateway authentication for repair procedures (such as ADAS recalibration) that can technically be performed offline using direct vehicle connections. These forced server connections serve no technical purpose but allow manufacturers to control, monitor, and potentially restrict independent aftermarket access. Such artificial barriers should not form the basis for additional compensation, as they represent access restrictions rather than genuine technical requirements. The Guidance should clarify that compensation cannot be claimed for costs arising from unnecessarily complex access mechanisms imposed by the data holder.

35. ~~Data holders do not have to necessarily use the solution that comprises the minimum costs. They can rely on the reasonably available options. While smart contracts bring down the costs of contracting, not all companies are able nor ready to use them. Also, well functioning dissemination mechanisms may already be in place (e.g. a web portal), so investments in an alternative and easier to use means (e.g. an API) may only be justified once upfront investment costs have been amortised. Similarly, API design may allow data recipients to select only a subset of data, but such design may not fit all data recipients' needs. For certain data recipients, manual processes may be necessary, triggering higher costs. Data holders should make reasonable assessments on what costs are necessary and what improvements in the cost structure can be made to keep costs reasonable.~~ **Compensation cannot be claimed for costs arising from unnecessary access mechanisms imposed by the data holder, such as requiring server authentication for procedures that can be performed through direct connection to the connected product.**

Paragraph 40

ADPA considers that the inclusion of a margin is fundamentally dangerous and in contradiction to the objective of establishing a method for the calculation of a compensation, which should be based on actual costs incurred to comply with legal obligations. The concept of a margin should be removed in its entirety in the framework of the Digital Omnibus[14]. If it is kept, it needs to be very clearly described and limited. ADPA would like to alert the European Commission that the simple introduction of the notion of "reasonable limits" is not sufficient to avoid legal uncertainty and disputes[15], as shown by experience.

40. It follows from the wording "shall take into account in particular" in Article 9(2) that several factors can play a role in the calculation of compensation and therefore of the margin. **However, the main part of the compensation, which is, as the word says, meant to compensate, should be the costs the data holder incurs.** Any margin should according to Art. 9(1) remain within reasonable limits **and be a fraction of the costs incurred**. **On no account may the margin be larger than the costs.** ~~**It should balance the right for data recipients to access data at affordable conditions with the protection of economic interests of data holders.**~~

Paragraph 41

ADPA remarks that this paragraph highlights a fundamental inconsistency in recital 47 of the Data Act. First, this recital proposes to include, within the compensation, a margin, which is not what a compensation is supposed to be about. Second, the elements used to determine this margin are redundant with the ones used to determine the cost or investments (e.g. "volume" of data), making data recipients pay twice (once to cover the costs, and once to feed the margin) for the same parameter. Third, any limitations imposed on the inclusion of costs and investments in the calculation, as set out in Art. 9 and in the draft Guidance, are moot if data holders can freely impose a margin on top.

ADPA understands that this is the current status of the legislation, but it would make sense, under the Digital Omnibus, to revise accordingly Recital 47 of the Data Act and to remove entirely the reference to a potential margin. A purely cost-based approach is enshrined in numerous other European legislations[16] and would be appropriate also for the Data Act.

Likewise, ADPA invites the European Commission to reconsider the inclusion of investments in the collection and production of data in the compensation. These are costs that the data holder will have regardless of any access request of a data recipient. The data holder makes these investments for its own purposes and to its own financial gain. Parallel to the CJEU case law regarding database rights[17], there should be no legal benefit attached to such investments.

ADPA believes that allowing data holders to recoup their investments will not foster the Data Act's goals of encouraging investment, either. A data holder will invest in data generation if it is beneficial and economically viable to them, without relying on potential future access requests by third parties which may or may not allow them to recoup their investments. That motivation is and will remain intrinsic. Data recipients designated by the user to exercise its rights under the Data Act should not serve as a means to create profits for data holders.

[14] See also comments on Paragraph 41

[15] See also Preliminary remarks and comments on Paragraphs 10, and 32 to 34

[16] See Annex 2

[17] Decision of 9 November 2004, British Horseracing Board, Case C-203/02, ECLI:EU:2004:695; decision of 9 November 2004, Fixtures Marketing, Case C-444/02, ECLI:EU:2004:697

The Data Act should encourage data sharing. As the CJEU pointed out[18], the purpose of encouraging investment in data sharing is separate from investments in data generation. Only the first should be supported through the compensation mechanism (which is achieved through allowing data holders to recover the costs of making data accessible, but not for generating it (or having it generated through the user) in the first place).

For the Guidance on compensation to efficiently support the objectives of the Data Act to encourage data sharing and ultimately data use for the development and deployment of innovative and competitive services and solution, the margin should also be inversely proportional to the volume of data accessed, reflecting economies of scale and ensuring that higher volumes correspond to lower relative margins. In the same spirit, the margin should reflect the commercial risk undertaken by data recipients and should be lower where data is used for innovative or untested use cases and business models.

41. In line with the objective of promoting continued investment into data generation, a margin can be added on top of items that qualify as "investments in the collection and production of data" within the meaning of Article 9(2)(b). Recital 47 states that the margin may vary depending on data-related factors (e.g. volume, format, or nature), the costs of collection, the impact on the data holder's activities, and whether other parties contributed to data generation. Moreover, it states that the margin should be higher when data collection requires significant investment, lower when costs are minimal or the data is co-generated, and may be reduced or excluded if the data recipient's use does not impact the data holder's business. **The margin shall be inversely proportional to the volume of data accessed, reflecting economies of scale and ensuring that compensation remains proportionate. In addition, the margin shall be lower where data is used for innovative or untested business models, in recognition of the commercial risk undertaken by the data recipient and in order to support innovation and incentivise risk-taking, in line with the objectives of the Data Act.**

Paragraph 42

ADPA considers that the introduction of a right for data holders to request information on the data recipient's intended use is extremely dangerous, completely unbalanced, and in direct opposition with the objectives of the legislation. It can give data holders clear indications as to the business model of data recipients, which is particularly problematic in the case where these data recipients are also competitors to the data holders. Data recipients don't have a mirroring right to review how the data holders are using the data for their own purposes. ADPA also fails to see the need for (and justification of) granting this right to data holders in the context of their obligations under the Data Act.

~~**42. In this context, the data holder may request information about the data recipient's intended use exclusively to assess whether its own activities are affected. To this end, the data holder may request the recipient to declare whether the use will compete with, replace, or interfere with the data holder's activities, which allows the data holder to determine if a margin is justified or if it should be reduced or excluded. The data holder cannot request or collect information irrelevant to the calculation of the margin, such as the data recipient's commercial plans, expected downstream profitability or market advantages, to justify a higher margin.**~~

[18] Decision of 9 November 2004, British Horseracing Board, Case C-203/02, ECLI:EU:2004:695, paragraph 42; decision of 9 November 2004, Fixtures Marketing, Case C-444/02, ECLI:EU:2004:697, paragraph 40

Annex 1 - Historic evolution of fees

The following table uses averages of fees paid by some ADPA Members to various vehicle manufacturers for access to technical information. For each vehicle manufacturer, the average of these fees for the year 2019 is used as a base 100, to anonymize as much as possible the data. Numbers have been rounded.

It shows that some vehicle manufacturers have dramatically increased their fees (way above inflation), while some others have increased their fees in a much more reasonable manner (at least in comparison), or didn't increase their fees at all. These disparities indicate that vehicle manufacturers have no common understanding of what Article 63 in the Type Approval Regulation (EU) 2018/858 allows them in terms of fees (vehicle manufacturers being rational economic operators, one would assume that they would all drastically increase their fees if they all considered that the legislation would enable them to do so), reinforcing the argument that the current wording lacks clarity. It shows also that there is no fatality in such an increase, but that it is a purely individual decision, most likely to be purely profit-driven.

It should be noted that:

- Some vehicle manufacturers started to increase their fees much before 2019. A base 100 in 2019 is therefore sometimes already much higher than what it used to be a few years before.
- Some vehicle manufacturers with a very large share of vehicles in operation have much lower fees than other ones which have much lower market shares, confirming the point above. This is not reflected here (all have a base 100).

ADPA can of course provide additional information upon request.

	2019	2020	2021	2022	2023	2024	2025
Vehicle manufacturers with significant increases							
OEM 1	100	100	280	280	447	1062	1062
OEM 2	100	100	172	278	380	460	469
OEM 3	100	100	100	206	206	206	206
OEM 4	100	100	100	111	111	111	189
Vehicle manufacturer with comparatively moderate increases							
OEM 5	100	100	102	102	110	117	121
Vehicle manufacturers with no increase							
OEM 6	100	100	100	100	100	100	100
OEM 7	100	100	100	100	100	100	100
OEM 8	100	100	100	100	100	100	100
OEM 9	100	100	100	100	100	100	100

Example 1: Multiplication of the fees by 10+

The order for reference from the Regional Court of Cologne[19] shows that the defendants had massively increased their fees within a short period of time:

> „Von einem beispielhaft herangezogenen unabhängigen Herausgeber von technischen Informationen verlangten die Beklagten im Jahre 2019 auf Grundlage der Preisformel einen Betrag von 137.687,47 EUR. In den Jahren 2012 bis 2015 hatte der Betrag für diesen noch bei 11.000,00 EUR gelegen […]."
>
> English translation:
>
> "From an independent publisher of technical information used as an example, the defendants demanded an amount of EUR 137,687.47 in 2019 on the basis of the price formula. In the years 2012 to 2015, the amount for this publisher had still been EUR 11,000.00 [...]."

[19] https://curia.europa.eu/juris/showPdf.jsf?text=&docid=244961&pageIndex=0&doclang=de&mode=req&dir=&occ=first&part=1&cid=481435

Example 2: Multiplication of the fees by 50+

A vehicle manufacturer recently approached the publishers of technical information and is now demanding exorbitantly high annual fees. If a publisher of technical information requires and obtains all information for vehicles of that brand (which should be the rule) and intends to use the access model with the fewest restrictions on the number of queries per day, it must pay a total of EUR 2.575 million plus a share of its turnover based on information for vehicles of that brand. Most of the publishers paid until now less than EUR 50.000.

It is obvious that these fees discourage the purchase of the information in its entirety. New companies will not enter the market, especially as they must expect that other vehicle manufacturers, or even all of them, might also enter at such a fee level.

Annex 2 - Selection of EU legal acts where fees are based on costs

EU legal act	Article(s)	Comment(s)
General Data Protection Regulation (EU) 2016/679 (GDPR) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0679	**Article 12** *5. Information provided under Articles 13 and 14 and any communication and any actions taken under Articles 15 to 22 and 34 shall be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either:* *(a) charge a **reasonable fee taking into account the administrative costs** of providing the information or communication or taking the action requested; or* *(b) refuse to act on the request.* *The controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.*	
Regulation (EC) No 1049/2001 **regarding public access to European Parliament, Council and Commission documents** https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32001R1049	**Article 10** *1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge **shall not exceed the real cost of producing** and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge.*	
Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on **public access to environmental information and repealing Council Directive 90/313/EEC** https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0004&qid=1759917077468	Article 5 Charges *1. Access to any public registers or lists established and maintained as mentioned in Article 3(5) and examination in situ of the information requested shall be free of charge.* *2. Public authorities may make a charge for supplying any environmental information but **such charge shall not exceed a reasonable amount.*** *3. Where charges are made, public authorities shall publish and make available to applicants a schedule of such charges as well as information on the circumstances in which a charge may be levied or waived.*	Case law: CJEU, C□71/14 — East Sussex County Council, judgment of 6 October 2015 Interpretation of the term “reasonable amount” (Environmental Information Directive): fees may include cost□based components, including reasonable overheads, but not profit mark-ups; components that are not linked to the provision of the information are impermissible.

EU legal act	Article(s)	Comment(s)
Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 **on open data and the re-use of public sector information (recast)** https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1024	**Article 6** **Principles governing charging** *4. In the cases referred to in points (a) and (c) of paragraph 2, the total charges **shall be calculated in accordance with objective, transparent and verifiable criteria**. Such criteria shall be laid down by Member States.* *The total income from supplying and allowing the re-use of documents over the **appropriate accounting period shall not exceed the cost of their collection, production, reproduction, dissemination and data storage**, together with a reasonable return on investment, and — where applicable — the anonymisation of personal data and measures taken to protect commercially confidential information.* *Charges shall be calculated in accordance with the applicable accounting principles.*	Earlier judgment: CJEU, C□138/11 — Compass□Datenbank, judgment of 12 July 2012 Re□use of public sector information: fees must remain within the limits laid down by the directive and be cost□based and non□discriminatory; excessive (profit□driven) models are contrary to EU law.
Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 **establishing an Infrastructure for Spatial Information in the European Community** (INSPIRE) https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32007L0002	Paras. 2–4: Exceptions (including public undertakings; libraries, museums and archives) **Article 14** *2. By way of derogation from paragraph 1, Member States may allow a public authority supplying a service referred to in point (b) of Article 11(1) to apply charges where such **charges secure the maintenance of spatial data sets and corresponding data services, especially in cases involving very large volumes of frequently updated data.*** Fees for geospatial data/services must not create practical barriers to use; they must be limited to the minimum necessary to ensure quality and availability (cost orientation)	
Data Governance Act (EU) 2022/868 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0868	Article 6 *2. Any fees charged pursuant to paragraph 1 shall be transparent, non-discriminatory, proportionate and **objectively justified** and shall not restrict competition* *5. **Any fees shall be derived from the costs** related to conducting the procedure for requests for the re-use of the categories of data referred to in Article 3(1) and limited to the necessary costs in relation to:* *(a) the reproduction, provision and dissemination of data;* *(b) the clearance of rights;* *(c) anonymisation or other forms of preparation of personal data and commercially confidential data as provided for in Article 5 (3);* *(d) the maintenance of the secure processing environment;* *(e) the acquisition of the right to allow re-use in accordance with this Chapter by third parties outside the public sector; and* *(f) assisting re-users in seeking consent from data subjects and permission from data holders whose rights and interests may be affected by such re-use.*	

EU legal act	Article(s)	Comment(s)
Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 **establishing the European Electronic Communications Code (Recast)** https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32018L1972	**Article 16** *1. Any administrative charges imposed on undertakings providing electronic communications networks or services under the general authorisation or to which a right of use has been granted shall:* *(a)* ***cover, in total, only the administrative costs*** *incurred in the management, control and enforcement of the general authorisation system and of the rights of use and of specific obligations as referred to in Article 13(2), which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of secondary legislation and administrative decisions, such as decisions on access and interconnection; and* *(b) be imposed upon the individual undertakings in an* ***objective, transparent and proportionate manner which minimises additional administrative costs and associated charges****.* **Article 74: Price control and cost accounting obligations** *1. A national regulatory authority may, in accordance with Article 68, impose obligations relating to* ***cost recovery*** *and price control, including obligations for cost orientation of prices and obligations concerning* ***cost-accounting systems****, for the provision of specific types of interconnection or access, in situations where a market analysis indicates that a lack of effective competition means that the undertaking concerned may sustain prices at an excessively high level, or may apply a price squeeze, to the detriment of end-users.*	
Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 **establishing a single European railway area** (recast) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0034	**Article 31: Principles of charging** 3. Without prejudice to paragraph 4 or 5 of this Article or to Article 32, the charges for the minimum access package and for access to infrastructure connecting service facilities **shall be set at the cost that is directly incurred as a result of operating the train service.** Before 16 June 2015, the Commission shall adopt measures setting out the modalities for the calculation **of the cost that is directly incurred as a result of operating the train**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).	CJEU, C□489/15 — CTL Logistics (judgment of 9 November 2017): “Costs directly incurred” = variable/marginal costs of train operation (e.g., usage□related wear and tear, line□specific maintenance); general overheads and investment/ financing costs are excluded. Mark□ups only pursuant to Article 32 where market segments can bear them.

EU legal act	Article(s)	Comment(s)
Regulation (EU) 2017/1926 of 31 May 2017 supplementing Directive 2010/40/EU of the European Parliament and of the Council **with regard to the provision of EU-wide multimodal travel information** services https://eur-lex.europa.eu/eli/reg_del/2017/1926/oj/eng	**Article 8** *4. The terms and conditions for the use of the traffic and travel data provided through the national access point may be determined through a licence agreement. Those conditions shall not unnecessarily restrict possibilities for reuse or be used to restrict competition. Licence agreements, whenever used, shall in any event impose as few restrictions on reuse as possible. Any financial compensation* ***shall be reasonable and proportionate to the legitimate costs*** *incurred of providing and disseminating the relevant travel and traffic data.* *5. Terms and conditions of linking travel information services shall be defined in contractual agreements between the travel information service providers.* ***Any financial compensation of the expenses of linking travel information services incurred shall be reasonable and proportionate.***	The Regulation requires data holders to make relevant travel information available via the National Access Point on fair, reasonable and non-discriminatory terms. It also clarifies that any fees may only be reasonable and proportionate and must be aligned with the justified costs of provision/ access (e.g., format adaptation, operation of interfaces, reproduction/transmission, quality assurance). **This effectively establishes a cost□based approach; profit□oriented pricing is constrained by the principle of proportionality.** Accordingly, here too, fees must not be profit□oriented.
Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 **on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)** https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002L0022	**Article 30** **Number portability** *2. National regulatory authorities shall ensure that pricing for interconnection related to the provision of number portability* ***is cost oriented*** *and that direct charges to subscribers, if any, do* ***not act as a disincentive for the use*** *of these facilities.*	
Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 **as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive** https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0565	**Article 85** Provision of market data on the basis of cost (Article 64(1) and 65(1) of Directive 2014/65/EU) *1. The price of market data shall* ***be based on the cost*** *of producing and disseminating such data and may include a reasonable margin.* *2. The costs of producing and disseminating market data may include an appropriate share of joint costs for other service provided by APAs and CTPs.*	

EU legal act	Article(s)	Comment(s)
Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 **on the internal market for electricity** https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0943	**Article 18** **Charges for access to networks, use of networks and reinforcement** *1. Charges applied by network operators for access to networks, including charges for connection to the networks, charges for use of networks, and, where applicable, charges for related network reinforcements, **shall be cost-reflective, transparent,** take into account the need for network security and flexibility and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in **a non-discriminatory manner.** Those charges **shall not include unrelated costs** supporting unrelated policy objectives.*	
Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions **for access to the natural gas transmission networks and repealing Regulation** (EC) No 1775/2005 https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009R0715	**Article 13** **Tariffs for access to networks** *1. Tariffs, or the methodologies used to calculate them, applied by the transmission system operators and approved by the regulatory authorities pursuant to Article 41(6) of Directive 2009/73/EC, as well as tariffs published pursuant to Article 32(1) of that Directive, **shall be transparent, take into account the need for system integrity and its improvement and reflect the actual costs** incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including an appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities. Tariffs, or the methodologies used to calculate them, shall be applied in a non-discriminatory manner.*	
Directive (EU) 2022/362 of the European Parliament and of the Council of 24 February 2022 amending **as regards the charging of vehicles for the use of certain infrastructures** https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32022L0362	**Article 7c** *1. Member States may maintain or introduce an external-cost charge**, related to the cost of traffic-based air pollution**, noise pollution, CO2 emissions or any combination thereof.* *Where an external-cost charge is applied for heavy-duty vehicles, Member States shall vary it and set it in accordance with the minimum requirements and the methods referred to in Annex IIIa and shall respect the reference values set out in Annexes IIIb and IIIc. Member States may choose to recover only a percentage of those costs.* **Article 7d** *No later than six months after the adoption of new and more stringent Euro emission standards, the Commission shall, where appropriate, submit a legislative proposal in order to determine the corresponding reference values in Annex IIIb and to adjust the maximum rates of user charges in Annex II.*	

EU legal act	Article(s)	Comment(s)
Commission Implementing Regulation (EU) No 391/2013 of 3 May 2013 **laying down a common charging scheme for air navigation** services https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0391	**Article 6** **Eligible services, facilities and activities** *1. Air navigation service providers referred to in Article 1(2) and (4) shall establish the costs incurred in the provision of air navigation services in relation to the facilities and services provided for and implemented under the ICAO Regional Air Navigation Plan, European Region, in the charging zones under their responsibility.* *Those costs shall include administrative overheads, training, studies, tests and trials as well as research and development allocated to these services.*	
Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the **development of the internal market of Community postal services and the improvement of quality of service** https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31997L0067	**Article 12** *Member States shall take steps to ensure that the tariffs for each of the services forming part of the provision of the universal service comply with the following principles:* *- prices must be affordable and must be such that all users have access to the services provided,* *- prices must be geared to costs; Member States may decide that a uniform tariff should be applied throughout their national territory,* *- the application of a uniform tariff does not exclude the right of the universal service provider(s) to conclude individual agreements on prices with customers,* *- tariffs must be transparent and non-discriminatory.*	Access to certain network elements (e.g., postcode systems, letter boxes, sorting capacity) on transparent, non-discriminatory and cost□based terms

About ADPA Members

ADPA Members are worldwide pioneers and leaders for the repairability of increasingly complex goods providing aggregated, harmonised, intelligible and ready-to-use technical information for the repair, maintenance and servicing of over 280 million vehicles from more than 40 different manufacturers on European roads ensuring their roadworthiness, safety and environmental performance over their lifetime in a reliable, timely and affordable way.

About ADPA - Automotive Data Publishers' Association

ADPA, the Automotive Data Publishers' Association, aims to ensure fair access to automotive data and information needed for servicing, repairing and maintaining road vehicles.

It advocates for international, European and national legislations maintaining and improving competition and consumers' choice in the automotive aftermarket by preventing or limiting the establishment of brand-specific monopolies.

Founded in 2016 and based in Brussels, ADPA is a Member of AFCAR, the Alliance for the Freedom of Car Repair in the European Union, and FAAS, the Forum on Automotive Aftermarket Sustainability.

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