

5/13/2022

Data Act: How to Put Data into Use and Facilitate Green Transition

Technology industries of Finland (TIF) regards the Data Act proposal as potentially the most important data regulation of von der Leyen's Commission. The proposal is bold, but we do see the value of putting data into the negotiation table and accelerate the market mechanism. Commission's proposal sets out the European way on a global discussion on [industrial] data. We are glad to be a constructive partner in the discussion, presenting both producers of products, their users and furthermore, the IT service providers as well.

The Commission proposal on B2B data sharing is the middle way between strictly mandated and laissez faire global approaches, stemming from European values and manufacturing heritage, but is – and should be – based on freedom of contract.

The proposal would help to advance data practices especially on SME companies and help them to make their leap in productivity. Enhancing availability of data generated by use of connected machines would give basis also to AI-driven optimisation and analysis tools and services – by using these easily scalable services we can reach significant advances in resource efficiency.

The proposal addresses only data access of the user of the product. In industrial realm, machines are often installed in user's industrial environment, making manufacturer's access to data a challenge that is to be settled by contract. Access to basic use data would be highly beneficial to the companies, facilitating quality control and R&D. Manufacturers' access to data should be equally enhanced.

Business to Business Data Sharing

Obligation to share data is the cornerstone of this proposal. The proposal aims to make data one key component of products and accelerate competition on data market by an obligation to make use data available to the users. Definition of data is a very crucial point of the proposal. The Data Act must not affect architectural choices of the design of the products. Companies need assurance to deploy edge computing and analysis and predictable legal environment for R&D and investments. It suffices to regulate on data sharing on a rather general level to leave room for the market to develop and operate.

The proposal needs further clarification as to the definition of data. The regulation should obligate only sharing of **raw, unanalysed and unprocessed data generated by use of the product**. This should be set out in the articles. The proposal should be fully linedated with the requirements of EU competition law and Commission's horizontal guidelines on application of competition law and especially the data categories listed therein¹. The definition of data is also of paramount importance to the manufacturer's ability to protect their trade secrets and other competitive assets. The general level legal protections provided on the proposal cannot sufficiently protect them – this must be done on the definition of data.

Liability for damage caused by disclosure of trade secrets must be included in the regulation to ensure proper compensation. Liability will serve both as a deterrent against inappropriate sharing and as a safeguard for the party suffering the harm.

As highlighted in the joint opinion of the EDPB and EDPS joint opinion, the proposal needs better lineation with the GDPR. To enhance usability of industrial data, we need to have very clear regulatory environment for handling mixed data sets containing personal data, especially more clarity is needed to role of pseudonymisation and anonymisation of personal data. It is important that the provisions applicable to processing of personal data remain at the GDPR and Data Act should not add further requirements or modalities for processing of personal data.

Finally, article 4 of the proposal should include a general provision to enhance also producers' access to use data of the machine produced.

Obligations for Data Holders: Fairness of Contract Terms

On top of mandated B2B data sharing of Chapter II of the Data Act, the companies need to be free to agree on more strategic co-operation based on data for purposes such as joint research or product development. When doing strategic co-operation, companies need to be able to choose their trusted partners – also on exclusive basis when needed. The regulation must provide clear line between mandated data sharing and voluntary data sharing arrangements, based on contract.

We ask the institutions to re-evaluate the regulation of the compensation of data. The proposed wording applies also to relations where both parties are SME companies.

¹ On Annex to the Communication from the Commission on Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (C (2022) 1159 Final), para 407 sets out following data categories:

- (i) raw and unorganised digital content that will need processing in order to make it useful (raw data);
- (ii) pre-processed data, that has already been prepared and validated;
- (iii) data that has been manipulated in order to produce meaningful information, of any form
- (iv) any other type of information, including non-digital information.

The definition of the 'product' refers to 'ability to communicate via publicly available electronic communications service'. It is confusing to exclude devices using a private channel from the definition.

Unfair Terms Related to Data Access

The provisions of this chapter apply not only on relations where other party is a big company and the other is an SME but also where both parties are SMEs. In our view, there is no need to regulate contractual relations over data where both parties are SMEs as this would add regulatory burden to data practices where data practices mostly need to be advanced.

The proposal does not address the situation and needs of producers of machinery, where machines are installed in industrial environments. Possibility to enhance access to data relevant for quality control and R&D should be examined through this section as well as through model contracts.

Making Data Available to Public Sector Bodies

The provisions of this chapter seem rather open-ended and do not sufficiently define in sufficient level of detail the situations where obligation to share data to public sector bodies is activated. This chapter needs a lot attention to reach a proportionate and predictable legal environment. Special care must be used when analysing interplay between these provisions with existing data access provisions of law enforcement officials.

There should be very clear requirements for companies and most importantly, clear provisions over companies' and public sector bodies' responsibilities of personal data and trade secrets. We note that quite many of the public sector's needs could be solved on voluntary basis, only if we had more clarity on anonymisation and pseudonymisation of personal data.

On their proposed form, the provisions would lead to unstable legal environment where companies could be approached simultaneously by plethora of public sector bodies presenting an array of requests of which legitimisation would be challenging for companies to verify.

The chapter should include better detailed provisions that proposed in the article 22 for public officials to effectively coordinate their needs for data and most importantly, their requests for data.

Switching between Data Processing Services

TIF supports the objective of avoiding vendor lock-in and advancing competition in data processing services. However, more clarity and phased development path is needed for this chapter. The term 'functional equivalence' should be defined more clearly, especially in terms of 'performance, level of security, operational resilience and quality of service' and how these can be ensured between different IaaS service providers.

Open interfaces and standards are offered as solutions to switching between PaaS and SaaS services. These are both very broad topics that raise a range of questions from API implementation requirements to feasibility of standardisation efforts in the SaaS domain with endless number of different kinds of SaaS solutions. Therefore, it would be the most feasible way forward to first concentrate on IaaS-level of the cloud service stack.

International Data Transfers

TIF Member companies are active in global export trade and global development of innovative solutions. Schrems II verdict by the European Court has raised many questions and threats for companies' ability to run a single data policy to which there are no feasible answers or additional safeguards available. This seriously affects our companies' competitiveness. For personal data, there is relevant Union legislation that requires these special arrangements to secure data subjects' privacy. In case of protection of privacy, there is usually third party's interest to protect.

The proposed chapter brings these same problems and challenges we have on international transfers of personal data also to non-personal data – without a pressing need. When dealing with non-personal data, the companies are used to use contracts to afford the required level of protection for their data and there is no unattended third-party interest present.

Companies are best placed to assess the level of protection required for their data. This is done by using contracts and specific terms and audits, if necessary. The proposed article 27 does not serve the business needs of the companies and open-ended terminology used poses risks to the predictability of these provisions. This provision seems likely to bring along unnecessary challenges for companies' ability to run one global data policy.

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Technology Industries of Finland (TIF) represents Finnish technology industries and has over 1,800 member companies, sizes varying from small SMEs and start-ups to world leading MNEs. The technology industry is comprised of five subsectors: electronics and the electrotechnical industry, mechanical engineering, metals industry, consulting engineering and information technology. Technology industry is the most important export industry in Finland, with operations constituting over 50 % of all Finnish exports and responsible for 70 % of all private investments