



Technology Industries of Finland Suggested Amendments to the Data Act Proposal

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<p>(6) Data generation is the result of the actions of at least two actors, the designer or manufacturer of a product and the user of that product. It gives rise to questions of fairness in the digital economy, because the data recorded by such products or related services are an important input for aftermarket, ancillary and other services. <i>In order to realise the important economic benefits of data as</i> a non-rival good for the economy and society, a general approach to assigning access and usage rights on data is preferable to awarding exclusive rights of access and use.</p>	<p>(6) Data generation is the result of the actions of at least two actors, the designer or manufacturer of a product and the user of that product. It gives rise to questions of fairness in the digital economy, because the data recorded by such products or related services are an important input for aftermarket, ancillary and other services. Taking into account the fact that data is a non-rival good and that the important benefits for the economy and society increase the more it is shared and used, a general approach to assigning access and usage rights on data is preferable to awarding exclusive rights of access and use. <i>However, it is also important that data sharing based on voluntary contracts will continue to develop to facilitate development of data-driven value growth in European companies.</i></p>

Justification

Suggest adding a sentence to highlight the importance of voluntary data sharing between companies, based on contracts.

Recital 6a (New)

<i>Commission proposal</i>	<i>TIF Amendment</i>
na	<i>(6a) New statutory obligations to share data need to be carefully lineated with the Union’s competition framework and maintain companies’ ability to protect their competitive assets and encourage companies to innovate new digital services.</i>

Justification

Suggest adding a new recital to highlight importance of functioning competition in the internal market and full lineation w/ EU competition acquis.

Recital 15

<i>Commission proposal</i>	<i>TIF Amendment</i>
<p>(15) In contrast, certain products that are primarily designed to display or play content, or to record and transmit content, amongst others for the use by an online service should not be covered by this Regulation. Such products include, for example, personal computers, servers, tablets and smart phones, cameras, webcams, sound recording systems and text scanners. They require human input to produce various forms of content, such as text documents, sound files, video files, games, digital maps.</p>	<p>(15) In contrast, certain products that are primarily designed to display or play content, or to record and transmit content or data, amongst others for the use by an online service should not be covered by this Regulation. Such products include, for example, personal computers, servers, electronic communication networks, tablets and smart phones, cameras, webcams, sound recording systems and text scanners. They require human input to produce various forms of</p>

	<p>content, such as text documents, sound files, video files, games, digital maps.</p>
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<i>Justification</i>
<p><i>Suggest adding electronic communication networks to the carve-out, as communications networks are in a similar manner required to process the data and have already steady practice on how they are incorporated into operator’s data systems.</i></p>

Recital 17

<i>Commission proposal</i>	<i>TIF Amendment</i>
<p>(17) Data generated by the use of a product or related service include data recorded intentionally by the user. Such data include also data generated as a by-product of the user’s action, such as diagnostics data, and without any action by the user, such as when the product is in ‘standby mode’, and data recorded during periods when the product is switched off. Such data should include data in the form and format in which they are generated by the product, but not pertain to data resulting from any software process that calculates derivative data from such data as such software process may be subject to intellectual property rights.</p>	<p>(17) Data generated by the use of a product or related service include data recorded intentionally by the user. Such data include also data generated as a by-product of the user’s action, such as diagnostics data, and data recorded by a device without any action by the user, such as when the product is in ‘standby mode’ but still generate data, such as about the charging status of a battery, and data recorded during periods when the product is switched off. Such data should include data in the form and format in which they are generated by the product, but not pertain to data resulting from any software process, analysis or adjustment</p>

	<p>process that calculates derivative data from such data as such software process may be subject to intellectual property rights and grant the data holder a competitive asset. Metadata means additional data attached to original data set to give information where and when the data has been produced.</p>
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<p>Justification</p>
<p><i>Highlighting the importance to target the statutory sharing requirement to basic use data created by interaction of the user and the product. The latter is needed to guide the interpretation to take into account also the requirements of competition law.</i></p>

Recital 17a (new)

<i>Commission proposal</i>	<i>TIF Amendment</i>
<p>na</p>	<p><i>(17a) It is important that the regulation will not hold back the development of edge computing and other efficient technologies needed for e.g. improving energy efficiency. Data generated by the use of a product should be limited in business-to-business relations and products strictly to data that is generated by the interactions of the user and the product, accompanied by relevant metadata. Any derivative data, know-how or analysis should not be regarded</i></p>

	<p><i>as data generated by the use of a product. This is also needed for companies to maintain their competitive assets. This regulation should not in any way limit data holders' ability to share data falling outside of the scope of this regulation under contractual arrangements.</i></p>
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<p><i>Justification</i></p>
<p><i>Need to clarify data generated by use still further especially on B2B-relations and highlight the relation of proposed regulation to the voluntary data sharing in companies' own networks.</i></p>

Recital 19

<i>Commission proposal</i>	<i>TIF Amendment</i>
<p>(19) In practice, not all data generated by products or related services are easily accessible to their users, and there are often limited possibilities for the portability of data generated by products connected to the Internet of Things. Users are unable to obtain data necessary to make use of providers of repair and other services, and businesses are unable to launch innovative, more efficient and convenient services. In many sectors, manufacturers are often able to determine, through their control of the technical design of the product or related services, what data are generated and how they can be accessed, even though they have</p>	<p>(19) In practice, not all data generated by products or related services are easily accessible to their users, and there are often limited possibilities for the portability of data generated by products connected to the Internet of Things. Users are unable to obtain data necessary to make use of providers of repair and other services, and businesses are unable to launch innovative, more efficient and convenient services. In some sectors, manufacturers are often able to determine, through their control of the technical design of the product or related services, what data are generated and how they</p>

<p>no legal right to the data. It is therefore necessary to ensure that products are designed and manufactured and related services are provided in such a manner that data generated by their use are always easily accessible to the user.</p>	<p>can be accessed. It is therefore necessary to ensure that products are designed and manufactured and related services are provided in such a manner that data generated by their use are easily accessible to the user. This should exclude data generated by the use of a product where the design of the product does not foresee such data to be stored or transmitted outside the component in which they are generated or the product as a whole. This Regulation does not set an obligation to store data additionally on the central computing unit of a product. This should not prevent the manufacturer or data holder to voluntarily agree with the user on making such adaptation.</p>
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Justification

It is needed to clearly state that this regulation does not generate a general statutory requirement to store the data so that it is always available as the main objective of this regulation is to make data available on real time. This does not limit parties' possibility to agree on any data storage arrangements.

Recital 28

<i>Commission proposal</i>	<i>TIF Amendment</i>
(28) The user should be free to use the data for any lawful purpose. This includes providing	(28) Any trade secrets or intellectual property rights should be respected in handling the data. This

~~**the data the user has received exercising the right under this Regulation to a third party offering an aftermarket service that may be in competition with a service provided by the data holder, or to instruct the data holder to do so. The data holder should ensure that the data made available to the third party is as accurate, complete, reliable, relevant and up-to-date as the data the data holder itself may be able or entitled to access from the use of the product or related service.**~~ Any trade secrets or intellectual property rights should be respected in handling the data. It is important to preserve incentives to invest in products with functionalities based on the use of data from sensors built into that product. The aim of this Regulation should accordingly be understood as to foster the development of new, innovative products or related services, stimulate innovation on aftermarkets, but also stimulate the development of entirely novel services making use of the data, including based on data from a variety of products or related services. At the same time, it aims to avoid undermining the investment incentives for the type of product from which the data are obtained, for instance, by the use of data to develop a competing product.

Regulation should be interpreted in a manner that it preserves the protection awarded to trade secrets under Directive (EU) 2016/943. For this reason, data holders should be able to require the user or third parties of the users' choice to preserve the secrecy of data considered as trade secrets, including through technical means. It is important to preserve incentives to invest in products with functionalities based on the use of data from sensors built into that product. The aim of this Regulation should accordingly be understood as to foster the development of new, innovative products or related services, stimulate innovation on aftermarkets, but also stimulate the development of entirely novel services making use of the data, including based on data from a variety of products or related services. At the same time, it aims to avoid undermining the investment incentives for the type of product from which the data are obtained, for instance, by the use of data to develop a competing product. **The data made available to the user on basis of the articles 4 and 5 of this regulation may also end up to the competitors of the data holder. It is important to define the data generated by use in a manner that does not negatively**

	<i>affect competition in the internal market.</i>
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<i>Justification</i>
<i>The additions to protect trade secrets are good. We propose still adding a sentence at the end to guide interpretation of the Regulation.</i>

Recital 36

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<p>(36) Start-ups, small and medium-sized enterprises and companies from traditional sectors with less-developed digital capabilities struggle to obtain access to relevant data. This Regulation aims to facilitate access to data for these entities, while ensuring that the corresponding obligations are scoped as proportionately as possible to avoid overreach. At the same time, a small number of very large companies have emerged with considerable economic power in the digital economy through the accumulation and aggregation of vast volumes of data and the technological infrastructure for monetising them. These companies include undertakings that provide core platform services controlling whole platform ecosystems in the digital economy and whom existing or new market operators are unable to challenge or contest. The [Regulation on contestable and fair</p>	<p>(36) Start-ups, small and medium-sized enterprises and companies from traditional sectors with less-developed digital capabilities struggle to obtain access to relevant data. This Regulation aims to facilitate access to data for these entities, while ensuring that the corresponding obligations are scoped as proportionately as possible to avoid overreach. At the same time, a small number of very large companies have emerged with considerable economic power in the digital economy through the accumulation and aggregation of vast volumes of data and the technological infrastructure for monetising them. These companies include undertakings that provide core platform services controlling whole platform ecosystems in the digital economy and whom existing or new market operators are unable to challenge or contest. The [Regulation on contestable and fair</p>

markets in the digital sector (Digital Markets Act)] aims to redress these inefficiencies and imbalances by allowing the Commission to designate a provider as a "gatekeeper", and imposes a number of obligations on such designated gatekeepers, including a prohibition to combine certain data without consent, and an obligation to ensure effective rights to data portability under Article 20 of Regulation (EU) 2016/679. ~~**Consistent with the [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)], and given the unrivalled ability of these companies to acquire data, it would not be necessary to achieve the objective of this Regulation, and would thus be disproportionate in relation to data holders made subject to such obligations, to include such gatekeeper undertakings as beneficiaries of the data access right. This means that an undertaking providing core platform services that has been designated as a gatekeeper cannot request or be granted access to users' data generated by the use of a product or related service or by a virtual assistant based on the provisions of Chapter II of this Regulation. An undertaking providing core platform services designated as**~~

markets in the digital sector (Digital Markets Act)] aims to redress these inefficiencies and imbalances by allowing the Commission to designate a provider as a "gatekeeper", and imposes a number of obligations on such designated gatekeepers, including a prohibition to combine certain data without consent, and an obligation to ensure effective rights to data portability under Article 20 of Regulation (EU) 2016/679.

<p>a gatekeeper pursuant to Digital Markets Act should be understood to include all legal entities of a group of companies where one legal entity provides a core platform service. Furthermore, third parties to whom data are made available at the request of the user may not make the data available to a designated gatekeeper. For instance, the third party may not sub-contract the service provision to a gatekeeper. However, this does not prevent third parties from using data processing services offered by a designated gatekeeper. This exclusion of designated gatekeepers from the scope of the access right under this Regulation does not prevent these companies from obtaining data through other lawful means.</p>	
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Justification

TIF is in favour of open internal market and does not support exclusion of the gatekeepers meant in the DMA as this would be very problematic for those companies that have based their operations on their services. The change of IT solutions provider is one the most crucial ones, especially for SMEs.

Recital 38a (new)

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
new	(38a) The manufacturer of a

	<p>product is not always in a position to require access to data that is essential for diagnostics, research and development and quality control. Access to this data is a prerequisite to develop long-lasting and sustainable machinery and maintain Europe’s manufacturing and industrial prowess. This regulation should grant access to data generated by the use of a product in business-to-business relations also to the manufacturer of the product. As this data may reveal details of user’s economic situation, the user should have the right to require aggregation of data or, delay to its provision.</p>
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Justification
<p><i>New recital is suggested to explain the addition of manufacturer’s limited access to data on article 3, para 3.</i></p>

Recital 72

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<p>(72) This Regulation aims to facilitate switching between data processing services, which encompasses all conditions and actions that are necessary for a customer to terminate a contractual agreement of a data</p>	<p>(72) This Regulation aims to facilitate switching between data processing services, which encompasses all conditions and actions that are necessary for a customer to terminate a contractual agreement of a data</p>

<p>processing service, to conclude one or multiple new contracts with different providers of data processing services, to port all its digital assets, including data, to the concerned other providers and to continue to use them in the new environment while benefitting from functional equivalence. Digital assets refer to elements in digital format for which the customer has the right of use, including data, applications, virtual machines and other manifestations of virtualisation technologies, such as containers. Functional equivalence means the maintenance of a minimum level of functionality of a service after switching, and should be deemed technically feasible whenever both the originating and the destination data processing services cover (in part or in whole) the same service type. Meta-data, generated by the customer's use of a service, should also be portable pursuant to this Regulation's provisions on switching.</p>	<p>processing service, to conclude one or multiple new contracts with different providers of data processing services to port all its digital assets, including data, to the concerned other providers and to continue to use them in the new environment in a way that does not compromise innovation and competitiveness of European organisations in the global economy. Digital assets refer to elements in digital format for which the customer has the right of use, including data, applications, virtual machines and other manifestations of virtualisation technologies, such as containers.</p>
Justification	
<p>Modern ICT applications are built on a complex and constantly evolving set of resources that offer choice in terms of capability, performance, cost, and other factors. Imposing switchability requirements (whether in the context of portability or interoperability) for cloud or data processing</p>	

services so that all services are interchangeable or mandating technical specifications and/or a lowest common denominator functionality, would be a long leap from existing practice. As the offer of services is very heterogenous, EU would need to develop realistic and detailed roadmap on how to achieve interoperability and required interfaces and technical means to facilitate switching providers without stifling innovation and development of services. Especially, we need to take into account also development of circular business models, including virtual twins.

Recital 74

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<p>(74) Data processing service providers should be required to offer all assistance and support that is required to make the switching process successful and effective without requiring those data processing service providers to develop new categories of services within or on the basis of the IT-infrastructure of different data processing service providers to guarantee functional equivalence in an environment other than their own systems. Nevertheless, service providers are required to offer all assistance and support that is required to make the switching process effective. Existing rights relating to the termination of contracts, including those introduced by Regulation (EU) 2016/679 and Directive (EU) 2019/770 of the European Parliament and of the Council should not be affected.</p>	<p>(74) Data processing service providers should be required to offer reasonable assistance and support that is required for the customer to extract its digital assets, including data, in a standardised way to help make the switching process successful and effective without requiring those data processing service providers to develop new categories of services within or on the basis of the IT-infrastructure of different data processing service providers. Data processing service providers should not be required to disclose or transfer proprietary or confidential data or technology that is eligible for protection by the provider as a trade secret or by other proprietary rights to the customer or to another data processing service provider.</p>

	Existing rights relating to the termination of contracts, including those introduced by Regulation (EU) 2016/679 and Directive (EU) 2019/770 of the European Parliament and of the Council should not be affected.
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Justification

Further clarity is needed on the specific data subject to switching. The concept currently includes all metadata created by the customer, yet such a concept is unclear and risks leading to legal uncertainty as the definition is now so broad that it is likely to cover data which is not relevant to enable a proper switching process and will just add additional administrative burdens. Data processing services forming part of data ecosystems may combine data from multiple businesses to create new insights, which may lead to broadly defined metadata including third party trade secrets or other intellectual property.

Recital 75b (new)

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
	<p>(75b) Certain cloud computing services, such as cloud computing services, which have been custom built to facilitate a specific customer's need, or cloud computing services that operate on a trial basis or only supply a testing and evaluation service for business product offerings, should be exempted from the obligations applicable to cloud computing service switching.</p>

Justification

TIF supports excluding completely custom-made and test-phase solutions to be excluded from portability.

Recital 75b (new)

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
	(75b) Certain cloud computing services, such as cloud computing services, which have been custom built to facilitate a specific customer's need, or cloud computing services that operate on a trial basis or only supply a testing and evaluation service for business product offerings, should be exempted from the obligations applicable to cloud computing service switching.

Justification

TIF supports excluding completely custom-made and test-phase solutions to be excluded from portability.

Recital 76

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
(76) Open interoperability specifications and standards developed in accordance with paragraph 3 and 4 of Annex II of Regulation (EU) 1025/2021 in the field of interoperability and portability enable a seamless multi-	(76) Open interoperability specifications and standards developed in accordance with paragraph 3 and 4 of Annex II of Regulation (EU) 1025/2021 in the field of interoperability and portability enable a multi-vendor

vendor cloud environment, which is a key requirement for open innovation in the European data economy. As market-driven processes have not demonstrated the capacity to establish technical specifications or standards that facilitate effective cloud interoperability at the PaaS (platform-as-a-service) and SaaS (software-as-a-service) levels, the Commission should be able, on the basis of this Regulation and in accordance with Regulation (EU) No 1025/2012, to request European standardisation bodies to develop such standards, **particularly for service types** where such standards do not yet exist. In addition to this, the Commission will encourage parties in the market to develop relevant open interoperability specifications. The Commission, by way of delegated acts, can mandate the use of European standards for interoperability or open interoperability specifications for specific **service types** through a reference in a central Union standards repository for the interoperability of **data processing** services. European standards and open interoperability specifications will only be referenced if in compliance with the criteria specified in this Regulation, which have the same meaning as the requirements in paragraphs 3 and 4 of Annex II of

cloud environment, which is a key requirement for open innovation in the European data economy. As market-driven processes have not demonstrated the capacity to establish technical specifications or standards that facilitate effective cloud **computing service** interoperability at the PaaS (platform-as-a-service) and SaaS (software-as-a-service) levels, the Commission should be able, on the basis of this Regulation and in accordance with Regulation (EU) No 1025/2012, to request European standardisation bodies to develop such standards, **for equivalent services** where such standards do not yet exist. In addition to this, the Commission will encourage parties in the market to develop relevant open interoperability specifications. **Following consultation with stakeholders and taking into account relevant international and European standards and self-regulating initiatives,** the Commission, by way of delegated acts, can mandate the use of European standards for interoperability or open interoperability specifications for specific **equivalent services** through a reference in a central Union standards repository for the interoperability of **cloud computing** services. European standards and open interoperability specifications

Regulation (EU) No 1025/2021 and the interoperability facets defined under the ISO/IEC 19941:2017.	will only be referenced if in compliance with the criteria specified in this Regulation, which have the same meaning as the requirements in paragraphs 3 and 4 of Annex II of Regulation (EU) No 1025/2021 and the interoperability facets defined under the ISO/IEC 19941:2017.
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Justification

As the proposed change to the cloud switching is very big step from existing practice, TIF supports to engage stakeholders on taking this leap.

Article 2, point 1a (new)

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
na	(1a) 'data generated by the use' means data in the form and format in which they are generated as a result of interaction by the user and the product while using it, including basic context and time stamp to make the data usable, but not covering any derived data, analysis or know-how.
<i>Justification</i>	
<p><i>Include definition for data generated by the use of a product to make sure that the regulation strikes the right balance between data sharing and protection of trade secrets and competitive assets. It should be kept in mind that this Regulation strikes the base line for obligated data sharing and in addition to this gives general framework for more detailed, sector-specific data sharing obligations, as in e.g. passenger cars, farming etc. It should be kept in mind that the data to be shared under this definition can (and will) end up to competing companies (and nations alike).</i></p>	

Article 2, point 2

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
(2) 'product' means a tangible, movable item, including where incorporated in an immovable item, that obtains, generates or collects, data concerning its use or environment, and that is able to communicate data via a publicly available electronic communications service and whose primary function is not the storing and processing of data;	(2) 'product' means a tangible, item, that obtains, generates or collects data concerning its use or environment, and that is able to communicate data and whose primary function is not the storing and processing or transmission of data;

Justification

Remove from the definition of product the reference to publicly available electronic communications services as this requirement is confusing in industrial appliances. Industrial networks may be implemented either as public or private and the focus here should be to cover appliances that are designed to generate and communicate data of their performance. We also suggest excluding also products that transmit data, such as electronic communication networks and their systems.

Article 2, point 13

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
(13) ' service type' means a set of data processing services that share the same primary objective and basic data processing service model;	(13) ' Capabilities type' means a classification of the functionality provided by a data processing service to the customer, based on the resources used into application

	capabilities type, infrastructure capabilities type and platform capabilities type;
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Justification
<p><i>Switching is not a one-step process and is never the sole responsibility of the exporting data processing service provider. While the porting out of data from a data processing service provider to a user is under the control of the existing cloud or data processing service and can be handled by that provider (and generally the customer), this is not the case for switching. Effective switching requires not only the co-operation but also, and most importantly, expertise at both the exporting and the importing data processing provider level. In practice it is very challenging to define a common set of functionalities for any given pair of commercial services. Every software system implements a unique solution for the needs of their users. It would be impossible to compile a list of all known types of data processing services (defined as "service types" in Article 2), as software is fundamentally malleable and outside a few very basic commodity services.</i></p>

Article 2, point 14

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<p>(14) 'functional equivalence' means the maintenance of a minimum level of functionality in the environment of a new data processing service after the switching process, to such an extent that, in response to an input action by the user on core elements of the service, the destination service will deliver the same output at the same performance and with the same level of security,</p>	

operational resilience and quality of service as the originating service at the time of termination of the contract;	
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Justification
<i>We suggest not to base the switching on proposed concept of functional equivalence as it is vague as a concept and does not provide a realistic path to reach straight one-to-one equivalence on a market that develops fast. In our view it would be better to develop a realistic transition pathway that is based on standards and more general regulatory approach, coupled with model clauses developed by the Commission, together with the industry.</i>

Article 2, point 20c (new)

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
na	(2) 'operators within data spaces' mean legal persons, such as data holders, data users, and data intermediation service providers, that facilitate or engage in data sharing within and across the common European data spaces;

Justification
<i>Add new definition for operators within data spaces, so that the regulatory requirements would fall on to all companies and other players who are active in a data space, instead of regulating 'data spaces' that do not yet exist.</i>

Article 3, para 3 (new)

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
	3. The user that is not a natural person shall allow the the data

	<p>holder to process data generated by the use of a product or related service that is essential for diagnostics, research and development and quality control purposes. The user may require reasonable aggregation of data to safeguard his or her's commercial position as meant in paragraph 6 of article 4.</p>
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<p><i>Justification</i></p>
<p><i>Add a new paragraph to strengthen data holder's access to data generated by use for certain purposes. This is needed especially in industrial applications where manufacturer might not have the required bargaining power to negotiate access to those data.</i></p>

Article 4, para 1

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<p>1. Where data cannot be directly accessed by the user from the product, the data holder shall make available to the user the data generated by its use of a product or related service without undue delay, free of charge and, where applicable, continuously and in real-time. This shall be done on the basis of a simple request through electronic means where technically feasible.</p>	<p>1. Where data cannot be directly accessed by the user from the product, the data holder shall make available to the user the data generated by its use of a product or related service without undue delay, and, where applicable, continuously and in real-time. This shall be done on the basis of a simple request through electronic means where technically feasible. When the user is a natural person, data shall be made available free of charge.</p>

Justification

Suggest to limit free of charge to B2C-situations. In B2B-situations charges can be left to be agreed, keeping in mind proposed provisions on fair contract clauses and data pricing, that would need to be adjusted accordingly to apply also to pricing according to this article.

Article 4, para 3

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
3. Trade secrets shall only be disclosed provided that all specific necessary measures are taken to preserve the confidentiality of trade secrets in particular with respect to third parties. The data holder and the user can agree measures to preserve the confidentiality of the shared data, in particular in relation to third parties.	3. Trade secrets shall only be disclosed provided that all specific necessary measures are taken to preserve the confidentiality of trade secrets in particular with respect to third parties. The data holder and the user shall agree measures to preserve the confidentiality of the shared data, in particular in relation to third parties, including liability over possible damages.

Justification

Suggest stronger wording to back the fact that data holder should always be in a position to require a contract to be to protect trade secrets, including liability clauses, that are an industry standard.

Article 5, para 1

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
1. Upon request by a user, or by a party acting on behalf of a user, the data holder shall make available the data generated by the use of a product or related service to a third	1. Upon request by a user, or by a party acting on behalf of a user, the data holder shall make available the data generated by the use of a product or related service to a third

party, without undue delay, free of charge to the user, of the same quality as is available to the data holder and, where applicable, continuously and in real-time.	party, without undue delay, free of charge to the user, of the same quality as is available to the user and, where applicable, continuously and in real-time.
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Justification

As third party acts on behalf of the user, the data they will get must be the same that the user gets. The data holder has more data, including on the product design, IPRs and trade secrets.

Article 5, para 3

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
3. The user or third party shall not be required to provide any information beyond what is necessary to verify the quality as user or as third party pursuant to paragraph 1. The data holder shall not keep any information on the third party's access to the data requested beyond what is necessary for the sound execution of the third party's access request and for the security and the maintenance of the data infrastructure.	3. The user or third party shall not be required to provide any information beyond what is necessary to verify the quality as user or as third party pursuant to paragraph 1. The data holder shall not keep any information on the third party's access to the data requested beyond what is necessary for the sound execution of the third party's access request and for the security and the maintenance of the data infrastructure. The identity of the data recipient and the scope of data must be disclosed to the data holder for an evaluation of trade secret related risk.

Justification

Suggest to add a sentence on data holder's right to know the identity of the data recipient to be able to properly protect trade secrets.

Article 5, para 8

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<p>8. Trade secrets shall only be disclosed to third parties to the extent that they are strictly necessary to fulfil the purpose agreed between the user and the third party and all specific necessary measures agreed between the data holder and the third party are taken by the third party to preserve the confidentiality of the trade secret. In such a case, the nature of the data as trade secrets and the measures for preserving the confidentiality shall be specified in the agreement between the data holder and the third party.</p>	<p>8. Trade secrets shall not be disclosed to third parties without authorisation of the data holder. In such a case, the nature of the data as trade secrets and the measures for preserving the confidentiality shall be specified in the agreement between the data holder and the third party</p>

Justification

The regulation should provide the data holder a reasonable way to protect trade secrets. It is a normal practice in these contracts to forbid passing on them to third parties without data holder's approval.

Article 6, para 3 (new)

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
new	3. If other third parties are required to provide the service as meant in paragraph 2, point c, the

	obligations and requirements of this article shall apply to them and the original third party shall disclose their identities to the original data holder. Other third parties are not allowed to use the data for their own purposes.
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Justification

Make the requirements of the article applicable to sub-processors as well by adding a new third paragraph to the article.

Amendment 1

Article 7, para 1

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
1. The obligations of this Chapter shall not apply to data generated by the use of products manufactured or related services provided by enterprises that qualify as micro or small enterprises, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as a micro or small enterprise.	1. The obligations of this Chapter shall not apply to data generated by the use of products manufactured or related services provided by enterprises that qualify as micro, small or medium enterprises, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as a micro, small or medium enterprise.

Justification

TIF supports including medium enterprises to the carve-out of the chapter. This is to facilitate the development of data sharing based on voluntary contract and data practices in SME companies.

Article 8, para 3

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<p>3. A data holder shall not discriminate between comparable categories of data recipients, including partner enterprises or linked enterprises, as defined in Article 3 of the Annex to Recommendation 2003/361/EC, of the data holder, when making data available. Where a data recipient considers the conditions under which data has been made available to it to be discriminatory, it shall be for the data holder to demonstrate that there has been no discrimination.</p>	<p>3. A data holder shall not discriminate between comparable categories of data recipients, including partner enterprises or linked enterprises, as defined in Article 3 of the Annex to Recommendation 2003/361/EC, of the data holder, when making data available.</p>

Justification

The burden of proof seems unreasonable and leaves open the possibility to abuse. There should be some substantial evidence required to back the claim, especially taking in to account article 13 of the proposal and that the Commission is developing model contracts.

Article 9, para 2

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<p>2. Where the data recipient is a micro, small or medium enterprise, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, any compensation agreed shall not</p>	<p>2. Where the data recipient is a micro, small or medium enterprise, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, and the data holder is not, any</p>

exceed the costs directly related to making the data available to the data recipient and which are attributable to the request. Article 8(3) shall apply accordingly.	compensation agreed shall not exceed the costs directly related to making the data available to the data recipient and which are attributable to the request. Article 8(3) shall apply accordingly.
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Justification

Regulation of pricing for access to data applies also when data holder and recipient are both SMEs. This should be altered because it might have a chilling effect on data arrangements b/w SME companies as identifying cost for making data available is challenging for SMEs.

Article 9, para 4

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
4. The data holder shall provide the data recipient with information setting out the basis for the calculation of the compensation in sufficient detail so that the data recipient can verify that the requirements of paragraph 1 and, where applicable, paragraph 2 are met.	delete

Justification

The level of detail in proposed paragraph seems disproportionate and challenging in practice for data holders, requiring them to reveal unusually detailed information of company's key functions. This information is and should be kept confidential as no safeguards are provided. In our view, the preceding paragraphs suffice to guarantee availability of data for fair and non-discriminatory price.

Article 11, para 2, point (c) (new)

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
new	(c) be liable for the damages to the party suffering from the disclosure.

Justification

To sufficiently protect trade secrets, the article should provide also for liability of the data recipient. This should be done by adding a new c point to the paragraph 2.

Article 11, para 3, point (a)

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
(a) use of the data has not caused significant harm to the data holder;	(a) use of the data has not caused harm to the data holder;

Justification

On para 3, point a – remove the requirement of significant harm as this is hard to distinguish in practice.

Article 23

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
1. Providers of a data processing service shall take the measures provided for in Articles 24, 25 and 26 to ensure that customers of their service can switch to another data processing service, covering the same service type, which is provided by a different service	1. Providers of data processing services shall take the measures provided for in Articles 24, 25 and 26 to facilitate customers of their service switching to another data processing service, covering the same capabilities type, which is provided by a different service

<p>provider. In particular, providers of data processing service shall remove commercial, technical, contractual and organisational obstacles, which inhibit customers from:</p> <p>a) terminating, after a maximum notice period of 30 calendar days, the contractual agreement of the service;</p> <p>b) concluding new contractual agreements with a different provider of data processing services covering the same service type;</p> <p>c) porting its data, applications and other digital assets to another provider of data processing services;</p> <p>d) maintaining functional equivalence of the service in the IT-environment of the different provider or providers of data processing services covering the same service type, in accordance with Article 26.</p> <p>Paragraph 1 shall apply only to material obstacles that are related to the services, contractual agreements or commercial practices provided by the original provider.</p>	<p>provider. In particular, providers of data processing services shall take reasonable measures to reduce material commercial, technical, contractual and organisational obstacles, which inhibit customers from:</p> <p>a) terminating the contractual agreement of the service;</p> <p>b) concluding new contractual agreements with a different provider of data processing services; and</p> <p>c) porting its data, applications and other digital assets to another provider of data processing services.</p> <p>2. Paragraph 1 shall apply only to material, commercially unreasonable obstacles that are related to the services, contractual agreements or commercial practices provided by the original provider. The following shall not constitute material or commercially unreasonable obstacles:</p> <p>a) a contractual requirement requiring either party to provide notice of termination of the service, provided such notice period does not exceed 6 months;</p> <p>b) charges for the extraction of digital assets, including data, imposed by the provider of a data processing service that do not exceed</p>
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	<p><i>the costs incurred by the provider in the extraction process; and</i></p> <p><i>a contractual requirement on the customer to make any request to port data in accordance with paragraph 1, point (c) within 1 month of the request for termination at paragraph 1, point (a).</i></p>
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<i>Justification</i>
<p><i>The concept of "functional equivalence" should be reconsidered throughout both Chapters 6 and 8. Customers choose their data processing service often based on the special features offered. It is a very strict requirement for data processing services to have adequate awareness of the functionalities of other data processing services to ensure any functional equivalence. Particularly, the level of security or performance levels should be left to the choice of the customers and such requirements should therefore be left out of the definition or must be, at the very least, more clearly defined limited to what's feasible.</i></p> <p><i>The proposal does not provide a definition for "obstacle," nor does it require that an obstacle meet a certain threshold of significance.</i></p>

Article 24

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<p>1. The rights of the customer and the obligations of the provider of a data processing service in relation to switching between providers of such services shall be clearly set out in a written contract. Without prejudice to Directive (EU) 2019/770, that contract shall include at least the following:</p>	<p>1. The rights of the customer and the obligations of the provider of a data processing service in relation to porting data and to switching between providers of services with the same capabilities type shall be clearly set out in a written contract. Without prejudice to Directive (EU) 2019/770, that</p>

<p>a) clauses allowing the customer, upon request, to switch to a data processing service offered by another provider of data processing service or to port all data, applications and digital assets generated directly or indirectly by the customer to an on-premise system, in particular the establishment of a mandatory maximum transition period of 30 calendar days, during which the data processing service provider shall:</p> <ol style="list-style-type: none"> 1) assist and, where technically feasible, complete the switching process; 2) ensure full continuity in the provision of the respective functions or services. <p>b) An exhaustive specification of all data and application categories exportable during the switching process, including, at minimum, all data imported by the customer at the inception of the service agreement and all data and metadata created by the customer and by the use of the service during the period the service was provided,</p>	<p>contract shall include at least the following:</p> <p>a) clauses allowing the customer, upon notice to the provider of a data processing service, to switch to a data processing service offered by another provider of data processing service or to port all data, applications and digital assets generated directly by the customer to an on-premise system, in particular, the establishment of a mandatory maximum transition period during which the provider shall:</p> <ol style="list-style-type: none"> 1) taking into account technical feasibility, take all reasonable steps to enable the customer to extract its data, applications and digital assets in a standardised manner such as to facilitate the customer and the receiving provider in completing the switching process; and 2) continue to perform its contractual obligations to the extent possible until such time as the customer's data is extracted. <p>b) An exhaustive specification of all data and application categories exportable during the switching process, including, at minimum, all data imported or created by and under the control of the customer at the inception of the</p>
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<p>including, but not limited to, configuration parameters, security settings, access rights and access logs to the service.</p> <p>c) A minimum period for data retrieval of at least 30 calendar days, starting after the termination of the transition period that was agreed between the customer and the service provider, in accordance with paragraph 1, point (a) and paragraph 2.</p> <p>2. Where the mandatory transition period as defined in paragraph 1, points (a) and (c) of this Article is technically unfeasible, the provider of data processing services shall notify the customer within 7 working days after the switching request has been made, duly motivating the technical unfeasibility with a detailed report and indicating an alternative transition period, which may not exceed 6 months. In accordance with paragraph 1 of this Article, full service continuity shall be ensured throughout the alternative transition period against reduced charges, referred to in Article 25(2).</p>	<p>service and during the period the service was provided, including, but not limited to, configuration parameters, security settings, access rights and access logs to the service.</p> <p>c) A minimum period for data retrieval of at least 30 calendar days, starting after the termination of the transition period that was agreed between the customer and the service provider, in accordance with paragraph 1, point (a) and paragraph 2.</p> <p>The mandatory transition period as defined in paragraph 1, points (a) and (c) of this Article may be extended upon reasonable request of the exporting provider. In accordance with paragraph 1 of this Article, the exporting provider shall continue to perform its contractual obligations to the extent possible until such time as extraction is complete.</p>
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Justification

Switching is not a one-step process and is never the sole responsibility of the exporting data processing service provider. While the porting out of data from a data processing service provider to a user is under the control of the existing cloud or data processing service and can be handled by that provider (and

generally the customer), this is not the case for switching. Effective switching requires not only the co-operation but also, and most importantly, expertise at both the exporting and the importing data processing provider level.

In addition, it is a practical impossibility to define a common set of functionalities for any given pair of commercial services. Every software system implements a unique solution for the needs of their users. It would be impossible to compile a list of all known types of data processing services (defined as "service types" in Article 2), as software is fundamentally malleable and outside a few very basic commodity services

Article 26

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<p>1. Providers of data processing services that concern scalable and elastic computing resources limited to infrastructural elements such as servers, networks and the virtual resources necessary for operating the infrastructure, but that do not provide access to the operating services, software and applications that are stored, otherwise processed, or deployed on those infrastructural elements, shall ensure that the customer, after switching to a service covering the same service type offered by a different provider of data processing services, enjoys functional equivalence in the use of the new service.</p>	<p>1. delete</p>
<p>2. For data processing services other than those covered by paragraph 1, providers of data</p>	<p>2. Providers of data processing services shall work towards adopting open interfaces to</p>

<p>processing services shall make open interfaces publicly available and free of charge.</p> <p>3. For data processing services other than those covered by paragraph 1, providers of data processing services shall ensure compatibility with open interoperability specifications or European standards for interoperability that are identified in accordance with Article 29(5) of this Regulation.</p> <p>Where the open interoperability specifications or European standards referred to in paragraph 3 do not exist for the service type concerned, the provider of data processing services shall, at the request of the customer, export all data generated or co-generated, including the relevant data formats and data structures, in a structured, commonly used and machine-readable format.</p>	<p>facilitate the porting of data in a structured, commonly used and machine-readable format and making such interfaces publicly available and free of charge.</p> <p>3. Where a provider of data processing services chooses not to adopt the open interfaces references in paragraph (2), it shall ensure compatibility with open interoperability specifications or European standards for interoperability that are identified in accordance with Article 29 of this Regulation</p> <p>4. Where the open interoperability specifications or European standards referred to in paragraph 3 do not exist for the capabilities type concerned, the provider of data processing services shall, upon request, enable the customer to export all data generated or co-generated, including the relevant data formats and data structures, in a structured, commonly used and machine-readable format.</p> <p>5. Nothing in this Chapter shall require a provider of data processing services to:</p> <p>a) disclose or transfer proprietary or confidential data or technology that is protected as a trade secret or by other property rights, to the customer or to another provider of data processing services; or</p>
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	<i>b) engage in, facilitate or enable anti-competitive behaviour.</i>
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<i>Justification</i>
<i>The Data Act should focus on creating an environment where the users can extract their data in standardised or at least in structured, commonly used, and machine-readable formats. This way the task of moving user/customer data from one service to another can be handled by custom or open-source tools and frameworks that can account for the uniqueness of each pair of data transfer scenarios while utilising the relevant data standards or well-documented data formats.</i>

Article 27

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
1. Providers of data processing services shall take all reasonable technical, legal and organisational measures, including contractual arrangements, in order to prevent international transfer or governmental access to non-personal data held in the Union where such transfer or access would create a conflict with Union law or the national law of the relevant Member State, without prejudice to paragraph 2 or 3.	1. Providers of data processing services shall make transparent their policies, practices and arrangements they apply when a request of governmental access to non-personal data is made, without prejudice to paragraph 2 or 3.

<i>Justification</i>
<i>Companies are perfectly capable to assess the level of protection needed for their data and arrange it by contracts. A sustainable way to address the</i>

surveillance practices in third countries is to agree on those on e.g. trade agreements. The article 27 should be either removed or, alternatively, developed to the direction of transparency provision to provide sufficient information for the market to operate.

Article 28, para 1

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
1. Operators of data spaces shall comply with, the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services :	1. Operators within data spaces [<i>use this terminology throughout consistently</i>] shall comply with the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services and reliable functioning of the data spaces :

Justification

Change the vocabulary to operators within data spaces to better reflect the anticipated working model: operators (i.e. companies and other players) form the data space and start developing the practices and deliverables meant in points a-d.

Article 28, paragraph 1, point e (new)

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<i>na</i>	(e) agree on required governance model and applicable rules and bylaws that allow open access to data spaces and development of deliverables.

Justification

Suggest adding a new point e to paragraph 1 to support setting up the

dataspaces and applicable rules so that access is open to all reliable actors. This addition also facilitates steering of data spaces by delegated acts meant in paragraph 2.

Article 29

<i>Text proposed by the Commission</i>	<i>TIF Amendment</i>
<p>1. Open interoperability specifications and European standards for the interoperability of data processing services shall:</p> <p>(a) be performance oriented towards achieving interoperability between different data processing services that cover the same service type;</p> <p>(b) enhance portability of digital assets between different data processing services that cover the same service type;</p> <p>(c) <i>guarantee, where technically feasible, functional equivalence between different data processing services that cover the same service type.</i></p> <p>2. Open interoperability specifications and European standards for the</p>	<p>1. Open interoperability specifications and European standards for the interoperability of data processing services shall:</p> <p>(a) be performance oriented towards achieving interoperability between different data processing services that cover the same service type;</p> <p>(b) enhance portability of digital assets between different data processing services that cover the same service type.</p> <p>2. Open interoperability specifications and European standards for the</p>

<p>interoperability of data processing services shall address:</p> <p>(a) the cloud interoperability aspects of transport interoperability, syntactic interoperability, semantic data interoperability, behavioural interoperability and policy interoperability;</p> <p>(b) the cloud data portability aspects of data syntactic portability, data semantic portability and data policy portability;</p> <p>(c) the cloud application aspects of application syntactic portability, application instruction portability, application metadata portability, application behaviour portability and application policy portability.</p> <p>3. Open interoperability specifications shall comply with paragraph 3 and 4 of Annex II of Regulation (EU) No 1025/2012.</p> <p>4. The Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft European standards applicable to specific service types of data processing services.</p>	<p>interoperability of data processing services shall address:</p> <p>(a) the cloud interoperability aspects of transport interoperability, syntactic interoperability, semantic data interoperability, behavioural interoperability and policy interoperability;</p> <p>(b) the cloud data portability aspects of data syntactic portability, data semantic portability and data policy portability;</p> <p>(c) the cloud application aspects of application syntactic portability, application instruction portability, application metadata portability, application behaviour portability and application policy portability.</p> <p>3. Open interoperability specifications shall comply with Annex II of Regulation (EU) No 1025/2012.</p> <p>4. The Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft European standards applicable to specific service types of data processing services.</p>
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<p>For the purposes of Article 26(3) of this Regulation, the Commission shall be empowered to adopt delegated acts, in accordance with Article 38, to publish the reference of open interoperability specifications and European standards for the interoperability of data processing services in central Union standards repository for the interoperability of data processing services, where these satisfy the criteria specified in paragraph 1 and 2 of this Article.</p>	<p>5. For the purposes of Article 26(3) of this Regulation, the Commission shall be empowered to adopt delegated acts, in accordance with Article 38 of this Regulation and subject to the consultation requirement set out in Article 13(3) of Regulation 1025/2012, to publish the reference of open interoperability specifications and European standards for the interoperability of data processing services in central Union standards repository for the interoperability of data processing services, where these satisfy the criteria specified in paragraph 1 and 2 of this Article.</p>
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Justification

The concept of "functional equivalence" should be reconsidered throughout both Chapters 6 and 8. Customers choose their data processing service often based on the special features offered. It is impossible for data processing services to have adequate awareness of the functionalities of other data processing services to "ensure" any functional equivalence. Particularly, the level of security or performance levels should be left to the choice of the customers and such requirements should therefore be left out of the definition or must be, at the very least, more clearly defined limited to what's feasible.

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Inquiries

Jussi Mäkinen, Director of EU Regulation, +358 40 900 3066,
Jussi.makinen@techind.fi

EU Transparency register n:o 39705603497-38