Public consultation – Data Act and amended rules on the legal protection of databases

The European Commission has set an ambitious and extensive agenda to promote the European Union's data economy. Finland welcomes these plans and supports the Commission's work on proposing a European Data Act.

Finland made a non-paper on the Data Act in February 2021 (attached). The views expressed in it are still relevant and address many of the topics of the public consultation. Since the scope of the initiative has been clarified, Finland would like to take this opportunity to highlight some further considerations and priorities.

1. **The EU needs to address B2B data sharing**. The EU's work on data has so far focused on the public sector and governance. B2B data sharing could be promoted be setting as a standard the use of FRAND terms. Additionally, it is not enough to address only data but also the whole "stack" need to be addressed (meaning data, its structural elements and APIs as well as software, licences and other services needed to access data). Special attention should be given to the capabilities of SMEs.

2. **The EU should promote a human-centric data economy**. As identified in the inception impact assessment, further actions are needed in order to make GDPR article 20 work, and with sufficient consideration of means for data subjects to manage use of their personal data.

3. **Metadata plays a crucial role**. The role of metadata is not identified in the consultation material. Having metadata in a machine-readable format would support repository managers (metadata operators) which, in turn, would promote the use of data with better findability. A well-functioning copyright infrastructure enables access to data in databases and efficient and transparent licensing of IP.

4. **The Data Act should focus on data**. On the one hand, this means that questions relating to access to and the use of data should be at the centre of the proposal. On the other hand, this means taking a lighter approach to new structure and governance mechanisms. Member States should have enough flexibility to organise their administration and to take into account national rules e.g. on access to public documents.

5. **The scope and cumulative effects of the Data Act need to be clear regarding other (proposed) regulation**. In the midst of all the new

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initiatives to implement the European Union's Digital Strategy, it is important to build a coherent legislative framework (e.g. compatibility with the GDPR). The Data Act aims, firstly, for a level the playing field to ensure data availability and, secondly, for "the end of lock-ins and lock-outs" to enable data access and portability. The selected means should be always measured and balanced against these goals to see if the proposed actions are needed. The Data Act should not be about certain technologies, like smart contracts, but about creating trust, interoperability and common data sharing mechanisms in a decentralised data processing environment.

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Attachments

Finnish views on the future Data Act - Non paper

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Finnish views on the future Data Act
Non paper

As informed in The European Strategy for Data in February 2020, the Commission is preparing a new regulation on data sharing (the Data Act). This proposal, together with further EU actions, would foster business-to-government data sharing for the common good and support business-to-business data sharing.

As the Commission has outlined, the EU needs to become a genuine single market for data and a society empowered by data in order to make better and more efficient decisions – in business and in the public sector – while also maintaining European values and a European identity. Finland strongly supports the Commission's **human-centred approach when developing a more unified data economy and fostering innovation by supporting business-to-government and business-to-business data** in a manner that respects common European values, fundamental rights, openness and trust. It is also of primary importance that data producers, i.e. companies and people whose actions or characteristics generate data, have both **a genuine possibility and the means to determine the use and sharing** of such **data**, as well as the possibility and the means to obtain their share of the benefits of using data. Common principles, pooling resources, building shared capacity and deploying technologies constitute the means for broadly strengthening the human-centric data economy.

Finland agrees with the Commission's view that common data spaces are critical for unleashing the real potential of Europe in the Digital Age in each strategic sector. **We encourage the development of such data spaces in a coordinated and interoperable way.** This development is especially important in the current Covid-19 crisis and its aftermath: better use, sharing and interoperability of data will enable governments and societies to respond to future challenges more efficiently and in a more coordinated way.

Increasing society's digital capabilities requires a wide-ranging set of measures — **a concrete list of bottlenecks that need to be removed so that set goals can be achieved.** Some goals — including digital connectivity, data structures, digital public services, digital literacy, cyber security and information security — have already been singled out for promotion through the Resilience and Recovery Facility and national plans. Also required is a paradigm shift in thinking about how to manage data and its potential. This means a fundamental change in thinking with a view to understanding data in terms of the people involved in its generation and value creation rather than in terms of the organisation responsible for its capture[1].

Using, reusing and sharing data contribute to the functioning of the economy and society overall. Finland stresses that the EU needs to become a genuine single market for data. It is essential that the EU confirms its position by safeguarding the ability of companies to move data, but also essential that, where necessary, the EU clearly specifies what data content can be considered highly sensitive so that minimum criteria can be established for processing and sharing environments and infrastructure. Furthermore, it is essential to promote data sharing from business

[1] See the World Economic Forum's work on the Importance of Human-Centricity and Data

to government when this is necessary in order to achieve important public policy goals, such as the development of digital public services and combatting climate change.

Special attention must be paid to other EU regulation and new legislative proposals relating to digitalisation and data. **The new regulation should be clearly aligned with other regulation in this field.** Due to interdependencies between the different legislative proposals, the regulation should be evaluated as a whole in order to ensure the quality, clarity and functionality of the regulation.

A thriving data economy: Conditions to unlock the use of data for innovation and growth

The digital economy presents a world of possibilities. New business partnerships can be created, formed and maintained exclusively virtually, a massive number of consumers and business partners can easily be reached through platforms, and data are collected constantly and shared endlessly. The value of the data economy is significant: the European Strategy for Data estimates that the data economy will be worth EUR 829 billion by 2025. Some research estimates that the potential value of data produced in Europe may soon reach as high as EUR 1.5 trillion a year[2]. In addition, the sharing and reuse of data generate an even greater indirect impact in the economy and society at large. The amount of this indirect impact should be taken into consideration as well when impacts are calculated.

However, we must avoid a situation where vast amounts of data end up only in the hands of the biggest or strongest. Attracting more companies to share data increases attractiveness for current and new actors on the market. The Data Act should create market mechanisms to support a thriving data economy. In this regard, the EU should

- continue on the path set out in the proposed Digital Market Act. When non-personal data is created or collected with multiple parties contributing, **all of the parties should have effective, high-quality, continuous and real-time mechanisms for accessing it**.

- encourage organisations to categorise and **to keep track of their data**. There is a clear need for individual organisations and businesses to publish information about the data they collect, store and use — a kind of structured or even a free-form data balance sheet[3].

- make the already existing data easier to find. Data directory or repository managers ('metadata operators'), who maintain a directory or repository on data collected and make that data available for reuse by different actors, would be among the most important roles for coordination. The result should be services **ensuring that data can be found easily** and providing metadata on data and its terms of use in a machine-readable format. The first step, however, is to guarantee that metadata is

[2] Keynote speech by President von der Leyen at the 'Masters of Digital 2021' event

[3] Organisations shoud publish information on the kinds of data they collect, store and use — like a free-form data balance sheet. This would be highly useful to other companies, researchers and public instances. It can be an informal or more structured sheet, such as data balance sheet used by the Finnish bank OP. This would also help other instances to recognise what kinds of data are collected.

generated and shared through the sharing mechanism established in the Data Governance Act.

• ensure that **data is made available in an easily useable and interoperable format**. With model APIs and common standards, even SMEs can start to use data in their activities. The procedures applied in creating these APIs and standards must be open and transparent, and must keep in mind cross-sectoral interoperability. Only through interoperability can we ensure the possibility for companies to choose a service provider — a freedom that needs to be emphasised in all well-functioning markets.

• **promote safe data processing** (i.e. by establishing a certain minimum level of security as well as data transferability and reusability) and maintaining the open and global nature of the market. The EU and all of the operators on the single market should assess and maintain a high level of cybersecurity and promote the principle of security by design.

A balanced data economy: Rules to widen the rights to data use

We must make sure that data sharing benefits all. We need actions to provide a **more level playing field for all actors and sectors** — big and small, public and private. The goal is to maximise the collective benefits of data, both by sharing and by establishing fair user rights to data, as well as by developing skills to deliver the aspirations for the data economy. While the Data Governance Act creates a Europe-wide framework for a more interoperable use of data, it will not create new rights of access to data. To complete the missing pieces of the EU-level work, it is therefore important that the Data Act addresses rights of access to B2B and B2G data in order to achieve market balance. Otherwise, since data is becoming increasingly important in traditional sectors, we will end up having gatekeepers of data in all value chains, as we have now in the digital services sector. In addition, the framework created by the Data Act should support the development of individual data spaces ensuring interoperability between the general framework and the various data spaces, and between the data spaces. In this regard, the EU should:

• promote a level playing field regarding access to data. **All relevant parties should be granted access to data on the basis of FRAND terms** (fair, reasonable and non-discriminatory). A fee can be charged, but it must also fulfil FRAND terms. When it comes to personal data, the GDPR continues to be the framework in that regard.

• tailor regulation to create a **balanced approach to the terms of access rights** to data. Although B2B data sharing is largely based on voluntary agreements, it is a fact that not all parties have equal negotiating powers. For example, with regard to vehicle data, the car manufacturer should not automatically have the exclusive right to the co-produced data. It is therefore essential that data producers, i.e. companies whose activities, systems or characteristics generate data, have both the right and a genuine opportunity to access the data, as well as an equal opportunity to decide on the use of the data. For individuals' personal data, this right has been already established through the GDPR.

• continue to **promote its objective of creating international rules for digital trade and the data economy** (including trade agreements). It is important that these rules are effective in promoting open digital markets, ensuring international data

flows without compromising data protection and promoting consumer confidence in the online environment. The digital and technological sovereignty of the EU advocated by the Commission must be developed, giving due consideration both to the global nature of different supply and value chains and to the need for a level playing field.

• **strengthen individuals and companies' right to data portability** in an interoperable manner in practice, so that date could be shared better and service providers could be chosen freely.

• In order to guarantee citizens' **trust in digital transformation,** it is essential that development is carried out in accordance with the EU's data protection regulation. The profound differences between non-personal and personal data must be taken into account.

• recognise specific areas in which the failure of the single market can largely be explained by the insufficient availability of data. This is the case in the health sector, where work on this issue is already ongoing. Additionally, effective formation of travel chains and the internal market for transport services requires that intermediary third-party operators are given access to intermediate tickets, and that ticket and payment systems are interoperable.

• create a set of principles determining the standard for ethical and fundamental values and human rights in the connection of data usage and management.

• promote the creation of API and metadata descriptions that can be read by AI so that it would be possible to utilise different data sources without pooling them and without the data itself being passed forward. The aim is that the algorithm learns from itself, while the storage of data remains in one system. The original data may only be used for the purpose of the algorithm, and may not be processed in any other way or for any other purpose.

• Increase understanding pertaining to **the twinning of data and the green transition**, with measures fostering the sustainability targets as a permanent dimension of every data economy action.

Relating initiatives

The EU is currently adjusting the electronic identification and trust services **(eIDAS) regulation** so that it would fit the needs of the internal market better and would contribute to a flourishing data economy. It is important to acknowledge that identity management is also more than a means to access services. In a profound way, it also encompasses the flexibility and functioning of any data use.

In addition to addressing the needs of identity use and consent management within the business environment, Finland considers it important that the EUid and other possible regulatory options should comply with the so-called MyData principle and should strengthen individuals' control of their personal data and identities. Finland sees this as an important point of view when assessing the possible introduction of trust services for attributes. In addition, we wish to point out that solutions to facilitate strong identification should not restrict the development of services outside the scope of

the eIDAS regulation that strengthen citizens' control over their data in online environments, while at the same time providing them with trusted anonymity, i.e. by avoiding the unnecessary linking of data to individual persons in digital services where possible.

In addition, the Commission is carrying out an evaluation of **database protection,** the aim being that the exclusive right should not prevent the use of the IoT. **IP rights** play a key role in the adoption of innovation and new technological solutions, and data sharing is central to the copyright infrastructure. A well-functioning infrastructure enables access to data and efficient and transparent licensing of IP.

On the flow of data

Achieving strategic autonomy while preserving an open economy requires a well-balanced approach:

Fears of data leakage outside the EU have led to somewhat conflicting outputs. It is therefore essential that the EU confirms its position by safeguarding **the ability of companies to move data** while clearly identifying data content that, where necessary, can be considered highly sensitive, so that minimum criteria can be established for its processing and sharing environments and infrastructure. Even if the data contents would be specified in sectoral legislation, **administrative procedures should not constitute an obstacle to the fundamental objective of the free movement of data.** It should be noted that transfers of personal data to third countries are — and should be — regulated in the EU's General Data Protection Regulation. It is clear that personal data must be protected in accordance with Union law. It should also be taken into account that combining different data sets may reveal information that is not meant to be revealed, such as personal data.