

25 June 2021

FEEDBACK ON THE EUROPEAN COMMISSION'S DATA ACT

1. BACKGROUND ON ECIS

1. The European Committee for Interoperable Systems ("**ECIS**") is an international, non-profit association of information technology companies founded in 1989 which endeavours to promote a favourable environment for interoperable ICT solutions. For three decades ECIS has actively represented its members on issues relating to interoperability and competition before European, international and national fora, including the EU institutions and WIPO. ECIS' members include both large and small information and communications technology hardware and software providers, including IBM, McAfee, Opera, Oracle, and Red Hat.

2. FEEDBACK ON THE ROADMAP FOR THE DATA ACT

2. ECIS welcomes the European Commission's ("**Commission**") roadmap in relation to the Data Act, and supports the Commission's strategy for data, aiming to ensure a fairer, more open and transparent approach towards international data flows.

B2G data sharing

3. ECIS notes the Commission's concern that the current framework for the use of privately-held data by the public sector in situations of "public interest" lacks structure and is fragmented across sectors and Member States. ECIS supports the Commission's aim to have a robust and secure data sharing framework. However, it is important that where data sharing is necessary in situations of public interest, these instances are narrowly defined to adequately protect the misappropriation of privately-held data. In addition, the principle of data sharing with the public sector in cases of "public interest" should be carefully considered against any associated

risks and costs to the private sector. Therefore, ECIS urges the Commission to continue its dialogue with relevant stakeholders in this regard.

B2B data sharing

4. ECIS supports the Commission's view that access to data for digital players, including start-ups and SMEs, is essential to ensure a fair and competitive market in the digital economy. However, it is vital that parties remain able to negotiate and contract freely in the context of B2B data sharing. In relation to contractual terms, ECIS welcomes the potential introduction of a B2B fairness test to avoid unilaterally imposed unfair conditions for access to and use of data.
5. Any regulation relating to data access and usage rights should not be burdensome. Similarly, the proposal to introduce model contract terms recommended by the Commission is generally well-received by ECIS, but these should be drafted through extensive communication with and input from relevant stakeholders.

Portability requirements for Cloud Services Providers

6. ECIS agrees with the Commission's views that in order to prevent vendor lock-in and ensure an open and competitive cloud market, it is necessary that business users can easily switch their data and applications between different cloud computing service providers or port their data back to on-premise IT systems without encountering contractual, or economic barriers, and minimising technical incompatibilities. Better standardisation and open source technologies continue to improve data and application portability in Europe, and we encourage the Commission to continue engaging with European OSS and Standardisation stakeholders (such as SWIPO) to facilitate improved standardisation, and the wider use of open APIs, specifications and software components.

Harmonisation with other legislation / proposals

7. In order to effectively strengthen the Commission's data strategy, it is necessary that the Data Act is aligned with other legislation, does not create overlapping obligations, and clearly outlines the new procedures which are not already covered by other existing or proposed European Union legislation (such as the Data Governance Act, General Data Protection Regulation, the Database Directive and the Trade Secrets Directive).