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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Data Act Regulation MT comments on 2nd compromise text

Delegations will find in the annex the MT comments on the 2nd compromise text on Data Act Regulation.

Malta's comments on second compromise proposal on DA (document 14019/22)

Reference	Second compromise proposal	Drafting suggestion	Comment
Article 23	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 provider. In particular, providers of data processing services shall remove not pose commercial, technical, contractual and organisational obstacles, which inhibit customers from: (a) terminating, after a the maximum notice period of 30 calendar days specified in the contract in accordance with Article 24, the contractual agreement of the service; (b) concluding new contractual agreements with a different provider of data processing services covering the same service type; (c) porting its data and metadata created by the customer and by the use of the originaing service, and/or the customer's applications and/or other digital		Articles 23-26 (and related Recitals) – In order to attain further legal certainty, Malta recommends that the applicable responsibilities and obligations imposed on the various service delivery types by means of this Regulation are clarified further in order to ensure that the relevant service providers are able to easily determine the responsibilities and obligations that will be imposed on them by means of this Regulation. This, due to the fact that following a reading of the updated Compromise Text, the applicability of the responsibilities and obligations on such service providers is still rather complex.

Reference	Second compromise proposal	Drafting suggestion	Comment
	assets to another provider of data processing services or to an on-premise system; (d) in accordance with paragraph 2 Article 23a, 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.		
Article 26	2. For data processing services other than those covered by paragraph 1, providers of data processing services shall make open interfaces publicly available to an equal extent to all their customers and the concerned destination service providers and free of charge, including sufficient information about the concerned service to enable the development of software to communicate with the service, for the purposes of portability and interoperability.	Article 26(2) <i>For data processing services other than those covered by paragraph 1, providers of data processing services shall make open interfaces publicly available, for functional equivalent functionality provided by other service provider, to an equal extent to all their customers and the concerned destination service providers and free of charge, including sufficient information about the concerned service to enable the development of software to communicate with the service, for the purposes of portability and interoperability.</i>	Malta agrees with the Commission's position as included in the presentation of the 8th November 2022, where in slide Functional Equivalence (II), stating that "Services can only be expected to facilitate functional equivalence for the functionalities that both the originating and destination services offer". However Article 26(2), does not limit that open interfaces need to be made available for functionality which is equivalent by different service providers. This might not correctly reflect the spirit of the regulation and possible suggestion

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			would be to include the functional equivalence in this article.
Article 42	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from [12 months after the date of entry into force of this Regulation]. The obligation resulting from Article 3(1) shall apply to products and related services placed on the market after [12 months] after the date of application of this Regulation. The provisions of Chapter IV shall apply to contracts concluded after [date of application of this Regulation].	It shall apply from [12 24 months after the date of entry into force of this Regulation].	Given that the Act includes a significant number of new obligations for businesses, a period of twelve months is deemed insufficient, and this period should be at least doubled to ensure a smooth transition and implementation.

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