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From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Data Governance Act : FI comments on Chapters I, II, III and IV

Delegations will find in annex FI comments on Chapters I, II, III and IV of Data Governance Act.

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Questions and comments on Data Governance Act

Finland welcomes the Data Governance Act (DGA). We support the purposes of the proposal. We maintain our parliamentary scrutiny reservation and are still assessing the proposal.

We thank the Commission and the German and Portugese Precideniesy for the opportunity to raise comments and questions about the proposal for Data Governance Act. Please find below our questions.

Chapters I and II and Chapter IV

Resital 15: "In order to ensure the protection of fundamental rights or interests of data holders, non-personal data which is to be protected from unlawful or unauthorised access under Union or national law, and which is held by public sector bodies, should be transferred only to third-countries where appropriate safeguards for the use of data are provided."
Question: How does the Commission see the transfer of non-personal data to third countries in relation to the commitments to WTO, where the aim is to remove the localisation requirement from all trade agreements?

Chapter I General provisions

Article 1(2)
Question: Why does not the 'without prejudice' clause in Article 1(2) refer to national rules?
Question: What are the financial impacts of the upcoming regulation (eg. on data spaces)?

Article 2 *Definitions:*
Comment: Some further clarification may be needed on how the terminology in the Regulation, in particular the definitions of "data holder", "data user" and "data altruism", relate to the key concepts of the GDPR.
Question: How the new actors established by the DGA, such as "provider of data sharing services", "data intermediary" and "data altruism organization", fit to the framework of the GDPR (eg. do these actors act as data processors or data controllers)?

Question: The terminology also differs from the Open Data Directive. Could you explain the reasons and implications of this choice?

Comment: The definition of and the context of data-altruism (Art 2(10)) may be too extensive and unspecified.

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Comment: The definition of metada (Art 2(4)) in its current form is quite narrow. Metadata is generally understood to include also other information that is relevant to data use and findability. There may be a need to clarify / expand the definition to include information on the data itself, address relevant terms for data access and re-/use.

Question: Is the use of metadata in Article 2(4) the correct term to describe the definition pursued? The term seems to be used only in Article 11.

Question: Could you confirm that when Article 2(7) refers to "sharing based on voluntary agreements", it excludes sharing of data in those circumstances, where sharing of the data has been regulated wholly or partly through national law? The same question applies to Article 4(1).

Comment: Comment: Finland notes that the definiotion of 'public undertaking' in Article 2 (13) could also cover other actors carrying out a public task which is good, but the definition itself might need some clarification on that.

Chapter II Re-use of certain categories of protected data held by public sector bodies

Question: The DGA complements the rules of the Open Data Directive, specifically in Chapter II. How does the definition of "data" (Art 2(1) in the DGA relate to the definition of "documents" in the Open Data Directive and definition of "personal data" in the GDPR?In practice, these rules can become applicable at the same time.

Comment: Chapter II of the proposal only applies to the data held by public sector bodies. In Finland, however, data held by private sector is also available through e.g. Findata. The scope of Chapter II should also include private sector bodies, whose data (including management of the access to that data) are by law or other arrangements given to publicly operated body, otherwise the datasets may remain inadequate.

Question: We would like to have more information on the basis of which the selection of data categories in Article 3(1) falls within the scope of the chapter and is this an exhaustive list and if the chapter covers only special purpose organisations such as Findata? We would also like to know, whether individual data requests (mostly automated by internet of text messages etc) are covered/should follow a similar administrative processes (burden). E.g.. by delivering registration plate number to the Finnish Traffic and Communications Angency, you can receive information on the Co2-emissions, owner of the vehicle and if the vehicle taxes have been paid etc. This is an easy-to-use service to facilitate sale of used cars. Due to the GDPR the requests must be made individually, but there is no limit on how many requests one person can make (i.e. no bulk access to the data) . A fee is requested and the service is also provided via third party provider (used car sales portals, spare parts dealers). This service and the connected fee are an important part of vehicle registrations and with the fees the Agency finances all costs related to this service (including fixed and administrative costs).There is no possibility to budgetary funding. Similar requests can be made from several public registries in Finland.

Question: Company data or confidential commercial information is mentioned. Companies are very strict on confidentiality of their business secrets and future business plans. Then there are basically public information such as annual reports etc. that is available from public registries. Processing of personal data is subject to purposes and processes set out by the data controllers. What kind of confidential commercial data do you anticipate to be shared under Chapter II?

Article 3(2)(e):

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Question: If a task is outside the scope of those tasks defined by law, shouldn't the transparency requirement be addressed to those tasks that are outside rather than those that are within the public scope – if the purpose is to balance public and private sector bodies to offer data services?

Article 3(3):
Question: Could the Commission clarify and explain the limitations of scope in Article 3(3) and the implications of the provision? The last sentence of the paragraph refers to Union law on access to documents. Could the Commission clarify, what is the specific reference to Union law here? What are the exact Regulations or Directives referred to in this sentence?

Article 4(2):
Question: What are the services or products in general interest referred to in Article 4(2)? Could you give examples of these?

Article 4 and Article 5:
Question: Shoulda public sector body take into account these obligations if it decides to give a thrid country directly access to some data that falls under the scope of the DGA? . What obligations arise from this to the public sector bodies?

Article 5(3)
Comment: The following is somewhat unclear: "Public sector bodies may impose an obligation to re-use only pre-processed data where such pre-processing aims to anonymize or pseudonymise personal data or delete commercially confidential information, including trade secrets."
Question: If data is pre-processed in the manner described in Article 5(3) is the data still considered "protected" within the meaning of Article 3(1)?
Question: Are the conditions in Article 5(3) and 5(4) the only conditions that can be imposed on re-use or can other obligations be imposed as implied by Articles 5(1) and 5(2)?
Question: Is an arrangement where anonymization of data is a condition for the access to data (i.e. the data can only be used if anonymised) but the anonymisation is provided by another entity than the data holder (provided that conditions in Article 5(5) are complied with),permitted under the DGA and what is the situation where the anonymization would be done e.g.. by a member of a research group located outside the EU (e.g. the UK or the US)? (And after this the rawdata is deleted/destroyed).

Article 5(6)
Question: How is the task given to a public sector body in Article 5(6) compatible with the GDPR, in particular the requirement of the consent of the data subject to be freely given (recital 43 of the GDPR) ? What are the exact obligations to the public sector body in Article 5(6)?

Article 5(8)
Question: What is meant by Article 5(8) and specifically the obligation to ensure that confidential information is not disclosed? What does this obligation mean in practice?

Article 5(9)
Question: What is the point of reference for the Commission in Article 5(9)? Recital 15 implies that the Commission could also take in to account the equivalence with national legislation?

Under Article 5(10) "Public sector bodies shall only transmit confidential data or data protected by intellectual property rights to a re-user which intends to transfer the data to a third country other than a country designated in accordance with paragraph 9 if the re-user undertakes" certain measures.
Question: Is the aim here to refer to non-personal data instead of data? Transfers of personal data to third countries are regulatedin the GDPR, so it would help if this could be clarified. What is the relationship of this paragraph to national rules and competences?

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Comment: The parts in the DGA that mention ”data protected by IP” need more specific wording (eg. ”data subject to protection by IP under certain conditions”) since the database protection protects the databases and not ”mere data”.

Article 5(11)
Question: Could you explain the purpose of Article 5(11)? Which are the specific rules that are referred to as “specific Union acts”? Does this refer to possible future legislation legislation or is thislegislation already in force? What could co considered as “highly sensitive data” referred to in this paragraph?

Article 6(4): “Where they apply fees, public sector bodies shall take measures to incentivise the re-use of the categories of data referred to in Article 3 (1) for non-commercial purposes and by small and medium-sized enterprises in line with State aid rules.”
Comment: This is understandable, but the Article seems very difficult to implement in practice. It raises questions about equal treatment, since the rules may be easily circumvented. Also individual transactions cost more than series of transactions which should be taken into account. We also read the article to allow including also fixed and administrative costs to the fees as the oprganisations are mainly financed based on these fees (netbudgeting). The current law also enables reasonable margin to be collected e.g.. for financing future investments.

Article 7(2)(c)
Question: What are the obligations in practice on public sector bodies derived from Article 7(2)(c)? Also the roles of public sector bodies as sources and exploiters of altruistic data remain unclear in the proposal. How does the paragraph address the actions of public sector bodies concerning alturistic data? Could this be clarified?

Article 7(3): “The competent bodies may also be entrusted, pursuant Union or national law which provides for such access to be given, to grant access for the re-use of the categories of data referred to in Article 3(1)”
Question: What could be the Union law referred to in the paragraph? Are there examples already or is this for the future? The same reference and question is for Article 7(4). Is Article 7(4) subordinate to Article 7(3), if the body referred to in Article 7(3) has been given the competence to grant access for re-use?

Article 8 *Single Information Point*
Comment: The role of the Single Information Point as a recipient and facilitator of requests for information does not necessarily facilitate rapid access to information whenthe competent authority has to in any case decide on the access. The role of the infopoint can therefore remain very marginal.

Comment: Finland supports the principle that the acces to data would always be granted by the competent athority in accordance with national legislation. Newertheless, Single Information Point should not be the only way to access open data, but in addition to the centralized model there should be a decentralized model (access directly from the authority or controller). Also the possibility of automating the operation of the Single Information Point should be taken into account, for example by means of artificial intelligence.

Comment: Single Information Point and providers of data sharing services must be able to ensure that the individual cannot be re-identified. Anonymization might not be enough but aggregation is needed. With regard to information security, it would be desirable to comply with international standards such as ISO (27001). If anonymization is to be achieved, then the limitations of anonymization techniques should be taken into account.

Article 8(2)

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Comment: Article 8(2) imposes a great administrative burden on national systems where there is a big amount of available data resources and official registers. It would be easier, if these would not have to be gathered in one register.

Article 8(3)
Comment: If requests to access data can be made also concerning data that is not readily available or listed in the register of available data soources, a time limit of two months may not be realistic given the planning and cooperation with data controllers required for data collection. In addition, it should be taken into account that there will be another data intermediary in the process, for example in Finland, before entering Findata.

Question: The Single Information Point would probably require IP skills too? Is the Commission planning to give any further guidance on the IP related legal issues before the regulation shall enter into force?

Chapter IV: Data Altruism

Article 15(3): "An entity registered in the register in accordance with Article 16 may refer to itself as a 'data altruism organisation recognised in the Union' in its written and spoken communication."
Question: Is the registration voluntary? Is the label "data altruism organisation recognised in the Union" voluntary for the organisations and are they still able to operate in the market with out the label?

Article 16 General requirements for registration
Question: Can public authorities engage in data-altruisim or be registered as a data-altruisim organisation?

Article 16(b): In order to qualify for registration, the data altruism organisation shall: operate on a not-for-profit basis and be independent from any entity that operates on a for-profit"
basis;"
Question: This probably needs a more precise definition. Are associations included? Associations may also make profit.

Article 17 *Registration*
"Where the entity has submitted all necessary information pursuant to paragraph 4 and the competent authority considers that the entity complies with the requirements of Article 16, it shall register the entity in the register of recognised data altruism organisations within twelve weeks from the date of application. The registration shall be valid in all Member States."
Comment: If the national requirements are higher in one member state than in another, we don't want to diminish the national requirements for information security.

Article 18 *Transparency requirements*
Question: - In case of Data altruism, it is essential to ensure efficient level of transparency of the intended processing towards the data subject to maintain high level of protection of personal data. In this light, should the information listed in article 18 be also made available to the data subject?

Article 18(2)(d): "a summary of the results of the data uses allowed by the entity, where applicable;"
Question: What is meant here with "summary of the results"?

Article 18(2)(e): "Information on sources of revenue of the entity, in particular all revenue resulted from allowing access to the data, and on expenditure."
Question: Does this refer to the balance sheet of the entity? Or some other specific report?

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Article 19(1)(a) “about the purposes of general interest for which it permits the processing of their data by a data user in an easy-to-understand manner”
Question: What is meant by general interest in this Article? Could you give some examples? Is it possible that commercial interests could be regarded as general interests?

Article 20(1): “Each Member State shall designate one or more competent authorities responsible for the register of recognised data altruism organisations and for the monitoring of compliance with the requirements of this Chapter.”
Question: Can these be private actors? See Comment Article 13(1).

Article 20(2): “Each Member State shall inform the Commission of the identity of the designated authorities.”
Question: Should the term be notify?

Article 22(1): “In order to facilitate the collection of data based on data altruism, the Commission may adopt implementing acts developing a European data altruism consent form.
Comment: It is important to remember to enable digital possibilities in giving the information and when utilizing the data and to be futureproof, we think it would benecessary require that the data of the consent form should be in structured form.).

Questions and comments on Data Governance Act chapters III,V,VI and VII

Finland welcomes the Data Governance Act (DGA). We support the purposes of the proposal. We maintain our parliamentary scrutiny reservation and are still assessing the proposal.

We thank the Commission and the Portugese Precidency for the opportunity to raise comments and questions about the proposal for Data Governance Act. Please find below our questions for chapter III, V, VI and VII.

Chapter III: Requirements applicable for data sharing services

Article 9 *Providers of data sharing services*
Question: What is meant by “data sharing services”? Could the Commision give us a concrete example of one?

Question: What is the anticipated relation between data sharing services and information society services as to the eCommerce directive/DSA and platforms of P2B regulation?

Question: Would you consider reasonable to limit regulation to data sharing services that are offered to the general market, e.g. MyData operators, general value-added services e.g. pseudonymisation / anonymisation / annotation etc. and leave companies’ mutual arrangements out of the scope?

Question: The requirements are explained to include voluntary mechanisms. However this is not reflected in the scope in Article 9 and conditions required in Article 11. How should the articles be interpreted?

Question:
The proposal remains unclear as to the responsibility/role of data intermediaries in the context of the processing of personal data. The resital 28 is a bit unclear: “Where the data sharing service providers are data controllers or processors in the sense of Regulation (EU) 2016/679 they are bound by the rules

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of that Regulation" – which role do the data sharing service providers have and can it be assumed that they do not function in either role (controller or processor)?

Question: Is data exchange with bilateral or multilateral limited agreements between companies always interpreted to be under the scope? (or facilitators for such limited agreements). Should "intermediation services/ body" be defined?

Question: What is the reasoning behind regulatory intervention to companies mutual data arrangements? The scope & definition of data sharing service providers is very wide – it is evident that trust exists where data is being shared and thus it is hard to reason how regulation would enhance trust there.

Article 10: Notification of data sharing service providers
Question: Does this mean that the data sharing service provider can operate on the market even if it has not a certification? Is registration voluntary and, consequently, certification? How do other actors distinguish themselves from those officially registered?

Article 10: "The notification shall entitle the provider to provide data sharing services in all Member States."
Comment: If the national requirements are higher in one member state than in another, we don't want to diminish the high (minimum) level of national requirements for information security.

Article 11 (5) "The provider shall have procedures in place to prevent fraudulent or abusive practices in relation to access to data from parties seeking access through their services;"
Question: What could the procedures referred to in Article 11(5) be?

Article 11 (6) "the provider shall ensure a reasonable continuity of provision of its services and, in the case of services which ensure storage of data, shall have sufficient guarantees in place that allow data holders and data users to obtain access to their data in case of insolvency;"
Question: Are these recuirements likely to receive more detailed content in the implementation?
Comment: Besides the case of insolvency, there may be also other risks for the continuity of provision of services and access to data (e.g. natural disasters).

Article 11(8) "the provider shall take measures to ensure a high level of security for the storage and transmission of non-personal data;"
Question: May a certain level or audit be required by a third party?

Article 11(10) "the provider offering services to data subjects shall act in the data subjects' best interest when facilitating the exercise of their rights, in particular by advising data subjects on potential data uses and standard terms and conditions attached to such uses;"
Comment: Shouldn't we somehow refer to compliace with the rules/standards and other requirements to be developed within other processes as well for the intermediaries themselves? fex: "The provider shall seek compliance with the requirements laid down by xx processes in order to build interoperability and reciprocital practical arrangements for data sharing in order to facilitate the freedom of choice for data subjects to use intermediating service providers of their choice."

Article 12 *Competent authorities*
Comment: Notification procedures should not be limited to be carried out by public authorities, but left to be decided in national law. In Finland it is usual that a publicly owned company or some other organisation carries tasks not considered as use of administrative power.

Article 12

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Comment: The provision on the disclosure of information in Article 12(3) should strive for more precise regulation if the purpose is also to disclose sensitive information. The same observation applies to Article 13(6).

Article 13(1)
Comment: Member State should appoint competent body or authority to monitor and supervise compliance. This task can also be divided and third party auditors should be possible to be used to assess the compliance.

Question: How would the requirements of the data sharing service providers be met in practice? Would there be some form of conformity assessment by an external body?

Chapter V Competent authorities and procedural provisions

Comment:
The relationship between the provisions remains unclear. Who is considered to have the right of appeal on the basis of Article 24, since the right of appeal in principle applies to private parties, whereas in Artic le 25 the right of appeal applies to the authority. The right of appeal should be correlated with the respo nsibility assigned to different actors.

Chapter VI European Innovation Board

Chapter VII Committee and Delegation

Question: Why has the Commision chosen the advisory procedure instead of the examination procedure?

Question: According to Article 5(9) and Recital 15 the Commission may adopt implementing acts that declare that a third country provides a level of protection that is essentially equivalent to those provided by Union or national law. This resembles Article 45 of the GDPR. The GDPR however requires the implementing acts for example to include a mechanisim for a periodic review. Should the DGA also have these kind of conditions?

Question: Is the intention of the delegated acts that the Comission will set out more specific conditions for different sectors or data categories seperately, or that it will set out general conditions for all data defined as “highly sensitive” in sector-specific regulation?

Comment: According to Article 5(11) the Comission’s delegation power applies to categories of non-personal data. At the same time the article also addresses the risks of anonymized data. We have established on a national level that it is not possible to efficiently anonymize health data and therefore its personal data can only be transmitted as aggregated statistical information. This might need clarification.

In Resital 15 “appropriate safeguards should be considered to exist when in that third-country there are equivalent measures in place which ensure that non-personal data benefits from a level of protection similar to that applicable by means of Union or national law in particular as regards the protection of trade secrets and the protection of intellectual property rights. To that end, the Commission may adopt implementing acts that declare that a third country provides a level of protection that is essentially equivalent to those provided by Union or national law.”
Question: What level of requirements would be assessed against the level of protection in a third country, i.e. is it possible to maintain a higher level of protection requirement in Member State?

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It is necessary to examine, in particular with regard to the article, how the Commission could compare the national systems of different Member States when making equivalence decisions, unless the Commission intends to lay down minimum criteria at EU level, in which case the basic level of all countries would be the same.

Comment: In Article 5 (9) The criteria for equivalence or the framework within which the transmission of data must take place are defined at a very general level. It is therefore important to specify in the proposal if, on the basis of this article, Commission regulations are adopted.

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