

# Proposal to enhance the draft Data Act

## *Based on a national market study into Cloud services*

### *By the Netherlands Authority for Consumers and Markets (ACM, NL)*

The Netherlands Authority for Consumers and Markets (the combined NCA, CPC member and NRA, hereafter: ACM) recently published its market study into cloud services.<sup>1</sup> ACM did a deep dive into how the market works, what the market dynamics are, and whether there are any market risks for price, quantity and innovation that need action from lawmakers and other authorities. On the basis of its findings, ACM recommends several adjustments to the draft Data Act.

ACMs findings are twofold. First, switching of users between cloud providers suffers from barriers that create lock-in effects. Technical barriers exist because it takes a lot of time and effort to untangle highly integrated cloud services in order to switch to a service of a different cloud provider. In addition, the portability of data is complicated due to a lack of open interfaces. Financial switching barriers are caused by the tariff structures used by cloud providers and the fees charged for users that want to transfer their data to another cloud provider (i.e. egress fees).

Second, a lack of interoperability between different cloud providers (or between services thereof) prevents users from freely selecting different services among different cloud providers to compose the bundle that works best for them. Currently, the options for multi-cloud services are limited since it is difficult or impossible for third-party cloud providers (or services thereof) to interconnect with the services of other cloud providers. In that context, even when interconnection *is* possible, egress fees charged by cloud providers complicate this further, since organizing a regular data flow between different cloud providers can be very costly. This has two consequences: users cannot freely choose the specific services that suit them best. Also, the scale, scope and network advantages that integrated cloud providers have over new providers and providers of niche services, dampen market entry and innovation.

The Data Act proposed by the EC comprises significant solutions to deal with some of these problems. ACM is therefore generally positive about the draft Data Act. Yet there is considerable room for improvement, in line with BEREC's opinion<sup>2</sup>. In addition, effective coordination of national and/or EU oversight on cloud services deserves serious consideration given the global characteristics of this market. ACM supports the proposals addressing switching barriers<sup>3</sup>. It is important that these proposed switching requirements will not be watered down for effectively addressing lock-in effects. Yet the current draft falls short on the requirements to increase interoperability between different cloud providers. The ACM urges the EP, EC and the Council to enhance the Data Act on this subject.

According to ACM, it is important

- to make a distinction in the Data Act between data portability and interoperability. Data portability is needed to create the ability to switch between service providers, which is a non-recurring action. Interoperability is needed to let services across multiple cloud providers connect and interact with each other, which is a recurring action.<sup>4</sup> Both aspects are important for an open, competitive and innovative cloud market;
- that APIs are publicly available, which should facilitate interoperability. It is not always necessary that a single uniform standard is available for every service, but a cloud provider that wants to interoperate needs to know what specifications are used;
- that different service types can communicate with each other. Therefore, requirements for standards need to apply more broadly than simply to services of the same service type;
- to lower egress fees, not only in the case of portability but also in the case of interoperability. Only the specific costs incurred for interoperability should be charged;
- that third-party service providers are able to interconnect their services with services of another cloud provider with the same quality as services within a specific cloud, i.e. can enjoy functional equivalence.

ACM therefore suggests the following amendments to the text of the draft Data Act

- to Article 26: to broaden the scope for both portability and interoperability. A 5<sup>th</sup> paragraph is added to oblige a cloud provider to publish APIs for the purpose of interoperability;
- a new Article 26A: to lower the charges that cloud providers ask for interoperability;
- since article 26 is broadened with a focus on increasing interoperability, and article 26B is added, the title of chapter VI of the draft Data Act might need to be changed or combined with chapter VIII.
- changes to Article 29: to broaden the scope for both portability and interoperability.

<sup>1</sup> See [www.acm.nl/en/publications/market-study-cloud-services](http://www.acm.nl/en/publications/market-study-cloud-services)

<sup>2</sup> [BEREC recommends strengthening independence of enforcing bodies in Data Act | BEREC \(europa.eu\)](https://www.berec.europa.eu/press-releases/berec-recommends-strengthening-independence-of-enforcing-bodies-in-data-act)

<sup>3</sup> Article 23, 24, 25 and 26.

<sup>4</sup> See also <https://www.iso.org/standard/66639.html>.

## Attachment: Proposed changes to the draft Data Act

### *Article 26 Technical aspects of switching and interoperability*

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.
2. For data processing services other than those covered by paragraph 1, providers of data processing services shall make open interfaces publicly available and free of charge **for the purposes of portability and interoperability.**
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.
4. 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. **The exporting data processing service shall ensure that the customer, after switching to a service covering the same service type offered by a different provider of data processing services, can enjoy functional equivalence in the use of the new service.**
5. **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 make APIs available for the purpose of interoperability. These APIs shall ensure, where technically feasible, that third-party services can enjoy the same functional equivalence as first-party services.**

### *Article 26A withdrawal of interoperability charges*

1. **From [date X] onwards, providers of data processing services shall not impose charges for the interoperability process in excess of the costs incurred by the provider of data processing services that are directly linked to the interoperability process concerned.**
2. **The Commission is empowered to adopt delegated acts in accordance with Article 38 to supplement this Regulation in order to introduce a monitoring mechanism for the Commission to monitor interoperability charges imposed by data processing service providers on the market to ensure that the limitation of interoperability charges as described in paragraph 1 of this Article will be attained in accordance with the deadline provided in the same paragraph.**

### *Article 29 Interoperability and portability for data processing services*

1. Open interoperability specifications and European standards for the interoperability **and portability** of data processing services shall:
  - (a) be performance oriented towards achieving interoperability **and portability** between different data processing services ~~that cover the same service type;~~
  - (b) enhance **interoperability and** portability of digital assets between different data processing services ~~that cover the same service type;~~
  - (c) guarantee, where technically feasible, functional equivalence between different data processing services ~~that cover the same service type.~~
2. Open interoperability specifications and European standards for the interoperability **and portability** of data processing services shall address:
  - (a) the cloud interoperability aspects of transport interoperability, syntactic interoperability, semantic data interoperability, behavioural interoperability and policy interoperability;
  - (b) the cloud data portability aspects of data syntactic portability, data semantic portability and data policy portability;
  - (c) the cloud application aspects of application syntactic portability, application instruction portability, application metadata portability, application behaviour portability and application policy portability.

[...]
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, to publish the reference of open interoperability specifications and European standards for the interoperability **and portability** of data processing services in central Union standards repository for the interoperability **and portability** of data processing services, where these satisfy the criteria specified in paragraph 1 and 2 of this Article.