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SWITCHING AND INTEROPERABILITY BETWEEN DATA PROCESSING SERVICES IN THE PROPOSED DATA ACT

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Findings of the CERRE Report on Data Processing Services

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THE MAIN FOCUS OF THE DATA ACT SHOULD BE ON FACILITATING SWITCHING BY STRENGTHENING DATA PORTABILITY

Main rationale behind recommendations:

- DA as a symmetric regulatory framework of basic rules
- Weigh benefits of regulation against potential adverse side effects and regulatory burden in a technically complex and dynamic sector
- Prioritize clarity and enforceability of rules



THE MAIN FOCUS OF THE DATA ACT SHOULD BE ON FACILITATING SWITCHING BY STRENGTHENING DATA PORTABILITY

Main rationale behind recommendations:

- Promote and facilitate one-off switching between data processing services
- Interoperability regulation and mandatory standards as additional provisions subject to further justification
- Competition law and sector-specific regulation as complementary tools



KEY RECOMMENDATION 1:

ON CONTRACTUAL OBLIGATIONS

Ensure effective right to data portability (Art. 24, Art. 25), but retain general freedom to conduct a business (remove Art. 23 (1) (a))

- Contractual obligations should be targeted to the switching process
- Provisions should safeguard against inflated financial barriers to switching, but allow for recoupment of “regular costs”
- Account for responsibilities of all involved parties in the switching process



KEY RECOMMENDATION 2:

ON DATA PORTABILITY

Make Art. 24 (1)(b) on minimum scope of data and Art 26 (4) on data format the default portability requirement for all data processing services

- Data and metadata should be exportable in a structured, commonly used and machine-readable format
- In addition, data should be available in a *non-proprietary, open* format



KEY RECOMMENDATION 3: ON FUNCTIONAL EQUIVALENCE

Replace the functional equivalence criterion with a (hypothetical) “service replication test” that refers to the original service provider

- Key idea: Is the portable data sufficient to recreate the same service at the original provider?
- Minimizes the need to classify services of the “same service type”



KEY RECOMMENDATION 4:

ON INTEROPERABILITY REGULATION

Mandatory interoperability standardisation should be tied to

- i) ineffectiveness of data portability in specific markets or**
 - ii) identification of market failures**
- Technical complexity, broad diversity of services and dynamic technological progress should be considered
 - Mandatory interoperability standards can promote competition, but may also have detrimental effects on smaller providers



OUTLOOK

- The Data Act creates a symmetric regulatory framework of **basic rules**
- **Sector-specific regulation** and the **DMA** present **complementary instruments** to address potential competition issues
- This requires a thorough understanding of the **economic characteristics** and **competition dynamics** in the cloud computing industry in order to target policy interventions to potential **market failures**
- **Rule implementation** in this technically complex industry will be key and will require **technical expertise** and **facilitating institutions**

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BACKUP



Contractual safeguards
(Maximum transition period,
no switching-specific charges)

+

Enhanced Data Portability

Minimum scope of data and metadata (Art. 24 (1)(b))	+	Structured, commonly used, <i>non-proprietary</i> and machine-readable format (Art. 26 (4))	+	“Service replication test” at the original service provider
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Mandatory interoperability standardisation
tied to i) ineffectiveness of data portability
or ii) identification of market failures

DATA PORTABILITY AND INTEROPERABILITY AS TWO DISTINCT CONCEPTS



EXPORT

Data and metadata must be *accessible* and *transferable* from the originating service



IMPORT

Data and metadata must be available in a format *compatible* with the new service



ORCHESTRATION

Cloud services must *interconnect* and exchange data directly

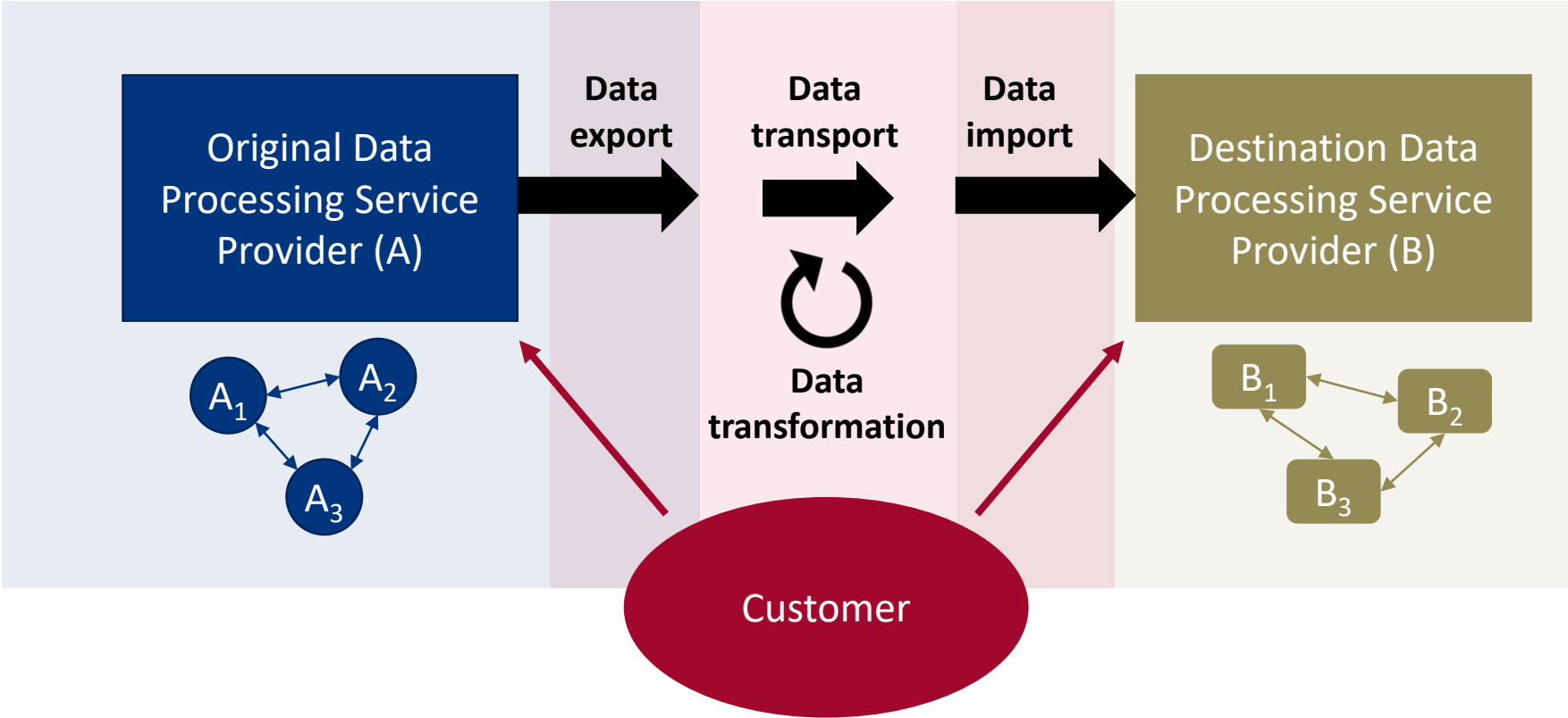
Portability

Interoperability

- **Mixing of terminology and lack of clarity in the DA**
 - DA: *Horizontal interoperability* between services of the same service type?
 - Facilitated switching hinges on one-off data portability
 - Service portability requires *vertical interoperability*



STYLIZED SWITCHING PROCESS



Switching choice should be based on *unbiased* and *predictable* cost-benefit comparison



CONTRACTUAL OBLIGATIONS

- Art. 23 (a): **Termination of a contractual agreement** within a maximum notice period of 30 days
- Art. 24 (1) and (2): **Maximum transition period** for the switching process
- Art. 25: **Gradual withdrawal of any switching charges** over three years after the publication of the DA
- **DA provisions should be targeted to the actual switching decision and process**
- **As the DA is a horizontal law and symmetric regulation, effects on smaller providers and markets entrants must be considered**



DATA PORTABILITY

- Art. 24 (1) (b): **Minimum scope of exportable data** including metadata created during the use of the service
- Art. 26 (4) on **commonly used and machine-readable data formats** should facilitate one-off data import and exports for switching customers
- **Functional equivalence criterion**
 - Key idea: portable data should be of sufficient quality and completeness
 - **Unclear applicable scope:** IaaS services vs. all data processing services
 - **Original service seemingly held responsible for output, performance, and quality of the destination service**
- Unclear how **classification of data processing services of the same service type** could be operationalised



INTEROPERABILITY

- Benefits of **horizontal interoperability obligations** not immediately evident
- (Vertical) Interoperability regulation requiring universal standards face **significant technical challenges** and run the **risk of slowing down innovation**
- Mandatory standards may **hurt smaller providers and market entrants**
- Unclear how standardisation would deal with **diverse service landscape** and distinguish between services of **different service types**



KEY RECOMMENDATION 4:

ON INTEROPERABILITY REGULATION

- Technical complexity, broad diversity of services and dynamic technological progress should be considered
- Mandatory interoperability standards can promote competition, but may also have detrimental effects on smaller providers
- Business users make strategic adoption decisions, which can facilitate market-driven alliances of interoperable providers