

CISPE's comments on the Digital Omnibus

Introduction

CISPE welcomes the opportunity to comment on the Commission's Digital Omnibus proposal and especially its proposed changes to the Data Act's Cloud Switching chapter. While we welcome the Commission's attempts to clarify the Act's provisions, we have one serious concern about the changes as currently drafted.

Early termination of long-term cloud contracts

Specifically, we are concerned about the proposed wording of the Omnibus's proposed amendment to Article 31 of the Data Act.

*31(1b). A provider of a data processing service may include provisions on proportionate early termination penalties in a contract of fixed duration on the provision of data processing services **other than those referred to in Article 30(1)**. [...]*

Although it is clear from corresponding recitals (i.e. 18 & 89) and from our discussions with the European Commission that the intention with this paragraph was simply to assure cloud providers that they can continue to charge early termination penalties when their customers break long-term contracts, we are nonetheless concerned that the wording is not suitable to achieve this outcome.

Indeed, as currently drafted, for IaaS providers this provision could be understood to say the opposite – namely that they would no longer be allowed to include early termination penalties in fixed-term contracts.

As a solution, we recommend the deletion of the part indicated in red, which, in our view, is in any case redundant for the purposes of the article.

We thank the Commission for considering this and remain at the co-legislators' disposal for further clarification about our concern and suggested solution.

About CISPE

CISPE (Cloud Infrastructure Services Providers in Europe) represents European cloud infrastructure providers and works to make the EU cloud market more competitive, transparent and resilient. We have been an early promoter of stricter rules about portability and interoperability and therefore supported the Data Act and its smooth roll-out [all the way](#), including via our [Cloud Switching Framework](#). We will soon unleash a tool that cloud providers will be able to use to – within a matter of minutes – test their compliance against the Data Act's cloud switching provisions.