



2022/0047(COD)

14.9.2022

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council on harmonised rules on fair access to and use of data (Data Act) (COM(2022)0068 – C9-0051/2022 – 2022/0047(COD))

Committee on Industry, Research and Energy

Rapporteur: Pilar del Castillo Vera

Rapporteurs for the opinion (\*):

Adam Bielan, Committee on the Internal Market and Consumer Protection

Ibán García Del Blanco, Committee on Legal Affairs

Sergey Lagodinsky, Committee on Civil Liberties, Justice and Home Affairs

(\*) Associated committee(s) – Rule 57 of the Rules of Procedure

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	60



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on harmonised rules on fair access to and use of data (Data Act) (COM(2022)0068 – C9-0051/2022 – 2022/0047(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0068),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0051/2022),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 15 June 2022<sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions of 30 June 2022<sup>2</sup>,
  - having regard to Rules 59 and 40 of its Rules of Procedure,
  - having regard to the opinions of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on the Internal Market and Consumer Protection,
  - having regard to the letter from of the Committee on Legal Affairs,
  - having regard to the report of the Committee on Industry, Research and Energy (A9-0000/2022),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

---

<sup>1</sup> OJ C xxx of XX.X.2022, p. xxx.

<sup>2</sup> OJ C xxx of XX.X.2022, p. xxx.

## Amendment 1

### Proposal for a regulation

#### Recital 2

*Text proposed by the Commission*

(2) Barriers to data sharing prevent an optimal allocation of data to the benefit of society. These barriers include a lack of incentives for data holders to enter voluntarily into data sharing agreements, uncertainty about rights and obligations in relation to data, costs of contracting and implementing technical interfaces, the high level of fragmentation of information in data silos, poor metadata management, the absence of standards for semantic and technical interoperability, bottlenecks impeding data access, a lack of common data sharing practices and abuse of contractual imbalances with regards to data access and use.

*Amendment*

(2) ***In a context where the Union holds a global competitive position in manufacturing and is a leader in industrial software and robotics,*** barriers to data sharing prevent an optimal allocation of data to the benefit of society. These barriers include a lack of incentives for data holders to enter voluntarily into data sharing agreements, uncertainty about rights and obligations in relation to data, costs of contracting and implementing technical interfaces, the high level of fragmentation of information in data silos, poor metadata management, the absence of standards for semantic and technical interoperability, bottlenecks impeding data access, a lack of common data sharing practices and abuse of contractual imbalances with regards to data access and use.

Or. en

## Amendment 2

### Proposal for a regulation

#### Recital 4

*Text proposed by the Commission*

(4) In order to respond to the needs of the digital economy and **to** remove barriers to a well-functioning internal market for data, it is necessary to lay down a harmonised framework specifying who, other than the manufacturer or other data holder is entitled to access the data generated by products or related services, under which conditions and on what basis. Accordingly, Member States should not

*Amendment*

(4) In order to respond to the needs of the digital economy, ***avoid the fragmentation of the internal market that could emerge from national legislation*** and remove barriers to a well-functioning internal market for data, it is necessary to lay down a harmonised framework specifying who, other than the manufacturer or other data holder is entitled to access the data generated by

adopt or maintain additional national requirements on those matters falling within the scope of this Regulation, unless explicitly provided for in this Regulation, since this would affect the direct and uniform application of this Regulation.

products or related services, under which conditions and on what basis. Accordingly, Member States should not adopt or maintain additional national requirements on those matters falling within the scope of this Regulation, unless explicitly provided for in this Regulation, since this would affect the direct and uniform application of this Regulation.

Or. en

### Amendment 3

#### Proposal for a regulation

##### Recital 6

*Text proposed by the Commission*

(6) Data generation is the result of the actions of at least two actors, the designer or manufacturer of a product and the user of that product. It gives rise to questions of fairness in the digital economy, because the data recorded by such products or related services are an important input for aftermarket, ancillary and other services. ***In order to realise the important economic benefits of data as*** a non-rival good for the economy and society, a general approach to assigning access and usage rights on data is preferable to awarding exclusive rights of access and use.

*Amendment*

(6) Data generation is the result of the actions of at least two actors, the designer or manufacturer of a product and the user of that product. It gives rise to questions of fairness in the digital economy, because the data recorded by such products or related services are an important input for aftermarket, ancillary and other services. ***Taking into account the fact that data is a non-rival good and that the important benefits*** for the economy and society ***increase the more it is shared and used***, a general approach to assigning access and usage rights on data is preferable to awarding exclusive rights of access and use.

Or. en

### Amendment 4

#### Proposal for a regulation

##### Recital 13

*Text proposed by the Commission*

(13) This Regulation is without prejudice to the competences of the Member States regarding activities concerning public security, defence and national security in accordance with Union law, and ***activities from customs on risk management and in general, verification of compliance with the Customs Code by economic operators.***

*Amendment*

(13) This Regulation is without prejudice to ***Union and national law that provides for the protection of intellectual property, including Directives 2001/29/EC and 2004/48/EC of the European Parliament and the Council,*** the competences of the Member States regarding activities concerning public security, defence and national security in accordance with Union law, and ***Directive (EU) 2019/790 of the European Parliament and the Council.***

Or. en

*Justification*

*Deletion of a duplication in recital 10.*

**Amendment 5**

**Proposal for a regulation  
Recital 14**

*Text proposed by the Commission*

(14) Physical products that obtain, generate or collect, by means of their components, data concerning their performance, use or environment and that are able to communicate that data via a publicly available electronic communications service (often referred to as the Internet of Things) should be covered by this Regulation. Electronic communications services include land-based telephone networks, television cable networks, satellite-based networks and near-field communication networks. Such products may include vehicles, home equipment and consumer goods, medical and health devices or agricultural and industrial machinery. The data represent the digitalisation of user actions and events

*Amendment*

(14) Physical products that obtain, generate or collect, by means of their components ***or operating systems*** data concerning their performance, use or environment and that are able to communicate that data via a publicly available electronic communications service (often referred to as the Internet of Things) should be covered by this Regulation ***with the exception of prototypes.*** Electronic communications services include land-based telephone networks, television cable networks, satellite-based networks and near-field communication networks. Such products may include vehicles, home equipment and consumer goods, medical and health devices or agricultural and industrial



and should accordingly be accessible to the user, while information derived or inferred from this data, where lawfully held, should not be considered within scope of this Regulation. Such data are potentially valuable to the user and support innovation and the development of digital and other services protecting the environment, health and the circular economy, in particular though facilitating the maintenance and repair of the products in question.

machinery. The data represent the digitalisation of user actions and events and should accordingly be accessible to the user, while information derived or inferred from this data, where lawfully held, should not be considered within scope of this Regulation. Such data are potentially valuable to the user and support innovation and the development of digital and other services protecting the environment, health and the circular economy, in particular though facilitating the maintenance and repair of the products in question. ***This Regulation applies to products placed on the market in the Union and thus does not apply to products in development stage such as prototypes.***

Or. en

#### *Justification*

*In order not to hamper investment in research and innovation the Regulation should not apply to prototypes*

### **Amendment 6**

#### **Proposal for a regulation Recital 16**

##### *Text proposed by the Commission*

(16) It is necessary to lay down rules applying to connected products that incorporate or are interconnected with a service in such a way that the absence of the service would prevent the product from performing ***its*** functions. Such related services can be part of the sale, rent or lease agreement, or such services are normally provided for products of the same type and the user could reasonably expect them to be provided given the nature of the product and taking into account any public statement made by or on behalf of the seller, renter, lessor or other persons in previous links of the chain of transactions,

##### *Amendment*

(16) It is necessary to lay down rules applying to connected products that, ***at the time of the sale, rental or leasing agreement*** incorporate or are interconnected with a service in such a way that the absence of the service would prevent the product from performing ***one of its main*** functions. Such related services can be part of the sale, rent or lease agreement, or such services are normally provided for products of the same type and the user could reasonably expect them to be provided given the nature of the product and taking into account any public statement made by or on behalf of the

including the manufacturer. These related services may themselves generate data of value to the user independently of the data collection capabilities of the product with which they are interconnected. This Regulation should also apply to a related service that is not supplied by the seller, renter or lessor itself, but is supplied, under the sales, rental or lease contract, by a third party. In the event of doubt as to whether the supply of service forms part of the sale, rent or lease contract, this Regulation should apply.

seller, renter, lessor or other persons in previous links of the chain of transactions, including the manufacturer. These related services may themselves generate data of value to the user independently of the data collection capabilities of the product with which they are interconnected. ***Neither the power supply nor the supply of the connectivity are to be interpreted as related services under this Regulation.*** This Regulation should also apply to a related service that is not supplied by the seller, renter or lessor itself, but is supplied, under the sales, rental or lease contract, by a third party. In the event of doubt as to whether the supply of service forms part of the sale, rent or lease contract, this Regulation should apply.

Or. en

#### *Justification*

*Access to electronic communications services data and metadata are covered by the ePrivacy directive.*

### **Amendment 7**

#### **Proposal for a regulation**

##### **Recital 17**

###### *Text proposed by the Commission*

(17) Data generated by the use of a product or related service include data recorded intentionally by the user. Such data include also data generated as a by-product of the user's action, such as diagnostics data, and without any action by the user, such as when the product is in 'standby mode', and data recorded during periods when the product is switched off. Such data should include data in the form and format in which they are generated by the product, but not pertain to data resulting from any software process that calculates derivative data from such data as

###### *Amendment*

(17) Data generated by the use of a product or related service include data recorded intentionally by the user. Such data include also data generated as a by-product of the user's action, such as diagnostics data, and ***data recorded by a device*** without any action by the user, such as when the product is in 'standby mode' ***but still generate data, such as about the charging status of a battery***, and data recorded during periods when the product is switched off. Such data should include data in the form and format in which they are generated by the product, but not

such software process may be subject to intellectual property rights.

pertain to data resulting from any software process that calculates derivative data from such data as such software process may be subject to intellectual property rights.

Or. en

### *Justification*

*The amendment clarifies the type of data that is subject to the access obligations*

## **Amendment 8**

### **Proposal for a regulation Recital 18**

#### *Text proposed by the Commission*

(18) The user of a product should be understood as the legal or natural person, such as a business *or* consumer, which has purchased, rented or leased the product. Depending on the legal title under which he uses it, such a user bears the risks and enjoys the benefits of using the connected product and should enjoy also the access to the data it generates. The user should therefore be entitled to derive benefit from data generated by that product and any related service.

#### *Amendment*

(18) The user of a product should be understood as the legal or natural person, such as a business, consumer *or public sector body* which has purchased, rented or leased the product. Depending on the legal title under which he uses it, such a user bears the risks and enjoys the benefits of using the connected product and should enjoy also the access to the data it generates. The user should therefore be entitled to derive benefit from data generated by that product and any related service.

Or. en

## **Amendment 9**

### **Proposal for a regulation Recital 19**

#### *Text proposed by the Commission*

(19) In practice, not all data generated by products or related services are easily accessible to their users, and there are often limited possibilities for the portability of

#### *Amendment*

(19) In practice, not all data generated by products or related services are easily accessible to their users, and there are often limited possibilities for the portability of

data generated by products connected to the Internet of Things. Users are unable to obtain data necessary to make use of providers of repair and other services, and businesses are unable to launch innovative, more efficient and convenient services. In **many** sectors, manufacturers are often able to determine, through their control of the technical design of the product or related services, what data are generated and how they can be accessed, even though they have no legal right to the data. It is therefore necessary to ensure that products are designed and manufactured and related services are provided in such a manner that data generated by their use **are** always easily accessible to the user.

data generated by products connected to the Internet of Things. Users are unable to obtain data necessary to make use of providers of repair and other services, and businesses are unable to launch innovative, more efficient and convenient services. In **some** sectors, manufacturers are often able to determine, through their control of the technical design of the product or related services, what data are generated and how they can be accessed, even though they have no legal right to the data. It is therefore necessary to ensure that products are designed and manufactured and related services are provided in such a manner that data generated by their use **and that are accessible to the manufacturer or a party of choice are also** always easily accessible to the user. ***This should exclude data generated by the use of a product where the design of the product does not foresee such data to be stored or transmitted outside the component in which they are generated or the product as a whole. This Regulation does not set an obligation to store data additionally on the central computing unit of a product where this would be disproportionate in relation to the expected use. This should not prevent the manufacturer or data holder to voluntarily agree with the user on making such adaptation.***

Or. en

### *Justification*

*Additional clarification concerning chapters II, III and IV*

## **Amendment 10**

### **Proposal for a regulation Recital 21**

*Text proposed by the Commission*

(21) Products may be designed to make

*Amendment*

(21) Products may be designed to make

certain data directly available from an on-device data storage or from a remote server to which the data are communicated. Access to the on-device data storage may be enabled via cable-based or wireless local area networks connected to a publicly available electronic communications service or a mobile network. The server may be the manufacturer's own local server capacity or that of a third party or a cloud service provider who functions as data holder. **They** may be designed to permit the user or a third party to process the data on the product **or** on a computing instance of the manufacturer.

certain data directly available from an on-device data storage or from a remote server to which the data are communicated. Access to the on-device data storage may be enabled via cable-based or wireless local area networks connected to a publicly available electronic communications service or a mobile network. The server may be the manufacturer's own local server capacity or that of a third party or a cloud service provider who functions as data holder. **Products** may be designed to permit the user or a third party to process the data on the product, on a computing instance of the manufacturer **or on an IT environment chosen by the user or the third party.**

Or. en

#### *Justification*

*Provides further case scenarios of how products may be designed to allow access to data.*

## **Amendment 11**

### **Proposal for a regulation Recital 23**

#### *Text proposed by the Commission*

(23) Before concluding a contract for the purchase, rent, or lease of a product or the provision of a related service, clear and sufficient information should be provided to the user on how the data generated may be accessed. This obligation provides transparency over the data generated and enhances the easy access for the user. This obligation to provide information does not affect the obligation for the controller to provide information to the data subject pursuant to Article 12, 13 and 14 of Regulation 2016/679.

#### *Amendment*

(23) Before concluding a contract for the purchase, rent, or lease of a product or the provision of a related service, clear and sufficient information should be provided **by the data holder** to the user on how the data generated may be accessed. This obligation provides transparency over the data generated and enhances the easy access for the user. **The information obligation should fall on the data holder, independently of whether the data holder concluded a contract for the sale, rent or lease of a product or the provision of a related service. If the data holder is not the seller, renter or lessor, the data holder should ensure that the user receives the**

*required information, for instance from the seller, renter or lessor. In this regard, the data holder should be able to agree in the contract with the seller, renter or lessor, to provide the information to the user. The transparency obligation could be fulfilled by the data holder for example by, maintaining a stable uniform resource locator (URL) on the web, which can be distributed as a web link or QR code, pointing to the relevant information. Such a URL could be provided by the seller, renter or lessor to the user before concluding the contract for the purchase, rent or leasing of a product or the provision of a related service. It is in any case necessary to ensure that it is possible for the user to store the information in a way that is accessible for future reference and that allows the unchanged reproduction of the information stored.*

This obligation to provide information does not affect the obligation for the controller to provide information to the data subject pursuant to Article 12, 13 and 14 of Regulation 2016/679.

Or. en

#### *Justification*

*Provides further clarification on who the data holder can comply with its information obligations*

### **Amendment 12**

#### **Proposal for a regulation**

##### **Recital 25**

###### *Text proposed by the Commission*

(25) In sectors characterised by the concentration of a small number of manufacturers supplying end users, there are only limited options available to users with regard to sharing data with those manufacturers. In such circumstances,

###### *Amendment*

(25) In sectors characterised by the concentration of a small number of manufacturers supplying end users, there are only limited options available to users with regard to sharing data with those manufacturers. In such circumstances,

contractual agreements may be insufficient to achieve the objective of user empowerment. The data tends to remain under the control of the manufacturers, making it difficult for users to obtain value from the data generated by the equipment they purchase or lease. Consequently, there is limited potential for innovative smaller businesses to offer data-based solutions in a competitive manner and for a diverse data economy in Europe. This Regulation should therefore build on recent developments in specific sectors, such as the Code of Conduct on agricultural data sharing by contractual agreement. Sectoral legislation may be brought forward to address sector-specific needs and objectives. Furthermore, the data holder should not use any data generated by the use of the product or related service in order to derive insights about the economic situation of the user or its assets or production methods or the use in any other way that could undermine the commercial position of the user on the markets it is active on. This would, for instance, involve using knowledge about the overall performance of a business or a farm in contractual negotiations with the user on potential acquisition of the user's products or agricultural produce to the user's detriment, or for instance, using such information to feed in larger databases on certain markets in the aggregate (,e.g. databases on crop yields for the upcoming harvesting season) as such use could affect the user negatively in an indirect manner. The user should be given the necessary technical interface to manage permissions, preferably with granular permission options (such as "allow once" or "allow while using this app or service"), including the option to withdraw permission.

contractual agreements may be insufficient to achieve the objective of user empowerment. The data tends to remain under the control of the manufacturers, making it difficult for users to obtain value from the data generated by the equipment they purchase or lease. Consequently, there is limited potential for innovative smaller businesses to offer data-based solutions in a competitive manner and for a diverse data economy in Europe. This Regulation should therefore build on recent developments in specific sectors, such as the Code of Conduct on agricultural data sharing by contractual agreement. Sectoral legislation may be brought forward to address sector-specific needs, ***security concerns*** and objectives. Furthermore, the data holder should not use any data generated by the use of the product or related service in order to derive insights about the economic situation of the user or its assets or production methods or the use in any other way that could undermine the commercial position of the user on the markets it is active on. This would, for instance, involve using knowledge about the overall performance of a business or a farm in contractual negotiations with the user on potential acquisition of the user's products or agricultural produce to the user's detriment, or for instance, using such information to feed in larger databases on certain markets in the aggregate (,e.g. databases on crop yields for the upcoming harvesting season) as such use could affect the user negatively in an indirect manner. The user should be given the necessary technical interface to manage permissions, preferably with granular permission options (such as "allow once" or "allow while using this app or service"), including the option to withdraw permission.

Or. en



## *Justification*

*Specific sectorial security and safety concerns that might arise due to the provisions of this regulation should be treated in sectorial legislation.*

### **Amendment 13**

#### **Proposal for a regulation Recital 28**

##### *Text proposed by the Commission*

(28) ***The user should be free to use the data for any lawful purpose. This includes providing the data the user has received exercising the right under this Regulation to a third party offering an aftermarket service that may be in competition with a service provided by the data holder, or to instruct the data holder to do so. The data holder should ensure that the data made available to the third party is as accurate, complete, reliable, relevant and up-to-date as the data the data holder itself may be able or entitled to access from the use of the product or related service.*** Any trade secrets or intellectual property rights should be respected in handling the data. It is important to preserve incentives to invest in products with functionalities based on the use of data from sensors built into that product. The aim of this Regulation should accordingly be understood as to foster the development of new, innovative products or related services, stimulate innovation on aftermarkets, but also stimulate the development of entirely novel services making use of the data, including based on data from a variety of products or related services. At the same time, it aims to avoid undermining the investment incentives for the type of product from which the data are obtained, for instance, by the use of data to develop a competing product.

##### *Amendment*

(28) Any trade secrets or intellectual property rights should be respected in handling the data. ***This Regulation should be interpreted in a manner that it preserves the protection awarded to trade secrets under Directive (EU) 2016/943. For this reason, data holders should be able to require the user or third parties of the users' choice to preserve the secrecy of data considered as trade secrets, including through technical means. However data holders should not be able to refuse a data access request under this Regulation on the grounds that certain data is considered to be a trade secret since this would undermine the main objective of this Regulation.*** It is important to preserve incentives to invest in products with functionalities based on the use of data from sensors built into that product. The aim of this Regulation should accordingly be understood as to foster the development of new, innovative products or related services, stimulate innovation on aftermarkets, but also stimulate the development of entirely novel services making use of the data, including based on data from a variety of products or related services. At the same time, it aims to avoid undermining the investment incentives for the type of product from which the data are obtained, for instance, by the use of data to develop a competing product.

Or. en



## *Justification*

*further clarification on how the Data Act protects trade secrets*

### **Amendment 14**

#### **Proposal for a regulation**

##### **Recital 31**

###### *Text proposed by the Commission*

(31) Data generated by the use of a product or related service should only be made available to a third party at the request of the user. This Regulation accordingly complements the right provided under Article 20 of Regulation (EU) 2016/679. That Article provides for a right of data subjects to receive personal data concerning them in a structured, commonly used and machine-readable format, and to port those data to other controllers, where those data are processed on the basis of Article 6(1), point (a), or Article 9(2), point (a), or of a contract pursuant to Article 6(1), point (b). Data subjects also have the right to have the personal data transmitted directly from one controller to another, but only where technically feasible. Article 20 specifies that it pertains to data provided by the data subject but does not specify whether this necessitates active behaviour on the side of the data subject or whether it also applies to situations where a product or related service by its design observes the behaviour of a data subject or other information in relation to a data subject in a passive manner. The right under this Regulation complements the right to receive and port personal data under Article 20 of Regulation (EU) 2016/679 in several ways. It grants users the right to access and make available to a third party to any data generated by the use of a product or related service, irrespective of its nature as personal data, of the

###### *Amendment*

(31) Data generated by the use of a product or related service should only be made available to a third party at the request of the user. This Regulation accordingly complements the right provided under Article 20 of Regulation (EU) 2016/679. That Article provides for a right of data subjects to receive personal data concerning them in a structured, commonly used and machine-readable format, and to port those data to other controllers, where those data are processed **by automated means** on the basis of Article 6(1), point (a), or Article 9(2), point (a), or of a contract pursuant to Article 6(1), point (b). Data subjects also have the right to have the personal data transmitted directly from one controller to another, but only where technically feasible. Article 20 specifies that it pertains to data provided by the data subject but does not specify whether this necessitates active behaviour on the side of the data subject or whether it also applies to situations where a product or related service by its design observes the behaviour of a data subject or other information in relation to a data subject in a passive manner. The right under this Regulation complements the right to receive and port personal data under Article 20 of Regulation (EU) 2016/679 in several ways. It grants users the right to access and make available to a third party to any data generated by the use of a product or related service, irrespective of its nature as personal data, of the

distinction between actively provided or passively observed data, and irrespective of the legal basis of processing. Unlike the *technical* obligations provided for in Article 20 of Regulation (EU) 2016/679, this Regulation *mandates and* ensures the technical feasibility of third party access for all types of data coming within its scope, whether personal or non-personal. It also allows the data holder to set reasonable compensation to be met by third parties, but not by the user, for any cost incurred in providing direct access to the data generated by the user's product. If a data holder and third party are unable to agree terms for such direct access, the data subject should be in no way prevented from exercising the rights contained in Regulation (EU) 2016/679, including the right to data portability, by seeking remedies in accordance with that Regulation. It is to be understood in this context that, in accordance with Regulation (EU) 2016/679, a contractual agreement does not allow for the processing of special categories of personal data by the data holder or the third party.

distinction between actively provided or passively observed data, and irrespective of the legal basis of processing. Unlike the obligations provided for in Article 20 of Regulation (EU) 2016/679, this Regulation ensures *that technical obstacles do not hinder or prevent access to data by mandating and ensuring* the technical feasibility of third party access for all types of data coming within its scope, whether personal or non-personal. It also allows the data holder to set reasonable compensation to be met by third parties, but not by the user, for any cost incurred in providing direct access to the data generated by the user's product. If a data holder and third party are unable to agree terms for such direct access, the data subject should be in no way prevented from exercising the rights contained in Regulation (EU) 2016/679, including the right to data portability, by seeking remedies in accordance with that Regulation. It is to be understood in this context that, in accordance with Regulation (EU) 2016/679, a contractual agreement does not allow for the processing of special categories of personal data by the data holder or the third party.

Or. en

## **Amendment 15**

### **Proposal for a regulation**

#### **Recital 36**

*Text proposed by the Commission*

(36) Start-ups, small and medium-sized enterprises and companies from traditional sectors with less-developed digital capabilities struggle to obtain access to relevant data. This Regulation aims to facilitate access to data for these entities, while ensuring that the corresponding obligations are scoped as proportionately

*Amendment*

(36) Start-ups, small and medium-sized enterprises and companies from traditional sectors with less-developed digital capabilities struggle to obtain access to relevant data. This Regulation aims to facilitate access to data for these entities, while ensuring that the corresponding obligations are scoped as proportionately

as possible to avoid overreach. At the same time, a small number of very large companies have emerged with considerable economic power in the digital economy through the accumulation and aggregation of vast volumes of data and the technological infrastructure for monetising them. These companies include undertakings that provide core platform services controlling whole platform ecosystems in the digital economy and whom existing or new market operators are unable to challenge or contest. The [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)] aims to redress these inefficiencies and imbalances by allowing the Commission to designate a provider as a “gatekeeper”, and imposes a number of obligations on such designated gatekeepers, including a prohibition to combine certain data without consent, and an obligation to ensure effective rights to data portability under Article 20 of Regulation (EU) 2016/679. Consistent with the [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)], and given the unrivalled ability of these companies to acquire data, it would not be necessary to achieve the objective of this Regulation, and would thus be disproportionate in relation to data holders made subject to such obligations, to include such gatekeeper undertakings as beneficiaries of the data access right. This means that an undertaking providing core platform services that has been designated as a gatekeeper cannot request or be granted access to users’ data generated by the use of a product or related service or by a virtual assistant based on the provisions of Chapter II of this Regulation. An undertaking providing core platform services designated as a gatekeeper pursuant to Digital Markets Act should be understood to include all legal entities of a group of companies where one legal entity provides a core platform service. Furthermore, third parties to whom data are

as possible to avoid overreach. At the same time, a small number of very large companies have emerged with considerable economic power in the digital economy through the accumulation and aggregation of vast volumes of data and the technological infrastructure for monetising them. These companies include undertakings that provide core platform services controlling whole platform ecosystems in the digital economy and whom existing or new market operators are unable to challenge or contest. The [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)] aims to redress these inefficiencies and imbalances by allowing the Commission to designate a provider as a “gatekeeper”, and imposes a number of obligations on such designated gatekeepers, including a prohibition to combine certain data without consent, and an obligation to ensure effective rights to data portability under Article 20 of Regulation (EU) 2016/679. Consistent with the [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)], and given the unrivalled ability of these companies to acquire data, it would not be necessary to achieve the objective of this Regulation, and would thus be disproportionate in relation to data holders made subject to such obligations, to include such gatekeeper undertakings as beneficiaries of the data access right. This means that an undertaking providing core platform services that has been designated as a gatekeeper cannot request or be granted access to users’ data generated by the use of a product or related service or by a virtual assistant based on the provisions of Chapter II of this Regulation. An undertaking providing core platform services designated as a gatekeeper pursuant to Digital Markets Act should be understood to include all legal entities of a group of companies where one legal entity provides a core platform service. Furthermore, third parties to whom data are

made available at the request of the user may not make the data available to a designated gatekeeper. For instance, the third party may not sub-contract the service provision to a gatekeeper. However, this does not prevent third parties from using data processing services offered by a designated gatekeeper. This exclusion of designated gatekeepers from the scope of the access right under this Regulation does not prevent these companies from obtaining data through other lawful means.

made available at the request of the user may not make the data available to a designated gatekeeper. For instance, the third party may not sub-contract the service provision to a gatekeeper. However, this does not prevent third parties from using data processing services offered by a designated gatekeeper. This exclusion of designated gatekeepers from the scope of the access right under this Regulation does not prevent these companies from obtaining data through other lawful means. ***In particular, it should continue to be possible for manufacturers to contractually agree with gatekeepers that data from the products that they manufacture can be used by a gatekeeper service.***

Or. en

#### *Justification*

*further clarification on how this regulation applies to gatekeepers*

### **Amendment 16**

#### **Proposal for a regulation Recital 37**

##### *Text proposed by the Commission*

(37) Given the current state of technology, it is overly burdensome to impose further design obligations in relation to products manufactured or designed and related services provided by micro **and** small enterprises. That is not the case, however, where **a micro or small enterprise** is sub-contracted to manufacture or design a product. In such situations, the enterprise, which has sub-contracted to the **micro or small enterprise**, is able to compensate the sub-contractor appropriately. **A micro or small enterprise** may nevertheless be subject to the requirements laid down by this Regulation

##### *Amendment*

(37) Given the current state of technology, it is overly burdensome to impose further design obligations in relation to products manufactured or designed and related services provided by micro, small **and medium-sized** enterprises (**SMEs**). That is not the case, however, where **an SME** is sub-contracted to manufacture or design a product. In such situations, the enterprise, which has sub-contracted to the **SME**, is able to compensate the sub-contractor appropriately. **An SME** may nevertheless be subject to the requirements laid down by this Regulation as data holder, where it is

as data holder, where it is not the manufacturer of the product or a provider of related services.

not the manufacturer of the product or a provider of related services.

Or. en

*Justification*

*Exclusion should be extended to all SMEs*

**Amendment 17**

**Proposal for a regulation  
Recital 38 a (new)**

*Text proposed by the Commission*

*Amendment*

***(38a) In order to take account of the variety of products in scope producing data of different nature, volume and speed, presenting different levels of cybersecurity risks and providing economic opportunities of different value, this Regulation assumes that the data holder and the third party conclude a contractual agreement on the arrangements under which the right to share data with third parties is fulfilled. Those arrangements should be fair, reasonable, non-discriminatory and transparent. The non-binding model contractual terms for business-to-business data sharing to be developed by the Commission should provide guidance in that respect. The right to share data with third parties is however not conditional upon the existence of such an agreement.***

Or. en

*Justification*

*Additional clarification on contractual agreements that govern the modalities of data sharing*

## Amendment 18

### Proposal for a regulation Recital 42

#### *Text proposed by the Commission*

(42) In order to incentivise the continued investment in generating valuable data, including investments in relevant technical tools, this Regulation contains the principle that the data holder may request reasonable compensation when legally obliged to make data available to the data recipient. These provisions should not be understood as paying for the data itself, but in the case of **micro, small or medium-sized enterprises**, for the costs incurred and investment required for making the data available.

#### *Amendment*

(42) In order to incentivise the continued investment in generating valuable data, including investments in relevant technical tools, this Regulation contains the principle that the data holder may request reasonable compensation, **which could be related to the share of expected profit**, when legally obliged to make data available to the data recipient. These provisions should not be understood as paying for the data itself, but in the case of **SMEs**, for the costs incurred and investment required for making the data available.

Or. en

#### *Justification*

*The amendment intends to give further precision to the term "reasonable compensation"*

## Amendment 19

### Proposal for a regulation Recital 55

#### *Text proposed by the Commission*

(55) If a contractual term is not included in the list of terms that are always considered unfair or that are presumed to be unfair, the general unfairness provision applies. In this regard, the terms listed as unfair terms should serve as a yardstick to interpret the general unfairness provision. Finally, model contractual terms for business-to-business data sharing contracts to be developed and recommended by the Commission may also be helpful to commercial parties when negotiating contracts.

#### *Amendment*

(55) ***In order to ensure legal certainty, this Regulation establishes a list with clauses that are always considered to be unfair and a list with clauses that are presumed to be unfair. In the latter case, the enterprise that imposed the contract term should rebut the presumption by demonstrating that the contract term listed is not unfair in the specific case at hand.*** If a contractual term is not included in the list of terms that are always considered unfair or that are presumed to be unfair, the general unfairness provision

applies. In this regard, the terms listed as unfair terms should serve as a yardstick to interpret the general unfairness provision. Finally, model contractual terms for business-to-business data sharing contracts to be developed and recommended by the Commission may also be helpful to commercial parties when negotiating contracts.

Or. en

## Amendment 20

### Proposal for a regulation Recital 56

#### *Text proposed by the Commission*

(56) In situations of exceptional need, it may be necessary for public sector bodies or Union institutions, agencies or bodies to use data held by an enterprise to respond to public emergencies or in other exceptional cases. Research-performing organisations and research-funding organisations could also be organised as public sector bodies or bodies governed by public law. To limit the burden on businesses, *micro and small enterprises* should be exempted from the obligation to provide public sector bodies and Union institutions, agencies or bodies data in situations of exceptional need.

#### *Amendment*

(56) In situations of exceptional need, it may be necessary for public sector bodies or Union institutions, agencies or bodies to use data held by an enterprise to respond to public emergencies or in other exceptional cases. Research-performing organisations and research-funding organisations could also be organised as public sector bodies or bodies governed by public law. To limit the burden on businesses, *SMEs* should be exempted from the obligation to provide public sector bodies and Union institutions, agencies or bodies data in situations of exceptional need.

Or. en

## Amendment 21

### Proposal for a regulation Recital 58

#### *Text proposed by the Commission*

(58) An exceptional need may also arise when a public sector body can demonstrate

#### *Amendment*

(58) An exceptional need may also arise when a public sector body can demonstrate



that the data are necessary either to prevent **a** public emergency, or to assist recovery from a public emergency, in circumstances that are reasonably proximate to the public emergency in question. Where the exceptional need is not justified by the need to respond to, prevent or assist recovery from a public emergency, the public sector body or the Union institution, agency or body should demonstrate that the lack of timely access to and the use of the data requested prevents it from effectively fulfilling a specific task in the public interest that has been explicitly provided in law. Such exceptional need may also occur in other situations, for example in relation to the timely compilation of official statistics when data is not otherwise available or when the burden on statistical respondents will be considerably reduced. At the same time, the public sector body or the Union institution, agency or body should, outside the case of responding to, preventing or assisting recovery from a public emergency, demonstrate that no alternative means for obtaining the data requested exists and that the data cannot be obtained in a timely manner through the laying down of the necessary data provision obligations in new legislation.

that the data are necessary either to prevent **an imminent** public emergency, or to assist recovery from a public emergency, in circumstances that are reasonably proximate to the public emergency in question. Where the exceptional need is not justified by the need to respond to, prevent or assist recovery from a public emergency, the public sector body or the Union institution, agency or body should demonstrate that the lack of timely access to and the use of the data requested prevents it from effectively fulfilling a specific task in the public interest that has been explicitly provided in law. Such exceptional need may also occur in other situations, for example in relation to the timely compilation of official statistics when data is not otherwise available or when the burden on statistical respondents will be considerably reduced. At the same time, the public sector body or the Union institution, agency or body should, outside the case of responding to, preventing or assisting recovery from a public emergency, demonstrate that no alternative means for obtaining the data requested exists and that the data cannot be obtained in a timely manner through the laying down of the necessary data provision obligations in new legislation.

Or. en

## Amendment 22

### Proposal for a regulation Recital 60 a (new)

*Text proposed by the Commission*

*Amendment*

***(60a) During a crisis due to a public emergency, there is a risk of lack of coordination among local, regional and national authorities affected. Such lack of coordination may result in a multiplicity of request of data and an unjustified***



*pressure on the data holders to which the data will be requested. Member States should have in place governance mechanism to manage such situations, in particular for the request of data.*

Or. en

## Amendment 23

### Proposal for a regulation Recital 67

#### *Text proposed by the Commission*

(67) When the safeguarding of a significant public good is at stake, such as is the case of responding to public emergencies, the public sector body or the Union institution, agency or body should not be expected to compensate enterprises for the data obtained. Public emergencies are rare events and not all such emergencies require the use of data held by enterprises. The business activities of the data holders are therefore not likely to be negatively affected as a consequence of the public sector bodies or Union institutions, agencies or bodies having recourse to this Regulation. However, *as cases of an exceptional need other than responding to a public emergency **might be more frequent, including cases of prevention of or recovery from a public emergency**, data holders should **in such cases** be entitled to a **reasonable compensation** which should **not exceed** the technical and organisational costs incurred in complying with the request and the reasonable margin required for making the data available to the public sector body or to the Union institution, agency or body. **The compensation should not be understood as constituting payment for the data itself and as being compulsory.***

#### *Amendment*

(67) When the safeguarding of a significant public good is at stake, such as is the case of responding to public emergencies, the public sector body or the Union institution, agency or body should not be expected to compensate enterprises for the data obtained. Public emergencies are rare events and not all such emergencies require the use of data held by enterprises. The business activities of the data holders are therefore not likely to be negatively affected as a consequence of the public sector bodies or Union institutions, agencies or bodies having recourse to this Regulation. However, *in cases of exceptional need other than responding to a public emergency data holders should be entitled to a **fair remuneration** which should **at the least cover** the technical and organisational costs incurred in complying with the request and the reasonable margin required for making the data available to the public sector body or to the Union institution, agency or body.*

Or. en

## Amendment 24

### Proposal for a regulation Recital 81 a (new)

*Text proposed by the Commission*

*Amendment*

***(81a) In order to further enhance coordination in the enforcement of this Regulation, the recently established European Data Innovation Board by the Data Governance Act should foster the mutual exchange of information amongst competent authorities as well as advise and assist the Commission in all matters falling under this Regulation.***

Or. en

*Justification*

*To provide the European Data Innovation Board established in the Data Governance Act a role in coordinating enforcement*

## Amendment 25

### Proposal for a regulation Article 1 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. This Regulation lays down harmonised rules on making data generated by the use of a product or related service available to the user of that product or service, on the making data available by data holders to data recipients, ***and*** on the making data available by data holders to public sector bodies or Union institutions, agencies or bodies, where there is an exceptional need, for the performance of a task carried out in the public interest:

1. This Regulation lays down harmonised rules on making data generated by the use of a product or related service available to the user of that product or service, on the making data available by data holders to data recipients, on the making data available by data holders to public sector bodies or Union institutions, agencies or bodies, where there is an exceptional need, for the performance of a task carried out in the public interest, ***on facilitating switching between data processing services, on introducing safeguards against unlawful third party access to non-personal data, and on***

***providing for the development of interoperability standards for data to be transferred and used.***

Or. en

*Justification*

*article 1 should reflect the entire scope of the Regulation*

**Amendment 26**

**Proposal for a regulation  
Article 1 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. This Regulation covers personal and non-personal data, including the following types of data or in the following contexts:***

***(a) Chapter II applies to data concerning the performance, use and environment of products and related services;***

***(b) Chapter III applies to any private sector data subject to statutory data sharing obligations;***

***(c) Chapter IV applies to any private sector data accessed and used on the basis of contractual agreements between businesses;***

***(d) Chapter V applies to any private sector data with a focus on non-personal data;***

***(e) Chapter VI applies to any data processed by data processing services;***

***(f) Chapter VII applies to any non-personal data held in the Union by providers of data processing services.***

Or. en

*Justification*

*To give legal certainty on the data that is subject to each of the chapters of the Regulation*

**Amendment 27**

**Proposal for a regulation**

**Article 1 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) manufacturers of products and suppliers of related services placed on the market in the Union and the **users** of such products or services;

*Amendment*

(a) manufacturers of products and suppliers of related services placed on the market in the Union, ***irrespective of their place of establishment***, and the ***use*** of such products or ***related services in the Union***;

Or. en

*Justification*

*Adds further precision on the scope of the Regulation*

**Amendment 28**

**Proposal for a regulation**

**Article 1 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) data holders that make data available to data recipients in the Union;

*Amendment*

(b) data holders, ***irrespective of their place of establishment***, that make data available to data recipients in the Union;

Or. en

*Justification*

*Adds further precision on the scope of the Regulation*

**Amendment 29**

**Proposal for a regulation**

**Article 1 – paragraph 2 – point e**

*Text proposed by the Commission*

(e) providers of data processing services offering such services to customers in the Union.

*Amendment*

(e) providers of data processing services, ***irrespective of their place of establishment***, offering such services to customers in the Union.

Or. en

*Justification*

*Adds further precision on the scope of the Regulation*

### **Amendment 30**

#### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) "personal data" means personal data as defined in Article 4, point (1), of Regulation (EU) 2016/679;***

Or. en

### **Amendment 31**

#### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***(1b) "non-personal data" means data other than personal data;***

Or. en

### **Amendment 32**

#### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 1 c (new)**

*Text proposed by the Commission*

*Amendment*

**(1c) "data subject" means data subject as referred to in Article 4, point (1), of Regulation (EU) 2016/679;**

Or. en

### **Amendment 33**

#### **Proposal for a regulation Article 2 – paragraph 1 – point 2**

*Text proposed by the Commission*

*Amendment*

(2) ‘product’ means a tangible, ***movable item, including where incorporated in an immovable item***, that obtains, generates or collects, data concerning its use or environment, and that is able to communicate data via a publicly available electronic communications service and whose primary function is not the storing and processing of data;

(2) ‘product’ means a tangible ***item*** that obtains, generates or collects, data concerning its use or environment, and that is able to communicate data via a publicly available electronic communications service and whose primary function is not the storing and processing of data ***nor is it primarily designed to display or play content, or to record and transmit content***;

Or. en

#### *Justification*

*The "movable" nature of the item should not be a prerequisite in order to fall under the definition of "product"*

### **Amendment 34**

#### **Proposal for a regulation Article 2 – paragraph 1 – point 3**

*Text proposed by the Commission*

*Amendment*

(3) ‘related service’ means a digital service, including software, which is ***incorporated in or*** inter-connected with a product in such a way that its absence would prevent the product from performing

(3) ‘related service’ means a digital service, including software, which is ***at the time of the purchase, rental or leasing agreement*** inter-connected with a product in such a way that its absence would prevent the product from performing one

one of its functions;

of its functions;

Or. en

## Amendment 35

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 4

##### *Text proposed by the Commission*

(4) ‘virtual assistants’ means software that can process demands, tasks or questions including based on audio, written input, gestures or motions, and based on those demands, tasks or questions provides access ***their own and third party*** services or ***control their own and third party*** devices;

##### *Amendment*

(4) ‘virtual assistants’ means software that can process demands, tasks or questions including ***those*** based on audio, written input, gestures or motions, and based on those demands, tasks or questions provides access ***to other*** services or ***controls connected physical*** devices;

Or. en

## Amendment 36

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 5

##### *Text proposed by the Commission*

(5) ‘user’ means a natural or legal person that owns, ***rents or leases*** a product or receives a services;

##### *Amendment*

(5) ‘user’ means a natural or legal person, ***including a data subject***, that owns a product or receives a ***related service or to whom the owner of the connected product has transferred, on the basis of a rental or leasing agreement, temporary rights to use the connected product or receive related*** services;

Or. en

## Amendment 37

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 10

*Text proposed by the Commission*

(10) ‘public emergency’ means an exceptional situation negatively affecting the population of the Union, a Member State or part of it, with a risk of serious and lasting repercussions on living conditions or economic stability, or the substantial degradation of economic assets in the Union or the relevant Member State(s);

*Amendment*

(10) ‘public emergency’ means an exceptional situation negatively **and suddenly** affecting the population of the Union, a Member State or part of it, with a risk of serious and lasting repercussions on living conditions or economic stability, or the substantial **and immediate** degradation of economic assets in the Union or the relevant Member State(s);

Or. en

## Amendment 38

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 20 a (new)

*Text proposed by the Commission*

*Amendment*

**(20a) ‘common European data spaces’ mean purpose- or sector-specific or cross-sectoral interoperable frameworks of common standards and practices to share or jointly process data for, inter alia, development of new products and services, scientific research or civil society initiatives.**

Or. en

## Amendment 39

### Proposal for a regulation

#### Article 3 – title

*Text proposed by the Commission*

*Amendment*

Obligation to make data generated by the

Obligation to make data generated by the



use of products or related services  
accessible

use of products or related services  
accessible *to the user*

Or. en

## Amendment 40

### Proposal for a regulation Article 3 – paragraph 1

*Text proposed by the Commission*

1. Products shall be designed and manufactured, and related services shall be provided, in such a manner that data generated by their use *are*, by default, easily, securely and, where relevant and appropriate, directly accessible to the user.

*Amendment*

1. Products shall be designed and manufactured, and related services shall be provided, in such a manner that data generated by their use ***that are accessible to the data holder are free of charge and***, by default, easily, securely and, where relevant and appropriate, directly accessible to the user ***in a structured, commonly used and machine-readable format. Data shall be provided in the form in which they have been generated by the product, with only the minimal adaptations necessary to make them useable by a third party, including related metadata necessary to interpret and use the data.***

Or. en

*Justification*

*Clarifies the scope of the data falling under the obligations of article 4*

## Amendment 41

### Proposal for a regulation Article 3 – paragraph 2 – point a

*Text proposed by the Commission*

(a) the ***nature and*** volume of the data likely to be generated by the use of the product or related service;

*Amendment*

(a) the ***type of data and the estimated*** volume of the data likely to be generated by the use of the product or related service;

## Amendment 42

### Proposal for a regulation

#### Article 3 – paragraph 2 – point b

*Text proposed by the Commission*

(b) whether the data is **likely to be** generated continuously and in real-time;

*Amendment*

(b) whether the data is generated continuously and in real-time;

Or. en

## Amendment 43

### Proposal for a regulation

#### Article 3 – paragraph 2 – point d

*Text proposed by the Commission*

(d) whether the manufacturer supplying the product or the service provider providing the related service intends to use the data itself or allow a third party to use the data and, **if so**, the purposes for which those data will be used;

*Amendment*

(d) whether the manufacturer supplying the product or the service provider providing the related service intends to use the data itself or allow a third party to use the data and the purposes for which those data will be used;

Or. en

## Amendment 44

### Proposal for a regulation

#### Article 4 – paragraph 1

*Text proposed by the Commission*

1. Where data cannot be directly accessed by the user from the product, the data holder shall make available to the user the data generated by **its** use of a product or related service without undue delay, free of charge and, where applicable, continuously and in real-time. This shall be done on the

*Amendment*

1. Where data cannot be directly accessed by the user from the product, the data holder shall make available to the user the data generated by **the** use of a product or related service **that are accessible to the data holder** without undue delay, **easily, securely, in a structured, commonly used**

basis of a simple request through electronic means where technically feasible.

***and machine-readable format***, free of charge and, where applicable, continuously and in real-time. ***Data shall be provided in the form in which they have been generated by the product, with only the minimal adaptations necessary to make them useable by a third party, including related metadata necessary to interpret and use the data.*** This shall be done on the basis of a simple request through electronic means where technically feasible.

Or. en

*Justification*

*In accordance with the changes introduced to article 3*

**Amendment 45**

**Proposal for a regulation**  
**Article 4 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The data holder shall not coerce, deceive or manipulate the user in any way, by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface with the user, to hinder the exercise of the users rights under this Article.***

Or. en

**Amendment 46**

**Proposal for a regulation**  
**Article 4 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. Trade secrets shall only be disclosed provided that all specific

3. Trade secrets shall only be disclosed provided that all specific

necessary measures are taken to preserve the confidentiality of trade secrets in particular with respect to third parties. The data holder and the user can agree measures to preserve the confidentiality of the shared data, in particular in relation to third parties.

necessary measures are taken *in advance* to preserve the confidentiality of trade secrets in particular with respect to third parties. The data holder and the user can agree measures to preserve the confidentiality of the shared data, in particular in relation to third parties. ***The user shall use data resulting from the use of a product or related service in the context of testing of other new products, substances or processes that are not yet placed on the market only in accordance with the specific provisions of the agreement with the enterprise with whom the user agreed to use one of its products for testing of other new products, substances or processes.***

Or. en

*Justification*

*In order not to hamper research and innovation the Regulation should not apply to prototypes not placed in the market.*

**Amendment 47**

**Proposal for a regulation  
Article 4 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. The user shall not deploy coercive means or abuse gaps in the technical infrastructure of the data holder designed to protect the data in order to obtain access to data.***

Or. en

*Justification*

*Strengthen coherence with the protection of Article 5.4*

## Amendment 48

### Proposal for a regulation Article 5 – title

*Text proposed by the Commission*

Right to share data with third parties

*Amendment*

**The right of the user** to share data with third parties

Or. en

## Amendment 49

### Proposal for a regulation Article 5 – paragraph 1

*Text proposed by the Commission*

1. Upon request by a user, or by a party acting on behalf of a user, the data holder shall make available the data generated by the use of a product or related service to a third party, without undue delay, free of charge to the user, of the same quality as is available to the data holder and, where applicable, continuously and in real-time.

*Amendment*

1. Upon request by a user, or by a party acting on behalf of a user, the data holder shall make available the data generated by the use of a product or related service **that are accessible to the data holder** to a third party, without undue delay, **easily, securely in machine-readable format**, free of charge to the user, of the same quality as is available to the data holder and, where applicable, continuously and in real-time. **Data shall be provided in the form in which they have been generated by the product, with only the minimal adaptations necessary to make them useable by a third party, including related metadata necessary to interpret and use the data.**

Or. en

*Justification*

*Enhances clarity on the data that is to be shared*

## Amendment 50

### Proposal for a regulation Article 5 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. The right under paragraph 1 shall not apply to data resulting from the use of a product or related service in the context of testing of other new products, substances or processes that are not yet placed on the market unless use by a third party is permitted by the agreement with the enterprise with whom the user agreed to use one of its products for testing of other new products, substances or processes.***

Or. en

*Justification*

*Further clarification on third party access to data of products not placed in the market.*

## Amendment 51

### Proposal for a regulation Article 5 – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. The third party shall not deploy coercive means or abuse ***evident*** gaps in the technical infrastructure of the data holder designed to protect the data in order to obtain access to data.

4. The third party shall not deploy coercive means or abuse gaps in the technical infrastructure of the data holder designed to protect the data in order to obtain access to data.

Or. en

*Justification*

*Gaps should not be abused independently of whether they are evident or not*

## Amendment 52

### Proposal for a regulation

#### Article 6 – paragraph 2 – point b

*Text proposed by the Commission*

(b) use the data it receives for the profiling of natural persons within the meaning of Article 4(4) of Regulation (EU) 2016/679, unless it is necessary to provide the service requested by the user;

*Amendment*

(b) use the data it receives for the profiling of natural persons within the meaning of Article 4(4) of Regulation (EU) 2016/679, unless it is **objectively** necessary to provide the service requested by the user;

Or. en

## Amendment 53

### Proposal for a regulation

#### Article 7 – paragraph 1

*Text proposed by the Commission*

1. The obligations of this Chapter shall not apply to data generated by the use of products manufactured or related services provided by enterprises that qualify as **micro or small enterprises**, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as **a micro or small enterprise**.

*Amendment*

1. The obligations of this Chapter shall not apply to data generated by the use of products manufactured or related services provided by enterprises that qualify as **SMEs**, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as **an SME**.

Or. en

*Justification*

*The exemption of the obligations of this chapter should apply to SMEs*

## Amendment 54

### Proposal for a regulation

#### Article 7 – paragraph 2

*Text proposed by the Commission*

2. Where this **Regulation** refers to products or related services, such reference shall also be understood to include virtual assistants, insofar as they are used to access or control a product or related service.

*Amendment*

2. Where this **Chapter** refers to products or related services, such reference shall also be understood to include virtual assistants **and other digital applications**, insofar as they are used to access or control a product or related service.

Or. en

**Amendment 55**

**Proposal for a regulation**  
**Article 8 – paragraph 1**

*Text proposed by the Commission*

1. Where a data holder is obliged to make data available to a data recipient under Article 5 or under other Union law or national legislation implementing Union law, it shall do so under fair, reasonable and non-discriminatory terms and in a transparent manner in accordance with the provisions of this Chapter and Chapter IV.

*Amendment*

1. Where, **in business-to-business relations**, a data holder is obliged to make data available to a data recipient under Article 5 or under other Union law or national legislation implementing Union law, it shall do so under fair, reasonable and non-discriminatory terms and in a transparent manner in accordance with the provisions of this Chapter and Chapter IV.

Or. en

*Justification*

*To clarify the scope of the provision*

**Amendment 56**

**Proposal for a regulation**  
**Article 8 – paragraph 3**

*Text proposed by the Commission*

3. A data holder shall not discriminate between comparable categories of data recipients, including partner enterprises or linked enterprises, as defined in Article 3

*Amendment*

3. A data holder shall not discriminate between comparable categories of data recipients, including partner enterprises or linked enterprises, as defined in Article 3



of the Annex to Recommendation 2003/361/EC, of the data holder, when making data available. Where a data recipient considers the conditions under which data has been made available to it to be discriminatory, *it shall be for* the data holder *to demonstrate* that there has been no discrimination.

of the Annex to Recommendation 2003/361/EC, of the data holder, when making data available. Where a data recipient considers the conditions under which data has been made available to it to be discriminatory, the data holder *shall without undue delay provide the data recipient with information showing* that there has been no discrimination.

Or. en

#### *Justification*

*To avoid an excessive and disproportionate burden on the data holder*

### **Amendment 57**

#### **Proposal for a regulation Article 8 – paragraph 6**

##### *Text proposed by the Commission*

6. Unless otherwise provided by Union law, including *Article 6* of this Regulation, or by national legislation implementing Union law, an obligation to make data available to a data recipient shall not oblige the disclosure of trade secrets within the meaning of Directive (EU) 2016/943.

##### *Amendment*

6. Unless otherwise provided by Union law, including *Articles 4(3), 5(8) and 6* of this Regulation, or by national legislation implementing Union law, an obligation to make data available to a data recipient shall not oblige the disclosure of trade secrets within the meaning of Directive (EU) 2016/943.

Or. en

#### *Justification*

*TO clarify that the proposal does not require a data holder to share trade secrets with a data recipient unless expressly provided by law.*

### **Amendment 58**

#### **Proposal for a regulation Article 9 – paragraph 1**

*Text proposed by the Commission*

1. Any compensation agreed between a data holder and a data recipient for making data available shall be reasonable.

*Amendment*

1. Any compensation agreed between a data holder and a data recipient for making data available ***in business-to-business relations*** shall be reasonable.

Or. en

**Amendment 59**

**Proposal for a regulation  
Article 9 – paragraph 2**

*Text proposed by the Commission*

2. Where the data recipient is ***a micro, small or medium enterprise***, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, any compensation agreed shall not exceed the costs directly related to making the data available to the data recipient and which are attributable to the request. Article 8(3) shall apply accordingly.

*Amendment*

2. Where the data recipient is ***an SME***, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, ***provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as an SME***, any compensation agreed shall not exceed the costs directly related to making the data available to the data recipient and which are attributable to the request. Article 8(3) shall apply accordingly.

Or. en

*Justification*

*To ensure that this provision applies to SMEs*

**Amendment 60**

**Proposal for a regulation  
Article 9 – paragraph 3**

*Text proposed by the Commission*

3. ***This Article shall not preclude other Union law or national legislation***

*Amendment*

***deleted***

***implementing Union law from excluding compensation for making data available or providing for lower compensation.***

Or. en

*Justification*

*The provision is too far reaching and clashes with the Data Acts objective of creating a consistent horizontal framework*

**Amendment 61**

**Proposal for a regulation**

**Article 11 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. A data recipient that has, for the purposes of obtaining data, provided inaccurate or false information to the data holder, deployed deceptive or coercive means or abused ***evident*** gaps in the technical infrastructure of the data holder designed to protect the data, has used the data made available for unauthorised purposes or has disclosed those data to another party without the data holder's authorisation, shall without undue delay, ***unless the data holder or the user instruct otherwise:***

*Amendment*

2. ***Where*** a data recipient that has, for the purposes of obtaining data, provided inaccurate, ***incomplete*** or false information to the data holder, deployed deceptive or coercive means or abused gaps in the technical infrastructure of the data holder designed to protect the data, has used the data made available for unauthorised purposes, ***including the development of a competing product within the meaning of Article 6(2)(e)*** or has disclosed those data to another party without the data holder's authorisation, ***the data recipient*** shall ***comply*** without undue delay ***with the requests of*** the data holder ***to:***

Or. en

*Justification*

*To strengthen the data holders protection on unauthorised use or disclosure of data.*

**Amendment 62**

**Proposal for a regulation**

**Article 11 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) ***destroy*** the data made available by the data holder and any copies thereof;

*Amendment*

(a) ***erase*** the data made available by the data holder and any copies thereof;

Or. en

### **Amendment 63**

#### **Proposal for a regulation**

#### **Article 11 – paragraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) inform the user of the unauthorised use or disclosure of data as well as the measures taken to put an end to the unauthorised use or disclosure of data.***

Or. en

#### *Justification*

*The user should be aware of the unauthorised use or disclosure of data as well as of the measures that have been taken.*

### **Amendment 64**

#### **Proposal for a regulation**

#### **Article 11 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The user shall enjoy the same prerogatives as the data holder and the data recipient the same obligation as those stated in paragraph 2 of this Article when the data recipient has infringed Article 6(2)(a) and (b).***

Or. en

## Amendment 65

### Proposal for a regulation Article 12 – paragraph 1

*Text proposed by the Commission*

1. This Chapter shall apply where a data holder is obliged under Article 5, or under Union law or national legislation implementing Union law, to make data available to a data recipient.

*Amendment*

1. This Chapter shall apply where, ***in business-to-business relations***, a data holder is obliged under Article 5, or under Union law or national legislation implementing Union law, to make data available to a data recipient.

Or. en

## Amendment 66

### Proposal for a regulation Article 13 – paragraph 1

*Text proposed by the Commission*

1. A contractual term, concerning the access to and use of data or the liability and remedies for the breach or the termination of data related obligations which has been unilaterally imposed by an enterprise on ***a micro, small or medium-sized enterprise*** as defined in Article 2 of the Annex to Recommendation 2003/361/EC shall not be binding on the latter enterprise if it is unfair.

*Amendment*

1. A contractual term, concerning the access to and use of data or the liability and remedies for the breach or the termination of data related obligations which has been unilaterally imposed by an enterprise on ***an SME*** as defined in Article 2 of the Annex to Recommendation 2003/361/EC, ***provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as an SME***, shall not be binding on the latter enterprise if it is unfair.

Or. en

*Justification*

*In accordance with addition to Article 9(2)*

## Amendment 67

### Proposal for a regulation Article 14 – paragraph 1

*Text proposed by the Commission*

1. Upon request, a data holder shall make data available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested.

*Amendment*

1. Upon ***a duly justified and time limited*** request, a data holder ***that is a legal person*** shall make data available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested.

Or. en

*Justification*

*To ensure that individuals do not fall within the scope. of Chapter V*

## Amendment 68

### Proposal for a regulation Article 14 – paragraph 2

*Text proposed by the Commission*

2. This Chapter shall not apply to ***small and micro enterprises*** as defined in Article 2 of the Annex to Recommendation 2003/361/EC.

*Amendment*

2. This Chapter shall not apply to ***SMEs*** as defined in Article 2 of the Annex to Recommendation 2003/361/EC.

Or. en

*Justification*

*SMEs might not have the human and technical resources to comply with the obligations of this chapter*

## Amendment 69

### Proposal for a regulation Article 15 – paragraph 1 – point a

*Text proposed by the Commission*

(a) where the data requested is necessary to respond to a public emergency;

*Amendment*

(a) where the data requested is necessary to respond to a public emergency, ***including public health emergencies or major natural disasters***;

Or. en

**Amendment 70**

**Proposal for a regulation  
Article 15 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) where the data request is limited in time and scope and necessary to prevent ***a*** public emergency or to assist the recovery from a public emergency;

*Amendment*

(b) where the data request is limited in time and scope and necessary to prevent ***an imminent*** public emergency or to assist the recovery from a public emergency;

Or. en

**Amendment 71**

**Proposal for a regulation  
Article 15 – paragraph 1 – point c – introductory part**

*Text proposed by the Commission*

(c) where the lack of available data prevents the public sector body or Union institution, agency or body from fulfilling a specific task in the public interest that has been explicitly provided by law; and

*Amendment*

(c) ***in non-emergency situations***, where the lack of available data prevents the public sector body or Union institution, agency or body from fulfilling a specific task in the public interest that has been explicitly provided by law; and

Or. en

## Amendment 72

### Proposal for a regulation

#### Article 17 – paragraph 1 – point e

*Text proposed by the Commission*

(e) specify **the** deadline by which the data are to be made available or within which the data holder may request the public sector body, Union institution, agency or body to modify or withdraw the request.

*Amendment*

(e) specify **appropriate** deadline **that allows the protection of informational self-determination and data security on the part of the data holder**, by which the data are to be made available or within which the data holder may request the public sector body, Union institution, agency or body to modify or withdraw the request.

Or. en

*Justification*

*Data protection-adequate pseudonymisation and anonymisation of personal data lead to a considerable amount of time.*

## Amendment 73

### Proposal for a regulation

#### Article 17 – paragraph 1 – point e a (new)

*Text proposed by the Commission*

*Amendment*

**(ea) report to the data holder within three months of receiving the requested data on how the data has been processed.**

Or. en

*Justification*

*Transparency requirements should oblige governments and public administrations to report to the company how the data requested was used to limit excessive requests.*

## Amendment 74

### Proposal for a regulation

#### Article 17 – paragraph 2 – point d



*Text proposed by the Commission*

*Amendment*

(d) *concern, insofar as possible, non-personal data;*

(d) *not extent to personal data or data covered by professional secrecy;*

Or. en

*Justification*

*Personal data or data that is subject to professional secrecy is highly sensitive and should not be subject to B2G data sharing.*

## **Amendment 75**

### **Proposal for a regulation**

#### **Article 17 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. Member States shall coordinate any request of databases on exceptional need pursuant to Article 14(1) and avoid multiple requests by different public sector bodies within their territory to the same data holder.**

Or. en

## **Amendment 76**

### **Proposal for a regulation**

#### **Article 17 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

**2b. Member States shall inform the Commission about any request pursuant to Article 14 without undue delay and in any event within 24 hours after the request has been made.**

Or. en

## Amendment 77

### Proposal for a regulation

#### Article 17 – paragraph 2 c (new)

*Text proposed by the Commission*

*Amendment*

**2c. Where a public sector body or a Union institution, agency or body requires data from more than one Member State on the basis of an exceptional need, , it shall submit its request to the Commission for handling.**

Or. en

## Amendment 78

### Proposal for a regulation

#### Article 17 – paragraph 4 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

Paragraph 3 does not preclude a public sector body or a Union institution, agency or body to exchange data obtained pursuant to this Chapter with another public sector body, Union institution, agency or body, in view of completing the tasks in Article 15 or to make the data available to a third party in cases where it has outsourced, by means of a publicly available agreement, technical inspections or other functions to this third party. The obligations on public sector bodies, Union institutions, agencies or bodies pursuant to Article 19 apply.

Paragraph 3 does not preclude a public sector body or a Union institution, agency or body to exchange data obtained pursuant to this Chapter with another public sector body, Union institution, agency or body, in view of completing the tasks in Article 15 or to make the data available to a third party in cases where it has outsourced, by means of a publicly available agreement, technical inspections or other functions to this third party. The obligations on public sector bodies, Union institutions, agencies or bodies pursuant to Article 19 apply **also to those third parties.**

Or. en

*Justification*

*To ensure that the safeguards, including confidentiality, also apply to third parties.*

## Amendment 79

### Proposal for a regulation

#### Article 17 – paragraph 4 – subparagraph 2

*Text proposed by the Commission*

Where a public sector body or a Union institution, agency or body transmits or makes data available under this paragraph, it shall notify the data holder from whom the data was received.

*Amendment*

Where a public sector body or a Union institution, agency or body transmits or makes data available under this paragraph, it shall notify the data holder from whom the data was received ***without undue delay***.

Or. en

## Amendment 80

### Proposal for a regulation

#### Article 17 – paragraph 4 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***The third party shall not use the data it receives from a public sector body or a Union institution, agency or body to develop a product or a service that competes with the product or service from which the accessed data originate or share the data with another third party for that purpose.***

Or. en

*Justification*

*A safeguard to ensure that the data is not used to foster competitive products or services*

## Amendment 81

### Proposal for a regulation

#### Article 17 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. The data request cannot extend to data already available within the public***

*sector domain.*

Or. en

*Justification*

*Before restricting the freedom of companies vis-à-vis the state, it should first be intensively examined to what extent the required data already exists in the public sector domain.*

**Amendment 82**

**Proposal for a regulation**

**Article 19 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) have in place the appropriate and proportionate technical and organisational measures to manage cyber risk to that data;***

Or. en

**Amendment 83**

**Proposal for a regulation**

**Article 19 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) ***destroy*** the data as soon as they are no longer necessary for the stated purpose and inform the data holder that the data have been destroyed.

(c) ***erase*** the data as soon as they are no longer necessary for the stated purpose and inform ***without undue delay*** the data holder that the data have been destroyed.

Or. en

**Amendment 84**

**Proposal for a regulation**

**Article 19 – paragraph 2**

*Text proposed by the Commission*

2. Disclosure of trade secrets or alleged trade secrets to a public sector body or to a Union institution, agency or body shall only be required to the extent that it is strictly necessary to achieve the purpose of the request. In such a case, the public sector body or the Union institution, agency or body shall take **appropriate** measures **to preserve** the confidentiality of those trade secrets.

*Amendment*

2. Disclosure of trade secrets or alleged trade secrets to a public sector body or to a Union institution, agency or body shall only be required to the extent that it is strictly necessary to achieve the purpose of the request. In such a case, the public sector body or the Union institution, agency or body shall take **the legal, technical and organisational** measures **needed to ensure** the confidentiality of those trade secrets.

Or. en

**Amendment 85**

**Proposal for a regulation**  
**Article 19 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. The public sector body or the Union institution, agency or body that has received data pursuant to Article 14 shall notify, without undue delay, the data holders of any cybersecurity incident with the data they have been trusted. Those entities shall be liable by damages due to a cybersecurity breach if they have not had the measures in place pursuant to paragraph 1, point (ba).**

Or. en

*Justification*

*Authorities are trusted with data that is not public and could be of a sensitive nature. Therefore they should also acquire a certain level of responsibility.*

## Amendment 86

### Proposal for a regulation Article 20 – paragraph 2

*Text proposed by the Commission*

2. *Where* the data holder *claims compensation* for making data available in compliance with a request made pursuant to Article 15, points (b) or (c), such compensation shall *not exceed* the technical and organisational costs incurred to comply with the request including, where necessary, the costs of anonymisation and of technical adaptation, plus a reasonable margin. Upon request of the public sector body or the Union institution, agency or body requesting the data, the data holder shall provide information on the basis for the calculation of the costs and the reasonable margin.

*Amendment*

2. The data holder *shall be entitled to fair remuneration* for making data available in compliance with a request made pursuant to Article 15, points (b) or (c), such compensation shall *at the least cover* the technical and organisational costs incurred to comply with the request including, where necessary, the costs of anonymisation and of technical adaptation, plus a reasonable margin. Upon request of the public sector body or the Union institution, agency or body requesting the data, the data holder shall provide information on the basis for the calculation of the costs and the reasonable margin.

Or. en

## Amendment 87

### Proposal for a regulation Article 23 – paragraph 1 – introductory part

*Text proposed by the Commission*

1. 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 service shall remove commercial, technical, contractual and organisational obstacles, which inhibit customers from:

*Amendment*

1. 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 service shall remove commercial, technical, contractual and organisational *significant* obstacles, which inhibit customers from:

Or. en

*Justification*

*To broad, need to avoid that any configuration detail might be considered an obstacle to switching*

**Amendment 88**

**Proposal for a regulation**

**Article 24 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. The rights of the customer and the obligations of the provider of a data processing service in relation to switching between providers of such services shall be clearly set out in a written contract. Without prejudice to Directive (EU) 2019/770, that contract shall include at least the following:

*Amendment*

1. The rights of the customer and the obligations of the provider of a data processing service in relation to switching between providers of such services shall be clearly set out in a written contract. Without prejudice to Directive (EU) 2019/770, that contract ***shall be simple and conspicuous and*** shall include at least the following:

Or. en

*Justification*

*It is often difficult for consumers to read and comprehend contracts.*

**Amendment 89**

**Proposal for a regulation**

**Article 24 – paragraph 2**

*Text proposed by the Commission*

2. Where the mandatory transition period as defined in paragraph 1, points (a) and (c) of this Article is technically unfeasible, the provider of data processing services shall notify the customer within 7 working days after the switching request has been made, duly motivating the technical unfeasibility with a detailed report and indicating an alternative transition period, ***which may not exceed 6 months***. In accordance with paragraph 1 of

*Amendment*

2. Where the mandatory transition period as defined in paragraph 1, points (a) and (c) of this Article is technically unfeasible, the provider of data processing services shall notify the customer within 7 working days after the switching request has been made, duly motivating the technical unfeasibility with a detailed report and indicating an alternative transition period. In accordance with paragraph 1 of this Article, full service

this Article, full service continuity shall be ensured throughout the alternative transition period against reduced charges, referred to in Article 25(2).

continuity shall be ensured throughout the alternative transition period against reduced charges, referred to in Article 25(2).

Or. en

*Justification*

*While in most cases a 30 day period should be sufficient in cases such as in moving full integrated enterprise IoT platforms a 6 month deadline might prove to be unrealistic.*

**Amendment 90**

**Proposal for a regulation  
Article 28 – paragraph 4**

*Text proposed by the Commission*

4. The Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft harmonised standards that satisfy the essential requirements under paragraph 1 of this Article

*Amendment*

4. The Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft harmonised standards that satisfy the essential requirements under paragraph 1 of this Article ***and are developed in an open, transparent, technology-neutral, and industry-driven manner.***

Or. en

*Justification*

*It is important that standards are developed in an open, transparent, technology-neutral, and industry-driven manner*

**Amendment 91**

**Proposal for a regulation  
Article 31 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 31a***

***Role of the European Data Innovation***



**Board**

***The European Data Innovation Board shall foster the mutual exchange of information amongst competent authorities as well as advise and assist the Commission in all matters falling under this Regulation.***

Or. en

*Justification*

*To further improve coordination at European level*

**Amendment 92**

**Proposal for a regulation  
Article 32 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Each Member State shall notify to the Commission and the European Data Innovation Board the provisions of national measures adopted pursuant to paragraph 1 without delay as well as any subsequent amendment affecting them.***

Or. en

*Justification*

*In order to avoid fragmentation of the digital single market*

**Amendment 93**

**Proposal for a regulation  
Article 33 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 33a***

***Mutual assistance***

***1. Competent authorities and the***

*Commission shall cooperate closely and provide each other mutual assistance in order to apply this Regulation in a consistent and efficient manner. Mutual assistance shall include, in particular, exchange of information in accordance with this Article and the duty of the competent authority of establishment to inform all competent authorities and the Commission about the opening of an investigation.*

*2. For the purpose of an investigation, the competent authority of establishment may request other competent authorities to provide specific information in their possession or to exercise their investigative powers with regard to specific information located in their Member State. Where appropriate, the competent authority receiving the request may involve other competent authorities or other public authorities of the Member State in question.*

*3. The competent authority receiving the request pursuant to paragraph 2 shall comply with such request and inform the competent authority of establishment about the action taken, without undue delay.*

Or. en

#### *Justification*

*Avoiding fragmentation of the market must be a guiding principle of the Regulation and the Data Act should give further clarity on the roles and coordination between competent authorities in regards to the supervision, complaint handling and penalty regime*

#### **Amendment 94**

##### **Proposal for a regulation Article 41 – paragraph 1 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

*(ea) the interaction between the this*

*Regulation and other relevant Union law  
to assess possible conflicting regulation,  
overregulation or legislative gaps.*

Or. en

## EXPLANATORY STATEMENT

Digitalisation in general and data in particular, are critical for the competitiveness of our economy and especially for our industry.

Data is a key pillar of the European digital economy and data collaboration within, and across Europe's industries, will be key to future innovation and economic growth. However, while the volume of data is expected to increase dramatically in the coming years, data re-use is hampered by low trust in data-sharing, conflicting economic incentives and technological obstacles. An unfortunate forecast taking into account that Europe, beyond its outstanding global competitive position in manufacturing, also holds large amounts of industrial data, with a potential that is yet under-used.

Consequently, the Data Act can be an absolute gamechanger if it can create a data-agile ecosystem that enables easy access to an almost infinite amount of high-quality industrial data by specially focusing on IoT data.

This is of paramount importance for the EU's competitiveness at a time where data will mainly come from connected things and anything that can be connected will, in the near future, be connected.

Accordingly, the rapporteur highlights that, data, and especially industrial data, is a growing competitive asset for Europe, a competitive advantage that, in the current economic context and under harsh international competition, Europe must optimize.

However, easy access to high quality industrial data will only be a reality if there is broad support of the regulation from all stakeholders.

The rapporteur believes that the underlining principle of the Regulation is that the user must have access to the data produced by the connected products and related services, and consequently be able to share it. Nevertheless, the Data Act regulation must avoid creating new considerable additional costs and legal uncertainties for companies. Circumventing a scenario where the development of and functioning data market might be hampered.

In the rapporteurs view the complexity of the task is due to the fact that the Data Act will be a horizontal regulation, that might affect business differently depending on the products they manufacture, the services that rely on these products or their role in the aftermarket. Indeed, as the Commission highlights in its most recent progress report regarding data spaces: in Europe, we rely on a "very heterogeneous development in the individual industries and sectors".

Nevertheless, the rapporteur highlights that it is an effort that must be undertaken at European level. It is necessary to avoid the market fragmentation which could emerge from individual national legislations, while simultaneously removing barriers to a well-functioning internal market for data.

The Data Act is a key part of a wider European Data Strategy, that follows, and builds, on the recently adopted Data Governance Act that has increased trust in data sharing and strengthen mechanisms to increase data availability and overcome technical obstacles to the reuse of data. The Data Act, with the triple objective of clarifying rights on IoT data, governing when, and how, businesses are required to share their data with public bodies, and improving switching between data processing services, represents the next ambitious step.

Notwithstanding, taking into account the internal attribution of competences amongst the

competent parliamentary committees the rapporteur has not focused in those provisions that fall under the exclusive competences of the opinion giving committees, notably Chapters VI, X as well as those related to the protection of personal data and GDPR implementation.

Since the Commission first published, the draft Regulation on Harmonised Rules on Fair Access to and Use of Data (Data Act) the rapporteur has identified a number of concepts and provisions that she believes need further clarification in order to improve legal certainty for all of the stakeholders active on the data economy.

The rapporteur is convinced of Parliament's support to the objectives of the proposal, and is committed to further enhance the potential of the Regulation to improve the Union's competitiveness as well as the wellbeing of Europeans throughout the parliamentary and interinstitutional debates. That said the rapporteur calls on all three Institutions, involved Parliamentary committees, Members of Parliament as well as current and incoming Council Presidencies, to actively contribute to reaching an agreement in a timely manner and thus, not unnecessarily delaying Europe's growth potential.

### **Data and Scope**

The rapporteur believes that some data categorisation is needed to understand with precision what is in the scope for each chapter. Accordingly article 1, paragraph 1 a (new) clarifies the data that falls under the scope of the different chapters. Chapter V, relating to business-to-government (B2G) data sharing, and chapter VI, on switching between data processing services entail, a broad range of data. Chapters II and III refer to data generated from an connected product or related services.

Regarding IoT data, the rapporteur introduces in recital 19 and article 3. 1 further legal certainty. Metadata is explicitly included to avoid the risk of a lack of usability and misinterpretation of the data received. On the other hand, data, which has been sophisticated processed, should be excluded in order not to hamper previous investment and respect IP rights and trade secrets.

In the same line, the rapporteur is of the opinion that the Regulations obligation of access to data should not apply to data resulting from the use of a product or related service in the context of testing of products that have not been placed in the market (recital 14 and article 5.1 (new)).

### **Clarification of roles**

The rapporteur highlights that the proposal seems to have a simple approach to, sometimes, complicated value chains of products, data and services, which can, in occasions, produce an array of dependencies and multiple data holders.

In order to shed additional legal certainty the rapporteur intends to achieve further clarification on how this regulation applies to the different actors, in particular on who would be responsible for providing data access to the user, and potentially also to the data recipient. Recitals 23 and 38 a (new) and Article 4.1 provide further guidance on that respect.

### **On trade secrets:**

The rapporteur supports the Commission's approach towards trade secrets in the Data Act. More precisely the rapporteur advocates that the Data Act lays down an obligation on the data holder to allow access to data collected by connected devices and that when being such data considered trade secrets, it may be technically protected from access by others (recital 28).

Additionally, in order to respond to legitimate concerns and ensure the respect of trade secrets, the rapporteur has reinforced this protection by: clearly defining the scope of the data that falls under the obligations of Chapters II and III; strengthening the enforcement of the protection and provisions on unauthorised use or disclosure of data (article 4.3 and article 11); and excluding from the obligations of the Regulation products that have not been put in the market or are in development phase (recital 14 and article 5.1 (new)).

Taking into account that the current definition of trade secrets will not be reviewed before 2025 and that the existing definitions stems from the TRIPS agreement, the rapporteur believes that this is a balanced approach that avoids the risk of voiding of meaning the obligation to give access to the user of the data created by the use of a product while ensuring trade secret protection.

### **SMEs**

Given the current state of technological development, the rapporteur is of the opinion that there is a risk of over burdening SMEs by imposing further design obligations in relation to the products they design or manufacture, or the related services they might provide. For this reason, the rapporteur proposes to exclude micro, small and medium-sized enterprises from the obligations of Chapter II (recital 37 and article 7.1).

Accordingly, in recital 56 and article 14.2 the rapporteur excludes SMEs from the obligations to make data available to public authorities of Chapter V.

### **Implementation and enforcement**

The rapporteur underlines that avoiding fragmentation of the market must be a guiding principle of the Regulation. The Data Act should give further clarity on the roles and coordination between competent authorities in regards to, inter alia, the supervision, complaint handling and penalty regime. In this line, the rapporteur has introduced amendments to chapter IX that build on the recently adopted Data Service Act as well as to Chapter V in article 17.

Additionally the rapporteur supports giving the European Data Innovation Board established in the Data Governance Act a role in coordinating enforcement.

### **B2G. Extent of the obligation under exceptional circumstances:**

As the pandemic has shown the B2G chapter of the Data can be instrumental in cases where public authorities need data to overcome a crisis. However the rapporteur is of the opinion that the proposed concept of “exceptional circumstances” covers a very wide range of scenarios where businesses would be obliged to share data, free of charge, with public administrations.

Accordingly, while the rapporteur supports the mandatory nature of the request done by the public authority, she shares the view that only in cases where the public authority seeks to respond to a public emergency (article 15 a) would the businesses comply free of charge. In the opinion of the rapporteur, the rest of scenarios foreseen in article 15 would entitle the recipient of a request to a fair remuneration that should, as a minimum cover the costs of processing and sharing the requested data.

The rapporteur believes that this balanced approach would not hamper the development of a functional data market, allowing, on the one hand public authorities to use valuable data in several important scenarios while, at the same time, encouraging the private sector to participate in the data market.

Additionally, the rapporteur underlines that there is a risk that a lack of coordination amongst public authorities that may result in a multiplicity of request of data and an unjustified pressure on the data holders. For this reason, Member States shall coordinate any request of databases on exceptional need pursuant Article 14(1) and avoid multiple requests by different public sector bodies within their territory to the same data holder (article 17.2a (new)). Furthermore, the rapporteur has introduced a number of provisions that strengthen the transparency and liability of public authorities (article 19).