



2022/0047(COD)

4.10.2022

DRAFT OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Industry, Research and Energy

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))

Rapporteur for opinion (*): Adam Bielan

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

PA_Legam

SHORT JUSTIFICATION

The growing importance of data for industry and the economy as a whole requires unlocking further channels through which data can flow and be reused to design new products and services. In parallel to the patterning of the importance of data to the economy, we are witnessing a symmetrical increase in the digitalisation of individual products. While in general this is a positive phenomenon, it could introduce challenges for stakeholders who have limited access to data. This for example includes car manufacturers: adapting electronic elements may prevent independent repair shops or manufacturers of parts from providing services and products to their customers, therefore limiting choice and competition. In this context, it is key to ensure data made available to third parties contains information that is possible to use and analyse.

Cloud services have become essential for the use of available data. In line with the Commission's 'digital targets for 2030', I believe that the competitiveness of the European services sector and industry relies heavily on accelerated uptake of cloud services. One of the main obstacles that can cause the EU to miss its targets relates to increased upfront fees for companies to switch to cloud services as well as limited offer from cloud services providers. While the Commission's proposal highlights the right principles, its implementation seems quite challenging: the proposal does not recognise that the use of cloud services differs between market participants. How these services are deployed within the network of customer's other services, applications and dependencies is rarely identical. Similarly, the concept of functional equivalence can be problematic, as it places obligations on the source providers that are impossible to comply with, unless they have access to the infrastructure of the provider of destination cloud services. Even if that was possible, functional equivalence would disturb the balance between what can be reasonably expected from two providers of cloud services participating in the switching process, either when it comes to the sharing of sensitive know-how or forcing responsibility for performance of competitor service.

The customer shall be the ultimate decision-maker who decides when to switch to another provider, introduce multicloud environment or migrate back to on-premises data center. In order for the customer to fully benefit from online computing, providers of services shall compete on the basis of their services' functionalities and pricing. Today, it is challenging for customers to access the information essential to take good business decisions. This is why I have decided to introduce a number of obligations requiring providers of cloud services to

support customers prior to and while concluding a contract. A key element here is to support the development of non-invasive customers' exit strategy, which prevents the potential lock-in effect. Similarly, for the number of obligations such as short-term contracts or specified timeframe for switching process, the customer shall retain the discretion to utilise it where it benefits his/her organisation. These measures facilitate predictable environment, mandatory to plan long-term business decisions.

Finally, in order to maintain access to the newest cloud services for European companies and maintain innovation, some custom made or still in development services shall operate without unnecessary burdens. More mature services, whether IaaS, PaaS or SaaS, shall be made interoperable via the open specifications. As per the Commission's proposal, such industry-led approach would facilitate customers' move between equivalent services and data porting.

Thanks to the Commission's proposal, the topic of cloud services receives its deserved and long overdue space in the public and legislative debate on the future of the single market. It is important to treat it with the utmost care and focus on delivering agile tools for the customers, who will improve these capabilities to further develop EU's economy.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) This Regulation ensures that users of a product or related service in the Union can access, in a timely manner, the data generated by the use of that product or related service and that those users can use the data, including by sharing them with third parties of their choice. It imposes the

Amendment

(5) This Regulation ensures that users of a product or related service in the Union can access, in a timely manner, the data generated by the use of that product or related service and that those users can use the data, including by sharing them with third parties of their choice. It imposes the

obligation on the data holder to make data available to users and third parties nominated by the users in certain circumstances. It also ensures that data holders make data available to data recipients in the Union under fair, reasonable and non-discriminatory terms and in a transparent manner. Private law rules are key in the overall framework of data sharing. Therefore, this Regulation adapts rules of contract law and prevents the exploitation of contractual imbalances that hinder fair data access and use for micro, small or medium-sized enterprises within the meaning of Recommendation 2003/361/EC. This Regulation also ensures that data holders make available to public sector bodies of the Member States and to Union institutions, agencies or bodies, where there is an exceptional need, the data that are necessary for the performance of tasks carried out in the public interest. In addition, this Regulation seeks to facilitate switching between *data processing* services and to enhance the interoperability of data and data sharing mechanisms and services in the Union. This Regulation should not be interpreted as recognising or creating any legal basis for the data holder to hold, have access to or process data, or as conferring any new right on the data holder to use data generated by the use of a product or related service. Instead, it takes as its starting point the control that the data holder effectively enjoys, de facto or de jure, over data generated by products or related services.

obligation on the data holder to make data available to users and third parties nominated by the users in certain circumstances. It also ensures that data holders make data available to data recipients in the Union under fair, reasonable and non-discriminatory terms and in a transparent manner. Private law rules are key in the overall framework of data sharing. Therefore, this Regulation adapts rules of contract law and prevents the exploitation of contractual imbalances that hinder fair data access and use for micro, small or medium-sized enterprises within the meaning of Recommendation 2003/361/EC. This Regulation also ensures that data holders make available to public sector bodies of the Member States and to Union institutions, agencies or bodies, where there is an exceptional need, the data that are necessary for the performance of tasks carried out in the public interest. In addition, this Regulation seeks to facilitate switching between *cloud computing* services and to enhance the interoperability of data and data sharing mechanisms and services in the Union. This Regulation should not be interpreted as recognising or creating any legal basis for the data holder to hold, have access to or process data, or as conferring any new right on the data holder to use data generated by the use of a product or related service. Instead, it takes as its starting point the control that the data holder effectively enjoys, de facto or de jure, over data generated by products or related services.

(This amendment applies throughout the text [cloud computing service] shall replace [data processing service]. Adopting it will necessitate corresponding changes throughout.)

Or. en

Amendment 2

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 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.

Amendment

(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 and should accordingly be accessible to the user, while ***volatile and data processed locally only and*** 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.

Or. en

Amendment 3

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) In contrast, certain products that are primarily designed to display or play content, or to record and transmit content, amongst others for the use by an online service should not be covered by this Regulation. Such products include, for example, personal computers, servers, tablets and smart phones, cameras, webcams, sound recording systems and text scanners. They require human input to produce various forms of content, such as text documents, sound files, video files, games, digital maps.

Amendment

(15) In contrast, certain products that are primarily designed to display or play content, or to record and transmit content, amongst others for the use by an online ***service and which are not the essential part of the connected product or related*** service should not be covered by this Regulation. Such products include, for example, personal computers, servers, tablets and smart phones, cameras, webcams, sound recording systems and text scanners. They require human input to produce various forms of content, such as text documents, sound files, video files, games, digital maps.

Or. en

Amendment 4

Proposal for a regulation
Recital 21

Text proposed by the Commission

(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.

Amendment

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Or. en

Justification

Introduced changes are necessary to avoid confusion on who is covered by the definition of ‘data holder’.

Amendment 5

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 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***

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.

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.

Or. en

Justification

In line with the changes addressing Article 5 and Article 6.

Amendment 6

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 ***ensure coherent practices between Member States and predictable environment for private entities, the Member States and the Commission should identify the bodies that can request access to data owned by the enterprises.*** 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.

Or. en

Amendment 7

Proposal for a regulation

Recital 57

Text proposed by the Commission

(57) In case of public emergencies, such as public health emergencies, emergencies resulting from environmental degradation and major natural disasters including those aggravated by climate change, as well as human-induced major disasters, such as major cybersecurity incidents, the public interest resulting from the use of the data will outweigh the interests of the data holders to dispose freely of the data they hold. In such a case, data holders should be placed under an obligation to make the data available to public sector bodies or to Union institutions, agencies or bodies upon

Amendment

(57) In case of public emergencies, such as public health emergencies, emergencies resulting from environmental degradation and major natural disasters including those aggravated by climate change, as well as human-induced major disasters, such as major cybersecurity incidents, the public interest resulting from the use of the data will outweigh the interests of the data holders to dispose freely of the data they hold. In such a case, data holders should be placed under an obligation to make the data available to ***identified*** public sector bodies or to ***identified*** Union institutions, agencies

their request. The existence of a public emergency is determined according to the respective procedures in the Member States or of relevant international organisations.

or bodies upon their request *and within the remit of their activities*. The existence of a public emergency is determined according to the respective procedures in the Member States or of relevant international organisations.

Or. en

Amendment 8

Proposal for a regulation Recital 62

Text proposed by the Commission

(62) The objective of the obligation to provide the data is to ensure that public sector bodies and Union institutions, agencies or bodies have the necessary knowledge to respond to, prevent or recover from public emergencies or to maintain the capacity to fulfil specific tasks explicitly provided by law. The data obtained by those entities may be commercially sensitive. Therefore, Directive (EU) 2019/1024 of the European Parliament and of the Council⁶⁵ should not apply to data made available under this Regulation and should not be considered as open data available for reuse by third parties. This however should not affect the applicability of Directive (EU) 2019/1024 to the reuse of official statistics for the production of which data obtained pursuant to this Regulation was used, provided the reuse does not include the underlying data. In addition, it should not affect the possibility of sharing the data for conducting research or for the compilation of official statistics, provided the conditions laid down in this Regulation are met. Public sector bodies should also be allowed to exchange data obtained pursuant to this Regulation with other public sector bodies to address the exceptional needs for which the data has

Amendment

(62) The objective of the obligation to provide the data is to ensure that public sector bodies and Union institutions, agencies or bodies have the necessary knowledge to respond to, prevent or recover from public emergencies or to maintain the capacity to fulfil specific tasks explicitly provided by law. The data obtained by those entities may be commercially sensitive. Therefore, Directive (EU) 2019/1024 of the European Parliament and of the Council should not apply to data made available under this Regulation and should not be considered as open data available for reuse by third parties. This however should not affect the applicability of Directive (EU) 2019/1024 to the reuse of official statistics for the production of which data obtained pursuant to this Regulation was used, provided the reuse does not include the underlying data. In addition, it should not affect the possibility of sharing the data for conducting research or for the compilation of official statistics, provided the conditions laid down in this Regulation are met. Public sector bodies should also be allowed to exchange data obtained pursuant to this Regulation with other public sector bodies to address the exceptional needs for which the data has

been requested.

been requested. *The business whose data is to be shared, provided it acts in a good faith, should also have the possibility to raise objection concerning planned data transfer in order to protect its security, integrity or confidentiality.*

⁶⁵ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).

⁶⁵ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).

Or. en

Amendment 9

Proposal for a regulation Recital 69

Text proposed by the Commission

(69) The ability for customers of **data processing** services, including cloud and edge services, to switch from one **data processing** service to another, while **maintaining a minimum functionality of service**, is a key condition for a more competitive market with lower entry barriers for new service providers.

Amendment

(69) The ability for customers of **cloud computing** services, including cloud and edge services, to **suitably** switch from one **cloud computing** service to another, while **avoiding downtime of services**, is a key condition for a more competitive market with lower entry barriers for new service providers. **Customers should also benefit, where they chose so, from the right to terminate the contract after a maximum notice period of 30 calendar days.**

Or. en

Amendment 10

Proposal for a regulation Recital 70

Text proposed by the Commission

(70) Regulation (EU) 2018/1807 of the

Amendment

(70) Regulation (EU) 2018/1807 of the

European Parliament and of the Council encourages *service* providers to effectively develop and implement self-regulatory codes of conduct covering best practices for, inter alia, facilitating the switching of *data processing service* providers and the porting of data. Given the limited *efficacy* of the self-regulatory frameworks developed in response, and the general unavailability of open standards and interfaces, it is necessary to adopt a set of minimum regulatory obligations on providers of *data processing* services to eliminate contractual, economic and technical barriers to effective switching between *data processing* services.

European Parliament and of the Council encourages providers *of cloud computing services* to effectively develop and implement self-regulatory codes of conduct covering best practices for, inter alia, facilitating the switching of providers *of cloud computing services* and the porting of data. Given the limited *uptake* of the self-regulatory frameworks developed in response, and the general unavailability of open standards and interfaces, it is necessary to adopt a set of minimum regulatory obligations on providers of *cloud computing* services to eliminate *any obstacles, such as* contractual, *commercial, organisational*, economic and technical barriers, *including but not limited to intentionally impeded speed of data transfer at the customer's exit*, to effective switching between *cloud computing* services.

Or. en

Amendment 11

Proposal for a regulation Recital 71

Text proposed by the Commission

(71) Data processing services should cover services that allow on-demand and broad remote access to a scalable and elastic pool of shareable and distributed computing resources. Those computing resources include resources such as networks, servers or other virtual or physical infrastructure, *operating systems*, software, including software development tools, storage, applications and services. The capability of the customer of the data processing service to unilaterally self-provision computing capabilities, such as server time or network storage, without any human interaction by the *service* provider could be described as on-demand

Amendment

(71) Data processing services should cover services that allow on-demand and broad remote access to a scalable and elastic pool of shareable and distributed computing resources. Those computing resources include resources such as networks, servers or other virtual or physical infrastructure, software, including software development tools, storage, applications and services. The capability of the customer of the data processing service to unilaterally self-provision computing capabilities, such as server time or network storage, without any human interaction by the provider *of cloud computing services* could be described as on-demand

administration. The term '***broad remote access***' is used to describe that the computing capabilities are provided over the network and accessed through mechanisms promoting the use of heterogeneous thin or thick client platforms (from web browsers to mobile devices and workstations). The term 'scalable' refers to computing resources that are flexibly allocated by the ***data processing service*** provider, irrespective of the geographical location of the resources, in order to handle fluctuations in demand. The term 'elastic pool' is used to describe those computing resources that are provisioned and released according to demand in order to rapidly increase or decrease resources available depending on workload. The term '***shareable***' is used to describe those computing resources that are provided to multiple users who share a common access to the service, but where the processing is carried out separately for each user, although the service is provided from the same electronic equipment. The term 'distributed' is used to describe those computing resources that are located on different networked computers or devices and which communicate and coordinate among themselves by message passing. The term 'highly distributed' is used to describe data processing services that involve data processing closer to where data are being generated or collected, for instance in a connected data processing device. Edge computing, which is a form of such highly distributed data processing, is expected to generate new business models and cloud service delivery models, which should be open and interoperable from the outset.

administration. The term '***ubiquitous***' is used to describe that the computing capabilities are provided over the network and accessed through mechanisms promoting the use of heterogeneous thin or thick client platforms (from web browsers to mobile devices and workstations). The term 'scalable' refers to computing resources that are flexibly allocated by the provider ***of cloud computing services***, irrespective of the geographical location of the resources, in order to handle fluctuations in demand. The term 'elastic pool' is used to describe those computing resources that are provisioned and released according to demand in order to rapidly increase or decrease resources available depending on workload. The term '***shared pool***' is used to describe those computing resources that are provided to multiple users who share a common access to the service, but where the processing is carried out separately for each user, although the service is provided from the same electronic equipment. The term 'distributed' is used to describe those computing resources that are located on different networked computers or devices and which communicate and coordinate among themselves by message passing. The term 'highly distributed' is used to describe data processing services that involve data processing closer to where data are being generated or collected, for instance in a connected data processing device. Edge computing, which is a form of such highly distributed data processing, is expected to generate new business models and cloud service delivery models, which should be open and interoperable from the outset. ***Digital services considered as an online platform as defined in point (i) of Article 3 of Regulation (the Digital Services Act) should not be considered as 'cloud computing services' within the meaning of this regulation.***

Amendment 12

Proposal for a regulation

Recital 72

Text proposed by the Commission

(72) This Regulation aims to facilitate switching between data processing services, which encompasses all conditions and actions that are necessary for a customer to terminate a contractual agreement of a data processing service, to conclude one or multiple new **contracts** with different providers of data processing services, to port all its digital assets, including data, to the concerned other providers and to continue to use them in the new environment **while benefitting from functional equivalence**. Digital assets refer to elements in digital format for which the customer has the right of use, including data, applications, virtual machines and other manifestations of virtualisation technologies, such as containers. **Functional equivalence means the maintenance of a minimum level of functionality of a service after switching, and should be deemed technically feasible whenever both the originating and the destination data processing services cover (in part or in whole) the same service type.** Meta-data, generated by the customer's use of a service, should also be portable pursuant to this Regulation's provisions on switching.

Amendment

(72) This Regulation aims to facilitate switching between data processing services, which encompasses all **relevant** conditions and actions that are necessary for a customer to terminate a contractual agreement of a data processing service, to conclude one or multiple new **contractual agreements** with different providers of data processing services, to port all its digital assets, including data, to the concerned other providers and to continue to use them in the new environment. Digital assets refer to elements in digital format for which the customer has the right of use, including data, applications, virtual machines and other manifestations of virtualisation technologies, such as containers. Meta-data, generated by the customer's use of a service, should also be portable pursuant to this Regulation's provisions on switching. **For the purpose of assessing whether two services are equivalent, syntactic data interoperability should be construed as a form of interoperability whereby the formats of the exchanged information can be understood by the participating systems while semantic data interoperability should be construed as a form of interoperability whereby the meaning of the old data model within the context of a subject area is understood by the participating systems.**

Amendment 13

Proposal for a regulation Recital 72 a (new)

Text proposed by the Commission

Amendment

(72a) Interoperability between equivalent cloud computing services involves multiple interfaces and layers of infrastructure and software and is rarely confined to a binary test of being achievable or not. Instead, the building of such interoperability is subject to a cost-benefit analysis which is necessary to establish whether it is worthwhile to pursue reasonably predictable results. Therefore, in some cases, two services might appear to be of equivalent or similar type, sharing the same primary objective, like storage, yet their underlying layer or operations differs significantly as a result of applying varying technologies, including their advancement and sophistication. The likelihood of portability and interoperability could be established by inspecting and comparing facets of different services. Those facets need to be sufficiently understood and mutually agreed upon in order to facilitate a switching process. Depending on the service type, it might be necessary to consider elements such as data policy, data syntactic, data semantic, behaviour and instruction portability as well as matching functionalities of those services.

Or. en

Amendment 14

Proposal for a regulation Recital 74

Text proposed by the Commission

Amendment

(74) Data processing service providers

(74) Providers of cloud computing

should be required to offer all assistance and support that is required to make the switching process successful *and effective without requiring those data processing service providers to develop new categories of services within or on the basis of the IT-infrastructure of different data processing service providers to guarantee functional equivalence in an environment other than their own systems. Nevertheless, service providers are required to offer all assistance and support that is required to make the switching process effective.* Existing rights relating to the termination of contracts, including those introduced by Regulation (EU) 2016/679 and Directive (EU) 2019/770 of the European Parliament and of the Council⁶⁷ should not be affected.

services should be required to offer all assistance and support that is required to make the switching process successful, *safe, effective and in line with the industry best practices.* Providers of *cloud computing* services *should* support *development of customer's exit strategy relevant to the contracted services, including through providing information such as procedures for initiating switching from the cloud computing service, the machine-readable data formats that user's data can be exported to, the tools, including at least one open standard data portability interface, foreseen to export data, information on known technical restrictions and limitations that could impact switching process, estimated time necessary to complete the switching process, costs indication related to the data transfers and additional services offered to facilitate the switching process, including the ability of the customer to test its switching process.* Existing rights relating to the termination of contracts, including those introduced by Regulation (EU) 2016/679 and Directive (EU) 2019/770 of the European Parliament and of the Council⁶⁷ should not be affected.

⁶⁷ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1).

⁶⁷ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1).

Or. en

Amendment 15

Proposal for a regulation Recital 75 a (new)

Text proposed by the Commission

Amendment

(75a) In order to facilitate switching between cloud computing services, providers of destination cloud computing services should cooperate in good faith with the provider of source cloud computing services with a view to enabling the timely transfer of necessary items such as data or applications.

Or. en

Amendment 16

Proposal for a regulation Recital 75 b (new)

Text proposed by the Commission

Amendment

(75b) Certain cloud computing services, such as cloud computing services, which have been custom built to facilitate a specific customer's need, or cloud computing services that operate on a trial basis or only supply a testing and evaluation service for business product offerings, should be exempted from the obligations applicable to cloud computing service switching.

Or. en

Amendment 17

Proposal for a regulation Recital 75 c (new)

Text proposed by the Commission

Amendment

(75c) Customers should have access to certified dispute settlement bodies to settle disputes related to switching between providers of cloud computing services.

Amendment 18

Proposal for a regulation

Recital 76

Text proposed by the Commission

(76) Open interoperability specifications and standards developed in accordance with paragraph 3 and 4 of Annex II of Regulation (EU) 1025/2021 in the field of interoperability and portability enable a *seamless* multi-vendor cloud environment, which is a key requirement for open innovation in the European data economy. As market-driven processes have not demonstrated the capacity to establish technical specifications or standards that facilitate effective cloud interoperability at the PaaS (platform-as-a-service) and SaaS (software-as-a-service) levels, the Commission should be able, on the basis of this Regulation and in accordance with Regulation (EU) No 1025/2012, to request European standardisation bodies to develop such standards, *particularly for service types* where such standards do not yet exist. In addition to this, the Commission will encourage parties in the market to develop relevant open interoperability specifications. The Commission, by way of delegated acts, can mandate the use of European standards for interoperability or open interoperability specifications for specific *service types* through a reference in a central Union standards repository for the interoperability of *data processing* services. European standards and open interoperability specifications will only be referenced if in compliance with the criteria specified in this Regulation, which have the same meaning as the requirements in paragraphs 3 and 4 of Annex II of Regulation (EU) No 1025/2021 and the interoperability facets defined under the

Amendment

(76) Open interoperability specifications and standards developed in accordance with paragraph 3 and 4 of Annex II of Regulation (EU) 1025/2021 in the field of interoperability and portability enable a multi-vendor cloud environment, which is a key requirement for open innovation in the European data economy. As market-driven processes have not demonstrated the capacity to establish technical specifications or standards that facilitate effective cloud *computing service* interoperability at the PaaS (platform-as-a-service) and SaaS (software-as-a-service) levels, the Commission should be able, on the basis of this Regulation and in accordance with Regulation (EU) No 1025/2012, to request European standardisation bodies to develop such standards, *for equivalent services* where such standards do not yet exist. In addition to this, the Commission will encourage parties in the market to develop relevant open interoperability specifications. *Following consultation with stakeholders and taking into account relevant international and European standards and self-regulating initiatives*, the Commission, by way of delegated acts, can mandate the use of European standards for interoperability or open interoperability specifications for specific *equivalent services* through a reference in a central Union standards repository for the interoperability of *cloud computing* services. European standards and open interoperability specifications will only be referenced if in compliance with the

ISO/IEC 19941:2017.

criteria specified in this Regulation, which have the same meaning as the requirements in paragraphs 3 and 4 of Annex II of Regulation (EU) No 1025/2021 and the interoperability facets defined under the ISO/IEC 19941:2017.

Or. en

Amendment 19

Proposal for a regulation

Recital 79

Text proposed by the Commission

(79) Standardisation and semantic interoperability should play a key role to provide technical solutions to ensure interoperability. In order to facilitate the conformity with the requirements for interoperability, it is necessary to provide for a presumption of conformity for interoperability solutions that meet harmonised standards or parts thereof in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council. ***The Commission should adopt common specifications in areas where no harmonised standards exist or where they are insufficient in order to further enhance interoperability for the common European data spaces, application programming interfaces, cloud switching as well as smart contracts. Additionally,*** common specifications in the different sectors could remain to be adopted, in accordance with Union or national sectoral law, based on the specific needs of those sectors. Reusable data structures and models (in form of core vocabularies), ontologies, metadata application profile, reference data in the form of core vocabulary, taxonomies, code lists, authority tables, thesauri should also be part of the technical specifications for semantic interoperability.

Amendment

(79) Standardisation and semantic interoperability should play a key role to provide technical solutions to ensure interoperability. In order to facilitate the conformity with the requirements for interoperability, it is necessary to provide for a presumption of conformity for interoperability solutions that meet harmonised standards or parts thereof in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council. Common specifications in the different sectors could remain to be adopted, in accordance with Union or national sectoral law, based on the specific needs of those sectors. Reusable data structures and models (in form of core vocabularies), ontologies, metadata application profile, reference data in the form of core vocabulary, taxonomies, code lists, authority tables, thesauri should also be part of the technical specifications for semantic interoperability. Furthermore, ***following consultation with stakeholders and taking into account relevant international and European standards and self-regulating initiatives*** the Commission should be enabled to mandate the development of harmonised standards for the interoperability of ***cloud computing***

Furthermore, the Commission should be enabled to mandate the development of harmonised standards for the interoperability of *data processing* services.

services.

Or. en

Amendment 20

Proposal for a regulation Recital 82

Text proposed by the Commission

(82) In order to enforce their rights under this Regulation, natural and legal *persons* should be entitled to seek redress for the infringements of their rights under this Regulation by lodging complaints with competent authorities. Those authorities should be obliged to cooperate to ensure the complaint is appropriately handled and resolved. In order to make use of the consumer protection cooperation network mechanism and to enable representative actions, this Regulation amends the Annexes to the Regulation (EU) 2017/2394 of the European Parliament and of the Council⁶⁸ and Directive (EU) 2020/1828 of the European Parliament and of the Council⁶⁹.

⁶⁸ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

⁶⁹ Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing

Amendment

(82) In order to enforce their rights under this Regulation, natural and legal *person, or any third party authorised to act on their behalf*, should be entitled to seek redress for the infringements of their rights under this Regulation by lodging complaints with competent authorities. Those authorities should be obliged to cooperate to ensure the complaint is appropriately handled and resolved. In order to make use of the consumer protection cooperation network mechanism and to enable representative actions, this Regulation amends the Annexes to the Regulation (EU) 2017/2394 of the European Parliament and of the Council⁶⁸ and Directive (EU) 2020/1828 of the European Parliament and of the Council⁶⁹.

⁶⁸ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

⁶⁹ Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing

Amendment 21

Proposal for a regulation Article 2 – paragraph 1 – point 6

Text proposed by the Commission

(6) ‘data holder’ means a legal or natural person who has the right or obligation, in accordance with this Regulation, applicable Union law or national legislation implementing Union law, or in the case of non-personal data and through ***control of the technical design*** of the product ***and*** related ***services, the ability***, to make available certain data;

Amendment

(6) ‘data holder’ means a legal or natural person who has the right or obligation, in accordance with this Regulation, applicable Union law or national legislation implementing Union law, or in the case of non-personal data and through ***ownership*** of the product ***or*** related ***service at the time the data is generated by the usage***, to make available certain data;

Justification

Introduced changes are necessary to clarify that entity merely providing storage or computing resources for the third party is not covered by the definition of ‘data holder’.

Amendment 22

Proposal for a regulation Article 2 – paragraph 1 – point 9

Text proposed by the Commission

(9) ‘public sector body’ means national, regional or local authorities of the Member States and bodies governed by public law of the Member States, or associations formed by one or more such authorities or one or more such bodies;

Amendment

(9) ‘public sector body’ means ***identified*** national, regional or local authorities of the Member States and bodies governed by public law of the Member States, or associations formed by one or more such authorities or one or more such bodies;

Justification

The amendment intends to increase predictability.

Amendment 23**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 affecting the population of the Union, a Member State or part of it, with a **provable** 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);

Or. en

Amendment 24**Proposal for a regulation****Article 2 – paragraph 1 – point 12***Text proposed by the Commission*

(12) ‘**data processing** service’ means a **digital** service **other than an online content service as defined in Article 2(5) of Regulation (EU) 2017/1128, provided to a customer, which enables on-demand administration and broad remote** access to a **scalable and elastic** pool of **shareable** computing resources of a centralised, distributed or highly distributed nature;

Amendment

(12) ‘**cloud computing** service’ means a service **enabling ubiquitous, scalable, elastic and on-demand network** access to a **shared** pool of **configurable** computing resources of a centralised, distributed or highly distributed nature **provided to a customer that can be rapidly provisioned and released with minimal management effort or service provider interaction**;

(This amendment applies throughout the text [cloud computing service] shall replace [data processing service]. Adopting it will necessitate corresponding

changes throughout.)

Or. en

Justification

The updated definition is necessary to introduce more clarity and to build on the well-recognised definition developed by standardisation bodies and partially used in other EU legislations.

Amendment 25

Proposal for a regulation

Article 2 – paragraph 1 – point 13

Text proposed by the Commission

(13) ‘service **type**’ means a set of **data processing** services that share the same primary objective and **basic** data processing service model;

Amendment

(13) ‘**equivalent** service ’ means a set of **cloud computing** services that share the same primary objective and data processing service model, **and can achieve syntactic and semantic data interoperability**;

Or. en

Amendment 26

Proposal for a regulation

Article 2 – paragraph 1 – point 13 a (new)

Text proposed by the Commission

Amendment

(13a) ‘cloud computing service data portability’ means the ability of the cloud service to move and suitably adapt its data between the customer’s cloud services, including in different deployment models;

Or. en

Justification

Clarification of the important term used throughout chapter VI.

Amendment 27

Proposal for a regulation

Article 2 – paragraph 1 – point 13 b (new)

Text proposed by the Commission

Amendment

(13b) 'cloud computing service switching' means the process where a cloud service customer suitably changes from using one cloud computing service to using a second equivalent or other service offered by a different provider of cloud computing services, involving the provider of source cloud computing services, the customer and the provider of destination cloud computing services.

Or. en

Justification

Clarification of the important term used throughout chapter VI.

Amendment 28

Proposal for a regulation

Article 2 – paragraph 1 – point 14

Text proposed by the Commission

Amendment

(14) 'functional equivalence' means the maintenance of a minimum level of functionality in the environment of a new data processing service after the switching process, to such an extent that, in response to an input action by the user on core elements of the service, the destination service will deliver the same output at the same performance and with the same level of security, operational resilience and quality of service as the originating service at the time of termination of the contract;

deleted

Amendment 29**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 basis of a simple request through electronic means where technically feasible.

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 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 basis of a simple request through electronic means where technically feasible.
Manufacturer, where technically supported, shall provide on-device access in a non-discriminatory manner.

Or. en

Justification

This amendment is intended to avoid a situation where data is provided to user or third party in a discriminatory way (e.g. slow data transfer), or under other conditions that make it difficult to use it effectively.

Amendment 30**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

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 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. ***Such data shall be***

and in real-time.

digitally processable and interpretable and shall at least provide basic context and time stamp.

Or. en

Amendment 31

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

Amendment

2. Any undertaking providing core platform services for which one or more of such services have been designated as a gatekeeper, pursuant to Article [...] of [Regulation XXX on contestable and fair markets in the digital sector (Digital Markets Act)⁷³], shall not be an eligible third party under this Article and therefore shall not:

deleted

(a) solicit or commercially incentivise a user in any manner, including by providing monetary or any other compensation, to make data available to one of its services that the user has obtained pursuant to a request under Article 4(1);

(b) solicit or commercially incentivise a user to request the data holder to make data available to one of its services pursuant to paragraph 1 of this Article;

(c) receive data from a user that the user has obtained pursuant to a request under Article 4(1).

⁷³ OJ [...].

Or. en

Justification

“This Regulation ensures that users of a product or related service in the Union can access, in a timely manner, the data generated by the use of that product or related service and that

*those users can use the data, including by sharing them with third parties of their choice.”
This provision deprives individuals the right to use their data freely.*

Amendment 32

Proposal for a regulation

Article 6 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) make the data available it receives to an undertaking providing core platform services for which one or more of such services have been designated as a gatekeeper pursuant to Article [...] of [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)]; **deleted**

Or. en

Justification

As per amendment [33].

Amendment 33

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. A data holder shall agree with a data recipient the terms for making the data available. A contractual term concerning the access to and use of the data **or the liability** and remedies for the breach or the termination of data related obligations shall not be binding if it fulfils the conditions of Article 13 or if it excludes the application of, derogates from or varies the effect of the user’s rights under Chapter II.

2. A data holder **shall not be liable for the data it shares when the data is under control of the third party and** shall agree with a data recipient the terms for making the data available. A contractual term concerning the access to and use of the data and remedies for the breach or the termination of data related obligations shall not be binding if it fulfils the conditions of Article 13 or if it excludes the application of, derogates from or varies the effect of the user’s rights under Chapter II.

Amendment 34

Proposal for a regulation

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The user shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes with data holders or data recipients or any third party in relation to breach of user's rights under this Regulation. The user shall have the right to allow a third party to pursue its legal claims on its behalf.

Or. en

Justification

While an individual user will have limited incentive to challenge unfair practices of certain entities, the companies (third party) directly benefiting from the data transfer can engage in process on user's behalf.

Amendment 35

Proposal for a regulation

Article 14 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. For the purpose of the request referred to in paragraph 1, the Member States authority referred to in Article 31 and the Commission shall establish a procedure to identify a list of dependent public sector bodies. This list shall be available to the public. While identifying the relevant public sector bodies, the Member States and the Commission shall consider what is strictly necessary to achieve the objectives of this Regulation.

Justification

It is necessary to keep under control the public or Union bodies that can engage with companies to request access of privately owned data.

Amendment 36

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) ***as a measure of last resort***, 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 37

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(aa) request data within its remit

Or. en

Justification

This amendment intends to prevent data requests outside of competence of certain public bodies.

Amendment 38

Proposal for a regulation

Article 17 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) take into account required information security measures;

Or. en

Amendment 39

Proposal for a regulation

Article 17 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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.

Where a public sector body or a Union institution, agency or body **intends to transmit or make** data available under this paragraph, it shall notify the data holder from whom the data was received. **Within 5 working days of that notification, the data holder shall have the right to submit reasonable objection to the intention of the public sector body to transmit or make its data available. In the case of a rejection by the public sector body, data holder may brought the objection to the competent authority referred to in Article 31.**

Or. en

Justification

The data holder should have the right to quick objection, in order to protect its integrity, security or confidentiality.

Amendment 40

Proposal for a regulation

Article 18 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) provided security measures concerning transfer, storing and

maintaining data confidentiality are insufficient.

Or. en

Amendment 41

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

Text proposed by the Commission

Amendment

2a. Notwithstanding Article 21(1), a public sector body or a Union institution, agency or body shall be responsible for the security of the data they receive.

Or. en

Amendment 42

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

Amendment

2. Individuals or organisations receiving the data pursuant to paragraph 1 shall act on a not-for-profit basis or in the context of a public-interest mission recognised in Union or Member State law. They shall not include organisations upon which commercial undertakings have **a decisive** influence or which could result in preferential access to the results of the research.

2. Individuals or organisations receiving the data pursuant to paragraph 1 shall act on a not-for-profit basis or in the context of a public-interest mission recognised in Union or Member State law. They shall not include organisations upon which commercial undertakings have influence or which could result in preferential access to the results of the research.

Or. en

Amendment 43

Proposal for a regulation Article 21 – paragraph 4

Text proposed by the Commission

4. Where a public sector body or a Union institution, agency or body **transmits or makes** data available under paragraph 1, it shall notify the data holder from whom the data was received.

Amendment

4. Where a public sector body or a Union institution, agency or body **intends to transmit or make** data available under paragraph 1, it shall notify the data holder from whom the data was received.

Or. en

Amendment 44

Proposal for a regulation

Article 21 – paragraph 4 – subparagraph 1a (new)

Text proposed by the Commission

Amendment

Within 5 working days of the notification referred to in the first subparagraph of this paragraph, the data holder shall have the right to submit reasonable objection to the intention of the public sector body to transmit or make its data available. In the case of a rejection by the public sector body, data holder may brought the objection to the competent authority referred to in Article 31.

Or. en

Justification

As per amendment [42].

Amendment 45

Proposal for a regulation

Article 23 – paragraph 1 – introductory part

Text proposed by the Commission

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

1. Providers of a **cloud computing** service shall take the measures provided for in Articles 24, 25 and 26 to **enable** customers **switching** to another **cloud**

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:

computing service, covering the **equivalent** service, which is provided by a different provider **of cloud computing services**. In particular, providers of **a cloud computing** service shall **not impose or shall** remove obstacles, which inhibit customers from:

Or. en

Amendment 46

Proposal for a regulation

Article 23 – paragraph 1 – point a

Text proposed by the Commission

(a) terminating, after a maximum notice period of 30 calendar days, the contractual agreement of the service;

Amendment

(a) terminating, after a maximum notice period of 30 calendar days **or after a notice period agreed in the contractual agreement between the customer and the provider of cloud computing services**, the contractual agreement of the service;

Or. en

Justification

The long-term contracts could allow the customer to optimise the costs and should remain optional for the customer.

Amendment 47

Proposal for a regulation

Article 23 – paragraph 1 – point b

Text proposed by the Commission

(b) concluding new contractual agreements with a different provider of **data processing** services covering the **same** service **type**;

Amendment

(b) concluding new contractual agreements with a different provider of **cloud computing** services covering the **equivalent** service;

Or. en

Amendment 48

Proposal for a regulation Article 23 – paragraph 1 – point d

Text proposed by the Commission

(d) maintaining functional equivalence of the service in the IT-environment of the different provider or providers of data processing services covering the same service type, in accordance with Article 26.

Amendment

deleted

Or. en

Amendment 49

Proposal for a regulation Article 23 – paragraph 2

Text proposed by the Commission

2. Paragraph 1 shall only apply to obstacles that are related to the services, contractual agreements or commercial practices provided by the **original** provider.

Amendment

2. Paragraph 1 shall only apply to obstacles that are related to the services, contractual agreements or commercial practices provided by the provider **of source cloud computing services**.

Or. en

Amendment 50

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)

Amendment

1. The rights of the customer and the obligations of the provider of a **cloud computing** service in relation to switching between providers of such services shall be clearly set out in a written **contractual agreement**. Without prejudice to Directive

2019/770, *that contract* shall include at least the following:

(EU) 2019/770, *the provider of cloud computing services shall ensure that contractual agreement* shall include at least the following:

Or. en

Amendment 51

Proposal for a regulation

Article 24 – paragraph 1 – point a – introductory part

Text proposed by the Commission

(a) clauses allowing the customer, upon request, to switch to a ***data processing*** service offered by another provider of ***data processing service*** or to port all data, applications and digital assets generated directly or indirectly by the customer to an on-premise system, ***in particular the establishment of a mandatory maximum transition period of 30 calendar days***, during which the ***data processing service*** provider shall:

Amendment

(a) clauses allowing the customer, upon request, to switch to a ***cloud computing*** service offered by another provider of ***cloud computing services*** or to port all data, applications and digital assets generated directly or indirectly by the customer to an on-premise system, ***without undue delay***, during which the provider ***of cloud computing services*** shall:

Or. en

Justification

The 'One size fits all' approach is not feasible for cloud computing services. While simple migrations can be finished within a single day, complex projects could last well beyond a few months. Forcing the provider to complete the switching process within a closed timeframe may have dire consequences on the customer's business operations.

Amendment 52

Proposal for a regulation

Article 24 – paragraph 1 – point a – point 1

Text proposed by the Commission

(1) assist and, ***where technically feasible, complete*** the switching process;

Amendment

(1) assist ***through*** and ***facilitate*** the switching process;

Amendment 53

Proposal for a regulation

Article 24 – paragraph 1 – point a – point 2

Text proposed by the Commission

(2) ensure **full** continuity in the provision of the **respective** functions or services.

Amendment

(2) **act with due care to maintain business continuity and security of the service and, taking into account the advancement in the switching process, ensure, to the greatest extent possible, continuity in the provision of the relevant functions or services within the provider of source cloud computing services' infrastructure capacity and according to the contractual obligations;**

Or. en

Amendment 54

Proposal for a regulation

Article 24 – paragraph 1 – point a – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) **provide clear information concerning known risks to continuity in the provision of the respective functions or services from the side of provider of source cloud computing services during the switching process.**

Or. en

Amendment 55

Proposal for a regulation

Article 24 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) obligation to complete the switching process within the period which may not exceed 6 months, provided that the customer acts in good faith. The customer shall retain the right to extend this period, if needed, prior or during the switching process;

Or. en

Amendment 56

Proposal for a regulation

Article 24 – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(ab) support development of customer's exit strategy relevant to the contracted services, including through providing information such as procedures for initiating switching from the cloud computing service, the machine-readable data formats that user's data can be exported to, the tools, including at least one open standard data portability interface, foreseen to export data, known technical restrictions and limitations that could impact switching process, estimated time necessary to complete the switching process, costs indication related to the data transfers and additional services offered to facilitate the switching process, including the ability of the customer to test its switching process.

Or. en

Justification

Set of new obligations supporting the customer's decision making. While the customer remains the ultimate decision maker, it must act based on the set the essential information.

Amendment 57

Proposal for a regulation

Article 24 – paragraph 1 – point b

Text proposed by the Commission

(b) ***an exhaustive*** specification of all data and application categories exportable during the switching process, including, at minimum, all data imported by the customer at the inception of the service agreement and all data and metadata created by the customer and by the use of the service during the period the service was provided, including, but not limited to, configuration parameters, security settings, access rights and access logs to the service;

Amendment

(b) ***a detailed*** specification of all data and application categories exportable during the switching process, including, at minimum, all data imported by the customer at the inception of the service agreement and all data and metadata ***related to customer's services and*** created by the customer and by the use of the service during the period the service was provided, including, but not limited to, ***where appropriate,*** configuration parameters, security settings, access rights and access logs to the service;

Or. en

Amendment 58

Proposal for a regulation

Article 24 – paragraph 1 – point c

Text proposed by the Commission

(c) a minimum period for data retrieval of at least 30 calendar days, starting after the termination of the transition period that was agreed between the customer and the ***service*** provider, in accordance with paragraph 1, point (a) ***and paragraph 2.***

Amendment

(c) a minimum period for data retrieval of at least 30 calendar days, starting after the termination of the transition period that was agreed between the customer and the provider ***of cloud computing services,*** in accordance with paragraph 1, point (a).

Or. en

Amendment 59

Proposal for a regulation

Article 24 – paragraph 2

Text proposed by the Commission

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, which may not exceed 6 months. In accordance with paragraph 1 of this Article, full service continuity shall be ensured throughout the alternative transition period against reduced charges, referred to in Article 25(2).

deleted

Or. en

Justification

Replaced by AM [59]

Amendment 60

Proposal for a regulation Article 24 a (new)

Text proposed by the Commission

Amendment

Article 24a

Obligations of the providers of destination cloud computing services

The provider of destination cloud computing services shall comply with the following obligations towards the customer:

a) shall provide information on available procedures for switching and porting to the cloud computing service when it is a porting destination, including information on available porting methods, formats as well as known restrictions and

technical limitations;

b) shall cooperate in good faith with the provider of source cloud computing services to enable the timely transfer of necessary items such as data or software via commonly used, machine-readable format and by means of the open standard data portability interface, unless otherwise agreed by both parties.

Or. en

Justification

Set of the obligations strengthening customers' position, highlighting that the switching process involves and requires good cooperation from the provider of destination cloud services.

Amendment 61

Proposal for a regulation Article 25 – paragraph 1

Text proposed by the Commission

1. From [date X+3yrs] onwards, providers of **data processing** services shall not impose any charges on **the customer** for the switching process.

Amendment

1. From [date X, **the date of entry into force of this Regulation**] onwards, providers of **cloud computing** services shall not impose any charges on **customers who are consumers** for the switching process.

Or. en

Amendment 62

Proposal for a regulation Article 25 – paragraph 2

Text proposed by the Commission

2. From [date X, the date of entry into force of the Data Act] **until [date X+3yrs]**, providers of **data processing** services **may** impose reduced charges on **the customer**

Amendment

2. From [date X, the date of entry into force of **this Regulation**], providers of **cloud computing** services **shall** impose reduced charges on **all customers** for the

for the switching process.

switching process.

Or. en

Justification

As the switching process could last longer than a few months, it is necessary to rationalise the exit fees to maintain robust uptake of the cloud services. Further study shall be conducted to analyse the impact of full withdrawal of switching chargers on the upfront cost of cloud computing services.

Amendment 63

Proposal for a regulation Article 25 – paragraph 3

Text proposed by the Commission

3. The charges referred to in paragraph 2 shall not exceed the costs incurred by the provider of **data processing** services that are directly linked to the switching process concerned.

Amendment

3. The charges referred to in paragraph 2 shall not exceed the costs incurred by the provider of **cloud computing** services that are directly linked to the switching process **and shall be associated with mandatory operations that the provider of cloud computing processing services must perform as part of the switching process** concerned.

Or. en

Amendment 64

Proposal for a regulation Article 25 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Before entering into a contractual agreement with a customer, the provider of cloud computing services shall provide the customer with clear information describing the charges imposed on the customer for the switching process and where relevant, shall provide information on services associated with highly

complex or costly switching or impossible to switch without significant interference in the data or application or service architecture.

Or. en

Amendment 65

Proposal for a regulation Article 25 – paragraph 4

Text proposed by the Commission

4. The Commission is empowered to adopt delegated acts in accordance with Article 38 to supplement this Regulation in order to introduce a monitoring mechanism for the Commission to monitor switching charges imposed by **data processing service** providers on the market to ensure that the **withdrawal** of switching charges as described in paragraph 1 of this Article **will be attained in accordance with** the deadline provided in **the same** paragraph.

Amendment

4. The Commission is empowered to adopt delegated acts in accordance with Article 38 to supplement this Regulation in order to introduce a monitoring mechanism for the Commission to monitor switching charges imposed by providers **of cloud computing services** on the market to ensure that the **reduction** of switching charges as described in paragraph 2 of this Article **is attained as from** the deadline provided in **that** paragraph.

Or. en

Amendment 66

Proposal for a regulation Article 26 – paragraph 1

Text proposed by the Commission

1. **Providers of data processing services that concern scalable and elastic computing resources limited to infrastructural elements such as servers, networks and the virtual resources necessary for operating the infrastructure, but that do not provide access to the operating services, software and applications that are stored, otherwise processed, or deployed on those**

Amendment

deleted

infrastructural elements, shall ensure that the customer, after switching to a service covering the same service type offered by a different provider of data processing services, enjoys functional equivalence in the use of the new service.

Or. en

Amendment 67

Proposal for a regulation Article 26 – paragraph 2

Text proposed by the Commission

2. *For data processing services other than those covered by paragraph 1, providers of data processing services shall make open interfaces publicly available and free of charge.*

Amendment

2. *Providers of cloud computing services, including providers of destination cloud computing services, shall make open interfaces available and free of charge.*

Or. en

Amendment 68

Proposal for a regulation Article 26 – paragraph 3

Text proposed by the Commission

3. *For data processing services other than those covered by paragraph 1, providers of data processing services shall ensure compatibility with open interoperability specifications or European standards for interoperability that are identified in accordance with Article 29(5) of this Regulation.*

Amendment

3. Providers of *cloud computing* services shall, *where technically feasible*, ensure compatibility with open interoperability specifications or European standards for interoperability that are identified in accordance with Article 29(5) of this Regulation.

Or. en

Amendment 69

Proposal for a regulation Article 26 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Providers of cloud computing services for which new open interoperability specification or European Standard was published in the repository referred to in Article 29(5) shall have the right to a one-year exemption from the obligation referred to in paragraph 3 of this Article.

Or. en

Amendment 70

Proposal for a regulation Article 26 – paragraph 4

Text proposed by the Commission

Amendment

4. Where the open interoperability specifications or European standards referred to in paragraph 3 do not exist for the service **type** concerned, the provider of **data processing** services shall, at the request of the customer, export all data generated or co-generated, including the relevant data formats and data structures, in a structured, commonly used and machine-readable format.

4. Where the open interoperability specifications or European standards referred to in paragraph 3 do not exist for the **equivalent** service concerned, the provider of **cloud computing** services shall, at the request of the customer, export **where technically feasible**, all data generated or co-generated, including the relevant data formats and data structures, in a structured, commonly used and machine-readable format **as indicated to the customer in accordance with Article 24 (1 ab), unless other format is accepted by the customer.**

Or. en

Amendment 71

Proposal for a regulation Article 26 a (new)

Text proposed by the Commission

Amendment

Article 26a

Exemptions for certain cloud computing services

The obligations set out in this Chapter shall not apply to:

- a) cloud computing services, which have been custom-built to facilitate a specific customer's need;***
- b) cloud computing services that operate on a trial basis or only supply a testing and evaluation service for business product offerings.***

Or. en

Amendment 72

Proposal for a regulation Article 26 b (new)

Text proposed by the Commission

Amendment

Article 26b

Dispute settlement

- 1. Customers shall have access to dispute settlement bodies, certified in accordance with Article 10 paragraph 2, to settle disputes in relation to breach of the rights of customer and the obligations of the provider of a cloud computing service in relation to switching between providers of such services. The customer shall have the right to allow a third party to pursue its legal claims on its behalf.***
- 2. Article 10 paragraphs (3) to (9) apply to the settlement of disputes between customers and cloud computing service in***

relation to switching between providers of such services.

Or. en

Amendment 73

Proposal for a regulation Article 27 – paragraph 1

Text proposed by the Commission

1. Providers of ***data processing*** services shall take all reasonable technical, legal and organisational measures, including contractual arrangements, in order to prevent international transfer or governmental access to non-personal data held in the Union where such transfer or access would create a conflict with Union law or the national law of the relevant Member State, without prejudice to paragraph 2 or 3.

Amendment

1. Providers of ***cloud computing*** services shall take all reasonable technical, legal and organisational measures, including contractual arrangements, in order to prevent international transfer or governmental access to non-personal data held in the Union, ***based on a contractual agreement with the user of that provider of cloud computing service or a legal obligation the provider is subject to***, where such transfer or access would create a conflict with Union law or the national law of the relevant Member State, ***as listed according to Article 27 a***, without prejudice to paragraph 2 or 3 ***of this Article***.

Or. en

Amendment 74

Proposal for a regulation Article 27 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where a provider of cloud computing services transfers data subject to appropriate safeguards as defined under article 46 of Regulation 2016/679, the conditions set out in paragraph 1 of this Article shall be presumed fulfilled.

Amendment 75**Proposal for a regulation
Article 27 – paragraph 2***Text proposed by the Commission*

2. Any decision or judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a provider of **data processing** services to transfer from or give access to non-personal data within the scope of this Regulation held in the Union may only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or any such agreement between the requesting third country and a Member State.

Amendment

2. Any decision or judgment of a court or tribunal and any decision of an administrative authority of a third country **listed in accordance with Article 27 a** requiring a provider of **cloud computing** services to transfer from or give access to non-personal data within the scope of this Regulation held in the Union may only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or any such agreement between the requesting third country and a Member State.

Amendment 76**Proposal for a regulation
Article 27 – paragraph 3 – subparagraph 1 – introductory part***Text proposed by the Commission*

In the absence of such an international agreement, where a provider of **data processing** services is the addressee of a decision of a court or a tribunal or a decision of an administrative authority of a third country to transfer from or give access to non-personal data within the scope of this Regulation held in the Union and compliance with such a decision would risk putting the addressee in conflict with Union law or with the national law of the

Amendment

In the absence of such an international agreement, where a provider of **cloud computing** services is the addressee of a decision of a court or a tribunal or a decision of an administrative authority of a third country **listed in accordance with Article 27 a** to transfer from or give access to non-personal data within the scope of this Regulation held in the Union and compliance with such a decision would risk putting the addressee in conflict with

relevant Member State, transfer to or access to such data by that third-country authority shall take place only:

Union law or with the national law of the relevant Member State, transfer to or access to such data by that third-country authority shall take place only:

Or. en

Amendment 77

Proposal for a regulation Article 27 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

The European Data Innovation Board established under Regulation [xxx – DGA] shall advise and assist the Commission in developing guidelines on the assessment of whether these conditions are met.

deleted

Or. en

Justification

Replaced with article 27 a.

Amendment 78

Proposal for a regulation Article 27 – paragraph 5

Text proposed by the Commission

Amendment

5. The provider of ***data processing*** services shall inform the data holder about the existence of a request of an administrative authority in a third-country to access its data before complying with its request, except in cases where the request serves law enforcement purposes and for as long as this is necessary to preserve the effectiveness of the law enforcement activity.

5. The provider of ***cloud computing*** services shall inform the data holder about the ***list of third-country jurisdictions and*** existence of a request of an administrative authority in a third-country to access its data before complying with its request, except in cases where the request serves law enforcement purposes and for as long as this is necessary to preserve the effectiveness of the law enforcement activity.

Amendment 79

**Proposal for a regulation
Article 27 a (new)**

Text proposed by the Commission

Amendment

Article 27a

List of third-country jurisdictions

1. The Commission may, by way of implementing acts, adopt a list of third-country jurisdictions where international transfer or governmental access to non-personal data held in the Union would create a conflict with Union law or the national law of the relevant Member State, taking into account:

- (i) conflicting regulations including on data protection, public security, national security;***
- (ii) access to the reasoned objection procedure;***
- (iii) the level of risk to lose the confidentiality of commercially sensitive data;***
- (iv) international commitments;***
- (v) third country adequacy recognition under article 45 of Regulation 2016/679.***

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).

When developing the list, the Commission shall consult and take due account of the recommendations issued by the Data Innovation Board established under Regulation [xxx – Data Governance Act] and other relevant expert groups.

Amendment 80

Proposal for a regulation Article 29 – paragraph 1 – point a

Text proposed by the Commission

(a) be performance oriented towards achieving interoperability between different *data processing* services that cover the *same service type*;

Amendment

(a) be performance oriented towards achieving interoperability between different *cloud computing* services that cover the *equivalent services*;

Or. en

Amendment 81

Proposal for a regulation Article 29 – paragraph 1 – point b

Text proposed by the Commission

(b) enhance portability of digital assets between different *data processing* services that cover the *same service type*;

Amendment

(b) enhance portability of digital assets between different *cloud computing* services that cover the *equivalent services*;

Or. en

Amendment 82

Proposal for a regulation Article 29 – paragraph 1 – point c

Text proposed by the Commission

(c) *guarantee, where technically feasible, functional equivalence between different data processing services that cover the same service type.*

Amendment

deleted

Or. en

Amendment 83

Proposal for a regulation Article 29 – 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 European standards applicable to specific **service types of data processing** services.

Amendment

4. **Following consultation with stakeholders and taking into account relevant international and European standards and self-regulating initiatives**, the Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft European standards applicable to specific **equivalent services of cloud computing** services.

Or. en

Amendment 84

Proposal for a regulation Article 29 – paragraph 5

Text proposed by the Commission

5. For the purposes of Article 26(3) of this Regulation, the Commission shall be empowered to adopt delegated acts, in accordance with Article 38, to publish the reference of open interoperability specifications and European standards for the interoperability of **data processing** services in central Union standards repository for the interoperability of **data processing** services, where these satisfy the criteria specified in paragraph 1 and 2 of this Article.

Amendment

5. For the purposes of Article 26(3) of this Regulation, the Commission shall be empowered to adopt delegated acts, in accordance with Article 38, to publish the reference of open interoperability specifications and European standards for the interoperability of **cloud computing** services **and developed by relevant standardisation organisations or organisations referred to in paragraph 3 of Annex II to Regulation (EU) No 1025/2012**, in central Union standards repository for the interoperability of **cloud computing** services, where these satisfy the criteria specified in paragraph 1 and 2 of this Article.

Or. en

Amendment 85

Proposal for a regulation

Article 41 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) the impact of the obligations provided for in Chapter VI, Article 27 and Article 29 on the cost of the cloud computing services in the Union, with a view to a full phase-out of switching fees;

Or. en

Amendment 86

Proposal for a regulation

Article 42 – paragraph 2

Text proposed by the Commission

Amendment

It shall apply from [**12** months after the date of entry into force of this Regulation].

It shall apply from [**24** months after the date of entry into force of this Regulation].

Or. en