



2022/0047(COD)

6.10.2022

DRAFT OPINION

of the Committee on Legal Affairs

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))

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

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SHORT JUSTIFICATION

On the subject of its proposed Data Act, the Commission says that it will ‘ensure fairness in the digital environment, stimulate a competitive data market, provide opportunities to businesses and make data more accessible to everyone. It will bring about new, innovative services for the aftermarket and repair of connected devices, at more competitive prices’. These are noble principles and highly ambitious objectives for a regulation that is one of the first of its kind in the world, and one that is extraordinarily complicated in technical and legal terms. This means that there are many aspects that require supplementing and improving in a text that from the outset involves a herculean effort to understand the situation, manage the objectives that are of public interest and provide the tools to do those things.

Multiple European Parliament committees are involved in discussing this regulation, such is the variety of topics that it covers. The Committee on Legal Affairs has to give an informed opinion on the whole text and has exclusive regulatory powers over some key areas, such as those to do with intellectual property, for example trade secrets and protection of databases that fall under *sui generis* intellectual property rights. We have also been working on improving the data flow between businesses and the public sector when matters of public interest are concerned, and on the possible establishment of compensatory payments for doing so. Other tasks we have worked on include the conceptual horizon for several key provisions, establishing corrective measures for contractual imbalances and strengthening governance to improve and ensure the development and effective application of the regulation.

In order to carry out our mandate, we have tried to improve and clarify some concepts that we found rather unclear and that could lead to ambiguous interpretations. We have also tried to add some provisions that ensure this law’s objectives are met in an improved manner. Next, I will try to describe the most relevant aspects of what we have added as significant amendments to the initial text.

We stressed the importance of providing a better outline of the guarantees to keep trade secrets, extending the tools given to the different people involved in order to secure their position when making data available, with both users and third parties chosen by them, and also in relation to the public sector, when data are made available by the private sector to the public sector, in emergencies or where there is a collective need for it. As the main exponent of the intellectual property of an operator in the data market, protecting trade secrets is the cornerstone of the very functioning of the European data market; it is what guarantees the maintenance of or increase in investments by private enterprise to improve services and products. Having said that, we also wanted to ensure appropriate compensation would be provided when it is not possible to keep trade secrets for reasons in the public interest.

Taking into account the real imbalances that exist between operators and users in the data market, we have tried to more effectively outline the circumstances where there can be substantial differences and introduce safeguards for those operating in less advantageous conditions.

Regarding public interest, we have tried to boost the amount of data that can be made available to the public authorities if required or appropriate, while also improving temporary provisions for public emergencies. To do this, we have altered some waiting times and removed exclusions that we found unfair so that the Act can be used for its intended purposes

as effectively and directly as possible. We also wanted to ensure appropriate compensation would be provided for making data available; therefore, we have removed the unjustified difference between emergencies and collective interests, as both circumstances are equally in the public interest. The potential for harm to private operators should be viewed in the same way.

Regarding the *sui generis* intellectual property rights of some databases (created by the previous Directive 1996/9 on the legal protection of databases), we have clarified in the text which databases enjoy that protection and which do not, in line with the provisions of the mentioned directive and subsequent CJEU case-law. We have also added measures that bolster safeguards against the illegal transfer of data.

Finally, concerning governance, we thought it necessary to add coordination mechanisms, taking into account the complex range of competent authorities in any given area covered by this law. Therefore, we have created a ‘Data Coordinator’ post in each Member State, and they are responsible for ensuring that people adhere to this law and to harmonise the work done by sectorial authorities and on data protection. According to the provisions of this regulation, the latter will continue to be the competent authorities in the execution of the legal provisions that apply to them concerning data. This post has its required corollary in the strengthening of the powers of the European Data Innovation Board (created by the 2022 Data Governance Act), which will serve to ensure better coordination within the European single market for data by providing support to Member States and the Commission in meeting the ambitious objectives set out in the regulation.

AMENDMENTS

The Committee on Legal Affairs 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 4

Text proposed by the Commission

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

Amendment

(4) In order to ***contribute to the digital transition of the Union, a comprehensive harmonisation at Union level is needed to achieve the aim of ensuring fairness in the allocation of value from data among all actors in the data economy as well as to avoid fragmentation resulting from national legislation, to create and reinforce trust in the data sharing environment. Moreover, to foster access to and use of data*** and to remove barriers to a well-functioning internal market for data, ***the*** harmonised framework ***should specify***

explicitly provided for in this Regulation, since this would affect the direct and uniform application of this Regulation.

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

Or. en

Amendment 2

Proposal for a regulation Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Further efforts must be made to consolidate the data economy and data governance. In particular, increasing and supporting data literacy is essential so that users and businesses are aware and motivated to offer and provide access to their data in compliance with the relevant legal rules. This is at the basis of a sustainable data society. Citizens should be able to understand the value of their data, together with the acquisition of a basic knowledge on data protection, privacy and security as fundamental rights.

Or. en

Amendment 3

Proposal for a regulation Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) The data economy has the

potential to deliver high-quality job opportunities, but entails the acquisition and development of data literacy to acquire competences by the labour market, especially in the case of employees from start-ups, micro, small and medium-sized enterprises. The spread of data literacy measures would imply the reduction of digital inequalities and contribute to improving working conditions, ensuring job stability and career predictability and ultimately sustain the consolidation and the innovation path of the data economy in the Union.

Or. en

Amendment 4

Proposal for a regulation Recital 4 c (new)

Text proposed by the Commission

Amendment

(4c) 'Data literacy' refers to skills, knowledge and understanding that allows users, consumers and businesses, in particular micro, small and medium-sized enterprises, to gain awareness on the potential value of the data they generated, produce and share, in the context of their rights and obligations set out in this Regulation and in other Union data related Regulations. Data literacy should go beyond learning about tools and technologies and aiming to equip citizens and businesses with the ability to benefit from a fair data market. It is therefore necessary that the Commission and the Member States, in cooperation with all relevant stakeholders, promote the development of data literacy, in all sectors of society, for citizens of all ages, including women and girls. Consequently, the Union and its Member States should allocate more investments in education

and training to spread data literacy, and ensure that progress in that regard is closely followed.

Or. en

Amendment 5

Proposal for a regulation

Recital 28

Text proposed by the Commission

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

Amendment

(28) The user should be free to use the data for any lawful purpose, ***in full compliance with this Regulation and any other Union and national related legislation***. This includes exercising the right ***of the user*** under this Regulation to ***share data with*** a third party ***of the user's choice*** offering an aftermarket service that may be in competition with a service provided by the data holder, or to instruct the data holder to do so. ***In order to comply with the user's request***, the data holder should ensure that the data made available to the third party is as accurate, complete, reliable, relevant and up-to-date as the data the data holder itself may be able or entitled to access from the use of the product or related service. Any trade secrets or intellectual property rights should be respected in handling the data. ***However, data holders cannot undermine the right of the users to request access and use of data in accordance with this Regulation on the basis of certain data considered as trade secrets by the data holder***. It is important to preserve incentives to invest in products with functionalities based on the use of data from sensors built into that product. The aim of this Regulation should accordingly be understood as to foster the development of new, innovative products or related services, stimulate innovation on aftermarkets, but also stimulate the

development of entirely novel services making use of the data, including based on data from a variety of products or related services. At the same time, it aims to avoid undermining the investment incentives for the type of product from which the data are obtained, for instance, by the use of data to develop a competing product.

Or. en

Amendment 6

Proposal for a regulation Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) This Regulation should be interpreted in a manner to preserve the protection awarded to trade secrets under Directive (EU) 2016/943. To this end, data holders should be able to require the user, or third parties of the users' choice, to preserve the confidentiality of data considered by the data holder as trade secrets, including by the use of model contractual terms and technical means. The Commission, assisted by the European Innovation Board, should develop model contractual terms, should be able to develop technical standards and should adopt common specifications. The Commission, assisted by the European Innovation Board, could also encourage the establishment of codes of conduct in relation with the respect of trade secrets or intellectual property rights in handling the data, in order to help achieving the aim of this Regulation.

Or. en

Amendment 7

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 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

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. ***Consequently, these entities should be provided with appropriate data literacy measures and tools to comply with the rights and obligations of this Regulation.*** At the same time, a small number of very large companies have emerged with considerable economic power in the digital economy through the accumulation and aggregation of vast volumes of data and the technological infrastructure for monetising them. These companies include undertakings that provide core platform services controlling whole platform ecosystems in the digital economy and whom existing or new market operators are unable to challenge or contest. The [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)] aims to redress these inefficiencies and imbalances by allowing the Commission to designate a provider as a “gatekeeper”, and imposes a number of obligations on such designated gatekeepers, including a prohibition to combine certain data without consent, and an obligation to ensure effective rights to data portability under Article 20 of Regulation (EU) 2016/679. Consistent with the [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)], and given the unrivalled ability of these companies to acquire data, it would not be necessary to achieve the objective of this Regulation,

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.

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 *should* not make the data available to a designated gatekeeper. For instance, the third party *should* not sub-contract the service provision to a gatekeeper. However, this does not prevent *such* 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

Amendment 8

Proposal for a regulation

Recital 51

Text proposed by the Commission

(51) Where one party is in a stronger bargaining position, there is a risk that that party could leverage such position to the detriment of the other contracting party when negotiating access to data and make

Amendment

(51) Where one party is in a stronger bargaining position, there is a risk that that party could leverage such position to the detriment of the other contracting party when negotiating access to data and make

access to data commercially less viable and sometimes economically prohibitive. Such contractual imbalances particularly harm micro, small and medium-sized enterprises without a meaningful ability to negotiate the conditions for access to data, who may have no other choice than to accept ‘take-it-or-leave-it’ contractual terms. Therefore, unfair contract terms regulating the access to and use of data or the liability and remedies for the breach or the termination of data related obligations should not be binding on *micro, small or medium-sized* enterprises when they have been unilaterally imposed on them.

access to data commercially less viable and sometimes economically prohibitive. Such contractual imbalances particularly harm micro, small and medium-sized enterprises ***but such imbalances might also appear on contracts concluded by very large companies and gatekeepers and other companies that will be*** without a meaningful ability to negotiate the conditions for access to data, who may have no other choice than to accept ‘take-it-or-leave-it’ contractual terms. Therefore, unfair contract terms regulating the access to and use of data or the liability and remedies for the breach or the termination of data related obligations should not be binding on *those* enterprises when they have been unilaterally imposed on them.

Or. en

Amendment 9

Proposal for a regulation Recital 52

Text proposed by the Commission

(52) Rules on contractual terms should take into account the principle of contractual freedom as an essential concept in business-to-business relationships. Therefore, not all contractual terms should be subject to an unfairness test, but only to those terms that are unilaterally imposed on *micro, small and medium-sized* enterprises. This concerns ‘take-it-or-leave-it’ situations where one party supplies a certain contractual term and the *micro, small or medium-sized* enterprise cannot influence the content of that term despite an attempt to negotiate it. A contractual term that is simply provided by one party and accepted by the *micro, small or medium-sized enterprise* or a term that is negotiated and subsequently agreed in an amended way between contracting parties

Amendment

(52) Rules on contractual terms should take into account the principle of contractual freedom as an essential concept in business-to-business relationships. Therefore, not all contractual terms should be subject to an unfairness test, but only to those terms that are unilaterally imposed on enterprises ***due to their unbalanced sizes and where there does not exist a meaningful ability to negotiate***. This concerns ‘take-it-or-leave-it’ situations where one party supplies a certain contractual term and the *other* enterprise cannot influence the content of that term despite an attempt to negotiate it. A contractual term that is simply provided by one party and accepted by the *other* or a term that is negotiated and subsequently agreed in an amended way between

should not be considered as unilaterally imposed.

contracting parties should not be considered as unilaterally imposed.

Or. en

Amendment 10

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, ***but also to prevent and recover from public emergencies*** or in other exceptional cases, ***under certain conditions, where there is a need to fulfil or improve a specific task in the public interest. Data in general, and privately held data in particular, have a high potential to serve the general public interest by informing decision-making, providing for new scientific insights and resolving policy issues, thus enabling suitable interventions and improving public-service delivery, amongst other possibilities.*** Research-performing organisations and research-funding organisations could also be organised as public sector bodies or bodies governed by public law.

Or. en

Amendment 11

Proposal for a regulation Recital 57

Text proposed by the Commission

(57) In case of public emergencies, such

Amendment

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

as public health emergencies, emergencies resulting from major natural disasters including those aggravated by climate change *and environmental degradation*, 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 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. en

Amendment 12

Proposal for a regulation

Recital 58

Text proposed by the Commission

(58) An exceptional need may also arise when a public sector body can demonstrate that the data are necessary either to prevent a public emergency, or to assist recovery from a public emergency, in circumstances that are reasonably proximate to the public emergency in question. Where the exceptional need is not justified by the need to respond to, prevent or assist recovery from a public emergency, the public sector body or the Union institution, agency or body should demonstrate that the lack of timely access to and the use of the data requested prevents it from effectively fulfilling a specific task in the public interest that has been explicitly provided in law. Such exceptional need may also occur in other situations, for example in relation to the timely compilation of official statistics when data is not otherwise

Amendment

(58) An exceptional need may also arise when a public sector body can demonstrate that the data are necessary either to prevent a public emergency, or to assist recovery from a public emergency, in circumstances that are reasonably proximate to the public emergency in question. Where the exceptional need is not justified by the need to respond to, prevent or assist recovery from a public emergency, the public sector body or the Union institution, agency or body should demonstrate that the lack of timely access to and the use of the data requested prevents it from effectively fulfilling *or improving* a specific task in the public interest that has been explicitly provided in law. Such exceptional need may also occur in other situations, for example in relation to the timely compilation of official statistics when data

available or when the burden on statistical respondents will be considerably reduced. At the same time, the public sector body or the Union institution, agency or body should, outside the case of responding to, preventing or assisting recovery from a public emergency, demonstrate that no alternative means for obtaining the data requested exists and that the data cannot be obtained in a timely manner through the laying down of the necessary data provision obligations in new legislation.

is not otherwise available or when the burden on statistical respondents will be considerably reduced. At the same time, the public sector body or the Union institution, agency or body should, outside the case of responding to, preventing or assisting recovery from a public emergency, demonstrate that no alternative means for obtaining the data requested exists and that the data cannot be obtained in a timely manner through the laying down of the necessary data provision obligations in new legislation.

Or. en

Amendment 13

Proposal for a regulation

Recital 61

Text proposed by the Commission

(61) A proportionate, limited and predictable framework at Union level is necessary for the making available of data by data holders, in cases of exceptional needs, to public sector bodies and to Union institution, agencies or bodies both to ensure legal certainty and to minimise the administrative burdens placed on businesses. To this end, data requests by public sector bodies and by Union institution, agencies and bodies to data holders should be transparent and proportionate in terms of their scope of content and their granularity. The purpose of the request and the intended use of the data requested should be specific and clearly explained, while allowing appropriate flexibility for the requesting entity to perform its tasks in the public interest. The request should also respect the legitimate interests of the businesses to whom the request is made. The burden on data holders should be minimised by obliging requesting entities to respect the

Amendment

(61) A proportionate, limited and predictable framework at Union level is necessary for the making available of data by data holders, in cases of exceptional needs, to public sector bodies and to Union institution, agencies or bodies both to ensure legal certainty and to minimise the administrative burdens placed on businesses. To this end, data requests by public sector bodies and by Union institution, agencies and bodies to data holders should be transparent and proportionate in terms of their scope of content and their granularity. The purpose of the request and the intended use of the data requested should be specific and clearly explained, while allowing appropriate flexibility for the requesting entity to perform its tasks in the public interest. The request should also respect the legitimate interests of the businesses to whom the request is made, ***mainly on the protection of trade secrets and other intellectual property rights***. The burden on

once-only principle, which prevents the same data from being requested more than once by more than one public sector body or Union institution, agency or body where those data are needed to respond to a public emergency. To ensure transparency, data requests made by public sector bodies and by Union institutions, agencies or bodies should be *made public* without undue delay by the entity requesting the data *and* online public *availability* of all requests justified by *a public emergency should be ensured*.

data holders should be minimised by obliging requesting entities to respect the once-only principle, which prevents the same data from being requested more than once by more than one public sector body or Union institution, agency or body where those data are needed to respond to a public emergency. To ensure transparency *and an appropriate coordination*, data requests made by public sector bodies and by Union institutions, agencies or bodies should be *communicated* without undue delay by the entity requesting the data *to the data coordinator of that Member State that should ensure that those requests are to be included in an* online public *list of all requests made by public bodies, Union institutions, agencies or bodies* justified by *an exceptional need*.

Or. en

Amendment 14

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

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 *or to improve* 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 been requested.

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).

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 **and protection of trade secrets and other intellectual property right is ensured**. 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.

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 15

Proposal for a regulation

Recital 63

Text proposed by the Commission

(63) Data holders should have the possibility to either ask for a modification of the request made by a public sector body or Union institution, agency and body or its cancellation in a period of **5 or 15 working** days depending on the nature of the exceptional need invoked in the request. In case of requests motivated by a public emergency, justified reason not to make the data available should exist if it can be shown that the request is similar or identical to a previously submitted request for the same purpose by another public sector body or by another Union

Amendment

(63) Data holders should have the possibility to either ask for a modification of the request made by a public sector body or Union institution, agency and body or its cancellation in a period of **1 to 20** days depending on the nature of the exceptional need invoked in **the request, the size of the company, the nature and granularity of the data, and, as appropriate, the technical and organisational adaptations necessary to comply with** the request. In case of requests motivated by a public emergency, justified reason not to make the data available should exist if it can be

institution, agency or body. A data holder rejecting the request or seeking its modification should communicate the underlying justification for refusing the request to the public sector body or to the Union institution, agency or body requesting the data. In case the sui generis database rights under Directive 96/6/EC of the European Parliament and of the Council⁶⁶ apply in relation to the requested datasets, data holders should exercise their rights in a way that does not prevent the public sector body and Union institutions, agencies or bodies from obtaining the data, or from sharing it, in accordance with this Regulation.

⁶⁶ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

shown that the request is similar or identical to a previously submitted request for the same purpose by another public sector body or by another Union institution, agency or body ***and it is included in the online list publicly available, under the authority of the Data coordinator referred to in Article 31.*** A data holder rejecting the request or seeking its modification should communicate the underlying justification for refusing the request to the public sector body or to the Union institution, agency or body requesting the data. In case the sui generis database rights under Directive 96/6/EC of the European Parliament and of the Council⁶⁶ apply in relation to the requested datasets, data holders should exercise their rights in a way that does not prevent the public sector body and Union institutions, agencies or bodies from obtaining the data, or from sharing it, in accordance with this Regulation.

⁶⁶ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

Or. en

Amendment 16

Proposal for a regulation

Recital 64

Text proposed by the Commission

(64) Where it is strictly necessary to include personal data in the data made available to a public sector body or to a Union institution, agency or body the applicable rules on personal data protection should be complied with and the making available of the data and their subsequent use should and be accompanied by

Amendment

(64) Where it is strictly necessary to include personal data in the data made available to a public sector body or to a Union institution, agency or body the applicable rules on personal data protection should be complied with and the making available of the data and their subsequent use should and be accompanied by

safeguards for the rights and interests of individuals concerned by those data. The body requesting the data should demonstrate the strict necessity and the specific and limited purposes for processing. The data holder should take reasonable efforts to anonymise the data or, where such anonymisation proves impossible, the data holder should apply technological means such as pseudonymisation and aggregation, prior to making the data available.

safeguards for the rights and interests of individuals concerned by those data ***in full compliance with Regulation (EU) 2016/679 and Regulation (EU) 2018/1725***. The body requesting the data should demonstrate the strict necessity and the specific and limited purposes for processing. The data holder should take reasonable efforts to anonymise the data or, where such anonymisation proves impossible, the data holder should apply technological means such as pseudonymisation and aggregation, prior to making the data available.

Or. en

Amendment 17

Proposal for a regulation Recital 65

Text proposed by the Commission

(65) Data made available to public sector bodies and to Union institutions, agencies and bodies on the basis of exceptional need should only be used for the purpose for which they were requested, unless the data holder that made the data available has expressly agreed for the data to be used for other purposes. The data should be destroyed once it is no longer necessary for the purpose stated in the request, unless agreed otherwise, and the data holder should be informed thereof.

Amendment

(65) Data made available to public sector bodies and to Union institutions, agencies and bodies on the basis of exceptional need should only be used for the purpose for which they were requested, unless the data holder that made the data available has expressly agreed for the data to be used for other purposes. The data ***holder should be informed in advance, if the data made available are to be used for other purposes, upon a new request on the basis of an exceptional need by a public sector bodies, Union institutions, agencies and bodies. The data*** should be destroyed once it is no longer necessary for the purpose stated in the request, unless agreed otherwise, and the data holder should be informed thereof.

Or. en

Amendment 18

Proposal for a regulation Recital 66

Text proposed by the Commission

(66) When reusing data provided by data holders, public sector bodies and Union institutions, agencies or bodies should respect both existing applicable legislation and contractual obligations to which the data holder is subject. Where the disclosure of trade secrets of the data holder to public sector bodies or to Union institutions, agencies or bodies is strictly necessary to fulfil the purpose for which the data has been requested, confidentiality of such disclosure should be ensured to the data holder.

Amendment

(66) When reusing data provided by data holders, public sector bodies and Union institutions, agencies or bodies should respect both existing applicable legislation and contractual obligations to which the data holder is subject. Where the disclosure of trade secrets of the data holder to public sector bodies or to Union institutions, agencies or bodies is strictly necessary to fulfil the purpose for which the data has been requested, confidentiality of such disclosure should be ensured to the data holder, ***including, as appropriate, by the use of model contractual terms, technical standards and the application of codes of conduct.***

Or. en

Amendment 19

Proposal for a regulation Recital 67

Text proposed by the Commission

(67) ***When the safeguarding of a significant public good is at stake, such as is the case of responding to public emergencies,*** the public sector body or the Union institution, agency or body should ***not be expected to*** compensate enterprises for the data obtained. ***Public emergencies are rare events and not all such emergencies require the use of data held by enterprises. The business activities of the data holders are therefore not likely to be negatively affected as a consequence of the public sector bodies or Union institutions, agencies or bodies having***

Amendment

(67) The public sector body or the Union institution, agency or body should compensate enterprises for the data obtained. Data holders should be entitled to a reasonable compensation which should ***cover*** the technical and organisational ***proven*** costs incurred in complying with the request and the reasonable margin required for making the data available to the public sector body or to the Union institution, agency or body, ***particularly when the data are requested to micro, small and medium-sized enterprises.*** The compensation should not be understood as

*recourse to this Regulation. However, as cases of an exceptional need other than responding to a public emergency might be more frequent, including cases of prevention of or recovery from a public emergency, data holders should in such cases be entitled to a reasonable compensation which should **not exceed** the technical and organisational costs incurred in complying with the request and the reasonable margin required for making the data available to the public sector body or to the Union institution, agency or body. The compensation should not be understood as constituting payment for the data itself and as being compulsory.*

constituting payment for the data itself and as being compulsory.

Or. en

Amendment 20

Proposal for a regulation

Recital 70

Text proposed by the Commission

(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.

Amendment

(70) Regulation (EU) 2018/1807 of the European Parliament and of the Council **on a framework for the free flow of non-personal data in the European Union** 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 to eliminate contractual, economic, **commercial, technical and organisational** barriers to **an** effective switching between data processing services, **favouring harmonisation and contributing to**

Amendment 21

Proposal for a regulation

Recital 77

Text proposed by the Commission

(77) Third countries may adopt laws, regulations and other legal acts that aim at directly transferring or providing governmental access to non-personal data located outside their borders, including in the Union. Judgments of courts or tribunals or decisions of other judicial or administrative authorities, including law enforcement authorities in third countries requiring such transfer or access to non-personal data should be enforceable when based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State. In other cases, situations may arise where a request to transfer or provide access to non-personal data arising from a third country law **conflicts with** an obligation to protect such data under Union law or national law, in particular as regards the protection of fundamental rights of the individual, such as the right to security and the right to effective remedy, or the fundamental interests of a Member State related to national security or defence, as well as the protection of commercially sensitive data, including the protection of trade secrets, and the protection of intellectual property rights, and including its contractual undertakings regarding confidentiality in accordance with such law. In the absence of international agreements regulating such matters, transfer or access should only be allowed if it has been verified that the third country's legal system requires the reasons

Amendment

(77) Third countries may adopt laws, regulations and other legal acts that aim at directly transferring or providing governmental access to non-personal data located outside their borders, including in the Union. Judgments of courts or tribunals or decisions of other judicial or administrative authorities, including law enforcement authorities in third countries requiring such transfer or access to non-personal data should be enforceable when based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State. In other cases, situations may arise where **fulfilling** a request to transfer or provide access to non-personal data arising from a third country law **would be in contravention of** an obligation to protect such data under Union law or national law, in particular as regards the protection of fundamental rights of the individual, such as the right to security and the right to effective remedy, or the fundamental interests of a Member State related to national security or defence, as well as the protection of commercially sensitive data, including the protection of trade secrets, and the protection of intellectual property rights, and including its contractual undertakings regarding confidentiality in accordance with such law. In the absence of international agreements regulating such matters, transfer or access should only be allowed if it has been verified that the third

and proportionality of the decision to be set out, that the court order or the decision is specific in character, and that the reasoned objection of the addressee is subject to a review by a competent court in the third country, which is empowered to take duly into account the relevant legal interests of the provider of such data. Wherever possible under the terms of the data access request of the third country's authority, the provider of data processing services should be able to inform the customer whose data are being requested in order to verify ***the presence of a potential conflict of such access with*** Union or national rules, such as those on the protection of commercially sensitive data, including the protection of trade secrets and intellectual property rights and the contractual undertakings regarding confidentiality.

country's legal system requires the reasons and proportionality of the decision to be set out, that the court order or the decision is specific in character, and that the reasoned objection of the addressee is subject to a review by a competent court in the third country, which is empowered to take duly into account the relevant legal interests of the provider of such data. Wherever possible under the terms of the data ***transfer or*** access request of the third country's authority, the provider of data processing services should be able to inform the customer whose data are being requested in order ***for the customer*** to verify ***whether fulfilling the data transfer or*** access ***request would be in*** ***contravention of*** Union or national rules, such as those on the protection of commercially sensitive data, including the protection of trade secrets and intellectual property rights and the contractual undertakings regarding confidentiality.

Or. en

Amendment 22

Proposal for a regulation

Recital 81

Text proposed by the Commission

(81) In order to ensure the efficient implementation of this Regulation, Member States should ***designate one or more competent authorities. If a Member State designates more than one competent authority, it should also*** designate a coordinating competent authority. ***Competent authorities should cooperate with each other.*** The authorities responsible for the supervision of compliance with data protection and competent authorities designated under sectoral legislation should have the responsibility for application of this

Amendment

(81) In order to ensure the efficient implementation of this Regulation ***and the Data Governance Act***, Member States should designate a coordinating competent authority (***'data coordinator'***). The authorities responsible for the supervision of compliance with data protection and competent authorities designated under sectoral legislation should have the responsibility for application of this Regulation in their areas of competence. ***The data coordinator should ensure that all competent authorities in the context of this Regulation cooperate with each other.***

Regulation in their areas of competence.

Data coordinators from different Member States should cooperate with each other and with the European Data Innovation Board.

Or. en

Amendment 23

Proposal for a regulation Recital 81 a (new)

Text proposed by the Commission

Amendment

(81a) The European Innovation Board established in Regulation 2022/868, Data Governance Act, should be given new competences and tasks in order to assist the Commission and the Member States in the implementation and enforcement of this Regulation. The European Data Innovation Board should integrate the national coordinating authorities -data coordinator- of the Member States, who will act as representative of the competent authorities for data intermediation services and as the competent authorities for the registration of data altruism organisations of all Member States. The European Data Innovation Board should provide advice and assistance to the Commission and ensure coordination among the Member States on the topics covered by this Regulation to promote an effective and competitive internal market for data, contribute to uniform administrative practices in the Member States and issue guidelines, recommendations and written contributions on matters related to the implementation of this Regulation. The subgroup ensuring a regular dialogue with stakeholders should also provide to the European Data Innovation Board advice on the implementation of the obligations established in this Regulation, including to pursue of the establishment

of codes of conduct, and providing a particular oversight and monitoring on the compliance with this Regulation.

Or. en

Amendment 24

Proposal for a regulation

Recital 83

Text proposed by the Commission

(83) Member States competent authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by penalties. When doing so, they should take into account the nature, gravity, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, as well as the economic capacity of the infringer. They should take into account whether the infringer systematically or recurrently fails to comply with its obligations stemming from this Regulation. In order to help enterprises to draft and negotiate contracts, the Commission should develop and recommend non-mandatory model contractual terms for business-to-business data sharing contracts, where necessary taking into account the conditions in specific sectors and the existing practices with voluntary data sharing mechanisms. These model contractual terms should be primarily a practical tool to help in particular smaller enterprises to conclude a contract. When used widely and integrally, these model contractual terms should also have the beneficial effect of influencing the design of contracts about access to and use of data and therefore lead more broadly towards fairer contractual relations when accessing and sharing data.

Amendment

(83) Member States competent authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by penalties. When doing so, they should take into account the nature, gravity, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, as well as the economic capacity of the infringer. They should take into account whether the infringer systematically or recurrently fails to comply with its obligations stemming from this Regulation. In order to help enterprises to draft and negotiate contracts, the Commission should develop and recommend non-mandatory model contractual terms for business-to-business data sharing contracts, where necessary taking into account the conditions in specific sectors and the existing practices with voluntary data sharing mechanisms. These model contractual terms should ***also tackle the preservation of the confidentiality of trade secrets which is key for the effective application of this Regulation. To that extent, the Commission could also encourage and facilitate the development of codes of conduct at Union level, involving relevant stakeholders, in particular on the preservation of confidentiality of trade secrets. These model contractual terms should*** be primarily a practical tool to help

in particular smaller enterprises to conclude a contract. When used widely and integrally, these model contractual terms should also have the beneficial effect of influencing the design of contracts about access to and use of data and therefore lead more broadly towards fairer contractual relations when accessing and sharing data, ***including as regards the preservation of the confidentiality of trade secrets.***

Or. en

Amendment 25

Proposal for a regulation Recital 84

Text proposed by the Commission

(84) In order to eliminate the risk that holders of ***data in*** databases obtained or generated by means of physical components, such as sensors, of a connected product and a related service claim the sui generis right under Article 7 of Directive 96/9/EC ***where such databases do not qualify for the sui generis right, and in so doing hinder the effective exercise of the right of users to access and use data and the right to share data with third parties under this Regulation, this Regulation should clarify*** that the sui generis right does not apply to such databases as the requirements for protection would not be fulfilled.

Amendment

(84) In order to eliminate the risk that holders of databases ***containing data*** obtained or generated by means of physical components, such as sensors, of a connected product and a related service, ***namely machine-generated data, claim the sui generis right under Article 7 of Directive 96/9/EC, this Regulation clarifies*** that the sui generis right does not apply to such databases as the requirements for protection ***of a substantial investment in either the obtaining, verification or presentation of the data as provided for in Article 7(1) of Directive 96/9/EC*** would not be fulfilled. ***That does not affect the possible application of the sui generis right under Article 7 of Directive 96/9/EC to databases containing data falling outside the scope of this Regulation provided the requirements for protection in accordance with Article 7(1) of that Directive are fulfilled.***

Or. en

Amendment 26

Proposal for a regulation Article 1 – paragraph 3

Text proposed by the Commission

3. Union law on the protection of personal data, privacy and confidentiality of communications and integrity of terminal equipment shall apply to personal data processed in connection with the rights and obligations laid down in this Regulation. This Regulation shall not affect the applicability of Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC, including the powers and competences of supervisory authorities. Insofar as the rights laid down in Chapter II of this Regulation are concerned, and where users are the data subjects of personal data subject to the rights and obligations under that Chapter, the provisions of this Regulation shall complement the right of data portability under Article 20 of Regulation (EU) 2016/679.

Amendment

3. Union law on the protection of personal data, privacy and confidentiality of communications and integrity of terminal equipment shall apply to personal data, **including where datasets include a mix of personal and non personal data**, processed in connection with the rights and obligations laid down in this Regulation. This Regulation shall not affect the applicability of Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC, including the powers and competences of supervisory authorities. Insofar as the rights laid down in Chapter II of this Regulation are concerned, and where users are the data subjects of personal data subject to the rights and obligations under that Chapter, the provisions of this Regulation shall complement the right of data portability under Article 20 of Regulation (EU) 2016/679.

Or. en

Amendment 27

Proposal for a regulation Article 1 – paragraph 4

Text proposed by the Commission

4. This Regulation shall not affect Union and national legal acts providing for the sharing, access and use of data for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including Regulation (EU)

Amendment

4. This Regulation shall not affect Union and national legal acts providing for the sharing, access and use of data for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including Regulation (EU)

2021/784 of the European Parliament and of the Council⁷² and the [e-evidence proposals [COM(2018) 225 and 226] once adopted, and international cooperation in that area. This Regulation shall not affect the collection, sharing, access to and use of data under Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing and Regulation (EU) 2015/847 of the European Parliament and of the Council on information accompanying the transfer of funds. This Regulation shall not affect the competences of the Member States regarding activities concerning public security, defence, national security, customs and tax administration and the health and safety of citizens in accordance with Union law.

⁷² Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online (OJ L 172, 17.5.2021, p. 79).

2021/784 of the European Parliament and of the Council⁷² and the [e-evidence proposals [COM(2018) 225 and 226] once adopted, and international cooperation in that area. This Regulation shall not affect the collection, sharing, access to and use of data under Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing and Regulation (EU) 2015/847 of the European Parliament and of the Council on information accompanying the transfer of funds. This Regulation shall not affect the competences of the Member States regarding activities concerning public security, defence, national security, customs and tax administration and ***shall be implemented with due consideration to the fundamental rights***, the health and safety of citizens in accordance with Union law.

⁷² Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online (OJ L 172, 17.5.2021, p. 79).

Or. en

Amendment 28

Proposal for a regulation Article 2 – paragraph 1 – point 20 a (new)

Text proposed by the Commission

Amendment

(20a) ‘trade secret’ means information which meets all the requirements of Article 2, point (1), of Directive (EU) 2016/943.

Or. en

Amendment 29

Proposal for a regulation Article 2 – paragraph 1 – point 20 b (new)

Text proposed by the Commission

Amendment

(20b) ‘data literacy’ means the skills, knowledge and understanding regarding data, data access and use, making data available and transfers of data, in order to exercise the rights and comply with the obligations established in this Regulation;

Or. en

Amendment 30

Proposal for a regulation Article 3 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) how the user may manage permissions to allow the use of data, preferably with granular permission options, and including the option to withdraw permission;

Or. en

Amendment 31

Proposal for a regulation Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Data literacy

1. When implementing this Regulation, the Union and the Member States shall promote measures and tools

for the development of data literacy, across sectors and taking into account the different needs of groups of users, consumers and businesses, including through education and training, skilling and reskilling programmes and while ensuring a proper gender and age balance, in view of allowing a fair data society and market.

2. Businesses shall promote tools and take measures to ensure data literacy skills of their staff and other persons dealing with data access and use and data transfers on their behalf, taking into account their technical knowledge, experience, education and training and considering the users or groups of users from which data is produced or generated.

3. Such literacy tools and measures shall consist in particular of the teaching and learning of basic notions and skills about data, its potential value, their access and use, data sharing and data transfers, to comply with the rights and obligations established in this Regulation, and in other Union or national data related legislation.

Or. en

Amendment 32

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, ***of the same quality as is available to the data holder*** 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.

Or. en

Amendment 33

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

Text proposed by the Commission

Amendment

2a. The data holder shall not make the exercise of the rights or choices of users unduly difficult including by offering choices to the users in a non-neutral manner, or coerce, deceive or manipulate the user in any way, or subvert or impair the autonomy, decision-making or free choices of the user, including by means of a digital interface or a part thereof, including its structure, design, function or manner of operation.

Or. en

Amendment 34

Proposal for a regulation Article 4 – paragraph 3

Text proposed by the Commission

Amendment

3. Trade secrets shall only be disclosed provided that all specific necessary measures are taken to preserve ***the*** confidentiality ***of trade secrets*** in particular with respect to third parties. The data holder and the user can agree measures to preserve the confidentiality of the shared data, in particular in relation to third parties.

3. Trade secrets shall only be disclosed provided that all specific necessary measures are taken to preserve ***their*** confidentiality, in particular with respect to third parties. The data holder and the user can agree ***technical and organisational*** measures to preserve the confidentiality of the shared data, in particular in relation to third parties, ***including, as appropriate, through model contractual terms, technical standards and the application of codes of conduct.***

Amendment 35

Proposal for a regulation

Article 4 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 36

Proposal for a regulation

Article 5 – title

Text proposed by the Commission

Amendment

Right to share data with third parties

Right **of users** to share data with third parties

Or. en

Amendment 37

Proposal for a regulation

Article 5 – paragraph 4

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 38

Proposal for a regulation Article 5 – paragraph 8

Text proposed by the Commission

8. Trade secrets shall only be disclosed to third parties to the extent that they are strictly necessary to fulfil the purpose agreed between the user and the third party and all specific necessary measures agreed between the data holder and the third party are taken by the third party to preserve the confidentiality of the trade secret. In such a case, the nature of the data as trade secrets and the measures for preserving *the* confidentiality shall be specified in the agreement between the data holder and the third party.

Amendment

8. Trade secrets shall only be disclosed to third parties to the extent that they are strictly necessary to fulfil the purpose *of the request* agreed between the user and the third party and all specific necessary measures agreed between the data holder and the third party are taken *in advance* by the third party to preserve the confidentiality of the trade secret. In such a case, the *data holder shall identify the* nature of the data *which are protected* as trade secrets and the *technical and organisational* measures for preserving *their* confidentiality shall be specified in the agreement between the data holder and the third party, *including, as appropriate through model contractual terms, technical standards and the application of codes of conduct.*

Or. en

Amendment 39

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

Text proposed by the Commission

(a) coerce, deceive or manipulate the user in any way, *by subverting or impairing* the autonomy, decision-making or choices of the user, including by means of a digital interface *with the user*;

Amendment

(a) *make the exercise of the rights or choices of users unduly difficult including by offering choices to the end-users in a non-neutral manner, or* coerce, deceive or manipulate the user in any way, *or subvert or impair* the autonomy, decision-making or *free* choices of the user, including by means of a digital interface *or a part thereof, including its structure, design,*

function or manner of operation;

Or. en

Amendment 40

Proposal for a regulation

Article 6 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) disregard the specific measures agreed with the data holder pursuant to Article 5(8) of this Regulation and break the confidentiality of trade secrets;

Or. en

Amendment 41

Proposal for a regulation

Article 8 – paragraph 6

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 42

Proposal for a regulation

Article 10 – paragraph 1

Text proposed by the Commission

1. Data holders and data recipients shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes in relation to the determination of fair, reasonable and non-discriminatory terms for and the transparent manner of making data available in accordance with Articles 8 and 9.

Amendment

1. Data holders and data recipients shall have access to **public** dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes in relation to the determination of fair, reasonable and non-discriminatory terms for and the transparent manner of making data available in accordance with Articles 8 and 9.

Or. en

Amendment 43

Proposal for a regulation

Article 10 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

The Member State where the dispute settlement body is established shall, **at the request of that body**, certify the body, **where** the body has demonstrated that it meets all of the following conditions:

Amendment

The Member State where the **public** dispute settlement body is established shall, certify the body, **and ensure that** the body has demonstrated that it meets all of the following conditions:

Or. en

Amendment 44

Proposal for a regulation

Article 10 – paragraph 2 – subparagraph 2

Text proposed by the Commission

If no dispute settlement body is certified in a Member State by [date of application of the Regulation], **that** Member State shall establish and certify a dispute settlement body that fulfils the conditions set out in points (a) to (d) of this paragraph.

Amendment

By [date of application of the Regulation], **the** Member State shall establish and certify a **public** dispute settlement body that fulfils the conditions set out in points (a) to (d) of this paragraph.

Or. en

Amendment 45

Proposal for a regulation Article 10 – paragraph 3

Text proposed by the Commission

3. Member States shall notify to the Commission the dispute settlement bodies certified in accordance with paragraph 2. The Commission shall publish a list of those bodies on a dedicated website and keep it updated.

Amendment

3. Member States shall notify to the Commission the **public** dispute settlement bodies certified in accordance with paragraph 2. The Commission shall publish a list of those **public** bodies on a dedicated website and keep it updated.

Or. en

Amendment 46

Proposal for a regulation Article 10 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. Public dispute settlement bodies shall make annual activity reports publicly available. Each annual report shall include in particular the following information:

- (a) the number of disputes received;***
- (b) the outcomes of those disputes;***
- (c) the average time taken to resolve the disputes;***
- (d) the most common reasons that lead to disputes between the parties.***

In order to facilitate the exchange of information and best practices, the public dispute settlement body may decide to include recommendations as to how such problems can be avoided or resolved.

Or. en

Amendment 47

Proposal for a regulation Article 10 – paragraph 8

Text proposed by the Commission

8. The decision of the dispute settlement body shall **only** be binding on the parties **if** the parties have explicitly consented to its **binding** nature prior to the start of the dispute settlement proceedings.

Amendment

8. The decision of the **public** dispute settlement body shall be binding on the parties **unless** the parties have explicitly consented to its **unbinding** nature prior to the start of the dispute settlement proceedings.

Or. en

Amendment 48

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

1. The data holder may apply appropriate technical protection measures, including smart contracts, to prevent unauthorised access to the data and to ensure compliance with Articles **5, 6, 9 and 10**, as well as with the agreed contractual terms for making data available. Such technical protection measures shall not be used as a means to hinder the user's right to effectively provide data to third parties pursuant to Article 5 or any right of a third party under Union law or national legislation implementing Union law as referred to in Article 8(1).

Amendment

1. The data holder may apply appropriate technical protection measures, including smart contracts, to prevent unauthorised access to the data and to ensure compliance with Articles **4, 5, 6, 8 and 9**, as well as with the agreed contractual terms for making data available. Such technical protection measures shall not be used as a means to hinder the user's right to effectively provide data to third parties pursuant to Article 5 or any right of a third party under Union law or national legislation implementing Union law as referred to in Article 8(1).

Or. en

Amendment 49

Proposal for a regulation Article 11 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

2. **When** a data recipient, for the purposes of obtaining data, **provides** inaccurate or false information to the data holder, **deploys** deceptive or coercive means or **abuses** gaps in the technical infrastructure of the data holder designed to protect the data, **uses** the data made available for unauthorised purposes, **including the development of a competing product within the meaning of Article 6(2)(e) or discloses** those data to another party without the data holder's authorisation, **the data recipient** shall without undue delay, **at the request of** the data holder:

Or. en

Amendment 50

Proposal for a regulation Article 11 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) inform the user of the unauthorised use or disclosure of data as well as of the measures taken to put an end to the unauthorised use or disclosure of data;

Or. en

Amendment 51

Proposal for a regulation Article 13 – title

Text proposed by the Commission

Amendment

Unfair contractual terms unilaterally imposed on **a micro, small or medium-**

Unfair contractual terms unilaterally imposed on **an** enterprise

sized enterprise

Or. en

Amendment 52

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

1. A contractual term, concerning the access to and use of data or the liability and remedies for the breach or the termination of data related obligations which has been unilaterally imposed by an enterprise on *another* enterprise *without a meaningful ability to negotiate conditions*, shall not be binding on the latter enterprise if it is unfair.

Or. en

Amendment 53

Proposal for a regulation Article 13 – paragraph 4 – point b

Text proposed by the Commission

(b) allow the party that unilaterally imposed the term to access and use data of the other contracting party in a manner that is significantly detrimental to the legitimate interests of the other contracting party;

Amendment

(b) allow the party that unilaterally imposed the term to access and use data of the other contracting party in a manner that is significantly detrimental to the legitimate interests of the other contracting party, *especially when such data contains commercially sensitive data, including the protection of trade secrets and intellectual property rights, without the prior consent of the relevant parties;*

Or. en

Amendment 54

Proposal for a regulation

Article 13 – paragraph 4 – point d a (new)

Text proposed by the Commission

Amendment

(da) enable the party that unilaterally imposed the term to substantially vary the upfront price payable under the contract, or any other substantial condition on the data to be shared, without the right of the other party to terminate the contract;

Or. en

Amendment 55

Proposal for a regulation

Article 13 – paragraph 5

Text proposed by the Commission

Amendment

5. A contractual term shall be considered to be unilaterally imposed within the meaning of this Article if it has been supplied by one contracting party and the other contracting party has not been able to influence its content despite an attempt to negotiate it. The contracting party that supplied a contractual term bears the burden of proving that that term has not been unilaterally imposed.

5. A contractual term shall be considered to be unilaterally imposed within the meaning of this Article if it has been supplied by one contracting party and the other contracting party ***is a micro, small or medium-sized enterprise, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, or if it*** has not been able to influence its content despite an attempt to negotiate it. The contracting party that supplied a contractual term bears the burden of proving that that term has not been unilaterally imposed.

Or. en

Amendment 56

Proposal for a regulation

Article 13 – paragraph 8

Text proposed by the Commission

8. The parties to a contract covered by paragraph 1 **may** not exclude the application of this Article, derogate from it, or vary its effects.

Amendment

8. The parties to a contract covered by paragraph 1 **shall** not exclude the application of this Article, derogate from it, or vary its effects.

Or. en

Amendment 57

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

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 58

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

Text proposed by the Commission

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

Amendment

(a) where the data requested, ***including real-time data***, is necessary to ***prevent, to respond or to assist the recovery from*** a public emergency;

Or. en

Amendment 59

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 60

Proposal for a regulation

Article 15 – paragraph 1 – point c – introductory part

Text proposed by the Commission

Amendment

(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

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

Or. en

Amendment 61

Proposal for a regulation

Article 15 – paragraph 1 – point c – point 1

Text proposed by the Commission

Amendment

(1) the public sector body or Union institution, agency or body has been unable to obtain such data by alternative means, including by purchasing the data on the market at market rates or by relying on existing obligations to make data available, and the adoption of new legislative measures cannot ensure the timely availability of the data; or

(1) the public sector body or Union institution, agency or body has been unable to obtain such data by alternative means, including by purchasing the data on the market at market rates or by relying on existing ***legal*** obligations to make data available, and the adoption of new legislative measures cannot ensure the timely availability of the data; or

Or. en

Amendment 62

Proposal for a regulation

Article 15 – paragraph 1 – point c – point 2

Text proposed by the Commission

(2) *obtaining the data in line with the procedure laid down in this Chapter would substantively reduce the administrative burden for data holders or other enterprises.*

Amendment

deleted

Or. en

Amendment 63

Proposal for a regulation

Article 17 – paragraph 1 – point e

Text proposed by the Commission

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

Amendment

(e) specify the deadline by which the data are to be made available ***and the deadline*** within which the data holder may request the public sector body, Union institution, agency or body to modify or withdraw the request. ***When the request is addressed to micro or small enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC, such deadlines may be extended to take into account the effort required to make the data available.***

Or. en

Amendment 64

Proposal for a regulation

Article 17 – paragraph 2 – point c

Text proposed by the Commission

(c) respect the legitimate aims of the data holder, taking into account the protection of trade secrets and the cost and effort required to make the data available;

Amendment

(c) respect the legitimate aims of the data holder, taking into account the protection of trade secrets and the cost and effort required to make the data available;
Where the disclosure of trade secrets of the data holder to public sector bodies or to Union institutions, agencies or bodies is strictly necessary to fulfil the purpose for which the data has been requested, confidentiality of such disclosure shall be ensured, including, as appropriate, through the use of model contractual terms and technical standards.

Or. en

Amendment 65

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(da) indicate, insofar as possible, user-friendly data-sharing mechanisms that respect ethical guidelines on transparency, security and privacy;

Or. en

Amendment 66

Proposal for a regulation

Article 17 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) be **made** publicly available online without undue delay.

(f) be **transmitted to the Data Coordinator referred to in article 31 who shall make the request** publicly available online without undue delay.

Amendment 67

Proposal for a regulation Article 17 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. *The third party shall not use the data it receives from a public sector body or a Union institution, agency or body as a result of the outsourcing of technical inspections or other functions pursuant to paragraph 4, to develop a product or a service that competes with the product or service from which the accessed data originate or share the data with another third party for that purpose.*

Or. en

Amendment 68

Proposal for a regulation Article 17 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. *The Data Coordinator as established in Article 31 may inform the public sector body or Union institution, agency or body if the data holder already provided the requested data in response to previously submitted request for the same purpose by another public sector body or Union institution, agency or body.*

Or. en

Amendment 69

Proposal for a regulation Article 18 – paragraph 4

Text proposed by the Commission

4. If the data holder decides to decline the request or to seek its modification in accordance with paragraph 3, it shall indicate the identity of the public sector body or Union institution agency or body that previously submitted a request for the same purpose.

Amendment

4. If the data holder decides to decline the request or to seek its modification in accordance with paragraph 3, it shall **remit the request to the data coordinator referred to in Article 31 and** indicate the identity of the public sector body or Union institution agency or body that previously submitted a request for the same purpose.

Or. en

Amendment 70

**Proposal for a regulation
Article 18 – paragraph 5**

Text proposed by the Commission

5. Where compliance with the request to make data available to a public sector body or a Union institution, agency or body requires the disclosure of personal data, the data holder shall take reasonable efforts to pseudonymise the data, insofar as the request can be fulfilled with pseudonymised data.

Amendment

5. Where compliance with the request to make data available to a public sector body or a Union institution, agency or body requires the disclosure of personal data, the data holder shall take reasonable efforts to **anonymise or** pseudonymise the data, insofar as the request can be fulfilled with pseudonymised data.

Or. en

Amendment 71

**Proposal for a regulation
Article 18 – paragraph 6**

Text proposed by the Commission

6. Where the public sector body or the Union institution, agency or body wishes to challenge a data holder's refusal to provide the data requested, or to seek modification of the request, or where the data holder wishes to challenge the request, the matter

Amendment

6. Where the public sector body or the Union institution, agency or body wishes to challenge a data holder's refusal to provide the data requested, or to seek modification of the request, or where the data holder wishes to challenge the request, the matter

shall be brought to the *competent authority* referred to in Article 31.

shall be brought to the *data coordinator* referred to in Article 31.

Or. en

Amendment 72

Proposal for a regulation Article 19 – paragraph 1 – point b

Text proposed by the Commission

(b) implement, insofar as the processing of personal data is necessary, technical and organisational measures that safeguard the rights and freedoms of data subjects;

Amendment

(b) implement, insofar as the processing of personal data is necessary, technical and organisational measures that safeguard the rights and freedoms of data subjects, *in accordance with Regulation (EU) 2016/ 679 and Directive 2002/58/EC*;

Or. en

Amendment 73

Proposal for a regulation Article 19 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Disclosure of trade secrets to a public sector body or to a Union institution, agency or body shall only be required to the extent that it is strictly necessary to achieve the purpose of the request. In such a case, the public sector body or the Union institution, agency or body shall take *in advance* appropriate *technical and organisational* measures to preserve the confidentiality of those trade secrets, *including, as appropriate, through the use of model contractual terms, technical standards and the application of codes of conduct.*

Or. en

Amendment 74

Proposal for a regulation Article 20 – paragraph 1

Text proposed by the Commission

1. *Data made available to respond to a public emergency pursuant to Article 15, point (a), shall be provided free of charge.*

Amendment

deleted

Or. en

Amendment 75

Proposal for a regulation Article 20 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where the data holder claims compensation for making data available in compliance with a request made pursuant to Article 15 such compensation shall **cover the proven** technical and organisational costs incurred to comply with the request including, where necessary, the costs of anonymisation and of technical adaptation, plus a reasonable margin. Upon request of the public sector body or the Union institution, agency or body requesting the data, the data holder shall provide information on the basis for the calculation of the costs and the reasonable margin.

Or. en

Amendment 76

Proposal for a regulation Article 21 – paragraph 3

Text proposed by the Commission

3. Individuals or organisations receiving the data pursuant to paragraph 1 shall comply with the provisions of Article 17(3) and Article **19**.

Amendment

3. Individuals or organisations receiving the data pursuant to paragraph 1 shall comply with the provisions of Article 17(3), **Article 19** and Article **20**.

Or. en

Amendment 77

**Proposal for a regulation
Article 22 – paragraph 1**

Text proposed by the Commission

1. Public sector bodies and Union institutions, agencies and bodies **shall** cooperate and assist one another, to implement this Chapter in a consistent manner.

Amendment

1. ***The data coordinator as referred to in Article 31 shall ensure that*** public sector bodies and Union institutions, agencies and bodies cooperate and assist one another, to implement this Chapter in a consistent manner.

Or. en

Amendment 78

**Proposal for a regulation
Article 22 – paragraph 3**

Text proposed by the Commission

3. Where a public sector body intends to request data from a data holder established in another Member State, it shall first notify the **competent authority** of that Member State as referred to in Article 31, of that intention. This requirement shall also apply to requests by Union institutions, agencies and bodies.

Amendment

3. Where a public sector body intends to request data from a data holder established in another Member State, it shall first notify the **data coordinator** of that Member State as referred to in Article 31, of that intention. This requirement shall also apply to requests by Union institutions, agencies and bodies.

Or. en

Amendment 79

Proposal for a regulation Article 22 – paragraph 4

Text proposed by the Commission

4. After having been notified in accordance with paragraph 3, the **relevant competent authority** shall advise the requesting public sector body of the need, if any, to cooperate with public sector bodies of the Member State in which the data holder is established, with the aim of reducing the administrative burden on the data holder in complying with the request. The requesting public sector body shall take the advice of the relevant competent authority into account.

Amendment

4. After having been notified in accordance with paragraph 3, the **data coordinator** shall advise the requesting public sector body of the need, if any, to cooperate with public sector bodies of the Member State in which the data holder is established, with the aim of reducing the administrative burden on the data holder in complying with the request. The requesting public sector body shall take the advice of the relevant competent authority into account.

Or. en

Amendment 80

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

Text proposed by the Commission

1. Providers of a data processing service shall take the measures provided for in Articles 24, 25 and 26 to ensure that customers of their service can switch to another data processing service, covering the same service type, which is provided by a different service provider. In particular, providers of data processing service shall remove commercial, technical, contractual and organisational obstacles, which inhibit customers from:

Amendment

1. Providers of a data processing service shall take the measures provided for in Articles 24, 25 and 26 to ensure that customers of their service can switch to another data processing service, covering the same service type, which is provided by a different service provider. In particular, providers of data processing service shall remove **economic,** commercial, technical, contractual and organisational obstacles **to an effective switching between data processing services,** which inhibit customers from:

Or. en

Amendment 81

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 and, where technically feasible, complete the switching process ***whenever both the originating and the destination data processing services cover the same service type;***

Or. en

Amendment 82

Proposal for a regulation

Article 24 – paragraph 2

Text proposed by the Commission

2. Where the mandatory transition period as defined in paragraph 1, points (a) and (c) of this Article is technically unfeasible, the provider of data processing services shall notify the customer within **7 *working*** days after the switching request has been made, duly motivating the technical unfeasibility with a detailed report and indicating an alternative transition period, which may not exceed **6** months. In accordance with paragraph 1 of this Article, full service continuity shall be ensured throughout the alternative transition period against reduced charges, referred to in Article 25(2).

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 *calendar*** 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 **3** months ***after the switching request has been formally submitted.*** 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).

Or. en

Amendment 83

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 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 **be in contravention** with Union law or the national law of the relevant Member State, without prejudice to paragraph 2 or 3.

Or. en

Amendment 84

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 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 **shall** 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.

Or. en

Amendment 85

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

Amendment

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 **contravention of** 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 86

Proposal for a regulation

Article 27 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The addressee of the decision may ask the opinion of the **relevant competent bodies or authorities, pursuant to this Regulation**, in order to determine whether these conditions are met, notably when it considers that the decision may relate to commercially sensitive data, or may impinge on national security or defence interests of the Union or its Member States.

Amendment

The addressee of the decision may ask the opinion of the **data coordinator as referred to in Article 31**, in order to determine whether these conditions are met, notably when it considers that the decision may relate to commercially sensitive data, **including the protection of trade secrets and the protection of intellectual property rights**, or may impinge on national security or defence interests of the Union or its Member States.

Or. en

Amendment 87

Proposal for a regulation

Article 27 – paragraph 3 – subparagraph 3

Text proposed by the Commission

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.

Amendment

The European Data Innovation Board established under **Regulation 2022/868, Data Governance Act, and referred to in Article 31a**, shall advise and assist the Commission in developing guidelines on the assessment of whether these conditions are met.

Or. en

Amendment 88

Proposal for a regulation

Article 30 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) protection of confidentiality of trade secrets: a smart contract shall be designed to ensure the confidentiality of trade secrets, in line with the provisions of this Regulation.

Or. en

Amendment 89

Proposal for a regulation

Article 31 – title

Text proposed by the Commission

Amendment

Competent authorities

Data coordinator

Or. en

Amendment 90

Proposal for a regulation Article 31 – paragraph 1

Text proposed by the Commission

1. Each Member State shall designate ***one or more*** competent ***authorities*** as responsible for the application and enforcement of this Regulation. Member ***States may establish one or more new authorities or rely on existing authorities.***

Amendment

1. Each Member State shall designate ***an independent*** competent ***coordinating authority ('data coordinator')*** as responsible for the application and enforcement of this Regulation, ***for coordinating the activities entrusted to that Member State, for acting as the single contact point towards the Commission, with regard to the implementation of this Regulation and for representing the Member State at the European Data Innovation Board, as referred to in Article 31a.***

Or. en

Amendment 91

Proposal for a regulation Article 31 – paragraph 2 – introductory part

Text proposed by the Commission

2. ***Without prejudice to paragraph 1 of this Article:***

Amendment

2. ***The data coordinator shall ensure cooperation among the national competent authorities that are responsible for the monitoring of other Union or national legal acts in the field of data and electronic communication services, namely:***

Or. en

Amendment 92

Proposal for a regulation Article 31 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the national competent authority responsible for the application and enforcement of Chapter VI of this Regulation shall have experience in the field of data and electronic communications services.

deleted

Or. en

Amendment 93

Proposal for a regulation

Article 31 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. Member States shall ensure that the **respective** tasks and powers of the **competent authorities** designated pursuant to paragraph 1 of this Article are clearly defined and include:

3. Member States shall ensure that the tasks and powers of the **data coordinator** designated pursuant to paragraph 1 of this Article are clearly defined and include:

Or. en

Amendment 94

Proposal for a regulation

Article 31 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) promoting awareness among users and entities falling within scope of this Regulation of **the** rights and obligations under this Regulation;

(a) promoting **data literacy measures and tools, raising** awareness among users and entities falling within **the** scope of this Regulation of **their** rights and obligations under this Regulation;

Or. en

Amendment 95

Proposal for a regulation

Article 31 – paragraph 3 – point a a (new)

Text proposed by the Commission

Amendment

(aa) issuing recommendations and providing advice to users and entities, in particular to micro, small and medium-sized enterprises on the implementation of this Regulation;

Or. en

Amendment 96

Proposal for a regulation

Article 31 – paragraph 3 – point a b (new)

Text proposed by the Commission

Amendment

(ab) facilitating the exchange of information and best practices among entities falling under the scope of this Regulation;

Or. en

Amendment 97

Proposal for a regulation

Article 31 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) handling complaints arising from alleged violations of this Regulation, and investigating, to the extent appropriate, the subject matter of the complaint and informing the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another competent authority is necessary;

(b) handling complaints arising from alleged violations of this Regulation, and investigating, to the extent appropriate, the subject matter of the complaint and informing the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another competent authority ***as those referred in***

paragraph 2, is necessary;

Or. en

Amendment 98

Proposal for a regulation

Article 31 – paragraph 3 – point c

Text proposed by the Commission

(c) conducting investigations into matters that concern the application of this Regulation, including on the basis of information received from another competent authority or other public authority;

Amendment

(c) conducting investigations into matters that concern the application of this Regulation, including on the basis of information received from another competent authority *as those referred in paragraph 2* or other public authority;

Or. en

Amendment 99

Proposal for a regulation

Article 31 – paragraph 3 – point f

Text proposed by the Commission

(f) cooperating with *competent authorities* of other Member States to ensure the consistent application of this Regulation, including the exchange of all relevant information by electronic means, without undue delay;

Amendment

(f) cooperating with *the data coordinators* of other Member States to ensure the consistent application of this Regulation, including the exchange of all relevant information by electronic means, without undue delay;

Or. en

Amendment 100

Proposal for a regulation

Article 31 – paragraph 3 – point g

Text proposed by the Commission

(g) ensuring the online public availability of requests for access to data made by public sector bodies in the case of **public emergencies** under Chapter V;

Amendment

(g) ensuring the online public availability of requests for access to data made by public sector bodies in the case of **an exceptional need** under Chapter V;

Or. en

Amendment 101

Proposal for a regulation

Article 31 – paragraph 3 – point h

Text proposed by the Commission

(h) **cooperating with all relevant competent authorities to ensure** that the obligations of Chapter VI are enforced consistently with other Union legislation and self-regulation applicable to providers of data processing service;

Amendment

(h) **ensuring** that the obligations of Chapter VI are enforced consistently with other Union legislation and self-regulation applicable to providers of data processing service;

Or. en

Amendment 102

Proposal for a regulation

Article 31 – paragraph 4

Text proposed by the Commission

4. Where a Member State designates more than one competent authority, the competent authorities shall, in the exercise of the tasks and powers assigned to them under paragraph 3 of this Article, cooperate with each other, including, as appropriate, with the supervisory authority responsible for monitoring the application of Regulation (EU) 2016/679, to ensure the consistent application of this Regulation. In such cases, relevant Member States shall designate a

Amendment

deleted

coordinating competent authority.

Or. en

Amendment 103

Proposal for a regulation Article 31 – paragraph 5

Text proposed by the Commission

5. Member States shall communicate the name of the designated **competent authorities** and their respective tasks and powers **and, where applicable, the name of the coordinating competent authority to the Commission**. The Commission shall maintain a public register of those authorities.

Amendment

5. Member States shall communicate the name of the designated **data coordinator** and their respective tasks and powers. The Commission shall maintain a public register of those authorities.

Or. en

Amendment 104

Proposal for a regulation Article 31 – paragraph 6

Text proposed by the Commission

6. When carrying out their tasks and exercising their powers in accordance with this Regulation, the **competent authorities** shall remain free from any external influence, whether direct or indirect, and shall neither seek nor take instructions from any other public authority or any private party.

Amendment

6. When carrying out their tasks and exercising their powers in accordance with this Regulation, the **data coordinator** shall remain free from any external influence, whether direct or indirect, and shall neither seek nor take instructions from any other public authority or any private party.

Or. en

Amendment 105

Proposal for a regulation Article 31 – paragraph 7

Text proposed by the Commission

7. Member States shall ensure that the designated **competent authorities** are provided with the necessary resources to adequately carry out their tasks in accordance with this Regulation.

Amendment

7. Member States shall ensure that the designated **data coordinators** are provided with **all** the necessary **financial and human** resources to adequately carry out their tasks in accordance with this Regulation.

Or. en

Amendment 106

Proposal for a regulation Article 31 a (new)

Text proposed by the Commission

Amendment

Article 31a

European Data Innovation Board

1. *The data coordinators shall represent the Member States at the European Data Innovation Board.*
2. *The European Data Innovation Board shall provide advice and assistance to the Commission and ensure coordination among the Member States on the topics covered by this Regulation in order to:*
 - (a) *promote an effective and competitive internal market for data;*
 - (b) *contribute to uniform administrative practices in the Member States;*
 - (c) *issue guidelines, recommendations and written contributions on matters related to the implementation of this Regulation:*
 - (i) *related to the transparency and*

fairness of the contractual terms,
(ii) to calculate a reasonable compensation, also in the context of data made available to public bodies, Union institutions, agencies or bodies, iii) on the development of model contractual terms and technical means when relating to the protection of confidentiality of trade secrets in the context of this Regulation

3. The subgroup ensuring a regular dialogue with stakeholders shall also provide to the European Data Innovation Board advice on the implementation of the obligations established in this Regulation providing a particular oversight and monitoring on the rights and obligations in compliance with this Regulation.

Or. en

Amendment 107

Proposal for a regulation Article 32 – paragraph 1

Text proposed by the Commission

1. Without prejudice to any other administrative or judicial remedy, natural and legal persons shall have the right to lodge a complaint, individually or, where relevant, collectively, with the **relevant competent authority** in the Member State of their habitual residence, place of work or establishment if they consider that their rights under this Regulation have been infringed.

Amendment

1. Without prejudice to any other administrative or judicial remedy, natural and legal persons shall have the right to lodge a complaint, individually or, where relevant, collectively, with the **Data coordinator** in the Member State of their habitual residence, place of work or establishment if they consider that their rights under this Regulation have been infringed.

Or. en

Amendment 108

Proposal for a regulation Article 32 – paragraph 2

Text proposed by the Commission

2. The **competent authority** with which the complaint has been lodged shall inform the complainant of the progress of the proceedings and of the decision taken.

Amendment

2. The **Data coordinator** with which the complaint has been lodged shall inform the complainant of the progress of the proceedings and of the decision taken.

Or. en

Amendment 109

Proposal for a regulation Article 32 – paragraph 3

Text proposed by the Commission

3. Competent authorities **shall cooperate** to handle and resolve complaints, including by exchanging all relevant information by electronic means, without undue delay. This cooperation shall not affect the specific cooperation mechanism provided for by Chapters VI and VII of Regulation (EU) 2016/679.

Amendment

3. **Data coordinators shall ensure the cooperation of all relevant** competent authorities **as those referred in Article 3(2)**, to handle and resolve complaints, including by exchanging all relevant information by electronic means, without undue delay. This cooperation shall not affect the specific cooperation mechanism provided for by Chapters VI and VII of Regulation (EU) 2016/679.

Or. en

Amendment 110

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

The Commission shall develop and recommend non-binding model contractual terms on data access and use to assist parties in drafting and negotiating contracts

Amendment

The Commission shall develop and recommend non-binding model contractual terms on data access and use to assist parties in drafting and negotiating contracts

with balanced contractual rights and obligations.

with balanced contractual rights and obligations. *These model contractual terms shall also address the preservation of the confidentiality of trade secrets in accordance with this Regulation.*

Or. en

Amendment 111

Proposal for a regulation Chapter X – title

Text proposed by the Commission

SUI GENERIS RIGHT UNDER
DIRECTIVE 1996/9/EC

Amendment

***INAPPLICABILITY OF THE SUI
GENERIS RIGHT UNDER DIRECTIVE
1996/9/EC TO DATABASES
CONTAINING CERTAIN DATA***

Or. en

Amendment 112

Proposal for a regulation Article 35 – paragraph 1

Text proposed by the Commission

In order not to hinder the exercise of the right of users to access and use such data in accordance with Article 4 of this Regulation or of the right to share such data with third parties in accordance with Article 5 of this Regulation, the sui generis right provided for in Article 7 of Directive 96/9/EC does not apply to databases containing data obtained from or generated by the use of a product or a related service.

Amendment

The sui generis right provided for in Article 7 of Directive 96/9/EC does not apply to databases containing data obtained from or generated by the use of a product or a related service.

Or. en

Amendment 113

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(aa) whether the provisions related to trade secrets ensure respect for trade secrets while not hampering the access to and sharing of data; in particular, the evaluation shall assess whether and how the confidentiality of trade secrets is ensured in practice despite their disclosure both in the context of data sharing with third parties and in the business-to-government context. This assessment shall be carried out in close relationship with the evaluation report on Directive (EU) 2016/943 expected by 9 June 2026 pursuant to Article 18(3) of the directive thereof.

Or. en

Amendment 114

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ea) the application and functioning of Article 27 on the international access and transfer of data.

Or. en