



2022/0047(COD)

19.10.2022

DRAFT OPINION

of the Committee on Civil Liberties, Justice and Home 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))

Rapporteur for opinion: Sergey Lagodinsky

PA_Legam

SHORT JUSTIFICATION

XXX

AMENDMENTS

The Committee on Civil Liberties, Justice and Home 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 7

Text proposed by the Commission

(7) The fundamental right to the protection of personal data is safeguarded in particular under Regulation (EU) 2016/679 and Regulation (EU) 2018/1725. Directive 2002/58/EC additionally protects private life and the confidentiality of communications, including providing conditions to any personal and non-personal data storing in and access from terminal equipment. These instruments provide the basis for sustainable and responsible data processing, including where datasets include a mix of personal and non-personal data. This Regulation complements and is without prejudice to Union law on data protection and privacy, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC. No provision of this Regulation should be applied or interpreted in such a way as to diminish or limit the right to the protection of personal data or the right to privacy and confidentiality of communications.

Amendment

(7) The fundamental right to the protection of personal data is safeguarded in particular under Regulation (EU) 2016/679 and Regulation (EU) 2018/1725. Directive 2002/58/EC additionally protects private life and the confidentiality of communications, including providing conditions to any personal and non-personal data storing in and access from terminal equipment. These instruments provide the basis for sustainable and responsible data processing, including where datasets include a mix of personal and non-personal data. This Regulation complements and is without prejudice to Union law on data protection and privacy, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC. No provision of this Regulation should be applied or interpreted in such a way as to diminish or limit the right to the protection of personal data or the right to privacy and confidentiality of communications. . ***In the event of a conflict between this Regulation and Union law on the protection of personal data and privacy or national law adopted in accordance with such Union law, the relevant Union or national law on the protection of personal data and privacy should prevail.***

Amendment 2

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) The principles of data minimisation and data protection by design and by default are essential **when** processing **involves** significant risks to the fundamental rights of individuals. Taking into account the state of the art, all parties to data sharing, including where within scope of this Regulation, should implement technical and organisational measures to protect **these** rights. Such measures include not only pseudonymisation **and** encryption, **but also the use of increasingly available technology that permits algorithms to be brought to the data and allow valuable insights to be derived without the transmission between parties or unnecessary copying of the raw or structured data themselves.**

Amendment

(8) The principles of data minimisation and data protection by design and by default are essential **as** processing **can lead to** significant risks to the fundamental rights of individuals. Taking into account the state of the art, all parties to data sharing, including where within scope of this Regulation, should implement technical and organisational measures to protect **and facilitate the exercise of data subjects' rights**. Such measures include not only **deletion and anonymisation where possible, and aggregation and pseudonymisation where the aforementioned are not possible to fulfil the purposes of the processing, as well as** encryption.

Amendment 3

Proposal for a regulation

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8 a) The goal of anonymisation is to prevent identification. In accordance with Regulation (EU) 2016/679, anonymised data have been processed in such a way as to remove the possibility to relate them to an identified or identifiable natural person and rendered anonymous in such a manner that the data subject is not or no

longer identifiable. Although improbable, the combination of non-personal data sets could lead to the identification or, in the case of previously anonymised data, the re-identification and therefore reattribution to a natural person.

Or. en

Amendment 4

Proposal for a regulation Recital 18

Text proposed by the Commission

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

Amendment

(18) The user of a product should be understood as the legal or natural person, such as a business or consumer, which has purchased, rented or leased the product. Depending on the legal title under which he *or she* uses it, such a user bears the risks and enjoys the benefits of using the connected product and should enjoy also the access to the data it generates. The user should therefore be entitled to derive benefit from data generated by that product and any related service. *A product or service may have been purchased, rented or leased by a business, and provided or otherwise made available to one or more employees. Where such provision of a product or service results in the data concerned to be personal data, such data are subject to applicable Union law, in particular on the protection of personal data, of privacy, and the protection of employees.*

Or. en

Amendment 5

Proposal for a regulation Recital 18 a (new)

Text proposed by the Commission

Amendment

(18 a) Where the right to access data is exercised by a legal person, the notion of ‘right’ is understood to describe the claim to the obligation of the data holder to provide access to data to a recipient as laid down in this Regulation, subject to all conditions and limits of Union law on the protection of personal data.

Or. en

Amendment 6

Proposal for a regulation

Recital 19

Text proposed by the Commission

Amendment

(19) In practice, not all data generated by products or related services are easily accessible to their users, and there are often limited possibilities for the portability of data generated by products connected to the Internet *of Things*. Users are unable to obtain data necessary to make use of providers of repair and other services, and businesses are unable to launch innovative, more efficient and convenient services. In many sectors, manufacturers are often able to determine, through their control of the technical design of the product or related services, what data are generated and how they can be accessed, even though they have no legal right to the data. It is therefore necessary to ensure that products are designed and manufactured and related services are provided in such a manner that data generated by their use are always easily accessible to the user.

(19) In practice, not all data generated by products or related services are easily accessible to their users, and there are often limited possibilities for the portability of data generated by products connected to the Internet. Users are unable to obtain data necessary to make use of providers of repair and other services, and businesses are unable to launch innovative, more efficient and convenient services. In many sectors, manufacturers are often able to determine, through their control of the technical design of the product or related services, what data are generated and how they can be accessed, even though they have no legal right to the data. It is therefore necessary to ensure that products are designed and manufactured and related services are provided in such a manner that data generated by their use are always easily accessible to the user.

Or. en

Amendment 7

Proposal for a regulation

Recital 22

Text proposed by the Commission

(22) Virtual assistants play an increasing role in digitising consumer environments and serve as an easy-to-use interface to play content, obtain information, or activate physical objects connected to the Internet *of Things*. Virtual assistants can act as a single gateway in, for example, a smart home environment and record significant amounts of relevant data on how users interact with products connected to the Internet *of Things*, including those manufactured by other parties and can replace the use of manufacturer-provided interfaces such as touchscreens or smart phone apps. The user may wish to make available such data with third party manufacturers and enable novel smart home services. Such virtual assistants should be covered by the data access right provided for in this Regulation also regarding data recorded before the virtual assistant's activation by the wake word and data generated when a user interacts with a product via a virtual assistant provided by an entity other than the manufacturer of the product. However, only the data stemming from the interaction between the user and product through the virtual assistant falls within the scope of this Regulation. Data produced by the virtual assistant unrelated to the use of a product is not the object of this Regulation.

Amendment

(22) Virtual assistants play an increasing role in digitising consumer environments and serve as an easy-to-use interface to play content, obtain information, or activate physical objects connected to the Internet. Virtual assistants can act as a single gateway in, for example, a smart home environment and record significant amounts of relevant data on how users interact with products connected to the Internet, including those manufactured by other parties and can replace the use of manufacturer-provided interfaces such as touchscreens or smart phone apps. The user may wish to make available such data with third party manufacturers and enable novel smart home services. Such virtual assistants should be covered by the data access right provided for in this Regulation also regarding data recorded before the virtual assistant's activation by the wake word and data generated when a user interacts with a product via a virtual assistant provided by an entity other than the manufacturer of the product. However, only the data stemming from the interaction between the user and product through the virtual assistant falls within the scope of this Regulation. Data produced by the virtual assistant unrelated to the use of a product is not the object of this Regulation.

Or. en

Amendment 8

Proposal for a regulation

Recital 24

(24) This Regulation imposes the obligation on data holders to make data available in certain circumstances. Insofar as personal data are processed, the data holder **should be** a controller **under** Regulation (EU) 2016/679. Where users are data subjects, data holders should be obliged to provide them access to their data and to make the data available to third parties of the user's choice in accordance with this Regulation. However, this Regulation does not create a legal basis under Regulation (EU) 2016/679 for the data holder to provide access to personal data or make it available to a third party when requested by a user that is not a data subject and should not be understood as conferring any new right on the data holder to use data generated by the use of a product or related service. This applies in particular where the manufacturer is the data holder. **In that case**, the basis for the manufacturer to use non-personal data should be a contractual agreement between the manufacturer and the user. This agreement may be part of the sale, rent or lease agreement relating to the product. Any contractual term in the agreement stipulating that the data holder may use the data generated by the user of a product or related service should be transparent to the user, including as regards the purpose for which the data holder intends to use the data. This Regulation should not prevent contractual conditions, whose effect is to exclude or limit the use of the data, or certain categories thereof, by the data holder. This Regulation should also not prevent sector-specific regulatory requirements under Union law, or national law compatible with Union law, which would exclude or limit the use of certain such data by the data holder on well-defined public policy grounds.

(24) This Regulation imposes the obligation on data holders to make data available in certain circumstances. Insofar as personal data are processed, the data holder **is** a controller **pursuant to** Regulation (EU) 2016/679. Where users are data subjects, data holders should be obliged to provide them access to their data and to make the data available to third parties of the user's choice in accordance with this Regulation. However, this Regulation does not create a legal basis under Regulation (EU) 2016/679 for the data holder to provide access to personal data or make it available to a third party when requested by a user that is not a data subject and should not be understood as conferring any new right on the data holder to use data generated by the use of a product or related service. This applies in particular where the manufacturer is the data holder. **The performance of a contract can only be a legal ground for processing of personal data if the data subject is a party or if steps are being taken at the request of the data subject prior to entering into a contract. The necessity requirement for processing personal data for the performance of a contract pursuant to Article 6(1)(b) of Regulation (EU) 2016/679 cannot be fulfilled by merely providing for processing in a contractual clause. Assessing what is objectively necessary must be fact-based, and this legal ground shall be allowed only in situations where it is not possible to perform service or provide product which the data subject has actively requested or signed up for without processing of specific data. Personal data necessary for the controller's wider business mode but not necessary for the individual services requested by the data subject, do not fulfil this requirement.** The basis for the manufacturer to use non-personal data

should be a contractual agreement between the manufacturer and the user. This agreement may be part of the sale, rent or lease agreement relating to the product. Any contractual term in the agreement stipulating that the data holder may use the data generated by the user of a product or related service should be transparent to the user, including as regards the purpose for which the data holder intends to use the data. This Regulation should not prevent contractual conditions, whose effect is to exclude or limit the use of the data, or certain categories thereof, by the data holder. This Regulation should also not prevent sector-specific regulatory requirements under Union law, or national law compatible with Union law, which would exclude or limit the use of certain such data by the data holder on well-defined public policy grounds.

Or. en

Amendment 9

Proposal for a regulation Recital 27

Text proposed by the Commission

(27) The data holder may require appropriate user identification to verify the user's entitlement to access the data. In the case of personal data processed by a processor on behalf of the controller, the data holder should ensure that the access request is received and handled by the processor.

Amendment

(27) The data holder may require appropriate user identification **or authentication** to verify the user's entitlement to access the data. In the case of personal data processed by a processor on behalf of the controller, the data holder should ensure that the access request is received and handled by the processor.

Or. en

Amendment 10

Proposal for a regulation

Recital 30

Text proposed by the Commission

(30) The use of a product or related service may, in particular when the user is a natural person, generate data that relates to an identified or identifiable natural person (the data subject). Processing of such data is subject to the rules established under Regulation (EU) 2016/679, including where personal and non-personal data in a data set are inextricably linked⁶⁴. ***The data subject may be the user or another natural person.*** Personal data ***may only be requested by a controller or a data subject.*** A user who is the data subject is under certain circumstances entitled under Regulation (EU) 2016/679 to access personal data concerning them, and such rights are unaffected by this Regulation. Under this Regulation, the user who is a natural person is further entitled to access all data generated by the product, personal and non-personal. ***Where the user is not the data subject but an enterprise, including a sole trader, and not in cases of shared household use of the product, the user will be a controller within the meaning of Regulation (EU) 2016/679.*** Accordingly, such a user ***as controller*** intending to request personal data generated by the use of a product or related service is required to have a legal basis for processing the data under Article 6(1) of Regulation (EU) 2016/679, such as the consent of the data subject ***or*** legitimate interest. This user should ensure that the data subject is appropriately informed of the specified, explicit and legitimate purposes for processing those data, and how the data subject may effectively exercise their rights. Where the data holder and the user are joint controllers within the meaning of Article 26 of Regulation (EU) 2016/679, they are required to determine,

Amendment

(30) The use of a product or related service may, in particular when the user is a natural person, generate data that relates to an identified or identifiable natural person (the data subject). Processing of such data is subject to the rules established under Regulation (EU) 2016/679, including where personal and non-personal data in a data set are inextricably linked⁶⁴. ***Such generation and further processing of personal data is only permitted to begin with where one of the legal grounds pursuant to Articles 6(1) and 9 of that Regulation is met.*** A user who is the data subject is under certain circumstances entitled under Regulation (EU) 2016/679 to access personal data concerning them, and such rights are unaffected by this Regulation. Under this Regulation, the user who is a natural person is further entitled to access all data generated by the product, personal and non-personal. Accordingly, such a user intending to request personal data generated by the use of a product or related service is required to have a legal basis for processing the data under Article 6(1) of Regulation (EU) 2016/679, such as the consent of the data subject, ***a contractual arrangement, or a legal obligation.*** ***The legitimate interest of such a user, or of the provider of a product or service, should not be considered a legal basis for generating, further processing, and accessing personal data.*** ***The data subject can expect products and services to not collect, obtain, or generate data about them without their consent or a freely entered contractual agreement.*** This user should ensure that the data subject is appropriately informed of the specified, explicit and legitimate purposes for processing those data, and how the data

in a transparent manner by means of an arrangement between them, their respective responsibilities for compliance with that Regulation. It should be understood that such a user, once data has been made available, may in turn become a data holder, if they meet the criteria under this Regulation and thus become subject to the obligations to make data available under this Regulation.

⁶⁴ OJ L 303, 28.11.2018, p. 59–68.

subject may effectively exercise their rights. Where the data holder and the user are joint controllers within the meaning of Article 26 of Regulation (EU) 2016/679, they are required to determine, in a transparent manner by means of an arrangement between them, their respective responsibilities for compliance with that Regulation. It should be understood that such a user, once data has been made available, may in turn become a data holder, if they meet the criteria under this Regulation and thus become subject to the obligations to make data available under this Regulation. ***Where the user is a Union institution, agency or body, Regulation (EU) 2018/1725 should apply unprejudiced.***

⁶⁴ OJ L 303, 28.11.2018, p. 59–68.

Or. en

Amendment 11

Proposal for a regulation Recital 34

Text proposed by the Commission

(34) In line with the data minimisation principle, the third party should only access additional information that is necessary for the provision of the service requested by the user. Having received access to data, the third party should process it exclusively for the purposes agreed with the user, without interference from the data holder. It should be as easy for the user to refuse or discontinue access by the third party to the data as it is for the user to authorise access. The third party should not coerce, deceive or manipulate the user in any way, by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface

Amendment

(34) In line with the data minimisation principle, the third party should only access additional information that is necessary for the provision of the service requested by the user. Having received access to data, the third party should process it exclusively for the purposes agreed with the user, without interference from the data holder. It should be as easy for the user to refuse or discontinue access by the third party to the data as it is for the user to authorise access. The third party should not coerce, deceive or manipulate the user in any way, by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface

with the user. in this context, third parties should not rely on so-called dark patterns in designing their digital interfaces. Dark patterns are design techniques that push or deceive consumers into decisions that have negative consequences for them. These manipulative techniques can be used to persuade users, particularly vulnerable consumers, to engage in unwanted behaviours, and to deceive users by nudging them into decisions on data disclosure transactions or to unreasonably bias the decision-making of the users of the service, in a way that subverts and impairs their autonomy, decision-making and choice. ***Common and legitimate*** commercial practices that are in compliance with Union law should not in themselves be regarded as constituting dark patterns. Third parties should comply with their obligations under relevant Union law, in particular the requirements set out in Directive 2005/29/EC, Directive 2011/83/EU, Directive 2000/31/EC and Directive 98/6/EC.

with the user. in this context, third parties should not rely on so-called dark patterns in designing their digital interfaces. Dark patterns are design techniques that push or deceive consumers into decisions that have negative consequences for them. These manipulative techniques can be used to persuade users, particularly vulnerable consumers, to engage in unwanted behaviours, and to deceive users by nudging them into decisions on data disclosure transactions or to unreasonably bias the decision-making of the users of the service, in a way that subverts and impairs their autonomy, decision-making and choice. Commercial practices that are in compliance with Union law should not in themselves be regarded as constituting dark patterns. Third parties should comply with their obligations under relevant Union law, in particular the requirements set out in Directive 2005/29/EC, Directive 2011/83/EU, Directive 2000/31/EC and Directive 98/6/EC.

Or. en

Amendment 12

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

Amendment

deleted

provide public sector bodies and Union institutions, agencies or bodies data in situations of exceptional need.

Or. en

Amendment 13

Proposal for a regulation Recital 57

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 14

Proposal for a regulation Recital 58

Text proposed by the Commission

Amendment

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

deleted

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

Or. en

Amendment 15

Proposal for a regulation

Recital 59

Text proposed by the Commission

(59) This Regulation should not apply to, nor pre-empt, voluntary arrangements for the exchange of data between private and public entities. Obligations placed on data holders to provide data that are motivated by needs of a non-exceptional

Amendment

(59) This Regulation should not apply to, nor pre-empt, voluntary arrangements for the exchange of **non-personal** data between private and public entities. Obligations placed on data holders to provide data that are motivated by needs of

nature, notably where the range of data and of data holders is known and where data use can take place on a regular basis, as in the case of reporting obligations and internal market obligations, should not be affected by this Regulation. Requirements to access data to verify compliance with applicable rules, including in cases where public sector bodies assign the task of the verification of compliance to entities other than public sector bodies, should also not be affected by this Regulation.

a non-exceptional nature, notably where the range of data and of data holders is known and where data use can take place on a regular basis, as in the case of reporting obligations and internal market obligations, should not be affected by this Regulation. Requirements to access data to verify compliance with applicable rules, including in cases where public sector bodies assign the task of the verification of compliance to entities other than public sector bodies, should also not be affected by this Regulation.

Or. en

Amendment 16

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

Amendment

deleted

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, 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.

Or. en

Amendment 17

Proposal for a regulation Recital 62

Text proposed by the Commission

Amendment

(62) The objective of the obligation to provide the data is to ensure that public sector bodies and Union institutions, agencies or bodies have the necessary knowledge to respond to, prevent or recover from public emergencies or to maintain the capacity to fulfil specific tasks explicitly provided by law. The data obtained by those entities may be commercially sensitive. Therefore, Directive (EU) 2019/1024 of the European Parliament and of the 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

deleted

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).*

Or. en

Amendment 18

Proposal for a regulation Recital 63

Text proposed by the Commission

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 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 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

deleted

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 19

Proposal for a regulation Recital 64

Text proposed by the Commission

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.*

deleted

Amendment 20

Proposal for a regulation Recital 65

Text proposed by the Commission

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 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. *deleted*

Or. en

Amendment 21

Proposal for a regulation Recital 66

Text proposed by the Commission

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. *deleted*

Amendment 22**Proposal for a regulation****Recital 67**

Text proposed by the Commission

Amendment

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

deleted

Amendment 23

Proposal for a regulation Recital 68

Text proposed by the Commission

Amendment

(68) The public sector body or Union institution, agency or body may share the data it has obtained pursuant to the request with other entities or persons when this is needed to carry out scientific research activities or analytical activities it cannot perform itself. Such data may also be shared under the same circumstances with the national statistical institutes and Eurostat for the compilation of official statistics. Such research activities should however be compatible with the purpose for which the data was requested and the data holder should be informed about the further sharing of the data it had provided. Individuals conducting research or research organisations with whom these data may be shared should act either on a not-for-profit basis or in the context of a public-interest mission recognised by the State. Organisations upon which commercial undertakings have a decisive influence allowing such undertakings to exercise control because of structural situations, which could result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Regulation.

deleted

Or. en

Amendment 24

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

Amendment

1. This Regulation lays down

1. This Regulation lays down

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

harmonised rules on making data *lawfully obtained, collected, or* generated by the use of a product or *data lawfully obtained, collected, or generated during the provision of a* related service to the user of that product, *on providers of related services*, on the making data available by data holders *upon request by a user or data subject* to data recipients , and on *contractual terms between users and data holder, and users and data recipients.*

Or. en

Amendment 25

Proposal for a regulation

Article 1 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) manufacturers of products and *providers* of related services placed on the market in the Union and the users , *or in the case of personal data, identified or identifiable natural person the information generated by the use of* such products or *related services relates to;*

Or. en

Amendment 26

Proposal for a regulation

Article 1 – paragraph 2 – point d

Text proposed by the Commission

(d) *public sector bodies and Union institutions, agencies or bodies that request data holders to make data available where there is an exceptional need to that data for the performance of a task carried out in the public interest and the data holders that provide those data in*

Amendment

deleted

response to such request;

Or. en

Amendment 27

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 processed in connection with the rights and obligations laid down in this Regulation. ***The obtaining, collection, or generation of personal data through the use of a product or related service requires a legal basis pursuant to data protection law.*** This Regulation ***does not create a legal basis for the processing of personal data, nor does it affect any of the rights and obligations set out in Regulations (EU) 2016/679 or (EU) 2018/1725 or Directives 2002/58/EC or (EU) 2016/680. The legitimate interest, as laid down in Article 6 paragraph 1 point f of Regulation (EU) 2016/679, of the manufacturer of a product or the provider of a related service shall not constitute a legal basis for this. This Regulation is without prejudice to*** Union law on the protection of personal data ***and privacy***, in particular Regulation (EU) 2016/679, ***Regulation (EU) 2018/1725***, Directive 2002/58/EC, ***and Directive (EU) 2016(680)***, including the powers and competences of supervisory authorities. ***In the event of a conflict between this Regulation and Union law on the protection of personal data or privacy or national law adopted in accordance with such Union law, the relevant Union or national law on the protection of personal data or privacy shall prevail.*** 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 **and particularise** the right of data portability under Article 20 of Regulation (EU) 2016/679, **and shall not adversely affect data protection rights of others. Insofar the processing of personal data, that is made available to a data recipient pursuant to Article 5 of this Regulation, is restricted in Article 6 of this Regulation, these provisions shall take precedence over Article 6 of Regulation (EU) 2016/679.**

Or. en

Amendment 28

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) 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

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 **or administrative** offences or the execution of criminal **or administrative** 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

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).

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, *public* health and *the* 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 29

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 30

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(1 b) ‘non-personal data’ means data other than personal data;

Or. en

Amendment 31

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(1 c) ‘consent’ means consent as defined in Article 4, point (11), of Regulation (EU) 2016/679;

Or. en

Amendment 32

Proposal for a regulation

Article 2 – paragraph 1 – point 1 d (new)

Text proposed by the Commission

Amendment

(1 d) ‘data subject’ means data subject as referred to in Article 4, point (1), of Regulation (EU) 2016/679;

Or. en

Amendment 33

Proposal for a regulation

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

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

(2) ‘product’ means a tangible item, ***that, through its design and features,*** including ***sensors or in-device software,*** obtains, ***collects, or*** generates, data concerning its use or environment, and that is able to communicate data, and whose primary function is not the storing and processing of data, ***with the exception of products that are primarily designed to display or play content, or to record and transmit content, amongst others for the use by an online service should not be***

covered by this Regulation;

Or. en

Amendment 34

Proposal for a regulation

Article 2 – paragraph 1 – point 3

Text proposed by the Commission

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

Amendment

(3) ‘related service’ means a digital service, including software, which is ***necessary in order for the product to perform one or more*** of its functions ***and which involves communicating data from the product to the related service, and deriving or inferring data;***

Or. en

Amendment 35

Proposal for a regulation

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 36

Proposal for a regulation

Article 2 – paragraph 1 – point 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 37

Proposal for a regulation

Article 2 – paragraph 1 – point 6

Text proposed by the Commission

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

Amendment

(6) ‘data holder’ means a legal or natural person **that is not the user, who has access to data communicated to it, or accessed by it, including derived or inferred data during the provision of a related service, and** who has the right or obligation, in accordance with applicable Union law or national legislation implementing Union law, or in the case of non-personal data **the contractually agreed right to process and** make available certain data;

Or. en

Amendment 38

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Text proposed by the Commission

(7) ‘data recipient’ means a legal or natural person, acting for purposes which are related to that person’s trade, business, craft or profession, other than the user of a product or related service, to whom the data holder makes data available,

Amendment

(7) ‘data recipient’ means a legal or natural person, acting for purposes which are related to that person’s trade, business, craft or profession, other than the user of a product or related service, to whom the data holder makes data available, following

including a third party following a request by the user to the data holder or in accordance with a legal obligation under Union law or national legislation implementing Union law;

a request by the user *or the data subject* to the data holder or in accordance with a legal obligation under Union law or national legislation implementing Union law, *and including a third party to whom the data is directly made available by the user or the data subject*;

Or. en

Amendment 39

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 40

Proposal for a regulation

Article 2 – paragraph 1 – point 11 a (new)

Text proposed by the Commission

Amendment

(11 a) ‘making available of data obtained, collected, or generated by the use of a product or a related service’ means the making accessible of data, including derived and inferred data, by a simple request through electronic means, enabling the user or a third party to copy the data and to receive the data in a structured, commonly used, interoperable

and machine-readable format;

Or. en

Amendment 41

Proposal for a regulation

Article 2 – paragraph 1 – point 12

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 42

Proposal for a regulation

Article 2 – paragraph 1 – point 19

Text proposed by the Commission

(19) ‘interoperability’ means the ability of two or more **data spaces or** communication networks, systems, products, applications **or** components to exchange and use data in order to perform their functions;

Amendment

(19) ‘interoperability’ means the ability of two or more communication networks, systems, products, applications, components, **or services** to exchange and use data in order to perform their functions;

Or. en

Amendment 43

Proposal for a regulation

Article 3 – title

Text proposed by the Commission

Obligation **to make data** generated by the use of products or related services **accessible**

Amendment

Obligation **of designers, manufacturers and providers of related services regarding data obtained, collected, or** generated by the use of products or related services

Or. en

Amendment 44

Proposal for a regulation Article 3 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Products shall be designed and manufactured, and related services shall be provided, in such a manner that data **obtained, collected, or** generated by their use are, by default, easily, securely and, where relevant and appropriate, directly accessible to **that user in a structured, commonly used and machine-readable format, including access to derived or inferred data. In the case that user is a data subject, products shall offer possibilities to directly exercise the data subjects' rights. Products shall be designed and manufactured, and related services shall be provided, in such a way that a data subject is offered the possibility to use the products covered by this Regulation anonymously.**

Or. en

Amendment 45

Proposal for a regulation Article 3 – paragraph 2 – introductory part

Text proposed by the Commission

2. Before **concluding** a contract for the purchase, rent or lease of a product **or a related service**, at least the following information shall be provided to the user, in a clear and comprehensible format:

Amendment

2. Before **the user concludes** a contract for the purchase, rent or lease of a product, at least the following information shall be provided to the user, in a clear and comprehensible format:

Or. en

Amendment 46

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

Text proposed by the Commission

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

Amendment

(a) the nature, **format, estimated** volume **and collection frequency** of the data **which** the product **is capable to obtain, collect, or generate**;

Or. en

Amendment 47

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

Text proposed by the Commission

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

Amendment

(b) whether the data **are likely** to be **obtained, collected, or** generated continuously and in real-time;

Or. en

Amendment 48

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

This point is to be moved under new paragraph 2a as (c) and amended

Amendment 49

Proposal for a regulation

Article 3 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) whether the seller, renter or lessor is the data holder and, if not, the identity of the data holder, such as its trading name and the geographical address at which it is established; **deleted**

Or. en

Justification

This point is moved under new paragraph 2a as (d) and amended

Amendment 50

Proposal for a regulation

Article 3 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) the means of communication which enable the user to contact the data holder quickly and communicate with that **deleted**

data holder efficiently;

Or. en

Justification

This point is moved under new paragraph 2a as (e) and amended

Amendment 51

Proposal for a regulation

Article 3 – paragraph 2 – point g

Text proposed by the Commission

Amendment

(g) how the user may request that the data are shared with a third-party;

(g) how the user may request that the data are shared with a third-party;

Or. en

Justification

This point is moved under new paragraph 2a as (f) and amended

Amendment 52

Proposal for a regulation

Article 3 – paragraph 2 – point h

Text proposed by the Commission

Amendment

(h) the user's right to lodge a complaint alleging a violation of the provisions of this Chapter with the competent authority referred to in Article 31.

deleted

Or. en

Justification

This point is moved under new paragraph 2a as (h) unchanged

Amendment 53

Proposal for a regulation

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. *Before the user concludes an agreement for the provision of a related service, at least the following information shall be provided to the user in a clear and comprehensible format:*

(a) the nature, format, and collection frequency of data communicated from the product to the related service, as well as modalities for the user of the product to access or retrieve the data;

(b) the nature and estimated volume of data obtained, collected, generated, derived or inferred during the provision of the related service, as well as modalities for the user to access or retrieve the data;

(c) whether the provider of the related service intends to process the data itself, whether it intends to allow a third party to process the data and, the purposes for which those data will be processed;

(d) the identity of the data holder and, where applicable, other data processing parties, such as the trading name and the geographical address of establishment;

(e) the means of communication which enable the user to contact the data holder and, where applicable, other data processing party quickly and communicate with them efficiently;

(f) how the user may request that the data be shared with or transferred to a third-party;

(g) the foreseen duration of the agreement, as well as the modalities to terminate the agreement prematurely;

(h) the user's right to lodge a complaint alleging a violation of the provisions of this Chapter with the competent authority

referred to in Article 31.

Or. en

Justification

This amendment includes and amends former points d-g from paragraph 2, adds a new point, and copies point h from paragraph 2 unchanged.

Amendment 54

Proposal for a regulation
Article 4 – title

Text proposed by the Commission

The right of users to access and use data generated by *the* use of products or related services

Amendment

The right of users to access and use data ***obtained, collected, or*** generated by ***their*** use of products or related services, ***and the obligation of data holders to provide access to such data***

Or. en

Amendment 55

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 ***any data communicated to the data holder from the product or obtained, collected, or generated during the provision of the*** related service without undue delay, free of charge and, where applicable, continuously and in real-time, ***in a structured, commonly used and machine-readable format, including access to derived or inferred data, and including the relevant metadata.*** This shall be done on the basis of a simple request through electronic

means. Where *this is not* technically feasible, *the data holder shall provide a functionally equivalent alternative.*

Or. en

Amendment 56

Proposal for a regulation Article 4 – paragraph 2

Text proposed by the Commission

2. The data holder shall not require the user to provide any information beyond what is necessary to verify *the* quality as *a* user pursuant to paragraph 1. The data holder shall not keep any information on the user's access to the data requested beyond what is necessary for the sound execution of the user's access request and for the security and the maintenance of the data infrastructure.

Amendment

2. The data holder shall not require the user to provide any information beyond what is necessary to verify *their* quality as *the* user pursuant to paragraph 1. The data holder shall not keep any information on the user's access to the data requested beyond what is necessary for the sound execution of the user's access request and for the security and the maintenance of the data infrastructure.

Or. en

Amendment 57

Proposal for a regulation Article 4 – paragraph 4

Text proposed by the Commission

4. The user shall not use the data obtained pursuant to a request referred to in paragraph 1 to develop a product that competes with the product from which the data originate.

Amendment

4. *Unless where that data can be directly accessed by the user from the product,* the user shall not use the data obtained pursuant to a request referred to in paragraph 1 to develop a product that competes with the product from which the data originate.

Or. en

Amendment 58

Proposal for a regulation Article 4 – paragraph 5

Text proposed by the Commission

5. Where the user is not a data subject, any personal data generated by the use of a product or related service shall only be made available by the data holder to the user where there is a valid legal basis under Article **6(1)** of Regulation (EU) 2016/679 and, where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 are fulfilled.

Amendment

5. Where the user is not a data subject, any personal data generated by the use of a product or related service shall only be made available by the data holder to the user where ***all conditions and rules provided by data protection legislation are complied with, notably where*** there is a valid legal basis under Article **6** of Regulation (EU) 2016/679 and, where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 ***and Article 5(3) of Directive 2002/58/EC*** are fulfilled.

Or. en

Amendment 59

Proposal for a regulation Article 5 – title

Text proposed by the Commission

Right to share data with third parties

Amendment

Right ***of users and data subjects*** to share, ***and the obligation of data holders to provide for the sharing of*** data with third parties

Or. en

Amendment 60

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

1. Upon request by a user, or by a party acting on behalf of a user, the data

Amendment

1. Upon request by ***a data subject, or*** a user, or by a party acting on behalf of a

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

user, the data holder shall make available the data ***obtained, collected, or*** generated by the use of a product or related service to a third party, without undue delay, free of charge to ***the data subject or*** the user, of the same quality as is available to the data holder and, where applicable, continuously and in real-time ***and only for the purposes of:***

Or. en

Amendment 61

Proposal for a regulation

Article 5 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(a) enabling the user or data subject to obtain repair or maintenance, or aftermarket services regarding the product, including competing or unrelated services;

Or. en

Amendment 62

Proposal for a regulation

Article 5 – paragraph 1 – point b (new)

Text proposed by the Commission

Amendment

(b) enabling the user or data subject to update the software of its product or related services in particular to fix security and usability problems;

Or. en

Amendment 63

Proposal for a regulation

Article 5 – paragraph 1 – point c (new)

Text proposed by the Commission

Amendment

(c) enabling the user or data subject to share data with recognised data altruism organisations pursuant to [Data Governance Act].

Or. en

Amendment 64

Proposal for a regulation

Article 5 – paragraph 1 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

A third party may not solicit or commercially incentivise a user or data subject in any manner, including by providing monetary or any other compensation, to make data available the consumer or data subject has obtained pursuant to a request under Article 4(1) as a mere tradeable commodity. These data may notably not be used by the third party for purposes of direct marketing or advertising, employee monitoring, credit scoring and profiling.

Or. en

Amendment 65

Proposal for a regulation

Article 5 – paragraph 3

Text proposed by the Commission

Amendment

3. The user or third party shall not be required to provide any information

3. The user or third party shall not be required to provide any information

beyond what is necessary to verify *the* quality as user or as third party pursuant to paragraph 1. The data holder shall not keep any information on the third party's access to the data requested beyond what is necessary for the sound execution of the third party's access request and for the security and the maintenance of the data infrastructure.

beyond what is necessary to verify *their* quality as *the* user or as third party pursuant to paragraph 1. The data holder shall not keep any information on the third party's access to the data requested beyond what is necessary for the sound execution of the third party's access request and for the security and the maintenance of the data infrastructure.

Or. en

Amendment 66

Proposal for a regulation Article 5 – paragraph 4

Text proposed by the Commission

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.

Amendment

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

Or. en

Amendment 67

Proposal for a regulation Article 5 – paragraph 5

Text proposed by the Commission

5. The data holder shall not use any non-personal data generated by the use of the product or related service to derive insights about the economic situation, assets and production methods of or use by the third party that could undermine the commercial position of the third party on the markets in which the third party is active, unless the third party has consented to such use and has the technical possibility

Amendment

5. The data holder shall not use any non-personal data *obtained, collected, or* generated by the use of the product or related service to derive insights about the economic situation, assets and production methods of or use by the third party that could undermine the commercial position of the third party on the markets in which the third party is active, unless the third party has consented to such use and has the

to withdraw that consent at any time.

technical possibility to withdraw that consent at any time.

Or. en

Amendment 68

Proposal for a regulation Article 5 – paragraph 6

Text proposed by the Commission

6. Where ***the user is not*** a data subject, any personal data generated by ***the*** use of a product or related service shall only be made available where there is a valid legal basis under Article 6(1) of Regulation (EU) 2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 are fulfilled.

Amendment

6. Where a data subject ***is concerned, that is not the user or data subject requesting access***, any personal data ***obtained, collected, or*** generated by ***their*** use of a product or related service, ***and data derived and inferred from that use***, shall only be made available ***by the data holder to the third party*** where there is a valid legal basis under ***points (a) or (b) of*** Article 6(1) of Regulation (EU) 2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 ***and Article 5(3) of Directive 2002/58/EC*** are fulfilled.

Or. en

Amendment 69

Proposal for a regulation Article 5 – paragraph 9

Text proposed by the Commission

9. The right referred to in paragraph 1 shall not adversely affect data ***protection*** rights of others.

Amendment

9. The right referred to in paragraph 1 shall not adversely affect data ***subject*** rights of others ***pursuant to applicable data protection legislation***.

Or. en

Amendment 70

Proposal for a regulation Article 6 – title

Text proposed by the Commission

Obligations of third parties receiving data at the request of the user

Amendment

Obligations of third parties receiving data at the request of the user ***or the data subject***

Or. en

Amendment 71

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

1. A third party shall process ***the*** data made available to it pursuant to Article 5 only for the purposes and under the conditions agreed with the user, and subject to the rights of the data subject insofar as personal data are concerned, ***and*** shall delete the data when they are no longer necessary for the agreed purpose.

Amendment

1. A third party shall process ***personal*** data made available to it pursuant to Article 5 only for the purposes and under the conditions agreed with the user, and ***where all conditions and rules provided by data protection legislation are complied with, notably where there is a valid legal basis under points (a) or (b) of Article 6(1) of Regulation (EU) 2016/679, and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 and Article 5(3) of Directive 2002/58/EC are fulfilled and*** subject to the rights of the data subject, insofar as personal data are concerned. ***The third party*** shall delete the data when they are no longer necessary for the agreed purpose.

Or. en

Amendment 72

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

Text proposed by the Commission

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

Amendment

(b) use the data it receives for the profiling of natural persons within the meaning of Article 4(4) of Regulation (EU) 2016/679;

Or. en

Amendment 73

Proposal for a regulation Article 6 – paragraph 2 – point b a (new)

Text proposed by the Commission

(b a) use data it receives to re-identify any data subject to whom the data relates and shall take technical and operational measures to prevent re-identification; it shall notify any data breach resulting in the re-identification of the data subjects concerned to a data protection authority;

Or. en

Amendment 74

Proposal for a regulation Article 6 – paragraph 2 – point f a (new)

Text proposed by the Commission

(f a) commercially incentivise the data subject by providing monetary or other compensation for making personal data available.

Or. en

Amendment 75

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 76

Proposal for a regulation Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7 a

Unfair contractual terms imposed on users and data subjects

Any contractual term which, to the detriment of the user or data subject, excludes the application of this Chapter, deviates from it, or alters its effect, shall not be binding on the user or data subject.

Or. en

Amendment 77

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Any compensation agreed between a data holder and a data recipient for ***the costs incurred and investment required*** for making data available shall, ***in the case of non-personal data, be fair and reasonable, and strictly proportionate in the case of personal data.***

Or. en

Amendment 78

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 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. ***This is without prejudice to the data subjects' rights to seek redress before a supervisory authority, and to the controller's data protection obligations.***

Or. en

Amendment 79

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 to prevent unauthorised ***disclosure of and*** 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). ***Where personal data is concerned, these technical measures shall be consistent with the obligation of the data controller to implement appropriate technical and organisational measures so as to ensure a level of security appropriate to the risk of the personal data processing pursuant to data protection legislation.***

Or. en

Amendment 80

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

Amendment

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 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 ***or in the case of personal data, an appropriate legal basis***, shall without

otherwise:

undue delay, unless the data holder or the user instruct otherwise:

Or. en

Amendment 81

Proposal for a regulation

Article 11 – paragraph 3 – introductory part

Text proposed by the Commission

3. Paragraph 2, point (b), shall not apply in either of the following cases:

Amendment

3. Paragraph 2, point (b), shall not apply in either of the following cases ***where non-personal data are concerned:***

Or. en

Amendment 82

Proposal for a regulation

Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Any contractual term in a data sharing agreement between data holders and data recipients which, to the detriment of the data subjects, undermines the application of their rights to privacy and data protection, derogates from it, or varies its effect, shall not be binding on that party.

Or. en

Amendment 83

Proposal for a regulation

Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. A contractual term is not to be considered unfair where it arises from applicable Union law.

Or. en

Amendment 84

Proposal for a regulation Chapter V – title

Text proposed by the Commission

Amendment

***MAKING DATA AVAILABLE TO
PUBLIC SECTOR BODIES AND
UNION INSTITUTIONS, AGENCIES
OR BODIES BASED ON
EXCEPTIONAL NEED***

deleted

Or. en

Justification

Chapter V is deleted

Amendment 85

Proposal for a regulation Article 14

Text proposed by the Commission

Amendment

Article 14

deleted

***Obligation to make data available based
on exceptional need***

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

2. This Chapter shall not apply to

small and micro enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC.

Or. en

Amendment 86

Proposal for a regulation Article 15

Text proposed by the Commission

Amendment

Article 15

deleted

Exceptional need to use data

An exceptional need to use data within the meaning of this Chapter shall be deemed to exist in any of the following circumstances:

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

Or. en

Amendment 87

Proposal for a regulation Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

Relationship with other obligations to make data available to public sector bodies and Union institutions, agencies and bodies

1. This Chapter shall not affect obligations laid down in Union or national law for the purposes of reporting, complying with information requests or demonstrating or verifying compliance with legal obligations.

2. The rights from this Chapter shall not be exercised by public sector bodies and Union institutions, agencies and bodies in order to carry out activities for the prevention, investigation, detection or prosecution of criminal or administrative offences or the execution of criminal penalties, or for customs or taxation administration. This Chapter does not affect the applicable Union and national law on the prevention, investigation, detection or prosecution of criminal or administrative offences or the execution of criminal or administrative penalties, or for customs or taxation administration.

Or. en

Amendment 88

Proposal for a regulation Article 17

Article 17

deleted

Requests for data to be made available

1. Where requesting data pursuant to Article 14(1), a public sector body or a Union institution, agency or body shall:

- (a) specify what data are required;***
- (b) demonstrate the exceptional need for which the data are requested;***
- (c) explain the purpose of the request, the intended use of the data requested, and the duration of that use;***
- (d) state the legal basis for requesting the data;***
- (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.***

2. A request for data made pursuant to paragraph 1 of this Article shall:

- (a) be expressed in clear, concise and plain language understandable to the data holder;***
- (b) be proportionate to the exceptional need, in terms of the granularity and volume of the data requested and frequency of access of the data requested;***
- (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;***
- (d) concern, insofar as possible, non-personal data;***
- (e) inform the data holder of the penalties that shall be imposed pursuant to Article 33 by a competent authority referred to in Article 31 in the event of non-compliance with the request;***

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

3. A public sector body or a Union institution, agency or body shall not make data obtained pursuant to this Chapter available for reuse within the meaning of Directive (EU) 2019/1024. Directive (EU) 2019/1024 shall not apply to the data held by public sector bodies obtained pursuant to this Chapter.

4.

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

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

Or. en

Amendment 89

Proposal for a regulation Article 18

Text proposed by the Commission

Amendment

Article 18

deleted

Compliance with requests for data

1. A data holder receiving a request for access to data under this Chapter shall

make the data available to the requesting public sector body or a Union institution, agency or body without undue delay.

2. Without prejudice to specific needs regarding the availability of data defined in sectoral legislation, the data holder may decline or seek the modification of the request within 5 working days following the receipt of a request for the data necessary to respond to a public emergency and within 15 working days in other cases of exceptional need, on either of the following grounds:

- (a) the data is unavailable;*
- (b) the request does not meet the conditions laid down in Article 17(1) and (2).*

3. In case of a request for data necessary to respond to a public emergency, the data holder may also decline or seek modification of the request 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 and the data holder has not been notified of the destruction of the data pursuant to Article 19(1), point (c).

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.

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.

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.

Or. en

Amendment 90

Proposal for a regulation Article 19

Text proposed by the Commission

Amendment

Article 19

deleted

Obligations of public sector bodies and Union institutions, agencies and bodies

1. A public sector body or a Union institution, agency or body having received data pursuant to a request made under Article 14 shall:

(a) not use the data in a manner incompatible with the purpose for which they were requested;

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

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

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.

Or. en

Amendment 91

Proposal for a regulation Article 20

Text proposed by the Commission

Amendment

Article 20

deleted

Compensation in cases of exceptional need

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

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.

Or. en

Amendment 92

Proposal for a regulation Article 21

Article 21

deleted

Contribution of research organisations or statistical bodies in the context of exceptional needs

- 1. A public sector body or a Union institution, agency or body shall be entitled to share data received under this Chapter with individuals or organisations in view of carrying out scientific research or analytics compatible with the purpose for which the data was requested, or to national statistical institutes and Eurostat for the compilation of official statistics.***
- 2. Individuals or organisations receiving the data pursuant to paragraph 1 shall act on a not-for-profit basis or in the context of a public-interest mission recognised in Union or Member State law. They shall not include organisations upon which commercial undertakings have a decisive influence or which could result in preferential access to the results of the research.***
- 3. Individuals or organisations receiving the data pursuant to paragraph 1 shall comply with the provisions of Article 17(3) and Article 19.***
- 4. Where a public sector body or a Union institution, agency or body transmits or makes data available under paragraph 1, it shall notify the data holder from whom the data was received.***

Or. en

Amendment 93

**Proposal for a regulation
Article 22**

Article 22

deleted

Mutual assistance and cross-border cooperation

- 1. Public sector bodies and Union institutions, agencies and bodies shall cooperate and assist one another, to implement this Chapter in a consistent manner.***
- 2. Any data exchanged in the context of assistance requested and provided pursuant to paragraph 1 shall not be used in a manner incompatible with the purpose for which they were requested.***
- 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.***
- 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.***

Or. en

Amendment 94

**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 **appropriate** 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.

Or. en

Amendment 95

**Proposal for a regulation
Article 27 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4 a. Where the provider of data processing services has reason to believe that the transfer of or access to non-personal data may lead to the risk of re-identification of non-personal, or anonymised data, the provider shall request the relevant bodies or authorities competent pursuant to applicable data protection legislation for authorisation before transferring or giving access to data.

Or. en

Amendment 96

**Proposal for a regulation
Article 31 – paragraph 1 a (new)**

1 a. The independent supervisory authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall be responsible for monitoring the application of this Regulation insofar as the protection of personal data is concerned. Chapters VI and VII of Regulation (EU) 2016/679 shall apply mutatis mutandis. The European Data Protection Supervisor shall be responsible for monitoring the application of this Regulation insofar as it concerns the Union institutions, bodies, offices and agencies. Where relevant, Article 62 of Regulation 2018/1725 shall apply mutatis mutandis. The tasks and powers of the supervisory authorities shall be exercised with regard to the processing of personal data.

Or. en

Justification

Former point (a) of para 2, moved up and amended.

Amendment 97

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

Text proposed by the Commission

Amendment

(a) the independent supervisory authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall be responsible for monitoring the application of this Regulation insofar as the protection of personal data is concerned. Chapters VI and VII of Regulation (EU) 2016/679 shall apply mutatis mutandis. The tasks and powers of the supervisory authorities shall be exercised with regard to the processing of

deleted

personal data;

Or. en

Justification

Moved up as new paragraph 1a and amended

Amendment 98

**Proposal for a regulation
Article 31 – paragraph 3 – point g**

Text proposed by the Commission

Amendment

(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;

deleted

Or. en

Amendment 99

**Proposal for a regulation
Article 31 – paragraph 4**

Text proposed by the Commission

Amendment

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 coordinating competent authority.***

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. ***In such cases, relevant Member States shall designate a coordinating competent authority. Competent authorities shall cooperate*** with the supervisory authority responsible for monitoring the application of Regulation (EU) 2016/679, to ensure the consistent application of this Regulation.

Or. en

Amendment 100

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 ***coordinating competent authority, or any other*** 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.

Or. en

Amendment 101

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 with balanced contractual rights and obligations.

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. ***The Commission shall consult the European Data Protection Board when developing such model contractual terms, as far as personal data are concerned.***

Or. en