



2022/0047(COD)

26.1.2023

OPINION

of the Committee on Legal Affairs

for the Committee on Industry, Research and Energy

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

Rapporteur for opinion(*): Ibán García Del Blanco

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

PA_Legam

SHORT JUSTIFICATION

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

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

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

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

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

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

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

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

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

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 4

Text proposed by the Commission

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

Amendment

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

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

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

Amendment 2

Proposal for a regulation Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Further efforts must be made to consolidate the data economy and data governance. In particular, increasing and supporting data literacy is essential so that users and businesses are aware and motivated to offer and provide access to their data in compliance with the relevant legal rules. This is at the basis of a sustainable data society. The spread of data literacy measures would imply the reduction of digital inequalities, contribute to improving working conditions, and ultimately sustain the consolidation and the innovation path of the data economy in the Union. In order to deliver high-quality job opportunities, the acquisition and development of data literacy skills, enabling the acquisition of digital competences by citizens and workers, should be ensured especially in the case of employees from start-ups, micro, small and medium-sized enterprises.

Amendment 3

**Proposal for a regulation
Recital 4 b (new)**

Text proposed by the Commission

Amendment

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

Amendment 4

**Proposal for a regulation
Recital 13 a (new)**

Text proposed by the Commission

Amendment

(13a) This Regulation is without prejudice to Union and national legal acts providing for the protection of intellectual property rights, including Directive 2001/29/EC, Directive 2004/48/EC, and Directive (EU) 2019/790.

Amendment 5

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) Physical products that obtain, generate or collect, by means of their components, data concerning their performance, use or environment and that are able to communicate that data via a publicly available electronic communications service (often referred to as the Internet of Things) should be covered by this Regulation. Electronic communications services include land-based telephone networks, television cable networks, satellite-based networks and near-field communication networks. Such products may include vehicles, home equipment and consumer goods, medical and health devices or agricultural and industrial machinery. The data represent the digitalisation of user actions and events and should accordingly be accessible to the user, while information derived or inferred from this data, where lawfully held, should not be considered within scope of this Regulation. Such data are potentially valuable to the user and support innovation and the development of digital and other services protecting the environment, health and the circular economy, in particular though facilitating the maintenance and repair of the products in question.

Amendment

(14) Physical products that obtain, generate or collect, by means of their components, data concerning their performance, use or environment and that are able to communicate that data via a publicly available electronic communications service, ***or through a physical or a wireless network that is connected to an electronic communication service*** (often referred to as the Internet of Things) should be covered by this Regulation. Electronic communications services include land-based telephone networks, television cable networks, satellite-based networks and near-field communication networks. Such products may include vehicles, home equipment and consumer goods, medical and health devices or agricultural and industrial machinery. The data represent the digitalisation of user actions and events and should accordingly be accessible to the user, while information derived or inferred from this data, where lawfully held, should not be considered within scope of this Regulation. Such data are potentially valuable to the user and support innovation and the development of digital and other services protecting the environment, health and the circular economy, in particular though facilitating the maintenance and repair of the products in question ***without hampering the protection of trade secrets or leading to unfair competition. To contribute further to the principles of the circular economy products should provide information to users on the guarantees to receive security and functionality updates.***

Amendment 6

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) Union law setting **physical** design and data requirements for products to be placed on the Union market should not be affected by this Regulation.

Amendment

(11) Union law setting design and data requirements for products to be placed on the Union market should not be affected by this Regulation.

Amendment 7

Proposal for a regulation

Recital 17

Text proposed by the Commission

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

Amendment

(17) Data **obtained, collected or** generated by the use of a product or related service include data recorded intentionally by the user. Such data include also data generated as a by-product of the user's action, such as diagnostics data, and without any action by the user, such as when the product is in 'standby mode', and data recorded during periods when the product is switched off. Such data should include data **either stored in the device or accessible to the data holder** in the form and format in which they are generated by the product, but not pertain to data **related to the product design or** resulting from any software process that calculates derivative data from such data as such **product design and** software process may be subject to intellectual property rights.

Amendment 8

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) This Regulation imposes the obligation on data holders to make data available in certain circumstances. Insofar as personal data are processed, the data

Amendment

(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.

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, ***without hindering the exercise of the rights of the user under this Regulation***, 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. ***However, bearing in mind the co-generated nature of the non-personal data concerned, the limitations on the use of such data to be respected by the data holder, should only apply where they are proportionate and clearly justified by a potential harm to the legitimate interest of the user. Where the user is a consumer, it is to the data holder to prove that the intended use is proportionate and does not cause harm to the legitimate interests of the user.*** 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.

Amendment 9

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) In sectors characterised by the concentration of a small number of manufacturers supplying end users, there are only limited options available to users with regard to sharing data with those manufacturers. In such circumstances, contractual agreements may be insufficient to achieve the objective of user empowerment. The data tends to remain under the control of the manufacturers, making it difficult for users to obtain value from the data generated by the equipment they purchase or lease. Consequently, there is limited potential for innovative smaller businesses to offer data-based solutions in a competitive manner and for a diverse data economy in Europe. This Regulation should therefore build on recent developments in specific sectors, such as the Code of Conduct on agricultural data sharing by contractual agreement. Sectoral legislation may be brought forward to address sector-specific needs and objectives. Furthermore, the data holder should not use any data generated by the use of the product or related service in order to derive insights about the economic situation of the **user** or its assets or production methods or the use in any other way that could undermine the commercial position of the **user** on the markets it is active on. This would, for instance, involve using knowledge about the overall performance of a business or a farm in contractual negotiations with the user on potential acquisition of the user's products

Amendment

(25) In sectors characterised by the concentration of a small number of manufacturers supplying end users, there are only limited options available to users with regard to sharing data with those manufacturers. In such circumstances, contractual agreements may be insufficient to achieve the objective of user empowerment. The data tends to remain under the control of the manufacturers, making it difficult for users to obtain value from the data generated by the equipment they purchase or lease. Consequently, there is limited potential for innovative smaller **businesses** to offer data based solutions in a competitive manner and for a diverse data economy in Europe. This Regulation should therefore build on recent developments in specific sectors, such as the Code of Conduct on agricultural data sharing by contractual agreement. Sectoral legislation may be brought forward to address sector-specific needs and objectives. Furthermore, the data holder **and the user** should not use any data generated by the use of the product or related service in order to derive insights about the economic situation of the **other party** or its assets or production methods or the use in any other way that could undermine the commercial position of the **other party** on the markets it is active on. This would, for instance, involve using knowledge about the overall performance of a business or a farm in contractual negotiations with the user on potential

or agricultural produce to the user's detriment, or for instance, using such information to feed in larger databases on certain markets in the aggregate (e.g. databases on crop yields for the upcoming harvesting season) as such use could affect the user negatively in an indirect manner. The user should be given the necessary technical interface to manage permissions, **preferably** with granular permission options (such as "allow once" or "allow while using this app or service"), including the option to withdraw permission.

acquisition of the user's products or agricultural produce to the user's detriment, or for instance, using such information to feed in large databases on certain markets in the aggregate (e.g. databases on crop yields for the upcoming harvesting season) as such use could affect the user negatively in an indirect manner. The user should be given the necessary technical interface to manage permissions, with granular permission options (such as "allow once" or "allow while using this app or service") including the option to withdraw permission. ***The data holder should not make the use of the product or related service dependent on the user allowing it to process data not required for the functionality of the product or provision of the related service. The data holder should delete the data when they are no longer necessary for the purpose contractually agreed.***

Amendment 10

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.

Amendment 11

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) The user should be free to use the

Amendment

(28) The user should be free to use the

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

data for any lawful purpose, **in full compliance with this Regulation, Directive (EU) 2016/943 and any other Union and national related legislation.** This includes exercising the right **of the user** under this Regulation to **share data with** a third party **of the user's choice** offering an aftermarket service that may be in competition with a service provided by the data holder, or to instruct the data holder to do so. **In order to comply with the user's request, the** data holder should ensure that the data made available to the third party is as accurate, complete, reliable, relevant and up-to-date as the data the data holder itself may be able or entitled to access from the use of the product or related service. Any trade secrets or intellectual property rights should be respected in handling the data. It is important to preserve incentives to invest in products with functionalities based on the use of data from sensors built into that product. The aim of this Regulation should accordingly be understood as to foster the development of new, innovative products or related services, stimulate innovation on aftermarkets, but also stimulate the development of entirely novel services making use of the data, including based on data from a variety of products or related services. At the same time, it aims to avoid undermining the investment incentives for the type of product from which the data are obtained, for instance, by the use of data to develop a competing product. **Other lawful purposes in this context include reverse engineering, when allowed pursuant to Directive (EU) 2016/943 as a lawful means of independent discovery of know-how or information, provided that it does not lead to unfair competition and it is without prejudice of the obligation not to develop a competing product using the data received under this Regulation. This may be the case for the purposes of repairing, prolonging the lifetime of a product or providing aftermarket services to connected products when the**

manufacturer or provider of related services has ended their production or provision.

Amendment 12

Proposal for a regulation Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) This Regulation should be interpreted in a manner to preserve the protection awarded to trade secrets under Directive (EU) 2016/943. To this end, data holders should be able to require the user, or third parties of the user's choice, to preserve the confidentiality of data considered as trade secrets. Trade secrets should be identified prior to the disclosure. However, data holders cannot undermine the right of the users to request access and use of data in accordance with this Regulation on the basis of certain data being considered as trade secrets by the data holder. The data holder, or the trade secret holder where it is not the data holder, should have the possibility to agree with the user, or third parties of the user's choice, on appropriate measures to preserve their confidentiality, including by the use of model contractual terms, confidentiality agreements, strict access protocols, technical standards and the application of codes of conduct. In cases where the user or third parties of the user's choice fail to implement those measures or undermine the confidentiality of trade secrets, the data holder should be able to suspend the sharing of data identified as trade secrets, pending review by the data coordinator of the Member State. In such cases, the data holder should immediately notify the data coordinator of the Member State in which the data holder is established, pursuant to article 31 of this Regulation, that it has suspended the sharing of data and

identify which measures have not been implemented or which trade secrets have had their confidentiality undermined. Where the user, or a third party of the user's choice, wishes to challenge the data holder's decision to suspend the sharing of data, the data coordinator should decide, within a reasonable period of time, whether the data sharing should be resumed or not and if yes, indicate under which conditions. The Commission, assisted by the European Data Innovation Board, should develop model contractual terms, and should be able to develop technical standards. The Commission, assisted by the European Innovation Board, could also encourage the establishment of codes of conduct in relation with the respect of trade secrets or intellectual property rights in handling the data, in order to help achieving the aim of this Regulation.

Amendment 13

Proposal for a regulation Recital 29

Text proposed by the Commission

(29) A third party to whom data is made available may be an enterprise, a research organisation or a not-for-profit organisation. In making the data available to the third party, the data holder should **not** abuse its position to seek a competitive advantage in markets where the data holder and third party may be in direct competition. **The data holder** should not therefore use any data generated by the use of the product or related service in order to derive insights about the economic situation of the **third** party or its assets or production methods or the use in any other way that could undermine the commercial position of the **third** party on the markets it is active on.

Amendment

(29) A third party to whom data is made available may be an enterprise, a research organisation or a not-for-profit organisation. In making the data available to the third party, **neither** the data holder **nor the third party** should abuse its position to seek a competitive advantage in markets where the data holder and third party may be in direct competition. **Either party** should not therefore use any data generated by the use of the product or related service in order to derive insights about the economic situation of the **other** party or its assets or production methods or the use in any other way that could undermine the commercial position of the **other** party on the markets it is active on.

Amendment 14

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 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

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. 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.

Amendment 15

Proposal for a regulation

Recital 36

Text proposed by the Commission

(36) Start-ups, small and medium-sized enterprises and companies from traditional sectors with less-developed digital capabilities struggle to obtain access to relevant data. This Regulation aims to facilitate access to data for these entities, while ensuring that the corresponding obligations are scoped as proportionately as possible to avoid overreach. At the same time, a small number of very large companies have emerged with considerable economic power in the digital economy through the accumulation and aggregation of vast volumes of data and the technological infrastructure for monetising them. These companies include undertakings that provide core platform services controlling whole platform ecosystems in the digital economy and whom existing or new market operators are unable to challenge or contest. The [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)] aims to redress these inefficiencies and imbalances by allowing the Commission to designate a provider as a “gatekeeper”, and imposes a number of obligations on such designated gatekeepers, including a prohibition to combine certain data without consent, and an obligation to ensure effective rights to data portability under Article 20 of Regulation (EU) 2016/679. Consistent with the [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)], and given the unrivalled ability of these companies to acquire data, it would not be necessary to achieve the objective of this Regulation, and would thus be disproportionate in

Amendment

(36) Start-ups, small and medium-sized enterprises and companies from traditional sectors with less-developed digital capabilities struggle to obtain access to relevant data. This Regulation aims to facilitate access to data for these entities, while ensuring that the corresponding obligations are scoped as proportionately as possible to avoid overreach. ***Consequently, these entities should be provided with appropriate data literacy measures and tools to comply with the rights and obligations of this Regulation.*** At the same time, a small number of very large companies have emerged with considerable economic power in the digital economy through the accumulation and aggregation of vast volumes of data and the technological infrastructure for monetising them. These companies include undertakings that provide core platform services controlling whole platform ecosystems in the digital economy and whom existing or new market operators are unable to challenge or contest. The [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)] aims to redress these inefficiencies and imbalances by allowing the Commission to designate a provider as a “gatekeeper”, and imposes a number of obligations on such designated gatekeepers, including a prohibition to combine certain data without consent, and an obligation to ensure effective rights to data portability under Article 20 of Regulation (EU) 2016/679. Consistent with the [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)], and given

relation to data holders made subject to such obligations, to include such gatekeeper undertakings as beneficiaries of the data access right. This means that an undertaking providing core platform services that has been designated as a gatekeeper cannot request or be granted access to users' data generated by the use of a product or related service or by a virtual assistant based on the provisions of Chapter II of this Regulation. An undertaking providing core platform services designated as a gatekeeper pursuant to Digital Markets Act should be understood to include all legal entities of a group of companies where one legal entity provides a core platform service. Furthermore, third parties to whom data are made available at the request of the user *may* not make the data available to a designated gatekeeper. For instance, the third party *may* not sub-contract the service provision to a gatekeeper. However, this does not prevent third parties from using data processing services offered by a designated gatekeeper. This exclusion of designated gatekeepers from the scope of the access right under this Regulation does not prevent these companies from obtaining data through other lawful means.

the unrivalled ability of these companies to acquire data, it would not be necessary to achieve the objective of this Regulation, and would thus be disproportionate in relation to data holders made subject to such obligations, to include such gatekeeper undertakings as beneficiaries of the data access right. This means that an undertaking providing core platform services that has been designated as a gatekeeper cannot request or be granted access to users' data generated by the use of a product or related service or by a virtual assistant based on the provisions of Chapter II of this Regulation. An undertaking providing core platform services designated as a gatekeeper pursuant to Digital Markets Act should be understood to include all legal entities of a group of companies where one legal entity provides a core platform service. Furthermore, third parties to whom data are made available at the request of the user *should* not make the data available to a designated gatekeeper. For instance, the third party *should* not sub-contract the service provision to a gatekeeper. However, this does not prevent *such* third parties from using data processing services offered by a designated gatekeeper. This exclusion of designated gatekeepers from the scope of the access right under this Regulation does not prevent these companies from obtaining data through other lawful means.

Amendment 16

Proposal for a regulation

Recital 37

Text proposed by the Commission

(37) Given the current state of technology, it is overly burdensome to impose further design obligations in relation to products manufactured or designed and related services provided by

Amendment

(37) Given the current state of technology, it is overly burdensome to impose further design obligations in relation to products manufactured or designed and related services provided by

micro and small enterprises. That is not the case, however, where a micro or small enterprise is sub-contracted to manufacture or design a product. In such situations, the enterprise, which has sub-contracted to the micro or small enterprise, is able to compensate the sub-contractor appropriately. A micro or small enterprise may nevertheless be subject to the requirements laid down by this Regulation as data holder, where it is not the manufacturer of the product or a provider of related services.

micro and small enterprises. That is not the case, however, where a micro or small enterprise is sub-contracted to manufacture or design a product. In such situations, the enterprise, which has sub-contracted to the micro or small enterprise, is able to compensate the sub-contractor appropriately. A micro or small enterprise may nevertheless be subject to the requirements laid down by this Regulation as data holder, where it is not the manufacturer of the product or a provider of related services. ***In order to increase the participation of micro and small enterprises in the data economy and facilitate their compliance with the obligations pursuant to this Regulation, each data coordinator should liaise with relevant authorities from their Member State in order to ensure that data literacy measures, training on smart contracts, recommendation and guidance is available to such enterprises.***

Amendment 17

Proposal for a regulation Recital 51

Text proposed by the Commission

(51) Where one party is in a stronger bargaining position, there is a risk that that party could leverage such position to the detriment of the other contracting party when negotiating access to data and make access to data commercially less viable and sometimes economically prohibitive. Such contractual imbalances ***particularly*** harm ***micro, small and medium-sized*** enterprises ***without*** a meaningful ability to negotiate the conditions for access to data, ***who*** may have no other choice than to accept ‘take-it-or-leave-it’ contractual terms. Therefore, unfair contract terms regulating the access to and use of data or the liability and remedies for the breach or the termination of data related obligations should not be

Amendment

(51) Where one party is in a stronger bargaining position, there is a risk that that party could leverage such position to the detriment of the other contracting party when negotiating access to data and make access to data commercially less viable and sometimes economically prohibitive. Such contractual imbalances ***can in particular*** harm enterprises ***that, due to their comparative smaller size, may not have*** a meaningful ability to ***individually*** negotiate the conditions for access to data ***and therefore***, may have no other choice than to accept ‘take-it-or-leave-it’ contractual terms. Therefore, unfair contract terms regulating the access to and use of data or the liability and remedies for the breach or

binding on *micro, small or medium-sized* enterprises when they have been unilaterally imposed on them.

the termination of data related obligations should not be binding on *those* enterprises when they have been unilaterally imposed on them.

Amendment 18

Proposal for a regulation Recital 52

Text proposed by the Commission

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

Amendment

(52) Rules on contractual terms should take into account the principle of contractual freedom as an essential concept in business-to-business relationships. Therefore, not all contractual terms should be subject to an unfairness test, but only to those terms that are unilaterally imposed on *situations where an imbalance of negotiation power exists between the parties and, therefore, there is no meaningful ability to negotiate*. This concerns ‘take-it-or-leave-it’ situations where one party supplies a certain contractual term, *particularly in the context of a pre-formulated standard contract*, and the *other* enterprise cannot influence the content *or the substance* of that term despite an attempt to *individually* negotiate it. A contractual term that is simply provided by one party and accepted by the *other* or a term that is negotiated and subsequently agreed in an amended way between contracting parties should not be considered as unilaterally imposed.

Amendment 19

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

Amendment

(56) In situations of exceptional need, it may be necessary for public sector bodies

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

or Union institutions, agencies or bodies to use data held by an enterprise to respond to public emergencies, **but also to prevent and recover from public emergencies** or in other exceptional cases, **under certain conditions, where there is a need to fulfil a specific task in the public interest. Data in general, and privately held data in particular, has the potential to serve the general public interest by informing decision-making, providing for new scientific insights and resolving policy issues, thus enabling suitable interventions and improving public-service delivery, amongst other possibilities.** Research-performing organisations and research-funding organisations could also be organised as public sector bodies or bodies governed by public law. To limit the burden on businesses, micro and small enterprises should be exempted from the obligation to provide public sector bodies and Union institutions, agencies or bodies data in situations of exceptional need.

Amendment 20

Proposal for a regulation Recital 57

Text proposed by the Commission

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

Amendment

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

emergency *is* determined according to the respective procedures in the Member States or of relevant international organisations.

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

Amendment 21

Proposal for a regulation Recital 58

Text proposed by the Commission

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

Amendment

(58) An exceptional need may also arise when a public sector body can demonstrate that the data are necessary either to prevent a public emergency, or to assist recovery from a public emergency, in circumstances that are reasonably proximate to the public emergency in question. Where the exceptional need is not justified by the need to respond to, prevent or assist recovery from a public emergency, the public sector body or the Union institution, agency or body should demonstrate that the lack of timely access to and the use of the data requested prevents it from effectively fulfilling a specific task in the public interest that has been explicitly provided in law. Such exceptional need may also occur in other situations, for example in relation to the timely compilation of official statistics when data is not otherwise available or when the burden on statistical respondents will be considerably reduced. At the same time, the public sector body or the Union institution, agency or body should, outside the case of responding to, preventing or assisting recovery from a public emergency, demonstrate that *such exceptional need cannot be reasonably addressed by policy decisions of the requesting public sector body and that it has exhausted all other* means for obtaining the data requested in a timely manner, *including* through the laying down of the necessary data provision

obligations in new legislation.

Amendment 22

Proposal for a regulation

Recital 61

Text proposed by the Commission

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

Amendment

(61) A proportionate, limited and predictable framework at Union level is necessary for the making available of data by data holders, in cases of exceptional needs, to public sector bodies and to Union institution, agencies or bodies both to ensure legal certainty and to minimise the administrative burdens placed on businesses. To this end, data requests by public sector bodies and by Union institution, agencies and bodies to data holders should be transparent and proportionate in terms of their scope of content and their granularity. The purpose of the request and the intended use of the data requested should be specific and clearly explained, while allowing appropriate flexibility for the requesting entity to perform its tasks in the public interest. The request should also respect the legitimate interests of the businesses to whom the request is made, **including on the protection of trade secrets**. The burden on data holders should be minimised by obliging requesting entities to respect the once-only principle, which prevents the same data from being requested more than once by more than one public sector body or Union institution, agency or body where those data are needed to respond to a public emergency. To ensure transparency **and an appropriate coordination**, data requests made by public sector bodies and by Union institutions, agencies or bodies should be **communicated** without undue delay by the entity requesting the data **to the data coordinator of that Member State that will ensure that those request are to be included in an** online public **list** of all

requests *made by public bodies, Union institutions, agencies or bodies* justified by *an exceptional need*.

Amendment 23

Proposal for a regulation

Recital 62

Text proposed by the Commission

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

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 possibility of sharing the data for conducting research or for the compilation of official statistics, provided the conditions laid down in this Regulation are met ***and protection of trade secrets and intellectual property rights is ensured*** . Public sector bodies should also be allowed to exchange data obtained pursuant to this Regulation with other public sector bodies to address the exceptional needs for which the data has been requested. ***The entities whose data are to be shared, provided they act in good faith, should also have the possibility to raise objections concerning planned data transfers in order to protect***

their security, integrity or confidentiality.

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

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

Amendment 24

Proposal for a regulation Recital 63

Text proposed by the Commission

(63) Data holders should have the possibility to either ask for a modification of the request made by a public sector body or Union institution, agency and body or its cancellation in a period of **5 or 15** working days depending on the nature of the exceptional need invoked in the request. In case of requests motivated by a public emergency, justified reason not to make the data available should exist if it can be shown that the request is similar or identical to a previously submitted request for the same purpose by another public sector body or by another Union institution, agency or body. A data holder rejecting the request or seeking its modification should communicate the underlying justification for refusing the request to the public sector body or to the Union institution, agency or body requesting the data. In case the sui generis database rights under Directive 96/6/EC of the European Parliament and of the Council⁶⁶ apply in relation to the requested datasets, data holders should exercise their rights in a way that does not prevent the public sector body and Union institutions, agencies or bodies from obtaining the data, or from sharing it, in accordance with this Regulation.

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 **2 to 20** working days depending on the nature of the exceptional need invoked in ***the request, the size of the company, the nature and granularity of the data, and, as appropriate, the technical and organisational adaptations necessary to comply with*** the request. In case of requests motivated by a public emergency, justified reason not to make the data available should exist if it can be 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 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).

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).

Amendment 25

Proposal for a regulation Recital 65

Text proposed by the Commission

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

Amendment

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

Amendment 26

Proposal for a regulation Recital 66

Text proposed by the Commission

(66) When reusing data provided by data holders, public sector bodies and Union institutions, agencies or bodies should respect both existing applicable legislation and contractual obligations to which the data holder is subject. Where the disclosure of trade secrets of the data holder to public

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.

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 *in advance* to the data holder *or the trade secret holder, including, as appropriate, by the use of model contractual clauses, technical standards and the application of codes of conduct. In cases where the public sector body or the Union institution, agency or body or the third parties that receive the data to perform the tasks that have been outsourced to them, fail to implement those measures or undermine the confidentiality of trade secrets, the data holder should be able to suspend the sharing of data identified as trade secrets. Such a decision to suspend the sharing of data might be challenged by the public sector body or the Union institution, agency or body or the third parties to which data were transmitted and subject to review by the data coordinator of the Member State.*

Amendment 27

Proposal for a regulation Recital 67

Text proposed by the Commission

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

Amendment

(67) The public sector body or the Union institution, agency or body *may* 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. *In such cases, data holders, after making data available, should be entitled to claim a reasonable compensation which should cover only*

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.

the technical and organisational proven costs incurred in complying with the request. 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 be entitled to *claim* a reasonable compensation which should *cover at least* the technical and organisational costs incurred in complying with the request and the reasonable margin required for making the data available to the public sector body or to the Union institution, agency or body. The compensation should not be understood as constituting payment for the data itself and as being compulsory.

Amendment 28

Proposal for a regulation

Recital 68

Text proposed by the Commission

(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

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 non-for-profit basis or in the context of a public-interest mission recognised by the State. *Individuals or organisations receiving those data should disclose the funding of*

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.

the research. They should demonstrate they have in place appropriate technical and organisational measures for the protection of the security and confidentiality of the data and be subject to the provisions established in this Regulation. Organisations upon which commercial undertakings have a decisive influence allowing such undertaking 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 purpose of this Regulation. ***Data can be kept for verification purposes in the context of scientific research and should be destroyed as soon as they are no longer necessary for the stated purpose.***

Amendment 29

Proposal for a regulation Recital 70

Text proposed by the Commission

(70) Regulation (EU) 2018/1807 of the European Parliament and of the Council encourages service providers to effectively develop and implement self-regulatory codes of conduct covering best practices for, inter alia, facilitating the switching of data processing service providers and the porting of data. Given the limited efficacy of the self-regulatory frameworks developed in response, and the general unavailability of open standards and interfaces, it is necessary to adopt a set of minimum regulatory obligations ***on providers of data processing services*** to eliminate contractual, economic ***and*** technical barriers to effective switching between data processing services.

Amendment

(70) Regulation (EU) 2018/1807 of the European Parliament and of the Council ***on a framework for the free flow of non-personal data in the European Union*** encourages service providers to effectively develop and implement self-regulatory codes of conduct covering best practices for, inter alia, facilitating the switching of data processing service providers and the porting of data. Given the limited efficacy of the self-regulatory frameworks developed in response, and the general unavailability of open standards and interfaces, it is necessary to adopt a set of minimum regulatory obligations to eliminate contractual, economic, ***commercial, technical and organisational*** barriers to ***an*** effective switching between data processing services, ***favouring harmonisation and contributing to***

Amendment 30

Proposal for a regulation

Recital 77

Text proposed by the Commission

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

Amendment

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

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

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

Amendment 31

Proposal for a regulation Recital 80

Text proposed by the Commission

(80) To promote the interoperability of smart contracts in data sharing applications, it is necessary to lay down essential requirements for smart contracts for professionals who create smart contracts for others or integrate such smart contracts in applications that support the implementation of agreements for sharing data. In order to facilitate the conformity of such smart contracts with those essential requirements, it is necessary to provide for a presumption of conformity for smart contracts that meet harmonised standards or parts thereof in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council.

Amendment

(80) To promote the interoperability of smart contracts in data sharing applications, it is necessary to lay down essential requirements for smart contracts for professionals who create smart contracts for others or integrate such smart contracts in applications that support the implementation of agreements for sharing data. ***Specific training programmes on smart contracts for businesses, in particular SMEs, should be provided.*** In order to facilitate the conformity of such smart contracts with those essential requirements, it is necessary to provide for a presumption of conformity for smart contracts that meet harmonised standards or parts thereof in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council.

Amendment 32

Proposal for a regulation Recital 81

Text proposed by the Commission

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

Amendment

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

Amendment 33

Proposal for a regulation Recital 82

Text proposed by the Commission

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

Amendment

(82) In order to enforce their rights under this Regulation, natural and legal persons should be entitled to seek redress for the infringements of their rights under this Regulation by lodging complaints with ***the data coordinator, other relevant*** competent authorities ***and before courts.*** Those authorities should be obliged to cooperate to ensure the complaint is appropriately handled and resolved ***swiftly and effectively.*** In order to make use of the consumer protection cooperation network mechanism and to enable representative

of the European Parliament and of the Council⁶⁸ and Directive (EU) 2020/1828 of the European Parliament and of the Council⁶⁹.

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

⁶⁹ Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).

Amendment 34

Proposal for a regulation Recital 83

Text proposed by the Commission

(83) Member States competent authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by penalties. When doing so, they should take into account the nature, gravity, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, as well as the economic capacity of the infringer. They should take into account whether the infringer systematically or recurrently fails to comply with its obligations stemming from this Regulation. In order to help enterprises to draft and negotiate contracts, the Commission should develop and recommend non-mandatory model

actions, this Regulation amends the Annexes to the Regulation (EU) 2017/2394 of the European Parliament and of the Council⁶⁸ and Directive (EU) 2020/1828 of the European Parliament and of the Council⁶⁹.

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

⁶⁹ Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).

Amendment

(83) Member States competent authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by penalties. When doing so, they should take into account the nature, gravity, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, as well as the economic capacity of the infringer. They should take into account whether the infringer systematically or recurrently fails to comply with its obligations stemming from this Regulation. In order to help enterprises to draft and negotiate contracts, the Commission should develop and recommend non-mandatory model

contractual terms for business-to-business data sharing contracts, where necessary taking into account the conditions in specific sectors and the existing practices with voluntary data sharing mechanisms. These model contractual terms should be primarily a practical tool to help in particular smaller enterprises to conclude a contract. When used widely and integrally, these model contractual terms should also have the beneficial effect of influencing the design of contracts about access to and use of data and therefore lead more broadly towards fairer contractual relations when accessing and sharing data.

contractual terms for business-to-business data sharing contracts, where necessary taking into account the conditions in specific sectors and the existing practices with voluntary data sharing mechanisms. These model contractual terms should ***also tackle the preservation of the confidentiality of trade secrets which is key for the effective application of this Regulation. To that extent, the Commission could also encourage and facilitate the development of codes of conduct at Union level, involving relevant stakeholders, in particular on the preservation of confidentiality of trade secrets. These model contractual terms should*** be primarily a practical tool to help in particular smaller enterprises to conclude a contract. When used widely and integrally, these model contractual terms should also have the beneficial effect of influencing the design of contracts about access to and use of data and therefore lead more broadly towards fairer contractual relations when accessing and sharing data, ***including as regards the preservation of the confidentiality of trade secrets.***

Amendment 35

Proposal for a regulation Recital 84

Text proposed by the Commission

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

Amendment

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

that the sui generis right does not apply to such databases as the requirements for protection would not be fulfilled.

Article 7(1) of Directive 96/9/EC would not be fulfilled. That does not affect the possible application of the sui generis right under Article 7 of Directive 96/9/CE to databases containing data falling outside the scope of this Regulation provided the requirements for protection in accordance with Article 7(1) of that Directive are fulfilled.

Amendment 36

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

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:

Amendment

1. This Regulation lays down harmonised rules on making data **lawfully obtained, collected or** generated by the use of a product or **during the provision of a** 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.

Amendment 37

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 of such products or **related** services;

Amendment 38

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

Text proposed by the Commission

Amendment

2a. This Regulation shall not affect the applicability of Union law aiming to ensure a high level of protection of the consumers, to protect their health, safety and economic interests, including Directive 2005/29/EC of the European Parliament and of the Council, Directive 2011/83/EU of the European Parliament and of the Council and Directive 93/13/EEC of the European Parliament and of the Council.

Amendment 39

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

Text proposed by the Commission

Amendment

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

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

Amendment 40

Proposal for a regulation
Article 2 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

(4) ‘virtual assistants’ means software that can process demands, tasks or

(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**;

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 **related** services or control their own and third party **products**;

Amendment 41

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 **or a consumer that uses** a product or receives a **related service**;

Amendment 42

Proposal for a regulation

Article 2 – paragraph 1 – point 5 a (new)

Text proposed by the Commission

Amendment

(5a) ‘consumer’ means any natural person who is acting for purposes which are outside their trade, business, craft or profession;

Amendment 43

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**

Amendment

(6) ‘data holder’ means a legal or natural person **who is not the user and** 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 through control of the

of the product *and* related services, the ability, to make available certain data;

technical *means for the use of a* product *or* related services, *has access to data obtained, collected or generated by the product or related services and has* the ability, to make available certain data;

Amendment 44

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, 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;

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

Amendment 45

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

Text proposed by the Commission

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

Amendment

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

Amendment 46

Proposal for a regulation Article 2 – paragraph 1 – point 10

Text proposed by the Commission

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

Amendment

(10) ‘public emergency’ means an exceptional situation ***which is officially declared according to the applicable procedures under Union or national law, caused by natural or man-made disasters, adversely*** affecting the population of the Union, a Member State or part of it, with a risk of serious and lasting repercussions on ***health, safety, social*** or economic stability, or the substantial degradation of economic assets in the Union or the relevant Member State(s);

Amendment 47

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 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 ***storage and*** computing resources;

Amendment 48

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 data spaces or communication networks, systems, products, applications, ***related services*** or components to exchange and use data in order to perform their functions;

Amendment 49

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Amendment 50

Proposal for a regulation

Article 2 – paragraph 1 – point 20 b (new)

Text proposed by the Commission

Amendment

(20b) ‘trade secret holder’ means trade secret holder as defined in Article 2, point (2), of Directive (EU) 2016/943;

Amendment 51

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

Amendment

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.

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, ***either stored on the device or accessible to the data holder*** are, by default, easily, ***safely***, securely and, where ***technically feasible***, directly accessible to the user ***in a structured, commonly used and machine-readable format. Data shall be provided in the form in which they have been obtained, collected or generated by the product with only the minimal adaptations necessary to make them usable by the requesting party,***

including the related structural metadata necessary to interpret and use the data.

Amendment 52

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 or a related service, at least the following information shall be provided to the user, in a clear and comprehensible format:

Amendment 53

Proposal for a regulation

Article 3 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) the **type of data, format and an average estimated** volume of the data likely to be **obtained, collected or** generated by the use of the product or related service ;

Amendment 54

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;

Amendment 55

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

Text proposed by the Commission

(c) how the user may access those data;

Amendment

(c) how the user may access those data, ***the period for which it shall be stored and the technical means to access the data, including the basic functionalities when the user is offline or the related service is unavailable;***

Amendment 56

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

Text proposed by the Commission

Amendment

(da) how the user may manage permissions to allow the use of data, preferably with granular permission options, and including the option to withdraw permissions to the data holder for the use of their data, to the third parties nominated by the data holder, or to exclude geographical addresses;

Amendment 57

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

Text proposed by the Commission

(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;

Amendment

(e) the identity of the data holder ***and where applicable, other data processing parties,*** such as its trading name and the geographical address at which it is established;

Amendment 58

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

Text proposed by the Commission

Amendment

(fa) whether the data holder is the holder of trade secrets or other intellectual property rights contained in the data likely to be generated by the use of the product or related service, and, if not, the identity of the trade secret holder, such as its trading name and the geographical address at which it is established;

Amendment 59

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

Text proposed by the Commission

Amendment

(fb) the foreseen duration of the agreement and the minimal period for which the product or related service is guaranteed to receive security and functionality updates;

Amendment 60

Proposal for a regulation Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Data Literacy

1. When implementing this Regulation, the Union and the Member States shall promote measures and tools for the development of data literacy, across sectors and taking into account the different needs of groups of users, consumers and businesses, including through education and training, skilling and reskilling programmes and while ensuring a proper gender and age balance, in view of allowing a fair data

society and market.

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

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

Amendment 61

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Where data cannot be directly accessed by the user from the product, the data holder shall make available to the user the data ***obtained, collected or*** generated by its use of a product or related service ***that are accessible to the data holder*** without undue delay, free of charge, ***in a structured, commonly used and machine-readable format. Data shall be provided in the form in which they have been obtained, collected or generated by the product with only the minimal adaptations necessary to make them usable by the requesting party, including related structural metadata necessary to interpret and use the data*** and, where applicable,

continuously and in real-time. 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. Where technically feasible, the user shall be able to choose between on-device and off-device access.***

Amendment 62

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.

Amendment 63

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

Text proposed by the Commission

Amendment

2a. The data holder shall not hinder the exercise of the rights of users under this Article, by coercing, deceiving or manipulating the user in any way, or subvert or impair the autonomy, decision-making or free choices of the user, including by means of a digital interface or a part thereof, including its structure, design, function or manner of operation.

Amendment 64

Proposal for a regulation
Article 4 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Trade secrets ***shall be preserved and*** shall only be disclosed provided that all specific necessary measures ***pursuant to Directive EU 2016/943*** are taken ***in advance*** to preserve ***their*** confidentiality, in particular with respect to third parties. The data holder ***or the trade secret holder if it is not simultaneously the data holder, shall identify the data which are protected as trade secrets and*** can agree ***with the user any technical and organisational*** measures to preserve the confidentiality of the shared data, in particular in relation to third parties, ***as well as on liability provisions. Such technical and organisational measures include, as appropriate, model contractual terms, confidential agreements, strict access protocols, technical standards and the application of codes of conduct. In cases where the user fails to implement those measures or undermines the confidentiality of trade secrets, the data holder shall be able to suspend the sharing of data identified as trade secrets. In such cases, the data holder must immediately notify the data coordinator of the Member State in which the data holder is established, pursuant to article 31 of this Regulation, that it has suspended the sharing of data and identify which measures have not been implemented or which trade secrets have had their confidentiality undermined. Where the user wishes to challenge the data holder's decision to suspend the sharing of data, the data coordinator shall decide, within a reasonable period of time, whether the data sharing shall be resumed or not and if yes, indicate under which conditions.***

Amendment 65

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

Text proposed by the Commission

Amendment

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

Amendment 66

Proposal for a regulation Article 4 – paragraph 6

Text proposed by the Commission

Amendment

6. The data holder shall only use any non-personal data generated by the use of a product or related service on the basis of a contractual agreement with the user. The data holder shall not use such data generated by the use of the product or related service to derive insights about the economic situation, assets and production methods of or the use by the **user** that could undermine the commercial position of the **user** in the markets in which the user is active.

6. The data holder shall only use any non-personal data **obtained, collected or** generated by the use of a product or related service on the basis of a contractual agreement **concluded in line with the principles of proportionality and good faith** with the user. The data holder shall not **make the use of the product or related service dependent on the user allowing it to process data not required for the functionality of the product or provision of the related service. The data holder shall delete the data when they are no longer necessary for the purpose contractually agreed. The data holder and the user shall not** use such 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 the use by the **other party** that could undermine the commercial position of the **other party** in the markets in which the user is active.

Amendment 67

Proposal for a regulation
Article 5 – title

Text proposed by the Commission

Right to share data with third parties

Amendment

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

Amendment 68

Proposal for a regulation
Article 5 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 69

Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission

3. The user or third party shall not be required to provide any information beyond what is necessary to verify **the** quality as **a** user or as third party pursuant

Amendment

3. The user or third party shall not be required to provide any information beyond what is **strictly** necessary to verify **their** quality as **the** user or as third party

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.

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. ***Where possible, users shall be able to use products or related services anonymously.***

Amendment 70

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 gaps in the technical infrastructure of the data holder designed to protect the data in order to obtain access to data.

Amendment 71

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 to withdraw that consent at any time.

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 ***expressly*** consented to such use and has the technical possibility to ***easily*** withdraw that consent at any time.

Amendment 72

Proposal for a regulation
Article 5 – paragraph 8

Text proposed by the Commission

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

Amendment

8. Trade secrets shall only be disclosed to third parties to the extent that they are strictly necessary to fulfil the purpose *of the request* agreed between the user and the third party and all specific necessary measures agreed between the data holder, *or between the trade secrets holder if it is not simultaneously the data holder*, and the third party are taken *prior to the disclosure* by the third party to preserve the confidentiality of the trade secret. In such a case, the *data holder or the trade secret holder, shall identify* the data *which are protected* as trade secrets and the *technical and organisational* measures for preserving *their* confidentiality, *as well as on liability provisions. Such technical and organisational measures* shall be specified in the agreement between the data *or trade secret* holder and the third party, *including, as appropriate through model contractual terms, strict access protocols, confidential agreements, technical standards and the application of codes of conduct. In cases where the third party fails to implement those measures or undermines the confidentiality of trade secrets, the data holder shall be able to suspend the sharing of data identified as trade secrets. In such cases, the data holder must immediately notify the data coordinator of the Member State in which the data holder is established, pursuant to article 31 of this Regulation, that it has suspended the sharing of data and identify which measures have not been implemented or which trade secrets have had their confidentiality undermined. Where the third party wishes to challenge the data holder's decision to suspend the sharing of data, the data coordinator shall decide, within a reasonable period of time, whether the data sharing shall be*

resumed or not and if yes, indicate under which conditions.

Amendment 73

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

Text proposed by the Commission

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

Amendment

(a) *hinder the exercise of the rights of users by coercing, deceiving or manipulating* the user in any way, or *subvert or impair* the autonomy, decision-making or *free* choices of the user, including by means of a digital interface *or a part thereof, including its structure, design, function or manner of operation.*

Amendment 74

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

Text proposed by the Commission

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

Amendment

Amendment 75

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

Text proposed by the Commission

(eb) *use the data it receives to cause a substantial damage to the data holder or the user by misuse of the data or to derive insights about the economic situation, assets and production methods of or use by the data holder that could undermine*

Amendment

the commercial position of the data holder or the user on the markets in which the data holder or the user is active;

Amendment 76

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 ***concerning business to business data sharing*** 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 77

Proposal for a regulation Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The obligations of this Chapter related to business to consumer data sharing 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.

Amendment 78

Proposal for a regulation Article 8 – paragraph 3

Text proposed by the Commission

3. A data holder shall not discriminate between comparable categories of data recipients, including partner enterprises or linked enterprises, as defined in Article 3 of the Annex to Recommendation 2003/361/EC, of the data holder, when making data available. Where a data recipient *considers* the conditions under which data has been made available to it to be discriminatory, it shall be for the data holder to demonstrate that there has been no discrimination.

Amendment

3. A data holder shall not discriminate between comparable categories of data recipients, including partner enterprises or linked enterprises, as defined in Article 3 of the Annex to Recommendation 2003/361/EC, of the data holder, when making data available. Where a data recipient *has reasonable grounds to consider that* the conditions under which data has been made available to it to be discriminatory, it shall be for the data holder to demonstrate that there has been no discrimination.

Amendment 79

Proposal for a regulation Article 8 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Amendment 80

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

1. Any compensation agreed between

Amendment

1. Any compensation agreed between

a data holder and a data recipient for making data available shall be reasonable.

a data holder and a data recipient for *the costs incurred and investment required* for making data available shall be *fair and* reasonable.

Amendment 81

Proposal for a regulation Article 9 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where the data recipient is a micro, small or medium enterprise, 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 micro, small or medium enterprises***, any compensation agreed shall not exceed the costs directly related to making the data available to the data recipient and which are attributable to the request ***unless the data holder is also a micro, small or medium enterprise, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, and no imbalance exists between the parties***. Article 8(3) shall apply accordingly.

Amendment 82

Proposal for a regulation Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Users shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes with data holders, data recipients or any third party in relation to breach of user's rights under this Regulation. Where the user is a consumer, it shall have the right to allow a third party to

pursue its legal claims on its behalf as provided for in Directive (EU) 2020/1828.

Amendment 83

Proposal for a regulation

Article 10 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 84

Proposal for a regulation

Article 10 – paragraph 2 – subparagraph 1 – point d

Text proposed by the Commission

(d) it is capable of issuing its decisions in a swift, efficient and cost-effective manner and in at least one official language of the **Union**.

Amendment

(d) it is capable of issuing its decisions in a swift, efficient and cost-effective manner and in at least one official language of the **Member State where the body is established**.

Amendment 85

Proposal for a regulation

Article 10 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 86

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

Text proposed by the Commission

Amendment

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

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

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

Amendment 87

Proposal for a regulation
Article 10 – paragraph 8

Text proposed by the Commission

Amendment

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

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

Amendment 88

Proposal for a regulation
Article 11 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The data holder may apply appropriate technical protection measures, including smart contracts, to prevent unauthorised ***disclosure of and*** access to the data and to ensure compliance with Articles ***4, 5, 6, 8, 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 ***access data or*** 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). ***Such technical protection measures shall not be used as a means to prevent interoperability of the data which the data holder is under an obligation to make available.***

Amendment 89

Proposal for a regulation

Article 11 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

2. 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, ***including the development of a competing product within the meaning of Article 6(2), point (e),*** or has disclosed those data to another party without the data holder's authorisation, shall without undue delay, ***at the request of*** the data holder or the ***trade secret holder when they are not the same legal person***:

Amendment 90

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

Text proposed by the Commission

Amendment

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

Amendment 91

Proposal for a regulation Article 12 – paragraph 3

Text proposed by the Commission

Amendment

3. This Chapter shall only apply in relation to obligations to make data available under Union law or national legislation implementing Union law, which enter into force after [date of application of the Regulation].

3. This Chapter shall only apply in relation to obligations to make data available under Union law or national legislation implementing Union law, which enter into force after [date of application of the Regulation]. ***As regards obligations which have entered into force before [date of application of this Regulation], where appropriate, the relevant provisions shall be aligned with this Regulation within two years after the date of application of this Regulation.***

Amendment 92

Proposal for a regulation Article 13 – title

Text proposed by the Commission

Amendment

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

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

Amendment 93

Proposal for a regulation
Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 94

Proposal for a regulation
Article 13 – paragraph 2

Text proposed by the Commission

2. A contractual term is unfair if it is of such a nature that its use grossly deviates from good commercial practice in data access and use, contrary to good faith and fair dealing.

Amendment

2. A contractual term is unfair if it is of such a nature that its use grossly deviates from good commercial practice in data access and use, contrary to good faith and fair dealing ***and it causes a significant imbalance in rights and obligations between the parties.***

Amendment 95

Proposal for a regulation
Article 13 – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) impose a unilateral choice of court or the payment of the costs of the proceedings in the event of a dispute.

Amendment 96

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

Text proposed by the Commission

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

Amendment

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

Amendment 97

Proposal for a regulation
Article 13 – paragraph 4 – point d a (new)

Text proposed by the Commission

Amendment

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

Amendment 98

Proposal for a regulation
Article 13 – paragraph 5

Text proposed by the Commission

Amendment

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

5. A contractual term shall be considered to be unilaterally imposed within the meaning of this Article if it has been supplied by one contracting party and the other contracting party has not been able to influence its content, ***due to an imbalance of power between the parties leading to a lack of meaningful ability to negotiate, particularly in the context of a***

been unilaterally imposed.

*pre-formulated standard contract, and despite an attempt to **individually** negotiate it. The contracting party that supplied a contractual term bears the burden of proving that that term has not been unilaterally imposed.*

Amendment 99

Proposal for a regulation Article 13 – paragraph 8

Text proposed by the Commission

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

Amendment

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

Amendment 100

Proposal for a regulation Article 13 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. This article shall apply to all new contracts following the entering into force of this Regulation. Businesses shall be given a 3-year grace period following the entering into force of this regulation to review existing contractual obligations that are subject to the data act.

Amendment 101

Proposal for a regulation Article 14 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Upon request, a data holder ***that is a legal person*** shall make data available to a public sector body or to a Union institution, agency or body demonstrating

the data requested.

an exceptional need to use the data requested.

Amendment 102

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

Text proposed by the Commission

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

Amendment

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

Amendment 103

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

Text proposed by the Commission

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

Amendment

(b) where the data request is limited in time and scope and necessary to prevent a public emergency or to assist ***in*** the recovery from a public emergency, ***and alternative means to obtain such data are unavailable or would be inappropriate***;

Amendment 104

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

Text proposed by the Commission

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

Amendment

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

Amendment 105

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

Text proposed by the Commission

(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**

Amendment

(1) the public sector body or Union institution, agency or body has **exhausted all other means at its disposal** to obtain such data, including **the purchase of** the data on the market **or directly from the data holder** at market rates, relying on existing **legal** obligations to make data available, **or** the adoption of new legislative measures **which could** ensure the timely availability of the data; **and**

Amendment 106

Proposal for a regulation
Article 17 – paragraph 1 – point b

Text proposed by the Commission

(b) demonstrate the exceptional need for which the data are requested;

Amendment

(b) demonstrate the exceptional need **pursuant to Article 15** for which the data are requested;

Amendment 107

Proposal for a regulation
Article 17 – paragraph 1 – point e

Text proposed by the Commission

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

Amendment

(e) specify **an appropriate** deadline by which the data are to be made available **and an appropriate deadline** within which the data holder may request the public sector body, Union institution, agency or body to modify or withdraw the request **taking into account the nature of the exceptional need invoked, the size of the company, the nature and granularity of the data and, as appropriate, the technical and organisational adaptations necessary to comply with it.**

Amendment 108

Proposal for a regulation Article 17 – paragraph 2 – point b

Text proposed by the Commission

(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;

Amendment

(b) be proportionate to the exceptional need, in terms of the granularity volume **and nature** of the data requested and frequency of access of the data requested;

Amendment 109

Proposal for a regulation Article 17 – paragraph 2 – point c

Text proposed by the Commission

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

Amendment

(c) respect the legitimate aims of the data holder, taking into account the protection of trade secrets and the cost and effort required to make the data available. ***Where applicable, specify the measures to be taken pursuant to Article 19(2) to preserve the confidentiality of trade secrets, including, as appropriate, through the use of model contractual terms, technical standards and codes of conduct;***

Amendment 110

Proposal for a regulation Article 17 – paragraph 2 – point d

Text proposed by the Commission

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

Amendment

(d) concern, insofar as possible, ***only*** non-personal data; ***if personal data are concerned, demonstrate that non-personal data would be insufficient to respond to the exceptional need and request the data in an aggregated or pseudonomised form;***

Amendment 111

Proposal for a regulation Article 17 – paragraph 2 – point e

Text proposed by the Commission

(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 noncompliance with the request;

Amendment

(e) inform the data holder of the penalties that shall be imposed pursuant to Article 33 by a **data coordinator** referred to in Article 31 in the event of noncompliance with the request;

Amendment 112

Proposal for a regulation Article 17 – paragraph 2 – point f

Text proposed by the Commission

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

Amendment

(f) be **transmitted to the data coordinator referred to in Article 31, who shall make the request** publicly available online without undue delay. **The data coordinator may inform the public sector body or Union institution, agency or body if the data holder already provided the requested data in response to previously submitted request for the same purpose by another public sector body or Union institution agency or body.**

Amendment 113

Proposal for a regulation Article 17 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

Paragraph 3 does not preclude a public sector body or a Union institution, agency or body to exchange data obtained pursuant to this Chapter with another public sector body, Union institution, agency or body, in view of completing the tasks in Article 15 or to make the data available to a third

party in cases where it has outsourced, by means of a publicly available agreement, technical inspections or other functions to this third party. The obligations on public sector bodies, Union institutions, agencies or bodies pursuant to Article 19 apply.

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 *to such third parties*.

Amendment 114

Proposal for a regulation

Article 17 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

Where a public sector body or a Union institution, agency or body *intends to transmit* or *make* data available under this paragraph, it shall notify *without undue delay* the data holder from whom the data was received. *Within the deadlines specified in article 18(2), counting from the receipt of the notification, the data holder may decline or submit any reasonable objection to the intention to transmit or make data available to a third party.*

Amendment 115

Proposal for a regulation

Article 17 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The third party shall not use the data it receives from a public sector body or a Union institution, agency or body as a result of the outsourcing of technical inspections or other functions pursuant to paragraph 4, to develop a product or a service that competes with the product or service from which the accessed data originate or share the data with another third party for that purpose nor make any attempts to reverse the anonymisation of

the data.

Amendment 116

Proposal for a regulation Article 18 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 ***and for the duration of the request pursuant to article 17(1).***

Amendment 117

Proposal for a regulation Article 18 – paragraph 2 – introductory part

Text proposed by the Commission

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:

Amendment

2. Without prejudice to specific needs regarding the availability of data defined in sectoral legislation ***and taking into account the criteria for setting an appropriate deadline by the public sector body or Union institution, agency or body as specified in Article 17(1), point (e),*** the data holder may decline or seek the modification of the request within ***2 to 20*** working days following the receipt of a request for the data necessary to respond to a public emergency ***or*** other cases of exceptional need, on either of the following grounds:

Amendment 118

Proposal for a regulation Article 18 – paragraph 2 – point a

Text proposed by the Commission

(a) the data *is* unavailable;

Amendment

(a) ***force majeure or de facto impossibility not attributable to the data holder, including technical and organisational reasons, such as the data being*** unavailable;

Amendment 119

Proposal for a regulation

Article 18 – paragraph 2 – point b

Text proposed by the Commission

(b) the request does not meet the conditions laid down in Article 17(1) and (2).

Amendment

(b) ***the data holder declares that*** the request ***is incomplete, contains manifest errors in form or content, is manifestly abusive, or*** does not meet ***or exceeds any of*** the conditions laid down in Article 17(1) and (2).

Amendment 120

Proposal for a regulation

Article 18 – paragraph 6

Text proposed by the Commission

6. Where the public sector body or the Union institution, agency or body wishes to challenge a data holder's refusal to provide the data requested, or to seek modification of the request, or where the data holder wishes to challenge the request, the matter shall be brought to the ***competent authority*** referred to in Article 31.

Amendment

6. Where the public sector body or the Union institution, agency or body wishes to challenge a data holder's refusal to provide the data requested, or to seek modification of the request, or where the data holder wishes to challenge the request ***or the intention to transmit the data to a third party***, the matter shall be brought to the ***data coordinator*** referred to in Article 31.

Amendment 121

Proposal for a regulation

Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. A public sector body or a Union institution, agency or body ***requesting data*** under Article 14 shall:

Amendment 122

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

Text proposed by the Commission

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

Amendment

(a) ***only*** use the data in a manner ***compatible*** with the purpose for which they were requested ***and for the duration of the intended use pursuant to article 17(1)***;

Amendment 123

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

Text proposed by the Commission

Amendment

(bb) ***not combine or process data in any way that would revert the anonymisation of that data***;

Amendment 124

**Proposal for a regulation
Article 19 – paragraph 2**

Text proposed by the Commission

Amendment

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

Disclosure of trade secrets to a public sector body or to a Union institution, agency or body shall only be required to the extent that it is strictly necessary to achieve the purpose of ***a*** request ***under article 15***. In such a case, the ***data holder***

public sector body or the Union institution, agency or body shall take appropriate measures to preserve the confidentiality of those trade secrets.

shall identify the data which are protected as trade secrets. The public sector body or the Union institution, agency or body shall take in advance all the necessary and appropriate technical and organisational measures agreed with the data holder or with the trade secrets holder if it is not simultaneously the same legal person, to preserve the confidentiality of those trade secrets including as appropriate through the use of model contractual terms, technical standards and the application of codes of conduct.

Amendment 125

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

Text proposed by the Commission

Amendment

2a. Where a public sector body or a Union institution, agency or body transmits or makes data available to third parties to perform the tasks that have been outsourced to it as a result of the outsourcing of technical inspections or other functions pursuant to Article 17(4), trade secrets as identified by the data holder, shall only be disclosed to the extent that they are strictly necessary for the third party to perform the tasks that have been outsourced and provided that all specific necessary measures agreed between the data holder and the third party are taken in advance, including technical and organisational measures to preserve the confidentiality of those trade secrets, including as appropriate through the use of model contractual terms, technical standards and the application of codes of conduct.

Amendment 126

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

Text proposed by the Commission

Amendment

2b. *In cases where the public sector body or a Union institution, agency or body that submitted the request for data or the third party to which data were made available pursuant to Article 17(4) fails to implement those measures or undermines the confidentiality of trade secrets, the data holder shall be able to suspend the sharing of data identified as trade secrets. In such cases, the data holder must immediately notify the data coordinator of the Member State in which the data holder is established, pursuant to article 31 of this Regulation, that it has suspended the sharing of data and identify which measures have not been implemented or which trade secrets have had their confidentiality undermined. Where the public sector body or Union institution, agency or body or the third party wishes to challenge the data holder’s decision to suspend the sharing of data, the data coordinator shall decide within a reasonable period of time, whether the data sharing shall be resumed or not and if yes, indicate under which conditions.*

Amendment 127

Proposal for a regulation
Article 20 – paragraph 1

Text proposed by the Commission

Amendment

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

1. ***After making data*** available to respond to a public emergency pursuant to Article 15, point (a), ***the data holder*** shall be ***entitled to claim a compensation, which shall cover only the proven technical and organisational costs incurred to comply with the request.***

Amendment 128

Proposal for a regulation Article 20 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 129

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

Text proposed by the Commission

Amendment

2a. In the case that there is no agreement on the compensation between the data holder and the public sector body or the Union institution, agency or body, the matter shall be referred to the data coordinator as referred to in Article 31.

Amendment 130

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

2. Individuals or organisations

Amendment

2. Individuals or organisations

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

receiving the data pursuant to paragraph 1 shall:

- (a) act on a not-for-profit basis or in the context of a public-interest mission recognised in Union or Member State law;
- (b) not include organisations upon which commercial undertakings have a decisive influence or which could result in preferential access to the results of the research;
- (c) ***disclose the funding of the research;***
- (d) ***be in a capacity to preserve the specific data security and confidentiality requirements corresponding to each request and to protect personal data, and they demonstrate the appropriate technical and organisational measures they put in place to this end;***
- (e) ***commit to making their research results publicly available free of charge, within a reasonable period after the completion of the research and, where appropriate, taking into account the rights and interests of the data holders concerned.***

Amendment 131

Proposal for a regulation Article 21 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 132

Proposal for a regulation Article 21 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Where a public sector body or a Union institution, agency or body transmits or makes data available under paragraph 1, it shall notify ***without undue delay*** the data holder from whom the data was received, ***and provide all necessary information regarding the identity of the data recipient and the activities that will be carried out by the data recipient based on the data received pursuant to paragraph 1. Within the deadlines specified in article 18(2), counting from the receipt of the notification, the data holder may decline or submit any reasonable objection to the intention to transmit or make data available to a research organisation or statistical body.***

Amendment 133

Proposal for a regulation Article 22 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 134

Proposal for a regulation
Article 22 – paragraph 4

Text proposed by the Commission

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

Amendment

4. After having been notified in accordance with paragraph 3, the **data coordinator** 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 **data coordinator** into account.

Amendment 135

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

Amendment 136

Proposal for a regulation
Article 27 – paragraph 2

Text proposed by the Commission

2. Any decision or judgment of a court or tribunal and any decision of an

Amendment

2. Any decision or judgment of a court or tribunal and any decision of an

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

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

Amendment 137

Proposal for a regulation Article 27 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

The addressee of the decision may *request* the opinion of the *data coordinator*, pursuant to this Regulation, in order to determine whether these conditions are met, notably when it considers that the decision may relate to *trade secrets and other* commercially sensitive data *as well as content protected by intellectual property rights*. *It shall ask the opinion of the Commission when the decision* may impinge on national security or defence interests of the Union or its Member States. *If the addressee has not received a reply within a month, or if the opinion of the competent authorities concludes that the conditions are not met, the addressee shall deny the request for transfer or access on those grounds.*

Amendment 138

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

Text proposed by the Commission

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

Amendment

The European Data Innovation Board established under Regulation [xxx – DGA] **and referred to in Article 31a** shall advise and assist the Commission in developing guidelines on the assessment of whether these conditions are met.

Amendment 139

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(da) equivalence: a smart contract shall afford the same level of protection and legal certainty as any other contracts generated through different means;

Amendment 140

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Amendment 141

Proposal for a regulation

Article 31 – title

Text proposed by the Commission

Amendment

Competent authorities

Data Coordinators

Amendment 142

Proposal for a regulation Article 31 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 143

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

Text proposed by the Commission

2. Without prejudice to paragraph 1 of this Article:

Amendment

2. Without prejudice to paragraph 1 of this Article, ***the data coordinator of each Member State shall ensure cooperation among the national competent authorities that are responsible for the monitoring of other Union or national legal acts in the field of data and electronic communication services, namely:***

Amendment 144

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

Text proposed by the Commission

(c) the national competent authority responsible for the application and enforcement of Chapter VI of this

Amendment

deleted

Regulation shall have experience in the field of data and electronic communications services.

Amendment 145

Proposal for a regulation Article 31 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 146

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

Text proposed by the Commission

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

Amendment

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

Amendment 147

Proposal for a regulation Article 31 – paragraph 3 – point a a (new)

Text proposed by the Commission

Amendment

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

Amendment 148

Proposal for a regulation
Article 31 – paragraph 3 – point a b (new)

Text proposed by the Commission

Amendment

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

Amendment 149

Proposal for a regulation
Article 31 – paragraph 3 – point b

Text proposed by the Commission

Amendment

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

(b) handling **and deciding on** complaints arising from alleged violations of this Regulation, **pursuant to Article 32 of this Regulation**, and investigating, to the extent appropriate, the subject matter of the complaint and informing the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another competent authority is necessary;

Amendment 150

Proposal for a regulation
Article 31 – paragraph 3 – point f

Text proposed by the Commission

Amendment

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

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

Amendment 151

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

Text proposed by the Commission

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

Amendment

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

Amendment 152

Proposal for a regulation
Article 31 – paragraph 3 – point h

Text proposed by the Commission

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

Amendment

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

Amendment 153

Proposal for a regulation
Article 31 – paragraph 4

Text proposed by the Commission

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

Amendment

4. **Data coordinators** shall, in the exercise of the tasks and powers assigned to them under paragraph 3 of this Article, cooperate with each other **and with the European Data Innovation Board**, including, as appropriate, with the supervisory authority responsible for monitoring the application of Regulation (EU) 2016/679 **and with the European Data Protection Supervisor**, to ensure the consistent application of this Regulation.

Amendment 154

Proposal for a regulation Article 31 – paragraph 5

Text proposed by the Commission

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

Amendment

5. Member States shall communicate the name of the designated **data coordinator** and their respective tasks and powers and, where applicable, the name of the coordinating competent authority to the Commission **and the European Data Innovation Board**. The Commission shall **regularly update and** maintain **an easily accessible** public register of those authorities.

Amendment 155

Proposal for a regulation Article 31 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Amendment 156

Proposal for a regulation Article 31 – paragraph 7

Text proposed by the Commission

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

Amendment

7. Member States shall ensure that the **data coordinator is** provided with the necessary resources to adequately carry out their tasks in accordance with this

accordance with this Regulation.

Regulation. *The data coordinator shall have experience, sufficient technical and human resources and expertise in the field of consumer protection, data and electronic communications services.*

Amendment 157

Proposal for a regulation Article 31 a (new)

Text proposed by the Commission

Amendment

Article 31a

European Data Innovation Board

- 1. The data coordinators shall represent the Member States at the European Data Innovation Board established under Regulation (EU) 2022/868 (Data Governance Act).*
- 2. The European Data Innovation Board shall provide advice and assistance to the Commission and ensure coordination among the Member States on the topics covered by this Regulation in order to:*
 - (a) promote an effective and competitive internal market for data;*
 - (b) contribute to uniform administrative practices in the Member States;*
 - (c) issue guidelines, recommendations and written contributions on matters related to the implementation of this Regulation:*
 - (i) related to the transparency and fairness of the contractual terms,*
 - (ii) to calculate compensation, in the cases foreseen in this Regulation, including in the context of data made available to public bodies, Union institutions, agencies or bodies,*
 - (iii) on the development of model contractual terms and technical means*

when relating to the protection of confidentiality of trade secrets in the context of this Regulation.

3. The subgroup ensuring a regular dialogue with stakeholders established under Regulation (EU) 2022/868 (Data Governance Act) shall also provide to the European Data Innovation Board advice on the implementation of the obligations established in this Regulation providing a particular oversight and monitoring on the rights and obligations in compliance with this Regulation.

Amendment 158

Proposal for a regulation Article 32 – title

Text proposed by the Commission

Right to lodge a complaint with **a competent authority**

Amendment

Right to lodge a complaint with **the data coordinator**

Amendment 159

Proposal for a regulation Article 32 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Such complaint may arise from the suspension of the sharing of data identified as trade secrets, after receiving the notification by the data holder

pursuant to Articles 4(3), 5(8) or 19 (2b).

Amendment 160

Proposal for a regulation Article 32 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 161

Proposal for a regulation Article 32 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 162

Proposal for a regulation Article 32 a (new)

Text proposed by the Commission

Amendment

Article 32a

Right to an effective judicial remedy against the data coordinator or a competent authority

1. ***Without prejudice to any other administrative or non-judicial remedy, each user shall have the right to an***

effective judicial remedy against a legally binding decision of the data coordinator or a competent authority pursuant article 31 concerning them.

2. Proceedings against a data coordinator or competent authority shall be brought before the courts of the Member State of the habitual residence, place of work or establishment of the user or their representative organisation.

3. Where proceedings are brought against a decision of a data coordinator or a competent authority pursuant article 31, which was preceded by an opinion or a decision of the Board, the supervisory authority shall forward that opinion or decision to the court.

Amendment 163

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, *as well as on the protection and preservation of the confidentiality of trade secrets, in accordance with this Regulation.*

Amendment 164

Proposal for a regulation Chapter X – title

Text proposed by the Commission

SUI GENERIS RIGHT UNDER
DIRECTIVE *1996/9/EC*

Amendment

***INAPPLICABILITY OF THE SUI
GENERIS RIGHT UNDER DIRECTIVE
96/9/EC TO DATABASES***

Amendment 165

**Proposal for a regulation
Article 35 – paragraph 1**

Text proposed by the Commission

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

Amendment

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

Amendment 166

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

Text proposed by the Commission

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

Amendment

Amendment 167

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

Text proposed by the Commission

Amendment

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

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Harmonised rules on fair access to and use of data (Data Act)	
References	COM(2022)0068 – C9-0051/2022 – 2022/0047(COD)	
Committee responsible Date announced in plenary	ITRE 23.3.2022	
Opinion by Date announced in plenary	JURI 23.3.2022	
Associated committees - date announced in plenary	7.7.2022	
Rapporteur for the opinion Date appointed	Ibán García Del Blanco 28.2.2022	
Discussed in committee	5.9.2022	27.10.2022
Date adopted	24.1.2023	
Result of final vote	+: 20	–: 2
	0: 1	
Members present for the final vote	Pascal Arimont, Gunnar Beck, Ilana Cicurel, Geoffroy Didier, Virginie Joron, Sergey Lagodinsky, Gilles Lebreton, Karen Melchior, Jiří Pospíšil, Franco Roberti, Raffaele Stancanelli, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Lara Wolters	
Substitutes present for the final vote	Angel Dzhambazki, Andrzej Halicki, Emil Radev, Nacho Sánchez Amor, Yana Toom	
Substitutes under Rule 209(7) present for the final vote	David Cormand, Nicolás González Casares, Birgit Sippel	

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

20	+
ID	Virginie Joron, Gilles Lebreton
PPE	Pascal Arimont, Geoffroy Didier, Andrzej Halicki, Jiří Pospíšil, Emil Radev, Axel Voss, Marion Walsmann
Renew	Ilana Cicurel, Karen Melchior, Yana Toom, Adrián Vázquez Lázara
S&D	Nicolás González Casares, Franco Roberti, Nacho Sánchez Amor, Birgit Sippel, Lara Wolters
Verts/ALE	David Cormand, Sergey Lagodinsky

2	-
ECR	Angel Dzhambazki, Raffaele Stancanelli

1	0
ID	Gunnar Beck

Key to symbols:

+ : in favour

- : against

0 : abstention