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*Plenary sitting*

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**A9-0031/2023**

28.2.2023

**\*\*\*I**  
**REPORT**

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

Committee on Industry, Research and Energy

Rapporteur: Pilar del Castillo Vera

Rapporteurs for the opinion (\*):  
Adam Bielan, Committee on the Internal Market and Consumer Protection  
Ibán García Del Blanco, Committee on Legal Affairs  
Sergey Lagodinsky, Committee on Civil Liberties, Justice and Home Affairs

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

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

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

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

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

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

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

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

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

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

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

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

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

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0068),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0051/2022),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 15 June 2022<sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions of 30 June 2022<sup>2</sup>,
  - having regard to Rules 59 of its Rules of Procedure,
  - having regard to the opinions of the Committee on the Internal Market and Consumer Protection, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs,
  - having regard to the report of the Committee on Industry, Research and Energy (A9-0031/2023),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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

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

## Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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2022/0047 (COD)

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)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

- (1) In recent years, data-driven technologies have had transformative effects on all sectors of the economy. The proliferation in products connected to the Internet **■** in particular has increased the volume and potential value of data for consumers, businesses and society. High quality and interoperable data from different domains increase competitiveness and innovation and ensure sustainable economic growth. The same dataset may potentially be used and reused for a variety of purposes and to an unlimited degree, without any loss in its quality or quantity.
- (2) ***In a context where the European Union holds a global competitive position in manufacturing and is leader in industrial software and robotics***, barriers to data sharing prevent an optimal allocation of data to the benefit of society. These barriers include a lack of incentives for data holders to enter voluntarily into data sharing agreements, uncertainty about rights and obligations in relation to data, ***the economic value of data sets***, ***the*** costs of contracting and implementing technical interfaces, the high level of fragmentation of information in data silos, poor metadata management, the absence of standards for semantic and technical interoperability, bottlenecks impeding data access, a lack of common data sharing practices and abuse of contractual imbalances with regards to data access and use.
- (3) In sectors characterised by the presence of micro, small and medium-sized enterprises (***SMEs***), there is often a lack of digital capacities and skills to collect, analyse and use data, and access is frequently restricted where one actor holds it in the system or due to a lack of interoperability between data, between data services or across borders.
- (4) In order to respond to the needs of the digital economy, ***avoid the fragmentation of the internal market that could emerge from national legislation*** and to remove barriers to a well-functioning internal market for data, it is necessary to lay down a harmonised framework specifying who, ***is entitled to use accessible data collected, obtained or otherwise*** generated by ***connected*** 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.

- (5) This Regulation ensures that *manufacturers of connected products and providers of related services must design the products and services in a way that* users of a *connected* product or related service in the Union can access, in a timely manner, the data *accessible from the product or generated during the provision of a* related service and that those users can use the data, including by sharing them with third parties of their choice. It imposes the obligation on *data holders* to make data available to users and *data recipients* nominated by the users **■** . It also ensures that data holders make data available to data recipients in the Union under fair, reasonable and non-discriminatory terms and in a transparent manner. Private law rules are key in the overall framework of data sharing. Therefore, this Regulation adapts rules of contract law and prevents the exploitation of contractual imbalances that hinder fair data access and use **■** . This Regulation also ensures that data holders make *data* available to public sector bodies of the Member States and to Union institutions, agencies or bodies, where there is an exceptional need **■** . In addition, this Regulation seeks to facilitate switching between data processing services and to enhance the interoperability of data and data sharing mechanisms and services in the Union. This Regulation should not be interpreted as recognising or creating any legal basis for *data holders* to hold, have access to or process data, or as conferring any new right on *a* data holder to use data *accessed from a connected product or generated during the provision of a* related service. Instead, it *recognizes that users may agree to grant access and use permissions over data accessed from connected products or generated during the provision of related services to data holders, which may often be manufacturers, and which may contractually agree with the user to perform one or more* related services.
- (6) Data generation is *a function of the manufacturer's design of a connected product, in particular the inclusion of sensors and processing software within the device, of the actions of the user and, depending on the operating modalities, of the provision of one or more related service. Many connected products, for example in the civil infrastructure, energy generation or transport sectors, are recording data about their environment or interaction with other elements of that infrastructure without any actions by the user or any third party. Such data may often be non-personal in nature and valuable for the user or third parties, which may use it to improve their operations, the overall functioning of a network or system or by making it available to others.*



*This gives rise to questions of fairness in the digital economy, because the data **accessed from connected** products or **generated during the provision of** related services are an important input for aftermarket, ancillary and other services. In order to realise the important economic benefits of data ■ for the economy and society, a general approach to assigning access and usage rights on data is preferable to awarding exclusive rights of access and use. **However, it is also important that data sharing based on voluntary agreements continues to develop in order to facilitate the development of data-driven value growth of European companies.***

- (7) The fundamental right to the protection of personal data is safeguarded in particular under **Regulations (EU) 2016/679<sup>3</sup>** and ■ **(EU) 2018/1725<sup>4</sup> of the European Parliament and of the Council**. **Directive 2002/58/EC of the European Parliament and of the Council<sup>5</sup>** additionally protects private life and the confidentiality of communications, including providing conditions to any personal and non-personal data storing in and access from terminal equipment. These instruments provide the basis for sustainable and responsible data processing, including where datasets include a mix of personal and non-personal data. This Regulation complements and is without prejudice to Union law on data protection and privacy, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC. No provision of this Regulation should be applied or interpreted in such a way as to diminish or limit the right to the protection of personal data or the right to privacy and confidentiality of communications. **This Regulation should not be read as creating a new legal basis for the processing of personal data for any of the regulated activities, or as amending the information requirements laid down in Regulation (EU) 2016/679. In the event of a conflict between this Regulation and Union law on the protection of personal data or national law adopted in**

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<sup>3</sup> **Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).**

<sup>4</sup> **Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).**

<sup>5</sup> **Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).**

***accordance with such Union law, the relevant Union or national law on the protection of personal data should prevail.***

- (8) The principles of data minimisation and data protection by design and by default are essential when processing involves significant risks to the fundamental rights of individuals. Taking into account the state of the art, all parties to data sharing, including where within scope of this Regulation, should implement technical and organisational measures to protect these rights. Such measures include not only pseudonymisation and encryption, but also the use of increasingly available technology that permits algorithms to be brought to the data and allow valuable insights to be derived without the transmission between parties or unnecessary copying of the raw or structured data themselves.
- (9) This Regulation complements and is without prejudice to Union law aiming to promote the interests of consumers and to ensure a high level of consumer protection, to protect their health, safety and economic interests, in particular Directive 2005/29/EC of the European Parliament and of the Council<sup>3</sup>, Directive 2011/83/EU of the European Parliament and of the Council<sup>4</sup> and Directive 93/13/EEC of the European Parliament and of the Council<sup>5</sup>.
- (10) This Regulation is without prejudice to Union legal acts providing for the sharing of, the access to and the use of data for the purpose of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, or for customs and taxation purposes, irrespective of the legal basis under the Treaty on the Functioning of the European Union on which basis they were adopted. Such acts include Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online, the [e-evidence proposals

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<sup>3</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

<sup>4</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

<sup>5</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

[COM(2018) 225 and 226] once adopted], the [Proposal for] a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, as well as international cooperation in this context in particular on the basis of the Council of Europe 2001 Convention on Cybercrime ("Budapest Convention"). This Regulation is without prejudice to the competences of the Member States regarding activities concerning public security, defence and national security in accordance with Union law, and activities from customs on risk management and in general, verification of compliance with the Customs Code by economic operators.

- (11) Union law setting physical design and data requirements for products to be placed on the Union market should not be affected *beyond the obligations of Article 3(1) of this Regulation*.
- (12) This Regulation complements and is without prejudice to Union law aiming at setting accessibility requirements on certain products and services, in particular Directive 2019/882<sup>6</sup>.
- (13) This Regulation is without prejudice to the competences of the Member States regarding activities concerning public security, defence and national security in accordance with Union law, and activities from customs on risk management and in general, verification of compliance with the Customs Code by economic operators.
- (13a) This Regulation also aims at strengthening the position and business models of third parties, for example suppliers, through a horizontal approach. To account for the specific situation and complexity of the respective sector, this Regulation should be followed by sectoral legislation, for example the mobility data space. That legislation could set out further rules for the right for suppliers to improved or direct access to data from their own smart components for issues such as quality monitoring, product development or safety improvements and clarifies the role of providers of components in relation to connected products.***

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<sup>6</sup> Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services OJ L 151, 7.6.2019

- (13b) *This Regulation is without prejudice to Union and national legal acts providing for the protection of intellectual property rights, including Directives 2001/29/EC<sup>6</sup>, 2004/48/EC<sup>7</sup>, and (EU) 2019/790<sup>8</sup> of the European Parliament and of the Council.*
- (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 *an* electronic communications service, *a physical connection, or on-device* (often referred to as the Internet of Things) should be covered by this Regulation *with the exception of prototypes*. Electronic communications services include land-based telephone networks, television cable networks, satellite-based networks and near-field communication networks. Such *connected products are found in all aspects of the economy and society, including in private, civil or commercial infrastructure, vehicles, ships, aircraft, home equipment and consumer goods, medical and health devices or agricultural and industrial machinery or energy production and transmission facilities. Data obtained, generated or collected by a connected product that is accessible to any data holders or data recipients should always be accessible to the owner of the product, or a third party to whom the owner of the product has transferred certain rights to the product based on a rental or lease contract. The owner or such third party should be referred to as the user for the purpose of this Regulation. Those access rights should in no way alter or interfere with the fundamental rights of data subjects, who may be interacting with connected product, to personal data generated by the product. Manufacturers' design choices, the users' demands and, where relevant, sectoral legislation to address sector-specific needs and objectives, or antitrust decisions, should determine which data a connected product is capable of making accessible to any data holders or data recipients at the point of sale. This Regulation applies to products placed on the market in the Union and thus does not apply to products in development stage such as prototypes.*

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<sup>6</sup> *Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).*

<sup>7</sup> *Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45).*

<sup>8</sup> *Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ L 130, 17.5.2019, p. 92).*

- (15) In contrast, *content, or data obtained, generated or accessed from the connected product or transmitted to it* for the *purpose of storage or processing on behalf of third parties, such as in the case of servers or cloud infrastructure, amongst others for the use by an online service should not be covered by this Regulation.*
- (16) It is *also* necessary to lay down rules applying to *related services that are incorporated* or are interconnected with a *connected product* in such a way that the absence of the service would prevent the product from performing *one or more of* its functions, *and which involve the transfer of data between the connected product and the provider of the related services* *Where a provider of a related service accesses data from a connected product or has access to data generated during the provision of the related service and has the right to use non-personal data, in accordance with Article 4(6), it should be considered a data holder for the data it accessed from the product or generated during the provision of the related service. Such related services can be part of the sale.* These related services may themselves generate data of value to the user independently of the data collection capabilities of the *connected* product with which they are interconnected. *Such data may represent the digitalisation of user actions and events and should accordingly be accessible to the user. 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, including particular through facilitating the maintenance and repair of the products in question or the development of products or services. Information derived or inferred from non-personal data by a data holder or a data recipient after it has been accessed from the connected product, other than in those generated during the provision of a related service, should not be considered to fall within scope of this Regulation.* This Regulation should also apply to a related service that is not supplied by the seller, renter or lessor itself, but is supplied, under the sales, rental or lease contract, by a third party. In the event of doubt as to whether the *provision of a related service is necessary to maintain the functional operation of the connected product*, supply of service forms part of the sale, rent or lease contract, this Regulation should apply. *Neither the power supply nor the supply of the connectivity are to be interpreted as related services under this Regulation.*

- (17) Data *accessed from a connected product or* generated *during the provision of a* 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 *data about the connected product's environment or interactions, including* 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 *accessed from* the product, *and be compiled in a comprehensible, structured, commonly used and machine-readable format and including the relevant metadata*, but not pertain to data resulting from *value-add via a* software process that calculates derivative data *where* such software process *is* be subject to *trade secrets and* intellectual property rights. *Where data is accessed in an encrypted format, the user should be provided with all necessary means to decrypt such data and make it accessible.*
- (17a) *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 on 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 and SMEs.*
- (18) The user of a *connected* product should be understood as the legal or natural person, such as a business, *consumer or public sector body* which has *acquired the connected product or receives related services, or to whom the owner of the connected product has transferred*, on the *basis of a rental or lease agreement, temporary rights to use the connected product or receive related services*. Such a user bears the risks and enjoys the benefits of using the connected product and should **■** therefore be entitled to derive benefit from data *accessed from the connected* product and *generated during the provision of* any related service.



*(18a) '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 Accordingly businesses should also 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 is produced or generated.*

(19) In practice, not all data generated by *connected* products or related services are easily accessible to their users, and there are often limited possibilities for the portability of data generated by products connected to the Internet **■** . Users are unable to obtain data necessary to make use of providers of repair and other services, and businesses are unable to launch innovative, more efficient and convenient services. In many sectors, manufacturers are often able to determine, through their control of the technical design of the product or related services, what data are generated and how they can be accessed, even though they have no legal right to the data. It is therefore necessary to ensure that *connected* products are designed and manufactured and related services are provided in such a manner that data generated by their use are always easily accessible to the user, *free of charge in a comprehensive, structured, commonly used and machine-readable format, including for the purpose of retrieving, using or sharing the data. Unless specified otherwise by Union or Member State law or relevant antitrust rulings, such data should be accessible at the level of processing, including by means of software contained in the connected product, which the manufacturer's design choice permit*

*ahead of the sale to the user. Data should be available in the form in which they are accessible from the product with only the minimal adaptations necessary to make them useable by a third party, including related metadata necessary to interpret and use the data. This requires the removal of technical barriers to ensure that users, where it is technically possible, will have direct real-time access to their data without extensive individual verification procedures. In order to facilitate third-party access to the required data, cost-efficient access to software tools is also necessary. Where subsequent updates or alterations to the connected product, by the manufacturer or another party, lead to additional accessible data or a restriction of initially accessible data, such changes should be communicated to the user in the context of the update or alteration. This Regulation does not set an obligation to store data additionally on the central computing unit of a product where this would be disproportionate in relation to the expected use. This does not prevent a manufacturer or data holder to voluntarily agree with the user on making such adaptation.*

- (20) In cases of co-ownership of the connected product and related services provided, where several persons or entities own a product or are party to a lease or rent agreement ■ the design of the *connected* product or related service or the relevant interface *should enable* all persons *to* have access to data they generate. Users of *connected* products that generate data typically require a user account to be set up. This allows for identification of the user by *a data holder, which may be* the manufacturer as well as a means to communicate to exercise and process data access requests. *For identification and authentication purposes, manufacturers and providers of related services should enable users to use European Digital Identity Wallets issued pursuant to Regulation (EU) 910/2014<sup>9</sup>.* Manufacturers or designers of a product that is typically used by several persons should put in place the necessary mechanism that allow separate user accounts for individual persons, where relevant, or the possibility for several persons to use the same user account. Access should be granted to the user upon simple request mechanisms granting automatic execution, not requiring examination or clearance by *a* manufacturer or data holder. This means that data should only be made available when the user actually wants this. Where automated execution of the data

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<sup>9</sup> *Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).*



access request is not possible, for instance, via a user account or accompanying mobile application provided with the product or service, the manufacturer should inform the user how the data may be accessed. *User accounts should enable users to revoke consent for processing and data sharing, as well as request deletion of the data generated through the use of the connected product, particularly in cases when the users of the product intend to transfer the ownership of the product to another party.*

- (21) Products may be designed to make certain data directly available from an on-device data storage or from a remote server to which the data are communicated. Access to the on-device data storage may be enabled via cable-based or wireless local area networks connected to a publicly available electronic communications service or a mobile network. The server may be the manufacturer's own local server capacity or that of a third party or a cloud. *Data processors as defined in Regulation (EU) 2016/679 are by default not considered to act as data holders, unless specifically tasked by the data controller.* They may be designed to permit the user or a third party to process the data on the product or on a computing instance of the manufacturer.
- (22) Virtual assistants play an increasing role in digitising consumer *and professional* environments and serve as an easy-to-use interface to play content, obtain information, or activate physical objects connected to the Internet **■** . Virtual assistants can act as a single gateway in, for example, a smart home environment and record significant amounts of relevant data on how users interact with products connected to the Internet **■** , including those manufactured by other parties and can replace the use of manufacturer-provided interfaces such as touchscreens or smart phone apps. The user may wish to make available such data with third party manufacturers and enable novel smart home services. Such virtual assistants should be covered by the data access right provided for in this Regulation also regarding data recorded before the virtual assistant's activation by the wake word and data generated when a user interacts with a *connected* product via a virtual assistant provided by an entity other than the manufacturer of the *connected* product **■** .
- (23) Before concluding a contract for the purchase *of a connected product, clear and sufficient information should be provided by the manufacturer, or where relevant the vendor, to the user with regard to the data which is accessible from the connected product, including the type, format, sampling frequency and the estimated volume of*

*accessible data. This should include information on data structures, data formats, vocabularies, classification schemes, taxonomies and code lists, where available, as well as information on how the data may be stored, retrieved or accessed, including the provision of software development kits or application programming interfaces, along with their terms of use and quality of service descriptions. This obligation provides transparency over the accessible data generated and enhances the easy access for the user. The transparency obligation could be fulfilled by a data holder for example by, maintaining a stable uniform resource locator (URL) on the web, which can be distributed as a web link or QR code, pointing to the relevant information. Such URL could be provided by the manufacturer or where relevant seller, to the user before concluding the contract for the purchase, of a connected product. It is in any case necessary that the user is enabled to store the information in a way that is accessible for future reference and that allows the unchanged reproduction of the information stored.* This obligation to provide information does not affect the obligation for the controller to provide information to the data subject pursuant to Article 12, 13 and 14 of Regulation (EU) 2016/679.

*(23a) Related services should be provided in such a manner that data generated during their provision, which represent the digitalisation of user actions or events, are, by default, easily, securely and, where relevant and technically feasible, directly accessible to the user free of charge, in a structured, commonly used and machine-readable format, along with the relevant metadata necessary to interpret and use it. Information derived or inferred from this data by means of complex proprietary algorithms, in particular where it combines the output of multiple sensors in the connected product, should not be considered within the scope of a data holder's obligation to share data with users or data recipients, unless agreed differently. Before concluding an agreement with a user on the provision of a related service, which involves the provider's access to data from the connected product, in line with Article 4(6) of this Regulation, the provider should agree with the user on the nature, volume, collection frequency and format of data accessed by the provider of related services from the connected product, as well as the nature and estimated volume of data generated during the provision of the related service and, where relevant, the modalities for the*

*user to access or retrieve such data, including the period during which it should be stored.*

(24) This Regulation imposes the obligation on data holders to make data available in certain circumstances. Insofar as personal data are processed, *a* 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 *data holders* 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 *data holders* to use data *accessed from the connected product or generated during the provision of a* related service. This applies in particular where the manufacturer is *a* 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 *agreement relating to the connected product. The user should be given a reasonable opportunity to reject this agreement. If a user chooses to reject the contractual terms and conditions, this should not prevent the user from using the relevant product of the service, unless the product of the service cannot function without the user's acceptance of the contractual terms.* Any contractual term in the agreement stipulating that *a* 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 *a* 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 *a* 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 *a* data holder on well-defined public policy grounds.

*(24a) It is currently often difficult for businesses to justify the personnel or computing costs that are necessary for preparing non-personal data sets or data products and offer them to potential counterparties via data marketplaces, including data intermediation services, as defined in Regulation (EU) 2022/868 of the European Parliament and of*

*the Council<sup>10</sup>. A substantial hurdle to non-personal data sharing by businesses thus results from the lack of predictability of economic returns from investing in the curation and making available of data sets or data products. In order to allow for the emergence of liquid, efficient and fair markets for non-personal data in the Union, it must be clarified which party has the right to offer such data on a marketplace. Users should therefore have the right to share non-personal data with data recipients for commercial and non-commercial purposes. Such data sharing could be performed directly by the user, upon the request of the user via a data holder or through data intermediation services. Data intermediation services, as regulated by Regulation (EU) 2022/868 could facilitate a data economy by establishing commercial relationships between users, data recipients and third parties and may support users in exercising their right to use data, such as ensuring the proper anonymisation of the data or aggregation of access to data from multiple individual users. In order to protect the incentives for users to monetize non-personal data from connected products they own, data holders should only be able to monetize aggregated data sets from multiple users and should not make available non-personal data accessed by them from the connected product to third parties for commercial or non-commercial purposes, other than the fulfilment of their contractual obligations to the user. At the same time, where data holders have contractually agreed with users the right to use such data, they should be free to use it for a wide range of purposes, including improving the functioning of the connected product or related services, developing new products or services or enriching or manipulating it or aggregating it with other data, including with the aim of making available the resulting data set with third parties, as long as such derived data set does not allow the identification of the specific data items accessed by the data holder from the connected product, or allow a third party to derive those data items from the data set without a significant effort.*

*(24b) Where products generate data, that is derived or inferred from other data generated by the connected product by means of proprietary, complex algorithms, including those that are a part of proprietary software, within the meaning of Directive*

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<sup>10</sup> Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act) (OJ L 152, 3.6.2022, p. 1).

*2009/24/EC of the European Parliament and of the Council<sup>11</sup>, such data should be considered to fall outside the scope of this Regulation and consequently not be subject to the obligation for a data holder to make it available to a user or data recipient, unless agreed otherwise between the user and the data holder. Such data should include in particular information derived by means of sensor fusion, inferring or deriving data from multiple sensors, collected in the connected product, using complex, proprietary algorithms. However, data inferred or derived from processing of raw data collected from a single sensor or a connected group of sensors, for the purpose of making the collected data comprehensible for wider use-cases by determining a physical quantity or quality or the change in a physical quantity, such as temperature, pressure, flow rate, pH, liquid level, position, acceleration or speed, should be included in the obligation for data holders to make data available to users and data recipients. Sectorial legislation should further define accessible data based on the specificities of the sector.*

- (24c) In principle, to foster the emergence of liquid, fair and efficient markets for non-personal data, users of connected products should be able to share data with others, including for commercial purposes, with minimal legal and technical effort. Ahead of sharing data, a user should be able to share data with a high degree of certainty that they will not face adverse legal consequence after the data has been shared. Therefore, where data is excluded from a data holder's obligation to make it available to users or data recipients, the scope of such data should be specified in the contractual agreement between the user and the data holder for the provision of a related service in a comprehensible and clear format, in a way that users can easily determine which data is available for them for sharing with data recipients or third parties without further obligations to protect such data.*
- (24d) There are many reasons why certain data generated by the use of a product remain inaccessible to a data holder and consequently would not fall under the sharing obligations of chapter II. Data may be highly volatile (values recorded at high frequency) and either instantly or quickly overwritten. They may be collected only for activating a very specific function, such as the activity of windshield wipers or*

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<sup>11</sup> Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16).

*headlights, and there is currently no use case and the design of the product does not foresee such data to be stored in the product in light of the cost related to storage of such data, to connecting the data-capturing sensor to a central computing component from which data could be exported and the costs of connectivity for transmitting the data when volumes are considerable. In this regard, sector-specific regulations should further specify relevancy of accessible data according to their specificities in order to ensure the availability of at least data, which is essential for the repairing or servicing of the connected products and related services.*

- (25) In sectors characterised by the concentration of a small number of manufacturers *or providers of related services* supplying end users, *the ability of users to bargain for access to data transferred by the connected product or generated during the provision of related services is limited due to the bargaining power of the manufacturer or provider of related service.* 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 *or providers of related services*, making it difficult for users to obtain value from the data generated by the equipment they *own*. Consequently, there is limited potential for innovative smaller businesses to offer data-based solutions in a competitive manner and for a diverse data economy in Europe. This Regulation should therefore build on recent developments in specific sectors, such as the Code of Conduct on agricultural data sharing by contractual agreement. Sectoral legislation may be brought forward to address sector-specific needs, *security concerns* and objectives. Furthermore, *data holders* should not use any data *accessed by them from the connected product or generated during the provision of related services* in order to derive insights about the economic situation of the user or its assets or production methods or the use in any other way that could undermine the commercial position of the user on the markets it is active on. This would, for instance, involve using knowledge about the overall performance of a business or a farm in contractual negotiations with the user on potential acquisition of the user's products or agricultural produce to the user's detriment, or for instance, using such information to feed in larger databases on certain markets in the aggregate ( ■ e.g. databases on crop yields for the upcoming harvesting season) as such use could affect the user negatively in an indirect manner. The user should be given the necessary technical interface to manage



permissions, preferably with granular permission options (such as "allow once" or "allow while using this app or service"), including the option to withdraw permission.

- (26) In contracts between a data holder and a consumer as a user of **connected products** or related service generating data, **EU consumer law applies, Directive 2005/29/EC, which applies against unfair commercial practices, and Directive 93/13/EEC** applies to the terms of the contract to ensure that a consumer is not subject to unfair contractual terms. For unfair contractual terms unilaterally imposed **■** this Regulation provides that such unfair terms should not be binding on that enterprise.
- (27) **Data holders** 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, **data holders** should ensure that the access request is received and handled by the processor.
- (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 **data recipient** offering an aftermarket service that may be in competition with a service provided by **a** data holder, or to instruct the data holder to do so. The **request should also be valid regardless of whether the request is put forward by the user or an authorised third party acting on user's behalf, such as authorised data intermediation service in the meaning of the Regulation (EU) 2022/868**. **Data holders** should ensure that the data made available to **a data recipient** 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 **connected** product or related service. Any trade secrets or intellectual property rights should be **fully** 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) of the**

*European Parliament and of the Council 2016/943<sup>12</sup> 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.*

*(28a) This Regulation should be interpreted in a manner to preserve the protection awarded to trade secrets under Directive (EU) 2016/943. To that end, data holders should be able to require the user, or third parties of the users' 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 users' 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 users' 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*

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<sup>12</sup> *Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).*



*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.*

- (29) A *data recipient* to whom data is made available may be *a natural or legal person, enterprise, a research organisation or a not-for-profit organisation or an intermediary, including data intermediation services or data altruism organisations as defined in Regulation (EU) 2022/868*. In making the data available to *a data recipient, data holders* should not abuse *their* position to seek a competitive advantage in markets where *a* data holder and *data recipient* may be in direct competition. *Data holders* should not therefore use any data *accessed from the connected product or generated during the provision of a* 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. *The user should have the right to share non-personal data with third parties for commercial purposes. Upon the agreement with the user, and subject to the provisions of this Regulation, data recipients should be able to transfer the data access rights granted by the user to third parties, including in exchange for compensation. Data intermediation services [as regulated by Regulation (EU) 2022/868] may support users or data recipients in establishing a commercial relation for any lawful purpose on the basis of data falling within the scope of this Regulation. They could play an instrumental role in aggregating access to data from a large number of individual potential data users so that big data analyses or machine learning can be facilitated, as long as such users remain in full control on whether to contribute their data to such aggregation and the commercial terms under which their data will be used.*
- (30) The use of a product or related service may, in particular when the user is a natural person, generate data that relates to an identified or identifiable natural person (the data subject). Processing of such data is subject to the rules established under Regulation (EU) 2016/679, including where personal and non-personal data in a data set are

inextricably linked<sup>8</sup>. The data subject may be the user or another natural person. Personal data may only be requested by a controller or a data subject. A user who is the data subject is under certain circumstances entitled under Regulation (EU) 2016/679 to access personal data concerning them, and such rights are unaffected by this Regulation. Under this Regulation, the user who is a natural person is further entitled to access all data generated by the product, personal and non-personal. Where the user is not the data subject but an enterprise, including a sole trader, and not in cases of shared household use of the product, the user will be a controller within the meaning of Regulation (EU) 2016/679. Accordingly, such a user as controller intending to request personal data generated by the use of a product or related service is required to have a legal basis for processing the data under Article 6(1) of Regulation (EU) 2016/679, such as the consent of the data subject or legitimate interest. This user should ensure that the data subject is appropriately informed of the specified, explicit and legitimate purposes for processing those data, and how the data subject may effectively exercise their rights. Where the data holder and the user are joint controllers within the meaning of Article 26 of Regulation (EU) 2016/679, they are required to determine, in a transparent manner by means of an arrangement between them, their respective responsibilities for compliance with that Regulation. It should be understood that such a user, once data has been made available, may in turn become a data holder, if they meet the criteria under this Regulation and thus become subject to the obligations to make data available under this Regulation.

- (31) Data *accessed from a connected product or* generated *during the provision of a* related service should only be made available to a third party at the request of the user. This Regulation accordingly complements the right provided under Article 20 of Regulation (EU) 2016/679. That Article provides for a right of data subjects to receive personal data concerning them in a structured, commonly used and machine-readable format, and to port those data to other controllers, where those data are processed on the basis of Article 6(1), point (a), or Article 9(2), point (a), or of a contract pursuant to Article 6(1), point (b). Data subjects also have the right to have the personal data transmitted directly from one controller to another, but only where technically feasible. Article 20 specifies that it pertains to data provided by the data subject but does not specify whether this

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<sup>8</sup> OJ L 303, 28.11.2018, p. 59–68.

necessitates active behaviour on the side of the data subject or whether it also applies to situations where a product or related service by its design observes the behaviour of a data subject or other information in relation to a data subject in a passive manner. The right under this Regulation complements the right to receive and port personal data under Article 20 of Regulation (EU) 2016/679 in several ways. It grants users the right to access and make available to a *data recipient* to any data *accessed from the connected product or* generated *during the provision of a* related service, irrespective of its nature as personal data, of the distinction between actively provided or passively observed data, and irrespective of the legal basis of processing. Unlike the technical obligations provided for in Article 20 of Regulation (EU) 2016/679, this Regulation mandates and ensures the technical feasibility of third party access for all types of data coming within its scope, whether personal or non-personal. It also allows *data holders* to set reasonable compensation to be met by *data recipients*, but not by the user, for any cost incurred in providing direct access to the data generated by the user's product. If a data holder and third party are unable to agree terms for such direct access, the data subject should be in no way prevented from exercising the rights contained in Regulation (EU) 2016/679, including the right to data portability, by seeking remedies in accordance with that Regulation. It is to be understood in this context that, in accordance with Regulation (EU) 2016/679, a contractual agreement does not allow for the processing of special categories of personal data by *data holders or data recipient*.

- (32) Access to any data stored in and accessed from terminal equipment is subject to Directive 2002/58/EC and requires the consent of the subscriber or user within the meaning of that Directive unless it is strictly necessary for the provision of an information society service explicitly requested by the user or subscriber (or for the sole purpose of the transmission of a communication). Directive 2002/58/EC ('ePrivacy Directive') (and the proposed ePrivacy Regulation) protect the integrity of the user's terminal equipment as regards the use of processing and storage capabilities and the collection of information. Internet of Things equipment is considered terminal equipment if it is directly or indirectly connected to a public communications network.
- (33) In order to prevent the exploitation of users, *data recipients* to whom data has been made available upon request of the user should only process the data for the purposes agreed with the user and *not* share it with another third party *without unequivocally*

*informing the user in a timely manner and having its explicit agreement to such sharing.*

- (34) **Data recipients** should only access additional information that is necessary for the provision of the service requested by the user. Having received access to data, the **data recipient** 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 **data recipient** to the data as it is for the user to authorise access. **A data recipient or data holder** should not **make the exercise of the rights or choices of users unduly difficult including by offering choices to users in a non-neutral manner, or** coerce, deceive or manipulate the user in any way, **or** by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface **or a part thereof, including its structure, design, function or manner of operation** with the user. **In** this context, third parties **or data holders** 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 **and data holders** should comply with their obligations under relevant Union law, **including** the requirements set out in Directive 2005/29/EC, Directive 2011/83/EU, Directive 2000/31/EC and Directive 98/6/EC.
- (35) **Data holders and data recipients** should also refrain from using the data to profile individuals unless these processing activities are strictly necessary to provide the service requested by the user. The requirement to delete **personal** data when no longer required for the purpose agreed with the user complements the right to erasure of the data subject pursuant to Article 17 of Regulation (EU) 2016/679. Where **a data recipient** is a provider of a data intermediation service within the meaning of **Regulation (EU) 2022/868**, the safeguards for the data subject provided for by that Regulation apply. The

third party may use the data to develop a new and innovative product or related service but not to develop a competing product.

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

- (37) ***Micro and small enterprises should be excluded from the obligations of Chapter II.*** 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.
- (38) This Regulation contains ■ rules, whenever a data holder is obliged by law to make data available to a data recipient. Such access should be based on fair, reasonable, non-discriminatory and transparent conditions to ensure consistency of data sharing practices in the internal market, including across sectors, and to encourage and promote fair data sharing practices even in areas where no such right to data access is provided. These general access rules do not apply to obligations to make data available under Regulation (EU) 2016/679. Voluntary data sharing remains unaffected by these rules.
- (39) Based on the principle of contractual freedom, the parties should remain free to negotiate the precise conditions for making data available in their contracts, within the framework of the general access rules for making data available.
- (40) In order to ensure that the conditions for mandatory data access are fair for both parties, the general rules on data access rights should refer to the rule on avoiding unfair contract terms.
- (41) ***Any agreement concluded for making the data available should not discriminate between comparable categories of data recipients, independently whether they are large companies or micro, small or medium-sized enterprises.*** In order to compensate for the lack of information on the conditions of different contracts, which makes it difficult for the data recipient to assess if the terms for making the data available are non-discriminatory, it should be ***the responsibility of the data holders*** to demonstrate that a contractual term is not discriminatory. ***The Commission, while involving all affected stakeholders, should establish practical guidelines on what constitutes non-***

*discriminatory terms.* It is not unlawful discrimination, where a data holder uses different contractual terms for making data available **■** , if those differences are justified by objective reasons. These obligations are without prejudice to Regulation (EU) 2016/679.

- (42) In order to incentivise the continued investment in generating *and making available* valuable data, including investments in relevant technical tools, this Regulation contains the principle that *data holders* may request reasonable compensation when legally obliged to make data available to the data recipient *in business- to business relations*. These provisions should not be understood as paying for the data itself, but *to allow data holders to be reasonably compensated for making data available or*, in the case of micro, small or medium-sized enterprises *and of research organisations using the data on a not-for-profit basis*, for the *direct* costs incurred and investment required for making the data available. *The Commission should develop guidance detailing what qualifies as a reasonable compensation in the data economy.*
- (42a) *Such reasonable compensation may include firstly the costs incurred and, except for micro and small enterprises, investment required for making the data available. Those costs can be technical costs, such as the costs necessary for data reproduction, dissemination via electronic means and storage, but not of data collection or production. Such technical costs could include also the costs for processing, necessary to make data available. Costs related to making the data available may also include the costs of facilitating concrete data sharing requests. They may also vary depending on the arrangements taken for making the data available. Long-term arrangements between data holders and data recipients, for instance via a subscription model or the use of smart contracts, could reduce the costs in regular or repetitive transactions in a business relationship. Costs related to making data available are either specific to a particular request or shared with other requests. In the latter case, a single data recipient should not pay the full costs of making the data available. Reasonable compensation may include, except for micro and small enterprises, secondly a margin. Such margin may vary depending on factors related to the data itself, such as volume, format or nature of the data, or on the supply of and demand for the data. It may consider the costs for collecting the data. The margin may therefore decrease where the data holder has collected the data for its own*



*business without significant investments or may increase where the investments in the data collection for the purposes of the data holder's business are high. The margin may also depend on the follow-on use of the data by the data recipient. It may be limited or even excluded in situations where the use of the data by the data recipient does not affect the own activities of the data holder. The fact that the data is co-generated by a connected product owned by the user could also lower the amount of the compensation in comparison to other situations where the data are generated by the data holder for example during the provision of a related service.*

- (43) In *duly* justified cases, including the need to safeguard consumer participation and competition or to promote innovation in certain markets, Union law or national legislation implementing Union law may impose regulated compensation for making available specific data types.
- (44) To protect micro, small or medium-sized enterprises from excessive economic burdens which would make it commercially too difficult for them to develop and run innovative business models, the compensation for making data available to be paid by them should not exceed the direct cost of making the data available and be non-discriminatory. *The same regime should apply to those research organisations that use the data on a not-for-profit basis.*
- (45) Direct costs for making data available are the costs necessary for data reproduction, dissemination via electronic means and storage but not of data collection or production. Direct costs for making data available should be limited to the share attributable to the individual requests, taking into account that the necessary technical interfaces or related software and connectivity will have to be set up permanently by the data holder. Long-term arrangements between data holders and data recipients, for instance via a subscription model, could reduce the costs linked to making the data available in regular or repetitive transactions in a business relationship. *The data holder, if not an SME, should actively provide the calculation showing that his price is a cost-based, when he knows, or should have known, that his counterparty is an SME. In any case, he should state that he is obliged to make the data available to an SME at cost price and that he is obliged to make detailed information available when requested.*



- (46) It is not necessary to intervene in the case of data sharing between large companies, or when the data holder is a small or medium-sized enterprise and the data recipient is a large company. In such cases, the companies are considered capable of negotiating any compensation if it is reasonable, taking into account factors such as the volume, format, nature, or supply of and demand for the data as well as the costs for collecting and making the data available to the data recipient. ***In the case of misuse or disclosure of data, the data recipient should be liable for the damages to the party suffering from it and should comply without undue delay with the requests of the data holder.***
- (47) Transparency is an important principle to ensure that the compensation requested by a data holder is reasonable, or, ***if*** the data recipient is ***an SME***, that the compensation does not exceed the costs directly related to making the data available to the data recipient and is attributable to the individual request. In order to put ***data recipients*** in the position to assess and verify that the compensation complies with the requirements under this Regulation, the data holder should provide to the data recipient the information for the calculation of the compensation with a sufficient degree of detail.
- (48) Ensuring access to alternative ways of resolving domestic and cross-border disputes that arise in connection with making data available should benefit data holders and data recipients and therefore strengthen trust in data sharing. In cases where parties cannot agree on fair, reasonable and non-discriminatory terms of making data available, dispute settlement bodies should offer a simple, fast and low-cost solution to the parties.
- (49) To avoid that two or more dispute settlement bodies are seized for the same dispute, particularly in a cross-border setting, a dispute settlement body should be able to reject a request to resolve a dispute that has already been brought before another dispute settlement body or before a court or a tribunal of a Member State.
- (50) Parties to dispute settlement proceedings should not be prevented from exercising their fundamental rights to an effective remedy and to a fair trial. Therefore, the decision to submit a dispute to a dispute settlement body should not deprive those parties of their right to seek redress before a court or a tribunal of a Member State. ***Dispute settlement bodies should make annual activity reports publicly available.***
- (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 *harm enterprises* without a meaningful ability to negotiate the conditions for access to data, who may have no other choice than to accept ‘take-it-or-leave-it’ contractual terms. Therefore, unfair contract terms regulating the access to and use of data or the liability and remedies for the breach or the termination of data related obligations should not be binding on micro, small or medium-sized enterprises when they have been unilaterally imposed on them.

- (52) Rules on contractual terms should take into account the principle of contractual freedom as an essential concept in business-to-business relationships. ■ . This concerns ‘take-it-or-leave-it’ situations where one party supplies a certain contractual term and the *other* enterprise cannot influence the content of that term despite an attempt to negotiate it. A contractual term that is simply provided by one party and accepted by the *other* enterprise or a term that is negotiated and subsequently agreed in an amended way between contracting parties should not be considered as unilaterally imposed. *All contractual agreements should be in line with Fair, Reasonable and Non-Discriminatory (FRAND) principles.*
- (53) Furthermore, the rules on unfair contractual terms should only apply to those elements of a contract that are related to making data available, that is contractual terms concerning the access to and use of data as well as liability or remedies for breach and termination of data related obligations. Other parts of the same contract, unrelated to making data available, should not be subject to the unfairness test laid down in this Regulation.
- (54) Criteria to identify unfair contractual terms should be applied only to excessive contractual terms, where a stronger bargaining position is abused. The vast majority of contractual terms that are commercially more favourable to one party than to the other, including those that are normal in business-to-business contracts, are a normal expression of the principle of contractual freedom and ■ continue to apply.
- (55) If a contractual term is not included in the list of terms that are always considered unfair or that are presumed to be unfair, the general unfairness provision applies. In this regard, the terms listed as unfair terms should serve as a yardstick to interpret the general unfairness provision. Finally, model contractual terms for business-to-business data

sharing contracts to be developed and recommended by the Commission may also be helpful to commercial parties when negotiating contracts.

- (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 ***or that it is currently collecting or has previously obtained, collected or otherwise generated and which it retains at the time of the request***, 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.
- (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 ***and subject to conditions and other safeguards set out in this Regulation or other Union or national law***. The existence of a public emergency is determined according to the respective procedures in the Member States or of relevant international organisations.
- (58) An exceptional need may also ***stem from non-emergency situations*** when a public sector body can demonstrate that the data are necessary ***for the fulfilment of*** a specific task in the public interest that has been explicitly provided ***and defined by national law, such as preventing or assisting the recovery from a public emergency. Such a request can be made only*** when the **■** public sector body or the Union institution, agency or body ***has identified specific data which is unavailable and only if it has exhausted all of the following three alternative means to obtain data: requesting the data through voluntary agreements; purchasing the data on the market or by relying on existing obligations to make data available.***

- (59) This Regulation should not apply to, nor pre-empt, voluntary arrangements for the exchange of *non-personal* data between private and public entities. ■ Requirements to access data to verify compliance with applicable rules, including in cases where public sector bodies assign the task of the verification of compliance to entities other than public sector bodies, should also not be affected by this Regulation.
- (60) For the exercise of their tasks in the areas of prevention, investigation, detection or prosecution of criminal and administrative offences, the execution of criminal and administrative penalties, as well as the collection of data for taxation or customs purposes, public sector bodies and Union institutions, agencies and bodies should rely on their powers under sectoral legislation. This Regulation accordingly does not affect instruments for the sharing, access and use of data in those areas.
- (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 *based on Union or national law, specific*, 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 *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 *available list* of all requests justified by *an exceptional need*.
- (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, **Regulation (EU) 2022/868, as well as** Directive (EU) 2019/1024 of the European Parliament and of the Council<sup>9</sup> 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. **Where allowed by Union or national law, 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. **provided that the data holder is informed in a timely manner and all bodies respect the same rules on transparency as the original requester of the data and protection of trade secrets and intellectual property rights is ensured.**

- (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 **or if the data holder is not currently collecting or has not previously collected, obtained or otherwise generated the requested data and does not retain it at the time of the request.** 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

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<sup>9</sup> 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).

under Directive 96/9/EC of the European Parliament and of the Council<sup>10</sup> 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.

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- (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 ■ . 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. ***Public sector bodies and to Union institutions, agencies and bodies should ensure, including through the application of proportionate security measures, where applicable in accordance with Union and national law, that any protected nature of data is preserved and unauthorised access is avoided.***
- (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 ***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 institutions, agency or body or the third parties that received the data to perform the task that have been outsourced to it, 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 institutions, agency or body or the third parties to which data were transmitted and subject to review by the data coordinator of the Member State.***

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<sup>10</sup> 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).

- (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 ***provided that the request is limited in time and scope, proportionate to the state of the public emergency.*** Public emergencies are rare events and not all such emergencies require the use of data held by enterprises. The business activities of the data holders are therefore not likely to be negatively affected as a consequence of the public sector bodies or Union institutions, agencies or bodies having recourse to this Regulation. However, as cases of an exceptional need other than responding to a public emergency might be more frequent, including cases of prevention of or recovery from a public emergency, data holders should in such cases be entitled to a reasonable compensation. ***This Regulation should not affect existing Union or national arrangements in which data is shared free of charge, or prevent public sector bodies, Union institutions, agencies or bodies, and data holders from entering into voluntary data sharing agreements free of charge.***
- (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 ***provided that those activities are strictly necessary to respond to the emergency need. It should inform the data holder of such sharing in a timely manner.*** 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 ***or public*** undertakings have a decisive influence allowing such undertakings to exercise control because of structural situations, which could result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Regulation.



- (69) The ability for customers of data processing services, including cloud and edge services, to switch from one data processing service to another, while *avoiding downtime of services, or to use the services of several providers simultaneously without undue data transfer costs*, is a key condition for a more competitive market with lower entry barriers for new service providers, *and for ensuring further resilience for the users of those services. Guarantees for effective switching should also include customers benefiting from large-scale free-tier offerings, so that does not result in a lock-in situation for customers. Facilitating a multi-cloud approach for customers of data processing services can also contribute to increasing their digital operational resilience, as recognised for financial service institutions in the Digital Operational Resilience Act (DORA).*
- (69a) *Switching charges are charges imposed by providers of cloud computing on their customers for the switching process. Typically, those charges are intended to pass on costs, which the source provider may incur because of the switching process, to the customer that wishes to switch. Examples of common switching charges are costs related to the transfer of data from one provider to the other or to an on-premise system ('egress fees') or the costs incurred for specific support actions during the switching process. Unnecessarily high egress fees and other unjustified charges unrelated to actual switching costs, inhibit customers' switching, restrict the free flow of data, have the potential to limit competition and cause lock-in effects for the customers of data processing services, by reducing incentives to choose a different or additional service provider. As a result of the new obligations foreseen in this Regulation, the source provider of data processing services might outsource certain tasks and remunerate third party entities in order to comply with those obligations. The customer should not bear costs arising from the outsourcing of services concluded by the source provider of data processing services during the switching process and such costs should be considered as unjustified. Nothing in the Data Act prevents a customer to remunerate third party entities for support in the migration process. Egress fees are charged to customers by providers of source data processing services when the customers are willing to take their data out from a cloud provider's network to an external location, especially when switching from one provider to one or several providers of destination, to relocate their data from one location to another*



*while using the same cloud service provider. Therefore, in order to foster competition, the gradual withdrawal of the charges associated with switching data processing services should specifically include withdrawing egress fees charged by the data processing service to a customer.*

- (70) Regulation (EU) 2018/1807 of the European Parliament and of the Council encourages **providers of data processing services** to effectively develop and implement self-regulatory codes of conduct covering best practices for, inter alia, facilitating the switching of **providers of data processing service** and the porting of data. Given the limited **uptake** of the self-regulatory frameworks developed in response, and the general unavailability of open standards and interfaces, it is necessary to adopt a set of minimum regulatory obligations on providers of data processing services to eliminate contractual, **commercial, organisational**, economic and technical barriers, **which are not limited to an impeded speed of data transfer at the customer's exit, which hamper** effective switching between data processing services.
- (71) Data processing services should cover services that allow **ubiquitous and on-demand network** access to a **configurable**, scalable and elastic **shared** pool of **distributed computing resources**. Those computing resources include resources such as networks, servers or other virtual or physical infrastructure, software, including software development tools, storage, applications and services. The **deployment models of data processing services should include private and public cloud. Such services and deployment models should be the same as defined by international standards.** The capability of the customer of the data processing service to unilaterally self-provision computing capabilities, such as server time or network storage, without any human interaction by the **provider of data processing services** could be described as **requiring minimal management effort and as entailing minimal interaction between provider and customer.** The term ‘**ubiquitous**’ is used to describe that the computing capabilities are provided over the network and accessed through mechanisms promoting the use of heterogeneous thin or thick client platforms (from web browsers to mobile devices and workstations). The term ‘scalable’ refers to computing resources that are flexibly allocated by the **provider of data processing services**, irrespective of the geographical location of the resources, in order to handle fluctuations in demand. The term ‘elastic’ is used to describe those computing resources that are provisioned and released

according to demand in order to rapidly increase or decrease resources available depending on workload. The term ‘*shared pool*’ is used to describe those computing resources that are provided to multiple users who share a common access to the service, but where the processing is carried out separately for each user, although the service is provided from the same electronic equipment. The term ‘distributed’ is used to describe those computing resources that are located on different networked computers or devices and which communicate and coordinate among themselves by message passing. The term ‘highly distributed’ is used to describe data processing services that involve data processing closer to where data are being generated or collected, for instance in a connected data processing device. Edge computing, which is a form of such highly distributed data processing, is expected to generate new business models and cloud service delivery models, which should be open and interoperable from the outset. *Digital services considered as an online platform as defined in point (i) of Article 3 of [the Digital Services Act] and an online content service as defined in Article 2(5) of Regulation (EU) 2017/1128 of the European Parliament and of the Council*<sup>13</sup> *should not be considered as ‘data processing services’ within the meaning of this Regulation.*

*(71a) Data processing services fall into one or more of the following three data processing service delivery models: IaaS (infrastructure-as-a-service), PaaS (platform-as-a-service) and SaaS (software-as-a-service). Those service delivery models represent a specific, pre-packaged combination of IT resources offered by a provider of data processing service. Three base cloud delivery models are further completed by emerging variations, each comprised of a distinct combination of IT resources, such as Storage-as-a-Service and Database-as-a-Service. For the purpose of this Regulation, data processing services can be categorised in more granular and a non-exhaustive multiplicity of different ‘equivalent services’, meaning sets of data processing services that share the same primary objective and main functionalities as well as the same type of data processing models, that are not related to the service operational characteristics. In an example two databases might appear to share the same primary objective, but after considering their data processing model, distribution model and targeted use-case, such databases should fall into a more*

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<sup>13</sup> *Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (OJ L 168, 30.6.2017, p. 1).*

*granular subcategory of equivalent services. Equivalent services may have different and competing characteristics such as performance, security, resilience, and quality of service.*

- (71b) *Extracting the data that belongs to the customer from the source provider of data processing services remains one of the challenges that impedes restoration of the service functionalities in the destination provider infrastructure. In order to properly plan the exit strategy, avoid unnecessary and burdensome tasks and to ensure that the customer does not lose any of its data as a consequence of the switching process, the source provider of data processing services should include in the contract the mandatory information on the scope of the data that can be exported by the customer once he or she decides to switch to a different service, other provider of data processing services or move to on-premise ICT infrastructure. The scope of exportable data should include at a minimum input and output data, including relevant data formats, data structures and metadata directly or indirectly generated or co-generated by the customer's use of the data processing service, and that can be clearly assigned to the customer. The exportable data should exclude any data processing service, or third party's assets or data protected by intellectual property rights or constituting a trade secret or confidential information, such as data related to the integrity and security of the service provided by the data processing service, and should also exclude data used by the provider to operate, maintain and improve the service.*
- (72) This Regulation aims to facilitate switching between data processing services, which encompasses all **relevant** conditions and actions that are necessary for a customer to terminate a contractual agreement of a data processing service, to conclude one or multiple new contracts with different providers of data processing services, to port all its digital assets, including data, to the concerned other providers and to continue to use them in the new environment **and benefit** from functional equivalence. ***It should be noted that the data processing services in scope are those where the data processing service, as defined under this Regulation, forms part of the core business of a provider.*** Digital assets refer to elements in digital format for which the customer has the right of use, including data, applications, virtual machines and other manifestations of virtualisation technologies, such as containers. ***Switching is a customer-driven***

*operation consisting in three main steps, namely (i) data extraction, i.e. downloading data from a source provider's ecosystem; (ii) transformation, when the data is structured in a way that does not match the schema of the target location; and (iii) the uploading of the data in a new destination location. In a specific situation outlined in this Regulation, unbundling of a particular service from the contract and moving it to another provider should also be considered as switching. The switching process is sometimes managed on behalf of the customer by a third-party entity. Accordingly, all rights and obligations of the customer established by this Regulation, including the obligation to collaborate in good faith, should be understood to apply to such a third-party entity in those circumstances. Providers of cloud computing services and customers have different levels of responsibilities, depending on the steps of the process referred to. For instance, the source provider of data processing services is responsible to extract the data to a machine-readable format, but it is the customer and the destination provider who will upload the data to the new environment, unless specific professional transition service has been obtained. Obstacles to switching are of a different nature, depending on which step of the switching process is referred to. Functional equivalence means the possibility to re-establish, on the basis of the customer's data, a minimum level of functionality of a service in the environment of a new data processing service after switching, where the destination service delivers a comparable outcome in response to the same input for shared functionality supplied to the customer under the contractual agreement. Different services may only achieve functional equivalence for the shared core functionalities, where both the source and destination service providers independently offer the same core functionalities. This Regulation does not instance an obligation of facilitating functional equivalence for data processing service delivery models of the PaaS or SaaS. Relevant meta-data, generated by the customer's use of a service, should also be portable pursuant to this Regulation's provisions on switching and falls within the definition of exportable data. Data processing services are used across sectors and vary in complexity and service type. This is an important consideration with regard to the porting process and timeframes.*

*(72a) An ambitious and innovation inspiring regulatory approach to interoperability is needed, in order to overcome vendor lock-in, which undermines competition and the*

*development of new services. Interoperability between equivalent data processing services involves multiple interfaces and layers of infrastructure and software and is rarely confined to a binary test of being achievable or not. Instead, the building of such interoperability is subject to a cost-benefit analysis which is necessary to establish whether it is worthwhile to pursue reasonably predictable results. The ISO/IEC 19941:2017 is an important reference for the achievement of the objectives of this Regulation, as it contains technical considerations clarifying the complexity of such a process.*

- (73) Where providers of data processing services are in turn customers of data processing services provided by a third party provider, they will benefit from more effective switching themselves, while simultaneously invariably bound by this Regulation's obligations for what pertains to their own service offerings.
- (74) *Providers of data processing services* should be required **not to impose and to remove all relevant obstacles and** to offer all assistance and support **within their capacity and proportional to their respective obligations** that is required to make the switching process successful, *safe* and effective. **This Regulation does not require providers of data processing services** to develop new categories of **data processing services, including** within or on the basis of the IT-infrastructure of different data processing service providers to guarantee functional equivalence in an environment other than their own systems. *A source provider of data processing services has no access and insights into the environment of the destination provider of data processing services and should not be obliged to rebuild customer's service, according to functional equivalence requirements, within the destination provider's infrastructure. Instead, the source provider should take all reasonable measures within their power to facilitate the process of achieving functional equivalence through providing capabilities, adequate information, documentation, technical support and, where appropriate, the necessary tools. The information to be provided by providers of data processing services to the customer should support the development of the customer's exit strategy and should include procedures for initiating switching from the cloud computing service, the machine-readable data formats that the user's data can be exported to, the tools, including at least one open standard data portability interface, foreseen to export data, information on known technical restrictions and limitations*

*that could impact the switching process and the estimated time necessary to complete the switching process. The written contract setting out the rights of the customer and the obligations of the provider of cloud computing services should only cover information which is available to the provider of data processing services at the time of the formation of the contract.* Existing rights relating to the termination of contracts, including those introduced by Regulation (EU) 2016/679 and Directive (EU) 2019/770 of the European Parliament and of the Council<sup>11</sup> should not be affected. *Any mandatory period under this Regulation should not affect compliance with other timelines specified under sectoral legislation. Chapter VI of this Regulation should not be understood as preventing a provider of data processing services from provisioning to its customers new and improved services, features and functionalities or from competing with other providers of data processing services on that basis.*

- (75) To facilitate switching between data processing services, providers of data processing services should consider the use of implementation and/or compliance tools, notably those published by the Commission in the form of a Rulebook relating to cloud services. In particular, standard contractual clauses are beneficial to increase confidence in data processing services, to create a more balanced relationship between users and *providers of data processing services* and to improve legal certainty on the conditions that apply for switching to other data processing services. In this light, users and *providers of data processing services* should consider the use of standard contractual clauses developed by relevant bodies or expert groups established under Union law.
- (75a) *In order to facilitate switching between cloud computing services, all parties involved, including providers of both source and destination data processing services, should collaborate in good faith with a view to enabling an effective switching process and the secure and timely transfer of necessary data in a commonly used, machine-readable format, and by means of an open standard data portability interface, and avoiding service disruptions.*
- (75b) *Data processing services which concern services that are substantially altered to facilitate a specific customer's need (custom built), or data processing services that operate on a trial basis or only supply a testing and evaluation service for business*

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<sup>11</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1).



*product offerings, should be exempted from some of the obligations applicable to data processing service switching.*

- (75c) *Without prejudice to their right to take action before a court, customers should have access to certified dispute settlement bodies to settle disputes related to switching between providers of data processing services.*
- (76) Open interoperability *and portability* specifications and standards developed in accordance with paragraph 3 and 4 of Annex II *to* Regulation (EU) 1025/2021 *of the European Parliament and of the Council*<sup>14</sup> in the field of interoperability and portability enable a ■ multi-vendor cloud environment, which is a key requirement for open innovation in the European data economy. As market-driven processes have not demonstrated the capacity to establish technical specifications or standards that facilitate effective cloud interoperability *and portability* at the PaaS ■ and SaaS ■ levels, the Commission should be able, *where technically feasible*, on the basis of this Regulation and in accordance with Regulation (EU) No 1025/2012, to request European standardisation bodies to develop such standards *for equivalent services* where such standards do not yet exist. In addition to this, the Commission will encourage parties in the market to develop relevant open interoperability *and portability* specifications. *Following consultation with stakeholders and taking into account relevant international and European standards and self-regulatory initiatives*, the Commission, by way of delegated acts, can mandate the use of European standards for interoperability *and portability* or open interoperability *and portability* specifications for specific *equivalent services* through a reference in a central Union standards repository for the interoperability of data processing services. *Providers of data processing services should ensure compatibility with those standards for interoperability and portability specifications, taking into account the nature, security and integrity of the data they host.* European standards *for the interoperability and portability of data processing services* and open interoperability specifications will only be referenced if in compliance with the criteria specified in this Regulation, which have

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<sup>14</sup> *Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).*



the same meaning as the requirements in paragraphs 3 and 4 of Annex II *to* Regulation (EU) No 1025/2021 and the interoperability facets defined under the ISO/IEC 19941:2017.

- (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 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 *consumer* 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.
- (78) To foster further trust in the data, it is important that safeguards in relation to Union citizens, the public sector and businesses are implemented to the extent possible to

ensure control over their data. In addition, Union law, values and standards should be upheld in terms of (but not limited to) security, data protection and privacy, and consumer protection. In order to prevent unlawful access to non-personal data, providers of data processing services subject to this instrument, such as cloud and edge services, should take all reasonable measures to prevent access to the systems where non-personal data is stored, including, where relevant, through the encryption of data, the frequent submission to audits, the verified adherence to relevant security reassurance certification schemes, and the modification of corporate policies.

- (79) Standardisation, *semantic and syntactic* interoperability should play a key role to provide technical solutions to *enable portability and* interoperability. In order to facilitate the conformity with the requirements for interoperability *within the common European data spaces which are purpose- or sector-specific or cross-sectoral, interoperable frameworks of common standards and practices to share or jointly process data for, inter alia, development of new products and services, scientific research or civil society initiatives should be developed. This Regulation lays down certain essential requirements for interoperability. Participants within the data spaces, which are entities facilitating or engaging in data sharing within the common European data spaces, including data holders, should comply with those requirements. Compliance with those rules can occur by adhering to the requirements laid down in this Regulation, or by adapting to already existing standards via a presumption of conformity. In order to facilitate the conformity with the requirements for interoperability*, it is necessary to provide for a presumption of conformity for interoperability solutions that meet harmonised standards or parts thereof in accordance with Regulation (EU) No 1025/2012 **■**. *Standards should be developed in open, technology neutral and inclusive way in line with Chapter II of the Regulation (EU) No 1025/2012. Taking into account, where relevant, positions adopted by the European Data Innovation Board according to Article 30, point (f), of Regulation (EU) 2022/868*, the Commission should adopt common specifications in areas where no harmonised standards exist or where they are insufficient in order to further enhance interoperability for the common European data spaces, application programming interfaces, cloud switching as well as smart contracts. Additionally, common specifications in the different sectors could remain to be adopted, in accordance with

Union or national sectoral law, based on the specific needs of those sectors. Reusable data structures and models (in form of core vocabularies), ontologies, metadata application profile, reference data in the form of core vocabulary, taxonomies, code lists, authority tables, thesauri *could* also be part of the technical specifications for semantic interoperability. Furthermore, *following consultation with stakeholders and taking into account relevant international and European standards and self-regulating initiatives, where relevant, positions adopted by the European Data Innovation Board, as referred to in Article 30, point (f), of Regulation (EU) 2022/868*, the Commission should be enabled to *adopt common specifications in areas where no harmonised standards exist and to* mandate the development of harmonised standards for the *portability and* interoperability of data processing services. *The European Data Innovation Board should build on existing European and global initiatives for cross-sectoral interoperability of data. In particular, the European Data Innovation Board should study the potential of the digital identity of objects framework as established by the Regulation (EU) 910/214 and systems for the identification of legal entities such as the GLEIF for that purpose.*

- (79a) *In order to further enhance coordination in the enforcement of this Regulation, the European Data Innovation Board should foster the mutual exchange of information amongst competent authorities as well as advise and assist the Commission in matters falling under this Regulation that fall within the competences of Article 30 of Regulation (EU) 2022/868. A subgroup for stakeholder involvement referred to in Article 29(2), point (c), of that Regulation should participate in the consultation on a continual basis.*
- (80) To promote the interoperability of smart contracts in data sharing applications, it *may be* 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. *For example*, smart contracts *should guarantee that conditions for data sharing are respected. Specific training programmes on smart contracts for businesses, in particular SMEs, should be promoted.*
- (81) In order to ensure the efficient implementation of this Regulation, Member States should designate one or more competent authorities *and assign to them sufficient resources.*

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 *effectively and in a timely manner, in line with the principles of good administration and mutual assistance to ensure the effective implementation and enforcement of this Regulation*. 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. *Competent authorities should cooperate upon request of the authorities within the European Data Protection Board and the European Data Innovation Board.*

- (81a) *In order to further enhance coordination in the enforcement of this Regulation, the European Data Innovation Board should foster the mutual exchange of information amongst competent authorities as well as advise and assist the Commission in matters falling under this Regulation with a focus on the matters falling under the competences of the Board in line with Article 30 of Regulation (EU) No 2022/868.*
- (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 the 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 actions, this Regulation amends the Annexes to the Regulation (EU) 2017/2394 of the European Parliament and of the Council<sup>12</sup> and Directive (EU) 2020/1828 of the European Parliament and of the Council<sup>13</sup>.
- (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

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<sup>12</sup> [1] 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).

<sup>13</sup> [2] 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).

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.

- (84) In order to eliminate the risk that holders of *databases containing data* obtained or generated by means of physical components, such as sensors, of a connected product and a related service, *namely machine-generated data*, claim the sui generis right under Article 7 of Directive 96/9/EC, *this Regulation clarifies that the sui generis right does not apply to such databases as the requirements for protection of a substantial investment in either the obtaining, verification or presentation of the data as provided for in Article 7(1) of Directive 96/9/EC would not be fulfilled. That does not affect the possible application of the sui generis right under Article 7 of Directive 96/9/EC to databases containing data falling outside the scope of this Regulation provided the requirements for protection in accordance with Article 7(1) of that Directive are fulfilled.*
- (85) In order to take account of technical aspects of data processing services, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of supplementing this Regulation to introduce a monitoring mechanism on switching charges imposed by data processing service providers on the market, to further specify the essential requirements for *participants* of data spaces *that offer data or data services to other participants*, and data processing service providers on interoperability and to publish the reference of open interoperability specifications and European standards for the interoperability of data processing services. It is of particular

importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>14</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (86) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of supplementing this Regulation to adopt common specifications to ensure the interoperability of common European data spaces and data sharing, the switching between data processing services, the interoperability of smart contracts as well as for technical means, such as application programming interfaces, for enabling transmission of data between parties including continuous or real-time and for core vocabularies of semantic interoperability, and to adopt common specifications for smart contracts. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>15</sup>.
- (87) This Regulation should not affect specific provisions of acts of the Union adopted in the field of data sharing between businesses, between businesses and consumers and between businesses and public sector bodies that were adopted prior to the date of the adoption of this Regulation. To ensure consistency and the smooth functioning of the internal market, the Commission should, where relevant, evaluate the situation with regard to the relationship between this Regulation and the acts adopted prior to the date of adoption of this Regulation regulating data sharing, in order to assess the need for alignment of those specific provisions with this Regulation. This Regulation should be without prejudice to rules addressing needs specific to individual sectors or areas of public interest. Such rules may include additional requirements on technical aspects of the data access, such as interfaces for data access, or how data access could be provided,

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<sup>14</sup> OJ L 123, 12.5.2016, p. 1.

<sup>15</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

for example directly from the product or via data intermediation services. Such rules may also include limits on the rights of data holders to access or use user data, or other aspects beyond data access and use, such as governance aspects. This Regulation also should be without prejudice to more specific rules in the context of the development of common European data spaces.

- (88) This Regulation should not affect the application of the rules of competition, and in particular Articles 101 and 102 of the Treaty. The measures provided for in this Regulation should not be used to restrict competition in a manner contrary to the Treaty.
- (89) In order to allow the economic actors to adapt to the new rules laid out in this Regulation, ***and make the necessary technical arrangements***, they should apply from ***18 months*** after entry into force of the Regulation. ***Only where the data holder and the manufacturer are the same entity the obligations related to the provision of related services provided for the connected products already placed in the market within the last five years from the entry into force of this Regulation should apply retroactively. Such obligations should be fulfilled, only when the provider of related services is able to remotely deploy mechanisms to ensure the fulfilment of the requirements pursuant to Article 1 and only when the deployment of such mechanisms would not place a disproportionate burden on the manufacturer.***
- (90) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered a joint opinion on [XX XX 2022],

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

##### Subject matter and scope

1. This Regulation lays down harmonised rules on :



- (a) the design of connected products to allow access to data generated by a connected product or generated during the provision of related services to the user of that product;*
- (b) data holders making available data they accessed from a connected product or generated during the provision of a related service to data subjects, users or to data recipients, at the request of the user or data subject;*
- (c) fair contractual terms for data sharing agreements;*
- (d) the making available of data to public sector bodies or Union institutions, agencies or bodies, where there is an exceptional need in the public interest;*
- (e) facilitating switching between data processing services;*
- (f) introducing safeguards against unlawful international governmental access to non-personal data; and*
- (g) providing for the development of interoperability standards and common specifications for data to be transferred and used.*

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

- (a) Chapter II applies to accessible data obtained, collected or otherwise generated by connected products or generated during the provision of related services;*
- (b) Chapter III applies to any private sector data subject to statutory data sharing obligations;*
- (c) Chapter IV applies to any private sector data accessed and used on the basis of contractual agreements between businesses;*
- (d) Chapter V applies to any private sector non-personal data;*
- (e) Chapter VI applies to any data and services processed by data processing services;*
- (f) Chapter VII applies to any non-personal data held in the Union by providers of data processing services.*

2. This Regulation applies to:

- (a) manufacturers of *connected* products and *providers* of related services placed on the market in the Union *irrespective of their place of establishment and* users of such *connected* products or *related* services *or in the case of personal data, identified or identifiable natural persons the data obtained, collected, or generated by the use, relates to*;
  - (b) *users of connected products or related services in the Union and* data holders, *irrespective of their place of establishment*, that make data available to data recipients in the Union *or in the case of personal data, identified or identifiable natural persons the data obtained, collected, or generated by the use, relates to*;
  - (c) data recipients in the Union to whom data are made available;
  - (d) public sector bodies *of a Member State* and Union institutions, agencies or bodies that request data holders to make data available where there is an exceptional need to that data for the performance of a *specific* task carried out in the public interest and the data holders that provide those data in response to such request;
  - (e) providers of data processing services, *irrespective of their place of establishment*, offering such services to customers in the Union.
3. Union law on the protection of personal data, privacy and confidentiality of communications and integrity of terminal equipment shall apply to *any* personal data processed in connection with the rights and obligations laid down in this Regulation. *The obtaining, collection, or generation of personal data through the use of a product or related service shall require a legal basis pursuant to applicable data protection law. This Regulation does not constitute a legal basis for the processing of personal data. This Regulation is without prejudice to* Union law on the protection of personal data *and privacy*, in particular Regulation (EU) 2016/679, *Regulation (EU) 2018/1725*, and Directive 2002/58/EC, including the *rules concerning the powers and competences of supervisory authorities. In the event of a conflict between this Regulation and Union law on the protection of personal data or privacy or national law adopted in accordance with such Union law, the relevant Union or national law on the protection of personal data or privacy shall prevail.* Insofar as

the rights laid down in Chapter II of this Regulation are concerned, and where users are the data subjects of personal data, subject to the rights and obligations under that Chapter, the provisions of this Regulation shall complement *and particularise* the right of data portability under Article 20 of Regulation (EU) 2016/679. ***No provision of this Regulation shall be applied or interpreted in such a way as to diminish or limit the right to the protection of personal data or the right to privacy and confidentiality of communications.***

4. This Regulation shall not affect Union and national legal acts providing for the sharing, access and use of data for the purpose of the prevention, investigation, detection or prosecution of criminal *or administrative* offences or the execution of criminal *or administrative* penalties, including Regulation (EU) 2021/784 of the European Parliament and of the Council<sup>16</sup> and the [e-evidence proposals [COM(2018) 225 and 226] once adopted, and international cooperation in that area. This Regulation shall not affect the collection, sharing, access to and use of data under Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing and Regulation (EU) 2015/847 of the European Parliament and of the Council on information accompanying the transfer of funds. This Regulation shall not affect the competences of the Member States regarding activities concerning public security, defence, national security, customs and tax administration and the *public* health and *the* safety of citizens in accordance with Union law. ***This Regulation shall not apply to data collected or generated in the context of defence-related activities or by defence products or services or by products or services deployed and used for defence purposes.***
- 4a. ***This Regulation complements and does not affect the applicability of Union law aiming to promote the interests of consumers and to ensure a high level of consumer protection, to protect their health, safety and economic interests, including Directives 2005/29/EC, 2011/83/EU and 93/13/EEC.***

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<sup>16</sup> Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online (OJ L 172, 17.5.2021, p. 79).

- 4b. Data holders shall not be obliged to provide access to data to any natural or legal person, entity or body outside the Union, unless requested by the user or otherwise provided by the Union law or national law implementing the Union law.**
- 4c. The obligations set out in the Regulation shall not preclude voluntary lawful reciprocal non personal data sharing between users, data holders and data recipients, agreed in contracts.**

## Article 2

### Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘data’ means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording; **content, or data obtained, generated or collected by the connected product or transmitted to it on behalf of others for the purpose of storage or processing, shall not be covered by this Regulation.**
- (1a) ‘personal data’ means personal data as defined in Article 4, point (1), of Regulation (EU) 2016/679;
- (1b) ‘non-personal data’ means data other than personal data;
- (1c) ‘consent’ means consent as defined in Article 4, point (11), of Regulation (EU) 2016/679;
- (1d) ‘data subject’ means data subject as defined in Article 4, point (1), of Regulation (EU) 2016/679;
- (1e) ‘data user’ means a natural or legal person who has lawful access to certain personal or non-personal data and has a right to use that data for commercial or non-commercial purposes;
- (2) ‘connected product’ means an  item, that obtains, generates or collects, **accessible** data concerning its use or environment, and that is able to communicate data via **an electronic communications service, a physical, connection or on-device access** and whose primary function is not the storing, **processing or transmission** of data **on behalf of others**;

- (3) ‘related service’ means a digital service, including software, **but excluding electronic communication services which is** inter-connected with a product in such a way that its absence would prevent the product from performing one **or more** of its functions, **and which involves accessing data from the connected product by the provider or the service;**
- (4) ‘virtual assistants’ means software that can process demands, tasks or questions including **those** based on audio, written input, gestures or motions, and based on those demands, tasks or questions provides access **to other** services or control **the functions of products;**
- (4a) ‘consumer’ means any natural person who, is acting for purposes which are outside that person’s trade, business, craft or profession;
- (5) ‘user’ means a natural or legal person that owns **a connected product or receives a related service or to whom the owner of a connected product has transferred, on the basis of a rental or leasing agreement, temporary rights to use a connected** product or **receive related** services **and, where the connected product or related service involves the processing of personal data, the data subject;**
- (6) ‘data holder’ means a legal or natural person, who has **accessed data from the connected product or has generated data during the provision of a related service and who has the contractually agreed right to use such data, and the obligation, in accordance with this Regulation, applicable Union law or national legislation implementing Union law** to make available certain data **to the user or a data recipient;**
- (7) ‘data recipient’ means a legal or natural person ■ other than the user of a **connected** product or related service, to whom **a** data holder makes **available data accessed from a connected product or generated during the provision of a related service** following **an explicit** request by the user ■ or in accordance with a legal obligation under Union law or national legislation implementing Union law;
- (8) ‘enterprise’ means a natural or legal person which in relation to contracts and practices covered by this Regulation is acting for purposes which are related to that person’s trade, business, craft or profession;

- (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;
- (10) ‘public emergency’ means an exceptional situation, ***limited in time such as public health emergencies, emergencies resulting from natural disasters, as well as human-induced major disasters, including major cybersecurity incidents***, 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, ***financial stability***, or the substantial ***and immediate*** degradation of economic assets in the Union or the relevant Member State(s) ***and which is determined and officially declared according to the relevant procedures under Union or national law***;
- (10a) ‘official statistics’ means ‘European statistics’ within the meaning of Regulation (EC) No 223/2009<sup>15</sup>;***
- (11) ‘processing’ means any operation or set of operations which is performed on data or on sets of data in electronic format, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- (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;
- (13) ‘service type’ means a set of data processing services that share the same primary objective and basic data processing service model;
- (14) ‘functional equivalence’ means the maintenance of a minimum level of functionality in the environment of a new data processing service after the switching process, to

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<sup>15</sup> ***Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).***

such an extent that, in response to an input action by the user on core elements of the service, the destination service will deliver the same output at the same performance and with the same level of security, operational resilience and quality of service as the originating service at the time of termination of the contract;

(15) ‘open *standards*’, *mean* technical specifications, ■ which are performance oriented towards achieving interoperability between data processing services *and which are adopted through an inclusive, collaborative, consensus-based and transparent process from which materially affected and interested parties cannot be excluded*;

■

(18) ‘common specifications’ means a document, other than a standard, containing technical solutions providing a means to comply with certain requirements and obligations established under this Regulation;

(19) ‘interoperability’ means the ability of two or more *data-based serviced, including* data spaces or communication networks, systems, products, applications or components to *process*, exchange and use data in order to perform their functions *in an accurate, effective and consistent manner*;

(19a) ‘*portability*’ means the ability of a customer to move imported or directly generated data that can be clearly assigned to the customer between their own system and cloud services, and between cloud services of different cloud service providers;

(20) ‘harmonised standard’ means a harmonised standard as defined in Article 2, point (1)(c), of Regulation (EU) No 1025/2012;

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

(20b) ‘*metadata*’ means a structured description of the contents of the use of data facilitating the discovery or use of that data;

(20c) ‘*data intermediation service*’ means data intermediation service as referred to in Article 2, point (8), of Regulation (EU) 2022/868;



- (20d) *‘data altruism’ means the voluntary sharing of data as defined in Article 2(16) of Regulation (EU) 2022/868;*
- (20e) *‘trade secret’ means information which meets all the requirements of Article 2, point (1) of Directive (EU) 2016/943;*
- (20f) *‘trade secret holder’ should be understood as per Article 2, point (2) of Directive (EU) 2016/943.*

## CHAPTER II

### BUSINESS TO CONSUMER AND BUSINESS TO BUSINESS DATA SHARING

#### Article 3

Obligation to make data *accessed from connected products or generated during the provision of* related services accessible *to the user.*

1. *Connected products shall be designed and manufactured in such a manner that data they collect, generate or otherwise obtain, which are accessible to data holders or data recipients are, by default free of charge to the user, and easily, securely and, where relevant and technically feasible, directly accessible to it, in a comprehensive, structured, commonly used and machine-readable format. Data shall be available in the form in which they have been collected, obtained or generated by the connected product, along with only the minimal adaptations necessary to make them useable by a third party, including related metadata necessary to interpret and use the data. Information derived or inferred from this data by means of complex proprietary algorithms, in particular where it combines the output of multiple sensors in the connected product, shall not be considered within the scope of a data holder’s obligation to share data with users or data recipients unless agreed differently between the user and the data holder. In case that user is a data subject, connected products shall offer possibilities to directly exercise the data subjects’ rights, where technically feasible. Connected products shall be designed and manufactured in such a way that a data subject, irrespective of their legal title over the connected product, is offered the possibility to use the products covered by this*

*Regulation in the least privacy-invasive way possible. The requirements set out in the first subparagraph shall be met without inhibiting the functionality of the connected product and related services and in accordance with data security requirements as laid down by Union law.*

*1a. Data holders may reject a request for data if access to the data is prohibited by Union or national law.*

2. Before concluding a contract for the purchase *of a connected product, the manufacturer, or where relevant the vendor, shall provide* at least the following information **■** to the user, in a *simple manner* clear and comprehensible format:

(a) *the type of data, format, sampling frequency, the in-device storage capacity, and the estimated volume of accessible data which the connected product is capable of collecting, generating or otherwise obtaining;*

(b) *whether the connected product is capable of generating data* continuously and in real-time;

*(ba) whether data will be stored on-device or on a remote server, including the period during which it shall be stored;*

(c) *how the user may access free of charge, and, where relevant, retrieve and request the deletion of those data;*

*(ca) The technical means to access the data, such as Software Development Kits or application programming interfaces, and their terms of use and quality of service shall be sufficiently described to enable the development of such means of access;*

*(cb) Whether a data holder is the holder of trade secrets or other intellectual property rights contained in the data likely to be accessed from the connected product or generated during the provision of 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.*

**■**

*2a. Related services shall be provided in such a manner that data generated during their provision, which represent the digitalisation of user actions or events, are free of*

*charge to the user and, by default, easily, securely and, where relevant and technically feasible, directly accessible to the user in a structured, commonly used and machine-readable format, along with the relevant metadata necessary to interpret and use it.*

**2b.** *Before the user concludes an agreement with a provider of related services, which involves the provider's access to data from the connected product during the provision of such services, in line with Article 4(6) of this Regulation, the agreement shall address:*

- (a) the nature, volume, collection frequency and format of data accessed by the provider of related services from the connected product and, where relevant, the modalities for the user to access or retrieve such data, including the period during which it shall be stored;*
- (b) the nature and estimated volume of data generated during the provision of the related service, as well as modalities for the user to access or retrieve such data;*
- (c) granular, meaningful consent options for data processing, within the meaning of Article 4(11) of Regulation (EU) 2016/679;*
- (d) whether the service provider providing the related service, in its role as data holder, intends to use the data accessed from the connected product itself or allow one or more third parties to use the data for purposes agreed upon with the user;*
- (e) the trading name of the provider of the related service, its legal entity identifier, contact details and the geographical address at which it is established; and where applicable, other data processing parties;*
- (f) where relevant, the means of communication which enable the user to contact the provider quickly and communicate with its staff efficiently;*
- (g) how the user may request that the data are shared with a data recipient, and, where relevant, withdraw the consent for data sharing;*
- (h) Whether a data holder is the holder of trade secrets or other intellectual property rights contained in the data likely to be accessed from the connected*

*product or generated during the provision of related service, and, if not, the identity of the trade secret holder, such as its trading name, legal identity identifier and the geographical address at which it is established;*

- (i) how the user is able to manage permissions to allow the use of data, where possible with granular permission options, and including the option to withdraw permissions to a data holder for the use of the user's data, to the third parties nominated by a data holder, or to exclude geographical addresses;*
- (j) the duration of the agreement between the user and the provider of the related service, as well as the modalities to terminate such an agreement prematurely; as well as the minimal period for which the related service is guaranteed to receive security and functionality updates;*
- (k) the user's right to lodge a complaint alleging a violation of the provisions of this Chapter with the data coordinator referred to in Article 31.*

#### *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.*

#### *Article 4*

The *rights and obligations* of users *and data holders* to access, *use and make available data accessed from connected products or generated during the provision of* related services

- 1. Where data cannot be directly accessed by the user from the product, data holders shall make available to the user any data accessed by them from a connected product or generated during the provision of a related service without undue delay, easily, securely, in a comprehensive, structured, commonly used and machine-readable format, free of charge and, where relevant and technically feasible, continuously and*

in real-time, *including making any personal data derived from such data available to a data subject pursuant to Article 15 of Regulation (EU) 2016/679, accompanied with relevant metadata. Data shall be provided in the form in which they have been accessed from the connected product or generated by the related service, with only the minimal adaptations necessary to make them useable by a third party, including related metadata necessary to interpret and use the data. Information derived or inferred from this data by means of complex proprietary algorithms, in particular where it combines the output of multiple sensors in the connected product, shall not be considered within the scope of a data holder's obligation to share data with users or data recipients, unless agreed differently between the user and the data holder. Any data access request to a data holder should be done on the basis of a simple request through electronic means where technically feasible and, where appropriate, indicate the type, nature or scope of data requested.*

- 1a. Data holders may reject a request for data if access to the data is prohibited by Union or national law;*
- 1b. Users and data holders may agree contractually on restricting or prohibiting the access, use of or further sharing of data, which could undermine security of the product as laid down by law. Each party may refer the case to the data coordinator, to assess whether such restriction is justified, in particular in light of serious adverse effect on the health, safety or security of human beings. Sectoral competent authorities will be given the possibility to provide technical expertise in this context.*
- 1c. Where in compliance with all the provisions established within this Regulation, and the terms and conditions agreed in the contractual agreement between the parties, a data holder shall not be liable towards the user for any damage arising from data made available, provided that the data holder has processed the data lawfully in accordance with Union and national law and has complied with relevant cybersecurity requirements and where applicable, with the technical and organisational measures to preserve the confidentiality of the shared data. When complying with this Regulation, a user, who lawfully makes available data accessed from the connected product or received following a request under Article 4 paragraph 1 to a third party, or a data recipient, who is lawfully sharing data made available to it by a data holder, to a third party, shall not be liable for damage arising*

*from sharing such data, provided that the user or data recipient have processed the data in accordance with Union and national laws and have complied with relevant cybersecurity requirement and where applicable, with the technical and organisational measures to preserve the confidentiality of the shared data.*

- 1d. Data holders shall not make the exercise of the rights or choices of users unduly difficult, including by offering choices to the users in a non-neutral manner or by subverting or impair the autonomy, decision-making or free choices of the user via the structure, design, function or manner of operation of a user interface or a part thereof.*
- 2. Data holders shall not require the user to provide any information beyond what is necessary to verify the quality as a user pursuant to paragraph 1. Data holders 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. Where identification is legally requires, data holders shall enable the possibility for users to identify and authenticate through the European Digital Identity Wallets, pursuant to Regulation (EU) No 914/2014.*
- 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.*

4. The user shall not use **■** data obtained pursuant to a request referred to in paragraph 1 to develop a product that *directly* competes with the product, from which the data originate *and shall not use such data to derive insights about the economic situation, assets and production methods of the manufacturer.*
- 4a. *The user shall not deploy coercive means or abuse gaps in the technical infrastructure of a data holder designed to protect the data in order to obtain access to data.*
- 4b. *Users have the right to either directly share, through a data holder or through providers of data intermediation services as set in the Regulation (EU) 2022/868, non-personal data accessed from the connected product or obtained pursuant to a request referred in paragraph 1 to any data recipient for commercial or non-commercial purposes. The data sharing between a user and a data recipient shall be carried out by means of contractual agreements; the provisions of Chapter IV on fair, reasonable and non-discriminatory terms shall apply mutatis mutandis to the contractual agreements between users and data recipients.*
5. Where the user is not a data subject, any personal data generated by the use of a product or related service shall only be made available by the data holder to the user where *all conditions and rules provided by the applicable data protection law are complied with, in particular where* there is a valid legal basis under Article 6 of Regulation (EU) 2016/679 and, where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 *and Article 5(3) of Directive 2002/58/EC* are fulfilled.
6. *Data holders* shall only use any non-personal data *accessed from a connected product or* generated *during the provision of a* related service on the basis of a contractual agreement 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. Data holders and the users 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.*

- 6a.** *Data holders shall not make available non-personal data accessed by them from the connected product, referred to in point (a) of Article 3(2a), to third parties for commercial or non-commercial purposes other than the fulfilment of their contractual obligations to the user. Where relevant, data holders shall contractually bind third parties not to further share data received from them.*
- 6b.** *Where the contractual agreement between the user and a data holder allows for the use of non personal data accessed by them from the connected product, referred to in point (a) of Article 3(2a), the data holder shall be able to use that data for any of the following purposes:*
- (a) improving the functioning of the connected product or related services;*
  - (b) developing new products or services;*
  - (c) enriching or manipulating it or aggregating it with other data, including with the aim of making available the resulting data set to third parties, as long as such derived data set does not allow the identification of the specific data items transmitted to the data holder from the connected product, or allow a third party to derive those data items from the data set.*
- 6c.** *Users, in business-to- business relations, have the right to make data available to data recipients or data holders under any lawful contractual condition, including by agreeing to limit or restrict further sharing of such data, and to be compensated proportionately in exchange for foregoing their right to use or share such data lawfully. Data recipients or data holders shall not make the offer of a related service, or its commercial terms, including pricing, contingent on such agreement by the user, or coerce, deceive or manipulate in any other way the user to make available data under such contractual conditions.*

## Article 5

### Right *of the user* to share data with third parties

1. Upon request by a user, or by a party acting on behalf of a user, ***such as an authorised data intermediation service in the meaning of the Regulation (EU) 2022/868, data holders*** shall make available the data ***accessed by them from a connected product or generated during the provision of a*** related service to a third party, without undue delay, ***easily, securely, in a comprehensive, structured, commonly used and machine-readable format***, free of charge to the user, of the same quality as is available to the data holder and, where ***relevant and technically feasible*** continuously and in real-time. ***Where the user is a data subject, personal data shall be processed for purposes specified by the data subject, such as the following:***

- (a) the provision of after-market services, such as the maintenance and repair of the product, including after-market services in competition with a connected product or service provided by a data holder;***
- (b) enabling the user to update the software of the connected product or related services in particular to fix security and usability problems;***
- (c) specific data intermediation services recognised in the Union or specific services provided by data altruism organisations recognised in the Union under the conditions and requirements of Chapters III and IV of Regulation (EU) 2022/868.***

***Data shall be provided in the form in which they have accessed from the product, with only the minimal adaptations necessary to make them useable by a third party, including related metadata necessary to interpret and use the data. Information derived or inferred from this data by means of complex proprietary algorithms, in particular where it combines the output of multiple sensors in the connected product, shall not be considered within the scope of a data holder's obligation to share data with users or data recipients, unless agreed differently between the user and the data holder.***

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

*permitted by the agreement with the enterprise with whom the user agreed to use one of its products for testing of other new products, substances or processes.*

2. Any undertaking providing core platform services for which one or more of such services have been designated as a gatekeeper, pursuant to Article [...] of [Regulation XXX on contestable and fair markets in the digital sector (Digital Markets Act)<sup>17</sup>], shall not be an eligible **data recipient** under this Article and therefore shall not:
  - (a) solicit or commercially incentivise a user in any manner, including by providing monetary or any other compensation, to make data available to one of its services that the user has obtained pursuant to a request under Article 4(1);
  - (b) solicit or commercially incentivise a user to request the data holder to make data available to one of its services pursuant to paragraph 1 of this Article;
  - (c) receive data from a user that the user has obtained pursuant to a request under Article 4(1).
3. The user or **the data recipient** shall not be required to provide any information beyond what is necessary to verify the quality as user or as **data recipient** pursuant to paragraph 1. **Data holders** shall not keep any information on the **data recipient's** access to the data requested beyond what is necessary for the sound execution of the **data recipient's** access request and for the security and the maintenance of the data infrastructure.
4. The **data recipient** shall not deploy coercive means or abuse █ gaps in the technical infrastructure of **a** data holder designed to protect the data in order to obtain access to data.
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.

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<sup>17</sup> 17 OJ [...].

6. ***In the case of a data subject who is not the user requesting access, any personal data obtained, collected, or generated by their use of a product or related service, and data derived and inferred from that use, shall only be made available by the data holder to the third party where there is a valid legal basis under Article 6 of Regulation (EU) 2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 and Article 5(3) of Directive 2002/58/EC are fulfilled.***
7. Any failure on the part of the data holder and the third party to agree on arrangements for transmitting the data shall not hinder, prevent or interfere with the exercise of the rights of the data subject under Regulation (EU) 2016/679 and, in particular, with the right to data portability under Article 20 of that Regulation.
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, 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.***

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

## Article 6

Obligations of *data recipients* receiving data at the request of the user

1. A *data recipient* shall process ■ data made available to it pursuant to Article 5 only for the purposes and under the conditions agreed with the user, and *where all conditions and rules provided by the applicable data protection law are complied with, notably where there is a valid legal basis under Article 6(1) of Regulation (EU) 2016/679 and, where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 and Article 5(3) of Directive 2002/58/EC are fulfilled, and* subject to the rights of the data subject insofar as personal data are concerned. *The data recipient shall delete the data when they are no longer necessary for the agreed purpose, unless otherwise agreed with the user.*
2. The *data recipient* shall not:
  - (a) *make the exercise of the rights or choices of users unduly difficult including by offering choices to the users in a non-neutral manner, or* coerce, deceive or manipulate the user in any way, *or* by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface with the user *or a part thereof, including its structure, design, function or manner of operation;*
  - (b) use the data it receives for the profiling of natural persons within the meaning of Article 4, *point (4)*, of Regulation (EU) 2016/679, *other than in accordance with that Regulation;*
  - (c) make the data ■ it receives *available* to another third party *without making the user aware in a clear and easily accessible way and seeking its the explicit contractual permission* by the user;
  - (d) make the data available it receives to an undertaking providing core platform services for which one or more of such services have been designated as a gatekeeper pursuant to Article 3 of [*Regulation (EU) 2022/1925* (Digital Markets Act)];

- (e) use the data it receives to develop a product that competes with the product from which the accessed data originate or share the data with another third party for that purpose; *data recipients shall also 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 data holder that could undermine the commercial position of the data holder on the markets in which the data holder is active;*
- (ea) *use the data it receives in a manner that adversely impacts the security of the product or related service(s);*
- (eb) *where relevant, disregard the specific measures agreed with a data holder or with the trade secrets holder pursuant to article 5 (8) of this Regulation and break the confidentiality of trade secrets;*
- (ec) *use the data to disrupt sensitive critical infrastructure protection information within the meaning of Article 2(d) of Directive 2008/114/EC.*

■

- 2a. *The third party shall bear the responsibility to ensure the security and protection of the data it receives from a data holder.*

## Article 7

### Scope of business to consumer and business to business data sharing obligations

1. The obligations of this Chapter shall not apply to ■ 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 *and where the micro and small enterprise is not subcontracted to manufacture or design a product or provide a related service.*
2. Where this Regulation refers to products or related services, such reference shall also be understood to include virtual assistants, insofar as they are used to access or control a product or related service.

CHAPTER III  
OBLIGATIONS FOR DATA HOLDERS LEGALLY OBLIGED TO MAKE  
DATA AVAILABLE

Article 8

Conditions under which data holders make data available to data recipients ■

1. **Where a** data holder is obliged to make data available to a data recipient under Article 5 or under other Union law or national legislation implementing Union law, it shall **agree, with a data recipient the modalities for making the data available and shall** do so under fair, reasonable and non-discriminatory terms and in a transparent manner in accordance with the provisions of this Chapter and Chapter IV.
2. ■ A contractual term concerning the access to and use of the data or the liability and remedies for the breach or the termination of data related obligations shall not be binding if it fulfils the conditions of Article 13 or if it excludes the application of, derogates from or varies the effect of the user's rights under Chapter II.
3. A data holder shall not discriminate **with respect to the modalities of data sharing** 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 **holds reasonable doubt that** the conditions under which data has been made available to it to be discriminatory, **the data holder shall, without undue delay, provide** the data recipient **with the evidence demonstrating** that there has been no discrimination.
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5. Data holders and data recipients shall not be required to provide any information beyond what is necessary to verify compliance with the contractual terms agreed for making data available or their obligations under this Regulation or other applicable Union law or national legislation implementing Union law.
- 5a. **Data holders and data recipients shall take all necessary legal, organisational and technical measures to ensure the security and integrity of the data transfers.**



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.

## Article 9

### Compensation for making data available

1. Any compensation agreed between a data holder and a data recipient for making data available *in business- to- business relations* shall be *non - discriminatory and reasonable. A data holder, a data recipient or a third party shall not directly or indirectly charge consumers or data subjects a fee, compensation or costs for sharing data or accessing it.*
2. Where the data recipient is a *non- profit research organisation or a SME*, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, *provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC and do not qualify as an SME*, any compensation agreed shall not exceed the costs directly related to making the data available to the data recipient and which are attributable to the request. Article 8(3) shall apply accordingly. *In case of an SME, the data holder shall actively inform of the obligation to provide the data preferably on the basis of a cost-based model.*
  - 2a. *The Commission shall develop guidelines to determine criteria for categories of costs related to making data available, which shall be the basis for awarding compensation pursuant to paragraph 1.*
3. This Article shall not preclude other Union law or national legislation implementing Union law from excluding compensation for making data available or providing for lower compensation.
4. The data holder shall provide the data recipient with information setting out the basis for the calculation of the compensation in sufficient detail so that the data recipient can verify that the requirements of paragraph 1 and, where applicable, paragraph 2 are met.

## Article 10

### Dispute settlement

1. *Users*, data holders and data recipients shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes in relation to ***fulfilment of the data holder's obligation to make data available to the data recipient, upon the request of the user***, the determination of fair, reasonable and non-discriminatory terms for and the transparent manner of making data available in accordance with Articles 8, **9 and 13**.
2. 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:
  - (a) it is impartial and independent, and it will issue its decisions in accordance with clear and fair rules of procedure;
  - (b) it has the necessary expertise in relation to the determination of fair, reasonable and non-discriminatory terms for and the transparent manner of making data available, allowing the body to effectively determine those terms;
  - (c) it is easily accessible through electronic communication technology;
  - (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***.

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.

3. Member States shall notify to the Commission the dispute settlement bodies certified in accordance with paragraph 2. The Commission shall publish a list of those bodies on a dedicated website and keep it updated.
4. Dispute settlement bodies shall make the fees, or the mechanisms used to determine the fees, known to the parties concerned before those parties request a decision.

5. Dispute settlement bodies shall refuse to deal with a request to resolve a dispute that has already been brought before another dispute settlement body or before a court or a tribunal of a Member State.
6. Dispute settlement bodies shall grant the parties the possibility, within a reasonable period of time, to express their point of view on matters those parties have brought before those bodies. In that context, dispute settlement bodies shall provide those parties with the submissions of the other party and any statements made by experts. Those bodies shall grant the parties the possibility to comment on those submissions and statements.
7. Dispute settlement bodies shall issue their decision on matters referred to them no later than 90 days after the request for a decision has been made. Those decisions shall be in writing or on a durable medium and shall be supported by a statement of reasons supporting the decision.
- 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) *an aggregation of 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.*
- 7b. ***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.***
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.
9. This Article does not affect the right of the parties to seek an effective remedy before a court or tribunal of a Member State.

## Article 11

Technical protection measures and provisions on unauthorised use or disclosure of data

1. The data holder may apply appropriate technical protection measures, including smart contracts *and encryption*, to prevent unauthorised *disclosure of and* access to the data, *including metadata*, 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 *neither discriminate between data recipients nor* hinder, the user's right to effectively *obtain a copy, retrieve, use or access data or* provide data to third parties pursuant to Article 5 or any right of a third party under Union law or national legislation implementing Union law as referred to in Article 8(1). *Where a user or data holder provides tangible relevant evidence for unlawful use or unauthorised disclosure to a third party by the data recipient, the data recipient shall, upon request of the user or data holder, provide information on how the data has been used, or with whom it has been shared.*
  
2. *Where* a data recipient that has, for the purposes of obtaining data, provided **■** 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, *including the development of a competing product within the meaning of Article 6 (2) (e)* or has *unlawfully* disclosed **■** data to another party, the data recipient shall be liable for the damages to the party suffering from the misuse or disclosure of such data and shall comply without undue delay *with the requests of* the data holder or the *trade secret holder when they are not the same legal person to:*
  - (a) *erase* the data made available **■** and any copies thereof;
  - (b) end the production, offering, placing on the market or use of goods, derivative data or services produced on the basis of knowledge obtained through such data, or the importation, export or storage of infringing goods for those purposes, and destroy any infringing goods.

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

*(bb) notify the data holder about the disclosure of such*

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



## Article 12

Scope of obligations for data holders legally obliged to make data available

1. This Chapter shall apply where a data holder is obliged under Article 5, or under Union law or national legislation implementing Union law, to make data available to a data recipient.
2. Any contractual term in a data sharing agreement which, to the detriment of one party, or, where applicable, to the detriment of the user, excludes the application of this Chapter, derogates from it, or varies its effect, shall *be void*.
- 2a. *Any contractual term in a data sharing agreement between data holders and data recipients which, to the detriment of the data subjects, undermines the application of their rights to privacy and data protection, derogates from it, or varies its effect, shall be void.*
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].

## CHAPTER IV

### UNFAIR TERMS RELATED TO DATA ACCESS AND USE BETWEEN ENTERPRISES

#### Article 13

Unfair contractual terms unilaterally imposed on a  enterprise

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 ■ shall not be binding on the latter enterprise, *the data recipient or user respectively*, if it is unfair.

- 1a. A contractual term is not to be considered unfair where it arises from applicable Union law.**
2. A contractual term is unfair if it is of such a nature that *objectively impairs the ability of the party upon whom the term has been unilaterally imposed to protect its legitimate commercial interest in the data in question* or its use grossly deviates from good commercial practice in data access and use, contrary to good faith and fair dealing. *or creates a significant imbalance between the rights and the obligations of the parties in the contract.*
3. A contractual term is unfair for the purposes of this Article if its object or effect is to:
- (a) exclude or limit the liability of the party that unilaterally imposed the term for intentional acts or gross negligence;
  - (b) exclude the remedies available to the party upon whom the term has been unilaterally imposed in *the* case of non-performance of contractual obligations or the liability of the party that unilaterally imposed the term in *the* case of *a* breach of those obligations;
  - (c) give the party that unilaterally imposed the term the exclusive right to determine whether the data supplied are in conformity with the contract or to interpret any term of the contract.
4. A contractual term is presumed unfair for the purposes of this Article if its object or effect is to:
- (a) inappropriately limit the remedies in *the* case of non-performance of contractual obligations or the liability in *the* case of *a* breach of those obligations;
  - (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 contains commercially sensitive data or are protected by trade secrets or by intellectual property rights, without the prior consent of the relevant parties*;

- (c) prevent the party upon whom the term has been unilaterally imposed from using the data contributed or generated by that party during the period of the contract, or to limit the use of such data to the extent that that party is not entitled to use, capture, access or control such data or exploit the value of such data in a proportionate manner;
- (ca) impose the unilateral choice of the competent jurisdiction or the payment of the cost related to the procedure;**
- (cb) prevent the party upon whom the term has been unilaterally imposed for terminating the agreement within a reasonable time period;**
- (d) prevent the party upon whom the term has been unilaterally imposed from obtaining a copy of the data contributed or generated by that party during the period of the contract or within a reasonable period after the termination thereof;
- (e) **enable the party that unilaterally imposed the term to substantially vary the upfront price payable under the contract, or any other substantial condition on the data to be shared, without the right of the other party to terminate the contract, or** enable the party that unilaterally imposed the term to terminate the contract with an unreasonably short notice, taking into consideration the reasonable possibilities of the other contracting party to switch to an alternative and comparable service and the financial detriment caused by such termination, except where there are serious grounds for doing so.

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

6. Where the unfair contractual term is severable from the remaining terms of the contract, those remaining terms shall remain binding.

**6a. The party that supplied the contested term may not argue that the term is an unfair term.**



7. This Article does not apply to contractual terms defining the main subject matter of the contract *and shall not affect the parties' ability to negotiate* the price to be paid.
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.
- 8a. *This Article shall apply to all new contracts entered into after ... [date of entry into force of this Regulation]. Businesses shall be given three-years following that date to review existing contractual obligations that are subject to this Regulation.*
- 8b. *Given the rapidity in which innovations occur in the markets, the list of unfair contractual terms within Article 13 shall be reviewed regularly by the Commission and be updated to new business practices if necessary.*

## CHAPTER V

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

#### Article 14

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

1. Upon *a specified duly justified* request *limited in time and scope*, a data holder *that is a legal person* shall make *non-personal data which are available at the time of the request, including metadata* available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested.
2. This Chapter shall not apply to small and micro enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC.
- 2a. *This Chapter shall not preclude voluntary arrangements between businesses and public sector bodies and union institutions, agencies or bodies for the sharing of data for purpose of delivering public services, including for exceptional needs if stipulated in their contracts.*

## Article 15

### Exceptional need to use data

An exceptional need to use *non-personal* data within the meaning of this Chapter shall be *limited in time and scope and shall be* deemed to exist in the following circumstances:

- (a) where the data requested is necessary to respond to public emergency;
- (b) *in non-emergency situations*, where the *public sector body or Union institution, agency or body is acting on the basis of Union or national law and has identified specific data, which is unavailable to it and which is* necessary to fulfil, a specific task in the public interest that has been explicitly provided by law such as the prevention or recovery from a public emergency and which the public sector body or Union institution, agency or body has been unable to obtain by any of the following means: voluntary agreement; by purchasing the data on the market or by relying on existing obligations to make data available.

## Article 15a

### *Single point to handle public sector bodies' request*

1. *The data coordinator designated pursuant to Article 31 shall be responsible for coordinating the requests pursuant Article 14(1) from the sector bodies of the Member State concerned, in order to ensure that the requests meet the requirement laid down in this Chapter and shall transmit them to the data holder. It shall avoid multiple requests by different public sector bodies within their territory to the same data holder.*
2. *Member States shall regularly inform the Commission about requests pursuant to Article 14(1).*
3. *Where public sector bodies or Union institutions, agencies or bodies requires data from the same data holder in more than one Member State on the basis of an exceptional need pursuant Article 14(1), the competent authorities of the Member States shall cooperate in accordance with Article 22 to coordinate their requests where it is necessary to minimise the administrative burden on the data holders.*

4. ***The Commission shall develop a model template for requests pursuant to Article 17.***

Article 16

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

1. This Chapter shall not affect obligations laid down in Union or national law for the purposes of reporting, complying with information requests or demonstrating or verifying compliance with legal obligations.
  2. ■ This Chapter shall not ***apply to*** public sector bodies and Union institutions, agencies and bodies ***that*** carry out activities for the prevention, investigation, detection or prosecution of criminal or administrative offences or the execution of criminal penalties, or ***to*** customs or taxation administration. This Chapter does not affect the applicable Union and national law on the prevention, investigation, detection or prosecution of criminal or administrative offences or the execution of criminal or administrative penalties, or for customs or taxation administration.
- 2a. ***Enterprises that fall within the scope of this Chapter shall inform their users of the possibility that data may be shared in the case of exceptional circumstances.***

Article 17

Requests for data to be made available

1. ***In a request for*** data pursuant to Article 14(1), a public sector body or a Union institution, agency or body shall:
  - (a) ***request within their remit and*** specify what ***datasets*** are required;
  - (b) demonstrate the exceptional need for which the data are requested ***and compliance with the conditions mentioned in Article 15;***
  - (c) explain the purpose of the request, the intended use of the data requested, and the duration of that use;

(ca) ***specify, if possible, when the data is expected to be deleted by all parties that have access to it;***

(cb) ***justify the choice of data holder to which the request is addressed;***

- (cc) specify any other public sector bodies, Union institutions, agencies or bodies and the third parties with which the data requested is expected to be shared with;*
- (cd) disclose the identity of the third party referred to in paragraph 4 of this Article, and in Article 21 of this Regulation;*
- (ce) apply all relevant ICT security measures concerning the transfer and storage of data;*
- (d) state the legal basis for requesting the data;
- (da) specify the geographical limits that apply to the request for data;*
- (e) specify the deadline by which the data are to be made available **and** within which the data holder may request the public sector body, Union institution, agency or body to modify or withdraw the request;
- (ea) submit a declaration on the lawful and secure handling of the data requested, including the confidentiality of trade secrets;*
- (eb) ensure that making the data available does not put the data holder in a situation that violates Union or national law or confer liability on the data holder for any infringement or damage resulting from the data access that it has requested.*

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

- (a) ***be made in writing and*** be expressed in clear, concise and plain language understandable to the data holder;
  - (aa) be submitted through the competent authority;*
  - (ab) be specific with regards to the type of data is requested and correspond to data which the data holder has available at the time of the request;*
- (b) be ***justified and*** proportionate to the exceptional need, in terms of the granularity and volume of the data requested and frequency of access of the data requested;
- (c) respect the legitimate aims of the data holder, taking into account the protection of trade secrets and the cost and effort required to make the data available. ***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;*

- (d) concern *only* non-personal data;
  - (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 non-compliance with the request;
  - (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.*
3. A public sector body or a Union institution, agency or body shall not make data obtained pursuant to this Chapter available for reuse within the meaning of Directive (EU) 2019/1024 *and Regulation (EU) 2022/868*. Directive (EU) 2019/1024 *and Regulation (EU) 2022/868* shall not apply to the data held by public sector bodies obtained pursuant to this Chapter.
4. Paragraph 3 does not preclude a public sector body or a Union institution, agency or body to exchange data obtained pursuant to this Chapter with another public sector body, Union institution, agency or body, *for the purpose* of completing the tasks in Article 15 *which was included the request in accordance with paragraph 1(cc)*, 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. *It shall bind the third party contractually not to use the data for any other purposes and not to share it with any other third parties, Where a public sector body or a Union institution, agency or body transmits or makes data available under this paragraph, it shall notify the data holder from whom the data was received without undue delay. Within five working days of that notification, the data holder shall have the right to submit a reasoned objection to such transmission or making available of data. In the case of a rejection of the reasoned objection by the public sector body or a Union institution, agency or body, the data holder may bring the matter to the*

*data coordinator referred to in Article 31. The receiving public sector bodies, Union institutions, agencies or bodies and third parties shall be bound by the obligations laid down in Article 19* ■ .

*Data obtained pursuant this chapter shall be used only for the purpose specified in the request. Public sector bodies, Union institutions, agencies or bodies shall bind contractually third parties with whom they agreed to share data pursuant paragraph 4 not to use the data for any other purpose and not to share it with other parties.*

## Article 18

### Compliance with requests for data

1. A data holder receiving a request for access to data under this Chapter shall make the data available to the requesting public sector body or a Union institution, agency or body without undue delay, *taking into account provision of time and necessary technical, organisational and legal measures.*
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 *five* working days following the receipt of a request for the data necessary to respond to a public emergency and within *30* working days in other cases of exceptional need, on either of the following grounds:
  - (a) the data is *not available to the data holder at the time of the request*; *(aa) provided security measures concerning transfer, storing and maintaining confidentiality are insufficient;*
  - (ab) a similar request for the same purpose has been previously submitted by another public sector body or Union institution, agency or body and the data holder has not been notified of the destruction of the data pursuant to Article 19(1) point (c);*
  - (b) the request does not meet the conditions laid down in Article 17(1) and (2).

■

4. If the data holder decides to decline the request or to seek its modification in accordance with paragraph 3, it shall indicate the identity of the public sector body or Union institution, agency or body that previously submitted a request for the same purpose.
5. Where compliance with the request to make data available to a public sector body or a Union institution, agency or body requires the disclosure of personal data, the data holder shall **█** pseudonymise the *personal data to be made available*.
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 *data coordinator* referred to in Article 31, ***without prejudice to the right to submit a dispute to a civil or administrative court, in accordance with Union or national law.***

#### Article 19

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

1. A public sector body or a Union institution, agency or body having received data pursuant to a request made under Article 14 ***and statistical or research organisations receiving data pursuant to a request made under Article 21(1)*** shall:  
**█**
  - (b) implement, insofar as the processing of personal data is necessary, technical and organisational measures that safeguard the rights and freedoms of data subjects ***and guarantee a high level of security and prevent the unauthorised disclosure of data;***
    - (ba) ***implement the necessary technical and organisational measures to manage cyber risk that could affect the confidentiality, integrity or availability of the requested data;***
    - (bb) ***notify the data holder from whom has received the data of any cybersecurity incident affecting the confidentiality, integrity, or availability of the received data as soon as possible but not later than 72 hours after having determined***



*that the incident has occurred without prejudice to the reporting obligations under Regulation(EU) XXX/XXXX (EUIBAL) and Directive (EU) 2022/2555. Those entities shall be liable by damages due to a cybersecurity breach if they have not had the measures in place pursuant to paragraph 1, point (ba);*

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

**1a.** *A public sector body, Union institution, agency, body, or a third party receiving data under this Chapter shall not:*

- (a) *use the data to develop a product or a service that competes with the product or service or enhance an existing product or service from which the accessed data originates;*
- (b) *derive insights about the economic situation, assets and production or operation methods of the data holder, or share the data with another third party for that purpose; or*
- (c) *share the data with another third party for any of those purposes.*

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

**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.*

- 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 shall immediately notify the data coordinator of the Member State in which the data holder is established, pursuant to Article 31, 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.*
- 2c.** *A public sector body or a Union institution, agency or body shall be responsible for the security of the data that they receive.*
- 2d.** *A public sector body or a Union institution, agency or body shall notify the data holder in the event of a security breach as soon as possible, but within 48 hours at the latest.*

## Article 20

### Compensation in cases of exceptional need

- 1.** *Unless specified otherwise in Union or national law, data made available to respond to a public emergency pursuant to Article 15, point (a), shall be provided free of charge. The public sector body or the Union institution, agency or body that has received data shall provide public recognition to the data holder if requested by the data holder.*

2. **█** The data holder *shall be entitled to fair remuneration* for making data available in compliance with a request made pursuant to Article 15, *point (b)*, such compensation shall *at least cover* the technical and organisational costs incurred to comply with the request including, where *applicable*, 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.
- 2a. *Where the public-sector body or the Union institution, agency or body wishes to challenge the level of remuneration requested by the data holder, the matter shall be brought to the attention of the data coordinator referred to in Article 31 of the Member State where the data holder is established.*

#### Article 21

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

1. A public sector body or a Union institution, agency or body shall be entitled to share data received under this Chapter with individuals or organisations in view of carrying out scientific research or analytics *necessary to fulfil* the purpose for which the data was requested, or to national statistical institutes, *the members of the European System of Central Banks* and Eurostat for the compilation of official statistics.
2. Individuals or organisations receiving the data pursuant to paragraph 1 shall act *exclusively* 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 *significant* influence, which could result in preferential access to the results of the research.
3. Individuals or organisations receiving the data pursuant to paragraph 1 shall comply with the provisions of Article 17(3) and Article 19.
4. Where a public sector body or a Union institution, agency or body *intends to transmit or make* data available under paragraph 1, it shall notify the data holder from whom the data was received. *That notification shall include the identity and the contact details of individuals or organisations receiving the data, the purpose of the transmission or making available of the data and the period for which the data will*

*be used by the receiving entity. Within five working days of the notification referred to in the first subparagraph of this paragraph, the data holder shall have the right to submit a reasoned objection to such transmission or making available of data. In the case of a rejection of the objection by the public sector body, Union institution, agency or body, the data holder may bring the reasoned objection to the data coordinator referred to in Article 31.*

## Article 22

### Mutual assistance and cross-border cooperation

1. Public sector bodies and Union institutions, agencies and bodies shall cooperate and assist one another, to implement this Chapter in a consistent manner.
2. Any data exchanged in the context of assistance requested and provided pursuant to paragraph 1 shall not be used in a manner incompatible with the purpose for which they were requested.
3. Where a public sector body intends to request data from a data holder established in another Member State, it shall first notify the *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. *The request shall be evaluated by the competent authority of the Member State where the data holder is established.*
4. After having been notified in accordance with paragraph 3, the *data coordinator* shall advise the requesting public sector body of the need, if any, to cooperate with public sector bodies of the Member State in which the data holder is established, with the aim of reducing the administrative burden on the data holder in complying with the request. The requesting public sector body shall take the advice of the *data coordinator* into account.

## CHAPTER VI

### SWITCHING BETWEEN DATA PROCESSING SERVICES

## *Article 22a*

### *Definitions*

*For the purposes of this Chapter, the following definitions apply:*

- 1. 'data processing service' means a digital service enabling ubiquitous, and on-demand network access to a shared pool of configurable, scalable and elastic computing resources of a centralised, distributed or highly distributed nature, provided to a customer, that can be rapidly provisioned and released with minimal management effort or service provider interaction;*
- 2. 'on-premise' means an ICT infrastructure and computing resources leased or owned by the customer, located in its own data center and operated by the customer or by a third-party;*
- 3. 'equivalent service' means a set of data processing services that share the same primary objective and data processing service model;*
- 4. 'data processing service data portability' means the ability of the cloud service to move and adapt its exportable data between the customer's data processing services, including in different deployment models;*
- 5. 'switching' means the process where a data processing service customer changes from using one data processing service to using a second equivalent or other service offered by a different provider of data processing services, including through extracting, transforming and uploading the data, involving the source provider of data processing services, the customer and the destination provider of data processing services;*
- 6. 'exportable data' means the input and output data, including metadata, directly or indirectly generated, or cogenerated, by the customer's use of the data processing service, excluding any data processing service provider's or third party's assets or data protected by intellectual property rights or constituting a trade secret or confidential information;*
- 7. 'functional equivalence' means the possibility to re-establish on the basis of the customer's data a minimum level of functionality in the environment of a new data processing service after the switching process, where the destination service delivers*

*comparable outcome in response to the same input for shared functionality supplied to the customer under the contractual agreement ;*

8. *'egress fees' refers to data transfer fees charged to the customers of a provider of data processing services for extracting their data through the network from the ICT infrastructure of a provider of data processing services.*

## Article 23

Removing obstacles to effective switching between providers of data processing services

1. Providers of a data processing service shall, ***within their capacity***, take the measures provided for in Articles 24, ***24a, 24b***, 25 and 26 to ***enable*** customers ***to*** switch to another data processing service, covering the ***equivalent*** service **■** , which is provided by a different ***provider of data processing services or, where relevant, to use several providers of data processing services at the same time***. In particular, providers of a data processing service ***shall not impose and*** shall remove commercial, technical, contractual and organisational obstacles, which inhibit customers from:
- (a) terminating, after a maximum notice period of ***60*** calendar days, the contractual agreement of the service, ***unless an alternative notice period is mutually and explicitly agreed between the customer and the provider where both parties are able equally to influence the content of the contractual agreement***;
  - (b) concluding new contractual agreements with a different provider of data processing services covering the ***equivalent*** service **■** ;
  - (c) porting ***the customer's exportable*** data, applications and other digital assets to another provider of data processing services ***or to an on-premise ICT infrastructure, including after having benefited from a free-tier offering***;
  - (d) ***achieving*** functional equivalence ***in the use*** of the ***new*** service in the IT-environment of the different provider or providers of data processing services covering the ***equivalent*** service **■** , in accordance with Article 26.
2. Paragraph 1 shall only apply to obstacles that are related to the services, contractual agreements or commercial practices provided by the ***source*** provider ***of data processing services***.

## Article 24

### Contractual terms concerning switching between providers of data processing services

1. The rights of the customer and the obligations of the provider of a data processing service in relation to switching between providers of such services ***or, where applicable, to an on-premise ICT infrastructure*** shall be clearly set out in a written contract ***which is made available to the customer in a user-friendly manner prior to signing the contract***. Without prejudice to Directive (EU) 2019/770, ***the provider of a data processing service*** shall ***ensure that that contract includes*** at least the following:
  - (a) clauses allowing the customer, upon request, to switch to a data processing service offered by another provider of data processing ***services*** or to port all ***exportable*** data ■ applications and digital assets ***to an on-premise ICT infrastructure, without undue delay and in any event no longer than*** mandatory maximum transition period of ***90*** calendar days, during which the ***provider of data processing services*** shall:
    - (i) ***reasonably assist through and facilitate*** the switching process;
    - (ii) ***act with due care to maintain business continuity and a high level of security of the service and, taking into account the advancement in the switching process, ensure, to the greatest extent possible, continuity in the provision of the relevant functions or services within the capacity of the source provider of data processing services and in accordance with contractual obligations.***
      - (iia) ***provide clear information concerning known risks to continuity in the provision of the respective functions or services on the part of the provider of source data processing services.***
  - (aa) ***a list of additional services that customers can obtain facilitating the switching process, such as the test of the switching process;***
  - (ab) ***an obligation on the provider of data processing services to support the development of the customer's exit strategy relevant to the contracted services, including through providing all relevant information;***



- (b) *a detailed* specification of all data and application categories *that can be ported* during the switching process, including, at *a* minimum, all *exportable data*;
  - (c) a minimum period for data retrieval of at least 30 calendar days, starting after the termination of the transition period that was agreed between the customer and the *provider of data processing services*, in accordance with paragraph 1, point (a) and paragraph 2;
- (ca) *an obligation on the provider of data processing services to delete all of the former customer's exportable data after the expiration of the period set out in paragraph 1, point (c), of this Article;*
2. Where the mandatory transition period as defined in paragraph 1, points (a) and (c) of this Article is technically unfeasible, the provider of data processing services shall notify the customer within *14* working days after the switching request has been made, *and shall duly motivate* the technical unfeasibility *and indicate* an alternative transition period, which may not exceed *9* months. In accordance with paragraph 1 of this Article, **■** service continuity shall be ensured throughout the alternative transition period against reduced charges, referred to in Article 25(2). *The customer shall retain the right to extend that period, if needed, prior to or during the switching process.*

#### *Article 24a*

##### *Information obligation of providers of destination data processing services*

*The provider of destination data processing services shall provide the customer with information on available procedures for switching and porting to the data processing service when it is a porting destination, including information on available porting methods and formats as well as restrictions and technical limitations which are known to the provider of destination data processing services.*

#### *Article 24b*

##### *Good faith obligation*

*All parties involved, including providers of destination data processing services, shall collaborate in good faith to make the switching process effective, enable the timely transfer of necessary data and maintain the continuity of the service.*

## Article 25

### Gradual withdrawal of switching charges

1. From [*the date of entry into force of this Regulation*] onwards, providers of data processing services shall not impose any charges on *customers who are consumers* for the switching process.
2. From [date X, the date of entry into force of *this Regulation*] until [date X+3yrs], providers of data processing services may impose reduced charges on *customers in the context of business-to-business relations* for the switching process, *with particular reference to egress fees*.
- 2a. *From [3 years after the date of entry into force of this Regulation] onwards, providers of data processing services shall not impose any charges for the switching process.*
3. The charges referred to in paragraph 2 shall not exceed the costs incurred by the provider of data processing services that are directly linked to the switching process concerned *and shall be linked to the mandatory operations that providers of data processing services must perform as part of the switching process*.
- 3a. *Standard subscription or service fees and charges for professional transition services work undertaken by the provider of data processing services at the customer's request for support in the switching process shall not be considered switching charges for the purposes of this Article.*
- 3b. *Before entering into a contractual agreement with a customer, the provider of data processing services shall provide the customer with clear information describing the charges imposed on the customer for the switching process in accordance with paragraph 2, as well as the fees and charges referred to in paragraph 3a, and, where relevant, shall provide information on services that involve highly complex or costly switching or for which it is impossible to switch without significant interference in the data, application or service architecture. Where applicable, the provider of data processing services shall make this information publicly available to customers via a dedicated section of their website or in any other easily accessible way.*

4. The Commission is empowered to adopt delegated acts in accordance with Article 38 to supplement this Regulation in order to introduce a monitoring mechanism for the Commission to monitor switching charges imposed by *providers of data processing services* on the market to ensure that the withdrawal *and reduction* of switching charges as described in *paragraphs 1 and 2* of this Article will be attained in accordance with the deadline provided in *those paragraphs*.

## Article 26

### Technical aspects of switching

1. Providers of data processing services that concern scalable and elastic computing resources limited to infrastructural elements such as servers, networks and the virtual resources necessary for operating the infrastructure, but that do not provide access to the operating services, software and applications that are stored, otherwise processed, or deployed on those infrastructural elements, shall *take reasonable measures within their power to facilitate* that the customer, after switching to a service covering the same service type offered by a different provider of data processing services, *achieves functional equivalence in the use of the new service, provided that the functional equivalence is established by the destination provider of data processing services. The source provider of data processing services shall facilitate the process through providing capabilities, adequate information, documentation, technical support and, where appropriate, the necessary tools.*
2. *Providers of data processing services* ■ , *including providers of destination data processing services*, shall make open interfaces publicly available and free of charge *in order to facilitate switching between those services and data portability and interoperability. In accordance with paragraph 1 of this Article, those services shall also make it possible that a specific service, where there are no major obstacles, can be unbundled from the contract and made available for switching in an interoperable manner.*
3. ■ Providers of data processing services shall ensure compatibility with open interoperability *and portability* specifications or European standards for interoperability that are identified in accordance with Article 29(5) ■ .

- 3a.** *Providers of data processing services for which a new open interoperability and portability specification or European standard was published in the repository referred to in Article 29(5) shall have the right to a one-year transition for compliance with the obligation referred to in paragraph 3 of this Article.*
4. Where the open interoperability *and portability* specifications or European standards referred to in paragraph 3 *of this Article* do not exist for the *equivalent* service **█** concerned, the provider of data processing services shall, at the request of the customer, *where technically feasible*, export all *exportable data in a structured, commonly used and machine-readable format as indicated to the customer in accordance with the exit strategy referred to in Article 24(1), point (ab), unless another format is accepted by the customer.*
- 4a.** *Providers of data processing services shall not be required to develop new technologies or services, disclose or transfer proprietary or confidential data or technology to a customer or to another provider of data processing services or compromise the customer's or provider's security and integrity of service;*

#### *Article 26a*

##### *Exemptions for certain data processing services*

- 1.** *The obligations set out in Article 23(1), point (d), and Articles 25 and 26 shall not apply to data processing services which have been custom-built to.*
- 2.** *The obligations set out in this Chapter shall not apply to data processing services provisioned free of charge, that operate on a trial basis or only supply a testing and evaluation service for business product offerings.*

#### *Article 26b*

##### *Dispute settlement*

- 1.** *Customers shall have access to dispute settlement bodies, certified in accordance with Article 10(2), to settle disputes in relation to breaches of the rights of customers and the obligations of providers of data processing services in relation to switching between providers of such services. The customer shall have the right to allow a third party to pursue its legal claims on its behalf.*

2. *Article 10(3) to (9) shall apply to the settlement of disputes between customers and providers of data processing service in relation to switching between providers of such services.*

## CHAPTER VII

### INTERNATIONAL CONTEXTS NON-PERSONAL DATA SAFEGUARDS

#### Article 27

##### International access and transfer

1. Providers of data processing services shall take all **■** technical, legal and organisational measures, including contractual arrangements, in order to prevent international transfer *and third-country* governmental access to *such* non-personal data held in the Union where such transfer or access would *be in contravention of* Union law or the national law of the relevant Member State, without prejudice to paragraph 2 or 3.
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 *falling* 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.
3. In the absence of such an international agreement, where a provider of data processing services is the addressee of a decision of a court or a tribunal or a decision of an administrative authority of a third country to transfer from or give access to non-personal data *falling* within the scope of this Regulation held in the Union and compliance with such a decision would risk putting the addressee in conflict with Union law or with the national law of the relevant Member State, transfer to or access to such data by that third-country authority shall take place only *following a review by the relevant competent bodies or authorities, pursuant to this Regulation to assess*

***if, in addition to complying with the provisions of any relevant Union or national law, the following conditions have been met:***

- (a) where the third-country system requires the reasons and proportionality of the decision or judgement to be set out, and it requires such decision or judgement, as the case may be, to be specific in character, for instance by establishing a sufficient link to certain suspected persons, or infringements;
- (b) the reasoned objection of the addressee is subject to a review by a competent court or tribunal in the third-country; and
- (c) the competent court or tribunal issuing the decision or judgement or reviewing the decision of an administrative authority is empowered under the law of that country to take duly into account the relevant legal interests of the provider of the data protected by Union law or national law of the relevant Member State.

The addressee of the decision may ask the opinion of the ***Commission, the data coordinator*** pursuant to this Regulation ***or relevant competent bodies or authorities***, 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 to content protected by intellectual property rights***, or 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.***

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

- 4. If the conditions in paragraph 2 or 3 are met, the provider of data processing services shall provide the minimum amount of data permissible in response to a request, based on a reasonable interpretation thereof ***by the relevant competent body or authority.***
- 4a. ***Where the provider of data processing services has reason to believe that the transfer of or access to non-personal data may lead to the risk of re-identification of non-personal, or anonymised data, the provider shall request the relevant bodies or***

*authorities competent pursuant to applicable data protection legislation for authorisation before transferring or giving access to data.*

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

## CHAPTER VIII

### INTEROPERABILITY

#### Article 28

Essential requirements regarding interoperability *of data spaces*

1. **Participants** of data spaces *that offer data or data services to other participants*, shall comply with, the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services:
  - (a) the dataset content, use restrictions, licences, data collection methodology, data quality and uncertainty shall be sufficiently described *in a machine-readable format* to allow the recipient to find, access and use the data;
  - (b) the data structures, data formats, vocabularies, classification schemes, taxonomies and code lists shall be described in a publicly available and consistent manner;
  - (c) the technical means to access the data, such as application programming interfaces, and their terms of use and quality of service shall be sufficiently described to enable automatic access and transmission of data between parties, including continuously or in real-time ■ in a machine-readable format *where that is technically feasible and does not hamper the good functioning of the product*;
  - (d) the means to enable the interoperability of ■ contracts *for data sharing* within their services and activities shall be provided.



These requirements can have a generic nature or concern specific sectors, while taking fully into account the interrelation with requirements coming from other Union or national sectoral legislation.

2. The Commission is empowered to adopt delegated acts, *after consulting the European Data Innovation Board pursuant to Article 29 and Article 30, points (f) and (h), of Regulation (EU) 2022/868 and in accordance with Article 38 of this Regulation*, to supplement this Regulation by further specifying the essential requirements referred to in paragraph 1 *of this Article*.
3. *The participants of data spaces that offer data or data services to other participants* of data spaces that meet the harmonised standards or parts thereof published by reference in the Official Journal of the European Union shall be presumed to be in conformity with the essential requirements referred to in paragraph 1 **■**, to the extent those standards cover those requirements.
  - 3a. *Participants within a particular data space shall agree on the rules by which the accountabilities regarding those requirements are defined between the participants.*
4. The Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft harmonised standards that satisfy the essential requirements under paragraph 1 of this Article, *developed in an open, transparent, technology-neutral, industry-led and inclusive manner, in accordance with Chapter II of Regulation (EU) No 1025/2012, taking into account, where relevant, existing international standards, good practices, norms, technical specifications and relevant open source norms as well as the needs of SMEs.*
5. The Commission *may*, by way of implementing acts, adopt common specifications, where harmonised standards referred to in paragraph 4 of this Article do not exist or *if* it considers that the relevant harmonised standards are insufficient to ensure conformity with the essential requirements in paragraph 1 of this Article, where necessary. *Prior to adopting those implementing acts the Commission shall seek advice from and take into account relevant positions adopted by the European Data Innovation Board, as referred to in Article 30, point (f), of Regulation (EU) 2022/868*

*and* be adopted in accordance with the examination procedure referred to in Article 39(2).

6. The Commission may adopt guidelines *proposed by the European Data Innovation Board in accordance with Article 30, point (h), of Regulation (EU) 868/2022* laying down interoperability specifications for the functioning of common European data spaces, such as architectural models and technical standards implementing legal rules and arrangements between parties that foster data sharing, such as regarding rights to access and technical translation of consent or permission.

## Article 29

### Interoperability *and portability* for data processing services

1. Open interoperability *and portability* specifications and European standards for the interoperability *and portability* of data processing services shall:
  - (a) *where technically feasible*, be performance oriented towards achieving interoperability *and portability* between different data processing services that cover *equivalent services*;
  - (b) enhance portability of digital assets between different data processing services that cover *equivalent services*;
  - (c) *facilitate*, where technically feasible, functional equivalence between different data processing services *referred to in paragraph 1 of Article 26 that cover equivalent services*;*(ca) shall not adversely impact the security and integrity of services and data*;
  - (cb) be designed in a way to allow for technical advances and inclusion of new functions and innovation in data processing services.*
2. Open interoperability *and portability* specifications and European standards for the interoperability *and portability* of data processing services shall address:
  - (a) the cloud interoperability aspects of transport interoperability, syntactic interoperability, semantic data interoperability, behavioural interoperability and policy interoperability;

- (b) the cloud data portability aspects of data syntactic portability, data semantic portability and data policy portability;
  - (c) the cloud application aspects of application syntactic portability, application instruction portability, application metadata portability, application behaviour portability and application policy portability.
3. Open interoperability **and portability** specifications shall comply with paragraph 3 and 4 of Annex II *to* Regulation (EU) No 1025/2012.
- 3a. *Open interoperability and portability specifications and European standards shall not distort the data processing services market or limit the development of any new competing and innovative technologies or solutions or any technologies or solutions that are based on them.***
4. ***After taking into account relevant international and European standards and self-regulating initiatives***, the Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft European standards applicable to ***equivalent services*** of data processing services. ***The standardisation shall take into account the needs of SMEs.***
5. For the purposes of Article 26(3) of this Regulation, the Commission, ***after consulting the European Data Innovation Board pursuant to Article 29 and Article 30, points (f) and (h), of Regulation (EU) 2022/868***, shall be empowered to adopt delegated acts, ***supplementing this Regulation***, in accordance with Article 38 ***of this Regulation***, to publish the reference of open **■** standards for the interoperability **and portability** of data processing services in central Union standards repository for the interoperability **and portability** of data processing services ***developed by relevant standardisation organisations or organisations referred to in paragraph 3 of Annex II to Regulation (EU) No 1025/2012***, where these satisfy the criteria specified in paragraph 1 and 2 of this Article.

#### Article 30

Essential requirements regarding smart contracts for data sharing

- The ***party offering*** smart contracts **■** in the context of an agreement to make data available shall comply with the following essential requirements:

- (a) robustness **and access control**: ensure that the smart contract has been designed to offer **rigorous access control mechanisms and** a very high degree of robustness to avoid functional errors and to withstand manipulation by third parties;
- (b) safe termination and interruption: ensure that a mechanism exists to terminate the continued execution of transactions: the smart contract shall include internal functions which can reset or instruct the contract to stop or interrupt the operation to avoid future (accidental) executions; **in this regard, the conditions under which a smart contract could be reset or instructed to stop or interrupted, should be clearly and transparently defined. Especially, it should be assessed under which conditions non-consensual termination or interruption should be permissible;**
- (ba) **equivalence**;: **a smart contract shall afford the same level of protection and legal certainty as any other contracts generated through different means.**
- (bb) **protection of confidentiality of trade secrets**: **ensure that a smart contract has been designed to ensure the confidentiality of trade secrets, in accordance with this Regulation.**



## CHAPTER IX

### IMPLEMENTATION AND ENFORCEMENT

#### Article 31

##### **Data coordinator**

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

- 1a. *The independent supervisory authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall be responsible for monitoring the application of this Regulation insofar as the protection of personal data is concerned. Chapters VI and VII of Regulation (EU) 2016/679 shall apply mutatis mutandis. The European Data Protection Supervisor shall be responsible for monitoring the application of this Regulation insofar as it concerns the Union institutions, bodies, offices and agencies. Where relevant, Article 62 of Regulation (EU) 2018/1725 shall apply mutatis mutandis. The tasks and powers of the supervisory authorities shall be exercised with regard to the processing of personal data.*
2. Without prejudice to paragraph 1 of this Article, *the data coordinator shall ensure cooperation among the national competent authorities that are responsible for the monitoring of other Union or national legal acts in the field of data and electronic communication services, namely:*
- I**
- (b) for specific sectoral data *access* issues related to the implementation of this Regulation, the competence of sectoral authorities shall be respected *without prejudice to the rules on conflicts of competences*;
- (c) the national competent authority responsible for the application and enforcement of Chapter VI of this Regulation shall have experience in the field of data and electronic communications services.
3. Member States shall ensure that the respective tasks and powers of the *data coordinator* are clearly defined and include:
- (a) promoting awareness among users and entities falling within *the* scope of this Regulation of the rights and obligations under this Regulation;
- (b) handling *and deciding on* complaints arising from alleged violations of this Regulation, and investigating, to the extent appropriate, the subject matter of the complaint and *regularly* 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;

- (c) conducting investigations into matters that concern the application of this Regulation, including on the basis of information received from another competent authority or other public authority;
  - (d) imposing *effective, proportionate and* dissuasive financial penalties which may include periodic penalties and penalties with retroactive effect, or initiating legal proceedings for the imposition of fines;
  - (e) monitoring technological *and commercial* developments of relevance for the making available and use of data *with a view of better enforcing this Regulation*;
  - (f) cooperating with *the data coordinators* of other Member States to ensure the consistent, *swift and effective* application of this Regulation, including the exchange of all relevant information by electronic means, without undue delay;
  - (fa) cooperating with all relevant competent authorities pursuant to other Union law, and with the European Data Protection Board and the European Data Innovation Board to ensure that the obligations of this Regulation are enforced coherently with other Union law*;
  - (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;
  - (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;
  - (i) ensuring that charges for the switching between providers of data processing services are withdrawn in accordance with Article 25.
4. Where a Member State designates more than one competent authority, the *data coordinator* 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. In such cases, relevant Member States shall designate a coordinating competent authority.

5. Member States shall communicate the name of *data coordinators* and their respective tasks and powers and, where applicable, the name of the coordinating competent authority to the Commission *and Data Innovation Board*. The Commission shall maintain a public register of those authorities.
6. When carrying out their tasks and exercising their powers in accordance with this Regulation, *data coordinators* shall *in an independent and impartial manner and* 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.
7. Member States shall ensure that the *data coordinator is* provided with *sufficient human and technical* resources, *expertise, premises and infrastructure necessary for the effective performance* to adequately carry out their tasks in accordance with this Regulation.
  - 7a. *Entities falling within the scope of this Regulation shall be subject to the jurisdiction of the Member State where the entity is established.*
  - 7b. *A user, data holder or data recipient that is a legal person and is not established in the Union, but which is subject to obligations under this Regulation, shall designate a legal representative in one of the Member States in which its relevant counterparties are established.*
  - 7c. *The competent authorities under this Regulation shall have the power to request from users, data holders or data recipients, that are legal persons, or their legal representatives all the information that is necessary to verify compliance with the requirements of this Regulation. Any request for information shall be proportionate to the performance of the task and shall be reasoned.*
  - 7d. *Where a user, data holder or data recipient, that is a legal person and not established in the Union fails to designate a legal representative or the legal representative fails, upon request of the competent authority, to provide the necessary information that comprehensively demonstrates compliance with this Regulation, the competent authority shall have the power to postpone the commencement of or to suspend the provision of related services by data holders or requests for data access from data*



*holders by users or data recipients, that are legal persons, until the legal representative is designated or the necessary information is provided.*

### *Article 31a*

#### *Mutual assistance*

- 1. Data coordinators and the Commission shall cooperate closely and provide each other mutual assistance in order to apply this Regulation in a consistent and efficient manner. Mutual assistance shall include, in particular, exchange of all information in accordance with this Article by electronic means and the duty of the Data Coordinator of the concerned Member State to inform all competent authorities and the Commission about the opening of an investigation.*
- 2. For the purpose of an investigation, the Data coordinator of establishment may request other Data coordinators to provide specific information in their possession or to exercise their investigative powers with regard to specific information located in their Member State. Where appropriate, the data coordinator receiving the request may involve other competent authorities or other public authorities of the Member State in question.*
- 3. The Data coordinator receiving the request pursuant to paragraph 2 shall comply with such request and inform the competent authority of the concerned Member State about the action taken, without undue delay.*
- 4. The European Data Innovation Board shall foster the mutual exchange of information amongst competent authorities as well as advise and assist the Commission in all matters falling under this Regulation., falling under the competence of the Board in accordance with Article 30 of the Regulation (EU) No 2022/868. The data coordinators shall represent the Member States at the European Data Innovation Board established under Regulation (EU) 2022/868.*

### *Article 32*

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

- 1. Without prejudice to any other administrative or judicial remedy, natural and legal persons shall have the right to lodge a complaint, individually or █ 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 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).*

2. The *data coordinator* with which the complaint has been lodged shall inform the complainant, *in accordance with national law*, of the progress of the proceedings and of the decision taken.
3. Competent authorities shall cooperate *from the beginning of the process* to handle and resolve complaints *effectively and in a timely manner*, including *by setting reasonable deadlines for adopting formal decisions, ensuring equality of the parties, ensuring the right to be heard from complainants and access to the file throughout the process, and* 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.

#### *Article 32a*

##### *Representation*

1. *Without prejudice to Directive (EU) 2020/1828 or to any other type of representation under national law, users, data holders and data recipients shall at least have the right to mandate a body, organisation or association to exercise the rights conferred by this Regulation on their behalf, provided the body, organisation or association meets all of the following conditions:*
  - (a) *it operates on a not-for-profit basis;*
  - (b) *it has been properly constituted in accordance with the law of a Member State;*
  - (c) *its statutory objectives include a legitimate interest in ensuring that this Regulation is complied with.*

#### *Article 32b*

##### *Right to an effective judicial remedy against a competent authority*

1. *Without prejudice to any other administrative or non-judicial remedy, each user, data holder and data recipient shall have the right to an effective judicial remedy against a legally binding decision of a competent authority concerning them.*
2. *Without prejudice to any other administrative or non-judicial remedy, each user shall have the right to an effective judicial remedy where the competent authority does not handle a complaint swiftly or does not inform the user, data holder and data recipient within three months on the progress or outcome of the complaint lodged pursuant to Article 32.*
3. *Proceedings against a 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.*
4. *Where proceedings are brought against a decision of a competent authority which was preceded by an opinion or a decision of the Board in the consistency mechanism, the supervisory authority shall forward that opinion or decision to the court.*

#### *Article 32c*

##### *Right to an effective judicial remedy*

1. *Without prejudice to any available administrative or non-judicial remedy, including under Directive (EU) 2020/1828 and the right to lodge a complaint with a competent authority pursuant to Article 32b, user, data holder and data recipient shall have the right to an effective judicial remedy where they consider that their rights under this Regulation have been infringed as a result of the non-compliance with this Regulation.*
2. *Proceedings against a data holder, third party or data recipient shall be brought before the courts of the Member State where the user has their habitual residence, place or work or establishment.*

Article 33

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.
  - 1a. ***Member States shall take into account the following non-exhaustive criteria for the imposition of penalties for infringements of this Regulation;***
    - (a) ***the nature, gravity, scale and duration of the infringement;***
    - (b) ***any action taken by the infringing party to mitigate or remedy the damage caused by the infringement;***
    - (c) ***any previous infringements by the infringing party;***
    - (d) ***the financial benefits gained or losses avoided by the infringing party due to the infringement, insofar as such benefits or losses can be reliably established;***
    - (e) ***any other aggravating or mitigating factors applicable to the circumstances of the case.***
2. Member States shall by [date of application of the Regulation] notify the Commission, ***the European Data Protection Board and the European Data Innovation Board*** of those rules and measures and shall notify ***them*** without delay of any subsequent amendment affecting them. ***The Commission shall regularly update and maintain an easily accessible public register of those measures.***
3. For infringements of the obligations laid down in Chapter II, III and V of this Regulation, the supervisory authorities referred to in Article 51 of the Regulation (EU) 2016/679 may within their scope of competence impose administrative fines in line with Article 83 of Regulation (EU) 2016/679 and up to the amount referred to in Article 83(5) of that Regulation.
4. For infringements of the obligations laid down in Chapter V of this Regulation, the supervisory authority referred to in Article 52 of Regulation (EU) 2018/1725 may impose within its scope of competence administrative fines in accordance with Article 66 of Regulation (EU) 2018/1725 up to the amount referred to in Article 66(3) of that Regulation.

## Article 34

### Model contractual terms

The Commission shall develop and recommend non-binding model contractual terms on data access and use *and standard contractual clauses for cloud computing contracts, based on Fair, Reasonable and Non-Discriminatory (FRAND) principles*, to assist parties in drafting and negotiating contracts with balanced contractual rights and obligations. *Such model contractual terms shall address at least the following elements:*

- (a) right to early termination of the contract and conditions for compensation in the case of early termination;*
- (b) data retention and storage policies;*
- (c) readability of the data for the user, including information on metadata and decryption;*
- (d) the protection and preservation of the confidentiality of trade secrets, in accordance with this Regulation.*

*The model contractual terms referred to in the first subparagraph shall be published and shall be available free of charge in easily usable electronic format.*

## CHAPTER X

### ***INAPPLICABILITY OF THE SUI GENERIS RIGHT UNDER DIRECTIVE 96/9/EC TO DATABASES CONTAINING CERTAIN DATA***

## Article 35

### Databases containing certain data

■ 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 within the scope of this Regulation.*

## CHAPTER XI

## FINAL PROVISIONS

### Article 36

#### Amendment to Regulation (EU) No 2017/2394

In the Annex to Regulation (EU) No 2017/2394 the following point is added:

‘29. [Regulation (EU) XXX of the European Parliament and of the Council [Data Act]].’

### Article 37

#### Amendment to Directive (EU) 2020/1828

In the Annex to Directive (EU) 2020/1828 the following point is added:

‘67. [Regulation (EU) XXX of the European Parliament and of the Council [Data Act]]’

### Article 38

#### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 25(4), 28(2) and 29(5) shall be conferred on the Commission for an indeterminate period of time from [...].
3. The delegation of power referred to in Articles 25(4), 28(2) and 29(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 25(4), 28(2) and 29(5) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

## Article 39

### Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

## Article 40

### Other Union legal acts governing rights and obligations on data access and use

1. The specific obligations for the making available of data between businesses, between businesses and consumers, and on exceptional basis between businesses and public bodies, in Union legal acts that entered into force on or before [xx XXX xxx], and delegated or implementing acts based thereupon, shall remain unaffected.
2. This Regulation is without prejudice to Union legislation specifying, in light of the needs of a sector, a common European data space, or an area of public interest, further requirements, in particular in relation to:
  - (a) technical aspects of data access;
  - (b) limits on the rights of data holders to access or use certain data provided by users;
  - (c) aspects going beyond data access and use.



## Article 41

### Evaluation and review

- I. By [two years after the date of application of this Regulation], the Commission shall carry out an evaluation of this Regulation and submit a report on its main findings to the European Parliament and to the Council as well as to the European Economic and Social Committee. That evaluation shall assess, in particular:
  - (-a) the use of data by users, data holders, data recipients and third parties, the development of monetisation practices in the European data economy as well as the development of the arrangements for data sharing, including competitive dynamics in data spaces and data intermediation services;*
  - (-aa) the effects of technical and administrative obligations to comply with this Regulation, in particular with Chapter II thereof on industry participants, also in view of the SME exemptions;*
  - (a) other categories or types of data to be made accessible;
  - (b) the exclusion of certain categories of enterprises as beneficiaries under Article 5;
  - (ba) 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 the directive thereof;*
  - (c) other situations to be deemed as exceptional needs for the purpose of Article 15;
  - (d) changes in contractual practices of data processing service providers and whether this results in sufficient compliance with Article 24;
  - (e) diminution of charges imposed by data processing service providers for the switching process, in line with the gradual withdrawal of switching charges pursuant to Article 25;

- (ea) the interaction between the this Regulation and other relevant Union law to assess possible conflicting regulation, overregulation or legislative gaps;*
- (eb) the contribution of this Regulation to ensuring the economic attractiveness of the collection and use of high quality data sets by Union companies;*
- (ec) the contribution of this Regulation to innovation and to promoting the development of high-tech start-ups and SMEs, as well as to enabling access for European users to state-of-the-art computing services;*
- (ed) the application and functioning of Article 27 on the international access and transfer of data.*

*1a On the basis of that report, the Commission shall, where appropriate, submit a legislative proposal to the Parliament and the Council to amend this Regulation.*

## Article 42

### Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from **18** months after the date of entry into force of this Regulation **■** .

*The obligations resulting from Article 4(1) shall apply to related services placed on the market within five years prior to the entry into force of this Regulation and only where the provider of a related service is able to remotely deploy mechanisms to ensure the fulfilment of the requirements pursuant to Article 4(1) and where the deployment of such mechanisms would not place a disproportionate burden on the manufacturer or provider of related services.*

Done at,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## EXPLANATORY STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Data and Scope**

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

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

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

### **Clarification of roles**

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

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

### **On trade secrets:**

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

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

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

### **SMEs**

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

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

### **Implementation and enforcement**

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

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

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

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

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

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

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



26.1.2023

## **OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION**

for the Committee on Industry, Research and Energy

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

Rapporteur for opinion (\*): Adam Bielan

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

### **SHORT JUSTIFICATION**

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

Cloud services have become essential for the use of available data. In line with the Commission's 'digital targets for 2030', I believe that the competitiveness of the European services sector and industry relies heavily on accelerated uptake of cloud services. One of the main obstacles that can cause the EU to miss its targets relates to increased upfront fees for companies to switch to cloud services as well as limited offer from cloud services providers. While the Commission's proposal highlights the right principles, its implementation seems quite challenging: the proposal does not recognise that the use of cloud services differs between market participants. How these services are deployed within the network of customer's other services, applications and dependencies is rarely identical. Similarly, the concept of functional

equivalence can be problematic, as it places obligations on the source providers that are impossible to comply with, unless they have access to the infrastructure of the provider of destination cloud services. Even if that was possible, functional equivalence would disturb the balance between what can be reasonably expected from two providers of cloud services participating in the switching process, either when it comes to the sharing of sensitive know-how or forcing responsibility for performance of competitor service.

The customer shall be the ultimate decision-maker who decides when to switch to another provider, introduce multicloud environment or migrate back to on-premises data center. In order for the customer to fully benefit from online computing, providers of services shall compete on the basis of their services' functionalities and pricing. Today, it is challenging for customers to access the information essential to take good business decisions. This is why I have decided to introduce a number of obligations requiring providers of cloud services to support customers prior to and while concluding a contract. A key element here is to support the development of non-invasive customers' exit strategy, which prevents the potential lock-in effect. Similarly, for the number of obligations such as short-term contracts or specified timeframe for switching process, the customer shall retain the discretion to utilise it where it benefits his/her organisation. These measures facilitate predictable environment, mandatory to plan long-term business decisions.

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

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

## **AMENDMENTS**

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

## Amendment 1

### Proposal for a regulation

#### Recital 1

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

(1) In recent years, data-driven technologies have had transformative effects on all sectors of the economy. The proliferation in products connected to the Internet of Things in particular has increased the volume and potential value of data for consumers, businesses and society. High quality and interoperable data from different domains increase competitiveness and innovation and ensure sustainable economic growth. The same dataset may potentially be used and reused for a variety of purposes and to an unlimited degree, without any loss in its quality or quantity.

##### *Amendment*

(1) In recent years, data-driven technologies have had transformative effects on all sectors of the economy. The proliferation in products connected to the Internet of Things in particular has increased the volume and potential value of data for consumers, businesses and society. High quality and interoperable data from different domains increase competitiveness and innovation and ensure sustainable economic growth. The same dataset may potentially be used and reused for a variety of purposes and to an unlimited degree, ***while respecting users' choices and applicable legislation to protect them.***

## Amendment 2

### Proposal for a regulation

#### Recital 4

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

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

##### *Amendment*

(4) In order to respond to the needs of the digital economy, ***protect consumers*** and to remove ***unjustified*** 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

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.

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 3

#### Proposal for a regulation

##### Recital 5

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

(5) This Regulation ensures that users of a product or related service in the Union can access, in a timely manner, the data generated by the use of that product or related service and that those users can use the data, including by sharing them with third parties of their choice. It imposes the obligation on the data holder to make data available to users and third parties nominated by the users in certain circumstances. It also ensures that data holders make data available to data recipients in the Union under fair, reasonable and non-discriminatory terms and in a transparent manner. Private law rules are key in the overall framework of data sharing. Therefore, this Regulation adapts rules of contract law and prevents the exploitation of contractual imbalances that hinder fair data access and use for micro, small or medium-sized enterprises within the meaning of Recommendation 2003/361/EC. This Regulation also ensures that data holders make available to public sector bodies of the Member States and to Union institutions, agencies or bodies, where there is an exceptional need, the data that are necessary for the performance of tasks carried out in the public interest. In addition, this Regulation seeks to facilitate switching between data processing services and to enhance the interoperability of data and data sharing mechanisms and services in the Union. This Regulation should not

###### *Amendment*

(5) This Regulation ensures that users of a product or related service in the Union ***including data subjects and consumers***, can access, in a timely manner, the data generated by the use of that product or related service and that those users can use the data, including by sharing them with third parties ***and for the purposes*** of their choice. It imposes the obligation on the data holder to make data available to users and third parties nominated by the users in certain circumstances. It also ensures that data holders make data available to data recipients in the Union under fair, reasonable and non-discriminatory terms and in a transparent manner. ***The term to ‘make data available’ under this Regulation should be understood also as to ‘export data permanently’.*** Private law rules are key in the overall framework of data sharing. Therefore, this Regulation adapts rules of contract law and prevents the exploitation of contractual imbalances that hinder fair data access and use for micro, small or medium-sized enterprises within the meaning of Recommendation 2003/361/EC ***and for all other types of enterprises, including start-ups***. This Regulation also ensures that data holders make available to public sector bodies of the Member States and to Union institutions, agencies or bodies, where there is an exceptional need, the data that are necessary for the performance of tasks

be interpreted as recognising or creating any legal basis for the data holder to hold, have access to or process data, or as conferring any new right on the data holder to use data generated by the use of a product or related service. Instead, it takes as its starting point the control that the data holder effectively enjoys, de facto or de jure, over data generated by products or related services.

carried out in the public interest. In addition, this Regulation seeks to facilitate switching between data processing services and to enhance the interoperability of data and data sharing mechanisms and services in the Union. This Regulation should not be interpreted as recognising or creating any legal basis for the data holder to hold, have access to or process data, or as conferring any new right on the data holder to use data generated by the use of a product or related service. Instead, it takes as its starting point the control that the data holder effectively enjoys, de facto or de jure, over data generated by products or related services.

#### Amendment 4

##### Proposal for a regulation Recital 9

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

(9) This Regulation complements and is without prejudice to Union law aiming to promote the interests of consumers and to ensure a high level of consumer protection, to protect their health, safety and economic interests, **in particular** Directive 2005/29/EC of the European Parliament and of the Council<sup>59</sup>, Directive 2011/83/EU of the European Parliament and of the Council<sup>60</sup> and Directive 93/13/EEC of the European Parliament and of the Council<sup>61</sup>.

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<sup>59</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council

###### *Amendment*

(9) This Regulation complements and is without prejudice to Union law aiming to promote the interests of consumers and to ensure a high level of consumer protection, to protect their health, safety and economic interests, **including** Directive 2005/29/EC of the European Parliament and of the Council<sup>59</sup>, Directive 2011/83/EU of the European Parliament and of the Council<sup>60</sup> and Directive 93/13/EEC of the European Parliament and of the Council<sup>61</sup>.

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<sup>59</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council

(‘Unfair Commercial Practices Directive’) (OJ L 149, 11.6.2005, p. 22).

<sup>60</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

<sup>61</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

(‘Unfair Commercial Practices Directive’) (OJ L 149, 11.6.2005, p. 22).

<sup>60</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

<sup>61</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

## 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

#### *Amendment*

(14) Physical products that obtain, generate or collect, by means of their components **or embedded software**, 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

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 through facilitating the maintenance and repair of the products in question.

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

### *Justification*

*Relevant data is not only generated by operating systems but also by applications running on the products. 'Embedded software' is therefore more comprehensive and inclusive. Such justification would avoid legal uncertainty regarding the boundary between the operating system and any other software running on the product.*

## **Amendment 6**

### **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 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, **sensor-generated data or data captured by embedded applications, and data recorded by a device** 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.



## *Justification*

*Variants of the machine generated data have been included in Recital 17 to clarify the scope of this Regulation and ensure legal certainty*

### **Amendment 7**

#### **Proposal for a regulation Recital 20**

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

(20) In case several persons or entities own a product or are party to a lease or rent agreement and benefit from access to a related service, reasonable efforts should be made in the design of the product or related service or the relevant interface so that ***all persons*** can have access to data they generate. ***Users of*** products that generate data ***typically*** require a user account to be set up. This allows for identification of the user by the manufacturer as well as a means to communicate to exercise and process data access requests. Manufacturers or designers of a product that is typically used by several persons should put in place the necessary mechanism that allow separate user accounts for individual persons, where relevant, ***or*** the possibility for several persons to use the same user account. Access should be granted to the user upon simple request mechanisms granting automatic execution, not requiring examination or clearance by the manufacturer or data holder. This means that data should only be made available when the user actually wants this. Where automated execution of the data access request is not possible, for instance, via a user account or accompanying mobile application provided with the product or service, the manufacturer should inform the user how the data may be accessed.

##### *Amendment*

(20) In case several persons or entities own ***or use*** a product or are party to a lease or rent agreement and benefit from access to a related service, reasonable efforts should be made in the design of the product or related service or the relevant interface so that ***each user using the product*** can have access to data they generate. Products that generate data ***usually*** require a user account to be set up. This allows for identification of the user by the manufacturer as well as a means to communicate to exercise and process data access requests. Manufacturers or designers of a product that is typically used by several persons should put in place the necessary mechanism that allow separate user accounts for individual persons, where relevant, ***and*** the possibility for several persons to use the same user account. Access should be granted to the user upon simple request mechanisms granting automatic ***and complete*** execution, not requiring examination or clearance by the manufacturer or data holder. This means that data should only be made available when the user actually wants this. Where automated execution of the data access request is not possible, for instance, via a user account or accompanying mobile application provided with the product or service, the manufacturer should ***swiftly*** inform the user how the data may be accessed.

## Amendment 8

### Proposal for a regulation

#### Recital 21

*Text proposed by the Commission*

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

*Amendment*

(21) Products may be designed to make certain data directly available from an on-device data storage or from a remote server to which the data are communicated. Access to the on-device data storage may be enabled via cable-based or wireless local area networks connected to a publicly available electronic communications service or a mobile network. The server may be the manufacturer's own local server capacity or that of a third party or a cloud service provider. ***Data processors as defined in Regulation (EU) 2016/679 are by default not considered to act as data holders, unless specifically tasked by the data controller.*** They may be designed to permit the user or a third party to process the data on the product or on a computing instance of the manufacturer.

## Amendment 9

### Proposal for a regulation

#### Recital 22

*Text proposed by the Commission*

(22) Virtual assistants play an increasing role in digitising consumer environments and serve as an easy-to-use interface to play content, obtain information, or activate physical objects connected to the Internet of Things. Virtual assistants can act as a single gateway in, for example, a smart home environment and record significant amounts of relevant data on how users interact with products connected to the Internet of Things, including those manufactured by other parties and can replace the use of manufacturer-provided interfaces such as touchscreens or smart

*Amendment*

(22) Virtual assistants play an increasing role in digitising consumer environments and serve as an easy-to-use interface to play content, obtain information, or activate physical objects connected to the Internet of Things. Virtual assistants can act as a single gateway in, for example, a smart home environment and record significant amounts of relevant data on how users interact with products connected to the Internet of Things, including those manufactured by other parties and can replace the use of manufacturer-provided interfaces such as touchscreens or smart

phone apps. The user may wish to make available such data with third party manufacturers and enable novel smart home services. Such virtual assistants should be covered by the data access right provided for in this Regulation also regarding data recorded before the virtual assistant's activation by the wake word and data generated when a user interacts with a product via a virtual assistant provided by an entity other than the manufacturer of the product. However, only the data stemming from the interaction between the user and product through the virtual assistant falls within the scope of this Regulation. Data produced by the virtual assistant unrelated to the use of a product is not the object of this Regulation.

phone apps. The user may wish to make available such data with third party manufacturers and enable novel smart home services. Such virtual assistants should be covered by the data access right provided for in this Regulation also regarding data recorded before the virtual assistant's activation by the wake word and data generated when a user interacts with a product via a virtual assistant provided by an entity other than the manufacturer of the product ***if such data are collected***. However, only the data stemming from the interaction between the user and product through the virtual assistant falls within the scope of this Regulation. Data produced by the virtual assistant unrelated to the use of a product is not the object of this Regulation.

## Amendment 10

### Proposal for a regulation Recital 23

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 11

### Proposal for a regulation Recital 24

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

(24) This Regulation imposes the obligation on data holders to make data available in certain circumstances. Insofar as personal data are processed, the data holder 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 ***fair and*** transparent to the user, including as regards the ***specific*** 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.

## Amendment 12

### Proposal for a regulation

#### Recital 25

*Text proposed by the Commission*

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

*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, *rent*, 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 *should* be brought forward to address sector-specific needs and objectives, *such as for vehicles and access to in-vehicle data and functions and resources thereof. Such sectoral legislation should address sectoral complexities where a small number of manufacturers deploys components from a large number of suppliers who would benefit from access to data generated by their components for quality monitoring, product development, or improving safety or sustainability aspects. Provisions of sectoral legislation should prevail over this regulation.* 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

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.

undermine the commercial position of the user on the markets it is active on. This would, for instance, involve using knowledge about the overall performance of a business or a farm in contractual negotiations with the user on potential acquisition of the user’s products or agricultural produce to the user’s detriment, or for instance, using such information to feed in larger databases on certain markets in the aggregate (,e.g. databases on crop yields for the upcoming harvesting season) as such use could affect the user negatively in an indirect manner. The user should be given the necessary technical interface to manage permissions, preferably with granular permission options (such as “allow once” or “allow while using this app or service”), including the option to withdraw permission.

## Amendment 13

### Proposal for a regulation

#### Recital 26

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

(26) In contracts between a data holder and a consumer as a user of a product or related service generating data, Directive 93/13/EEC applies to the terms of the contract to ensure that a consumer is not subject to unfair contractual terms. For unfair contractual terms unilaterally imposed on a micro, small or medium-sized enterprise as defined in Article 2 of the Annex to Recommendation 2003/361/EC<sup>63</sup>, this Regulation provides that such unfair terms should not be binding on that enterprise.

##### *Amendment*

(26) In contracts between a data holder and a consumer as a user of a product or related service generating data, ***EU consumer law applies, including Directive 2005/29/EC, which applies against unfair commercial practices, and*** Directive 93/13/EEC ***which*** applies to the terms of the contract to ensure that a consumer is not subject to unfair contractual terms. For unfair contractual terms unilaterally imposed on a micro, small or medium-sized enterprise as defined in Article 2 of the Annex to Recommendation 2003/361/EC<sup>l</sup>, this Regulation provides that such unfair terms should not be binding on that enterprise.

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<sup>63</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning



the definition of micro, small and medium-sized enterprises

#### Amendment 14

##### Proposal for a regulation Recital 27 a (new)

*Text proposed by the Commission*

*Amendment*

***(27a) In view of a better protection of trade secrets, this regulation should not be interpreted as giving a right to providers of related services to share data generated by the use of products and that are considered trade secrets, to data recipients without informing the manufacturer of such products. Such data holders should agree with the manufacturers the terms for making available that type of data.***

#### Amendment 15

##### Proposal for a regulation Recital 29

*Text proposed by the Commission*

*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, ***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.

(29) A third party to whom data is made available may be an ***individual, an enterprise such as the data marketplace, data sharing service provider referred to Article 10 [Data Governance Act],*** a research organisation or a not-for-profit organisation. In making the data available to the third party, ***no party*** should abuse its position to seek a competitive advantage in markets where the data holder and third party may be in direct competition. ***Concerned parties*** 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 ***another*** party or its assets or production methods or the use in any other way that could undermine the commercial position of ***another*** party on the markets it is active



on.

## **Amendment 16**

### **Proposal for a regulation**

#### **Recital 31**

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

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

##### *Amendment*

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

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

## Amendment 17

### Proposal for a regulation Recital 33

#### *Text proposed by the Commission*

(33) In order to prevent the exploitation of users, third parties to whom data has been made available upon request of the user should only process the data for the purposes agreed with the user and share it with another third party only if this is necessary to provide the service requested by the user.

## Amendment 18

### Proposal for a regulation Recital 34

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technical obligations provided for in Article 20 of Regulation (EU) 2016/679, this Regulation mandates and ensures the technical feasibility of third party access for all types of data coming within its scope, whether personal or non-personal. *This Regulation also allows direct data sharing from users to third parties. This Regulation precludes the data holder or the third party from directly or indirectly charging consumers a fee, compensation or costs for sharing data or for accessing it.* The data subject should be in no way prevented from exercising the rights contained in Regulation (EU) 2016/679, including the right to data portability, by seeking remedies in accordance with that Regulation. It is to be understood in this context that, in accordance with Regulation (EU) 2016/679, a contractual agreement does not allow for the processing of special categories of personal data by the data holder or the third party.

#### *Amendment*

(33) In order to prevent the exploitation of users, third parties to whom data has been made available upon request of the user should only process the data for the purposes agreed with the user and share it with another third party only if, *as clearly and unequivocally communicated to the user in a timely manner,* this is necessary to provide the service requested by the user.

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(34) In line with the data minimisation principle, the third party should only access additional information that is necessary for the provision of the service requested by the user. Having received access to data, the third party should process it exclusively for the purposes agreed with the user, without interference from the data holder. It should be as easy for the user to refuse or discontinue access by the third party to the data as it is for the user to authorise access. The third party should not coerce, deceive or manipulate the user in any way, by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface with the user. In this context, third parties should not rely on so-called dark patterns in designing their digital interfaces. Dark patterns are design techniques that push or deceive consumers into decisions that have negative consequences for them. These manipulative techniques can be used to persuade users, particularly vulnerable consumers, to engage in unwanted behaviours, and to deceive users by nudging them into decisions on data disclosure transactions or to unreasonably bias the decision-making of the users of the service, in a way that subverts and impairs their autonomy, decision-making and choice. Common and legitimate commercial practices that are in compliance with Union law should not in themselves be regarded as constituting dark patterns. Third parties should comply with their obligations under relevant Union law, in particular the requirements set out in Directive 2005/29/EC, Directive 2011/83/EU, Directive 2000/31/EC and Directive 98/6/EC.

(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 ***make the exercise of the rights or choices of users unduly difficult, including by offering choices to users in a non-neutral manner,*** or coerce, deceive or manipulate the user in any way, by subverting or impairing the autonomy, decision-making or ***free*** choices of the user, including by means of a digital interface with the user ***or a part thereof, including its structure, design, function or manner of operation.*** 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 19

### Proposal for a regulation

#### Recital 37

*Text proposed by the Commission*

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

*Amendment*

(37) ***This Regulation does not prevent micro and small enterprises to participate in the data sharing practices, however*** 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. Where a micro or small enterprise is sub-contracted to manufacture or design a product, 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 Member States should provide guidance to such enterprises.***

## Amendment 20

### Proposal for a regulation

#### Recital 42

*Text proposed by the Commission*

(42) In order to incentivise the continued investment in generating valuable data, including investments in relevant technical tools, this Regulation contains the principle that the data holder may request reasonable compensation when legally obliged to make data available to the data recipient.

*Amendment*

(42) In order to incentivise the continued investment in generating valuable data, including investments in relevant technical tools, this Regulation contains the principle that the data holder may request reasonable compensation when legally obliged to make data available to the data recipient ***in***

These provisions should not be understood as paying for the data itself, but in the case of micro, small or medium-sized enterprises, for the costs incurred and investment required for making the data available.

***business-to business relations.*** These provisions should not be understood as paying for the data itself, but in the case of micro, small or medium-sized enterprises, ***and of research organisations using the data on a not-for-profit basis or in the context of a public-interest mission recognised in the Union or national law,*** for the costs incurred and investment required for making the data available. ***This Regulation precludes the data holder or the third party from directly or indirectly charging consumers a fee, compensation or costs for sharing data or for accessing it.***

## Amendment 21

### Proposal for a regulation Recital 43

*Text proposed by the Commission*

(43) In justified cases, including the need to safeguard consumer participation and competition or to promote innovation in certain markets, Union law or national legislation implementing Union law may impose regulated compensation for making available specific data types.

*Amendment*

(43) In ***duly*** justified cases, including the need to safeguard consumer participation and competition or to promote innovation in certain markets, Union law or national legislation implementing Union law may impose regulated compensation for making available specific data types.

## Amendment 22

### Proposal for a regulation Recital 44

*Text proposed by the Commission*

(44) To protect micro, small or medium-sized enterprises from excessive economic burdens which would make it commercially too difficult for them to develop and run innovative business models, the compensation for making data available to be paid by them should not exceed the direct cost of making the data

*Amendment*

(44) To protect micro, small or medium-sized enterprises from excessive economic burdens which would make it commercially too difficult for them to develop and run innovative business models, the compensation for making data available to be paid by them should not exceed the direct cost of making the data available and be non-discriminatory. ***The***

available and be non-discriminatory.

***same regime should apply to those research organisations that use the data on a not-for-profit basis or in the context of a public-interest mission recognised in the Union or national law.***

## Amendment 23

### Proposal for a regulation Recital 48

#### *Text proposed by the Commission*

(48) Ensuring access to alternative ways of resolving domestic and cross-border disputes that arise in connection with making data available should benefit data holders and data recipients and therefore strengthen trust in data sharing. In cases where parties cannot agree on fair, reasonable and non-discriminatory terms of making data available, dispute settlement bodies should offer a simple, fast and low-cost solution to the parties.

#### *Amendment*

(48) Ensuring access to alternative ways of resolving domestic and cross-border disputes that arise in connection with making data available should benefit data holders and data recipients and therefore strengthen trust in data sharing. In cases where parties cannot agree on fair, reasonable and non-discriminatory terms of making data available, dispute settlement bodies should offer a simple, fast and low-cost solution to the parties. ***This process cannot undermine the exercise of the rights of users and in case users are affected by a dispute between data holders and data recipients or third parties, users should be effectively and swiftly compensated.***

## Amendment 24

### 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-

#### *Amendment*

(52) Rules on contractual terms ***between enterprises*** 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



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.

'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. ***All contractual agreements shall be in line with Fair, Reasonable and Non-Discriminatory (FRAND) principles***

## Amendment 25

### Proposal for a regulation Recital 53

*Text proposed by the Commission*

(53) Furthermore, the rules on unfair contractual terms should only apply to those elements of a contract that are related to making data available, that is contractual terms concerning the access to and use of data as well as liability or remedies for breach and termination of data related obligations. Other parts of the same contract, unrelated to making data available, should not be subject to the unfairness test laid down in this Regulation.

*Amendment*

(53) Furthermore, the rules on unfair contractual terms ***between enterprises*** should only apply to those elements of a contract that are related to making data available, that is contractual terms concerning the access to and use of data as well as liability or remedies for breach and termination of data related obligations. Other parts of the same contract, unrelated to making data available, should not be subject to the unfairness test laid down in this Regulation.

## Amendment 26

### Proposal for a regulation Recital 54

*Text proposed by the Commission*

(54) Criteria to identify unfair contractual terms should be applied only to excessive contractual terms, where a

*Amendment*

(54) Criteria to identify unfair contractual terms ***between enterprises*** should be applied only to excessive



stronger bargaining position is abused. The vast majority of contractual terms that are commercially more favourable to one party than to the other, including those that are normal in business-to-business contracts, are a normal expression of the principle of contractual freedom and shall continue to apply.

contractual terms, where a stronger bargaining position is abused. The vast majority of contractual terms that are commercially more favourable to one party than to the other, including those that are normal in business-to-business contracts, are a normal expression of the principle of contractual freedom and shall continue to apply.

## **Amendment 27**

### **Proposal for a regulation**

#### **Recital 55**

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

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

##### *Amendment*

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

## **Amendment 28**

### **Proposal for a regulation**

#### **Recital 56**

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

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

##### *Amendment*

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

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.

*coherent practices between Member States and predictable environment for private entities, the Member States and the Commission should identify within their own remit, the bodies that can request access to data owned by the enterprises. To* limit the burden on businesses, micro and small enterprises should be exempted from the obligation to provide public sector bodies and Union institutions, agencies or bodies data in situations of exceptional need.

## Amendment 29

### 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

##### *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, ***and based on the authorisation granted by the competent authority. The Commission should establish its own procedure for granting authorisation for its respective Union's institutions, agencies and bodies.*** 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

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.

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 **and unless not restricted by other law within 10 working days**, by the entity requesting the data and online public availability of all requests justified by a public emergency should be ensured.

### Amendment 30

#### 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 Council<sup>65</sup> 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

##### *Amendment*

(62) The objective of the obligation to provide the data is to ensure that public sector bodies and Union institutions, agencies or bodies have the necessary knowledge to respond to, prevent or recover from public emergencies or to maintain the capacity to fulfil specific tasks explicitly provided by law. The data obtained by those entities may be commercially sensitive. Therefore, Directive (EU) 2019/1024 of the European Parliament and of the Council<sup>65</sup> 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.

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, ***as long as all bodies respect the same rules and restrictions as the original requester of the data. The business whose data is to be shared, provided it acts in a good faith, should also have the possibility to raise objection concerning planned data transfer in order to protect its security, integrity or confidentiality.***

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<sup>65</sup> 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).

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<sup>65</sup> 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 31

### Proposal for a regulation Recital 66

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 32

### Proposal for a regulation Recital 67

*Text proposed by the Commission*

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

*Amendment*

(67) When responding to public emergencies ***as defined in this Regulation***, the public sector body or the Union institution, agency or body should not be expected to compensate enterprises for the data obtained. Public emergencies are rare events and not all such emergencies require the use of data held by enterprises. The business activities of the data holders are therefore not likely to be negatively affected as a consequence of the public sector bodies or Union institutions, agencies or bodies having recourse to this Regulation. However, as cases of an exceptional need other than responding to a public emergency might be more frequent, including cases of prevention of or recovery from a public emergency, data holders should in such cases be entitled to a reasonable compensation which should not exceed the technical and organisational costs incurred in complying with the request and the reasonable margin required for making the data available to the public sector body or to the Union institution, agency or body. ***Where the public sector body or the Union institution, agency or body believes that the level of compensation requested by the data holder is unjustified, the matter should be brought to the competent authority referred to in Article 31 of the Member State where the data holder is established.*** The compensation should not be understood as constituting payment for the data itself and as being compulsory.

## Amendment 33

**Proposal for a regulation**  
**Recital 69**

*Text proposed by the Commission*

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

*Amendment*

(69) The ability for customers of data processing services, including cloud and edge services, to switch from one data processing service to another, while ***avoiding downtime of services, or to use the services of several providers simultaneously without undue data transfer costs***, is a key condition for a more competitive market with lower entry barriers for new service providers, ***and for ensuring further resilience for the users of these services. Guarantees for effective switching should also include customers benefiting from large-scale free-tier offerings, so that does not result in a lock-in situation for customers. Facilitating a multi-cloud approach for customers of data processing services can also contribute to increasing their digital operational resilience, as recognised for financial service institutions in the Digital Operational Resilience Act (DORA).***

**Amendment 34**

**Proposal for a regulation**  
**Recital 69 a (new)**

*Text proposed by the Commission*

*Amendment*

***(69a) Switching charges are charges imposed by providers of cloud computing on their customers for the switching process. Typically, those charges are intended to pass on costs, which the source provider may incur because of the switching process, to the customer that wishes to switch. Examples of common switching charges are costs related to the transfer of data from one provider to the other or to an on-premise system ('egress fees') or the costs incurred for specific support actions during the switching***



*process. Unnecessarily high egress fees and other unjustified charges unrelated to actual switching costs, inhibit customers' switching, restrict the free flow of data, have the potential to limit competition and cause lock-in effects for the customers of data processing services, by reducing incentives to choose a different or additional service provider. As a result of the new obligations foreseen in this Regulation, the source provider of data processing services might outsource certain tasks and remunerate third party entities in order to comply with these obligations. The customer shall not bear costs arising from the outsourcing of services concluded by the source provider of data processing services during the switching process and such costs shall be considered as unjustified. Nothing in the Data Act prevents a customer to remunerate third party entities for support in the migration process. Egress fees are charged to customers by providers of source data processing services when the customers are willing to take their data out from a cloud provider's network to an external location, especially when switching from one provider to one or several providers of destination, to relocate their data from one location to another while using the same cloud service provider. Therefore, in order to foster competition, the gradual withdrawal of the charges associated with switching data processing services should specifically include withdrawing egress fees charged by the data processing service to a customer.*

## **Amendment 35**

### **Proposal for a regulation**

#### **Recital 70**

*Text proposed by the Commission*

*Amendment*

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

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



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

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

## Amendment 36

### Proposal for a regulation

#### Recital 71

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

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

##### *Amendment*

(71) Data processing services should cover services that allow *ubiquitous and* on-demand *network* access to a *configurable*, scalable and elastic *shared* pool of distributed computing resources. Those computing resources include resources such as networks, servers or other virtual or physical infrastructure, software, including software development tools, storage, applications and services. *The deployment models of data processing services should include private and public cloud. Such services and deployment models should be the same as defined by international standards.* The capability of the customer of the data processing service to unilaterally self-provision computing capabilities, such as server time or network storage, without any human interaction by the provider *of data processing services*

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

could be described as *requiring minimal management effort and as entailing minimal interaction between provider and customer*. The term ‘*ubiquitous*’ is used to describe that the computing capabilities are provided over the network and accessed through mechanisms promoting the use of heterogeneous thin or thick client platforms (from web browsers to mobile devices and workstations). The term ‘scalable’ refers to computing resources that are flexibly allocated by the *provider of data processing services*, irrespective of the geographical location of the resources, in order to handle fluctuations in demand. The term ‘elastic’ is used to describe those computing resources that are provisioned and released according to demand in order to rapidly increase or decrease resources available depending on workload. The term ‘*shared pool*’ is used to describe those computing resources that are provided to multiple users who share a common access to the service, but where the processing is carried out separately for each user, although the service is provided from the same electronic equipment. The term ‘distributed’ is used to describe those computing resources that are located on different networked computers or devices and which communicate and coordinate among themselves by message passing. The term ‘highly distributed’ is used to describe data processing services that involve data processing closer to where data are being generated or collected, for instance in a connected data processing device. Edge computing, which is a form of such highly distributed data processing, is expected to generate new business models and cloud service delivery models, which should be open and interoperable from the outset. ***Digital services considered as an online platform as defined in point (i) of Article 3 of [the Digital Services Act] and an online content service as defined in Article 2(5) of Regulation (EU) 2017/1128 should not be considered as ‘data processing***

*services' within the meaning of this Regulation.*

## **Amendment 37**

### **Proposal for a regulation Recital 71 a (new)**

*Text proposed by the Commission*

*Amendment*

*(71a) Data processing services fall into one or more of the following three data processing service delivery models: IaaS (infrastructure-as-a-service), PaaS (platform-as-a-service) and SaaS (software-as-a-service). These service delivery models represent a specific, pre-packaged combination of IT resources offered by a provider of data processing service. Three base cloud delivery models are further completed by emerging variations, each comprised of a distinct combination of IT resources, such as Storage-as-a-Service and Database-as-a-Service. For the purpose of this Regulation, data processing services can be categorised in more granular and a non-exhaustive multiplicity of different 'equivalent services', meaning sets of data processing services that share the same primary objective and main functionalities as well as the same type of data processing models, that are not related to the service operational characteristics. In an example two databases might appear to share the same primary objective, but after considering their data processing model, distribution model and targeted use-case, such databases shall fall into a more granular subcategory of equivalent services. Equivalent services may have different and competing characteristics such as performance, security, resilience, and quality of service.*

## Amendment 38

### Proposal for a regulation Recital 71 b (new)

*Text proposed by the Commission*

*Amendment*

*(71b) Extracting the data that belongs to the customer from the source provider of data processing services remains one of the challenges that impedes restoration of the service functionalities in the destination provider infrastructure. In order to properly plan the exit strategy, avoid unnecessary and burdensome tasks and to ensure that the customer does not lose any of its data as a consequence of the switching process, the source provider of data processing services shall include in the contract the mandatory information on the scope of the data that can be exported by the customer once he or she decides to switch to a different service, other provider of data processing services or move to on-premise ICT infrastructure. The scope of exportable data should include at a minimum input and output data, including relevant data formats, data structures and metadata directly or indirectly generated or co-generated by the customer's use of the data processing service, and that can be clearly assigned to the customer. The exportable data should exclude any data processing service, or third party's assets or data protected by intellectual property rights or constituting a trade secret or confidential information, such as data related to the integrity and security of the service provided by the data processing service, and should also exclude data used by the provider to operate, maintain and improve the service.*

## Amendment 39

### Proposal for a regulation Recital 72

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

(72) This Regulation aims to facilitate switching between data processing services, which encompasses all **relevant** conditions and actions that are necessary for a customer to terminate a contractual agreement of a data processing service, to conclude one or multiple new contracts with different providers of data processing services, to port all its digital assets, including data, to the concerned other providers and to continue to use them in the new environment **and benefit from** functional equivalence. **It should be noted that the data processing services in scope are those where the data processing service, as defined under this Regulation, forms part of the core business of a provider.** Digital assets refer to elements in digital format for which the customer has the right of use, including data, applications, virtual machines and other manifestations of virtualisation technologies, such as containers. **Switching is a customer-driven operation consisting in three main steps: i) data extraction, i.e. downloading data from a source provider's ecosystem; ii) transformation, when the data is structured in a way that does not match the schema of the target location; iii) upload of the data in a new destination location. In a specific situation outlined in this Regulation, unbundling of a particular service from the contract and moving it to another provider shall also be considered as switching. The switching process is sometimes managed on behalf of the customer by a third-party entity. Accordingly, all right and obligations of the customer established by this Regulation, including the obligation to collaborate in good faith, should be understood to apply to such a third-party entity in these circumstances. Providers of cloud computing services and customers have different levels of responsibilities,**

*depending on the steps of the process referred to. For instance, the source provider of data processing services is responsible to extract the data to a machine-readable format, but it is the customer and the destination provider who will upload the data to the new environment, unless specific professional transition service has been obtained. Obstacles to switching are of a different nature, depending on which step of the switching process is referred to.*

Functional equivalence means the *possibility to re-establish, on the basis of the customer's data, a minimum level of functionality of a service in the environment of a new data processing service after switching, where the destination service delivers a comparable outcome in response to the same input for shared functionality supplied to the customer under the contractual agreement. Different services may only achieve functional equivalence for the shared core functionalities, where both the source and destination service providers independently offer the same core functionalities. This Regulation does not instance an obligation of facilitating functional equivalence for data processing service delivery models of the PaaS or SaaS. Relevant meta-data, generated by the customer's use of a service, should also be portable pursuant to this Regulation's provisions on switching and falls within the definition of exportable data. Data processing services are used across sectors and vary in complexity and service type. This is an important consideration with regard to the porting process and timeframes.*

Amendment 40

Proposal for a regulation  
Recital 72 a (new)



**(72a) An ambitious and innovation-inspiring regulatory approach to interoperability is needed, in order to overcome vendor lock-in, which undermines competition and the development of new services. Interoperability between equivalent data processing services involves multiple interfaces and layers of infrastructure and software and is rarely confined to a binary test of being achievable or not. Instead, the building of such interoperability is subject to a cost-benefit analysis which is necessary to establish whether it is worthwhile to pursue reasonably predictable results. The ISO/IEC 19941:2017 is an important reference for the achievement of the objectives of this Regulation, as it contains technical considerations clarifying the complexity of such a process.**

#### Amendment 41

##### Proposal for a regulation Recital 74

Text proposed by the Commission

Amendment

(74) Data processing **service providers** should be required to offer all assistance and support that is required to make the switching process successful and effective **without requiring those** data processing **service providers** to develop new categories of services within or on the basis of the IT-infrastructure of different data processing service providers to guarantee functional equivalence in an environment other than their own systems. **Nevertheless, service providers are required to offer all assistance and support that is required to make** the switching process **effective**. Existing rights relating to the termination of contracts, including those introduced by Regulation (EU) 2016/679 and Directive

(74) **Providers of** data processing **services** should be required **not to impose and to remove all relevant obstacles and** to offer all assistance and support **within their capacity and proportional to their respective obligations** that is required to make the switching process successful, **safe** and effective. **This Regulation does not require providers of** data processing **services** to develop new categories of **data processing** services, **including** within or on the basis of the IT-infrastructure of different data processing service providers to guarantee functional equivalence in an environment other than their own systems. **A source provider of data processing services has no access and insights into**



(EU) 2019/770 of the European Parliament and of the Council<sup>67</sup> should not be affected.

*the environment of the destination provider of data processing services and should not be obliged to rebuilt customer's service, according to functional equivalence requirements, within the destination provider's infrastructure. Instead, the source provider should take all reasonable measures within their power to facilitate the process of achieving functional equivalence through providing capabilities, adequate information, documentation, technical support and, where appropriate, the necessary tools. The information to be provided by providers of data processing services to the customer should support the development of the customer's exit strategy and should include procedures for initiating switching from the cloud computing service, the machine-readable data formats that the user's data can be exported to, the tools, including at least one open standard data portability interface, foreseen to export data, information on known technical restrictions and limitations that could impact the switching process and the estimated time necessary to complete the switching process. The written contract setting out the rights of the customer and the obligations of the provider of cloud computing services should only cover information which is available to the provider of data processing services at the time of the formation of the contract. Existing rights relating to the termination of contracts, including those introduced by Regulation (EU) 2016/679 and Directive (EU) 2019/770 of the European Parliament and of the Council<sup>67</sup> should not be affected. Any mandatory period under this Regulation should not affect compliance with other timelines specified under sectoral legislation. Chapter VI of this Regulation should not be understood as preventing a provider of data processing services from provisioning to its customers new and improved services,*

***features and functionalities or from competing with other providers of data processing services on that basis.***

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

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

## **Amendment 42**

### **Proposal for a regulation Recital 75**

*Text proposed by the Commission*

(75) To facilitate switching between data processing services, providers of data processing services should consider the use of implementation and/or compliance tools, notably those published by the Commission in the form of a Rulebook relating to cloud services. In particular, standard contractual clauses are beneficial to increase confidence in data processing services, to create a more balanced relationship between users and **service** providers and to improve legal certainty on the conditions that apply for switching to other data processing services. In this light, users and **service** providers should consider the use of standard contractual clauses developed by relevant bodies or expert groups established under Union law.

*Amendment*

(75) To facilitate switching between data processing services, providers of data processing services should consider the use of implementation and/or compliance tools, notably those published by the Commission in the form of a Rulebook relating to cloud services. In particular, standard contractual clauses are beneficial to increase confidence in data processing services, to create a more balanced relationship between users and providers **of data processing services** and to improve legal certainty on the conditions that apply for switching to other data processing services. In this light, users and providers **of data processing services** should consider the use of standard contractual clauses developed by relevant bodies or expert groups established under Union law.

## **Amendment 43**

### **Proposal for a regulation Recital 75 a (new)**

*Text proposed by the Commission*

*Amendment*

**(75a) In order to facilitate switching**

*between cloud computing services, all parties involved, including providers of both source and destination data processing services, should collaborate in good faith with a view to enabling an effective switching process and the secure and timely transfer of necessary data in a commonly used, machine-readable format, and by means of an open standard data portability interface, and avoiding service disruptions.*

#### **Amendment 44**

##### **Proposal for a regulation Recital 75 b (new)**

*Text proposed by the Commission*

*Amendment*

*(75b) Data processing services which concern services that are substantially altered to facilitate a specific customer's need (custom built), or data processing services that operate on a trial basis or only supply a testing and evaluation service for business product offerings, should be exempted from some of the obligations applicable to data processing service switching.*

#### **Amendment 45**

##### **Proposal for a regulation Recital 75 c (new)**

*Text proposed by the Commission*

*Amendment*

*(75c) Without prejudice to their right to take action before a court, customers should have access to certified dispute settlement bodies to settle disputes related to switching between providers of data processing services.*

#### **Amendment 46**

**Proposal for a regulation**  
**Recital 76**

*Text proposed by the Commission*

(76) Open interoperability specifications and standards developed in accordance with paragraph 3 and 4 of Annex II of Regulation (EU) 1025/2021 in the field of interoperability and portability enable a **seamless** multi-vendor cloud environment, which is a key requirement for open innovation in the European data economy. As market-driven processes have not demonstrated the capacity to establish technical specifications or standards that facilitate effective cloud interoperability at the PaaS (platform-as-a-service) and SaaS (software-as-a-service) levels, the Commission should be able, on the basis of this Regulation and in accordance with Regulation (EU) No 1025/2012, to request European standardisation bodies to develop such standards, **particularly for service types** where such standards do not yet exist. In addition to this, the Commission will encourage parties in the market to develop relevant open interoperability specifications. The Commission, by way of delegated acts, can mandate the use of European standards for interoperability or open interoperability specifications for specific **service types** through a reference in a central Union standards repository for the interoperability of data processing services. European standards and open interoperability specifications will only be referenced if in compliance with the criteria specified in this Regulation, which have the same meaning as the requirements in paragraphs 3 and 4 of Annex II of Regulation (EU) No 1025/2021 and the interoperability facets defined under the ISO/IEC 19941:2017.

*Amendment*

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

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

## Amendment 47

### Proposal for a regulation Recital 79

*Text proposed by the Commission*

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

*Amendment*

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

the development of harmonised standards for the interoperability of data processing services.

*and taking into account relevant international and European standards and self-regulatory initiatives*, the Commission should be enabled *to adopt common specifications in areas where no harmonised standards exist* and to mandate the development of harmonised standards for the *portability and interoperability* of data processing services.

## Amendment 48

### 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, 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 *effectively and in a timely manner, in line with the principles of good administration and mutual assistance to ensure the effective implementation and enforcement of this Regulation*. . 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 49

### Proposal for a regulation

#### Recital 82

*Text proposed by the Commission*

(82) In order to enforce their rights under this Regulation, natural and legal

*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 competent authorities. Those authorities should be obliged to cooperate to ensure the complaint is appropriately handled and resolved. In order to make use of the consumer protection cooperation network mechanism and to enable representative actions, this Regulation amends the Annexes to the Regulation (EU) 2017/2394 of the European Parliament and of the Council<sup>68</sup> and Directive (EU) 2020/1828 of the European Parliament and of the Council<sup>69</sup>.

persons, *or any third party authorised to act on their behalf*, should be entitled to seek redress for the infringements of this Regulation by lodging complaints with competent authorities *and before the courts*. Those authorities should be obliged to cooperate to ensure the complaint is appropriately handled and resolved *swiftly*. In order to make use of the consumer protection cooperation network mechanism and to enable representative actions, this Regulation amends the Annexes to the Regulation (EU) 2017/2394 of the European Parliament and of the Council<sup>68</sup> and Directive (EU) 2020/1828 of the European Parliament and of the Council<sup>69</sup>. ***Authorities competent to enforce this Regulation should cooperate with the Consumer Protection Cooperation network in relation to consumer protection matters, but not on data processing matters. Any referral to the Consumer Protection Cooperation network should not result in a lack of efficient or swift enforcement of this Regulation.***

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<sup>68</sup> 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).

<sup>69</sup> 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).

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<sup>68</sup> 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).

<sup>69</sup> 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 50**

### **Proposal for a regulation Recital 85**



*Text proposed by the Commission*

(85) In order to take account of technical aspects of data processing services, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of supplementing this Regulation to introduce a monitoring mechanism on switching charges imposed by data processing *service providers* on the market, to further specify the essential requirements for operators of data spaces and data processing *service providers* on interoperability and to publish the reference of open interoperability specifications and European standards for the interoperability of data processing services. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>70</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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<sup>70</sup> OJ L 123, 12.5.2016, p. 1.

## **Amendment 51**

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

*Text proposed by the Commission*

1. This Regulation lays down harmonised rules on making data generated

*Amendment*

(85) In order to take account of technical aspects of data processing services, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of supplementing this Regulation to introduce a monitoring mechanism on switching charges imposed by *providers of data processing services* on the market, to further specify the essential requirements for operators of data spaces and *providers of data processing services* on interoperability and to publish the reference of open interoperability *and portability* specifications and European standards for the interoperability of data processing services. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>70</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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<sup>70</sup> OJ L 123, 12.5.2016, p. 1.

*Amendment*

1. This Regulation lays down harmonised rules on making data generated

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

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, ***on facilitating switching between data processing services and on providing for the development of interoperability standards for data to be transferred and used.***

## Amendment 52

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

*Text proposed by the Commission*

*Amendment*

***2a. This Regulation complements and does not affect the applicability of Union law aiming to promote the interests of consumers and to ensure a high level of consumer protection, 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. No provision in this Regulation should be applied or interpreted in such a way as to diminish or limit a high level of consumer protection.***

## Amendment 53

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

*Text proposed by the Commission*

*Amendment*

(1) ‘data’ means any digital

(1) ‘data’ means any digital

representation of acts, facts or information and any compilation of such acts, facts or information, **including** in the form **of sound, visual or audio-visual recording**;

representation, **including in the form of sound, visual or audio-visual recording** of acts, facts or information and any compilation of such acts, facts or information, in the form **and format in which they are generated**;

#### **Amendment 54**

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

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

*Text proposed by the Commission*

*Amendment*

**(1a) ‘metadata’ means data generated by a data processing service, including the date, time and geolocation data, duration of activity, connections to other natural or legal persons established by the person who uses the service;**

#### **Amendment 55**

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

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

*Text proposed by the Commission*

*Amendment*

**(1b) ‘non-personal data’ means data other than personal data as defined in point (1) of Article 4 of Regulation (EU) 2016/679;**

#### **Amendment 56**

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

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

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 57

### 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 58

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 6

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 59

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 7

*Text proposed by the Commission*

*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** following a request by the user to the data holder or in accordance with a legal obligation under

(7) 'data recipient' means a legal or natural person, acting for purposes which are related to that person's trade, business, craft or profession, other than the user of a product or related service, to whom the data holder makes data available following a request by the user to the data holder or in accordance with a legal obligation under Union law or national legislation

Union law or national legislation implementing Union law;

implementing Union law **and including a third party to whom the data is directly made available by the user or the data subject**;

#### *Justification*

*The amendment brings consistency with other parts of the text. In particular, it is very important that this concept does not exclude situations whether the user directly shares data with the third party without resorting to the data holder*

### **Amendment 60**

#### **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 determined and officially declared according to the respective procedures under national or Union laws and** negatively affecting the population of the Union, a Member State or part of it, with a **demonstrated** risk of **life-threatening**, 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 61**

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

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

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

##### *Amendment*

1. Products shall be designed and manufactured, and related services shall be provided, in such a manner that data generated by their use **and that are under the control of the data holder** are, by default, **free of charge, safely**, easily, securely and, where relevant, directly accessible to the user **in a structured**,

*commonly used and machine-readable format. Provided that the data holder has processed the data lawfully in accordance with Union and national laws and has complied with relevant cybersecurity requirements, the data holder shall not be held liable towards the data recipient for direct or indirect damages arising from, relating to or in connection with the data that was made accessible to the data recipient.*

*The requirements set out in the first subparagraph shall be achieved without endangering the functionality of the product and related services and in accordance with data security requirements as laid down by Regulation 2016/679.*

## **Amendment 62**

### **Proposal for a regulation Article 3 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1a. Consumers shall have the right to obtain a copy of the data generated by their use of the product and related services from the data holder without hindrance, in a structured, commonly used and machine-readable format, free of charge.*

## **Amendment 63**

### **Proposal for a regulation Article 3 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

*1b. The data holder may reject a request for data if access to the data is restricted by Union or national law.*

## Amendment 64

### Proposal for a regulation

#### Article 3 – paragraph 1 c (new)

*Text proposed by the Commission*

*Amendment*

**1c. The user may grant or withdraw at any time consent for the data holder to use their data, or for a third party nominated by the data holder.**

## Amendment 65

### Proposal for a regulation

#### Article 3 – paragraph 2 – introductory part

*Text proposed by the Commission*

*Amendment*

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:

2. Before concluding a contract for the purchase, rent or lease of a product or a related service, **consumers should be presented with consent options for data processing, within the meaning of Article 4 (11) of Regulation (EU) 2016/679. In addition,** at least the following information shall be provided to the user, in a **timely and prominent manner and in an easily accessible,** clear and comprehensible format:

## Amendment 66

### Proposal for a regulation

#### Article 3 – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 67

### Proposal for a regulation



**Article 3 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

**(aa) the estimated time during which the data holder will store the data and make it available to the user;**

**Amendment 68**

**Proposal for a regulation**

**Article 3 – paragraph 2 – point a b (new)**

*Text proposed by the Commission*

*Amendment*

**(ab) the purpose for which the data will be processed;**

**Amendment 69**

**Proposal for a regulation**

**Article 3 – paragraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

(c) how the user may access those data;

(c) how **and in which technical means** the user may access those data **and a copy of those data, free of charge for consumers;**

**Amendment 70**

**Proposal for a regulation**

**Article 3 – paragraph 2 – point f**

*Text proposed by the Commission*

*Amendment*

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

(f) **a** means of communication which **enables** the user to contact the data holder **directly**, quickly and communicate with that data holder efficiently;

**Amendment 71**

**Proposal for a regulation**

### Article 3 – paragraph 2 – point g

*Text proposed by the Commission*

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

*Amendment*

(g) how the user may request that the data are shared with a third-party, **and how users who are consumers, may request the data free of charge;**

### Amendment 72

#### Proposal for a regulation

#### Article 3 – paragraph 2 – point h

*Text proposed by the Commission*

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

*Amendment*

(h) the user's right to lodge a complaint alleging a violation of the provisions of this Chapter with the competent authority referred to in Article 31, **including a list of competent authorities per Member State.**

### Amendment 73

#### Proposal for a regulation

#### Article 3 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. The data holder shall not make the exercise of the rights or choices of users unduly difficult, including by offering choices to the users in a non-neutral manner or by subverting or impair the autonomy, decision-making or free choices of the user via the structure, design, function or manner of operation of a user interface or a part thereof.**

### Amendment 74

#### Proposal for a regulation

#### Article 4 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

1. Where data cannot be directly accessed by the user from the product *or related service*, the data holder shall make available to the user the data generated by *the* use of a product or related service *that are under the control of the data holder, as well as the relevant metadata*, without undue delay, free of charge, *in a structured, commonly used and machine-readable format*, and, where applicable, continuously and in real-time. *Data shall be provided in the form in which they have been generated by the product, with only the minimal adaptations necessary to make them useable by a user.* This shall be done on the basis of a simple request through electronic means where technically feasible. *Provided that the data holder has processed the data lawfully in accordance with Union and national laws and has complied with relevant cybersecurity requirements, the data holder shall not be held liable towards the data recipient for direct or indirect damages arising from, relating to or in connection with the data that was made accessible to the data recipient.*

*Where on-device access is technically supported, the manufacturer shall provide this means of access in a non-discriminatory manner. Where on-device and off-device access are available, the user or third party shall choose their preferred method.*

## Amendment 75

### Proposal for a regulation Article 4 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*1a. The data holder may reject a request for data if access to the data is restricted by Union or national law.*

## Amendment 76

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

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 77

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

*Text proposed by the Commission*

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

*Amendment*

1. Upon request by a user, or by a party acting on behalf of a user, the data holder shall make available the data generated by the use of a product or related service ***that are under the control of the data holder, as well as the relevant metadata***, to a third party, without undue delay, ***in a structured, commonly used and machine-readable format***, free of charge to the user, of the same quality as is available to the data holder and, where applicable, continuously and in real-time ***and on the basis of secure access mechanisms, subject to compliance with applicable laws on the outsourcing of data-driven services. Such data shall be provided in the form in which they have been generated by the product, with only the minimal adaptations necessary to make them digitally processable and interpretable and shall at least provide basic context, metadata and time stamp.***

## Amendment 78

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

*Text proposed by the Commission*

*Amendment*

**1a.** *The data holder may reject a request for data if access to the data is restricted by Union or national law.*

## **Amendment 79**

### **Proposal for a regulation**

#### **Article 5 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

2. Any undertaking providing core platform services for which one or more of such services have been designated as a gatekeeper, pursuant to Article 3 of [Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (Digital Markets Act)[1]], shall not be an eligible third party under this Article and therefore shall not:

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<sup>73</sup> OJ [...].

## **Amendment 80**

### **Proposal for a regulation**

#### **Article 5 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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

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

## **Amendment 81**

### **Proposal for a regulation**

#### **Article 5 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

**6a.** *The data holder shall not make the usability 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.*

## **Amendment 82**

### **Proposal for a regulation Article 6 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

1. A third party shall process the data made available to it pursuant to Article 5 only for the purposes and under the conditions agreed with the user, and subject to the rights of the data subject insofar as personal data are concerned, and shall delete the data ***without undue delay*** when they are no longer necessary for the agreed purpose.

## **Amendment 83**

### **Proposal for a regulation Article 6 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1a.** *Where the non-personal data is made available to be reused for commercial or non-commercial purposes and may include bilateral or multilateral exchanges of data with non-discriminatory access for commercial or non-commercial purposes, the third party shall process the data in accordance with Union and national law.*

## **Amendment 84**

### **Proposal for a regulation**

## Article 6 – paragraph 2 – point a

*Text proposed by the Commission*

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

*Amendment*

(a) ***make the exercise of the rights or choices of users unduly difficult, including by offering choices to users in a non-neutral manner, or*** 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 ***or a part thereof, including its structure, design, function or manner of operation;***

## Amendment 85

### Proposal for a regulation

#### Article 6 – paragraph 2 – point c

*Text proposed by the Commission*

(c) make the data available it receives to another third party, in raw, aggregated or derived form, unless this is necessary to provide the service requested by the user;

*Amendment*

(c) make the data available it receives to another third party, in raw, aggregated or derived form, unless this is ***the sole purpose of the agreement with the user and facilitates the development of non-competing software or products or is*** necessary to provide the service requested by the user ***and the user has explicitly been made aware of this in a clear, easily accessible and prominent way;***

## Amendment 86

### Proposal for a regulation

#### Article 7 – title

*Text proposed by the Commission*

Scope of ***business to consumer and*** business to business data sharing obligations

*Amendment*

Scope of business to business data sharing obligations

## Amendment 87



**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 ***related to 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 88**

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

*Text proposed by the Commission*

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

*Amendment*

1. Where a data holder is obliged to make data available to a data recipient under Article 5 or under other Union law or national legislation implementing Union law, it shall do so under fair, reasonable and non-discriminatory terms and in a transparent manner in accordance with the provisions of this Chapter and Chapter IV ***and without prejudice to Regulation (EU) 2016/679. Provided that the data holder has processed the data lawfully in accordance with Union and national laws and has complied with relevant cybersecurity requirements, the data holder shall not be held liable towards the data recipient for direct or indirect damages arising from, relating to or in connection with the data that was made accessible to the data recipient.***

**Amendment 89**

**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 90**

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

*Text proposed by the Commission*

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

**Amendment 91**

**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

*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 a reasonable doubt that** the conditions under which data has been made available to it **are** discriminatory, it shall be for the data holder to demonstrate that there has been no discrimination.

*Amendment*

1. Any compensation agreed between a data holder and a data recipient for making data available **in business-to-business relations** shall be reasonable. ***This Regulation precludes the data holder or the third party from directly or indirectly charging consumers or data subjects a fee, compensation or costs for sharing data or for accessing it.***

*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, **or is a research organisation, and the data holder is not**

making the data available to the data recipient and which are attributable to the request. Article 8(3) shall apply accordingly.

*an SME*, any compensation agreed shall not exceed the costs directly related to making the data available to the data recipient and which are attributable to the request. Article 8(3) shall apply accordingly.

## **Amendment 92**

### **Proposal for a regulation Article 9 – paragraph 4**

*Text proposed by the Commission*

4. The data holder shall provide the data recipient with information setting out the basis for the calculation of the compensation in sufficient detail so that the data recipient can verify that the requirements of paragraph 1 *and, where applicable, paragraph 2* are met.

*Amendment*

4. The data holder shall provide the data recipient with information setting out the basis for the calculation of the compensation in sufficient detail so that the data recipient can verify that the requirements of paragraph 1 are met.

## **Amendment 93**

### **Proposal for a regulation Article 9 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

**4a. *The data holder should be allowed to offer and to charge the data user for an additional value-added data service.***

## **Amendment 94**

### **Proposal for a regulation Article 10 – paragraph 1**

*Text proposed by the Commission*

1. Data holders and data recipients shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes in relation to the determination of fair, reasonable and non-discriminatory

*Amendment*

1. Data holders and data recipients shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes in relation to the determination of fair, reasonable and non-discriminatory

terms for and the transparent manner of making data available in accordance with Articles 8 *and* 9.

terms for and the transparent manner of making data available in accordance with Articles 8, 9 *and* 13.

## Amendment 95

### Proposal for a regulation

#### Article 10 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. Without prejudice to rights for dispute settlement provided for in European and national legislation, the user shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes with data holders or data recipients or any third party in relation to breach of user's rights under this Regulation. The user shall have the right to allow a third party to pursue its legal claims on its behalf. This is without prejudice to the right of individuals to initiate, at any stage, proceedings before a court in accordance with the applicable law.***

## Amendment 96

### Proposal for a regulation

#### Article 11 – paragraph 2 – introductory part

*Text proposed by the Commission*

*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 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

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 ***be liable for any damage suffered as a result of the misuse***

otherwise:

*or disclosure of such data and may, without undue delay, unless the data holder or the user instruct otherwise:*

## Amendment 97

### Proposal for a regulation Article 12 – paragraph 2

*Text proposed by the Commission*

2. Any contractual term in a data sharing agreement which, to the detriment of one party, or, where applicable, to the detriment of the user, excludes the application of this Chapter, derogates from it, or varies its effect, shall not be binding on that party.

*Amendment*

2. Any contractual term in a data sharing agreement which, to the detriment of one party, or, where applicable, to the detriment of the user, excludes the application of this Chapter, derogates from it, or varies its effect, shall not be binding on that party. ***These obligations do not prevent the parties from entering into a mutual contract about data sharing.***

## Amendment 98

### 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 a micro, small or medium-sized enterprise as defined in Article 2 of the Annex to Recommendation 2003/361/EC ***or which has been unilaterally imposed by an enterprise which is the source of the data they hold*** shall not be binding on the latter enterprise, ***the data recipient or user***, if it is unfair, ***provided that that enterprise does 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, small or medium enterprise;***

## Amendment 99

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

*Text proposed by the Commission*

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

*Amendment*

1. Upon **specific** request, a data holder **that is a legal person** shall make data, **including relevant metadata**, available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested.

## Amendment 100

### Proposal for a regulation Article 14 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**1a. For the purpose of the request referred to in paragraph 1, the public sector body shall consult the competent authority referred to in Article 31 in order to verify whether the request meets the requirements laid down in this Chapter.**

## Amendment 101

### Proposal for a regulation Article 15 – paragraph 1 – introductory part

*Text proposed by the Commission*

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

*Amendment*

An exceptional need to use data within the meaning of this Chapter shall be **limited in time and scope and** deemed to exist **only** in the following circumstances:

## Amendment 102

### 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 necessary to prevent a public emergency or to assist the recovery from a public emergency;

## Amendment 103

### 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 the public sector body or Union institution, agency or body **is acting on the basis of EU or national law and has identified specific data, which is demonstrably necessary to fulfil** a specific task in the public interest that has been explicitly provided by law; and

## Amendment 104

### 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 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;

## Amendment 105

### Proposal for a regulation

#### Article 15 – paragraph 1 – point c – point 2



*Text proposed by the Commission*

*Amendment*

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

**deleted**

#### **Amendment 106**

##### **Proposal for a regulation Article 17 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

**(a) specify what data are required;**

**(a) request data within its remit and specify what data *and relevant metadata* are required;**

#### **Amendment 107**

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

*Text proposed by the Commission*

*Amendment*

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

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

#### **Amendment 108**

##### **Proposal for a regulation Article 17 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

**(ca) disclose the identity of the third party referred to in paragraph 4, and Article 21 of this Regulation;**

#### **Amendment 109**

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

**Article 17 – paragraph 1 – point c b (new)**

*Text proposed by the Commission*

*Amendment*

**(cb) apply all relevant ICT security measures concerning the transfer and storage of data;**

**Amendment 110**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

**(ea) where feasible, report to the data holder on how the data has been processed;**

**Amendment 111**

**Proposal for a regulation**

**Article 17 – paragraph 1 – point e b (new)**

*Text proposed by the Commission*

*Amendment*

**(eb) specify when the data is expected to be destroyed by the requesting body in accordance with Article 19(1)(c).**

**Amendment 112**

**Proposal for a regulation**

**Article 17 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

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

(d) concern non-personal data;

**Amendment 113**

**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 made publicly available online without undue delay **and where possible within 10 working days**.

**Amendment 114**

**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 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.

*Amendment*

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

**Amendment 115**

**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 the data holder from whom the data was received. **Within 5 working days of that notification, the data holder shall have the right to submit a reasoned objection to such transmission or making available of data. In the case of a rejection of the reasoned objection by the public sector body, the data holder may bring the matter to the competent**

*authority referred to in Article 31.*

## **Amendment 116**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***Any third party is forbidden to use the data it receives from a public sector body or a Union institution, agency or body to develop a product or a service that competes with the product or service from which the accessed data originate or to share the data with another third party for that purpose.***

## **Amendment 117**

### **Proposal for a regulation**

#### **Article 18 – paragraph 1**

*Text proposed by the Commission*

*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.

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, ***taking into account necessary technical, organisational and legal measures.***

## **Amendment 118**

### **Proposal for a regulation**

#### **Article 18 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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 **10** 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:

necessary to respond to a public emergency and within **20** working days in other cases of exceptional need, on either of the following grounds:

#### **Amendment 119**

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

*Text proposed by the Commission*

(a) the data *is unavailable*;

*Amendment*

(a) the data *holder is not currently collecting or has not previously collected, obtained or otherwise generated the requested data and does not retain it at the time of the request*;

#### **Amendment 120**

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

*Text proposed by the Commission*

*Amendment*

(ca) *not use the data to develop a product or a service that competes with the product or service from which the received data originated*;

#### **Amendment 121**

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

*Text proposed by the Commission*

*Amendment*

(cb) *not use the data to derive any insight about the economic situation, assets and production or operations methods of the data holder, or share the data with another third party for that purpose.*

#### **Amendment 122**

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

*Text proposed by the Commission*

*Amendment*

**2a. A public sector body or a Union institution, agency or body shall be responsible for the security of the data they receive.**

**Amendment 123**

**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. **Unless specified otherwise in EU or national legislation,** data made available to respond to a public emergency pursuant to Article 15, point (a), shall be provided free of charge.

**Amendment 124**

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

*Text proposed by the Commission*

*Amendment*

**2a. Where the public-sector body or the Union institution, agency or body wishes to challenge the level of compensation requested by the data holder, the matter shall be brought to the competent authority referred to in Article 31 of the Member State where the data holder is established.**

**Amendment 125**

**Proposal for a regulation**  
**Article 21 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

## Amendment 126

### 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.

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 **an** influence or which could result in preferential access to the results of the research.

#### *Amendment*

4. Where a public sector body or a Union institution, agency or body **intends to transmit or make** data available under paragraph 1, it shall notify the data holder from whom the data was received. **That notification shall include the identity and the contact details of individuals or organisations receiving the data, the purpose of the transmission or making available of the data and the period for which the data will be used by the receiving entity.**

**Within 5 working days of the notification referred to in the first subparagraph of this paragraph, the data holder shall have the right to submit a reasoned objection to such transmission or making available of data. In the case of a rejection of the objection by the public sector body, the data holder may bring the reasoned objection to the competent authority referred to in Article 31.**

## Amendment 127

### Proposal for a regulation Article 22 a (new)



Article 22 a

Definitions

*For the purposes of this Chapter, the following definitions apply:*

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

*(2) ‘on-premise’ means an ICT infrastructure and computing resources leased or owned by the customer, located in its own data center and operated by the customer or by a third-party;*

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

*(4) ‘data processing service data portability’ means the ability of the cloud service to move and adapt its exportable data between the customer’s data processing services, including in different deployment models;*

*(5) ‘switching’ means the process where a data processing service customer changes from using one data processing service to using a second equivalent or other service offered by a different provider of data processing services, including through extracting, transforming and uploading the data, involving the source provider of data processing services, the customer and the destination provider of data processing services;*

*(6) ‘exportable data’ means the input and output data, including metadata,*

*directly or indirectly generated, or co-generated, by the customer's use of the data processing service, excluding any data processing service provider's or third party's assets or data protected by intellectual property rights or constituting a trade secret or confidential information;*

*(7) 'functional equivalence' means the possibility to re-establish on the basis of the customer's data a minimum level of functionality in the environment of a new data processing service after the switching process, where the destination service delivers comparable outcome in response to the same input for shared functionality supplied to the customer under the contractual agreement ;*

*(8) 'egress fees' refers to data transfer fees charged to the customers of a provider of data processing services for extracting their data through the network from the ICT infrastructure of a provider of data processing services.*

## Amendment 128

### Proposal for a regulation

#### Article 23 – paragraph 1 – introductory part

*Text proposed by the Commission*

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

*Amendment*

1. Providers of a data processing service shall, **within their capacity**, take the measures provided for in Articles 24, **24a, 24b**, 25 and 26 to **enable** customers **to** switch to another data processing service, covering the **equivalent** service, which is provided by a different provider **of data processing services or, where relevant, to use several** providers of data processing **services at the same time. In particular, providers of a data processing** service **shall not impose and** shall remove commercial, technical, contractual and organisational obstacles, which inhibit customers from:

## Amendment 129

### Proposal for a regulation

#### Article 23 – paragraph 1 – point a

*Text proposed by the Commission*

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

*Amendment*

(a) terminating, after a maximum notice period of **60** calendar days, the contractual agreement of the service, ***unless an alternative notice period is mutually and explicitly agreed between the customer and the provider where both parties are able equally to influence the content of the contractual agreement;***

## Amendment 130

### Proposal for a regulation

#### Article 23 – paragraph 1 – point b

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 131

### Proposal for a regulation

#### Article 23 – paragraph 1 – point c

*Text proposed by the Commission*

(c) porting ***its*** data, applications and other digital assets to another provider of data processing services;

*Amendment*

(c) porting ***the customer's exportable*** data, applications and other digital assets to another provider of data processing services ***or to an on-premise ICT infrastructure, including after having benefited from a free-tier offering;***

## Amendment 132

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

*Text proposed by the Commission*

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

*Amendment*

(d) ***achieving*** functional equivalence ***in the use*** of the ***new*** service in the IT-environment of the different provider or providers of data processing services covering the ***equivalent*** service, in accordance with Article 26.

**Amendment 133**

**Proposal for a regulation**  
**Article 23 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 134**

**Proposal for a regulation**  
**Article 24 – paragraph 1 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

1. The rights of the customer and the obligations of the provider of a data processing service in relation to switching between providers of such services ***or, where applicable, to an on-premise ICT infrastructure*** shall be clearly set out in a written ***contract which is made available to the customer in a user-friendly manner prior to signing the*** contract. Without prejudice to Directive (EU) 2019/770, ***the provider of a data processing service shall ensure that*** that contract ***includes*** at least the following:

## Amendment 135

### Proposal for a regulation

#### Article 24 – paragraph 1 – point a – introductory part

*Text proposed by the Commission*

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

*Amendment*

(a) clauses allowing the customer, upon request, to switch to a data processing service offered by another provider of data processing *services* or to port all *exportable* data, applications and digital assets to an on-premise *ICT infrastructure without undue delay and in any event no later than* a mandatory maximum transition period of *90* calendar days, during which the *provider of* data processing *services* shall:

## Amendment 136

### Proposal for a regulation

#### Article 24 – paragraph 1 – point a – point 1

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 137

### Proposal for a regulation

#### Article 24 – paragraph 1 – point a – point 2

*Text proposed by the Commission*

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

*Amendment*

(2) *act with due care to maintain business continuity and a high level of security of the service and, taking into account the advancement in the switching process, ensure, to the greatest extent possible, continuity in the provision of the relevant functions or services within the capacity of the source provider of data processing services and in accordance with contractual obligations.*

## **Amendment 138**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

**(2a) provide clear information concerning known risks to continuity in the provision of the respective functions or services on the part of the provider of source data processing services.**

## **Amendment 139**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

**(aa) a list of additional services that customers can obtain facilitating the switching process, such as the test of the switching process;**

## **Amendment 140**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

**(ab) an obligation on the provider of data processing services to support the development of the customer's exit strategy relevant to the contracted services, including through providing all relevant information;**

## **Amendment 141**

### **Proposal for a regulation**

#### **Article 24 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

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

(b) ***a detailed*** specification of all data and application categories ***that can be ported*** during the switching process, including, at ***a*** minimum, all ***exportable data;***

## Amendment 142

### Proposal for a regulation Article 24 – paragraph 1 – point c

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 143

### Proposal for a regulation Article 24 – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) an obligation on the provider of data processing services to delete all of the former customer's exportable data after the expiration of the period set out in paragraph 1, point (c), of this Article;***

## Amendment 144

### Proposal for a regulation Article 24 – paragraph 2



*Text proposed by the Commission*

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

*Amendment*

2. Where the mandatory transition period as defined in paragraph 1, points (a) and (c) of this Article is technically unfeasible, the provider of data processing services shall notify the customer within ***14*** working days after the switching request has been made, ***and shall duly motivate*** the technical unfeasibility ***and indicate*** an alternative transition period, which may not exceed ***9*** months. In accordance with paragraph 1 of this Article, service continuity shall be ensured throughout the alternative transition period against reduced charges, referred to in Article 25(2). ***The customer shall retain the right to extend that period, if needed, prior to or during the switching process.***

**Amendment 145**

**Proposal for a regulation  
Article 24 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 24a***

***Information obligation of providers of destination data processing services***

***The provider of destination data processing services shall provide the customer with information on available procedures for switching and porting to the data processing service when it is a porting destination, including information on available porting methods and formats as well as restrictions and technical limitations which are known to the provider of destination data processing services.***

**Amendment 146**

**Proposal for a regulation  
Article 24 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 24b**

**Good faith obligation**

*All parties involved, including providers of destination data processing services, shall collaborate in good faith to make the switching process effective, enable the timely transfer of necessary data and maintain the continuity of the service.*

**Amendment 147**

**Proposal for a regulation  
Article 25 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 148**

**Proposal for a regulation  
Article 25 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

2. From [date X, the date of entry into force of *this Regulation*] until [date X+3yrs], providers of data processing services may impose reduced charges on *customers in the context of business-to-business relations* for the switching process, *with particular reference to egress fees*.

**Amendment 149**

**Proposal for a regulation  
Article 25 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a.** *From [3 years after the date of entry into force of this Regulation] onwards, providers of data processing services shall not impose any charges for the switching process.*

## **Amendment 150**

### **Proposal for a regulation Article 25 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

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

## **Amendment 151**

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

*Text proposed by the Commission*

*Amendment*

**3a.** *Standard subscription or service fees and charges for professional transition services work undertaken by the provider of data processing services at the customer's request for support in the switching process shall not be considered switching charges for the purposes of this Article.*

## **Amendment 152**

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

**3b. Before entering into a contractual agreement with a customer, the provider of data processing services shall provide the customer with clear information describing the charges imposed on the customer for the switching process in accordance with paragraph 2 of this Article, as well as the fees and charges referred to in paragraph 3a of this Article, and, where relevant, shall provide information on services that involve highly complex or costly switching or for which it is impossible to switch without significant interference in the data, application or service architecture. Where applicable, the provider of data processing services shall make this information publicly available to customers via a dedicated section of their website or in any other easily accessible way.**

#### Amendment 153

##### Proposal for a regulation Article 25 – paragraph 4

Text proposed by the Commission

Amendment

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

4. The Commission is empowered to adopt delegated acts in accordance with Article 38 to supplement this Regulation in order to introduce a monitoring mechanism for the Commission to monitor switching charges imposed by **providers of** data processing **services** on the market to ensure that the withdrawal **and reduction** of switching charges as described in **paragraphs 1 and 2** of this Article will be attained in accordance with the deadline provided in **those paragraphs**.

#### Amendment 154

##### Proposal for a regulation Article 26 – paragraph 1

*Text proposed by the Commission*

1. Providers of data processing services that concern scalable and elastic computing resources limited to infrastructural elements such as servers, networks and the virtual resources necessary for operating the infrastructure, but that do not provide access to the operating services, software and applications that are stored, otherwise processed, or deployed on those infrastructural elements, shall **ensure** that the customer, after switching to a service covering the same service type offered by a different provider of data processing services, **enjoys** functional equivalence in the use of the new service.

*Amendment*

1. Providers of data processing services that concern scalable and elastic computing resources limited to infrastructural elements such as servers, networks and the virtual resources necessary for operating the infrastructure, but that do not provide access to the operating services, software and applications that are stored, otherwise processed, or deployed on those infrastructural elements, shall **take reasonable measures within their power to facilitate** that the customer, after switching to a service covering the same service type offered by a different provider of data processing services, **achieves** functional equivalence in the use of the new service, **provided that the functional equivalence is established by the destination provider of data processing services. The source provider of data processing services shall facilitate the process through providing capabilities, adequate information, documentation, technical support and, where appropriate, the necessary tools.**

**Amendment 155**

**Proposal for a regulation  
Article 26 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

2. Providers of data processing services, **including providers of destination data processing services,** shall make open interfaces publicly available and free of charge **in order to facilitate switching between those services and data portability and interoperability. In accordance with paragraph 1 of this Article, those services shall also make it possible that a specific service, where there are no major obstacles, can be unbundled from the contract and made**

*available for switching in an interoperable manner.*

## **Amendment 156**

### **Proposal for a regulation Article 26 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

3. Providers of data processing services shall ensure compatibility with open interoperability **and portability** specifications or European standards for interoperability that are identified in accordance with Article 29(5) of this Regulation.

## **Amendment 157**

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

*Text proposed by the Commission*

*Amendment*

**3a. Providers of data processing services for which a new open interoperability and portability specification or European standard was published in the repository referred to in Article 29(5) shall have the right to a one-year transition for compliance with the obligation referred to in paragraph 3 of this Article.**

## **Amendment 158**

### **Proposal for a regulation Article 26 – paragraph 4**

*Text proposed by the Commission*

4. Where the open interoperability specifications or European standards referred to in paragraph 3 do not exist for

*Amendment*

4. Where the open interoperability **and portability** specifications or European standards referred to in paragraph 3 do not

the service **type** concerned, the provider of data processing services shall, at the request of the customer, export all **data generated or co-generated, including the relevant data formats and data structures**, in a structured, commonly used and machine-readable format.

exist for the **equivalent** service concerned, the provider of data processing services shall, at the request of the customer, **where technically feasible**, export all **exportable data** in a structured, commonly used and machine-readable format **as indicated to the customer in accordance with the exit strategy referred to in Article 24(1)(ab), unless another format is accepted by the customer**.

## Amendment 159

### Proposal for a regulation Article 26 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a. Providers of data processing services shall not be required to develop new technologies or services, disclose or transfer proprietary or confidential data or technology to a customer or to another provider of data processing services or compromise the customer's or provider's security and integrity of service;**

## Amendment 160

### Proposal for a regulation Article 26 a (new)

*Text proposed by the Commission*

*Amendment*

#### **Article 26a**

#### **Exemptions for certain data processing services**

- 1. The obligations set out in Article 23(1)(d) and Articles 25 and 26 shall not apply to data processing services which have been custom-built to facilitate a specific customer's need.**
- 2. The obligations set out in this Chapter shall not apply to data processing services provisioned free of charge, that operate on a trial basis or only supply a**



*testing and evaluation service for business product offerings.*

## **Amendment 161**

### **Proposal for a regulation Article 26 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 26b**

##### **Dispute settlement**

**1. Customers shall have access to dispute settlement bodies, certified in accordance with Article 10(2), to settle disputes in relation to breaches of the rights of customers and the obligations of providers of data processing services in relation to switching between providers of such services. The customer shall have the right to allow a third party to pursue its legal claims on its behalf.**

**2. Article 10(3) to (9) shall apply to the settlement of disputes between customers and providers of data processing service in relation to switching between providers of such services.**

## **Amendment 162**

### **Proposal for a regulation Article 27 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

1. **Data holders and** providers of data processing services shall take all **necessary and** 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.

paragraph 2 or 3 *of this Article*.

#### **Amendment 163**

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

##### **Article 27 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Data holders and providers of data processing services shall make transparent to data holders the policies, practices and arrangements they apply to international transfer or governmental access to non-personal data held in the Union.***

#### **Amendment 164**

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

##### **Article 27 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Where a data holder or provider of data processing services transfers data, the conditions set out in paragraph 1 of this Article shall be presumed to have been fulfilled where the data is transferred to a country not listed in accordance with Article 27a.***

#### **Amendment 165**

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

##### **Article 27 – paragraph 2**

*Text proposed by the Commission*

*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

2. Any decision or judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a ***data holder*** 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

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.

may only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or any such agreement between the requesting third country and a Member State.

## Amendment 166

### Proposal for a regulation

#### Article 27 – paragraph 3 – subparagraph 1 – introductory part

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

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

##### *Amendment*

In the absence of such an international agreement, where a ***data holder and*** provider of data processing services is the addressee of a decision of a court or a tribunal or a decision of an administrative authority of a third country to transfer from or give access to non-personal data within the scope of this Regulation held in the Union and compliance with such a decision would risk putting the addressee in conflict with Union law or with the national law of the relevant Member State, transfer to or access to such data by that third-country authority shall take place only ***following review by the relevant competent bodies or authorities, pursuant to this Regulation, to assess if, in addition to the provisions of any relevant national or Union law, the following conditions have been met:***

## Amendment 167

### 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***

##### *Amendment*

***deleted***

*conditions are met.*

## **Amendment 168**

### **Proposal for a regulation Article 27 – paragraph 4**

*Text proposed by the Commission*

4. If the conditions in paragraph 2 or 3 are met, the provider of data processing services shall provide the minimum amount of data permissible in response to a request, based on a reasonable interpretation thereof.

*Amendment*

4. If the conditions in paragraph 2 or 3 are met, the ***data holder or*** provider of data processing services shall provide the minimum amount of data permissible in response to a request, based on a reasonable interpretation thereof.

## **Amendment 169**

### **Proposal for a regulation Article 27 – paragraph 5**

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 170**

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

*Text proposed by the Commission*

*Amendment*

***Article 27 a***

***1. For the purposes of Article 27(1), the Commission may, by way of implementing acts, adopt a list of third-country jurisdictions where international***

*transfer or governmental access to non-personal data held in the Union might create a conflict with Union law, taking into account:*

*(i) conflicting law, including on data protection, public security and national security;*

*(ii) access to the reasoned objection procedure;*

*(iii) the level of risk to the confidentiality of data, in particular the risk to trade secrets; and*

*(iv) third country adequacy recognition under Article 45 of Regulation (EU) 2016/679.*

*2. The implementing acts referred to in paragraph 1 of this Article shall be adopted in accordance with the examination procedure referred to in Article 39(2).*

*3. When developing the list referred to in paragraph 1 of this Article, the Commission shall consult and take due account of the recommendations issued by the Data Innovation Board established under Regulation [xxx – Data Governance Act] and other relevant expert groups.*

## **Amendment 171**

### **Proposal for a regulation**

#### **Article 28 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

Operators *of* data spaces shall comply with, the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services:

*Amendment*

***Data holders and Operators within Common European*** data spaces shall comply with, the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services:

## **Amendment 172**

## Proposal for a regulation

### Article 28 – paragraph 1 – subparagraph 1 – point a

*Text proposed by the Commission*

(a) the dataset content, use restrictions, licences, data collection methodology, data quality and uncertainty shall be sufficiently described to allow the recipient to find, access and use the data;

*Amendment*

(a) the dataset content, use restrictions, licences, data collection methodology, data quality and uncertainty shall be sufficiently described ***in a machine-readable format*** to allow the recipient to find, access and use the data;

## Amendment 173

### Proposal for a regulation

#### Article 28 – paragraph 1 – subparagraph 1 – point b

*Text proposed by the Commission*

(b) the data structures, data formats, vocabularies, classification schemes, taxonomies and code lists shall be described in a publicly available and consistent manner;

*Amendment*

(b) the data structures, data formats, vocabularies, classification schemes, taxonomies and code lists, ***where available***, shall be described in a publicly available and consistent manner;

## Amendment 174

### Proposal for a regulation

#### Article 28 – paragraph 1 – subparagraph 1 – point c

*Text proposed by the Commission*

(c) the technical means to access the data, such as application programming interfaces, and their terms of use and quality of service shall be sufficiently described to enable automatic access and transmission of data between parties, including continuously or in real-time in a machine-readable format;

*Amendment*

(c) ***where applicable***, the technical means to access the data, such as application programming interfaces, and their terms of use and quality of service shall be sufficiently described to enable automatic access and transmission of data between parties, including continuously or in real-time in a machine-readable format;

## Amendment 175

### Proposal for a regulation

#### Article 28 – paragraph 2

*Text proposed by the Commission*

2. The Commission is empowered to adopt delegated acts, in accordance with Article 38 to supplement this Regulation by **further** specifying **the** essential requirements referred to in paragraph 1.

*Amendment*

2. The Commission is empowered to adopt delegated acts, in accordance with Article 38 to supplement this Regulation by specifying essential requirements **for harmonised standards** referred to in paragraph 1 **taking into account, where relevant, positions adopted by the European Data Innovation Board, as referred to in Article 30(f) of Regulation... [DGA]**.

**Amendment 176**

**Proposal for a regulation  
Article 28 – paragraph 3**

*Text proposed by the Commission*

3. Operators **of** data spaces that meet the harmonised standards or parts thereof published by reference in the Official Journal of the European Union shall be presumed to be in conformity with the essential requirements referred to in paragraph 1 of this Article, to the extent those standards cover those requirements.

*Amendment*

3. Operators **within** data spaces **and data holders** that meet the harmonised standards or parts thereof published by reference in the Official Journal of the European Union shall be presumed to be in conformity with the essential requirements referred to in paragraph 1 of this Article, to the extent those standards cover those requirements.

**Amendment 177**

**Proposal for a regulation  
Article 28 – paragraph 5**

*Text proposed by the Commission*

5. The Commission **shall**, by way of implementing acts, adopt common specifications, where harmonised standards referred to in paragraph 4 of this Article do not exist or in case it considers that the relevant harmonised standards are insufficient to ensure conformity with the essential requirements in paragraph 1 of this Article, where necessary, **with respect to any or all of the requirements laid**

*Amendment*

5. The Commission **may**, by way of implementing acts, adopt common specifications, where harmonised standards referred to in paragraph 4 of this Article do not exist or in case it considers that the relevant harmonised standards are insufficient to ensure conformity with the essential requirements in paragraph 1 of this Article, where necessary. **Prior to adopting such implementing acts, the**



*down in paragraph 1 of this Article.*  
*Those* implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).

*Commission shall seek advice from and take into account relevant positions adopted by the European Data Innovation Board, as referred to in Article 30(f) of Regulation... [DGA].* The implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).

## Amendment 178

### Proposal for a regulation Article 29 – title

*Text proposed by the Commission*

*Amendment*

Interoperability for data processing services

Interoperability **and portability** for data processing services

## Amendment 179

### Proposal for a regulation Article 29 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

1. Open interoperability specifications and European standards for the interoperability of data processing services shall:

1. Open interoperability **and portability** specifications and European standards for the interoperability **and portability** of data processing services shall:

## Amendment 180

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

*Text proposed by the Commission*

*Amendment*

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

(a) **where technically feasible**, be performance oriented towards achieving interoperability between different data processing services that cover **equivalent services**;

## Amendment 181

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

*Text proposed by the Commission*

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

*Amendment*

(b) enhance portability of digital assets between different data processing services that cover *equivalent services*;

## Amendment 182

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

*Text proposed by the Commission*

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

*Amendment*

(c) *facilitate*, where technically feasible, functional equivalence between data processing services *referred to in Article 26(1)* that cover *equivalent services*.

## Amendment 183

### Proposal for a regulation Article 29 – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

*(ca) shall not adversely impact the security and integrity of services and data;*

## Amendment 184

### Proposal for a regulation Article 29 – paragraph 1 – point c b (new)

*Text proposed by the Commission*

*Amendment*

*(cb) be designed in a way that allows for technical advances and the inclusion of new functions and innovation in data processing services.*

## Amendment 185

### Proposal for a regulation

#### Article 29 – paragraph 2 – introductory part

*Text proposed by the Commission*

2. Open interoperability specifications and European standards for the interoperability of data processing services shall address:

*Amendment*

2. Open interoperability **and portability** specifications and European standards for the interoperability of data processing services shall address:

## Amendment 186

### Proposal for a regulation

#### Article 29 – paragraph 3

*Text proposed by the Commission*

3. Open interoperability specifications shall comply with paragraph 3 and 4 of Annex II of Regulation (EU) No 1025/2012.

*Amendment*

3. Open interoperability **and portability** specifications shall comply with paragraph 3 and 4 of Annex II of Regulation (EU) No 1025/2012.

## Amendment 187

### Proposal for a regulation

#### Article 29 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. Open interoperability and portability specifications and European standards shall not distort the market for data processing services or limit the development of any new competing and innovative technologies or solutions or any technologies or solutions that are based on them.**

## Amendment 188

### Proposal for a regulation

#### Article 29 – paragraph 4

*Text proposed by the Commission*

4. The Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft European standards applicable to specific ***service types of*** data processing services.

*Amendment*

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

**Amendment 189**

**Proposal for a regulation  
Article 29 – paragraph 5**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 190**

**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*

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

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

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

#### Amendment 191

##### Proposal for a regulation Article 31 – paragraph 7

*Text proposed by the Commission*

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

*Amendment*

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

#### Amendment 192

##### Proposal for a regulation Article 31 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

**7a. The competent authorities shall cooperate with the competent authorities of the other Member States to ensure this Regulation is implemented coherently and efficiently. Such mutual assistance shall include the exchange of all relevant information by secure electronic means without undue delay, in particular for the purpose of carrying out the tasks referred to in paragraph 3(b), (c) and (d).**

#### Amendment 193

##### Proposal for a regulation Article 32 – paragraph 1

*Text proposed by the Commission*

1. Without prejudice to any other

*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 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.

administrative or judicial remedy, natural and legal persons shall have the right to lodge a complaint, individually or, 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 194

### 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. Competent authorities shall cooperate to handle and resolve complaints ***effectively and in a timely manner***, including by ***setting reasonable deadlines for adopting formal decisions, ensuring equality of the parties, ensuring the right to be heard from complainants and access to the file throughout the process***, 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 195

### 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. ***Such contractual terms shall be in line with Fair, Reasonable and Non-***

*Discriminatory (FRAND) principles.*

#### **Amendment 196**

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

##### **Article 34 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*The Commission shall, after consulting the European Data Protection Board, issue guidelines on the definition of products to ascertain which devices are included or excluded from the scope of this Regulation in line with the definition of product under Article 2 of this Regulation.*

#### **Amendment 197**

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

##### **Article 41 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) the interplay between this Regulation, the sector-specific legislation and other relevant Union law, in order to assess any possible conflicting provision, overregulation or legislative gaps;*

#### **Amendment 198**

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

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

*Text proposed by the Commission*

*Amendment*

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

#### **Amendment 199**



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

*Text proposed by the Commission*

*Amendment*

*(ea) the efficiency and swiftness of enforcement;*

**Amendment 200**

**Proposal for a regulation**  
**Article 42 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

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

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Harmonised rules on fair access to and use of data (Data Act)		
<b>References</b>	COM(2022)0068 – C9-0051/2022 – 2022/0047(COD)		
<b>Committee responsible</b> Date announced in plenary	ITRE 23.3.2022		
<b>Opinion by</b> Date announced in plenary	IMCO 23.3.2022		
<b>Associated committees - date announced in plenary</b>	7.7.2022		
<b>Rapporteur for the opinion</b> Date appointed	Adam Bielan 11.5.2022		
<b>Discussed in committee</b>	26.10.2022	29.11.2022	8.12.2022
<b>Date adopted</b>	24.1.2023		
<b>Result of final vote</b>	+: -: 0:	33 7 0	

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

33	+
ECR	Adam Bielan, Beata Mazurek, Bogdan Rzońca, Kosma Zlotowski
ID	Jean-Lin Lacapelle
NI	Miroslav Radačovský
PPE	Pablo Arias Echeverría, Maria da Graça Carvalho, Deirdre Clune, Adam Jarubas, Arba Kokalari, Andrey Kovatchev, Antonius Manders, Andreas Schwab, Tomislav Sokol, Ivan Štefanec, Loránt Vincze, Marion Walsmann
Renew	Andrus Ansip, Dita Charanzová, Sandro Gozi, Svenja Hahn, Morten Løkkegaard, Róza Thun und Hohenstein, Marco Zullo
S&D	Alex Agius Saliba, Biljana Borzan, Maria Grapini, Camilla Laureti, Adriana Maldonado López, Leszek Miller, Tsvetelina Penkova, Christel Schaldemose

7	-
The Left	Kateřina Konečná, Anne-Sophie Pelletier
Verts/ALE	David Cormand, Malte Gallée, Alexandra Geese, Marcel Kolaja, Kim Van Sparrentak

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention

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

### SHORT JUSTIFICATION

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

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

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

We stressed the importance of providing a better outline of the guarantees to keep trade secrets, extending the tools given to the different people involved in order to secure their

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

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

Regarding public interest, we have tried to boost the amount of data that can be made available to the public authorities if required or appropriate, while also improving temporary provisions for public emergencies. To do this, we have altered some waiting times and removed exclusions that we found unfair so that the Act can be used for its intended purposes as effectively and directly as possible. We also wanted to ensure appropriate compensation would be provided for making data available; therefore, we have removed the unjustified difference between emergencies and collective interests, as both circumstances are equally in the public interest. The potential for harm to private operators should be viewed in the same way.

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

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

## **AMENDMENTS**

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

## Amendment 1

### Proposal for a regulation Recital 4

*Text proposed by the Commission*

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

*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 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*

*Amendment*

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

(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

though facilitating the maintenance and repair of the products in question.

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

*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

intellectual property rights.

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 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

##### *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, ***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

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.

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

#### *Amendment*

(25) In sectors characterised by the concentration of a small number of manufacturers supplying end users, there are only limited options available to users with regard to sharing data with those manufacturers. In such circumstances, contractual agreements may be insufficient to achieve the objective of user empowerment. The data tends to remain under the control of the manufacturers, making it difficult for users to obtain value from the data generated by the equipment they purchase or lease. Consequently, there is limited potential for innovative smaller ***businesses*** to offer data based solutions in a competitive manner and for a diverse data economy in Europe. This Regulation should therefore build on recent developments in specific sectors, such as the Code of Conduct on agricultural data

sharing by contractual agreement. Sectoral legislation may be brought forward to address sector-specific needs and objectives. Furthermore, the data holder should not use any data generated by the use of the product or related service in order to derive insights about the economic situation of the **user** or its assets or production methods or the use in any other way that could undermine the commercial position of the **user** on the markets it is active on. This would, for instance, involve using knowledge about the overall performance of a business or a farm in contractual negotiations with the user on potential acquisition of the user's products or agricultural produce to the user's detriment, or for instance, using such information to feed in larger databases on certain markets in the aggregate (,e.g. databases on crop yields for the upcoming harvesting season) as such use could affect the user negatively in an indirect manner. The user should be given the necessary technical interface to manage permissions, **preferably** with granular permission options (such as "allow once" or "allow while using this app or service"), including the option to withdraw permission.

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 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

*Amendment*

(27) The data holder may require appropriate user identification **or**

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 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.

**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*

(28) The user should be free to use the 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

*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, 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.

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

*Amendment*

(34) In line with the data minimisation principle, the third party should only access additional information that is necessary for the provision of the service requested by the user. Having received access to data, the third party should process it exclusively for the purposes agreed with the user, without interference from the data holder. It should be as easy for the user to refuse or discontinue access by the third party to the data as it is for the user to authorise access. The third party should not coerce, deceive or manipulate the user in any way, by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface with the user. in this context, third parties should not rely on so-called dark patterns in designing their digital interfaces. Dark patterns are design techniques that push or deceive consumers into decisions that have negative consequences for them. These manipulative techniques can be used to persuade users, particularly vulnerable consumers, to engage in unwanted

behaviours, and to deceive users by nudging them into decisions on data disclosure transactions or to unreasonably bias the decision-making of the users of the service, in a way that subverts and impairs their autonomy, decision-making and choice. ***Common and legitimate*** commercial practices that are in compliance with Union law should not in themselves be regarded as constituting dark patterns. Third parties should comply with their obligations under relevant Union law, in particular the requirements set out in Directive 2005/29/EC, Directive 2011/83/EU, Directive 2000/31/EC and Directive 98/6/EC.

## 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

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*

(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

imbalances by allowing the Commission to designate a provider as a “gatekeeper”, and imposes a number of obligations on such designated gatekeepers, including a prohibition to combine certain data without consent, and an obligation to ensure effective rights to data portability under Article 20 of Regulation (EU) 2016/679. Consistent with the [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)], and given the unrivalled ability of these companies to acquire data, it would not be necessary to achieve the objective of this Regulation, and would thus be disproportionate in relation to data holders made subject to such obligations, to include such gatekeeper undertakings as beneficiaries of the data access right. This means that an undertaking providing core platform services that has been designated as a gatekeeper cannot request or be granted access to users’ data generated by the use of a product or related service or by a virtual assistant based on the provisions of Chapter II of this Regulation. An undertaking providing core platform services designated as a gatekeeper pursuant to Digital Markets Act should be understood to include all legal entities of a group of companies where one legal entity provides a core platform service. Furthermore, third parties to whom data are made available at the request of the user *may* not make the data available to a designated gatekeeper. For instance, the third party *may* not sub-contract the service provision to a gatekeeper. However, this does not prevent third parties from using data processing services offered by a designated gatekeeper. This exclusion of designated gatekeepers from the scope of the access right under this Regulation does not prevent these companies from obtaining data through other lawful means.

unable to challenge or contest. The [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)] aims to redress these inefficiencies and imbalances by allowing the Commission to designate a provider as a “gatekeeper”, and imposes a number of obligations on such designated gatekeepers, including a prohibition to combine certain data without consent, and an obligation to ensure effective rights to data portability under Article 20 of Regulation (EU) 2016/679. Consistent with the [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)], and given the unrivalled ability of these companies to acquire data, it would not be necessary to achieve the objective of this Regulation, and would thus be disproportionate in relation to data holders made subject to such obligations, to include such gatekeeper undertakings as beneficiaries of the data access right. This means that an undertaking providing core platform services that has been designated as a gatekeeper cannot request or be granted access to users’ data generated by the use of a product or related service or by a virtual assistant based on the provisions of Chapter II of this Regulation. An undertaking providing core platform services designated as a gatekeeper pursuant to Digital Markets Act should be understood to include all legal entities of a group of companies where one legal entity provides a core platform service. Furthermore, third parties to whom data are made available at the request of the user *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 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.

##### *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. ***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

##### *Amendment*

(51) Where one party is in a stronger

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

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 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

#### *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

imposed.

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

#### *Amendment*

(56) In situations of exceptional need, it may be necessary for public sector bodies or Union institutions, agencies or bodies to use data held by an enterprise to respond to public emergencies, ***but also to prevent and recover from public emergencies*** or in other exceptional cases, ***under certain conditions, where there is a need to fulfil 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 emergency ***is*** determined according to the respective procedures in the Member States or of relevant international organisations.

*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*** 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

*Amendment*

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



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

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

##### *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***

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**.

***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 Council<sup>65</sup> 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

#### *Amendment*

(62) The objective of the obligation to provide the data is to ensure that public sector bodies and Union institutions, agencies or bodies have the necessary knowledge to respond to, prevent or recover from public emergencies or to maintain the capacity to fulfil specific tasks explicitly provided by law. The data obtained by those entities may be commercially sensitive. Therefore, Directive (EU) 2019/1024 of the European Parliament and of the Council<sup>65</sup> 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.

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.***

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<sup>65</sup> 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).

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<sup>65</sup> 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

#### *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

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 Council<sup>66</sup> 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.

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<sup>66</sup> 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).

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 Council<sup>66</sup> 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.

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<sup>66</sup> 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 sector bodies or to Union institutions, agencies or bodies is strictly necessary to fulfil the purpose for which the data has been requested, confidentiality of such disclosure should be ensured to the data holder.

##### *Amendment*

(66) When reusing data provided by data holders, public sector bodies and Union institutions, agencies or bodies should respect both existing applicable legislation and contractual obligations to which the data holder is subject. Where the disclosure of trade secrets of the data holder to public sector bodies or to Union institutions, agencies or bodies is strictly necessary to fulfil the purpose for which the data has been requested, confidentiality of such disclosure should be ensured ***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 exceptional need other than responding to a public emergency might be more frequent, including cases of prevention of or recovery from a public emergency, data holders should ***in such cases*** be entitled to a reasonable compensation which should ***not exceed*** the technical and organisational costs incurred in complying with the request and the reasonable margin required for making the data available to the public sector body or to the Union institution, agency or body. The compensation should not be understood as constituting payment for the data itself and as being compulsory.

*Amendment*

(67) 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 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

*Amendment*

(68) The public sector body or Union institution, agency or body may share the data it has obtained pursuant to the request with other entities or persons when this is



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

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 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

*Amendment*

(70) Regulation (EU) 2018/1807 of the European Parliament and of the Council ***on a framework for the free flow of non-***



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.

***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 developing a competitive internal market.**

## 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

##### *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

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 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.

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 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

##### *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. 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.

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 of the European Parliament and of the Council<sup>68</sup> and Directive (EU) 2020/1828 of the European Parliament and of the Council<sup>69</sup>.

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<sup>68</sup> 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).

<sup>69</sup> 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**

*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 actions, this Regulation amends the Annexes to the Regulation (EU) 2017/2394 of the European Parliament and of the Council<sup>68</sup> and Directive (EU) 2020/1828 of the European Parliament and of the Council<sup>69</sup>.

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<sup>68</sup> 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).

<sup>69</sup> 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).

*Text proposed by the Commission*

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

*Amendment*

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

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

*Amendment*

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

*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



task carried out in the public interest:

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*

(2) ‘product’ means a tangible, **movable** item, **including where incorporated in an immovable item**, that obtains, generates **or collects**, data

*Amendment*

(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



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;

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*

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

*Amendment*

(4) ‘virtual assistants’ means software that can process demands, tasks or questions including based on audio, written input, gestures or motions, and based on those demands, tasks or questions provides access 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 of the product and** related services, the ability, to make available certain data;

*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 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

*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 *a scalable and elastic pool of shareable* computing resources *of a centralised, distributed or highly distributed nature*;

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*

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

*Amendment*

1. Products shall be designed and manufactured, and related services shall be provided, in such a manner that data **obtained, collected or** generated by their use, **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

*Amendment*

(a) the **type of data, format and an average estimated** volume of the data

product or related service;

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*

*Amendment*

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

3. Trade secrets **shall 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

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***

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.

*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 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.

*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 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*

*Amendment*

(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 75

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

*Text proposed by the Commission*

*Amendment*

*(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 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*

*Amendment*

1. The obligations of this Chapter shall not apply to data generated by the use of products manufactured or related services provided by enterprises that qualify as 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.

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*

*Amendment*

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

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

*Amendment*

1. Any compensation agreed between a data holder and a data recipient for **the costs incurred and investment required** for making data available shall 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*

*Amendment*

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:

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*

*Amendment*

(d) it is capable of issuing its decisions in a swift, efficient and cost-effective

(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*.

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*

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

*Amendment*

8. The decision of the 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 (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*

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

*Amendment*

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

*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.

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*

*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;

(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*

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

*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, ***due to an imbalance of power between the parties leading to a lack of meaningful ability to negotiate, particularly in the context of a 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*

*Amendment*

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

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 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*

*Amendment*

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

(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*

*Amendment*

(b) where the data request is limited in time and scope and necessary to prevent a

(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;

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*

*Amendment*

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

(c) *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*

*Amendment*

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

(1) the public sector body or Union institution, agency or body has *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*

*Amendment*

(b) demonstrate the exceptional need

(b) demonstrate the exceptional need

for which the data are requested;

*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

*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;

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 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.

*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 ***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*

*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.

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

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 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*

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

*Amendment*

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*

*Amendment*

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

2. Individuals or organisations receiving the data pursuant to paragraph 1 shall:

**(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,

*Amendment*

1. Providers of data processing services shall take all **appropriate**

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.

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

#### *Amendment*

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

## 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

#### *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**

impinge on national security or defence interests of the Union or its Member States.

*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*

*Amendment*

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.

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*

*Amendment*

2. Without prejudice to paragraph 1 of this Article:

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*

*Amendment*

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

***deleted***

#### **Amendment 145**

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

*Text proposed by the Commission*

*Amendment*

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

3. Member States shall ensure that the tasks and powers of the ***data 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

(b) handling **and deciding on** complaints arising from alleged violations of this Regulation, **pursuant to Article 32 of this Regulation**, and investigating, to

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;

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*

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

*Amendment*

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

## 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

*Amendment*

(h) **ensuring** that the obligations of Chapter VI are enforced **efficiently, swiftly and** consistently with other Union

consistently with other Union legislation and self-regulation applicable to providers of data processing service;

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 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 accordance with this Regulation.

**Amendment 157**

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

*Text proposed by the Commission*

*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*

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 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*

**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  
CONTAINING CERTAIN DATA***

## 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***

*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.***

related service.

## **Amendment 166**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(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 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

<b>Title</b>	Harmonised rules on fair access to and use of data (Data Act)	
<b>References</b>	COM(2022)0068 – C9-0051/2022 – 2022/0047(COD)	
<b>Committee responsible</b> Date announced in plenary	ITRE 23.3.2022	
<b>Opinion by</b> Date announced in plenary	JURI 23.3.2022	
<b>Associated committees - date announced in plenary</b>	7.7.2022	
<b>Rapporteur for the opinion</b> Date appointed	Ibán García Del Blanco 28.2.2022	
<b>Discussed in committee</b>	5.9.2022	27.10.2022
<b>Date adopted</b>	24.1.2023	
<b>Result of final vote</b>	+: 20	–: 2
	0: 1	
<b>Members present for the final vote</b>	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	
<b>Substitutes present for the final vote</b>	Angel Dzhambazki, Andrzej Halicki, Emil Radev, Nacho Sánchez Amor, Yana Toom	
<b>Substitutes under Rule 209(7) present for the final vote</b>	David Cormand, Nicolás González Casares, Birgit Sippel	

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

<b>20</b>	<b>+</b>
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

<b>2</b>	<b>-</b>
ECR	Angel Dzhambazki, Raffaele Stancanelli

<b>1</b>	<b>0</b>
ID	Gunnar Beck

Key to symbols:

+ : in favour

- : against

0 : abstention

2.2.2023

## **OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

for the Committee on Industry, Research and Energy

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

Rapporteur for opinion (\*): Sergey Lagodinsky

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

### **SHORT JUSTIFICATION**

#### 1. Background

The proposal for a Regulation on harmonised rules on fair access to and use of data (Data Act) is part of the Commission's European Strategy for Data, announced in February 2020.

According to the Commission, the Data Act was proposed trying to ensure “fairness in the allocation of value from data” and “to foster access to and use of data”. Tapping into the unused 80% of industrial data, with an expected volume of “175 zettabytes in 2025”, the Commission “expects to create €270 billion of additional GDP by 2028”, according to its press release.

#### 2. The Rapporteur's Position

The rapporteur aims at a number of improvements, most importantly the following:

##### A. Against a wild west for personal data

The fundamental right to the protection of personal data is rooted in the realisation that in a democratic society, an individual needs to be able to decide over the information others have over them, and to exercise control. To protect these fundamental interests, personal data must not be allowed to become a tradable commodity. Therefore, the sharing of data by data holders with third parties should take place mainly for purposes such as the provision of aftermarket services, to provide updates fixing security and usability problems, and for the purposes of data intermediation services and data altruism organisations under the Data Governance Act.

##### B. Strengthen data minimisation and storage limitation

The principles of data minimisation and storage limitation in the General Data Protection

Regulation follow from the fundamental right to protection of personal data. Where this is no longer necessary for the purpose of processing, and where ever possible, data holders should delete, or anonymise data. Only where this is not possible in order to fulfil the purpose, aggregation, pseudonymisation, or encryption should be put in place. Through the increase in available data, and the combination of non-personal data sets, the re-identification of a data subject even based on anonymised data sets becomes more plausible. This must be prevented.

C. Include derived and inferred personal data

Data concerned by the provisions of the Data Act are not only produced by devices and communicated to data holders. Some data like metadata come into existence merely in the data holder's infrastructure. Such derived and inferred personal data should therefore also be in the scope and be provided to data subjects.

D. Separate product purchase from data service provision

The purchase of a product is often combined with the provision of a related service. To facilitate contractual autonomy of users, the LIBE opinion proposes to separate the contract for the purchase of a product from the agreement to the provision of such a related service.

E. Calibrate Business to Government data sharing

The provisions on business to government data sharing have raised concerns regarding legal certainty and proportionality. The definitions of exceptional need and of public emergency have been reformulated to be more precise and avoid uncertainty. Article 15 in particular now avoids interfering with the fundamental rights requirement of foreseeability of law and uncertainty in that the reduction of administrative burden cannot easily be weighed against the potential impacts on fundamental rights of the provision.

## AMENDMENTS

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

### Amendment 1

#### Proposal for a regulation

##### Recital 1

*Text proposed by the Commission*

(1) In recent years, data-driven technologies have had transformative effects on all sectors of the economy. The proliferation in products connected to the Internet of Things in particular has

*Amendment*

(1) In recent years, data-driven technologies have had transformative effects on all sectors of the economy. The proliferation in products connected to the Internet of Things in particular has



increased the volume and potential value of data for consumers, businesses and society. High quality and interoperable data from different domains increase competitiveness and innovation and ensure sustainable economic growth. The same dataset may potentially be used and reused for a variety of purposes and to an unlimited degree, without any loss in its quality or quantity.

increased the volume and potential value of data for consumers, businesses and society. High quality and interoperable data from different domains increase competitiveness and innovation and ensure sustainable economic growth. The same dataset may potentially be used and reused for a variety of purposes and to an unlimited degree, ***while respecting users' choices and applicable legislation to protect them.***

## Amendment 2

### Proposal for a regulation

#### Recital 4

*Text proposed by the Commission*

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

(4) In order to remove barriers to a well-functioning internal market for ***connected products and related services***, it is necessary to lay down a harmonised framework specifying who, other than the manufacturer or other data holder is entitled, ***upon request by a user***, 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 3

### Proposal for a regulation

#### Recital 5

*Text proposed by the Commission*

(5) This Regulation ensures that users of a product or related service in the Union

*Amendment*

(5) This Regulation ensures that users of a product or related service in the Union

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

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

#### Amendment 4

**Proposal for a regulation**  
**Recital 6**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 5**

**Proposal for a regulation**  
**Recital 7**

*Text proposed by the Commission*

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

*Amendment*

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

right to the protection of personal data or the right to privacy and confidentiality of communications.

right to the protection of personal data or the right to privacy and confidentiality of communications. ***The obtaining, collection, or generation of personal data through the use of a product or related service should require a legal basis pursuant to applicable data protection law. This Regulation should not be interpreted as constituting a legal basis for the processing of personal data. In the event of a conflict between this Regulation and Union law on the protection of personal data and privacy or national law adopted in accordance with such Union law, the relevant Union or national law on the protection of personal data and privacy should prevail. Where personal data is generated by the use of a product or related service, the term "user" should be understood as "data subject" within the meaning of applicable data protection law.***

## Amendment 6

### Proposal for a regulation Recital 8

#### *Text proposed by the Commission*

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

#### *Amendment*

(8) ***All principles of Regulation (EU) 2016/679 and in particular*** the principles of data minimisation and data protection by design and by default are essential when processing ***can lead to*** significant risks to the fundamental rights of individuals. Taking into account the state of the art, all parties to data sharing, including where within scope of this Regulation, should implement technical and organisational measures to protect these rights. Such measures include not only ***anonymisation***, pseudonymisation and encryption, but also the use of increasingly available technology that permits algorithms to be brought to the data and allow valuable insights to be derived without the transmission between parties or

structured data themselves.

unnecessary copying of the raw or structured data themselves.

## Amendment 7

### Proposal for a regulation Recital 8 a (new)

*Text proposed by the Commission*

*Amendment*

***(8a) The goal of anonymisation is to prevent identification. In accordance with Regulation (EU) 2016/679, anonymised data is formerly personal data that has been processed in such a way as to remove the possibility to relate them to an identified or identifiable natural person and rendered anonymous in such a manner that the data subject is not or no longer identifiable. Although improbable, the combination of non-personal data sets could lead to the identification or, in the case of previously anonymised data, the re-identification and therefore reattribution to a natural person. The principle of data minimisation requires that personal data must be anonymised where the purpose or purposes for which they are processed can be fulfilled without the use of personal data.***

## Amendment 8

### Proposal for a regulation Recital 10

*Text proposed by the Commission*

*Amendment*

(10) This Regulation is without prejudice to Union legal acts providing for the sharing of, the access to and the use of data for the purpose of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, or for customs and taxation purposes, irrespective of the legal

(10) This Regulation is without prejudice to Union legal acts providing for the sharing of, the access to and the use of data for the purpose of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, or for customs and taxation purposes, irrespective of the legal

basis under the Treaty on the Functioning of the European Union on which basis they were adopted. Such acts include Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online, the [e-evidence proposals [COM(2018) 225 and 226] once adopted], *the [Proposal for] a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, as well as international cooperation in this context in particular on the basis of the Council of Europe 2001 Convention on Cybercrime (“Budapest Convention”)*. ***This Regulation is without prejudice to the competences of the Member States regarding activities concerning public security, defence and national security in accordance with Union law, and activities from customs on risk management and in general, verification of compliance with the Customs Code by economic operators.***

basis under the Treaty on the Functioning of the European Union on which basis they were adopted. Such acts include Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online, the [e-evidence proposals [COM(2018) 225 and 226] once adopted], Regulation ***(EU) 2022/2065*** of the European Parliament and of the Council ***of 19 October 2022*** on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, as well as international cooperation in this context in particular on the basis of the Council of Europe 2001 Convention on Cybercrime (“Budapest Convention”).

## Amendment 9

### Proposal for a regulation Recital 13

#### *Text proposed by the Commission*

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

#### *Amendment*

(13) This Regulation is without prejudice to the competences of the Member States regarding activities concerning public security, defence and national security in accordance with Union law, and activities from customs on risk management and in general, verification of compliance with the Customs Code by economic operators. ***Data collected or generated by defence products or services or in the context of defence-related activities should be excluded from the scope of this Regulation as the disclosure of such data would create strategic vulnerabilities for Union security and***



*defence.*

## Amendment 10

### 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 ***or embedded software***, 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 ***when it is not personal data***. 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 11

### 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 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, **sensor-generated data or data captured by embedded applications, and data recorded by a device**, 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 **infers or derives** data from such data, **unless this data is personal data**, as such software process may be subject to intellectual property rights.

**Amendment 12**

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

*Text proposed by the Commission*

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

*Amendment*

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

*are subject to applicable Union law, in particular on the protection of personal data, of privacy, and the protection of employees.*

## Amendment 13

### Proposal for a regulation Recital 18 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 14

### Proposal for a regulation Recital 19

*Text proposed by the Commission*

*Amendment*

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

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

services are provided in such a manner that data generated by their use are always easily accessible to the user.

are designed and manufactured and related services are provided in such a manner that data generated by their use are always easily accessible to the user.

## Amendment 15

### Proposal for a regulation Recital 21

#### *Text proposed by the Commission*

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

#### *Amendment*

(21) Products may be designed to make certain data directly available from an on-device data storage or from a remote server to which the data are communicated. Access to the on-device data storage may be enabled via cable-based or wireless local area networks connected to a publicly available electronic communications service or a mobile network. The server may be the manufacturer's own local server capacity or that of a third party or a cloud service provider who functions as data holder. They may be designed to permit the user or a third party to process the data on the product or on a computing instance of the manufacturer. ***Where on-device access to data is technically supported, the manufacturer should make this means of access also technically available to third-party service providers in a non-discriminatory manner. Products should be designed, and related services should be provided, in such a way that it is possible to use the products and services in the least privacy-invasive way possible. Where users can reasonably expect it due to the nature of the product, products should be designed, and related services should be provided, in such a manner that a basic set of functionalities is maintained when the product or related service is used offline.***

## Amendment 16

**Proposal for a regulation**  
**Recital 22**

*Text proposed by the Commission*

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

**Amendment 17**

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

*Text proposed by the Commission*

(23) Before concluding a contract for the purchase, rent, or lease of a product or the

*Amendment*

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

*Amendment*

(23) Before concluding a contract for the purchase, rent, or lease of a product or the

provision of a related service, clear and sufficient information should be provided to the user *on* how the data *generated* may be accessed. This obligation provides transparency over the data generated and enhances the easy access for the user. This obligation to provide information does not affect the obligation for the controller to provide information to the data subject pursuant to Article 12, 13 and 14 of Regulation 2016/679.

provision of a related service, clear and sufficient information should be provided to the user, *including on the type, format, and collection frequency of data, the nature and estimated volume of any data obtained, collected, generated, and personal data derived or inferred*, how the data may be accessed, *whether the data is to be or can be shared with third parties, and other relevant information*. This obligation provides transparency over the data generated and enhances the easy access for the user. This obligation to provide information does not affect the obligation for the controller to provide information to the data subject pursuant to Article 12, 13 and 14 of Regulation 2016/679.

## Amendment 18

### 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 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

#### *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 *is* a controller *pursuant to* Regulation (EU) 2016/679. Where users are data subjects, data holders should be obliged to provide them access to their data and to make the data available to third parties of the user's choice in accordance with this Regulation. However, this Regulation does not create a legal basis under Regulation (EU) 2016/679 for the data holder to provide access to personal data or make it available to a third party when requested by a user that is not a data subject and should not be understood as conferring any new right on the data holder to use data generated by the use of a product or related service. This applies in particular where the manufacturer is the data holder. *The performance of a*

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.

***contract can only be a legal ground for processing of personal data if the data subject is a party or if steps are being taken at the request of the data subject prior to entering into a contract. The necessity requirement for processing personal data for the performance of a contract pursuant to Article 6(1)(b) of Regulation (EU) 2016/679 cannot be fulfilled by merely providing for processing in a contractual clause. Assessing what is objectively necessary for the individual services requested by the data subject must be fact-based.*** 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.

## **Amendment 19**

### **Proposal for a regulation Recital 24 a (new)**

*Text proposed by the Commission*

*Amendment*

***(24a) After the data has been made available to a user or data recipient according to the provisions of this Regulation, the data holder should not be***

*liable for any direct or indirect damages arising from, relating to, or in connection with the processing of the data by the user or by the third party.*

## Amendment 20

### 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 21

### Proposal for a regulation

#### Recital 28

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

(28) The user should be free to use the data for any lawful purpose. This includes providing the data the user has received exercising the right under this Regulation to a third party offering an aftermarket service that may be in competition with a service provided by the data holder, or to instruct the data holder to do so. The data holder should ensure that the data made available to the third party is as accurate, complete, reliable, relevant and up-to-date as the data the data holder itself may be able or entitled to access from the use of the product or related service. Any trade secrets or intellectual property rights should be respected in handling the data. It is important to preserve incentives to invest in products with functionalities based on

##### *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, ***for maintenance and repair, for software updates, or for intermediation services or data altruism organisations in the framework of Regulation (EU) 2022/868 (Data Governance Act)***. 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



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.

product or related service. Any trade secrets or intellectual property rights should be respected in handling the data. It is important to preserve incentives to invest in products with functionalities based on the use of data from sensors built into that product. The aim of this Regulation should accordingly be understood as to foster the development of new, innovative products or related services, stimulate innovation on aftermarkets, but also stimulate the development of entirely novel services making use of the data, including based on data from a variety of products or related services. At the same time, it aims to avoid undermining the investment incentives for the type of product from which the data are obtained, for instance, by the use of data to develop a competing product.

## Amendment 22

### Proposal for a regulation

#### Recital 30

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

(30) The use of a product or related service may, in particular when the user is a natural person, generate data that relates to an identified or identifiable natural person (the data subject). Processing of such data is subject to the rules established under Regulation (EU) 2016/679, including where personal and non-personal data in a data set are inextricably linked<sup>64</sup>. The data subject may be the user or another natural person. Personal data may only be requested by a controller or a data subject. A user who is the data subject is under certain circumstances entitled under Regulation (EU) 2016/679 to access personal data concerning them, and such rights are unaffected by this Regulation. Under this Regulation, the user who is a natural person is further entitled to access all data generated by the product, personal and non-personal. Where the user is not the

##### *Amendment*

(30) The use of a product or related service may, in particular when the user is a natural person, generate data that relates to an identified or identifiable natural person (the data subject). Processing of such data is subject to the rules established under Regulation (EU) 2016/679, including where personal and non-personal data in a data set are inextricably linked<sup>64</sup>. The data subject may be the user or another natural person. Personal data may only be requested by a controller or a data subject. A user who is the data subject is under certain circumstances entitled under Regulation (EU) 2016/679 to access personal data concerning them, ***including derived or inferred data***, and such rights are unaffected by this Regulation. Under this Regulation, the user who is a natural person is further entitled to access all data generated by the product, personal and



data subject but an enterprise, including a sole trader, and not in cases of shared household use of the product, the user will be a controller within the meaning of Regulation (EU) 2016/679. Accordingly, such a user as controller intending to request personal data generated by the use of a product or related service is required to have a legal basis for processing the data under Article 6(1) of Regulation (EU) 2016/679, such as the consent of the data subject or legitimate interest. This user should ensure that the data subject is appropriately informed of the specified, explicit and legitimate purposes for processing those data, and how the data subject may effectively exercise their rights. Where the data holder and the user are joint controllers within the meaning of Article 26 of Regulation (EU) 2016/679, they are required to determine, in a transparent manner by means of an arrangement between them, their respective responsibilities for compliance with that Regulation. It should be understood that such a user, once data has been made available, may in turn become a data holder, if they meet the criteria under this Regulation and thus become subject to the obligations to make data available under this Regulation.

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<sup>64</sup> OJ L 303, 28.11.2018, p. 59–68.

non-personal. Where the user is not the data subject but an enterprise, including a sole trader, and not in cases of shared household use of the product, the user will be a controller within the meaning of Regulation (EU) 2016/679. Accordingly, such a user as controller intending to request personal data generated by the use of a product or related service is required to have a legal basis for processing the data under Article 6 of Regulation (EU) 2016/679, such as the consent of the data subject or legitimate interest. *Where relevant, the conditions laid down in Article 9 of Regulation (EU) 2016/679 and Article 5(3) of Directive 2002/58/EC should also be required to be fulfilled. Where personal data is processed and the user is a Union institution, agency or body, this Regulation should apply without prejudice to Regulation (EU) 2018/1725*. This user should ensure that the data subject is appropriately informed of the specified, explicit and legitimate purposes for processing those data, and how the data subject may effectively exercise their rights. Where the data holder and the user are joint controllers within the meaning of Article 26 of Regulation (EU) 2016/679, they are required to determine, in a transparent manner by means of an arrangement between them, their respective responsibilities for compliance with that Regulation. It should be understood that such a user, once data has been made available, may in turn become a data holder, if they meet the criteria under this Regulation and thus become subject to the obligations to make data available under this Regulation.

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<sup>64</sup> OJ L 303, 28.11.2018, p. 59–68.

## Amendment 23

### Proposal for a regulation Recital 31

*Text proposed by the Commission*

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

*Amendment*

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

reasonable compensation to be met by third parties, but not by the user, **for** any cost incurred in providing direct access to the data generated by the user's product. If a data holder and third party are unable to agree terms for such direct access, the data subject should be in no way prevented from exercising the rights contained in Regulation (EU) 2016/679, including the right to data portability, by seeking remedies in accordance with that Regulation. It is to be understood in this context that, in accordance with Regulation (EU) 2016/679, a contractual agreement does not allow for the processing of special categories of personal data by the data holder or the third party.

reasonable compensation to be met by third parties, but not by the user, **which should not exceed** any cost incurred in providing direct access to the data generated by the user's product. If a data holder and third party are unable to agree terms for such direct access, the data subject should be in no way prevented from exercising the rights contained in Regulation (EU) 2016/679, including the right to data portability, by seeking remedies in accordance with that Regulation. It is to be understood in this context that, in accordance with Regulation (EU) 2016/679, a contractual agreement does not allow for the processing of special categories of personal data by the data holder or the third party.

## Amendment 24

### Proposal for a regulation

#### Recital 32

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

(32) Access to any data stored in and accessed from terminal equipment is subject to Directive 2002/58/EC and requires the consent of the subscriber or user within the meaning of that Directive unless it is strictly necessary for the provision of an information society service explicitly requested by the user or subscriber (or for the sole purpose of the transmission of a communication). Directive 2002/58/EC ('ePrivacy Directive') (**and** the proposed ePrivacy Regulation) protect the integrity of the user's terminal equipment as regards the use of processing and storage capabilities and the collection of information. Internet of Things equipment is considered terminal equipment if it is directly or indirectly connected to a public communications network.

##### *Amendment*

(32) Access to any data stored in and accessed from terminal equipment is subject to Directive 2002/58/EC and requires the consent of the subscriber or user within the meaning of that Directive unless it is strictly necessary for the provision of an information society service explicitly requested by the user or subscriber (or for the sole purpose of the transmission of a communication). Directive 2002/58/EC ('ePrivacy Directive') [**or** the proposed ePrivacy Regulation, **in case already adopted**] protect the integrity of the user's terminal equipment as regards the use of processing and storage capabilities and the collection of information. Internet of Things equipment is considered terminal equipment if it is directly or indirectly connected to a public communications network.

## Amendment 25

### 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, ***or a part thereof, including its structure, design, function or manner of operation.*** 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 98/6/EC.

Directive 2005/29/EC, Directive 2011/83/EU, Directive 2000/31/EC and Directive 98/6/EC.

## Amendment 26

### Proposal for a regulation Recital 35

#### *Text proposed by the Commission*

(35) The third party should also refrain from using the data to profile individuals unless these processing activities are ***strictly necessary to provide the service requested by the user***. The requirement to delete data when no longer required for the purpose agreed with the user complements the right to erasure of the data subject pursuant to Article 17 of Regulation 2016/679. Where the third party is a provider of a data intermediation service within the meaning of [Data Governance Act], the safeguards for the data subject provided for by that Regulation apply. The third party may use the data to develop a new and innovative product or related service but not to develop a competing product.

#### *Amendment*

(35) The third party should also refrain from using the data to profile individuals unless these processing activities are ***permitted by Regulation (EU) 2016/679***. The requirement to delete data when no longer required for the purpose agreed with the user complements the right to erasure of the data subject pursuant to Article 17 of Regulation 2016/679. ***The third party should also refrain from using the data to re-identify any data subject, and should take technical and operational measures to prevent re-identification***. Where the third party is a provider of a data intermediation service within the meaning of ***Regulation (EU) 2022/868*** (Data Governance Act), the safeguards for the data subject provided for by that Regulation apply. The third party may use the data to develop a new and innovative product or related service but not to develop a competing product.

## Amendment 27

### 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

#### *Amendment*

(36) Start-ups, ***micro***, small and medium-sized enterprises and companies from traditional sectors with less-developed digital capabilities struggle to obtain access to relevant data. This

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

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. Regulation *(EU) 2022/1925 of 14 September 2022* 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 Digital Markets Act, and given the unrivalled ability of these companies to acquire data, it would not be necessary to achieve the objective of this Regulation, and would thus be disproportionate in relation to data holders made subject to such obligations, to include such gatekeeper undertakings as beneficiaries of the data access right. This means that an undertaking providing core platform services that has been designated as a gatekeeper cannot request or be granted access to users’ data generated by the use of a product or related service or by a virtual assistant based on the provisions of Chapter II of this Regulation. An undertaking providing core platform services designated as a gatekeeper pursuant to Digital Markets Act should be understood to include all legal entities of a



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

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.

## Amendment 28

### Proposal for a regulation Recital 42

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 29

### Proposal for a regulation Recital 44

#### *Text proposed by the Commission*

(44) ***To protect micro, small or medium-sized enterprises from excessive***

#### *Amendment*

***deleted***

*economic burdens which would make it commercially too difficult for them to develop and run innovative business models, the compensation for making data available to be paid by them should not exceed the direct cost of making the data available and be non-discriminatory.*

## Amendment 30

### Proposal for a regulation

#### Recital 45

*Text proposed by the Commission*

(45) Direct costs for making data available are the costs necessary for data reproduction, dissemination via electronic means **and storage** but not of data collection **or production**. Direct costs for making data available should be limited to the share attributable to the individual requests, taking into account that the necessary technical interfaces or related software and connectivity will have to be set up permanently by the data holder. Long-term arrangements between data holders and data recipients, for instance via a subscription model, could reduce the costs linked to making the data available in regular or repetitive transactions in a business relationship.

*Amendment*

(45) Direct costs for making data available are the costs necessary for data reproduction **and** dissemination via electronic means, but not of data collection, **generation, or storage, as long as this is not induced by a request**. Direct costs for making data available should be limited to the share attributable to the individual requests, taking into account that the necessary technical interfaces or related software and connectivity will have to be set up permanently by the data holder. Long-term arrangements between data holders and data recipients, for instance via a subscription model, could reduce the costs linked to making the data available in regular or repetitive transactions in a business relationship.

## Amendment 31

### Proposal for a regulation

#### Recital 47

*Text proposed by the Commission*

(47) Transparency is an important principle to ensure that the compensation requested by the data holder is reasonable, **or, in case the data recipient is a micro, small or medium-sized enterprise, that the**

*Amendment*

(47) Transparency is an important principle to ensure that the compensation requested by the data holder is reasonable, **and** does not exceed the costs directly related to making the data available to the



**compensation** does not exceed the costs directly related to making the data available to the data recipient and is attributable to the individual request. In order to put the data recipient in the position to assess and verify that the compensation complies with the requirements under this Regulation, the data holder should provide to the data recipient the information for the calculation of the compensation with a sufficient degree of detail.

## Amendment 32

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

## Amendment 33

### Proposal for a regulation Recital 54

data recipient and is attributable to the individual request. In order to put the data recipient in the position to assess and verify that the compensation complies with the requirements under this Regulation, the data holder should provide to the data recipient the information for the calculation of the compensation with a sufficient degree of detail.

#### *Amendment*

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

*Text proposed by the Commission*

(54) Criteria to identify unfair contractual terms should be applied only to excessive contractual terms, where a stronger bargaining position is abused. The vast majority of contractual terms that are commercially more favourable to one party than to the other, including those that are normal in business-to-business contracts, are a normal expression of the principle of contractual freedom and shall continue to apply.

*Amendment*

(54) Criteria to identify unfair contractual terms should be applied only to excessive contractual terms, where a stronger bargaining position is abused. The vast majority of contractual terms that are commercially more favourable to one party than to the other, including those that are normal in business-to-business contracts, are a normal expression of the principle of contractual freedom and shall continue to apply. ***A contractual term should not be considered unfair where it arises from applicable Union law.***

**Amendment 34**

**Proposal for a regulation**  
**Recital 56**

*Text proposed by the Commission*

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

*Amendment*

(56) In situations of exceptional need, it may be necessary for public sector bodies or Union institutions, agencies or bodies to use data held by an enterprise to respond to ***or to help assist in the recovery from*** public emergencies. Research-performing organisations and research-funding organisations could also be organised as public sector bodies or bodies governed by public law.

**Amendment 35**

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

*Amendment*

(57) In case of public emergencies ***for which non-emergency measures for the maintenance of public safety, health and order are manifestly inadequate***, 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 ***duly justified request that is limited in time and scope.*** The existence of a public emergency is determined ***and officially declared in accordance with the applicable procedures under Union or national law.***

## **Amendment 36**

### **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***

*Amendment*

(58) An exceptional need may also arise when a public sector body can demonstrate that the data are necessary to assist recovery from a public emergency, in circumstances that are reasonably proximate to the public emergency in question.

*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 37**

##### **Proposal for a regulation Recital 59 a (new)**

*Text proposed by the Commission*

*Amendment*

***(59a) This Regulation complements and is without prejudice to the Union and national laws providing for the access to and enabling to use data for statistical purposes, in particular Regulation 223/2009 on European Statistics and its related legal acts as well as national legal acts related to official statistics.***

#### **Amendment 38**

##### **Proposal for a regulation Recital 61**

*Text proposed by the Commission*

*Amendment*

(61) A proportionate, limited and predictable framework at Union level is necessary for the making available of data

(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.

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, *necessity to address the exceptional need, duration, nature, volume* and their granularity. *Public sector bodies or Union institutions, agencies or bodies should only request personal data if non-personal data is demonstrated to be insufficient to respond to the exceptional need to use data, and request personal data in aggregated or pseudonymised form. They should demonstrate the need and legal basis in case personal data are requested.* The purpose of the request and the intended use of the data requested should be specific and clearly explained. 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 39

### Proposal for a regulation Recital 61 a (new)

*Text proposed by the Commission*

*Amendment*

***(61a) In order to avoid duplicate requests and requests not fulfilling the requirements and conditions of Chapter V, and therefore to limit the number of requests to data holders, Member States should be encouraged to designate one or more points of contact to coordinate requests pursuant to that Chapter.***

## **Amendment 40**

### **Proposal for a regulation Recital 62**

*Text proposed by the Commission*

*Amendment*

(62) The objective of the obligation to provide the data is to ensure that public sector bodies and Union institutions, agencies or bodies have the necessary knowledge to respond to, prevent or recover from public emergencies ***or to maintain the capacity to fulfil specific tasks explicitly provided by law***. The data obtained by those entities may be commercially sensitive. Therefore, Directive (EU) 2019/1024 of the European Parliament and of the Council<sup>65</sup> 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

(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. The data obtained by those entities may be commercially sensitive. Therefore, Directive (EU) 2019/1024 of the European Parliament and of the Council<sup>65</sup> 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

public sector bodies to address the exceptional needs for which the data has been requested.

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<sup>65</sup> 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 41

### 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 Council<sup>66</sup> 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

been requested.

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<sup>65</sup> 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*

(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 working days. 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 Council<sup>66</sup> 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.



Regulation.

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<sup>66</sup> 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).

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<sup>66</sup> 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 42**

### **Proposal for a regulation**

#### **Recital 64**

*Text proposed by the Commission*

(64) Where it is strictly necessary to include personal data in the data made available to a public sector body or to a Union institution, agency or body the applicable rules on personal data protection should be complied with and the making available of the data and their subsequent use should and be accompanied by safeguards for the rights and interests of individuals concerned by those data. The body requesting the data should demonstrate the strict necessity and the specific and limited purposes for processing. The data holder should **take reasonable efforts to** anonymise the data or, where such anonymisation proves impossible, the data holder should apply technological means such as pseudonymisation and aggregation, prior to making the data available.

*Amendment*

(64) Where it is strictly necessary to include personal data in the data made available to a public sector body or to a Union institution, agency or body the applicable rules on personal data protection should be complied with and the making available of the data and their subsequent use should and be accompanied by safeguards for the rights and interests of individuals concerned by those data. The body requesting the data should demonstrate the strict necessity and the specific and limited purposes for processing. The data holder should anonymise the data or, where such anonymisation proves impossible, the data holder should apply technological means such as pseudonymisation and aggregation, prior to making the data available.

## **Amendment 43**

### **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

*Amendment*

(67) When the safeguarding of a significant public good is at stake, such as is the case of responding to public

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

## **Amendment 44**

### **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

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. Data holders should be entitled to a reasonable compensation which should not exceed the technical and organisational costs incurred in complying with the request 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*

(68) The public sector body or Union institution, agency or body may share the data it has obtained pursuant to the request with other entities or persons when this is needed to carry out scientific research activities or analytical activities it cannot perform itself. Such data may also be shared under the same circumstances with the national statistical institutes and Eurostat for the compilation of official statistics. Such research activities should however be compatible with the purpose for which the data was requested and the

data holder should be informed about the further sharing of the data it had provided. Individuals conducting research or research organisations with whom these data may be shared should **act either** on a not-for-profit basis or in the context of a public-interest mission recognised by the State. Organisations upon which commercial undertakings have a decisive influence allowing such undertakings to exercise control because of structural situations, which could result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Regulation.

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 **be vetted researchers pursuant to Regulation 2022/2065 (Digital Services Act), or demonstrate that they act** on a not-for-profit basis or in the context of a public-interest mission recognised by the State. Organisations upon which commercial undertakings have a decisive influence allowing such undertakings to exercise control because of structural situations, which could result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Regulation. **Further, individuals conducting research or research organisations with whom these data may be shared should demonstrate they are affiliated to a research organisation as defined in Article 2, point (1), of Directive (EU) 2019/790, they are independent from commercial interests, they disclose the funding of the research, they are in a capacity to preserve the specific data security and confidentiality requirements corresponding to each request, to protect personal data and demonstrate the appropriate technical and organisational measures put in place to this end, they justify the necessity and proportionality for the purpose of their research of the data requested and the timeframes within which they request access to the data, and they demonstrate the contribution to scientific or academic progress, or benefits for the public interest, of the expected research results, and they commit to making their research results publicly available for further research free of charge, within a reasonable period after the completion of the research and taking into account the rights and interests of users of the product or service concerned.**

## Amendment 45

### Proposal for a regulation

#### Recital 71

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

(71) Data processing services should cover services that allow on-demand and broad remote access to a scalable and elastic pool of shareable and distributed computing resources. Those computing resources include resources such as networks, servers or other virtual or physical infrastructure, operating systems, software, including software development tools, storage, applications and services. The capability of the customer of the data processing service to unilaterally self-provision computing capabilities, such as server time or network storage, without any human interaction by the service provider could be described as on-demand administration. The term ‘broad remote access’ is used to describe that the computing capabilities are provided over the network and accessed through mechanisms promoting the use of heterogeneous thin or thick client platforms (from web browsers to mobile devices and workstations). The term ‘scalable’ refers to computing resources that are flexibly allocated by the data processing service provider, irrespective of the geographical location of the resources, in order to handle fluctuations in demand. The term ‘elastic pool’ is used to describe those computing resources that are provisioned and released according to demand in order to rapidly increase or decrease resources available depending on workload. The term ‘shareable’ is used to describe those computing resources that are provided to multiple users who share a common access to the service, but where the processing is carried out separately for each user, although the service is provided from the same electronic equipment. The term ‘distributed’ is used to describe those

##### *Amendment*

(71) Data processing services should cover services that allow on-demand and broad remote access to a scalable and elastic pool of shareable and distributed **storage and** computing resources. Those computing resources include resources such as networks, servers or other virtual or physical infrastructure, operating systems, software, including software development tools, storage, applications and services. The capability of the customer of the data processing service to unilaterally self-provision computing capabilities, such as server time or network storage, without any human interaction by the service provider could be described as on-demand administration. The term ‘broad remote access’ is used to describe that the computing capabilities are provided over the network and accessed through mechanisms promoting the use of heterogeneous thin or thick client platforms (from web browsers to mobile devices and workstations). The term ‘scalable’ refers to computing resources that are flexibly allocated by the data processing service provider, irrespective of the geographical location of the resources, in order to handle fluctuations in demand. The term ‘elastic pool’ is used to describe those computing resources that are provisioned and released according to demand in order to rapidly increase or decrease resources available depending on workload. The term ‘shareable’ is used to describe those computing resources that are provided to multiple users who share a common access to the service, but where the processing is carried out separately for each user, although the service is provided from the same electronic equipment. The term ‘distributed’ is used to describe those

computing resources that are located on different networked computers or devices and which communicate and coordinate among themselves by message passing. The term ‘highly distributed’ is used to describe data processing services that involve data processing closer to where data are being generated or collected, for instance in a connected data processing device. Edge computing, which is a form of such highly distributed data processing, is expected to generate new business models and cloud service delivery models, which should be open and interoperable from the outset.

computing resources that are located on different networked computers or devices and which communicate and coordinate among themselves by message passing. The term ‘highly distributed’ is used to describe data processing services that involve data processing closer to where data are being generated or collected, for instance in a connected data processing device. Edge computing, which is a form of such highly distributed data processing, is expected to generate new business models and cloud service delivery models, which should be open and interoperable from the outset.

## **Amendment 46**

### **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

##### *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 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 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.

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

## Amendment 47

### Proposal for a regulation Recital 78



*Text proposed by the Commission*

(78) To foster further trust in the data, it is important that safeguards in relation to Union citizens, the public sector and businesses are implemented to the extent possible to ensure control over their data. In addition, Union law, values and standards should be upheld in terms of (but not limited to) security, data protection and privacy, and consumer protection. In order to prevent unlawful access to non-personal data, providers of data processing services subject to this instrument, such as cloud and edge services, should take all **reasonable** measures to prevent access to the systems where non-personal data is stored, including, where relevant, through the encryption of data, the frequent submission to audits, the verified adherence to relevant security reassurance certification schemes, and the modification of corporate policies.

**Amendment 48**

**Proposal for a regulation**

**Recital 79**

*Text proposed by the Commission*

(79) Standardisation and semantic interoperability should play a key role to provide technical solutions to ensure interoperability. In order to facilitate the conformity with the requirements for interoperability, it is necessary to provide for a presumption of conformity for interoperability solutions that meet harmonised standards or parts thereof in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council. The Commission should adopt common specifications in areas where no harmonised standards exist or where they are insufficient in order to further enhance interoperability for the

*Amendment*

(78) To foster further trust in the data, it is important that safeguards in relation to Union citizens, the public sector and businesses are implemented to the extent possible to ensure control over their data. In addition, Union law, values and standards should be upheld in terms of (but not limited to) security, data protection and privacy, and consumer protection. In order to prevent unlawful access to non-personal data, providers of data processing services subject to this instrument, such as cloud and edge services, should take all **appropriate** measures to prevent access to the systems where non-personal data is stored, including, where relevant, through the encryption of data, the frequent submission to audits, the verified adherence to relevant security reassurance certification schemes, and the modification of corporate policies.

*Amendment*

(79) Standardisation and semantic interoperability should play a key role to provide technical solutions to ensure interoperability. In order to facilitate the conformity with the requirements for interoperability, it is necessary to provide for a presumption of conformity for interoperability solutions that meet harmonised standards or parts thereof in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council. The Commission should adopt common specifications in areas where no harmonised standards exist or where they are insufficient in order to further enhance interoperability for the



common European data spaces, application programming interfaces, cloud switching as well as smart contracts. Additionally, common specifications in the different sectors could remain to be adopted, in accordance with Union or national sectoral law, based on the specific needs of those sectors. Reusable data structures and models (in form of core vocabularies), ontologies, metadata application profile, reference data in the form of core vocabulary, taxonomies, code lists, authority tables, thesauri should also be part of the technical specifications for semantic interoperability. Furthermore, the Commission should be enabled to mandate the development of harmonised standards for the interoperability of data processing services.

common European data spaces, application programming interfaces, cloud switching as well as smart contracts. Additionally, common specifications in the different sectors could remain to be adopted, in accordance with Union or national sectoral law, based on the specific needs of those sectors. ***Common specifications should be developed in an open, transparent manner, in consultation with industry and relevant stakeholders.*** Reusable data structures and models (in form of core vocabularies), ontologies, metadata application profile, reference data in the form of core vocabulary, taxonomies, code lists, authority tables, thesauri should also be part of the technical specifications for semantic interoperability. Furthermore, the Commission should be enabled to mandate the development of harmonised standards for the interoperability of data processing services.

## Amendment 49

### Proposal for a regulation Recital 82

#### *Text proposed by the Commission*

(82) In order to enforce their rights under this Regulation, natural and legal persons should be entitled to seek redress for the infringements of their rights under this Regulation by lodging complaints with competent authorities. Those authorities should be obliged to cooperate to ensure the complaint is appropriately handled and resolved. In order to make use of the consumer protection cooperation network mechanism and to enable representative actions, this Regulation amends the Annexes to the Regulation (EU) 2017/2394 of the European Parliament and of the Council<sup>68</sup> and Directive (EU) 2020/1828 of the European Parliament and of the Council<sup>69</sup>.

#### *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 coordinating or any other relevant*** competent authorities. Those authorities should be obliged to cooperate to ensure the complaint is appropriately handled and resolved. In order to make use of the consumer protection cooperation network mechanism and to enable representative actions, this Regulation amends the Annexes to the Regulation (EU) 2017/2394 of the European Parliament and of the Council<sup>68</sup> and Directive (EU) 2020/1828 of the European Parliament and of the

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<sup>68</sup> 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).

<sup>69</sup> 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).

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<sup>68</sup> 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).

<sup>69</sup> 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 50**

### **Proposal for a regulation**

#### **Recital 83**

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

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

##### *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.

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. ***Insofar as these model contractual terms concern the processing of personal data, the Commission should adopt those terms in the form of a delegated act, in consultation with the EDPB.***

## Amendment 51

### Proposal for a regulation Recital 90

*Text proposed by the Commission*

(90) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered a joint opinion on *[XX XX 2022]*.

*Amendment*

(90) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered a joint opinion on ***4 May 2022***.

## Amendment 52

### 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

*Amendment*

1. This Regulation lays down harmonised rules on making data, ***collected, or*** generated by the use of a product or ***data lawfully obtained, collected, or generated during the provision of a*** related service available to the user of that product or ***providers of related services***, on the making data available by data holders ***upon request by***

exceptional need, *for the performance of a task carried out* in the public *interest*:

*a user to data recipients, on contractual terms between users and data holders, and users and 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 in the **context of a public emergency**.*

## Amendment 53

### 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 or in the case of personal data, identified or identifiable natural person the data obtained, collected, or generated by the use, relates to*;

## Amendment 54

### Proposal for a regulation

#### Article 1 – paragraph 2 – point d

*Text proposed by the Commission*

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

*Amendment*

(d) public sector bodies and Union institutions, agencies or bodies that request data holders to make data available where there is an exceptional need in the *context of a public emergency* and the data holders that provide those data in response to such request;

## Amendment 55

### Proposal for a regulation

#### Article 1 – paragraph 3

*Text proposed by the Commission*

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

*Amendment*

3. Union law on the protection of personal data, privacy and confidentiality of communications and integrity of terminal equipment shall apply to ***any*** personal data processed in connection with the rights and obligations laid down in this Regulation. ***The obtaining, collection, or generation of personal data through the use of a product or related service shall require a legal basis pursuant to applicable data protection law.*** This Regulation ***does not constitute a legal basis for the processing of personal data.*** ***This Regulation is without prejudice to*** Union law on the protection of personal data ***and privacy***, in particular Regulation (EU) 2016/679, ***Regulation (EU) 2018/1725***, and Directive 2002/58/EC, including ***the rules concerning*** the powers and competences of supervisory authorities. ***In the event of a conflict between this Regulation and Union law on the protection of personal data or privacy or national law adopted in accordance with such Union law, the relevant Union or national law on the protection of personal data or privacy shall prevail.*** Insofar as the rights laid down in Chapter II of this Regulation are concerned, and where users are the data subjects of personal data, subject to the rights and obligations under that Chapter, the provisions of this Regulation shall complement ***and particularise*** the right of data portability under Article 20 of Regulation (EU) 2016/679. ***No provision of this Regulation shall be applied or interpreted in such a way as to diminish or limit the right to the protection of personal data or the right to privacy and confidentiality of communications.***

**Amendment 56**

**Proposal for a regulation**  
**Article 1 – paragraph 4**

*Text proposed by the Commission*

4. This Regulation shall not affect Union and national legal acts providing for the sharing, access and use of data for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including Regulation (EU) 2021/784 of the European Parliament and of the Council<sup>72</sup> and the [e-evidence proposals [COM(2018) 225 and 226] once adopted, and international cooperation in that area. This Regulation shall not affect the collection, sharing, access to and use of data under Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing and Regulation (EU) 2015/847 of the European Parliament and of the Council on information accompanying the transfer of funds. This Regulation shall not affect the competences of the Member States regarding activities concerning public security, defence, national security, customs and tax administration and the health and safety of citizens in accordance with Union law.

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

*Amendment*

4. This Regulation shall not affect Union and national legal acts providing for the sharing, access and use of data for the purpose of the prevention, investigation, detection or prosecution of criminal **or administrative** offences or the execution of criminal **or administrative** penalties, including Regulation (EU) 2021/784 of the European Parliament and of the Council<sup>72</sup> and the [e-evidence proposals [COM(2018) 225 and 226] once adopted, and international cooperation in that area. This Regulation shall not affect the collection, sharing, access to and use of data under Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing and Regulation (EU) 2015/847 of the European Parliament and of the Council on information accompanying the transfer of funds. This Regulation shall not affect the competences of the Member States regarding activities concerning public security, defence, national security, customs and tax administration and the **public** health and **the** safety of citizens in accordance with Union law. ***This Regulation shall not apply to data collected or generated in the context of defence-related activities or by defence products or services or by products or services deployed and used for defence purposes.***

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

## **Amendment 57**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 58**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 59**

### **Proposal for a regulation Article 2 – paragraph 1 – point 1 c (new)**

*Text proposed by the Commission*

*Amendment*

***(1c) ‘data generated by the use of a product or a related service’ means any data recorded intentionally by the user or as a by-product of the user’s action, as well as data generated or recorded without any action by the user among others in standby mode or while the product is switched off. This includes sensor-generated data, data captured by embedded applications and diagnostics data;***

## **Amendment 60**

### **Proposal for a regulation Article 2 – paragraph 1 – point 1 d (new)**



*Text proposed by the Commission*

*Amendment*

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

## **Amendment 61**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 62**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 2**

*Text proposed by the Commission*

*Amendment*

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

(2) ‘product’ means a tangible item, that, ***through its design and features*** obtains, generates or collects, data concerning its use or environment, and that is able to communicate data and whose primary function is not the storing and processing of data, ***with the exception of products that are primarily designed to display or play content, or to record and transmit content, including general-purpose computers, tablets and smart phones, cameras, sound recording systems and text scanners;***

## **Amendment 63**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 3**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 64**

**Proposal for a regulation**

**Article 2 – paragraph 1 – point 4**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 65**

**Proposal for a regulation**

**Article 2 – paragraph 1 – point 5**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 66**

**Proposal for a regulation**

**Article 2 – paragraph 1 – point 6**

*Text proposed by the Commission*

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

*Amendment*

(6) ‘data holder’ means a legal or natural person ***that is not the user, who has access to data communicated to it, 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 ***has the contractually agreed right to process and*** make available certain data;

**Amendment 67**

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

**Amendment 68**

**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

*Amendment*

(10) ‘public emergency’ means an exceptional situation negatively affecting the population of the Union, a Member State or part of it, ***such as a public health***

lasting repercussions on living conditions or economic stability, or the substantial degradation of economic assets in the Union or the relevant Member State(s);

***emergency, emergency resulting from a natural disaster or a human-induced major disaster, such as major cybersecurity incident***, 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), ***for which non-emergency measures for the maintenance of public safety, health and order are manifestly inadequate, and which is determined and officially declared in accordance with the applicable procedures under Union or national law;***

## Amendment 69

### Proposal for a regulation

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

*Text proposed by the Commission*

*Amendment*

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

## Amendment 70

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 12

*Text proposed by the Commission*

*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

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

administration and broad remote access to ***a scalable and elastic pool of shareable computing resources of a centralised, distributed or highly distributed nature;***

and broad remote access to ***storage and*** computing resources;

## Amendment 71

### Proposal for a regulation Article 2 – paragraph 1 – point 19

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 72

### Proposal for a regulation Article 3 – title

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 73

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

*Text proposed by the Commission*

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

*Amendment*

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

accessible to *that user in a structured, commonly used and machine-readable format, including access to derived or inferred data in the case of personal data, and information necessary to interpret and use the data.* The user shall be able to process the data outside the data holders' control. In case that user is a data subject, products shall offer possibilities to directly exercise the data subjects' rights, where technically feasible. Products shall be designed and manufactured, and related services shall be provided, in such a way that a data subject, irrespective of their legal title over the product, is offered the possibility to use the products covered by this Regulation in the least privacy-invasive way possible. Where users can reasonably expect it due to the nature of the product, products shall be designed and manufactured, and related services shall be provided, in such a manner that a basic set of functionalities is maintained when the product or related service is used offline.

#### **Amendment 74**

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

##### **Article 3 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1a.** *The usability of the product or related service shall not be made dependent on the user allowing it to process data not required for the functionality of the product or provision of the related service.*

#### **Amendment 75**

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

##### **Article 3 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

**1b.** *Where on-device access to data is technically supported, the manufacturer shall make this means of access also technically available to third-party service providers in a non-discriminatory manner.*

## **Amendment 76**

### **Proposal for a regulation**

#### **Article 3 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

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:

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

## **Amendment 77**

### **Proposal for a regulation**

#### **Article 3 – paragraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

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

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

## **Amendment 78**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

(b) whether the data is likely to be

(b) whether the data is likely to be



generated continuously and in real-time;

***obtained, collected, or*** generated continuously and in real-time;

#### Amendment 79

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

*Text proposed by the Commission*

*Amendment*

(c) how the user may access those data;

(c) how the user may access, ***retrieve, and request the deletion of*** those data;

#### Amendment 80

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

*Text proposed by the Commission*

*Amendment*

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

***deleted***

#### Amendment 81

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

*Text proposed by the Commission*

*Amendment*

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

***deleted***

#### Amendment 82

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

*Text proposed by the Commission*

*Amendment*

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

**deleted**

**Amendment 83**

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

*Text proposed by the Commission*

*Amendment*

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

**deleted**

**Amendment 84**

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

*Text proposed by the Commission*

*Amendment*

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

**deleted**

**Amendment 85**

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

*Text proposed by the Commission*

*Amendment*

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

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

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

*(c) whether the provider of the related service intends to process the data itself, whether it intends to allow a third party to process the data, and if so, the identity of the third party, the purposes for which those data will be processed, the period for which they can be accessed, and the necessary safeguards after the data access has ended;*

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

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

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

*(g) the foreseen duration of the agreement, as well as the modalities for early termination of the agreement;*

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

**Proposal for a regulation**  
**Article 4 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. Where data cannot be directly accessed by the user from the product, the data holder shall make available to the user ***any data communicated to the data holder from the product or obtained, collected, or generated during the provision of the*** related service without undue delay, free of charge and, where applicable, continuously and in real-time, ***in a structured, commonly used and machine-readable format, including access to derived or inferred data in the case of personal data, pursuant to Article 15 of Regulation (EU) 2016/679, and including the relevant information to interpret and use the data.*** This shall be done on the basis of a simple request through electronic means. Where ***such an electronic request is not*** technically feasible, ***the data holder shall provide a simple and comparably efficient alternative.***

**Amendment 87**

**Proposal for a regulation**  
**Article 4 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Where available, the data holder shall provide information on the data structures, data formats, vocabularies, classification schemes, taxonomies and code lists, , which shall be described in a consistent manner and made publicly available.***

**Amendment 88**

**Proposal for a regulation**  
**Article 4 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

**1b.** *The data holder shall describe the technical means to use the data, such as software development kits or application programming interfaces, and their terms of use and quality of service, in sufficient detail to enable such access.*

## **Amendment 89**

### **Proposal for a regulation Article 4 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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.

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 90**

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

*Text proposed by the Commission*

*Amendment*

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

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

## **Amendment 91**

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

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 92**

**Proposal for a regulation**

**Article 5 – title**

*Text proposed by the Commission*

Right to share data with third parties

*Amendment*

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

**Amendment 93**

**Proposal for a regulation**

**Article 5 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. Upon request by ***a data subject, or*** 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 to a third party, without undue delay, free of charge to ***the data subject or*** the user, of the same quality as is available to the data holder and, where applicable, continuously and in real-time, ***for the purpose specified by the data subject or user, such as for the***

*purposes of:*

#### **Amendment 94**

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

##### **Article 5 – paragraph 1 – point a (new)**

*Text proposed by the Commission*

*Amendment*

***(a) the provision of after-market services, such as the maintenance and repair of the product, including after-market services in competition with a product or service provided by the data holder;***

#### **Amendment 95**

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

##### **Article 5 – paragraph 1 – point b (new)**

*Text proposed by the Commission*

*Amendment*

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

#### **Amendment 96**

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

##### **Article 5 – paragraph 1 – point c (new)**

*Text proposed by the Commission*

*Amendment*

***(c) specific data intermediation services recognised in the Union or specific services provided by data altruism organisations recognised in the Union under the conditions and requirements of Chapters III and IV of Regulation (EU) 2022/868 (Data Governance Act);***

#### **Amendment 97**



**Proposal for a regulation**  
**Article 5 – paragraph 2 – introductory part**

*Text proposed by the Commission*

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

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<sup>73</sup> OJ [...].

*Amendment*

2. Any undertaking providing core platform services for which one or more of such services have been designated as a gatekeeper, pursuant to Article 3 of Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (Digital Markets Act)<sup>73</sup>, shall not be an eligible third party under this Article and therefore shall not:

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<sup>73</sup> OJ [...].

**Amendment 98**

**Proposal for a regulation**  
**Article 5 – paragraph 2 – point a**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 99**

**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 user or as third party pursuant to paragraph 1. The data holder shall not keep

*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 pursuant to paragraph 1. The data holder

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.

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.

## Amendment 100

### Proposal for a regulation Article 5 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a. The data holder and the third party shall not solicit or commercially incentivise a user in any manner, including by providing monetary or any other compensation, to make data available, which the consumer or data subject has obtained pursuant to a request under Article 4(1).**

## Amendment 101

### Proposal for a regulation Article 5 – paragraph 6

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 102

**Proposal for a regulation**  
**Article 5 – paragraph 9**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 103**

**Proposal for a regulation**  
**Article 6 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 104**

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

*Text proposed by the Commission*

(a) coerce, deceive or manipulate the

*Amendment*

(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;

user in any way, ***or subvert or impair*** the autonomy, decision-making or choices of the user, including by means of a digital interface with the user, ***or a part thereof, including its structure, design, function or manner of operation;***

## **Amendment 105**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

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

*Amendment*

(b) use the data it receives for the profiling of natural persons within the meaning of Article 4, ***point (4)***, of Regulation (EU) 2016/679, ***other than in accordance with that Regulation;***

## **Amendment 106**

### **Proposal for a regulation**

#### **Article 6 – paragraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 107**

### **Proposal for a regulation**

#### **Article 6 – paragraph 2 – point c**

*Text proposed by the Commission*

(c) make the data available it receives to another third party, in raw, aggregated or

*Amendment*

(c) make the data available it receives to another third party, in raw, aggregated or

derived form, unless this is necessary to provide the service requested by the user;

derived form, unless this is necessary to provide the service requested by the user, **and the user has explicitly been made aware of this in a clear, easily accessible and prominent way**;

## Amendment 108

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

*Text proposed by the Commission*

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

*Amendment*

(d) make the data available it receives to an undertaking providing core platform services for which one or more of such services have been designated as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (Digital Markets Act);

## Amendment 109

### 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 **related to business to business data sharing** shall not apply to 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 110

**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 111**

**Proposal for a regulation**  
**Article 7 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a.** *The data holder shall not be liable towards the user for any direct or indirect damages arising from the processing of the data by the user after the data has been made available.*

**Amendment 112**

**Proposal for a regulation**  
**Article 7 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 7a**

***Unfair contractual terms imposed on users and data subjects***

***Any contractual term by data holders, third parties or data recipients which, to the detriment of the user, excludes the***

*application of this Chapter, derogates from it, or alters its effect, shall not be binding on the user.*

## Amendment 113

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

*Text proposed by the Commission*

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

*Amendment*

1. Any compensation agreed between a data holder and a data recipient for *the costs directly incurred by* making data available shall be *fair and* reasonable, *and shall not exceed the costs directly related to making the data available. These costs include the costs necessary for data reproduction and dissemination via electronic means, but not of data collection, generation, or storage, as long as this is not induced by a request.*

## Amendment 114

### 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. Article 8(3) shall apply accordingly.

## Amendment 115

### Proposal for a regulation Article 11 – paragraph 1



*Text proposed by the Commission*

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

*Amendment*

1. The data holder may apply appropriate technical protection measures to prevent unauthorised **disclosure of and** access to the data and to ensure compliance with Articles 5, 6, 9 and 10, as well as with the agreed contractual terms for making data available. Such technical protection measures shall not be used as a means to **discriminate or** hinder the user's right to **access data, obtain a copy 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).

**Amendment 116**

**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 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 **or in the case of personal data, an appropriate legal basis under Regulation (EU) 2016/679**, shall without undue delay, unless the data holder or the user instruct otherwise:

**Amendment 117**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 118**

### **Proposal for a regulation**

#### **Article 11 – paragraph 3 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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

## **Amendment 119**

### **Proposal for a regulation**

#### **Article 12 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The data holder shall not be liable for any direct or indirect damages arising from, relating to, or in connection with the processing of the data by the data recipient after the data has been made available.***

## **Amendment 120**

### **Proposal for a regulation**

#### **Article 12 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Any contractual term in a data sharing agreement which, to the detriment of one party, or, where applicable, to the detriment of the user, excludes the

2. Any contractual term in a data sharing agreement which, to the detriment of one party, or, where applicable, to the detriment of the user, excludes the

application of this Chapter, derogates from it, or varies its effect, shall ***not be binding on that party***.

application of this Chapter, derogates from it, or varies its effect, shall ***be void***.

## Amendment 121

### Proposal for a regulation Article 12 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. Any contractual term in a data sharing agreement between data holders and data recipients which, to the detriment of the data subjects, undermines the application of their rights to privacy and data protection, derogates from it, or varies its effect, shall be void***

## Amendment 122

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

*Text proposed by the Commission*

*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 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.

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, ***or which has been unilaterally imposed by an enterprise which is the source of the data they hold*** shall not be binding on the ***micro, small or medium-sized*** enterprise, ***or the data recipient or user, respectively***, if it is unfair.

## Amendment 123

### Proposal for a regulation Article 13 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 124**

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

*Text proposed by the Commission*

*Amendment*

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

1. Upon ***a duly justified*** request ***that is limited in time and scope***, a data holder ***that is a legal person*** shall make data available to a public sector body or to ***the*** Union institution, agency or body demonstrating an exceptional need ***pursuant to Article 15*** to use the data requested.

## **Amendment 125**

### **Proposal for a regulation Article 14 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. A public sector body or a Union institution, agency or body shall be able to extend the time for which the data are requested by making a justified request, providing a specific time limit, where the exceptional need pursuant to Article 15 demonstrably continues, and where so provided for in Union or national law.***

## **Amendment 126**

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

*Text proposed by the Commission*

*Amendment*

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

**deleted**

## **Amendment 127**

### **Proposal for a regulation**

#### **Article 15 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

An exceptional need to use data within the meaning of this Chapter shall be deemed to exist **where** any of the following **conditions are met**:

## **Amendment 128**

### **Proposal for a regulation**

#### **Article 15 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

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

(a) the data **are strictly** necessary to respond to a public emergency;

## **Amendment 129**

### **Proposal for a regulation**

#### **Article 15 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

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

(b) the data **are strictly** necessary to **help** assist the recovery from a public emergency.

## **Amendment 130**

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

*Text proposed by the Commission*

*Amendment*

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

*deleted*

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

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

**Amendment 131**

**Proposal for a regulation**  
**Article 16 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

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

**Amendment 132**

**Proposal for a regulation**  
**Article 16 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

2. This Chapter shall not ***apply to*** public sector bodies and Union institutions, agencies and bodies ***that*** carry out activities for the prevention, investigation, detection or prosecution of criminal or administrative offences or the execution of criminal penalties, or ***to*** customs or taxation administration. This Chapter does not affect the applicable Union and national law on the prevention, investigation, detection or prosecution of criminal or administrative offences or the execution of criminal or administrative penalties, or for customs or taxation administration.

### **Amendment 133**

#### **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, ***and in particular the need and legal basis for personal data to be included;***

### **Amendment 134**

#### **Proposal for a regulation Article 17 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) explain the purpose of the request, the intended use of the data requested, ***and*** the duration of that use;

*Amendment*

(c) explain the purpose of the request, the intended use of the data requested, ***including how the processing of the data is to address the exceptional need, and indicate*** the duration of that use, ***and to which third parties the data is to be disclosed pursuant to Article 21;***



## Amendment 135

### Proposal for a regulation

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

*Text proposed by the Commission*

*Amendment*

***(ca) where personal data are requested, specify any measures necessary and proportionate to implement data-protection principles, in particular the extent to which anonymisation can be applied, or the level of aggregation or pseudonymisation to be applied by the data holder before making data available;***

## Amendment 136

### Proposal for a regulation

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

*Text proposed by the Commission*

*Amendment*

***(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.***

***(e) specify the deadline by which the data are to be made available.***

## Amendment 137

### Proposal for a regulation

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

*Text proposed by the Commission*

*Amendment*

***(ea) where the request is made by a public sector body to a data holder established in another Member State, confirm that the public sector body has notified the competent authority of that Member State in conformity with Article 22(3).***

## Amendment 138

### 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, **as well as the** frequency of access of the data requested;

## Amendment 139

### 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, non-personal data, **and only if this is demonstrated to be insufficient to respond to the exceptional need to use data, request personal data in aggregated or pseudonymised form;**

## Amendment 140

### 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 party in cases where it has outsourced, by means of a publicly available agreement, technical inspections or other functions to this third party. The

*Amendment*

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

obligations on public sector bodies, Union institutions, agencies or bodies pursuant to Article 19 apply.

## **Amendment 141**

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

*Text proposed by the Commission*

*Amendment*

**4a. Where a public sector body or a Union institution, agency, or body has reason to believe that the exchange of or access to non-personal data may lead to the risk of re-identification of non-personal, or anonymised data, the public sector body, Union institution, agency, or body shall request the relevant bodies or authorities competent pursuant to applicable data protection legislation for authorisation before exchanging or giving access to data.**

## **Amendment 142**

### **Proposal for a regulation Article 17 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 17a*

##### *Point of contact for data requests*

- 1. Member States are encouraged to designate one or more points of contact to coordinate and support public sector bodies in requesting data pursuant to this Chapter. The points of contact shall help prevent duplicate requests and requests not fulfilling the requirements and conditions of this Chapter.**
- 2. Member States shall notify the Commission of points of contact they have designated.**

3. ***The Commission shall maintain a public register of the points of contact.***

## Amendment 143

### 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 intended use pursuant to Article 17(1)(c).***

## Amendment 144

### 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, the data holder may decline or seek the modification of the request ***and the requested deadline*** within 5 working days following the receipt of a request for the data necessary to respond to a public emergency on either of the following grounds:

## Amendment 145

### 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 grounds, such as the data being unavailable;*

## Amendment 146

### 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 147

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

*Text proposed by the Commission*

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

*Amendment*

5. Where compliance with the request to make data available to a public sector body or a Union institution, agency or body requires the disclosure of personal data, the data holder shall pseudonymise the ***personal data to be made available.***

## Amendment 148

### Proposal for a regulation Article 18 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***6a. A data holder complying with a request for access to data pursuant to this Article shall not be liable for any actions or, direct or indirect harm arising from***

*the actions of a recipient of data under this Chapter.*

#### **Amendment 149**

##### **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 150**

##### **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 within the intended duration of the intended use pursuant to Article 17(1)(c)***;

#### **Amendment 151**

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

##### **Article 19 – paragraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

(b) implement, insofar as the processing of personal data is necessary, technical and organisational measures that safeguard the rights and freedoms of data subjects ***and guarantee a high level of security and prevent the unauthorised disclosure of data***;

#### **Amendment 152**

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

*Text proposed by the Commission*

*Amendment*

**(ba) inform the data holder without undue delay of any security incidents that have occurred, where they affect the confidentiality, integrity, or availability of the data provided;**

**Amendment 153**

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

*Text proposed by the Commission*

*Amendment*

**(ca) destroy any derived or inferred personal data as soon as they are no longer necessary for the stated purpose and inform the data holder that the data have been destroyed.**

**Amendment 154**

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

**Amendment 155**

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

*Text proposed by the Commission*

*Amendment*

2. **Where** the data holder **claims** compensation for making data available in

2. **After providing the data**, the data holder **shall be entitled to claim**



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**.

compensation for making data available in compliance with a request made pursuant to Article 15. Such compensation shall not exceed the technical and organisational costs incurred to comply with the request including, where necessary, the costs of anonymisation, **aggregation**, and of technical adaptation. 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.

## Amendment 156

### Proposal for a regulation

#### Article 21 – paragraph 1

*Text proposed by the Commission*

1. A public sector body or a Union institution, agency or body shall be entitled to share data received under this Chapter with individuals or organisations in view of carrying out scientific research or analytics **compatible with** the purpose for which the data was requested, or **to national statistical institutes and Eurostat** for the compilation of official statistics.

*Amendment*

1. A public sector body or a Union institution, agency or body shall be entitled to share data received under this Chapter with individuals or organisations, **including national statistical institutes and Eurostat**, in view of carrying out scientific research or analytics **for** the purpose for which the data was requested, or for the compilation of official statistics.

## Amendment 157

### Proposal for a regulation

#### Article 21 – paragraph 2

*Text proposed by the Commission*

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**

*Amendment*

2. Individuals or organisations receiving the data pursuant to paragraph 1 shall **be vetted researchers pursuant to Regulation 2022/2065 (Digital Services Act), or demonstrate that they meet all of the following criteria:**

*preferential access to the results of the research.*

#### **Amendment 158**

**Proposal for a regulation**  
**Article 21 – paragraph 2 – point a (new)**

*Text proposed by the Commission*

*Amendment*

**(a) they act on a not-for-profit basis or in the context of a public-interest mission recognised in Union or Member State law;**

#### **Amendment 159**

**Proposal for a regulation**  
**Article 21 – paragraph 2 – point b (new)**

*Text proposed by the Commission*

*Amendment*

**(b) they do not include organisations upon which commercial undertakings have a decisive influence or which could result in preferential access to the results of the research;**

#### **Amendment 160**

**Proposal for a regulation**  
**Article 21 – paragraph 2 – point c (new)**

*Text proposed by the Commission*

*Amendment*

**(c) they are affiliated to a research organisation as defined in Article 2, point (1), of Directive (EU) 2019/790;**

#### **Amendment 161**

**Proposal for a regulation**  
**Article 21 – paragraph 2 – point d (new)**

*Text proposed by the Commission*

*Amendment*

**(d) they are independent from commercial interests;**

#### **Amendment 162**

##### **Proposal for a regulation Article 21 – paragraph 2 – point e (new)**

*Text proposed by the Commission*

*Amendment*

**(e) they disclose the funding of the research;**

#### **Amendment 163**

##### **Proposal for a regulation Article 21 – paragraph 2 – point f (new)**

*Text proposed by the Commission*

*Amendment*

**(f) they are 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;**

#### **Amendment 164**

##### **Proposal for a regulation Article 21 – paragraph 2 – point g (new)**

*Text proposed by the Commission*

*Amendment*

**(g) they justify the necessity and proportionality for the purpose of their research of the data requested and the timeframes within which they request access to the data, and they demonstrate the contribution to scientific or academic**

*progress, or benefits for the public interest, of the expected research results;*

## **Amendment 165**

### **Proposal for a regulation Article 21 – paragraph 2 – point h (new)**

*Text proposed by the Commission*

*Amendment*

*(h) they commit to making their research results publicly available for further research free of charge, within a reasonable period after the completion of the research and taking into account the rights and interests of users of the product or service concerned.*

## **Amendment 166**

### **Proposal for a regulation Article 21 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

3. Individuals or organisations receiving the data pursuant to paragraph 1 shall comply with the provisions of Article 17(3) and Article 19. *Where this is necessary for the scientific research, analytics or official statistical purpose, Article 19 paragraph 1 points (c) and (c a) shall not apply.*

## **Amendment 167**

### **Proposal for a regulation Article 21 – paragraph 4**

*Text proposed by the Commission*

*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 the data holder from whom

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.

the data was received, ***providing the identity and contact details of the data recipient and information on the purposes and intended duration of data processing.***

## Amendment 168

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

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 169

### Proposal for a regulation Article 27 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

1. Providers of data processing services shall take all ***appropriate*** technical, legal and organisational measures, including contractual arrangements, in order to prevent international transfer or governmental access to non-personal data held in the Union where such transfer or access would create a conflict with Union law or the national law of the relevant Member State.

## Amendment 170

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

*Text proposed by the Commission*

The addressee of the decision may ask the

*Amendment*

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.

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.  
***If the opinion of the competent authorities concludes that the conditions are not met, the recipient shall not provide access to the data.***

## **Amendment 171**

### **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 (EU) 2022/868 shall advise and assist the Commission in developing guidelines on the assessment of whether these conditions are met.

## **Amendment 172**

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

*Text proposed by the Commission*

*Amendment*

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

## Amendment 173

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

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 174

### Proposal for a regulation Article 28 – paragraph 5

*Text proposed by the Commission*

5. The Commission shall, by way of implementing acts, adopt common specifications, where harmonised standards referred to in paragraph 4 of this Article do not exist or in case it considers that the relevant harmonised standards are insufficient to ensure conformity with the essential requirements in paragraph 1 of this Article, where necessary, with respect to any or all of the requirements laid down in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).

*Amendment*

5. The Commission shall, by way of implementing acts, adopt common specifications, where harmonised standards referred to in paragraph 4 of this Article do not exist or in case it considers that the relevant harmonised standards are insufficient to ensure conformity with the essential requirements in paragraph 1 of this Article, where necessary, with respect to any or all of the requirements laid down in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2). ***Common specifications shall be developed in an open, transparent manner, in consultation with industry and relevant stakeholders.***

## Amendment 175

### Proposal for a regulation Article 29 – paragraph 4

*Text proposed by the Commission*

4. The Commission **may**, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft European standards applicable to specific service types of data processing services.

*Amendment*

4. The Commission **shall**, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft European standards applicable to specific service types of data processing services.

**Amendment 176**

**Proposal for a regulation  
Article 30 – paragraph 5**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 177**

**Proposal for a regulation  
Article 30 – paragraph 6**

*Text proposed by the Commission*

6. Where harmonised standards referred to in paragraph 4 of this Article do not exist or where the Commission considers that the relevant harmonised standards are insufficient to ensure conformity with the essential requirements in paragraph 1 of this Article in a cross-border context, the Commission may, by way of implementing acts, adopt common specifications in respect of the essential requirements set out in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the

*Amendment*

6. Where harmonised standards referred to in paragraph 4 of this Article do not exist or where the Commission considers that the relevant harmonised standards are insufficient to ensure conformity with the essential requirements in paragraph 1 of this Article in a cross-border context, the Commission may, by way of implementing acts, adopt common specifications in respect of the essential requirements set out in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the



examination procedure referred to in Article 39(2).

examination procedure referred to in Article 39(2). ***Common specifications shall be developed in an open, transparent, technology-neutral manner, in consultation with industry and relevant stakeholders.***

## **Amendment 178**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 179**

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

*Text proposed by the Commission*

*Amendment*

***(a) the independent supervisory authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall be responsible for monitoring the application of this Regulation insofar as***

***deleted***

*the protection of personal data is concerned. Chapters VI and VII of Regulation (EU) 2016/679 shall apply mutatis mutandis. The tasks and powers of the supervisory authorities shall be exercised with regard to the processing of personal data;*

## **Amendment 180**

### **Proposal for a regulation**

#### **Article 31 – paragraph 3 – point g**

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 181**

### **Proposal for a regulation**

#### **Article 31 – paragraph 3 – point i a (new)**

*Text proposed by the Commission*

*Amendment*

***(ia) ensuring data sharing is free of charge for users, in accordance with Articles 4 and 5.***

## **Amendment 182**

### **Proposal for a regulation**

#### **Article 31 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. Where a Member State designates more than one competent authority, the competent authorities shall, in the exercise of the tasks and powers assigned to them under paragraph 3 of this Article, cooperate with each other, ***including, as appropriate,***

4. Where a Member State designates more than one competent authority, the competent authorities shall, in the exercise of the tasks and powers assigned to them under paragraph 3 of this Article, cooperate with each other. ***In such cases, relevant***

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.***

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

## Amendment 183

### 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 competent authorities shall ***act in an independent and impartial manner, and*** 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 184

### Proposal for a regulation Article 31 – paragraph 7

*Text proposed by the Commission*

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

*Amendment*

7. Member States shall ensure that the designated competent authorities are provided with ***sufficient human and technical resources, expertise, premises and infrastructure*** necessary ***for the effective performance*** to adequately carry out their tasks in accordance with this Regulation.

## Amendment 185

### Proposal for a regulation Article 32 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 186**

**Proposal for a regulation  
Article 34 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

The Commission shall develop and recommend non-binding model contractual terms on data access and use to assist parties in drafting and negotiating contracts with balanced contractual rights and obligations. ***The Commission shall consult the European Data Protection Board when developing such model contractual terms, as far as personal data are concerned.***

**Amendment 187**

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

*Text proposed by the Commission*

*Amendment*

***(ba) the protection of trade secrets in Article 4(3) and Article 5(8);***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Harmonised rules on fair access to and use of data (Data Act)
<b>References</b>	COM(2022)0068 – C9-0051/2022 – 2022/0047(COD)
<b>Committee responsible</b> Date announced in plenary	ITRE 23.3.2022
<b>Opinion by</b> Date announced in plenary	LIBE 23.3.2022
<b>Associated committees - date announced in plenary</b>	7.7.2022
<b>Rapporteur for the opinion</b> Date appointed	Sergey Lagodinsky 15.6.2022
<b>Discussed in committee</b>	8.11.2022
<b>Date adopted</b>	31.1.2023
<b>Result of final vote</b>	+ : 56 - : 2 0 : 2
<b>Members present for the final vote</b>	Konstantinos Arvanitis, Malik Azmani, Pietro Bartolo, Vladimír Bilčík, Vasile Blaga, Karolin Braunsberger-Reinhold, Patrick Breyer, Saskia Bricmont, Joachim Stanisław Brudziński, Annika Bruna, Damien Carême, Patricia Chagnon, Caterina Chinnici, Clare Daly, Lena Düpont, Lucia Ďuriš Nicholsonová, Cornelia Ernst, Nicolaus Fest, Maria Grapini, Sylvie Guillaume, Andrzej Halicki, Evin Incir, Sophia in 't Veld, Assita Kanko, Fabienne Keller, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Lukas Mandl, Erik Marquardt, Javier Moreno Sánchez, Theresa Muigg, Emil Radev, Karlo Ressler, Diana Riba i Giner, Isabel Santos, Birgit Sippel, Sara Skyttedal, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Yana Toom, Milan Uhrík, Tom Vandendriessche, Jadwiga Wiśniewska, Elena Yoncheva
<b>Substitutes present for the final vote</b>	Delara Burkhardt, Beata Kempa, Alessandra Mussolini, Matjaž Nemeč, Jan-Christoph Oetjen, Rob Rooken, Róza Thun und Hohenstein, Dragoş Tudorache, Loránt Vincze, Tomáš Zdechovský
<b>Substitutes under Rule 209(7) present for the final vote</b>	Niyazi Kizilyürek, David Lega

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

56	+
ECR	Joachim Stanisław Brudziński, Assita Kanko, Beata Kempa, Jadwiga Wiśniewska
ID	Annika Bruna, Patricia Chagnon, Nicolaus Fest, Annalisa Tardino, Tom Vandendriessche
PPE	Vladimír Bilčík, Vasile Blaga, Karolin Braunsberger-Reinhold, Lena Düpont, Andrzej Halicki, Jeroen Lenaers, Lukas Mandl, Alessandra Mussolini, Emil Radev, Karlo Ressler, Loránt Vincze, Tomáš Zdechovský
Renew	Malik Azmani, Lucia Ďuriš Nicholsonová, Sophia in 't Veld, Fabienne Keller, Moritz Körner, Jan-Christoph Oetjen, Ramona Strugariu, Róza Thun und Hohenstein, Yana Toom, Dragoş Tudorache
S&D	Pietro Bartolo, Delara Burkhardt, Caterina Chinnici, Maria Grapini, Sylvie Guillaume, Evin Incir, Łukasz Kohut, Juan Fernando López Aguilar, Javier Moreno Sánchez, Theresa Muigg, Matjaž Nemeč, Isabel Santos, Birgit Sippel, Elena Yoncheva
The Left	Konstantinos Arvanitis, Clare Daly, Cornelia Ernst, Niyazi Kizilyürek
Verts/ALE	Patrick Breyer, Saskia Briemont, Damien Carême, Alice Kuhnke, Erik Marquardt, Diana Riba i Giner, Tineke Strik

2	-
ECR	Rob Rooker
NI	Milan Uhrík

2	0
PPE	David Lega, Sara Skytvedal

**Key to symbols:**

+ : in favour

- : against

0 : abstention



## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Harmonised rules on fair access to and use of data (Data Act)		
<b>References</b>	COM(2022)0068 – C9-0051/2022 – 2022/0047(COD)		
<b>Date submitted to Parliament</b>	24.2.2022		
<b>Committee responsible</b> Date announced in plenary	ITRE 23.3.2022		
<b>Committees asked for opinions</b> Date announced in plenary	IMCO 23.3.2022	JURI 23.3.2022	LIBE 23.3.2022
<b>Associated committees</b> Date announced in plenary	JURI 7.7.2022	LIBE 7.7.2022	IMCO 7.7.2022
<b>Rapporteurs</b> Date appointed	Pilar del Castillo Vera 31.3.2022		
<b>Discussed in committee</b>	26.10.2022		
<b>Date adopted</b>	9.2.2023		
<b>Result of final vote</b>	+	59	
	-	0	
	0:	11	
<b>Members present for the final vote</b>	Nicola Beer, François-Xavier Bellamy, Hildegard Bentele, Tom Berendsen, Michael Bloss, Paolo Borchia, Marc Botenga, Cristian-Silviu Buşoi, Jerzy Buzek, Maria da Graça Carvalho, Ignazio Corrao, Beatrice Covassi, Ciarán Cuffe, Josianne Cutajar, Nicola Danti, Marie Dauchy, Pilar del Castillo Vera, Christian Ehler, Valter Flego, Lina Gálvez Muñoz, Jens Geier, Bart Groothuis, Christophe Grudler, András Gyürk, Henrike Hahn, Robert Hajšel, Ivo Hristov, Ivars Ijabs, Romana Jerković, Seán Kelly, Izabela-Helena Kloc, Łukasz Kohut, Miapetra Kumpula-Natri, Eva Maydell, Iskra Mihaylova, Johan Nissinen, Mauri Pekkarinen, Mikuláš Peksa, Tsvetelina Penkova, Morten Petersen, Markus Pieper, Clara Ponsatí Obiols, Robert Roos, Sara Skytvedal, Maria Spyrali, Beata Szydło, Grzegorz Tobiszowski, Patrizia Toia, Henna Virkkunen, Pernille Weiss, Carlos Zorrinho		
<b>Substitutes present for the final vote</b>	Damian Boeselager, Jakob G. Dalunde, Margarita de la Pisa Carrión, Matthias Ecke, Cornelia Ernst, Klemen Grošelj, Elena Kountoura, Dace Melbārde, Alin Mituța, Jutta Paulus, Massimiliano Salini		
<b>Substitutes under Rule 209(7) present for the final vote</b>	Marco Campomenosi, Rosanna Conte, Jarosław Duda, France Jamet, Aušra Maldeikienė, Tilly Metz, Alessandro Panza, Rovana Plumb		
<b>Date tabled</b>	28.2.2023		



## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

59	+
ECR	Izabela-Helena Kloc, Margarita de la Pisa Carrión, Robert Roos, Beata Szydło, Grzegorz Tobiszowski
NI	Clara Ponsatí Obiols
PPE	François-Xavier Bellamy, Hildegard Bentele, Tom Berendsen, Cristian-Silviu Buşoi, Jerzy Buzek, Maria da Graça Carvalho, Pilar del Castillo Vera, Jarosław Duda, Christian Ehler, Seán Kelly, Aušra Maldeikienė, Eva Maydell, Dace Melbārde, Markus Pieper, Massimiliano Salini, Sara Skytvedal, Maria Spyraiki, Henna Virkkunen, Pernille Weiss
Renew	Nicola Beer, Nicola Danti, Valter Flego, Bart Groothuis, Klemen Grošelj, Christophe Grudler, Ivars Ijabs, Iskra Mihaylova, Alin Mituța, Mauri Pekkarinen, Morten Petersen
S&D	Beatrice Covassi, Josianne Cutajar, Matthias Ecke, Lina Gálvez Muñoz, Jens Geier, Robert Hajšel, Ivo Hristov, Romana Jerković, Łukasz Kohut, Miapetra Kumpula-Natri, Tsvetelina Penkova, Rovana Plumb, Patrizia Toia, Carlos Zorrinho
Verts/ALE	Michael Bloss, Damian Boeselager, Ignazio Corrao, Ciarán Cuffe, Jakop G. Dalunde, Henrike Hahn, Tilly Metz, Jutta Paulus, Mikuláš Peksa

0	-

11	0
ECR	Johan Nissinen
ID	Paolo Borchia, Marco Campomenosi, Rosanna Conte, Marie Dauchy, France Jamet, Alessandro Panza
NI	András Gyürk
The Left	Marc Botenga, Cornelia Ernst, Elena Kountoura

Key to symbols:

+ : in favour

- : against

0 : abstention