



**2022/0047(COD)**

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'

PA\_Legam

## SHORT JUSTIFICATION

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

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

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

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

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

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

## **AMENDMENTS**

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

### **Amendment 1**

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

##### **Recital 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 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 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

#### *Amendment*

(5) This Regulation ensures that users of a product or related service in the Union ***including data subjects and consumers,***

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 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 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>.

---

<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

#### *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>.

---

<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.

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 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. 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.

#### *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

##### *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

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.

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

*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.

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 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

#### *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 *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

this Regulation.

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

*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

*Amendment*

(24) This Regulation imposes the obligation on data holders to make data available in certain circumstances. Insofar as personal data are processed, the data holder should be a controller under Regulation (EU) 2016/679. Where users are data subjects, data holders should be obliged to provide them access to their data and to make the data available to third parties of the user's choice in accordance with this Regulation. However, this Regulation does not create a legal basis under Regulation (EU) 2016/679 for the data holder to provide access to personal data or make it available to a third party when requested by a user that is not a data

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

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

*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.

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 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.

---

<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*

(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>1</sup>, this Regulation provides that such unfair terms should not be binding on that enterprise.

***(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*

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

*Amendment*

(29) A third party to whom data is made available may be an **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

*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***

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. ***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

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.

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*

(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.

## Amendment 18

### 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,

#### *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 ***make the exercise of the rights or choices of users unduly difficult, including by offering choices to users in a non-neutral manner***,

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.

*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 Directive 98/6/EC.

## 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

##### *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

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.

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. 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 ***in 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 available and be non-discriminatory.

*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 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

*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.

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-leave-it’ situations where one party supplies a certain contractual term and the micro, small or medium-sized enterprise cannot influence the content of that term despite an attempt to negotiate it. A contractual term that is simply provided by one party and accepted by the micro, small or medium-sized enterprise or a term that is negotiated and subsequently agreed in an amended way between contracting parties should not be considered as unilaterally imposed.

#### *Amendment*

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

*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*

(56) In situations of exceptional need, it may be necessary for public sector bodies or Union institutions, agencies or bodies to use data held by an enterprise to respond to public emergencies or in other exceptional cases. Research-performing organisations and research-funding organisations could also be organised as public sector bodies or bodies governed by public law. To ***ensure coherent practices between Member States and predictable environment for private entities, the Member States and the Commission should identify 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.



**Proposal for a regulation**  
**Recital 61**

*Text proposed by the Commission*

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

*Amendment*

(61) A proportionate, limited and predictable framework at Union level is necessary for the making available of data by data holders, in cases of exceptional needs, to public sector bodies and to Union institution, agencies or bodies both to ensure legal certainty and to minimise the administrative burdens placed on businesses. To this end, data requests by public sector bodies and by Union institution, agencies and bodies to data holders should be transparent and proportionate in terms of their scope of content and their granularity, ***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 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 of official statistics, provided the conditions laid down in this Regulation are met. Public sector bodies should also be allowed to exchange data obtained pursuant to this Regulation with other public sector bodies to address the exceptional needs for which the data has been requested.

#### *Amendment*

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

---

<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).

---

<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

##### *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

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.

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 bare 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*

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

*Amendment*

(70) Regulation (EU) 2018/1807 of the European Parliament and of the Council 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 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

*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** 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

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.

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

#### *Text proposed by the Commission*

(72) This Regulation aims to facilitate switching between data processing services, which encompasses all conditions and actions that are necessary for a customer to terminate a contractual agreement of a data processing service, to conclude one or multiple new contracts with different providers of data processing services, to port all its digital assets, including data, to the concerned other providers and to continue to use them in the new environment **while benefitting** from functional equivalence. Digital assets refer to elements in digital format for which the customer has the right of use,

#### *Amendment*

(72) This Regulation aims to facilitate switching between data processing services, which encompasses all **relevant** conditions and actions that are necessary for a customer to terminate a contractual agreement of a data processing service, to conclude one or multiple new 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**

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.

***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)**

*Text proposed by the Commission*

*Amendment*

*(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*

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

*Amendment*

(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 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.*

---

<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).

---

<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*

*Amendment*

(76) Open interoperability specifications and standards developed in accordance with paragraph 3 and 4 of Annex II of Regulation (EU) 1025/2021 in the field of interoperability and portability enable a ***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

(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-



(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.

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

*Amendment*

(79) Standardisation, semantic **and**

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.

**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 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*

*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. 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.

(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 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, ***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.***

---

<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).

---

<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

##### *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

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.

---

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

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.

---

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

#### *Amendment*

1. This Regulation lays down harmonised rules on making data 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, ***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 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**;

(1) ‘data’ means any digital 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*

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

##### *Amendment*

(6) ‘data holder’ means a legal or natural person who has the right or obligation, in accordance with this Regulation, applicable Union law or national legislation implementing Union law, or in the case of non-personal data and through 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*

(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 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 **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*

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 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*

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

*Amendment*

(a) the **type, 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*

*Amendment*

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

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

*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 *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*

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:

---

<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)]*[I]*, shall not be an eligible third party under this Article and therefore shall not:

**Amendment 80**

**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 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*

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 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*

*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;

(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

*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

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.

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

#### *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.

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 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*

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 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 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, *or is a research organisation, and the data holder is not 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 93**

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

*Text proposed by the Commission*

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

**Amendment 95**

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

*Text proposed by the Commission*

*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*

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

*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, **9 and 13**.



***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*

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

*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.

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

#### *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

the data requested.

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*

*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 **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*

*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) 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*

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

*Amendment*

***deleted***

## Amendment 106

### Proposal for a regulation

## Article 17 – paragraph 1 – point a

*Text proposed by the Commission*

(a) specify what data are required;

*Amendment*

(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*

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

*Amendment*

(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*

*Amendment*

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

(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*

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, ***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*

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 within **10** working days following the receipt of a request for the data 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*

*Amendment*

(a) the data *is unavailable*;

(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*

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

*Amendment*

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*

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*

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 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.

*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)

*Text proposed by the Commission*

*Amendment*

***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

*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**

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:

**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

*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

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).

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*

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

*Amendment*

3. The charges referred to in paragraph 2 shall not exceed the costs incurred by the provider of 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)**

*Text proposed by the Commission*

*Amendment*

***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*

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

*Amendment*

4. The Commission is empowered to adopt delegated acts in accordance with Article 38 to supplement this Regulation in order to introduce a monitoring mechanism for the Commission to monitor switching charges imposed by **providers of** 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

*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 **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.

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**

*Amendment*

3. Providers of data processing

*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.

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*

*Amendment*

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

4. Where the open interoperability **and portability** specifications or European standards referred to in paragraph 3 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)(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*

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. **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 **of this Article**.

### **Amendment 163**

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

*Text proposed by the Commission*

*Amendment*

***Datra 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 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.

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 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 conditions are met.***

*Amendment*

***deleted***

### 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

*Amendment*

4. If the conditions in paragraph 2 or 3 are met, the ***data holder or*** provider of data



services shall provide the minimum amount of data permissible in response to a request, based on a reasonable interpretation thereof.

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 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 *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 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*

Interoperability for data processing services

*Amendment*

Interoperability **and portability** for data processing services

## Amendment 179

### Proposal for a regulation Article 29 – paragraph 1 – introductory part

*Text proposed by the Commission*

1. Open interoperability specifications and European standards for the interoperability of data processing services shall:

*Amendment*

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*

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

*Amendment*

(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*

*Amendment*

2. Open interoperability specifications and European standards for the

2. Open interoperability ***and portability*** specifications and European

interoperability of data processing services shall address:

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

*Amendment*

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

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

*Amendment*

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><br>Date announced in plenary | ITRE<br>23.3.2022   |              |           |
| <b>Opinion by</b><br>Date announced in plenary            | IMCO<br>23.3.2022   |              |           |
| <b>Associated committees - date announced in plenary</b>  | 7.7.2022  |              |           |
| <b>Rapporteur for the opinion</b><br>Date appointed       | Adam Bielan<br>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>                               | +:<br>-:<br>0:  | 33<br>7<br>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