



09/11/2022

AMENDMENTS: 214

Pilar del Castillo Vera

Harmonised rules on fair access to and use of data (Data Act)

Proposal for a regulation COM(2022)0068 - C9-0051/2022 – 2022/0047(COD)

Amendments created with



Go to <http://www.at4am.ep.parl.union.eu>

\000000EN.doc

Amendments per language:

EN: 214

Amendments justification with more than 500 chars : 0

Amendments justification number with more than 500 chars :

Amendment 1
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 2

Text proposed by the Commission

(2) Barriers to data sharing prevent an optimal allocation of data to the benefit of society. These barriers include a lack of incentives for data holders to enter voluntarily into data sharing agreements, uncertainty about rights and obligations in relation to data, costs of contracting and implementing technical interfaces, the high level of fragmentation of information in data silos, poor metadata management, the absence of standards for semantic and technical interoperability, bottlenecks impeding data access, a lack of common data sharing practices and abuse of contractual imbalances with regards to data access and use.

Amendment

(2) Barriers to data sharing prevent an optimal allocation of data to the benefit of society. These barriers include a lack of incentives for data holders to enter voluntarily into data sharing agreements, uncertainty about rights and obligations in relation to data, ***the economic value of data sets, the*** costs of contracting and implementing technical interfaces, the high level of fragmentation of information in data silos, poor metadata management, the absence of standards for semantic and technical interoperability, bottlenecks impeding data access, a lack of common data sharing practices and abuse of contractual imbalances with regards to data access and use.

Or. en

Justification

There is substantial uncertainty about the distribution of economic value of data sets, which leads to a lack of willingness to invest to make data available. This should very much be a key element of the Data Act

Amendment 2
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 3

Text proposed by the Commission

(3) In sectors characterised by the presence of micro, small and medium-sized

Amendment

(3) ***In particular*** in sectors characterised by the presence of micro,

enterprises, there is often a lack of digital capacities and skills to collect, analyse and use data, and access is frequently restricted where one actor holds it in the system or due to a lack of interoperability between data, between data services or across borders.

small and medium-sized enterprises, there is often a lack of digital capacities and skills to collect, analyse and use data, and access is frequently restricted where one actor holds it in the system or due to a lack of interoperability between data, between data services or across borders.

Or. en

Amendment 3

Damian Boeselager

on behalf of the Verts/ALE Group

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

Or. en

Justification

Two very important elements: (1) the sentence "other than the manufacturer... is entitled" implies that the manufacturer is entitled to access data in any case. This is not the case and should be made clear. A manufacturer can become a data holder (on the basis of a contract with the user) but does not have to be. (2) we are changing across the text the scope of accessed data to (a) data "transmitted by a connected product" or (b) data generated during the provision of related services

Amendment 4

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 5

Text proposed by the Commission

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

Amendment

(5) This Regulation ensures that **manufacturers of connected products and providers of related services must design the products and services in a way that** users of a **connected products** or related **services** in the Union can **always** access, in a timely manner, the data **transmitted by** that **connected** product or **generated during the provision of a** related service and that those users can use the data **for any lawful purpose**, including by sharing **it** 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, **in cases where users cannot access such data directly**, data holders **make available to the user, upon request, any data transmitted to them by a connected product or data generated during the provision of a related service. It also imposes the obligations on data holders to** make data available to data recipients, **at the request of the user**, in the Union under fair, reasonable and non-discriminatory terms and in a transparent manner. Private law rules are key in the overall framework of data sharing. Therefore, this Regulation adapts rules of contract law and prevents the exploitation of contractual imbalances that hinder fair data access and use. This Regulation also ensures that, **where there is an exceptional need and where certain safeguards are being adhered to**, data holders **should** make available to public sector bodies of the Member States and to Union institutions, agencies or bodies. In

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.

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 ***or data recipients*** to hold, have access to or process data, or as conferring any new right on the data holder to use data ***transmitted by a connected*** product or ***generated during the provision of a*** related service. Instead, it ***recognizes that, based on operational, economic, security or other considerations, users may agree to grant access and use permissions*** over data ***transmitted by connected*** products or ***generated during the provision of*** related services ***to data holders, which may often be manufacturers, and which may contractually agree with the user to perform one or more related services, including the storage, management and curation of data transmitted by the connected product.***

Or. en

Justification

Multiple elements:(a) clarification of the delineation between the "in-device access requirement" in Art3(1), which is an obligation for manufacturers, and the "making data available requirement in Art4&5, which is an obligation for data holders.(b) extension of Chapter IV to all companies, not just SMEs(c) Important clarification of the role of the user and the data holder and removal of the "control of the data" criterion which is legally and practically highly unclear.

Amendment 5

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 6

Text proposed by the Commission

Amendment

(6) Data generation is ***the result*** of the

(6) Data generation is ***a function of the***

actions of *at least two actors, the designer or manufacturer of a product and the user of that product*. It gives rise to questions of fairness in the digital economy, because the data *recorded* by such products or related services are an important input for aftermarket, ancillary and other services. In order to realise the important economic benefits of data *as a non-rival good* for the economy and society, a general approach to assigning access and usage rights on data is preferable to awarding exclusive rights of access and use.

design of a connected product, in particular the inclusion of sensors and processing software within the device, of the actions of the user and, depending on the operating modalities, of the provision of one or more related service. In addition, many connected products, for example in the civil infrastructure, energy generation or transport sectors are recording data about their environment or interaction with other elements of that infrastructure without any actions by the user or any third party. Such data may often be non-personal in nature and valuable for the user or third parties, which can use it to improve their operations, the overall functioning of a network or system or by making it available to create new products or services. This gives rise to questions of fairness in the digital economy, because the data *generated and transmitted* by such products or related services are an important input for aftermarket, ancillary and other services. In order to realise the important economic benefits of data *for the user, as well as* for the economy and society, a general approach to assigning access and usage rights on data is preferable to awarding exclusive rights of access and use.

Or. en

Justification

(a) The Commission proposal overlooks the many use cases where connected products collect data on their environment or system interactions (think of a wind-speed gauge in a windmill, or a measure of electric currents in a piece of grid infrastructure). The data act proposal seems to be focussing on consumer products (cars, smart fridges, etc.) which are directly linked to user actions. (b) The notion that data is always non-rival is economically absurd. If one competitor has access to valuable data, and the other does not, data is clearly object of rival competition for access.

Amendment 6
Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9 a) This Regulation acknowledges that in some situations a user can benefit from the legal protection of consumer law, but by acting in a non-professional capacity a natural person should also benefit from the protections offered by the rules on fairness in data sharing contracts applicable to enterprises. A typical example would be the prosumers, who as natural persons do acquire equipment under the consumer protection framework but use it to generate electricity and sell excess back to the grid operator without being in the framework of a trade, business, craft or profession, thus generating non-personal data that should be opened for sharing under fair terms. To that regard, when acting under another role than consumer, users that are natural persons should benefit from the opportunities and legal certainty offered to enterprises.

Or. en

Justification

To take into account the role of natural persons generating non-personal data

Amendment 7

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 11

Text proposed by the Commission

Amendment

(11) Union law setting physical design

deleted

and data requirements for products to be placed on the Union market should not be affected by this Regulation.

Or. en

Justification

What is the point of Article 3(1) in light of this? Obviously we are setting a design requirement.

Amendment 8

Damian Boeselager

on behalf of the Verts/ALE Group

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***

Amendment

(14) Products that obtain, generate or collect, by means of their ***design and*** components, data concerning their performance, use or environment and that are able to communicate that data (often referred to as the Internet of Things) should be covered by this Regulation. Such ***connected products are found in all aspects of the economy and society, including in private, civil or commercial infrastructure, vehicles, ships, aircraft, home equipment and consumer goods, medical and health devices, or agricultural and industrial machinery or energy production and transmission facilities.*** ***Transmissible data obtained, generated or collected by a connected product*** should ***always*** be accessible to the ***owner of the product, or a third party to whom the owner of the product has transferred certain rights to the product based on a rental or lease contract. The owner or such third party shall be referred to as the user for the purpose*** of this regulation. ***These access rights shall in no way alter or interfere with the fundamental rights of data subjects, who may be interacting***

economy, in particular though facilitating the maintenance and repair of the products in question.

with connected product, to personal data generated by the product. Manufacturers' design choices, the users' demands and, where relevant, sectoral legislation to address sector-specific needs and objectives determine which data is transmissible from the connected product.

Or. en

Justification

(a) Transmission should not be limited to electronic communication services (and in any case not only to "publicly available" ones). Any transmission through any interface (including a cable/USB stick, etc.) should be in scope. (b) We are expanding the scope of examples beyond the narrow consumer-oriented set of examples to infrastructure, energy production, etc. (c) We are clarifying the user definition to reflect the starting point of property of the connected product. (and the difference between the user in the DA and a data subject in GDPR) and obligation under Art 3(1)

Amendment 9

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) In contrast, *certain products that are primarily designed to display or play content, or to record and transmit content*, amongst others for the use by an online service should not be covered by this Regulation. *Such products include, for example, personal computers, servers, tablets and smart phones, cameras, webcams, sound recording systems and text scanners. They require human input to produce various forms of content, such as text documents, sound files, video files, games, digital maps.*

Amendment

(15) In contrast, content, or *data obtained, generated or collected by the connected product or transmitted to it for the purpose of storage or processing on behalf of third parties*, amongst others for the use by an online service should not be covered by this Regulation.

Or. en

Justification

We prefer to have the type of data (content, data processed/stored on behalf of a third party etc.) as the basis for exclusions from the Data Act, rather than whole product categories.

Amendment 10

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) It is necessary to lay down rules applying to ***connected products that incorporate or*** are interconnected with a ***service in such a way that the absence of the service would prevent the*** product from performing its functions. ***Such*** related services ***can be part of the sale, rent or lease agreement, or such services are normally provided for products of the same type and the user could reasonably expect them to be provided given the nature of the*** product and taking into account any public statement made by or on behalf of the seller, renter, lessor or other persons in previous links of the chain of transactions, including the manufacturer. ***These*** related services may themselves generate data of value to the user independently of the data collection capabilities of the product ***with which they are interconnected***. This Regulation should also apply to a related service that is not supplied by the seller, renter or lessor itself, but is supplied, under the sales, rental or lease contract, by a third party. In the event of doubt as to whether the supply of service forms part of the sale, rent or lease contract, this Regulation should apply.

Amendment

(16) It is ***also*** necessary to lay down rules applying to ***providers of related services that*** are interconnected with a ***connected product and that are necessary in order for the connected*** product to perform one or more of its functions and which involve the transfer of data between the connected product and the provider of the related services. Where a provider of related services ***receives data from a connected product or has access to data generated during the provision of the related service and has the right to use this non-personal data, in accordance with Article 4(6), it should be considered a data holder***. The provision of related services may themselves generate data of value to the user independently of the data collection capabilities of the product. ***Such data may represent the digitalisation of user actions and events and should accordingly be accessible to the user. Such data are potentially valuable to the user and support innovation and the development of digital and other services protecting the environment, health and the circular economy, including particular through facilitating the maintenance and repair of the products in question or the development of products or services. Information derived or***

inferred from this data by the data holder or another third party after it has been transmitted from the connected product, should not be considered within scope of this Regulation. This Regulation should also apply to a related service that is not supplied by the seller, renter or lessor itself, but is supplied, under the sales, rental or lease contract, by a third party. In the event of doubt as to whether the *provision of a related service is necessary to maintain the functional operation of the connected product*, supply of service forms part of the sale, rent or lease contract, this Regulation should apply.

Or. en

Justification

(a) we are clarifying the role of the provider of related services and the data holder definition. For this purpose we have moved some language from Recital 14 to this place where it fits much better. (b) we are removing the highly confusing language about services being incorporated in the product at the time of the sale lease or rental contract and making the main qualification for the related service definition about (a) contributing to the functionality of the product and (b) receiving data from it.

Amendment 11

Damian Boeselager

on behalf of the Verts/ALE Group

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

Amendment

(17) Data ***transmitted by a connected*** product or ***generated during the provision of a*** related service include data ***obtained, recorded or otherwise generated*** by the ***product according to the users intentions and*** data generated as a by-product of the user's action, such as diagnostics data, and ***data generated*** without any action by the user, ***in particular data about the connected product's environment or***

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.

interactions, including when the product is in ‘standby mode’, and data recorded during periods when the product is switched off. Such data should include data in the form and format in which they are generated by the product ***and be compiled in a comprehensible, structured, commonly used and machine-readable format and including the relevant metadata***, but not pertain to data ***that is demonstrated to*** be subject to intellectual property rights. ***The description about what data is transmissible by the connected product may refer to the specific data, where relevant, that is subject to intellectual property rights. Where data is transferred in an encrypted format, the user should be provided with all necessary means to decrypt such data and make it accessible.***

Or. en

Justification

(a) clarification of transmitted data scope and extension to environmental or situational data collected without the users input.(b) clarification on IPR protection(c) inclusion of metadata and modalities for encrypted data

Amendment 12

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) The user of a product should be understood as the legal or natural person, such as a business or consumer, which has ***purchased, rented or leased the*** product. ***Depending on the legal title under which he uses it***, such a user bears the risks and enjoys the benefits of using the connected product and should ***enjoy also the access to***

Amendment

(18) The user of a ***connected*** product should be understood as the legal or natural person, such as a business or consumer, which has ***acquired the connected*** product ***or receives related services, or to whom the owner of the connected product has transferred***, on the ***basis of a rental or lease agreement, temporary rights to use***

the data it generates. The user should therefore be entitled to derive benefit from data generated by *that product and* any related service.

the connected product or receive related services. Such a user bears the risks and enjoys the benefits of using the connected product and should therefore be entitled to derive benefit from data *transmitted by that connected product and* generated by *the provision of* any related service.

Or. en

Justification

Clarification of user and alignment with property law, which makes a clear distinction between the rights of an owner and those of a lease taker or renter.

Amendment 13

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 19

Text proposed by the Commission

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

Amendment

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

provided in such a manner that data *that is transmissible by them to others* are always easily accessible to the user.

Or. en

Amendment 14

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 20

Text proposed by the Commission

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

Amendment

(20) In case several persons or entities own a *connected* product or are party to a lease or rent agreement and benefit from access to a related service, *all necessary* efforts should be made in the design of the *connected* product or related service or the relevant interface so that all persons can have access to data they generate. Users of *connected* products that generate data *may* require a user account to be set up. This allows for identification of the user by the *party managing the data transmission, storage and processing*, as well as a means to communicate to exercise and process data access requests *to the user*. Manufacturers or designers of a *connected* 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 *any* data holder. 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 application provided with the *connected* product or

the user how the data may be accessed.

related service, the *party managing the data transmission, storage and processing* should inform the user how the data may be accessed.

Or. en

Justification

Clarification that the manufacturer is not automatically involved in the process of data management. The manufacturer CAN be a data holder, but does not have to be, as is insinuated by this recital in its original form.

Amendment 15

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 21

Text proposed by the Commission

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

Amendment

(21) *Connected* products may be designed to make certain data directly available *by means of* an on-device data *access or* storage or from a remote server to which *data collected, obtained or otherwise generated by the* connected *product are transmitted* to. *Such* server may be *based on the user's* own local server capacity or that of a *data holder, a* third party, *including the manufacturer or vendor, or a cloud service provider, who may be considered a* data holder, *if the receipt, storage, processing or sharing of data transmitted by the connected product are important to the operation of such product. Such servers* may be designed to permit the user or a *data recipient* to process the data on the *connected* product or on a computing instance of *a third party*.

Or. en

Justification

As before, removing the assumption that manufacturers are automatically the party that manages the data processes. Users, data holders, third parties (e.g. cloud providers) and manufacturers are all potential data handlers. The law should not predetermine the setup in such a widely heterogeneous sector as IoT.

Amendment 16

Damian Boeselager

on behalf of the Verts/ALE Group

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***

Amendment

(22) Virtual assistants play an increasing role in digitising consumer ***and professional*** environments and serve as an easy-to-use interface to play content, obtain information, or activate physical objects connected to the Internet 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 ***connected*** product via a virtual assistant provided by an entity other than the manufacturer of the ***connected*** product.

*produced by the virtual assistant
unrelated to the use of a product is not the
object of this Regulation.*

Or. en

Justification

Virtual assistants also exist in professional contexts (i.e. in factories, etc.) they are not only lifestyle products.

Amendment 17

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) This Regulation imposes the obligation on data holders to make data available in certain circumstances. Insofar as personal data are processed, ***the data holder*** should be ***a controller*** under Regulation (EU) 2016/679. Where users are data subjects, data holders should be obliged to provide them access to their data and to make the data available to third parties of the ***user's*** choice in accordance with this Regulation. However, this Regulation does not create a legal basis under Regulation (EU) 2016/679 for ***the data holder*** to provide access to personal data or make it available to a third party when requested by a user that is not a data subject and should not be understood as conferring any new right on ***the data holder*** to use data generated by the use of a product or related service. ***This applies in particular where the manufacturer is the data holder. In that case,*** the basis for ***the manufacturer*** to use non-personal data should be a contractual agreement between the ***manufacturer*** and the user. This agreement may ***be part of*** the sale, ***rent or***

Amendment

(24) This Regulation imposes the obligation on data holders to make data available in certain circumstances. Insofar as personal data are processed, ***data holders*** should be ***controllers*** 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 ***data subject's*** choice in accordance with this Regulation. However, this Regulation does not create a legal basis under Regulation (EU) 2016/679 for ***data holders*** to provide access to personal data or make it available to a third party when requested by a user that is not a data subject and should not be understood as conferring any new right on ***data holders*** to use data ***transmitted to it from the connected*** generated by the use of a product or ***generated during the provision of a*** related service. ***Instead,*** the basis for ***a data holder*** to use non-personal data ***transmitted to it*** should be a contractual agreement between the ***data holder, in its role as a provider of related services,*** and

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.

the user. ***Where the manufacturer or vendor of the connected product is also a provider of related services,*** this agreement may ***combined with*** the sale agreement relating to the ***connected*** product. Any agreement ***between the user and a data holder shall clearly and comprehensively address the nature and access modalities of data transmitted from the connected product to the data holder or generated during the provision of the*** related services, ***as well as the duration of the agreement and modalities to terminate the agreement prematurely.*** ***Where a*** data holder intends to ***share data with third parties for the fulfilment of its contractual obligations, it shall inform the user of the nature and volume of the shared data and, where relevant, contractually bind the third party not to*** use the data ***for any other purpose.*** This Regulation should not prevent contractual conditions, whose effect is to exclude or limit the use of the data, or certain categories thereof, by ***a*** data holder. This Regulation should also not prevent sector-specific regulatory requirements under Union law, or national law compatible with Union law, which would exclude or limit the use of certain such data by ***a*** data holder on well-defined public policy grounds.

Or. en

Justification

The COM proposal intertwines the rights and obligations resulting from two separate transactions in the data economy: (1) the sale of a connected product and (2) the offering of services relating to the product. This creates great uncertainty with regards to the rights and obligations of the contract parties. We clarify that, unless a user rents/leases a connected product directly from the manufacturer, transaction (1) and (2) must have happened before a user can use a connected product and receive related services. Again, manufacturers can be data holders, but don't have to be.

Amendment 18
Damian Boeselager

Proposal for a regulation
Recital 24 a (new)

Text proposed by the Commission

Amendment

(24 a) It is currently often difficult for businesses to justify the personnel or computing costs that are necessary for preparing non-personal data sets or data products and offer them to potential counter parties via data marketplaces, including data intermediation services, as defined in Regulation EU [DGA]. A substantial hurdle to non-personal data sharing by businesses thus results from the lack of predictability of economic returns from investing in the curation and making available of data sets or data products. In order to allow for the emergence of liquid, efficient and fair markets for non-personal data in the Union, it must be clarified which party has the right to offer such data on a marketplace. In order to protect the incentives for users to monetize non-personal data from their connected products, data holders should only be able to monetize aggregated data sets from multiple users and should not make available non-personal data transmitted to them from the connected product with third parties for commercial or non-commercial purposes other than the fulfilment of their contractual obligations to the user. Where relevant, data holders should contractually bind third parties not to market, monetise or further share data received from them. At the same time, where data holders have contractually agreed with users the right to use such data, they should be free to use it for a wide range of purposes, including improving the functioning of the connected product or related services, developing new products or services or

enriching or manipulating it or aggregating it with other data, including with the aim of making available the resulting data set with third parties, as long as such derived data set does not allow the identification of the specific data items transmitted to the data holder from the connected product, or allow a third party to derive these data items from the data set without a significant effort. The freedom of contract between users and data holders should also make it possible for data holders to be granted access rights to data on an exclusive basis, which could also be further shared with others, as long as they do not coerce deceive or otherwise manipulate the users to reach its agreement, including by making the sale of the connected product or the provision of a related service conditional upon the user agreeing to share data exclusively.

Or. en

Justification

For a market price for a given individual data product to emerge, only one market participant can have the right to share it. Otherwise, another actor who holds the same data can destroy the market by offering the identical dataset on the same market. This leads to the situation where a data holder can destroy the business case for the user to monetize data, and vice versa. We do not want existing data usage models of data holders to be substantially disrupted, but to create incentives also for data holders to make aggregated data sets available and to seek to be data recipients themselves.

Amendment 19

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) In sectors characterised by the concentration of a small number of

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

manufacturers *or providers of related services* available to users, *the ability of users to bargain for access to data transferred by the connected product or generated during the provision of related services is limited due to the bargaining power of the manufacturer or provider of related service*. In such circumstances, contractual agreements may be insufficient to achieve the objective of user empowerment. The data tends to remain under the control of the manufacturers *or providers of related services*, making it difficult for users to obtain value from the data generated by the equipment they *own*. Consequently, there is limited potential for innovative smaller businesses to offer data-based solutions in a competitive manner and for a diverse data economy in Europe. Furthermore, *data holders* should not use any data *transmitted to them from the connected product or generated during the provision of related services* in order to derive insights about the economic situation of the user or its assets or production methods or the use in any other way that could undermine the commercial position of the user on the markets it is active on. This *could*, for instance, involve using knowledge about the overall performance of a business in contractual negotiations with the user on potential acquisition of the user's products to the user's detriment, or for instance, using such information to feed in larger databases on certain markets in the aggregate as such use could affect the user negatively in an indirect manner. The user should be given the necessary technical interface to manage permissions, with granular permission options, *where possible* (such as "allow once" or "allow while using this app or service"), including the option to withdraw permission.

withdraw permission.

Or. en

Justification

(a) removing misplaced reference to Codes of Conduct and the agricultural sector (this has nothing to do with the horizontal nature of the Data Act)(b) clarifying the nature and consequences of market concentrations

Amendment 20

Damian Boeselager

on behalf of the Verts/ALE Group

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/EC⁶³, this Regulation provides that such unfair terms should not be binding on that enterprise.

⁶³ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises

Amendment

(26) In contracts between a data holder and a consumer as a user of a **connected** 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/EC⁶³, this Regulation provides that such unfair terms should not be binding on that enterprise.

⁶³ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises

Or. en

Amendment 21

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 27

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

In most cases it is not the user that is being identified but the device. A connected machine has an ID and an interface, while the human operating can be unknown and we should not add new identification obligations as long as we can presume that the one having access to a device also has the rights.

Amendment 22
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 28

Text proposed by the Commission

(28) The user should be free to use the data for any lawful purpose. This includes providing the data the user has received exercising the right under this Regulation to a **third party** offering an aftermarket service that may be in competition with a service provided by the data holder, or to instruct the data holder to do so. The data holder should ensure that the data made available to the **third party** is as accurate, complete, reliable, relevant and up-to-date as the data the data holder itself may be able or entitled to access from the **use of the** product or related **service**. **Any trade**

Amendment

(28) The user should be free to use the data for any lawful purpose. This includes providing the data the user has received exercising the right under this Regulation to a **data recipient** offering an aftermarket service that may be in competition with a service provided by the data holder, or to instruct the data holder to do so. The data holder should ensure that the data made available to the **data recipient** is as accurate, complete, reliable, relevant and up-to-date as the data the data holder itself may be able or entitled to access from the **connected** product or **the provision of**

*secrets or intellectual property rights should be respected **in** handling the data. It is important to preserve incentives to invest in products with functionalities based on the use of data from sensors built into that product.* The aim of this Regulation should accordingly be understood as *to foster* the development of new, innovative products or related services, *stimulate* innovation on aftermarkets, but also *stimulate* the development of entirely novel *services making use of the data, including based on data from a variety of products or related services.* *At the same time, it aims to avoid undermining the investment incentives for the type of product from which the data are obtained, for instance, by the use of data to develop a competing product.*

related *functional services.* *The user should also be able to make available data transmitted from the connected product or generated during the provision of related services to data users through the use of data intermediation services, data altruism organisations or arm's length transactions, which may or may not involve remuneration or other economic arrangements.* *Data intermediation services, as defined in the [DGA] can fulfil a variety of purposes in the facilitating of data sharing, including acting as an agent to connect users, data recipients and third parties seeking to access data or act as a data recipient in the form of a data market or exchange.* Intellectual property rights should be respected *when* handling the data. The aim of this Regulation should accordingly be understood as *fostering* the development of new, innovative *connected* products or related services, *stimulating* innovation on aftermarkets, but also *as enabling* the development of *liquid and efficient markets on which non-personal data can be exchanged, for entirely novel purposes unrelated to the originating connected product or related service.*

Or. en

Justification

(a) consistent use of "data recipient" everywhere in the document (b) Involvement of Data Intermediation Services from DGA (c) Adding the creation of liquid data markets to the objectives of this legislation.

Amendment 23

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 29

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

(29) A **data recipient** to whom data is made available may be an **natural or legal person**, enterprise, research organisation, a not-for-profit organisation **or an intermediary, including data intermediation services or data altruism organisations as defined in Regulation [XX...DGA]**. In making the data available to **a data recipient, a** data holder should not abuse its position to seek a competitive advantage in markets where the data holder and **data recipient** may be in direct competition. **Data holders** should not therefore use any data **transmitted** by the **connected** product or related service in order to derive insights about the economic situation of the **data recipient** or its assets or production methods or the use in any other way that could undermine the commercial position of the **data recipient** on the markets it is active on. **Upon the agreement of the user, data recipients should be able to transfer the data access rights granted by the user to third parties, including in exchange for compensation. Data holders shall make available data to this third party on the same terms as to the initial data recipient.**

Or. en

Justification

(a) consistent use of data recipient vs. third party (b) introduction of the role of the DGA (c) Clarifying that (non-personal) data can be traded away by users.

Amendment 24

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 30

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

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

responsibilities for compliance with that Regulation. It should be understood that such a user, once data has been made available, may in turn become a data holder, if they meet the criteria under this Regulation and thus become subject to the obligations to make data available under this Regulation.

⁶⁴ OJ L 303, 28.11.2018, p. 59–68.

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

⁶⁴ OJ L 303, 28.11.2018, p. 59–68.

Or. en

Justification

Aligning with terminology

Amendment 25

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 31

Text proposed by the Commission

(31) Data ***generated by the use of a*** product or related ***service*** should only be made available to a third party at the request of the user. This Regulation accordingly complements the right provided under Article 20 of Regulation (EU) 2016/679. That Article provides for a right of data subjects to receive personal data concerning them in a structured, commonly used and machine-readable format, and to port those data to other controllers, where those data are processed on the basis of Article 6(1), point (a), or Article 9(2), point (a), or of a contract pursuant to Article 6(1), point (b). Data subjects also have the right to have the personal data transmitted directly from one

Amendment

(31) Data ***transmitted by a connected*** product or ***generated during the provision of*** related ***services*** 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

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

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 **data recipient** to any data **transmitted by a connected** product or **generated during the provision of a** related service, irrespective of its nature as personal data, of the distinction between actively provided, **extrapolated** or passively observed data, and irrespective of the legal basis of processing. Unlike the technical obligations provided for in Article 20 of Regulation (EU) 2016/679, this Regulation mandates and ensures the technical feasibility of third party access for all types of data coming within its scope, whether personal or non-personal. It also allows **data holders** to set compensation to be met by **data recipients**, but not by the user, **not exceeding the** any cost incurred in providing direct access to the data generated by the user's **connected** product. If a data holder and third party are unable to agree terms for such direct access, the data subject should be in no way prevented from exercising the rights contained in Regulation (EU) 2016/679, including the right to data portability, by seeking remedies in accordance with that Regulation. It is to be understood in this context that, in accordance with Regulation (EU) 2016/679, a contractual agreement does not allow for the processing of special categories of personal data by the data

holder or the third party.

Or. en

Justification

Aligning terminology and clarifying that compensation should not exceed the cost of making data available.

Amendment 26

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 32

Text proposed by the Commission

(32) Access to any data stored in and accessed from terminal equipment is subject to Directive 2002/58/EC and requires the consent of the subscriber or user within the meaning of that Directive unless it is strictly necessary for the provision of an information society service explicitly requested by the user or subscriber (or for the sole purpose of the transmission of a communication). Directive 2002/58/EC ('ePrivacy Directive') (and the proposed ePrivacy Regulation) protect the integrity of the user's terminal equipment as regards the use of processing and storage capabilities and the collection of information. ***Internet of Things equipment is considered terminal equipment if it is directly or indirectly connected to a public communications network.***

Amendment

(32) Access to any data stored in and accessed from terminal equipment is subject to Directive 2002/58/EC and requires the consent of the subscriber or user within the meaning of that Directive unless it is strictly necessary for the provision of an information society service explicitly requested by the user or subscriber (or for the sole purpose of the transmission of a communication). Directive 2002/58/EC ('ePrivacy Directive') (and the proposed ePrivacy Regulation) protect the integrity of the user's terminal equipment as regards the use of processing and storage capabilities and the collection of information.

Or. en

Justification

Last sentence in proposal is unnecessarily broad and excludes a huge amount of use cases that are not meant to be covered by Directive 2002/58/EC.

Amendment 27

Damian Boeselager

on behalf of the Verts/ALE Group

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) ***As far as personal data is concerned,*** in order to prevent the exploitation of users ***of connected products who are natural persons, data recipients*** to whom data has been made available upon request of the user should only process the data for the purposes agreed with the user and share it with another third party only if this is necessary to provide the service requested by the user, ***or explicitly agreed with the user.***

Or. en

Justification

(a) Clarification that data recipients can indeed share the data further (i.e. in a data market context, if the user has agreed to this)

Amendment 28

Damian Boeselager

on behalf of the Verts/ALE Group

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

Amendment

(34) ***As far as personal data is concerned,*** in line with the data minimisation principle, the ***data recipient*** should only access additional information that is necessary for the provision of the service requested by the user. Having received access to data, the ***data recipient*** should process it ***only in accordance with*** for the purposes agreed with the user,

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

without interference from **a** data holder. It should be as easy for the user to refuse or discontinue access by the **data recipient** to the data as it is for the user to authorise access. The **data recipient** should not coerce, deceive or manipulate the user in any way, by subverting or impairing the autonomy, **decision making** or choices of the user **of the connected product**, including by means of a digital interface. In this context, **data recipient** 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 **they would not otherwise have taken**. These manipulative techniques can be used to persuade users **of connected products and related services**, particularly vulnerable consumers, to engage in unwanted behaviours, and to deceive **them** by nudging them into decisions on data disclosure transactions or to unreasonably bias the **decision making of user** in a way that subverts and impairs their autonomy, decision-making and choice. Third parties should comply with their obligations under relevant Union law, in particular the requirements set out in Directive 2005/29/EC, Directive 2011/83/EU, Directive 2000/31/EC and Directive 98/6/EC

Or. en

Justification

(a) Clarification that data minimisation principle only applies to personal data. (b) Improvement of the language on dark patterns. Sentence on "common and legitimate commercial practices" is absolutely not acceptable.

Amendment 29

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 35

Text proposed by the Commission

(35) ***The third party*** should also refrain from using the data to profile individuals unless these processing activities are strictly necessary ***to provide*** the service requested by the user. The requirement to delete data when no longer required for the purpose agreed with the user complements the right to erasure of the data subject pursuant to Article 17 of Regulation 2016/679. Where the ***third party is*** a provider of a data intermediation service within the meaning of [Data Governance Act], the safeguards for the data subject provided for by that Regulation apply. ***The third party may use the data to develop a new and innovative product or related service but not to develop a competing product.***

Amendment

(35) ***Data holders and data recipients*** should also refrain from using the data to profile individuals unless these processing activities are strictly necessary ***for the functioning of*** the service requested by the user. The requirement to delete ***personal*** data when no longer required for the purpose agreed with the user ***of the connected product*** complements the right to erasure of the data subject pursuant to Article 17 of Regulation 2016/679. Where the ***data recipient*** a provider of a data intermediation service within the meaning of [Data Governance Act], the safeguards for the data subject provided for by that Regulation apply.

Or. en

Justification

(a) clarify that profiling prohibition extends to data holders (b) clarify that there is no non-compete for data recipients, which could have the absurd unintended consequence that a company having received some data in another context may not compete with the original product in that market (seemingly in eternity... there is no time limit in the non-compete). It would induce a huge legal uncertainty for any data recipient about the source of data and the possibility to violate non-compete clauses.

Amendment 30
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 36

Text proposed by the Commission

(36) Start-ups, small and medium-sized enterprises and companies from traditional

Amendment

(36) Start-ups, small and medium-sized enterprises and companies from traditional

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

sectors with less-developed digital capabilities struggle to obtain access to relevant data. This Regulation aims to facilitate access to data for these entities, while ensuring that the corresponding obligations are scoped as proportionately as possible. At the same time, a small number of very large companies have emerged with considerable economic power in the digital economy through the accumulation and aggregation of vast ***amounts*** of data and the technological infrastructure for monetising them. These companies include undertakings that provide core platform services controlling whole platform ecosystems in the digital economy and whom existing or new market operators are unable to challenge or contest. The [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)] aims to redress these inefficiencies and imbalances by allowing the Commission to designate a provider as a “gatekeeper”, and imposes a number of obligations on such designated gatekeepers, including a prohibition to combine certain data without consent, and an obligation to ensure effective rights to data portability under Article 20 of Regulation (EU) 2016/679. Consistent with the [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)], and given the unrivalled ability of these companies to acquire data, ***a specific regime should apply to sharing data with these companies***. This means that an undertaking providing core platform services that has been designated as a gatekeeper ***should not solicit, coerce or manipulate users into sharing data with them, and in particular, should use its customer access, bargaining power and information across multiple products or service markets. It should therefore not make the commercial terms, including pricing, of any products or services offered to the user conditional or***

of Chapter II of this Regulation. An undertaking providing core platform services designated as a gatekeeper pursuant to Digital Markets Act should be understood to include all legal entities of a group of companies where one legal entity provides a core platform service. Furthermore, third parties to whom data are made available at the request of the user may not make the data available to a designated gatekeeper. For instance, the third party may not sub-contract the service provision to a gatekeeper. However, this does not prevent third parties from using data processing services offered by a designated gatekeeper. ***This exclusion of designated gatekeepers from the scope of the access right under this Regulation does not prevent these companies from obtaining data through other lawful means.***

otherwise commercially dependent upon whether, or to which degree, the user agrees to make available data, transmitted from the connected object or generated during the provision of related services, to the undertaking providing platform services or any of its affiliates. As an example, it should not offer the user a reduction in price or additional services in one digital service, in return for the user making available data in context of the same, or another service. An undertaking providing core platform services designated as a gatekeeper pursuant to Digital Markets Act should be understood to include all legal entities of a group of companies where one legal entity provides a core platform service. Furthermore, third parties to whom data are made available at the request of the user may not make the data available to a designated gatekeeper. For instance, the third party may not sub-contract the service provision to a gatekeeper. However, this does not prevent third parties from using data processing services offered by a designated gatekeeper.

Or. en

Amendment 31

Damian Boeselager

on behalf of the Verts/ALE Group

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) It is overly burdensome ***for*** micro and small enterprises ***to follow the obligations for data holders with respect to making available data to data recipients.*** That is not the case, however, where a micro or small enterprise is sub-contracted to manufacture or design a ***connected product or provide a related***

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.***

service. 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 ***other*** requirements laid down by this Regulation.

Or. en

Justification

Art 5(1) is the burdensome article for small companies, not Art 3(1)

Amendment 32

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) This Regulation contains ***general access*** rules, whenever a data holder is obliged by law to make data available to a data recipient. Such access should be based on fair, reasonable, non-discriminatory and transparent conditions to ensure consistency of data sharing practices in the internal market, including across sectors, and to encourage and promote fair data sharing practices even in areas where no such right to data access is provided. These ***general access*** rules do not apply to obligations to make data available under Regulation (EU) 2016/679. Voluntary data sharing remains unaffected by these rules.

Amendment

(38) This Regulation contains rules, whenever a data holder is obliged by law to make data available to a data recipient. Such access should be based on fair, reasonable, non-discriminatory and transparent conditions to ensure consistency of data sharing practices in the internal market, including across sectors, and to encourage and promote fair data sharing practices even in areas where no such right to data access is provided. These rules do not apply to obligations to make data available under Regulation (EU) 2016/679. Voluntary data sharing remains unaffected by these rules.

Or. en

Justification

There are no general access rules for anyone but the users. Rules are specific and conditional

for access for the data holder (upon a contract) and the data recipient (upon instruction by the user)

Amendment 33

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 39

Text proposed by the Commission

(39) Based on the principle of contractual freedom, the parties should remain free to negotiate the precise conditions for making data available in their contracts, within the framework *of the general access rules for making data available*.

Amendment

(39) Based on the principle of contractual freedom, the parties should remain free to negotiate the precise conditions for making data available in their contracts, within the framework ***laid out in this Regulation and the [DGA]***.

Or. en

Justification

Link to DGA which contains data sharing rules for re-use data as well as rules for data intermediation services

Amendment 34

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 40

Text proposed by the Commission

(40) *In order to ensure that the conditions for mandatory data access are fair for both parties, the general rules on data access rights should refer to the rule on avoiding unfair contract terms.*

Amendment

deleted

Or. en

Justification

This recital is very confusing and it remains unclear which actual scenario is being addressed here (mandatory data access -> mandatory for whom? / access for whom?). Which "general rules on data access rights?"

Amendment 35

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 41

Text proposed by the Commission

(41) In order to compensate for the lack of information on the conditions of different contracts, which makes it difficult for the data recipient to assess if the terms for making the data available are non-discriminatory, it should be ***on the data holder*** to demonstrate that ***a contractual term is not discriminatory. It is not unlawful discrimination***, where a data holder uses different contractual terms for making data available or different compensation, ***if those differences are justified by objective reasons***. These obligations are without prejudice to Regulation (EU) 2016/679.

Amendment

(41) In order to compensate for the lack of information on the conditions of different contracts, which makes it difficult for the data recipient to assess if the terms for making the data available are non-discriminatory, it should be the ***responsibility of data holders*** to demonstrate that, where a data holder uses different contractual terms for making data available or ***provides*** different compensation, ***a contractual term is not discriminatory***. These obligations are without prejudice to Regulation (EU) 2016/679.

Or. en

Justification

This recital is very unclear and impractical. The second sentence seems to directly counteract the first one.

Amendment 36

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 42

Text proposed by the Commission

Amendment

(42) In order to incentivise the continued investment in generating valuable data, including investments in relevant technical tools, this Regulation contains the principle that the data holder may request **reasonable** compensation when legally obliged to make data available to **the** data recipient. These provisions should not be understood as paying for the data itself, but **in the case of micro, small or medium-sized enterprises**, for the costs incurred and investment required for making the data available.

(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 compensation **in line with the costs incurred** when legally obliged to make data available to **a** data recipient. These provisions should not be understood as paying for the data itself, but for the costs incurred and investment required for making the data available.

Or. en

Justification

There is no justification for asking for more than the cost of making data available. This will only be an inhibition to make data available.

Amendment 37

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 44

Text proposed by the Commission

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.

deleted

Or. en

Justification

See recital 42 - this is no longer necessary

Amendment 38

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 45

Text proposed by the Commission

(45) Direct costs for making data available are the costs necessary for data reproduction, dissemination via electronic means and storage but not of data collection or production. Direct costs for making data available should be limited to the share attributable to the individual requests, taking into account that the necessary technical interfaces or related software and connectivity will have to be set up permanently by the data holder. Long-term arrangements between data holders and data recipients, for instance via a subscription model, could reduce the costs linked to making the data available in regular or repetitive transactions in a business relationship.

Amendment

(45) Direct costs for making data available are the costs necessary for data reproduction, dissemination via electronic means and storage but not of data collection or production. Direct costs for making data available should be limited to the share attributable to the individual requests, taking into account that the necessary technical interfaces or related software and connectivity will have to be set up permanently by the data holder. Long-term arrangements between data holders and data recipients, ***with the explicit permission of the user,*** for instance via a subscription model, could reduce the costs linked to making the data available in regular or repetitive transactions in a business relationship.

Or. en

Amendment 39

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 46

Text proposed by the Commission

(46) ***It is not necessary to intervene in the case of data sharing between large***

Amendment

deleted

companies, or when the data holder is a small or medium-sized enterprise and the data recipient is a large company. In such cases, the companies are considered capable of negotiating any compensation if it is reasonable, taking into account factors such as the volume, format, nature, or supply of and demand for the data as well as the costs for collecting and making the data available to the data recipient.

Or. en

Justification

No longer necessary - Compensation for making data available is not the same thing as selling data products.

Amendment 40

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 47

Text proposed by the Commission

(47) Transparency is an important principle to ensure that the compensation requested by *the* data holder *is reasonable, or, in case the data recipient is a micro, small or medium-sized enterprise, that the compensation* does not exceed the costs directly related to making the data available to *the* data recipient and is attributable to the individual request. In order to put the data recipient in the position to assess and verify that the compensation complies with the requirements under this Regulation, the data holder should provide to the data recipient the information for the calculation of the compensation with a sufficient degree of detail.

Amendment

(47) Transparency is an important principle to ensure that the compensation requested by *a* data holder does not exceed the costs directly related to making the data available to *a* data recipient and is attributable to the individual request. In order to put the data recipient in the position to assess and verify that the compensation complies with the requirements under this Regulation, the data holder should provide to the data recipient the information for the calculation of the compensation with a sufficient degree of detail.

Or. en

Amendment 41

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 48

Text proposed by the Commission

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

Amendment

(48) Ensuring access to alternative ways of resolving domestic and cross-border disputes that arise in connection with making data available should benefit data holders and data recipients and therefore strengthen trust in data sharing. In cases where parties cannot agree on fair, reasonable and non-discriminatory terms of making data available, dispute settlement bodies should offer a simple, fast and low-cost solution to the parties. ***The availability of a dispute body should not, however, prevent a data recipient to seek legal action to enforce a provider of related functional service's obligation to make data available to the data recipient at the user of the connected product's request.***

Or. en

Amendment 42

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 51

Text proposed by the Commission

(51) Where one party is in a stronger bargaining position, there is a risk that that party could leverage such position to the detriment of the other contracting party when negotiating access to data and make access to data commercially less viable and sometimes economically prohibitive. Such

Amendment

(51) Where one party is in a stronger bargaining position, there is a risk that that party could leverage such position to the detriment of the other contracting party when negotiating access to data and make access to data commercially less viable and sometimes economically prohibitive. Such

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

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

Or. en

Justification

Unfair contract terms should not be binding on any company

Amendment 43

Damian Boeselager

on behalf of the Verts/ALE Group

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

Amendment

(52) Rules on contractual terms should take into account the principle of contractual freedom as an essential concept in business-to-business relationships.

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

term that is negotiated and subsequently agreed in an amended way between contracting parties should not be considered as unilaterally imposed.

Or. en

Amendment 44

Damian Boeselager

on behalf of the Verts/ALE Group

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 should only apply to those elements of a contract that are related to making data available ***or supressing data access***, 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 ***or supressing data access***, should not be subject to the unfairness test laid down in this Regulation.

Or. en

Amendment 45

Damian Boeselager

on behalf of the Verts/ALE Group

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***

Amendment

(56) In situations of exceptional need, ***arising from an imminent public emergency or from a situation where the public sector body or Union institution, agency or body is acting on the basis of EU, or Member State law and has***

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.

identified a specific data set, which is unavailable to it and which is demonstrably necessary to fulfil a specific task in the public interest that has been explicitly provided by law, it may be necessary for public sector bodies or Union institutions, agencies or bodies to use data, *which* an enterprise *is currently collecting or has previously obtained, collected or otherwise generated and which it retains at the time of the request*, to respond to *the situation of exceptional need*. Research-performing organisations could also be organised as public sector bodies or bodies governed by public law. To limit the burden on businesses, micro and small enterprises should be exempted from the obligation to provide public sector bodies and Union institutions, agencies or bodies data in situations of exceptional need.

Or. en

Justification

(a) we are clarifying that there needs to be a legal basis for data access (b) research funding organisation have no need to access data (c) the business needs to actually have collected the data in question

Amendment 46

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 57

Text proposed by the Commission

(57) In case of public emergencies, such as public health emergencies, emergencies resulting from environmental degradation and major natural disasters including those aggravated by climate change, as well as human-induced major disasters, such as major cybersecurity incidents, the public interest resulting from the use of the data

Amendment

(57) In case of public emergencies, such as public health emergencies, emergencies resulting from environmental degradation and major natural disasters including those aggravated by climate change, as well as human-induced major disasters, such as major cybersecurity incidents, the public interest resulting from the use of the data

will outweigh the interests of the data holders to dispose freely of *the* data they hold. In such a case, data holders *should* be placed under an obligation to make the data available to public sector bodies or to Union institutions, agencies or bodies upon their request. The existence of a public emergency is determined according to the respective procedures in the Member States or of relevant international organisations.

may outweigh the interests of the data holders to dispose freely of *some specific* data they hold. In such a case, *and subject to conditions and other safeguards set out in this Regulation or other EU or Member State regulation*, data holders *may* be placed under an obligation to make the data available to public sector bodies or to Union institutions, agencies or bodies upon their request. The existence of a public emergency is determined according to the respective procedures in the Member States or of relevant international organisations.

Or. en

Amendment 47

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 58

Text proposed by the Commission

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

Amendment

(58) Where the exceptional need is not justified by the need to respond to a public emergency, the public sector body or the Union institution, agency or body, *acting on the basis of EU or Member State law*, should demonstrate that the lack of timely access to and the use of the data requested prevents it from effectively fulfilling a specific task in the public interest that has been explicitly provided in law *and the legal basis for requiring the access to that data*. Such exceptional need may *include* the timely compilation of official statistics when data is not otherwise available *and necessary for the fulfilment of a specific task in the public interest*. At the same time, the public sector body or the Union institution, agency or body should, outside the case of responding to a public emergency, demonstrate that no alternative means for obtaining the data requested exists and that the data cannot be obtained

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

in a timely manner through the laying down of the necessary data provision obligations in new legislation. ***Data holders should inform users of connected products if their data access and use rights are affected by the request by the public sector body or the Union institution, agency or body.***

Or. en

Justification

Clarifying restriction to "responding to" an emergency, legal basis and role of users of connected products, where relevant.

Amendment 48

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 59

Text proposed by the Commission

(59) This Regulation should not apply to, nor pre-empt, voluntary arrangements for the exchange of data between private and public entities. ***Obligations placed on data holders to provide data that are motivated by needs of a non-exceptional nature, notably where the range of data and of data holders is known and where data use can take place on a regular basis, as in the case of reporting obligations and internal market obligations, should not be affected by this Regulation.*** Requirements to access data to verify compliance with applicable rules, including in cases where public sector bodies assign the task of the verification of compliance to entities other than public sector bodies, should also not be affected by this Regulation.

Amendment

(59) This Regulation should not apply to, nor pre-empt, ***existing mandatory or any existing or future*** voluntary arrangements for the exchange of data between private and public entities. Requirements to access data to verify compliance with applicable rules, including in cases where public sector bodies assign the task of the verification of compliance to entities other than public sector bodies, should also not be affected by this Regulation.

Justification

The deleted language is very ambivalent and confusing and does not add anything beyond what is currently there.

Amendment 49

Damian Boeselager

on behalf of the Verts/ALE Group

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,

Amendment

(61) A proportionate, limited and predictable framework at Union level **should complement EU or Member State law** for the making available of data by data holders, in cases of exceptional needs, to public sector bodies and to Union **institutions**, 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 **institutions**, agencies and bodies to data holders should be **based on EU or Member State law, specific**, transparent and proportionate in terms of their scope of content and their granularity. The purpose of the request and the intended use of the data requested should be specific and clearly explained, while allowing appropriate flexibility for the requesting entity to perform its tasks in the public interest. The request should also respect the legitimate interests of the businesses to whom the request is made. The burden on data holders should be minimised by obliging requesting entities to respect the once-only principle, which prevents the same data from being requested more than once by more than one public sector body or Union institution, agency or body where

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.

those data are needed to respond to a public emergency. To ensure transparency, data requests ***including secondary requests for access to the data under the once-only principle***, made by public sector bodies, and by Union institutions, agencies or bodies should be made public without undue delay by the entity requesting the data and online public availability of all requests justified by a public emergency should be ensured.

Or. en

Justification

Important to anchor the principle of subsidiarity in data access, without prohibiting EU wide regulation.

Amendment 50

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 62

Text proposed by the Commission

(62) The objective of the obligation to provide the data is to ensure that public sector bodies and Union institutions, agencies or bodies have the necessary knowledge to respond to, ***prevent or recover from*** public emergencies or to maintain the capacity to fulfil specific tasks explicitly provided by law. The data obtained by those entities may be commercially sensitive. Therefore, Directive (EU) 2019/1024 of the European Parliament and of the Council⁶⁵ should not apply to data made available under this Regulation and should not be considered as open data available for reuse by third parties. This however should not affect the applicability of Directive (EU) 2019/1024 to the reuse of official statistics for the

Amendment

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

production of which data obtained pursuant to this Regulation was used, provided the reuse does not include the underlying data. In addition, it should not affect the possibility of sharing the data for **conducting research or for** the compilation of official statistics, provided the conditions laid down in this Regulation are met. Public sector bodies should also be allowed to exchange data obtained pursuant to this Regulation with other public sector bodies to address the exceptional needs for which the data has been requested.

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

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 the compilation of official statistics, provided the conditions laid down in this Regulation are met. **Where permitted by EU or Member State law**, public sector bodies should also be allowed to exchange data obtained pursuant to this Regulation with other public sector bodies to address the exceptional needs for which the data has been requested, **as long as the data holder is informed in a timely manner and all bodies respect the same rules on transparency as the original requester of the data.**

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

Or. en

Justification

General remark: "conducting research" does not warrant the mandatory access per se. It has to be clearly linked to the public emergency. "Research" is not clearly enough delimited from wider public tasks which may eventually compete with or replace private enterprise.

Amendment 51

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 62 a (new)

Text proposed by the Commission

Amendment

(62 a) A public sector body, Union institution, agency, body or undertaking,

or a third party receiving data under this Chapter should take all necessary measures to avoid that public undertakings, enterprises connected with the public sector body, Union institution, agency, body or undertaking, or any third party receiving data can use the data to improve its competitive position vis-à-vis the data holder, or, where relevant, the user, or enter a market in which the data holder, or, where relevant, the user, is present.

Or. en

Justification

Important condition to safeguard against overreach or the political interference in private markets by means of data requests on behalf of publicly-linked companies.

Amendment 52

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 63

Text proposed by the Commission

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

Amendment

(63) Data holders should have the possibility to either ask for a modification of the request made by a public sector body or Union institution, agency and body or its cancellation in a period of **10 or 20** working days depending on the nature of the exceptional need invoked in the request. In case of requests motivated by a public emergency, justified reason not to make the data available should exist if it can be shown that the request is similar or identical to a previously submitted request for the same purpose by another public sector body or by another Union institution, agency or body ***or if the data holder is not currently collecting or has not previously collected, obtained or***

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

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

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

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

Or. en

Amendment 53

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 64

Text proposed by the Commission

(64) Where it is strictly necessary to include personal data in the data made available to a public sector body or to a Union institution, agency or body the applicable rules on personal data protection should be complied with and the making available of the data and their subsequent use should and be accompanied by safeguards for the rights and interests of individuals concerned by those data. The body requesting the data should demonstrate the strict necessity

Amendment

deleted

and the specific and limited purposes for processing. The data holder should take reasonable efforts to anonymise the data or, where such anonymisation proves impossible, the data holder should apply technological means such as pseudonymisation and aggregation, prior to making the data available.

Or. en

Amendment 54

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 65

Text proposed by the Commission

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

Amendment

(65) Data made available to public sector bodies and to Union institutions, agencies and bodies on the basis of exceptional need should only be used for the purpose for which they were requested. The data should be destroyed once it is no longer necessary for the purpose stated in the request, unless agreed otherwise, and the data holder should be informed thereof. *Public sector bodies and to Union institutions, agencies and bodies should ensure, including through the application of proportionate security measures, where applicable in accordance with Union and national law, that any protected nature of data is preserved and unauthorised access is avoided.*

Or. en

Amendment 55

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 67

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

(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 ***as long as the request is limited in time and scope, proportionate to the state of the public emergency.*** Public emergencies are rare events and not all such emergencies require the use of data held by enterprises. The business activities of the data holders are therefore not likely to be negatively affected as a consequence of the public sector bodies or Union institutions, agencies or bodies having recourse to this Regulation. However, as cases of an exceptional need other than responding to a public emergency might be more frequent, including cases of prevention of or recovery from a public emergency, data holders should in such cases be entitled to a reasonable compensation. ***This regulation*** should not ***affect existing EU or Member State arrangements in which data is shared free of charge, or prevent public sector bodies, Union institutions, agencies or bodies, and data holders from entering into voluntary data sharing agreements free of charge.***

Or. en

Justification

We do not want to interrupt existing arrangement at national or local level which may be free of charge or have other forms of compensation.

Amendment 56

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 68

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

"Research" per se is not a reason for an exceptional need request. Safeguards need to be in place.

Amendment 57

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 76

Text proposed by the Commission

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

Amendment

(76) Open standards developed in accordance with paragraph 3 and 4 of Annex II of Regulation (EU) **1025/2012** 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. **Where** market-driven processes **do not successfully** establish technical specifications or standards that facilitate effective cloud interoperability at the PaaS (platform-as-a-service) and SaaS (software-as-a-service) levels, the Commission should be able, on the basis of this Regulation and in accordance with Regulation (EU) No 1025/2012, to request European standardisation bodies to develop such standards, particularly for service types where such standards do not yet exist. The Commission **should be empowered to adopt delegated acts, in accordance with Article 38, to publish the reference of open 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 this Regulation, **notably to be developed on the basis of open decision-making accessible to all interested parties in the market, or markets affected by those technical specifications.**

defined under the ISO/IEC 19941:2017.

Or. en

Justification

*Market based standards need to have a chance to emerge before the Commission takes action.
All interested parties should be involved in the drawing up of these standards.*

Amendment 58

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 77

Text proposed by the Commission

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

Amendment

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

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

and the protection of intellectual property rights, and including its contractual undertakings regarding confidentiality in accordance with such law. In the absence of international agreements regulating such matters, transfer or access should only be allowed if it has been verified that the third country's legal system requires the reasons and proportionality of the decision to be set out, that the court order or the decision is specific in character, and that the reasoned objection of the addressee is subject to a review by a competent court in the third country, which is empowered to take duly into account the relevant legal interests of the provider of such data. Wherever possible under the terms of the data access request of the third country's authority, *a* provider of data processing services should be able to inform *a data holder* whose data are being requested in order to verify the presence of a potential conflict of such access with Union or national rules, such as those on the protection of commercially sensitive data, including the protection of trade secrets and intellectual property rights and the contractual undertakings regarding confidentiality.

Or. en

Amendment 59

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 78

Text proposed by the Commission

(78) To foster further trust in the data, it is important that safeguards in relation to Union citizens, the public sector and businesses are implemented to the extent possible to ensure control over their data. In addition, Union law, values and standards should be upheld in terms of (but

Amendment

(78) To foster further trust in the data, it is important that safeguards in relation to Union citizens, the public sector and businesses are implemented to the extent possible to ensure control over their data. In addition, Union law, values and standards should be upheld in terms of (but

not limited to) security, data protection and privacy, and consumer protection. In order to prevent unlawful access to non-personal data, providers of data processing services subject to this instrument, such as cloud and edge services, should take all reasonable measures to prevent access to ***the systems where*** non-personal data ***is stored***, including, where relevant, through the encryption of data, the frequent submission to audits, the verified adherence to relevant security reassurance certification schemes, and the modification of corporate policies.

not limited to) security, data protection and privacy, and consumer protection. In order to prevent unlawful access to non-personal data, ***data holders and*** providers of data processing services subject to this instrument, such as cloud and edge services, should take all reasonable measures to prevent access to non-personal data, including, where relevant, through the encryption of data, the frequent submission to audits, the verified adherence to relevant security reassurance certification schemes, and the modification of corporate policies.

Or. en

Justification

This regulatory mechanism should extend to data holders who are not cloud companies - also to mirror the logic of the same provision in the DGA which applies to a much broader list of actors (natural, legal persons, etc.).

Amendment 60

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 79

Text proposed by the Commission

(79) Standardisation and semantic interoperability should play a key role to provide technical solutions to ensure interoperability. In order to facilitate the conformity with the requirements for interoperability, it is necessary to provide for a presumption of conformity for interoperability solutions that meet harmonised standards or parts thereof in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council. The Commission should adopt common specifications in areas where no harmonised standards exist or

Amendment

(79) Standardisation and semantic interoperability should play a key role to provide technical solutions to ensure interoperability. In order to facilitate the conformity with the requirements for interoperability, it is necessary to provide for a presumption of conformity for interoperability solutions that meet harmonised standards or parts thereof in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council. ***Taking into account, where relevant, positions adopted by the European Data Innovation Board, as***

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.

referred to in Article 30(f) of Regulation... [DGA], the Commission should ***be able to*** 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. Reusable data structures and models (in form of core vocabularies), ontologies, metadata application profile, reference data in the form of core vocabulary, taxonomies, code lists, authority tables, thesauri ***could*** be part of the technical specifications for semantic interoperability. Furthermore, ***taking into account, where relevant, positions adopted by the European Data Innovation Board, as referred to in Article 30(f) of Regulation... [DGA],*** the Commission should be enabled to mandate the development of harmonised standards for the interoperability of data processing services.

Or. en

Justification

Link to Data Innovation Board in DGA. Also making system more flexible and not giving absolute power to the Commission.

Amendment 61

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 80

Text proposed by the Commission

(80) To promote the interoperability of smart contracts in data sharing applications, it ***is*** necessary to lay down essential requirements for smart contracts

Amendment

(80) To promote the interoperability of smart contracts in data sharing applications, it ***may be*** necessary to lay down essential requirements for smart

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

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

Or. en

Amendment 62

Damian Boeselager

on behalf of the Verts/ALE Group

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

⁶⁸ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between

Amendment

(82) In order to enforce their rights under this Regulation, natural and legal persons should be entitled to seek redress for the infringements of their rights under this Regulation by lodging complaints with competent authorities. Those authorities should be obliged to cooperate to ensure the complaint is appropriately handled *in a timely manner* 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 Council⁶⁸ and Directive (EU) 2020/1828 of the European Parliament and of the Council⁶⁹.

⁶⁸ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between

national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

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

national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

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

Or. en

Amendment 63

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 85

Text proposed by the Commission

(85) In order to take account of technical aspects of data processing services, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of supplementing this Regulation to introduce a monitoring mechanism on switching charges imposed by data processing service providers on the market, to further specify the essential requirements for operators of data spaces and data processing service providers on interoperability and to publish the reference of open *interoperability specifications and European* standards for the interoperability of data processing services. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016⁷⁰. In

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 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 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 2016⁷⁰. In particular, to ensure equal participation 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.

⁷⁰ OJ L 123, 12.5.2016, p. 1.

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.

⁷⁰ OJ L 123, 12.5.2016, p. 1.

Or. en

Amendment 64

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 87

Text proposed by the Commission

(87) ***This Regulation should not affect specific provisions of acts of the Union adopted in the field of data sharing between businesses, between businesses and consumers and between businesses and public sector bodies that were adopted prior to the date of the adoption of this Regulation.*** To ensure consistency and the smooth functioning of the internal market, the Commission should, where relevant, evaluate the situation with regard to the relationship between this Regulation and the acts adopted prior to the date of adoption of this Regulation regulating data sharing, in order to assess the need for alignment of those specific provisions with this Regulation. ***This Regulation should be without prejudice to rules addressing needs specific to individual sectors or areas of public interest.*** Such rules may include additional requirements on technical aspects of the data access, such as interfaces for data access, or how data access could be provided, for example

Amendment

(87) To ensure consistency and the smooth functioning of the internal market, the Commission should, where relevant, evaluate the situation with regard to the relationship between this Regulation and the acts adopted prior to the date of adoption of this Regulation regulating data sharing, in order to assess the need for alignment of those specific provisions with this Regulation. Such rules may include additional requirements on technical aspects of the data access, such as interfaces for data access, or how data access could be provided, for example directly from the product or via data intermediation services. Such rules may also include limits on the rights of data holders to access or use user data, or other aspects beyond data access and use, such as governance aspects. This Regulation ***can be complemented by*** more specific rules in the context of the development of common European data spaces.

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

Or. en

Amendment 65

Damian Boeselager

on behalf of the Verts/ALE Group

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:

- (a) on the design of connected products to allow access to*** data generated by a product or ***generated during the provision of*** related ***services*** to the user of that product;
- (b) on*** data holders ***making available data they received from a connected product or generated during the provision of a related service to users or*** to data recipients, ***at the request of the user;***
- (c) on fair contractual terms for sharing data;***

(d) on the making available *of data* to public sector bodies or Union institutions, agencies or bodies, where there is an exceptional need in the public interest:

(e) *on facilitating switching between data processing services;*

(f) *on introducing safeguards against unlawful international access to non-personal data, and;*

(g) *on providing for the development of interoperability standards and common specifications for data to be transferred and used.*

Or. en

Justification

Clarification of the various parts of the law

Amendment 66

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) manufacturers *and vendors of connected* products, *as well as providers* of related services placed on the market in the Union and the users of such *connected* products or *related* services;

Or. en

Justification

Clarification of "in-device access requirement" in Art 3(1).

Amendment 67

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 2 – point b

Text proposed by the Commission

- (b) data holders that make data available to data recipients in the Union;

Amendment

- (b) ***users of connected products or*** data holders that make data available to data recipients in the Union;

Or. en

Amendment 68

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 2 – point d

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 69

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 3

Text proposed by the Commission

3. Union law on the protection of personal data, privacy and confidentiality of communications and integrity of terminal equipment shall apply to personal data processed in connection with the rights and obligations laid down in this

Amendment

3. Union law on the protection of personal data, privacy and confidentiality of communications and integrity of terminal equipment shall apply to personal data processed in connection with the rights and obligations laid down in this

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

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

Or. en

Justification

To mirror draft LIBE report

Amendment 70

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission

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

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

Amendment

4. This Regulation shall not affect Union and national legal acts providing for the sharing, access and use of data for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including Regulation (EU) 2021/784 of the European Parliament and of the Council and the [e-evidence proposals [COM(2018) 225 and 226] once adopted, **competition law and antitrust investigations**, and international cooperation in **these areas**. This Regulation shall not affect the collection, sharing, access to and use of data under Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing and Regulation (EU) 2015/847 of the European Parliament and of the Council on information accompanying the transfer of funds. This Regulation shall not affect the competences of the Member States regarding activities concerning public security, defence, national security, customs and tax administration and the health and safety of citizens in accordance with Union law.

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

Or. en

Justification

Keeping the door open to competition law and antitrust investigations

Amendment 71

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. This Regulation shall not be interpreted as recognising or creating a legal basis for manufacturers or vendors of connected products to access data generated by connected products that they have sold, or as conferring any new right onto manufacturers, data holders or data recipients to use data transmitted by a connected product or generated during the provision of a related service.

Or. en

Justification

Important clarification (taken from existing Amendment into the operational text), that property law remains in tact, i.e. that this law does not create a legal basis for manufacturers to access data from products they have sold.

Amendment 72

Damian Boeselager

on behalf of the Verts/ALE Group

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

(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;

sound, visual or audio-visual recording;
content, or data obtained, generated or collected by the connected product or transmitted to it on behalf of others for the purpose of storage or processing, should not be covered by this Regulation.

Or. en

Justification

We prefer having very clear exclusions of data categories (content, etc.) rather than less legally clear exclusion of product groups in the product definition.

Amendment 73

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

‘non-personal data’ means data other than personal data;

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

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

‘data user’ means a natural or legal person who has lawful access to certain personal or non-personal data and has the right, including under Regulation (EU) 2016/679 in the case of personal data, to use that data for commercial or non-commercial purposes;

Or. en

Justification

Data user definition from Data Governance Act - in general, we would prefer to have all definition names aligned between both laws.

Amendment 74

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

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

Amendment

(2) ‘*connected* product’ means a tangible item *that, through its technical design and features*, including *sensors and in-device software*, obtains, *collects or otherwise* generates *transmissible* data concerning its use or environment, and that is able to communicate data and whose primary function is not the storing and processing of data *on behalf of third parties*;

Or. en

Justification

We prefer having very clear exclusions of data categories (content, etc.) rather than less legally clear exclusion of product groups in the product definition.

Amendment 75

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 2 – paragraph 1 – point 3

Text proposed by the Commission

(3) ‘related service’ means a digital service, including software, which is *incorporated in or inter-connected with a product in such a way that its absence*

Amendment

(3) ‘related service’ means a digital service, including software, which is *necessary in order for the connected product to perform one or more* of its

would prevent the product from performing one of its functions;

functions *and which involves the transmission of data from the connected product to the provider of that service*

Or. en

Justification

A related service should be directly related to the functionality of the product. Importantly, it should not only apply to services incorporated at the point of sale. There are many IoT products which have very long useful lives and should be able to add related services at a later stage to fulfil new or additional functions. It would needlessly restrict the benefits of the data act to short term effects otherwise.

Amendment 76

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

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

Amendment

(4) ‘virtual assistants’ means software, *including when incorporated in a connected product*, that can process demands, tasks or questions including based on audio, written input, gestures or motions, and based on those demands, tasks or questions provides access *to* services or control *the functions of connected products*;

Or. en

Justification

Virtual assistants also exist in an industrial context - this seems to be needlessly restricted to consumer products

Amendment 77

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation
Article 2 – paragraph 1 – point 5

Text proposed by the Commission

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

Amendment

(5) ‘user’ means a natural or legal person, ***including a data subject***, that owns a ***connected*** product or receives a ***related service, or to whom the owner of the connected product has transferred, on the basis of a rental or lease agreement, temporary rights to use the connected product or receive related*** services;

Or. en

Justification

We strongly support the Rapporteurs change, as there is a fundamental difference between ownership of a product and renting or leasing a product (based on property law). There are many instances in industrial contexts where connected products are rented or leased in a B2B context, where we do not see the same distortions and imbalances in the contractual relations that we see in the area where users have purchased a product and receive related services on a product they own.

Amendment 78
Damian Boeselager
on behalf of the Verts/ALE Group

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 offers a related service to the user, which involves access to data transmitted from a connected product or generated during the provision of a related service, and*** who has, in the case of non-personal data, ***the contractually agreed*** ability ***to use such data***

Or. en

Justification

Access to data and the contractual right to use it, based on the provision of a related services, should be the only conditions for identifying a data holder. "Control of the technical design" should not be a qualifying factor as it does imply that only manufacturers could be data holders.

Amendment 79

Damian Boeselager

on behalf of the Verts/ALE Group

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, ***including a data intermediation service, or data altruism organisation, as defined in Regulation ... [DGA]*** to whom the *user or*, following a request *of* the user ***or a data holder makes available data transmitted by a connected product or generated during the provision of a related service;***

Or. en

Justification

The data recipient is not currently sufficiently developed in the Commission proposal. Data recipients should not be restricted to alternative service providers but should also explicitly include parties that receive data from the user for other purposes, including for the sharing of data by the user for commercial or non-commercial purposes, including via data intermediaries or data altruism organisations, as established under the Data Governance Act

Amendment 80

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 2 – paragraph 1 – point 8

Text proposed by the Commission

(8) ‘enterprise’ means a natural or legal person which in relation to contracts and practices covered by this Regulation is acting for purposes which are related to that person’s trade, business, craft or profession;

Amendment

(8) ‘enterprise’ means a natural or legal person which in relation to contracts and practices covered by this Regulation is acting for purposes which are related to that person’s trade, business, craft or profession; ***In cases where the acts of a natural person are of a nature that go beyond consumer behaviour but do not meet the regular character of a trade, business, craft or profession, such as prosumers, they are to be assimilated to enterprises and benefit from the rights conferred upon them by this Regulation;***

Or. en

Justification

To account for the role of prosumers (i.e. natural persons as users of connected products for commercial purposes)

Amendment 81

Damian Boeselager

on behalf of the Verts/ALE Group

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, ***such as public health emergencies, emergencies resulting from natural disasters, as well as human-induced major disasters,*** 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) ***and which is determined and officially declared according to the***

respective procedures under Union or national law;

Or. en

Amendment 82

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 2 – paragraph 1 – point 11

Text proposed by the Commission

(11) ‘processing’ means *any operation or set of operations which is performed on data or on sets of data in electronic format, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;*

Amendment

(11) ‘processing’ means *processing as defined in Article 4, point (2), of Regulation (EU) 2016/679 with regard to personal data or Article 3, point (2), of Regulation (EU) 2018/1807 with regard to non-personal data;*

Or. en

Amendment 83

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 2 – paragraph 1 – point 12

Text proposed by the Commission

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

Amendment

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

Justification

Should be a more holistic definition of cloud services, which do not only include Infrastructure as a Service

Amendment 84

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation**Article 2 – paragraph 1 – point 15***Text proposed by the Commission*

(15) ‘open *interoperability specifications*’ *mean ICT technical specifications*, as defined in Regulation (EU) No 1025/2012, which are performance oriented towards achieving interoperability between data processing services;

Amendment

(15) ‘open *standards*’, as defined in Regulation (EU) No 1025/2012, *mean technical specifications*, which are performance oriented towards achieving interoperability between data processing services *and which are adopted through an inclusive, collaborative, consensus-based and transparent process from which materially affected and interested parties cannot be excluded*;

Or. en

Justification

We strongly prefer "open standards", broader as the ICT standards set by Reg 1025/2012, as they offer a more comprehensive stakeholder inclusion;

Amendment 85

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation**Article 2 – paragraph 1 – point 16***Text proposed by the Commission*

(16) ‘*smart contract*’ *means a computer program stored in an electronic ledger*

Amendment

deleted

system wherein the outcome of the execution of the program is recorded on the electronic ledger;

Or. en

Justification

We don't believe that this definition is necessary

Amendment 86

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 2 – paragraph 1 – point 17

Text proposed by the Commission

Amendment

(17) ‘*electronic ledger*’ means an *electronic ledger within the meaning of Article 3, point (53), of Regulation (EU) No 910/2014;*

deleted

Or. en

Justification

We don't believe that this definition is necessary

Amendment 87

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 2 – paragraph 1 – point 19

Text proposed by the Commission

Amendment

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

(19) ‘interoperability’ means the ability of two or more *data-based services*, *including* data spaces, communication networks, systems, applications or components to *store, process*, exchange and use data in order to perform their

functions;

Or. en

Amendment 88

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 3 – title

Text proposed by the Commission

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

Amendment

In device access obligation to make data generated by *connected* products *accessible to the user and obligations on contracts regarding* related services

Or. en

Justification

Chapter 3 is about in device data access to the user. We also clarify the different contractual obligations.

Amendment 89

Damian Boeselager

on behalf of the Verts/ALE Group

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. *Connected* products shall be designed and manufactured in such a manner that *transmissible data obtained, collected or otherwise* generated by *the connected product* are, by default, easily, securely and, where *technically feasible*, directly accessible *and retrievable* to the user, *in a structured, commonly used and machine-readable format, including the relevant metadata*.

Or. en

Justification

Crucial clarification: (a) Article 3(1) is about in device data access. Related services are not necessarily a part of the "package" of the product sale, as they could also be added later on. The in-device access requirement is a manufacturer obligation and should not be confused with obligations from ongoing service contracts.

Amendment 90

Damian Boeselager

on behalf of the Verts/ALE Group

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 of a ***connected*** product, ***the vendor shall provide***, at least the following information ***to a prospective buyer*** in a clear and comprehensible format:

Or. en

Justification

Clarification: this is an obligation for the manufacturer at the point of sale of a product, therefore we need to have clear transparency requirements to the purchase contract, which are not the same as those in a service agreement.

Amendment 91

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 3 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Justification

Article 3(1) is a manufacturer requirement at the design stage. Therefore for the purchase contract the manufacturer should only be obliged to make transparent to the user (i.e. buyer) what data the sensory system of the object is capable of transmitting. It is for the contract between the user and the data holder for related service provision (in Art3(3) in our text) to determine which data is actually transmitted. The purchase contract is also a place to disclose which data has IPR or trade secrets attached to it.

Amendment 92**Damian Boeselager**

on behalf of the Verts/ALE Group

Proposal for a regulation**Article 3 – paragraph 2 – point b***Text proposed by the Commission*

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

Amendment

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

Or. en

Justification

The manufacturer cannot know about the predicted use of the product as it is the users choice what to do with it.

Amendment 93**Damian Boeselager**

on behalf of the Verts/ALE Group

Proposal for a regulation**Article 3 – paragraph 2 – point c***Text proposed by the Commission*

- (c) how the ***user may*** access those data;

Amendment

- (c) how the access ***and, where relevant, retrieve*** those data;

Or. en

Amendment 94

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 3 – paragraph 2 – point d

Text proposed by the Commission

Amendment

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

Or. en

Justification

Moving to the service contract

Amendment 95

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 3 – paragraph 2 – point e

Text proposed by the Commission

Amendment

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

Or. en

Justification

Moving to the service contract

Amendment 96
Damian Boeselager
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

Moving to the service contract

Amendment 97
Damian Boeselager
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

Moving to the service contract

Amendment 98
Damian Boeselager
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

Moving to the service contract

Amendment 99

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Where a user concludes an agreement with a provider of related services for the provision of such services, in line with Article 4([6]) of this Regulation, the agreement shall address:

(a) the nature, volume, collection frequency and format of data transmitted to the provider of related services from the connected product and, where relevant, the modalities for the user to access or retrieve such data, including the period during which it shall be stored;

(b) the nature and estimated volume of data generated during the provision of related services, as well as modalities for the user to access or retrieve such data;

(c) whether a provider of the related service, in its role as data holder, intends allow a third party to use data, mentioned under point (a), for purposes agreed upon with the user;

(d) where relevant, the means of communication which enable the user to contact the data holder quickly and communicate with its staff efficiently;

(e) how the user may request that the data are shared with a data recipient or data user, within the meaning of Regulation EU...[DGA]

(f) the user's rights to legal remedy or to lodge a complaint alleging a violation of the provisions of this Chapter with the competent authority referred to in Article 31;

(g) the duration of the agreement between the user and the provider of the related service, as well as the modalities to terminate such an agreement prematurely.

Or. en

Justification

This is to address the contract between a data holder and the user for the provision of related services. This is a service contract and different from the purchase contract (addressed in 3(2)). The legal entities involved are users and data holders. A manufacturer can act as a data holder, but it does not have to be the case. A manufacturer per se has no obligations or rights in this contract that are not defined in the purchase contract. A service contract specifies rights and obligations for all contracting parties on the basis of an ongoing business relationship, usually limited in time.

Amendment 100

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 4 – title

Text proposed by the Commission

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

Amendment

The ***rights and obligations*** of users ***and data holders*** to access and ***make available data transmitted by connected*** products or ***generated during the provision of*** related

Amendment 101

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 4 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Where **it** cannot be directly accessed by the user from the product, **data holders** shall make available to the user **any data transmitted to them by the connected product, or** generated **during the provision of** related **services** without undue delay, free of charge and, where applicable, continuously and in real-time, **in a comprehensive, structured, commonly used and machine-readable format and including the relevant metadata.** This shall be done on the basis of a simple request through electronic means where technically feasible.

Or. en

Justification

Change of scope to (a) data transmitted to a product, i.e. data that a data holder has actually accessed and received, and (b) data generated during the provision of a related service, i.e. data that is co-generated by the data holder in its role of service provider, which would normally be expected to be stored on the data holders premises and not on the product itself. In addition, clarification about format, context and metadata that should be included so that the user or a third party can comprehend, contextualise and use the data

Amendment 102

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

Clarification that there can be more than one data holder for any given connected product

Amendment 103

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 4 – paragraph 3

Text proposed by the Commission

Amendment

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

3. **When sharing data mentioned under point b of Article 3(3)**, trade secrets shall only be disclosed provided that all specific necessary measures are taken to preserve the confidentiality of trade secrets in particular with respect to third parties. The data holder and the user can agree measures to preserve the confidentiality of the shared data, in particular in relation to third parties.

Or. en

Justification

Clarification that this refers to co-generated data

Amendment 104

Damian Boeselager

on behalf of the Verts/ALE Group

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. *deleted*

Or. en

Justification

This non-compete is completely unproportional (also in its lack of time limitation) and could lead to the very perverse effect that a competitor could be forbidden to enter a market in which it has received data from another product they have bought.

Amendment 105

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 4 – paragraph 5

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

Alignment with transmitted data system as well as clarification that there can be more than one

data holder

Amendment 106

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 4 – paragraph 6

Text proposed by the Commission

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

Amendment

6. ***Data holders*** shall only use any non-personal data ***transmitted to them from a connected*** product or ***generated during the provision of a*** related service on the basis of a contractual agreement with the user. ***Where such contractual agreement is unilaterally imposed, in the sense of Article 13(5), Article 13 shall apply to the agreement. Data holders*** shall not use such data ***transmitted to them from the connected*** product or ***generated during the provision of*** related service to derive insights about the economic situation, assets and production methods of or the use by the user that could undermine the commercial position of the user in the markets in which ***it*** is active.

Or. en

Justification

Alignment with system of transmitted data and clarification that there can be more than one data holder. Application of the "unilaterally imposed" (take-it-or-leave-it) contract provision from Chapter IV to this contract.

Amendment 107

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 4 – paragraph 6 a (new)

6 a. *Data holders shall not make available non-personal data transmitted to them from the connected product, referred to in point (a) of Article 3(3), with third parties for commercial or non-commercial purposes other than the fulfilment of their contractual obligations to the user. Where relevant, data holders shall contractually bind third parties not to market, monetise or further share data received from them.*

Or. en

Justification

In order for a market price for a given individual dataset or data product to emerge, only one market participant can have the right to share this dataset. Otherwise, another market participant who holds the same data can destroy the market simply by offering the identical dataset on the same market. This would lead to the situation where a data holder can at any time destroy the business case for the user to monetize data, and vice versa. The resulting commercial insecurity will prevent the sharing of data.

Amendment 108

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 4 – paragraph 6 b (new)

6 b. *Where the contractual agreement between the user and a data holder allows for the use of data transmitted from the connected product, referred to in point (a) of Article 3(3), the data holder shall be able to use that data for any of the following purposes:*

(a) improving the functioning of the connected product or related services;

(b) developing new products or services;

(c) enriching or manipulating it or aggregating it with other data, including with the aim of making available the resulting data set with third parties, as long as such derived data set does not allow the identification of the specific data items transmitted to the data holder from the connected product, or allow a third party to derive these data items from the data set.

Or. en

Justification

We do not want existing data usage models of data holders to be substantially disrupted. Indeed we want to create incentives also for data holders to make their aggregated data sets available and to seek to be data recipients themselves. Therefore, we set up a market design that allocates the right to share the individual datasets transmitted by the connected product to the user, while allowing data holders to use this data for a broad range of purposes internally and also to share it externally, provided it is in aggregated form and conceals the individual dataset.

Amendment 109

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 4 – paragraph 6 c (new)

Text proposed by the Commission

Amendment

6 c. Data holders shall be able to commercially incentivise the user to make available data transmitted from the connected object exclusively to them, but shall not make the offer of a related services, or its commercial terms, including pricing, contingent on such agreement by the user, or coerce, deceive or manipulate in any way the user to make available data on a exclusive basis.

Or. en

Justification

We do not want to prohibit data holders or manufacturers, who are also data holders, from

buying data from a user on an exclusive basis, however we want to avoid situations where they could coerce or manipulate users into such choice, by making the sale of a product or the offer of a related service conditional upon such choice.

Amendment 110

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 4 – paragraph 6 d (new)

Text proposed by the Commission

Amendment

6 d. A vendor of a connected product shall not make the sale of such product dependent on the user concluding an agreement with it for the provision of related services.

Or. en

Justification

See explanation for 6c new

Amendment 111

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 4 – paragraph 6 e (new)

Text proposed by the Commission

Amendment

6 e. Data holders shall not use data transmitted to it from the connected product or generated during the provision of related services to derive insights about the economic situation, assets and production methods of or the use by the user that could undermine the commercial position of the user in the markets in which it is active.

Or. en

Justification

Protection of the user from data holder abusing its position to undermine its commercial or negotiation position.

Amendment 112

Damian Boeselager

on behalf of the Verts/ALE Group

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, ***or, in the case of personal data, upon request of*** the data ***subject, data holders*** shall make available ***data transmitted to them from the connected*** product or ***generated during the provision of a*** related service to a ***data recipient***, 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.

Or. en

Justification

Consistency to refer to data recipients as such everywhere (instead of changing between third parties and data recipients at all time)

Amendment 113

Damian Boeselager

on behalf of the Verts/ALE Group

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

Amendment

2. Any undertaking providing core platform services for which one or more of such services have been designated as a

gatekeeper, pursuant to Article [...] of [Regulation XXX on contestable and fair markets in the digital sector (Digital Markets Act)⁷³], shall not ***be an eligible third party under this Article and therefore shall not:***

⁷³ OJ [...].

gatekeeper, pursuant to Article [...] of [Regulation XXX on contestable and fair markets in the digital sector (Digital Markets Act)⁷³], shall not:

⁷³ OJ [...].

Or. en

Amendment 114

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 5 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) solicit ***or commercially incentivise*** a user in any manner, ***including by providing monetary or any other compensation***, to make data available to one of its services that the user has obtained pursuant to a request under Article 4(1);

(a) solicit user in any manner to make data available to one of its services that the user has obtained pursuant to a request under Article 4(1);

Or. en

Justification

Users should be able to choose gate keepers on their own, but should not be solicited.

Amendment 115

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(a a) solicit a data holder to make available data, that they have the rights to

use and make available to under Article 4(6);

Or. en

Justification

It makes little sense that users (i.e. the owners of a product) should be denied an option while data holders (i.e. those providing services to users) can do so.

Amendment 116

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 5 – paragraph 2 – point b

Text proposed by the Commission

(b) solicit *or commercially incentivise* a user to request the data holder to make data available to one of its services pursuant to paragraph 1 of this Article;

Amendment

(b) solicit a user to request the data holder to make data available to one of its services pursuant to paragraph 1 of this Article;

Or. en

Amendment 117

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 5 – paragraph 2 – point c

Text proposed by the Commission

(c) *receive data from a user that* the user *has obtained pursuant to a request under Article 4(1).*

Amendment

(c) *make the commercial terms, including pricing, of any products or services offered to the user conditional or otherwise commercially dependent upon whether, or to which degree, the user agrees to make available data, transmitted from the connected object or generated during the provision of related services, to the undertaking providing platform services or any of its affiliates;*

Or. en

Justification

Instead of denying the user (who is in this case very likely a business that owns a connected product) the free choice of business partner, it should instead be forbidden to gatekeepers to use their horizontal bargaining power and platform power to entice users to share data. An unbundling requirement for data access for gatekeepers will put them on equal footing with other competing services in one particular sector.

Amendment 118

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(c a) coerce, deceive or manipulate in any other way the user, including by subverting or impairing its autonomy, decision-making or choices in order to receive such data from the user or a data holder.

Or. en

Justification

It is important that the user is not coerced or the user's choice is not subverted by a gatekeeper.

Amendment 119

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 5 – paragraph 3

Text proposed by the Commission

Amendment

3. The user or **third party** shall not be required to provide any information beyond what is necessary to verify the quality as user or as **third party** pursuant to paragraph 1. **The data holder** shall not keep any information on the **third party's**

3. The user or **the data recipient** shall not be required to provide any information beyond what is necessary to verify the quality as user or as **data recipient** pursuant to paragraph 1. **Data holders** shall not keep any information on the **data**

access to the data requested beyond what is necessary for the sound execution of the *third party's* access request and for the security and the maintenance of the data infrastructure.

recipient's access to the data requested beyond what is necessary for the sound execution of the *data recipient's* access request and for the security and the maintenance of the data infrastructure.

Or. en

Justification

Alignment of terms and clarifications that there can be more than one data holder

Amendment 120

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. Data recipients shall not make the commercial terms, including pricing, of any products or services offered to the user conditional or otherwise commercially dependent upon whether, or to which degree, the user agrees to make available data, transmitted from the connected object or generated during the provision of related services, to the data recipient or a related entity.

Or. en

Justification

Unbundling requirement for data recipients - to level the playing field

Amendment 121

Damian Boeselager

on behalf of the Verts/ALE Group

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

Or. en

Amendment 122

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 5 – paragraph 5

Text proposed by the Commission

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

Amendment

5. **Data holders** shall not use any non-personal data **transmitted to it from the connected** product or **generated during the provision of a** related service to derive insights about the economic situation, assets and production methods of or use by the **data recipient** that could undermine the commercial position of the **data recipient** on the markets in which **it** is active, unless the **data recipient** has consented to such use and has the technical possibility to withdraw that consent at any time.

Or. en

Amendment 123

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 5 – paragraph 6

Text proposed by the Commission

6. Where the user is not a data subject, any personal data generated by the use of a product or related service shall only be

Amendment

6. Where the user is not a data subject, any personal data generated by the use of a **connected** product or related service shall

made available where there is a valid legal basis under Article 6(1) of Regulation (EU) 2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 are fulfilled.

only be made available where there is a valid legal basis under Article 6(1) of Regulation (EU) 2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 are fulfilled.

Or. en

Amendment 124

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 5 – paragraph 7

Text proposed by the Commission

7. Any failure on the part of ***the*** data holder and the ***third party*** to agree on arrangements for transmitting the data shall not hinder, prevent or interfere with the exercise of the rights of the data subject under Regulation (EU) 2016/679 and, in particular, with the right to data portability under Article 20 of that Regulation.

Amendment

7. Any failure on the part of ***a*** data holder and the ***data recipient*** to agree on arrangements for transmitting the data shall not hinder, prevent or interfere with the exercise of the rights of the data subject under Regulation (EU) 2016/679 and, in particular, with the right to data portability under Article 20 of that Regulation.

Or. en

Amendment 125

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 5 – paragraph 8

Text proposed by the Commission

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

Amendment

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

for preserving the confidentiality shall be specified in the agreement between the data holder and the *third party*.

and the measures for preserving the confidentiality shall be specified in the agreement between the *user and the* data holder and the *data recipient*.

Or. en

Amendment 126

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 6 – title

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Alignment of terms throughout the law

Amendment 127

Damian Boeselager

on behalf of the Verts/ALE Group

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 *data recipient* 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, *unless agreed differently with the user*.

Or. en

Justification

A user and a data recipient should be able to agree that a data recipient can store and use the data.

Amendment 128

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. The ***third party*** shall not:

2. The ***data recipient*** shall not:

Or. en

Amendment 129

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 6 – paragraph 2 – point c

Text proposed by the Commission

Amendment

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

(c) make the data available it receives to another third party, unless this is ***explicitly permitted by the user, or*** necessary to provide the service requested by the user;

Or. en

Justification

The users choice of arrangement with a third party should not be inhibited, especially not with respect to data transmitted from a product that the user owns

Amendment 130

Damian Boeselager

on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

(d) *make the data available it receives
to an undertaking providing core platform
services for which one or more of such
services have been designated as a
gatekeeper pursuant to Article [...] of
[Regulation on contestable and fair
markets in the digital sector (Digital
Markets Act)];* *deleted*

Or. en

Amendment 131
Damian Boeselager
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

(e) *use the data it receives to develop a
product that competes with the product
from which the accessed data originate or
share the data with another third party for
that purpose;* *deleted*

Or. en

Justification

*Completely non-proportional to the protection of the interests of the data holder as we are
talking about secondary or third data use of a subset of data transmitted from the product.*

Amendment 132
Damian Boeselager
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

(f) *prevent the user, including through contractual commitments, from making the data it receives available to other parties.*

deleted

Or. en

Justification

It is simply not in the economic interest of the user to forego the possibility to offer data exclusively. Indeed a data recipient should be able to ask the user to contractually commit to exclusive data sharing. This is completely standard market practice in any other transaction, why should it not be in data?

Amendment 133

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 7 – paragraph 1

Text proposed by the Commission

Amendment

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

1. The obligations of **Article 5(1)** shall not apply to **connected** products manufactured or related services provided by enterprises that qualify as micro or small enterprises, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as a micro or small enterprise **and where a micro or small enterprise is not subcontracted to manufacture or design a product or provide a related service.**

Or. en

Justification

Its not the 'in device access requirement' in Art 3(1) that is problematic for small companies but

the 'making available data to third parties' requirement in Article 5(1), which requires technical infrastructure as well as legal know-how.

Amendment 134

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. Where this Regulation refers to products or related services, such reference shall also be understood to include virtual assistants, insofar as they are used to access or control a product or related service.

deleted

Or. en

Justification

We do not see a point in creating a separate (somewhat vaguely worded) paragraph for virtual assistants - which should be fully in scope in as far as they are either connected products or related services.

Amendment 135

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

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.

1. Where a data holder is obliged to make data available to a data recipient under Article 5 or under other Union law or national legislation implementing Union law, it shall *agree, where applicable, with a data recipient the modalities for making the data available and shall* do so under fair, reasonable and non-discriminatory terms and in a transparent manner in

accordance with the provisions of this
Chapter and Chapter IV.

Or. en

Justification

Clarifying that it is an obligation for the data holder to engage with the data recipient on the modalities of making data available

Amendment 136

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

2. ***A data holder shall agree with a data recipient the terms for making the data available. A contractual term*** concerning the access to and use of the data or the liability and remedies for the breach or the termination of data related obligations shall not be binding if it fulfils the conditions of Article 13 or if it excludes the application of, derogates from or varies the effect of the user's rights under Chapter II.

Amendment

2. ***Any*** contractual ***agreement*** concerning the access to and use of the data or the liability and remedies for the breach or the termination of data related obligations shall not be binding if it fulfils the conditions of Article 13 or if it excludes the application of, derogates from or varies the effect of the user's rights under Chapter II.

Or. en

Amendment 137

Damian Boeselager

on behalf of the Verts/ALE Group

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

Amendment

3. A data holder shall not discriminate ***with respect to the modalities of data sharing*** between comparable categories of data recipients, including partner

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.

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.

Or. en

Justification

Clarification that we are speaking about the modalities of data sharing

Amendment 138

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 8 – paragraph 4

Text proposed by the Commission

Amendment

4. A data holder shall not make data available to a data recipient on an exclusive basis unless requested by the user under Chapter II. *deleted*

Or. en

Justification

This paragraph makes no sense as it seems to imply that data holders could chose independently of users to whom to make data available on what basis, which is not provided for anywhere in the law.

Amendment 139

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 8 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 140

Damian Boeselager

on behalf of the Verts/ALE Group

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 shall **not exceed the costs related to making the data available to the data recipient and which are attributable to the request. Article 8(3) shall apply accordingly**

Or. en

Justification

There is no point in creating any obstacles for users to share data with data recipients by allowing data holders to impose undue rents upon a legal obligation. They should be fully compensated for all relevant costs, not more than that.

Amendment 141

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 9 – paragraph 2

Text proposed by the Commission

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, 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.*

deleted

Or. en

Amendment 142

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 9 – paragraph 4

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 *and, where applicable, paragraph 2* are met.

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.

Or. en

Amendment 143

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 10 – paragraph 1

Text proposed by the Commission

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

1. *Users*, data holders and data recipients shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle

disputes in relation to 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.

disputes in relation to the *fulfilment of the data holder's obligation to make data available to the data recipient, upon the request of the user*, the determination of fair, reasonable and non-discriminatory terms for and the transparent manner of making data available in accordance with Articles 8 and 9.

Or. en

Justification

Users are also a party to this dispute, given their role in instructing data holders to make data available.

Amendment 144

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 11 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 145
Damian Boeselager
on behalf of the Verts/ALE Group

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 designed to protect the data, has used the data made available for unauthorised purposes or has disclosed those data to another party without the *user's* authorisation, shall without undue delay, unless the data holder or the user instruct otherwise:

Or. en

Justification

The users authorisation is required, not the data holders, given the users role in instructing the data to be shared.

Amendment 146
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 11 – paragraph 2 – point a

Text proposed by the Commission

(a) destroy the data made available *by the data holder* and any copies thereof;

Amendment

(a) destroy the data made available and any copies thereof;

Or. en

Amendment 147
Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 11 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

3. Paragraph 2, point (b), shall not apply *if it would be disproportionate in light* of the *interests of the user*

.

Or. en

Justification

It is the users interests that are being concerned by illegitimate data access.

Amendment 148

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 12 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Sunset clause for existing related service contracts within a reasonable time.

Amendment 149
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Chapter IV – title

Text proposed by the Commission

Amendment

IV UNFAIR TERMS RELATED TO
DATA ACCESS AND USE **BETWEEN**
ENTERPRISES

UNFAIR TERMS RELATED TO DATA
ACCESS AND USE

Or. en

Amendment 150
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 13 – title

Text proposed by the Commission

Amendment

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

Unilaterally imposed unfair contractual
terms

Or. en

Justification

These should apply to all B2B transactions, not just for SMEs

Amendment 151
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 13 – paragraph 1

Text proposed by the Commission

Amendment

1. A contractual term, concerning the
access to and use of data or the liability and
remedies for the breach or the termination

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.

of data related obligations which has been unilaterally imposed by ***one actor onto another*** shall not be binding on the latter ***actor*** if it is unfair.

Or. en

Justification

Should be applicable to all contract parties, not just SMEs

Amendment 152

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 13 – paragraph 2

Text proposed by the Commission

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

Amendment

2. A contractual term is unfair if it is of such a nature that ***objectively impairs the ability of the party upon whom the term has been unilaterally imposed to protect its legitimate commercial or non-commercial interest in the data in question, if*** its use grossly deviates from good commercial practice in data access and use, contrary to good faith and fair dealing.

Or. en

Justification

Additional clarity as to the commercial effect of an unfair contractual term

Amendment 153

Damian Boeselager

on behalf of the Verts/ALE Group

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 154
Damian Boeselager
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

(c) prevent the party upon whom the term has been unilaterally imposed from using the data contributed or generated by that party during the period of the contract, or to limit the use of such data to the extent that that party is not entitled to use, ***capture***, access or control such data or exploit the value of such data in a proportionate manner;

Amendment

(c) prevent the party upon whom the term has been unilaterally imposed from using the data contributed or generated by that party, ***including data transmitted from a connected product, as defined under Article 3(2a)***, during the period of the contract, or to limit the use of such data to the extent that that party is not entitled to use, ***extract***, access or control such data or exploit the value of such data in a proportionate manner, ***unless it has presented that party with an explicit choice between concluding the agreement without limitation to its rights and the option to be compensated proportionately in exchange for foregoing those rights***;

Or. en

Justification

Important clarification that indeed users can offer up data exclusively if they are being compensated for it.

Amendment 155

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(e a) prevent the party upon whom the term has been unilaterally imposed from terminating the agreement within a reasonable time period.

Or. en

Amendment 156

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 13 – paragraph 7

Text proposed by the Commission

Amendment

7. This Article does not apply to contractual terms defining the main subject matter of the contract *or to contractual terms determining the price to be paid.*

7. This Article does not apply to contractual terms defining the main subject matter of the contract.

Or. en

Justification

Excluding the price to be paid is not justified by any of the points, as pricing and commercial terms are often intrinsically interlinked in unilaterally imposed contracts.

Amendment 157

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 14 – paragraph 1

Text proposed by the Commission

Amendment

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

1. Upon **a specific** request, a data holder shall make **non-personal data, which it is currently collecting or has previously obtained, collected or otherwise generated and which it retains at the time of the request**, available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested.

Or. en

Justification

Note: the data holder definition for the purpose of this Chapter should be that of the DGA.

Amendment 158

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 14 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The basis for the exceptional need to request data referred to in paragraph 1 shall be laid down by Union law; or Member State law.

Or. en

Justification

A reference to the subsidiarity principle is necessary here. There should be democratic control of access at the level where the access is requested (i.e. for local public bodies at local level, etc.). A general horizontal legal basis for such access in an EU Regulation seems to go against the subsidiarity principle.

Amendment 159

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 15 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

An exceptional need to use **non-personal** data within the meaning of this Chapter shall be deemed to exist in **either** of the following circumstances

Or. en

Justification

Non-personal data only

Amendment 160

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 15 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) where the data requested is **limited in time and scope and** necessary to respond to **an imminent** public emergency;

Or. en

Amendment 161

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 15 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 162

Damian Boeselager

on behalf of the Verts/ALE Group

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) where the public sector body or Union institution, agency or body ***is acting on the basis of EU or Member State law and has identified specific data, which is unavailable to it and which is demonstrably necessary to fulfil*** a specific task in the public interest that has been explicitly provided by law, ***and where, in the absence of EU, Member State obligations to make data available without compensation, 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. en

Justification

We need clear conditions and safeguards under which such access can take place. At the same time we do not want to interfere with existing arrangements at EU or Member State level.

Amendment 163

Damian Boeselager

on behalf of the Verts/ALE Group

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***

Amendment

deleted

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

Or. en

Justification

Summarized in existing text

Amendment 164

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 15 – paragraph 1 – point c – point 2

Text proposed by the Commission

Amendment

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

Or. en

Justification

Summarized in existing text

Amendment 165

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 16 – paragraph 2

Text proposed by the Commission

Amendment

2. *The rights from* this Chapter *shall* 2. This Chapter *does not apply to*

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

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

Or. en

Amendment 166

Damian Boeselager

on behalf of the Verts/ALE Group

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;

Or. en

Amendment 167

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(e a) *specify when the data is expected to be deleted by the public sector body, Union institution, agency or body.*

Or. en

Justification

Data should be deleted when no longer needed.

Amendment 168

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(a a) be specific with regards to the type of data and correspond to data which the data holder is currently collecting or has previously collected, obtained or otherwise generated and which it retains at the time of the request,

Or. en

Amendment 169

Damian Boeselager

on behalf of the Verts/ALE Group

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;

Or. en

Amendment 170

Damian Boeselager

on behalf of the Verts/ALE Group

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
within ten working days.

Or. en

Amendment 171

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 17 – paragraph 3

Text proposed by the Commission

Amendment

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

3. A public sector body or a Union institution, agency or body shall not make data obtained pursuant to this Chapter available for reuse within the meaning of Directive (EU) 2019/1024 *and Regulation (EU) 2022/868*. Directive (EU) 2019/1024 shall not apply to the data held by public sector bodies obtained pursuant to this Chapter.

Or. en

Justification

Also include data re-use chapters under Data Governance Act

Amendment 172

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 17 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

Paragraph 3 does not preclude a public sector body or a Union institution, agency or body to exchange data obtained pursuant to this Chapter with another public sector

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

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.

public sector body, Union institution, agency or body, ***for the purpose*** of completing the tasks in Article 15 or to make the data available to a third party ***strictly for those purposes***, in cases where it has outsourced, by means of a publicly available agreement, technical inspections or other functions to this third party. ***Where relevant, it shall bind the third party contractually not to use the data for any other purposes and not to share it with other third parties.*** The obligations on public sector bodies, Union institutions, agencies or bodies pursuant to Article 19 apply, ***including, where relevant, to those third parties.***

Or. en

Amendment 173

Damian Boeselager

on behalf of the Verts/ALE Group

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 makes data available under this paragraph ***to a third party***, it shall notify the data holder from whom the data was received ***without undue delay.***

Or. en

Amendment 174

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

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

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

(a) use the data to develop a product or a service that competes with the product or service from which the accessed data originates;

(b) use it to enhance an existing product or service which is competing with the product or service from which the accessed data originates;

(c) derive insights about the economic situation, assets and production or operation methods of the data holder, or share the data with another third party for that purpose.

Or. en

Justification

It is essential to protect the commercial interests of the enterprise being forced to give up data.

Amendment 175

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 18 – paragraph 2 – introductory part

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

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, ***defined under point***

following grounds:

(b) of Article 15, on either of the following grounds:

Or. en

Amendment 176

Damian Boeselager

on behalf of the Verts/ALE Group

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*

;

Or. en

Justification

More legally precise than "unavailable"

Amendment 177

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 18 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 178

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 19 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 179

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 19 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) ensure, including through the application of proportionate security measures, where applicable in accordance with Union and national law, that any protected nature of data is preserved and unauthorised access is avoided.

Or. en

Justification

Cybersecurity measures on the side of the public sector body need to be sufficient

Amendment 180

Damian Boeselager

on behalf of the Verts/ALE Group

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 Member State law***, data made available to respond to a public emergency pursuant to Article 15, point (a), shall be provided free of charge.

Or. en

Justification

This is to allow for more specific local arrangements.

Amendment 181
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 20 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 182
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 21

Text proposed by the Commission

Amendment

Article 21

deleted

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

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

Or. en

Justification

We do not see the proportional need for such access, in particular considering that public research organisations are included. It is unclear in how far statistical organisations are involved in the alleviation of an emergency need separately from the arrangement in the previous paragraphs.

Amendment 183

Damian Boeselager

on behalf of the Verts/ALE Group

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 **appropriate** technical, legal and organisational measures, including contractual arrangements, in order to prevent international transfer or governmental access to non-personal data held in the Union where such transfer or access would create a conflict with Union law or the national law of the relevant Member State, without prejudice to paragraph 2 or 3.

Or. en

Justification

If the objective of this Article is the protection of non-personal data from undue foreign government access, such requirements should apply to all data holders not just cloud providers. Otherwise the overall provision is somewhat pointless, as foreign governments could just go to data holders who are not cloud providers to acquire the data in question. The DGA has an identical provision which extends to all natural and legal persons.

Amendment 184

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 27 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Any decision or **judgement** of a court or tribunal and any decision of an administrative authority of a third country requiring a **data holder or** 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.

Or. en

Amendment 185

Damian Boeselager

on behalf of the Verts/ALE Group

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 or** 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:

Or. en

Amendment 186

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 28 – title

Text proposed by the Commission

Amendment

Essential requirements regarding interoperability

Essential requirements regarding interoperability *of data spaces*

Or. en

Justification

These provisions appear only to appear to data spaces

Amendment 187

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 28 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

Operators of data spaces shall ***comply with***, the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services:

Where participants of data spaces ***offer data or data-based services to other participants, they*** shall ***adhere to***, the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services ***by making publicly available comprehensive and consistent descriptions of***:

Or. en

Justification

It seems very unclear who "operators of data spaces" should be. These provisions address the description of data sets, and thus should be primarily directed at parties who are offering data or data based services

Amendment 188

Damian Boeselager

on behalf of the Verts/ALE Group

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 to allow ***participants*** to find, access and use the data;

Or. en

Justification

Restructured the paragraph to make clear that these are description requirements

Amendment 189

Damian Boeselager

on behalf of the Verts/ALE Group

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;

Or. en

Amendment 190

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 28 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(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;

(c) the technical means to access the data, such as application programming interfaces, and their terms of use and quality of service to enable automatic access and transmission of data between parties, including continuously or in real-time in a machine-readable format ***and, where relevant, the means and terms for compensation for such access;***

Or. en

Amendment 191

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 28 – paragraph 1 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) the means to enable the interoperability of ***smart*** contracts within their services and activities ***shall be provided***.

(d) the means to enable the interoperability of contracts ***for data sharing*** within their services and activities.

Or. en

Amendment 192

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 28 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

This sentence seems not to add any particular meaning to the text.

Amendment 193

Damian Boeselager

on behalf of the Verts/ALE Group

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].**

Or. en

Amendment 194

Damian Boeselager

on behalf of the Verts/ALE Group

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

deleted

Or. en

Justification

Unclear what benefit this would add in practice.

Amendment 195

Damian Boeselager

on behalf of the Verts/ALE Group

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*** those implementing acts ***the Commission shall seek advice from and take into account relevant positions adopted by the European Data Innovation Board, as referred to in Article 30(f) of Regulation... [DGA]*** and be adopted in accordance with the examination procedure referred to in Article 39(2).

Or. en

Justification

Anchor the role of the DGA and interplay between both legislations which provide for very similar requirements

Amendment 196

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 28 – paragraph 6

Text proposed by the Commission

Amendment

6. The Commission may adopt guidelines laying down interoperability specifications for the functioning of common European data spaces, such as architectural models and technical standards implementing legal rules and arrangements between parties that foster data sharing, such as regarding rights to access and technical translation of consent or permission.

deleted

Or. en

Justification

This seems not to be a job for the Commission but for private actors or standard setting organisations.

Amendment 197

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 30 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The **vendor of an application using smart contracts or, in the absence thereof, the person whose trade, business or profession involves the deployment of smart contracts for others** in the context of an agreement to make data available shall comply with the following essential requirements:

1. The **offering contractual party of a smart contract** in the context of an agreement to make data available shall comply with the following essential requirements:

Or. en

Justification

Its not necessarily only in the context of applications that smart contracts are offered. This wording in general seems very deterministic.

Amendment 198
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 30 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(d a) transparency of commercial terms: the smart contract offering shall comprehensively describe the commercial terms underlying the agreement, including any conditional commercial terms, such as future changes of commercial terms conditional upon environmental and performance factors

Or. en

Justification

Transparency about the commercial terms and conditionalities is essential in smart contracts, which may involve highly complex structures which may be a source of information asymmetry between the parties.

Amendment 199
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 30 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(d b) The obligations under Article 13 of this Regulation, if applicable.

Or. en

Amendment 200
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 30 – paragraph 2

Text proposed by the Commission

2. The **vendor** of a smart contract **or, in the absence thereof, the person whose trade, business or profession involves the deployment of smart contracts for others** in the context of an agreement to make data available shall perform a conformity assessment with a view to fulfilling the essential requirements under paragraph 1 and, on the fulfilment of the requirements, issue an EU declaration of conformity.

Amendment

2. The **offering party** of a smart contract in the context of an agreement to make data available shall perform a conformity assessment with a view to fulfilling the essential requirements under paragraph 1 and, on the fulfilment of the requirements, issue an EU declaration of conformity.

Or. en

Amendment 201

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 30 – paragraph 3

Text proposed by the Commission

3. By drawing up the EU declaration of conformity, the **vendor of an application using smart contracts or, in the absence thereof, the person whose trade, business or profession involves the deployment of smart contracts for others** in the context of an agreement to make data available shall be responsible for compliance with the requirements under paragraph 1.

Amendment

3. By drawing up the EU declaration of conformity, the **offering party of a smart contract** in the context of an agreement to make data available shall be responsible for compliance with the requirements under paragraph 1.

Or. en

Amendment 202

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 30 – paragraph 6

Text proposed by the Commission

Amendment

6. Where harmonised standards referred to in paragraph 4 of this Article do not exist or where the Commission considers that the relevant harmonised standards are insufficient to ensure conformity with the essential requirements in paragraph 1 of this Article in a cross-border context, the Commission may, by way of implementing acts, adopt common specifications in respect of the essential requirements set out in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).

deleted

Or. en

Justification

What is the justification for the Commissions interference in a practically non-existent market segment at this stage?

Amendment 203

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 31 – paragraph 1

Text proposed by the Commission

Amendment

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

1. Each Member State shall designate one or more competent authorities as responsible for the application and enforcement of this Regulation. Member States may establish one or more new authorities or rely on existing authorities, ***including those designated for data intermediation services in Article 13 of Regulation ...[DGA]***.

Or. en

Justification

Link to DGA and avoidance of proliferation of competent bodies

Amendment 204

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 31 – paragraph 2 – point b

Text proposed by the Commission

(b) for specific sectoral data ***exchange*** issues related to the implementation of this Regulation, the competence of sectoral authorities shall be respected;

Amendment

(b) for specific sectoral data ***access*** issues related to the implementation ***of this Regulation, in particular with regard to data access requirements under Article 3*** of this Regulation, the competence of sectoral authorities shall be respected, ***unless a conflict of competences inhibits the ability of the competent authorities under this Regulation to enforce the rights and obligations of this Regulation;***

Or. en

Justification

Avoidance of conflicts of competences between different competent bodies and establishing a hierarchy starting with the competent body for the Data Act

Amendment 205

Damian Boeselager

on behalf of the Verts/ALE Group

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

Amendment

(c) the national competent authority responsible for the application and enforcement of this Regulation shall have experience in the field of data, ***including non-personal data***, and electronic

communications services.

communications services.

Or. en

Justification

This competence should clearly expand past Chapter VI. Given the limited current competence in questions of non-personal data sharing, such experience seems especially relevant to competent bodies.

Amendment 206

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 31 – paragraph 3 – point e

Text proposed by the Commission

(e) monitoring technological developments of relevance for the making available and use of data;

Amendment

(e) monitoring technological **and commercial** developments of relevance for the making available and use of data;

Or. en

Justification

It would be a mistake not to monitor commercial developments as well, in particular with regards to market imbalances and concentration.

Amendment 207

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 31 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7 a. Competent authorities shall cooperate with competent authorities of other Member States to ensure a consistent and efficient application of this Regulation. Such mutual assistance shall include the exchange of all relevant

information by electronic means, without undue delay, in particular to carry out the tasks referred to in paragraph (3), points (b), (c) and (d);

Or. en

Amendment 208
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 31 – paragraph 7 b (new)

Text proposed by the Commission

Amendment

7 b. Entities falling within the scope of this Regulation shall be subject to the jurisdiction of the Member State where the entity is established. In case the entity is established in more than one Member State, it shall be deemed to be under the jurisdiction of the Member State in which business footprint, as measured by the number of employees registered or revenues generated in that Member State is largest.

Or. en

Amendment 209
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 31 – paragraph 7 c (new)

Text proposed by the Commission

Amendment

7 c. An entity falling within scope of this Regulation that offers products or services in the Union but is not established in the Union, nor has designated a legal representative therein, shall be under the jurisdiction of all Member States, where applicable, for the purposes of ensuring the application and

enforcement of this Regulation. Any competent authority may exercise its competence, provided that the entity is not subject to enforcement proceedings for the same facts by another competent authority.

Or. en

Amendment 210

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 33 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Member States shall take into account the following non-exhaustive criteria for the imposition of penalties for infringements of this Regulation:

(a) the nature, gravity, scale and duration of the infringement;

(b) any action taken by the infringing party to mitigate or remedy the damage caused by the infringement;

(c) any previous infringements by the infringing party;

(d) the financial benefits gained or losses avoided by the infringing party due to the infringement, insofar as such benefits or losses can be reliably established;

(e) any other aggravating or mitigating factors applicable to the circumstances of the case.

Or. en

Justification

From Recitals and mirroring the Data Governance Act

Amendment 211
Damian Boeselager
on behalf of the Verts/ALE Group

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 ***and standard contractual clauses for cloud computing contracts*** to assist parties in drafting and negotiating contracts with balanced contractual rights and obligations. ***Such model contractual terms shall address at least the following elements:***

- (a) right to early termination of the contract and to switch operator and modalities to effect such switch;***
- (b) right for the user of a connected product to suppress use of data transmitted from the connected product;***
- (c) data retention and storage policies;***
- (d) readability of the data for the user, including information on metadata and decryption.***

Or. en

Justification

Important to establish at least some basic requirements for these model contractual terms.

Amendment 212
Damian Boeselager
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 41 – paragraph 1 – point a

Text proposed by the Commission

(a) ***other*** categories or types of data to

Amendment

(a) ***further specifying*** categories or

be made accessible;

types of data to be made accessible;

Or. en

Amendment 213

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(a a) the use of data by users, including making them available to third parties as well as the development of the modalities of data sharing, including competitive dynamics in data spaces and data intermediation services;

Or. en

Justification

Important to analyse the interplay of the Data Act with the DGA and in particular the emergence of markets for non-personal data

Amendment 214

Damian Boeselager

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 42 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

The obligation resulting from Article 3(1) shall apply to products and related services placed on the market after [12 months] after the date of application of this Regulation.

Or. en