Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on harmonised rules on fair access to and use of data (Data Act) (Text with EEA relevance)

2022/0047(COD)

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Formula				
1	2022/0047 (COD)	2022/0047 (COD)	2022/0047 (COD)	
Proposal Title				
2	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on harmonised rules on fair access to and use of data (Data Act) (Text with EEA relevance)	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on harmonised rules on fair access to and use of data (Data Act) (Text with EEA relevance)	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on harmonised rules on fair access to and use of data (Data Act) (Text with EEA relevance)	
Formula				
3	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Citation 1				
4	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Citation 2				
5	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	
Citation 3				
6	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	
Citation 4				
7	Having regard to the opinion of the European Economic and Social Committee[1], _____ 1. OJ C , , p. .	Having regard to the opinion of the European Economic and Social Committee[1], _____ 1. OJ C ***365, 23.9.2022***, , p. ***18***.	Having regard to the opinion of the European Economic and Social Committee[1], _____ 1. OJ C , , p. .	
Citation 5				
8	Having regard to the opinion of the Committee of the Regions[1], _____ 1. OJ C , , p. .	Having regard to the opinion of the Committee of the Regions~~1~~***2***, _____ ~~1. OJ C , , p. .~~ ***2. OJ C 375, 30.9.2022, , p. 112,.***	Having regard to the opinion of the Committee of the Regions[1], _____ 1. OJ C , , p. .	
Citation 6				
9	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	
Formula				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
10	Whereas:	Whereas:	Whereas:	
Recital 1				
11	(1) In recent years, data-driven technologies have had transformative effects on all sectors of the economy. The proliferation in products connected to the Internet of Things in particular has increased the volume and potential value of data for consumers, businesses and society. High quality and interoperable data from different domains increase competitiveness and innovation and ensure sustainable economic growth. The same dataset may potentially be used and reused for a variety of purposes and to an unlimited degree, without any loss in its quality or quantity.	(1) In recent years, data-driven technologies have had transformative effects on all sectors of the economy. The proliferation in products connected to the Internet ~~*of Things*~~ in particular has increased the volume and potential value of data for consumers, businesses and society. High quality and interoperable data from different domains increase competitiveness and innovation and ensure sustainable economic growth. The same dataset may potentially be used and reused for a variety of purposes and to an unlimited degree, without any loss in its quality or quantity.	(1) In recent years, data-driven technologies have had transformative effects on all sectors of the economy. The proliferation in products connected to the Internet of Things in particular has increased the volume and potential value of data for consumers, businesses and society. High quality and interoperable data from different domains increase competitiveness and innovation and ensure sustainable economic growth. The same dataset may potentially be used and reused for a variety of purposes and to an unlimited degree, without any loss in its quality or quantity.	
Recital 2				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
12	(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.	(2) ***In a context where the European Union holds a global competitive position in manufacturing and is leader in industrial software and robotics,*** barriers to data sharing prevent an optimal allocation of data to the benefit of society. These barriers include a lack of incentives for data holders to enter voluntarily into data sharing agreements, uncertainty about rights and obligations in relation to data, ***the economic value of data sets, the*** costs of contracting and implementing technical interfaces, the high level of fragmentation of information in data silos, poor metadata management, the absence of standards for semantic and technical interoperability, bottlenecks impeding data access, a lack of common data sharing practices and abuse of contractual imbalances with regards to data access and use.	(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.	
Recital 3				

Obtenido por CSUT.XYZ

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
13	(3) In sectors characterised by the presence of micro, 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.	(3) In sectors characterised by the presence of micro, small and medium-sized enterprises ***(SMEs)***, there is often a lack of digital capacities and skills to collect, analyse and use data, and access is frequently restricted where one actor holds it in the system or due to a lack of interoperability between data, between data services or across borders.	(3) In sectors characterised by the presence of micro, 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.	
Recital 4				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
14	(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.	(4) In order to respond to the needs of the digital economy, ***avoid the fragmentation of the internal market that could emerge from national legislation*** and to remove barriers to a well-functioning internal market for data, it is necessary to lay down a harmonised framework specifying who, ~~*other than the manufacturer or other data holder is entitled to access the data*~~***is entitled to use accessible data collected, obtained or otherwise*** generated by ***connected*** products or related services, under which conditions and on what basis. Accordingly, Member States should not adopt or maintain additional national requirements on those matters falling within the scope of this Regulation, unless explicitly provided for in this Regulation, since this would affect the direct and uniform application of this Regulation.	(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. **Moreover, action at Union level should be without prejudice to obligations and commitments in the international trade agreements concluded by the Union.**	
Recital 5				

Obtenu par courriel

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
15	(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	(5) This Regulation ensures that ***manufacturers of connected products and providers of related services must design the products and services in a way that*** users of a ***connected*** product or related service in the Union can access, in a timely manner, the data ***accessible from the product or*** generated ~~*by the use of that product or*~~***during the provision of a*** related service and that those users can use the data, including by sharing them with third parties of their choice. It imposes the obligation on ~~*the data holder*~~***data holders*** to make data available to users and ~~*third parties*~~***data recipients*** 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 ***data*** 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*	(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~~ **the Commission, the European Central Bank or Union** 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	

OPEN BY CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 6				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
16	(6) Data generation is the result of the actions of at least two actors, the designer or manufacturer of a product and the user of that product. It gives rise to questions of fairness in the digital economy, because the data recorded by such products or related services are an important input for aftermarket, ancillary and other services. In order to realise the important economic benefits of data as a non-rival good for the economy and society, a general approach to assigning access and usage rights on data is preferable to awarding exclusive rights of access and use.	(6) Data generation is ***a function of the manufacturer's design of a connected product, in particular the inclusion of sensors and processing software within the device,*** ~~*the result*~~ of the actions of ~~*at least two actors, the designer or manufacturer of a product and*~~***the user and, depending on the operating modalities, of the provision of one or more related service. Many connected products, for example in the civil infrastructure, energy generation or transport sectors, are recording data about their environment or interaction with other elements of that infrastructure without any actions by the user or any third party. Such data may often be non-personal in nature and valuable for*** the user ***or third parties, which may use it to improve their operations, the overall functioning of a network or system or by making it available to others. This*** ~~*of that product. It*~~ gives rise to questions of fairness in the digital economy, because the data ~~*recorded by such*~~***accessed from connected*** products or ***generated during the provision of*** related services are an important input for aftermarket, ancillary and other services. In order to realise the important economic benefits of data ~~*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.	(6) Data generation is the result of the actions of at least two actors, the designer or manufacturer of a product and the user of that product. It gives rise to questions of fairness in the digital economy, because the data recorded by such products or related services are an important input for aftermarket, ancillary and other services. In order to realise the important economic benefits of data as a non-rival good for the economy and society, a general approach to assigning access and usage rights on data is preferable to awarding exclusive rights of access and use.	

Observatoire COMPET

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 7				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
17	(7) The fundamental right to the protection of personal data is safeguarded in particular under Regulation (EU) 2016/679 and Regulation (EU) 2018/1725. Directive 2002/58/EC additionally protects private life and the confidentiality of communications, including providing conditions to any personal and non-personal data storing in and access from terminal equipment. These instruments provide the basis for sustainable and responsible data processing, including where datasets include a mix of personal and non-personal data. This Regulation complements and is without prejudice to Union law on data protection and privacy, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC. No provision of this Regulation should be applied or interpreted in such a way as to diminish or limit the right to the protection of personal data or the right to privacy and confidentiality of communications.	(7) The fundamental right to the protection of personal data is safeguarded in particular under ~~Regulation~~***Regulations*** (EU) 2016/679***[1] and*** ~~and Regulation~~ (EU) 2018/1725***[2] of the European Parliament and of the Council***. Directive 2002/58/EC ***of the European Parliament and of the Council[3]*** additionally protects private life and the confidentiality of communications, including providing conditions to any personal and non-personal data storing in and access from terminal equipment. These instruments provide the basis for sustainable and responsible data processing, including where datasets include a mix of personal and non-personal data. This Regulation complements and is without prejudice to Union law on data protection and privacy, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC. No provision of this Regulation should be applied or interpreted in such a way as to diminish or limit the right to the protection of personal data or the right to privacy and confidentiality of communications. ***This Regulation should not be read as creating a new legal basis for the processing of personal data for any of the regulated activities, or as amending the information requirements laid down in Regulation (EU) 2016/679. In the event of a conflict between this Regulation and Union law on***	(7) The fundamental right to the protection of personal data is safeguarded in particular under Regulation (EU) 2016/679 and Regulation (EU) 2018/1725. Directive 2002/58/EC additionally protects private life and the confidentiality of communications, including providing conditions to any personal and non-personal data storing in and access from terminal equipment. These instruments provide the basis for sustainable and responsible data processing, including where datasets include a mix of personal and non-personal data. This Regulation complements and is without prejudice to Union law on data protection and privacy, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC. No provision of this Regulation should be applied or interpreted in such a way as to diminish or limit the right to the protection of personal data or the right to privacy and confidentiality of communications. **Any processing of personal data in accordance with this Regulation should comply with all conditions and rules provided by data protection legislation, including but not limited to the need for a valid legal basis under Article 6 of Regulation (EU) 2016/679, where relevant the conditions of Article 9 of Regulation (EU) 2016/679 and Article 5(3) of Directive 2002/58/**	

Obs. par. CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 8				
18	(8) The principles of data minimisation and data protection by design and by default are essential when processing involves significant risks to the fundamental rights of individuals. Taking into account the state of the art, all parties to data sharing, including where within scope of this Regulation, should implement technical and organisational measures to protect these rights. Such measures include not only pseudonymisation and encryption, but also the use of increasingly available technology that permits algorithms to be brought to the data and allow valuable insights to be derived without the transmission between parties or unnecessary copying of the raw or structured data themselves.	(8) The principles of data minimisation and data protection by design and by default are essential when processing involves significant risks to the fundamental rights of individuals. Taking into account the state of the art, all parties to data sharing, including where within scope of this Regulation, should implement technical and organisational measures to protect these rights. Such measures include not only pseudonymisation and encryption, but also the use of increasingly available technology that permits algorithms to be brought to the data and allow valuable insights to be derived without the transmission between parties or unnecessary copying of the raw or structured data themselves.	(8) The principles of data minimisation and data protection by design and by default are essential when processing involves significant risks to the fundamental rights of individuals. Taking into account the state of the art, all parties to data sharing, including where within scope of this Regulation, should implement technical and organisational measures to protect these rights. Such measures include not only pseudonymisation and encryption, but also the use of increasingly available technology that permits algorithms to be brought to the data and allow valuable insights to be derived without the transmission between parties or unnecessary copying of the raw or structured data themselves.	
Recital 9				

Obtenu par COURTAT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
19	(9) This Regulation complements and is without prejudice to Union law aiming to promote the interests of consumers and to ensure a high level of consumer protection, to protect their health, safety and economic interests, in particular Directive 2005/29/EC of the European Parliament and of the Council[1], Directive 2011/83/EU of the European Parliament and of the Council[2] and Directive 93/13/EEC of the European Parliament and of the Council[3]. _____ 1. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22). 2. Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council. 3. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of	(9) This Regulation complements and is without prejudice to Union law aiming to promote the interests of consumers and to ensure a high level of consumer protection, to protect their health, safety and economic interests, in particular Directive 2005/29/EC of the European Parliament and of the Council[1], Directive 2011/83/EU of the European Parliament and of the Council[2] and Directive 93/13/EEC of the European Parliament and of the Council[3]. _____ 1. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22). 2. Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council. 3. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of	(9) **In so far as not regulated in this Regulation, this Regulation should not affect national contract laws such as rules on formation, the validity or effects of contracts, including the consequences of the termination of a contract.** This Regulation complements and is without prejudice to Union law aiming to promote the interests of consumers and to ensure a high level of consumer protection, to protect their health, safety and economic interests, in particular Directive 2005/29/EC of the European Parliament and of the Council[1], Directive 2011/83/EU of the European Parliament and of the Council[2] and Directive 93/13/EEC of the European Parliament and of the Council[3]. _____ 1. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair- business-to-consumer commercial practices in the internal market and amending Council Directive ~~84/450/EEC~~**8 4/450/EEC**, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair- Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22). 2. Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive	

OFFICIAL USE ONLY

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 10				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
20	(10) This Regulation is without prejudice to Union legal acts providing for the sharing of, the access to and the use of data for the purpose of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, or for customs and taxation purposes, irrespective of the legal basis under the Treaty on the Functioning of the European Union on which basis they were adopted. Such acts include Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online, the [e-evidence proposals [COM(2018) 225 and 226] once adopted], the [Proposal for] a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, as well as international cooperation in this context in particular on the basis of the Council of Europe 2001 Convention on Cybercrime ("Budapest Convention"). This Regulation is without prejudice to the competences of the Member States regarding activities concerning public security, defence and national security in accordance with Union law, and activities from customs on risk management and in general, verification of compliance with the Customs Code by economic	(10) This Regulation is without prejudice to Union legal acts providing for the sharing of, the access to and the use of data for the purpose of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, or for customs and taxation purposes, irrespective of the legal basis under the Treaty on the Functioning of the European Union on which basis they were adopted. Such acts include Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online, the [e-evidence proposals [COM(2018) 225 and 226] once adopted], the [Proposal for] a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, as well as international cooperation in this context in particular on the basis of the Council of Europe 2001 Convention on Cybercrime (""Budapest Convention""). This Regulation is without prejudice to the competences of the Member States regarding activities concerning public security, defence and national security in accordance with Union law, and activities from customs on risk management and in general, verification of compliance with the Customs Code by economic	(10) This Regulation is without prejudice to Union legal acts providing for the sharing of, the access to and the use of data for the purpose of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, or for customs and taxation purposes, irrespective of the legal basis under the Treaty on the Functioning of the European Union on which basis they were adopted. Such acts– include Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online, the [e-evidence proposals [COM(2018) 225 and 226] once adopted], the [Proposal for] a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, as well as international cooperation in this context in particular on the basis of the Council of Europe 2001 Convention on Cybercrime ("Budapest Convention"). This Regulation **does not apply to activities or data in areas that fall outside the scope of Union law and in any event** is without prejudice to the competences of the Member States regarding activities **or data** concerning public security, defence ~~and~~**,** national security ~~in accordance with Union law, and activities from~~	

Orientation Only - Not for Vote

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 11				
21	(11) Union law setting physical design and data requirements for products to be placed on the Union market should not be affected by this Regulation.	(11) Union law setting physical design and data requirements for products to be placed on the Union market should not be affected ~~by~~***beyond the obligations of Article 3(1) of*** this Regulation.	(11) Union law setting physical design and data requirements for products to be placed on the Union market should not be affected by this Regulation.	
Recital 12				
22	(12) This Regulation complements and is without prejudice to Union law aiming at setting accessibility requirements on certain products and services, in particular Directive 2019/882[1]. _____ 1. Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services OJ L 151, 7.6.2019	(12) This Regulation complements and is without prejudice to Union law aiming at setting accessibility requirements on certain products and services, in particular Directive 2019/882[1]. _____ 1. Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services OJ L 151, 7.6.2019	(12) This Regulation complements and is without prejudice to Union law aiming at setting accessibility requirements on certain products and services, in particular Directive 2019/882[1]. _____ 1. Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services OJ L 151, 7.6.2019	
Recital 13				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
23	(13) This Regulation is without prejudice to the competences of the Member States regarding activities concerning public security, defence and national security in accordance with Union law, and activities from customs on risk management and in general, verification of compliance with the Customs Code by economic operators.	(13) This Regulation is without prejudice to the competences of the Member States regarding activities concerning public security, defence and national security in accordance with Union law, and activities from customs on risk management and in general, verification of compliance with the Customs Code by economic operators.	(13) This Regulation is without prejudice to ~~the competences of the Member States regarding activities concerning public security, defence and national security in accordance with Union law, and activities from customs on risk management and in general, verification of compliance with the Customs Code by economic operators~~**Union and national legal acts providing for the protection of intellectual property, including 2001/29/EC, 2004/48/EC, and (EU) 2019/790 of the European Parliament and of the Council**.	

Obtenu par courriel

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
23a		***(13a) This Regulation also aims at strengthening the position and business models of third parties, for example suppliers, through a horizontal approach. To account for the specific situation and complexity of the respective sector, this Regulation should be followed by sectoral legislation, for example the mobility data space. That legislation could set out further rules for the right for suppliers to improved or direct access to data from their own smart components for issues such as quality monitoring, product development or safety improvements and clarifies the role of providers of components in relation to connected products.***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
23b		***(13b) This Regulation is without prejudice to Union and national legal acts providing for the protection of intellectual property rights, including Directives 2001/29/EC[1], 2004/48/EC[2], and (EU) 2019/790[3] of the European Parliament and of the Council.*** _____ *1. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).* *2. Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45).* *3. Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ L 130, 17.5.2019, p. 92).*		
Recital 14				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
24	(14) Physical products that obtain, generate or collect, by means of their components, data concerning their performance, use or environment and that are able to communicate that data via a publicly available electronic communications service (often referred to as the Internet of Things) should be covered by this Regulation. Electronic communications services include land-based telephone networks, television cable networks, satellite-based networks and near-field communication networks. Such products may include vehicles, home equipment and consumer goods, medical and health devices or agricultural and industrial machinery. The data represent the digitalisation of user actions and events and should accordingly be accessible to the user, while information derived or inferred from this data, where lawfully held, should not be considered within scope of this Regulation. Such data are potentially valuable to the user and support innovation and the development of digital and other services protecting the environment, health and the circular economy, in particular though facilitating the maintenance and repair of the products in question.	(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~~***an*** electronic communications service**,** ***a physical connection, or on-device*** (often referred to as the Internet of Things) should be covered by this Regulation ***with the exception of prototypes***. Electronic communications services include land-based telephone networks, television cable networks, satellite-based networks and near-field communication networks. Such ***connected*** products ~~may include~~***are found in all aspects of the economy and society, including in private, civil or commercial infrastructure,*** vehicles, ***ships, aircraft,*** home equipment and consumer goods, medical and health devices or agricultural and industrial machinery ***or energy production and transmission facilities. Data obtained, generated or collected by a connected product that is accessible to any data holders or data recipients***~~. The data represent the digitalisation of user actions and events and~~ should ~~accordingly~~***always*** be accessible to the ~~user, while information derived or inferred from this data, where lawfully held,~~***owner of the product, or a third party to whom the owner of the product has transferred***	(14) Physical products that obtain, generate or collect, by means of their components **or operating system**, 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. **Examples of such** electronic communications services include **in particular** 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 **health and lifestyle equipment,** ~~and health devices~~ or agricultural and industrial machinery. ~~The data represent the digitalisation of user actions and events and should accordingly be accessible to the user, while information derived or inferred from this data, where lawfully held, should not be considered within scope of this Regulation. Such data are potentially valuable to the user and support innovation and the development of digital and other services protecting the environment, health and the circular economy, in particular though facilitating the maintenance and repair of the products in question.~~	

OK TO PUBLISH

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			(14a) The data represent the digitalisation of user actions and events and should accordingly be accessible to the user. Data generated by the use of a product or related service should be understood to cover data recorded intentionally or indirectly resulting from the user's action. This should include data on the use of a product generated by the use of a user interface or via a related service, and not be limited to the information that such action happened, but all data that the product generates as a result of such action such as data generated automatically by sensors and data recorded by embedded applications, including applications indicating hardware status and malfunctions . This should also include data generated by the product or related service during times of inaction by the user, such as when the user chooses to not use a product for a given period of time and keep it in stand-by or even switched off, as the status of a product or its components, e.g. batteries, can vary when the product is in stand-by or switched off. In scope are data which are not substantially modified, meaning data in raw form (also known as source or primary data, which refers to data points that are automatically generated without any form of	

Obtenu par COMETT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 15				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
25	(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.	(15) In contrast, ~~*certain products that are primarily designed to display or play content, or to record and transmit content, amongst others*~~***content, or data obtained, generated or accessed from the connected product or transmitted to it*** for the ~~*use by an online service should not be covered by this Regulation. Such products include, for example, personal computers,*~~***purpose of storage or processing on behalf of third parties, such as in the case of*** 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*~~ ***or cloud infrastructure, amongst others for the use by an online service should not be covered by this Regulation***.	(15) ~~In contrast, certain~~**This Regulation enables users of connected** 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~~**to benefit from aftermarket, ancillary and other services based on data collected by sensors embedded in such products the collection of these data being of potential value in improving the performance of the connected products. It is important to delineate between markets for the provision of such sensor-equipped connected** 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~~**and related services on the one hand and on the other hand markets for other software and content such as textual, audio or audiovisual content often covered by intellectual property rights. As a result, data that such products generate when the user records, transmits, displays or plays content, as well as the content itself, often covered by intellectual property rights** ~~video files, games~~**, amongst others for the use by an**	

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 16				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(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.	(16) It is ***also*** necessary to lay down rules applying to ~~*connected products that incorporate*~~***related services that are incorporated*** or are interconnected with a ~~*service*~~***connected product*** in such a way that the absence of the service would prevent the product from performing ***one or more of*** its functions~~*. Such related services can be part of the sale, rent or lease agreement, or such*~~***, and which involve the transfer of data between the connected product and the provider of the related*** services ~~*are normally provided for products of the same type and the user could reasonably expect them to be provided given the nature*~~***Where a provider of a related service accesses data from a connected product or has access to data generated during the provision*** 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*~~***related service and has the right to use non-personal data, in accordance with Article 4(6), it should be considered a data holder for the data it accessed from the product or generated during the provision*** of the ~~*chain of transactions, including the manufacturer*~~***related service. Such related services can be part of the sale***. These related services may themselves generate data of value to	(16) It is necessary to lay down rules applying to connected products that ~~incorporate or~~ **at the time of the purchase, rent or lease agreement** are interconnected with a service in such a way that the absence of the service would prevent the product from performing **one of** its functions**, without being incorporated into the product**. 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.	

Orange for comment

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 17				
27	(17) Data generated by the use of a product or related service include data recorded intentionally by the user. Such data include also data generated as a by-product of the user's action, such as diagnostics data, and without any action by the user, such as when the product is in 'standby mode', and data recorded during periods when the product is switched off. Such data should include data in the form and format in which they are generated by the product, but not pertain to data resulting from any software process that calculates derivative data from such data as such software process may be subject to intellectual property rights.	(17) Data ***accessed from a connected product or*** generated ~~*by the use of a product or*~~***during the provision of a*** related service include data recorded intentionally by the user. Such data include also data generated as a by-product of the user's action, such as diagnostics data, and without any action by the user, such as ***data about the connected product's environment or interactions, including*** when the product is in 'standby mode', and data recorded during periods when the product is switched off. Such data should include data in the form and format in which they are ~~*generated by*~~***accessed from*** the product, ***and be compiled in a comprehensible, structured, commonly used and machine-readable format and including the relevant metadata,*** but not pertain to data resulting from ~~*any*~~***value-add via a*** software process that calculates derivative data ~~*from such data as*~~***where*** such software process ~~*may*~~***is*** be subject to ***trade secrets and*** intellectual property rights. ***Where data is accessed in an encrypted format, the user should be provided with all necessary means to decrypt such data and make it accessible.***	*deleted*	

Objet du CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
27a		***(17a) Further efforts must be made to consolidate the data economy and data governance. In particular, increasing and supporting data literacy is essential so that users and businesses are aware and motivated to offer and provide access to their data in compliance with the relevant legal rules. This is on the basis of a sustainable data society. The spread of data literacy measures would imply the reduction of digital inequalities, contribute to improving working conditions, and ultimately sustain the consolidation and the innovation path of the data economy in the Union. In order to deliver high-quality job opportunities, the acquisition and development of data literacy skills, enabling the acquisition of digital competences by citizens and workers, should be ensured especially in the case of employees from start-ups and SMEs.***		
Recital 18				

Obtenez votre CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
28	(18) The user of a product should be understood as the legal or natural person, such as a business or consumer, which has purchased, rented or leased the product. Depending on the legal title under which he uses it, such a user bears the risks and enjoys the benefits of using the connected product and should enjoy also the access to the data it generates. The user should therefore be entitled to derive benefit from data generated by that product and any related service.	(18) The user of a ***connected*** product should be understood as the legal or natural person, such as a business***, consumer or public sector body*** ~~*or consumer,*~~ which has ~~*purchased, rented or leased the*~~ ***acquired the connected product or receives related services, or to whom the owner of the connected*** product~~*. Depending*~~ ***has transferred,*** on the ~~*legal title under which he uses it,*~~ ***basis of a rental or lease agreement, temporary rights to use the connected product or receive related services.*** Such a user bears the risks and enjoys the benefits of using the connected product and should ~~*enjoy also the access to the data it generates. The user should*~~ therefore be entitled to derive benefit from data ~~*generated by that*~~***accessed from the connected*** product and ***generated during the provision of*** any related service.	(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~~ **but also a public sector body, that owns, rents or leases** the product . Depending on the legal title under which he uses it, such a user bears the risks and enjoys the benefits of using the connected product and should enjoy also the access to the data it generates. The user should therefore be entitled to derive benefit from data generated by that product and any related service. **An owner, renter or lessee should equally be considered as user, including when several entities can be considered as users. In the context of multiple users, each user may contribute in a different manner to the data generation and can have an interest in several forms of use, e.g. fleet management for a leasing company, or mobility solutions for individuals using a car sharing service.**	

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
28a		***(18a) 'Data literacy' refers to skills, knowledge and understanding that allows users, consumers and businesses, in particular medium, small and micro companies, to gain awareness on the potential value of the data they generated, produce and share, in the context of their rights and obligations set out in this Regulation and in other Union data related Regulations. Data literacy should go beyond learning about tools and technologies and aiming to equip citizens and businesses with the ability to benefit from a fair data market. It is therefore necessary that the Commission and the Member States, in cooperation with all relevant stakeholders, promote the development of data literacy, in all sectors of society, for citizens of all ages, including women and girls. Consequently, the Union and its Member states should allocate more investments in education and training to spread data literacy, and that progress in that regard is closely followed Accordingly businesses should also promote tools and take measures to ensure data literacy skills of their staff dealing with data access and use and data transfers, and where applicable, of other persons processing data on their behalf, taking into account their technical knowledge, experience, education and training and considering the users or groups of users from***		

OUVERT POUR CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 19				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
29	(19) In practice, not all data generated by products or related services are easily accessible to their users, and there are often limited possibilities for the portability of data generated by products connected to the Internet of Things. Users are unable to obtain data necessary to make use of providers of repair and other services, and businesses are unable to launch innovative, more efficient and convenient services. In many sectors, manufacturers are often able to determine, through their control of the technical design of the product or related services, what data are generated and how they can be accessed, even though they have no legal right to the data. It is therefore necessary to ensure that products are designed and manufactured and related services are provided in such a manner that data generated by their use are always easily accessible to the user.	(19) In practice, not all data generated by ***connected*** products or related services are easily accessible to their users, and there are often limited possibilities for the portability of data generated by products connected to the Internet ~~*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 ***connected*** products are designed and manufactured and related services are provided in such a manner that data generated by their use are always easily accessible to the user***, free of charge in a comprehensive, structured, commonly used and machine-readable format, including for the purpose of retrieving, using or sharing the data. Unless specified otherwise by Union or Member State law or relevant antitrust rulings, such data should be accessible at the level of processing, including by means of software contained in the connected product, which the manufacturer's design choice permit ahead of the***	(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 **the data that are** ~~data~~ generated by their use **and that are readily available to the manufacturer or a party of his choice,** are always easily accessible **also** to the user**, including users with special needs. This excludes data generated by the use of a product where the design of the product does not foresee such data to be stored or transmitted outside the component in which they are generated or the product as a whole. This Regulation should thus not be understood as an obligation to**	

Official Document

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 20				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
30	(20) In case several persons or entities own a product or are party to a lease or rent agreement and benefit from access to a related service, reasonable efforts should be made in the design of the product or related service or the relevant interface so that all persons can have access to data they generate. Users of products that generate data typically require a user account to be set up. This allows for identification of the user by the manufacturer as well as a means to communicate to exercise and process data access requests. Manufacturers or designers of a product that is typically used by several persons should put in place the necessary mechanism that allow separate user accounts for individual persons, where relevant, or the possibility for several persons to use the same user account. Access should be granted to the user upon simple request mechanisms granting automatic execution, not requiring examination or clearance by the manufacturer or data holder. This means that data should only be made available when the user actually wants this. Where automated execution of the data access request is not possible, for instance, via a user account or accompanying mobile application provided with the product or service, the manufacturer should inform the user how the data may be accessed.	(20) In ~~case~~***cases of co-ownership of the connected product and related services provided, where*** several persons or entities own a product or are party to a lease or rent agreement ~~and benefit from access to a related service, reasonable efforts should be made in~~ the design of the ***connected*** product or related service or the relevant interface ~~so that~~***should enable*** all persons ~~can~~***to*** have access to data they generate. Users of ***connected*** products that generate data typically require a user account to be set up. This allows for identification of the user by ***a data holder, which may be*** the manufacturer as well as a means to communicate to exercise and process data access requests. ***For identification and authentication purposes, manufacturers and providers of related services should enable users to use European Digital Identity Wallets issued pursuant to Regulation (EU) 910/2014[1].*** 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~~***a*** manufacturer or	(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~~**are considered as user, e.g. in the case of co-ownership or when an owner and a renter or lessee exist** , reasonable efforts should be made in the design of the product or related service or the relevant interface so that ~~all persons~~ **each user** 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. **In case several manufacturers or related services providers have sold, rent out or leased products or services integrated together to the same user, the user should turn to each of the manufacturers or related service providers with whom it has a contractual agreement.** 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**. Account solutions should allow a user to delete their account and the data related to it, in particular taking into account situations when the**	

Obs. Uso Comercial

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 21				
31	(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.	(21) Products may be designed to make certain data directly available from an on-device data storage or from a remote server to which the data are communicated. Access to the on-device data storage may be enabled via cable-based or wireless local area networks connected to a publicly available electronic communications service or a mobile network. The server may be the manufacturer's own local server capacity or that of a third party or a cloud. ***Data processors as defined in Regulation (EU) 2016/679 are by default not considered to act*** ~~*service provider who functions*~~ as data ~~*holder*~~***holders, unless specifically tasked by the data controller***. They may be designed to permit the user or a third party to process the data on the product or on a computing instance of the manufacturer.	(21) Products may be designed to make certain data directly ~~available~~ **accessible** 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~~**Products** 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 **or within an IT environment chosen by the user or the third party**.	
Recital 22				

Obtenu sur COMETE

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

Original for COMPARE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 23				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
33	(23) Before concluding a contract for the purchase, rent, or lease of a product or the provision of a related service, clear and sufficient information should be provided to the user on how the data generated may be accessed. This obligation provides transparency over the data generated and enhances the easy access for the user. This obligation to provide information does not affect the obligation for the controller to provide information to the data subject pursuant to Article 12, 13 and 14 of Regulation 2016/679.	(23) Before concluding a contract for the purchase ***of a connected product, clear and sufficient information should be provided by the manufacturer, or where relevant the vendor, to the user with regard to the data which is accessible from the connected*** ~~*, rent, or lease of a*~~ product***, including the type, format, sampling frequency and the estimated volume of accessible data. This should include information on data structures, data formats, vocabularies, classification schemes, taxonomies and code lists, where available, as well as information*** ~~*or the provision of a related service, clear and sufficient information should be provided to the user*~~ on how the data ~~*generated*~~ may be ***stored, retrieved or*** accessed***, including the provision of software development kits or application programming interfaces, along with their terms of use and quality of service descriptions***. This obligation provides transparency over the ***accessible*** data generated and enhances the easy access for the user. ***The transparency obligation could be fulfilled by a data holder for example by, maintaining a stable uniform resource locator (URL) on the web, which can be distributed as a web link or QR code, pointing to the relevant information. Such URL could be provided by the manufacturer or***	(23) Before concluding a contract for the purchase, rent, or lease of a product or the provision of a related service, **the data holder should provide to the user** clear and sufficient information ~~should be provided to~~**relevant for the exercise of** the user**'s rights with regard to** ~~on how the~~ data generated ~~may be accessed.~~ **by the use of the product or related services . In case any information changes during the lifetime of the product, including when the purpose for which those data will be used changes from the originally specified purpose, this should also be provided to the user.** This obligation provides transparency over the data generated and enhances the easy access for the user**. The information obligation should be on the data holder, independently whether the data holder concludes the contract for the purchase, rent or lease of a product or the provision of related service. If the data holder is not the seller, rentor or lessor, the data holder should ensure that the user receives the required information, for instance from the seller, rentor or lessor which acts as a messenger. In this regard, the data holder could agree in the contract with the seller, rentor or lessor to provide the information to the user. The transparency obligation could be fulfilled by the data holder for example by,**	

Office Consolidated

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
33a		***(23a) Related services should be provided in such a manner that data generated during their provision, which represent the digitalisation of user actions or events, are, by default, easily, securely and, where relevant and technically feasible, directly accessible to the user free of charge, in a structured, commonly used and machine-readable format, along with the relevant metadata necessary to interpret and use it. Information derived or inferred from this data by means of complex proprietary algorithms, in particular where it combines the output of multiple sensors in the connected product, should not be considered within the scope of a data holder's obligation to share data with users or data recipients, unless agreed differently. Before concluding an agreement with a user on the provision of a related service, which involves the provider's access to data from the connected product, in line with Article 4(6) of this Regulation, the provider should agree with the user on the nature, volume, collection frequency and format of data accessed by the provider of related services from the connected product, as well as the nature and estimated volume of data generated during the provision of the related service and, where relevant, the modalities for the user to access or***		

OUTIL EN CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 24				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(24) This Regulation imposes the obligation on data holders to make data available in certain circumstances. Insofar as personal data are processed, the data holder should be a controller under Regulation (EU) 2016/679. Where users are data subjects, data holders should be obliged to provide them access to their data and to make the data available to third parties of the user's choice in accordance with this Regulation. However, this Regulation does not create a legal basis under Regulation (EU) 2016/679 for the data holder to provide access to personal data or make it available to a third party when requested by a user that is not a data subject and should not be understood as conferring any new right on the data holder to use data generated by the use of a product or related service. This applies in particular where the manufacturer is the data holder. In that case, the basis for the manufacturer to use non-personal data should be a contractual agreement between the manufacturer and the user. This agreement may be part of the sale, rent or lease agreement relating to the product. Any contractual term in the agreement stipulating that the data holder may use the data generated by the user of a product or related service should be transparent to the user, including as regards the purpose for which the data holder	(24) This Regulation imposes the obligation on data holders to make data available in certain circumstances. Insofar as personal data are processed, ~~the~~*a* data holder should be a controller under Regulation (EU) 2016/679. Where users are data subjects, data holders should be obliged to provide them access to their data and to make the data available to third parties of the user's choice in accordance with this Regulation. However, this Regulation does not create a legal basis under Regulation (EU) 2016/679 for ~~the data holder~~*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 ~~the data holder~~ *data holders* to use data *accessed from the connected product or* generated ~~by the use of a product or~~*during the provision of a* related service. This applies in particular where the manufacturer is ~~the~~*a* data holder. In that case, the basis for the manufacturer to use non-personal data should be a contractual agreement between the manufacturer and the user. This agreement may be part of the sale~~, rent or lease~~ *agreement relating to the connected product. The user should be given a reasonable opportunity to reject this* agreement*. If a user choses to reject the contractual terms and*	(24) **In certain circumstances** this Regulation imposes the obligation on data holders to make data available **, in accordance with Article 6(1)(c) and 6(3) of Regulation (EU) 2016/679**~~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~~**Where the user is not the data subject**, this Regulation does not create a legal basis ~~under~~**in accordance with Article 6(1)(c) and 6(3) of** 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~~**In these cases, it could be in the interest of the user to facilitate meeting the requirements of Article 6 of Regulation (EU) 2016/679. In any case, the data holder needs to ensure compliance of their sharing of personal data with relevant data protection legislation, including but not limited to the**	

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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		(24a) It is currently often difficult for businesses to justify the personnel or computing costs that are necessary for preparing non-personal data sets or data products and offer them to potential counterparties via data marketplaces, including data intermediation services, as defined in Regulation (EU) 2022/868 of the European Parliament and of the Council[1]. A substantial hurdle to non-personal data sharing by businesses thus results from the lack of predictability of economic returns from investing in the curation and making available of data sets or data products. In order to allow for the emergence of liquid, efficient and fair markets for non-personal data in the Union, it must be clarified which party has the right to offer such data on a marketplace. Users should therefore have the right to share non-personal data with data recipients for commercial and non-commercial purposes. Such data sharing could be performed directly by the user, upon the request of the user via a data holder or through data intermediation services. Data intermediation services, as regulated by Regulation (EU) 2022/868 could facilitate a data economy by establishing commercial relationships between users, data recipients and third parties and may support users in		

OUTIL DE CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
34b		***(24b) Where products generate data, that is derived or inferred from other data generated by the connected product by means of proprietary, complex algorithms, including those that are a part of proprietary software, within the meaning of Directive 2009/24/EC of the European Parliament and of the Council[1], such data should be considered to fall outside the scope of this Regulation and consequently not be subject to the obligation for a data holder to make it available to a user or data recipient, unless agreed otherwise between the user and the data holder. Such data should include in particular information derived by means of sensor fusion, inferring or deriving data from multiple sensors, collected in the connected product, using complex, proprietary algorithms. However, data inferred or derived from processing of raw data collected from a single sensor or a connected group of sensors, for the purpose of making the collected data comprehensible for wider use-cases by determining a physical quantity or quality or the change in a physical quantity, such as temperature, pressure, flow rate, pH, liquid level, position, acceleration or speed, should be included in the obligation for data holders to make data available to users and data recipients. Sectorial legislation should further define***		

OUT OF CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
34c		***(24c) In principle, to foster the emergence of liquid, fair and efficient markets for non-personal data, users of connected products should be able to share data with others, including for commercial purposes, with minimal legal and technical effort. Ahead of sharing data, a user should be able to share data with a high degree of certainty that they will not face adverse legal consequence after the data has been shared. Therefore, where data is excluded from a data holder's obligation to make it available to users or data recipients, the scope of such data should be specified in the contractual agreement between the user and the data holder for the provision of a related service in a comprehensible and clear format, in a way that users can easily determine which data is available for them for sharing with data recipients or third parties without further obligations to protect such data.***		

Objet du CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
34d		***(24d) There are many reasons why certain data generated by the use of a product remain inaccessible to a data holder and consequently would not fall under the sharing obligations of chapter II. Data may be highly volatile (values recorded at high frequency) and either instantly or quickly overwritten. They may be collected only for activating a very specific function, such as the activity of windshield wipers or headlights, and there is currently no use case and the design of the product does not foresee such data to be stored in the product in light of the cost related to storage of such data, to connecting the data-capturing sensor to a central computing component from which data could be exported and the costs of connectivity for transmitting the data when volumes are considerable. In this regard, sector-specific regulations should further specify relevancy of accessible data according to their specificities in order to ensure the availability of at least data, which is essential for the repairing or servicing of the connected products and related services.***		
Recital 25				

OUT OF CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
35	(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	(25) In sectors characterised by the concentration of a small number of manufacturers ***or providers of related services*** supplying end users, ~~*there are only limited options available to users with regard to sharing data with those manufacturers*~~***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 ~~*purchase or lease*~~***own***. Consequently, there is limited potential for innovative smaller businesses to offer data-based solutions in a competitive manner and for a diverse data economy in Europe. This Regulation should therefore build on recent developments in specific sectors, such as the Code of Conduct on agricultural data sharing by contractual agreement. Sectoral legislation may be brought forward to address sector-specific needs***, security concerns*** and objectives.	(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	

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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 26				
36	(26) In contracts between a data holder and a consumer as a user of a product or related service generating data, Directive 93/13/EEC applies to the terms of the contract to ensure that a consumer is not subject to unfair contractual terms. For unfair contractual terms unilaterally imposed on a micro, small or medium-sized enterprise as defined in Article 2 of the Annex to Recommendation 2003/361/EC[1], this Regulation provides that such unfair terms should not be binding on that enterprise. _____ 1. Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises	(26) In contracts between a data holder and a consumer as a user of ~~a product~~ ***connected products*** or related service generating data, ***EU consumer law applies, Directive 2005/29/EC, which applies against unfair commercial practices, and*** Directive 93/13/EEC applies to the terms of the contract to ensure that a consumer is not subject to unfair contractual terms. For unfair contractual terms unilaterally imposed ~~on a micro, small or medium-sized enterprise as defined in Article 2 of the Annex to Recommendation 2003/361/EC[1],~~ this Regulation provides that such unfair terms should not be binding on that enterprise. _____ ~~1. Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises~~	(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~~ **an** enterprise ~~as defined in Article 2 of the Annex to Recommendation 2003/361/EC[1]~~, this Regulation provides that such unfair terms should not be binding on that enterprise. _____ ~~1. Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises~~	
Recital 27				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
37	(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.	(27) ~~*The data holder*~~***Data holders*** may require appropriate user identification to verify the user's entitlement to access the data. In the case of personal data processed by a processor on behalf of the controller, ~~*the data holder*~~***data holders*** should ensure that the access request is received and handled by the processor.	(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.	
Recital 28				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
38	(28) The user should be free to use the data for any lawful purpose. This includes providing the data the user has received exercising the right under this Regulation to a third party offering an aftermarket service that may be in competition with a service provided by the data holder, or to instruct the data holder to do so. The data holder should ensure that the data made available to the third party is as accurate, complete, reliable, relevant and up-to-date as the data the data holder itself may be able or entitled to access from the use of the product or related service. Any trade secrets or intellectual property rights should be respected in handling the data. It is important to preserve incentives to invest in products with functionalities based on the use of data from sensors built into that product. The aim of this Regulation should accordingly be understood as to foster the development of new, innovative products or related services, stimulate innovation on aftermarkets, but also stimulate the development of entirely novel services making use of the data, including based on data from a variety of products or related services. At the same time, it aims to avoid undermining the investment incentives for the type of product from which the data are obtained, for instance, by the use of data to develop a competing product.	(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~~***data recipient*** offering an aftermarket service that may be in competition with a service provided by ~~the~~***a*** data holder, or to instruct the data holder to do so. The ***request should also be valid regardless of whether the request is put forward by the user or an authorised third party acting on user's behalf, such as authorised data intermediation service in the meaning of the Regulation (EU) 2022/868. Data holders*** ~~data holder~~ should ensure that the data made available to ~~the third party~~***a data recipient*** is as accurate, complete, reliable, relevant and up-to-date as the data the data holder itself may be able or entitled to access from the use of the ***connected*** product or related service. Any trade secrets or intellectual property rights should be ***fully*** respected in handling the data. It is important to preserve incentives to invest in products with functionalities based on the use of data from sensors built into that product. The aim of this Regulation should accordingly be understood as to foster the development of new, innovative products or related services, stimulate innovation on aftermarkets, but also stimulate the development of entirely novel	(28) The user should be free to use the data for any lawful purpose. This includes providing the data the user has received exercising the right under this Regulation to a third party offering an aftermarket service that may be in competition with a service provided by the data holder, or to instruct the data holder to do so. The data holder should ensure that the data made available to the third party is as accurate, complete, reliable, relevant and up-to-date as the data the data holder itself may be able or entitled to access from the use of the product or related service. Any ~~trade secrets or~~ intellectual property rights should be respected in handling the data. It is important to preserve incentives to invest in products with functionalities based on the use of data from sensors built into that product. The aim of this Regulation should accordingly be understood as to foster the development of new, innovative products or related services, stimulate innovation on aftermarkets, but also stimulate the development of entirely novel services making use of the data, including based on data from a variety of products or related services. At the same time, it aims to avoid undermining the investment incentives for the type of product from which the data are obtained, for instance, by the use of data to develop a competing product.	

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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
38a		***(28a) This Regulation should be interpreted in a manner to preserve the protection awarded to trade secrets under Directive (EU) 2016/943. To that end, data holders should be able to require the user, or third parties of the users' choice, to preserve the confidentiality of data considered as trade secrets. Trade secrets should be identified prior to the disclosure. However, data holders cannot undermine the right of the users to request access and use of data in accordance with this Regulation on the basis of certain data being considered as trade secrets by the data holder. The data holder, or the trade secret holder where it is not the data holder, should have the possibility to agree with the user, or third parties of the users' choice, on appropriate measures to preserve their confidentiality, including by the use of model contractual terms, confidentiality agreements, strict access protocols, technical standards and the application of codes of conduct. In cases where the user or third parties of the users' choice fail to implement those measures or undermine the confidentiality of trade secrets, the data holder should be able to suspend the sharing of data identified as trade secrets, pending review by the data coordinator of the Member State. In such cases, the data holder should immediately***		

OUT OF CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			(28a) Directive (EU) 2016/943 provides that the acquisition, use or disclosure of a trade secret shall be considered lawful notably where such acquisition, use or disclosure is required or allowed by Union or national law. While this Regulation requires data holders to disclose certain data to users or third parties of their choice even when such data qualify for protection as trade secrets, it should be interpreted in a manner to preserve the protection awarded to trade secrets under that Directive as regards any other natural or legal persons. For this reason, data holders can require the user or third parties of the user's choice to preserve the secrecy of data considered as trade secrets, including through technical means. Depending on the risks presented by the individual case, including the enforceability of trade secrets protection in the third country where the user or third party chose to process the data, the requirements as concerns the technical means set by the data holder can be further strengthened. Also, the data holders can require that the confidentiality of a disclosure must be ensured by the user and any third party of the user's choice. Data holders cannot refuse a data access request under this	

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 29				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
39	(29) A third party to whom data is made available may be an enterprise, a research organisation or a not-for-profit organisation. In making the data available to the third party, the data holder should not abuse its position to seek a competitive advantage in markets where the data holder and third party may be in direct competition. The data holder should not therefore use any data generated by the use of the product or related service in order to derive insights about the economic situation of the third party or its assets or production methods or the use in any other way that could undermine the commercial position of the third party on the markets it is active on.	(29) A ~~third party~~***data recipient*** to whom data is made available may be ~~an~~***a natural or legal person,*** enterprise, a research organisation or a not-for-profit organisation ***or an intermediary, including data intermediation services or data altruism organisations as defined in Regulation (EU) 2022/868***. In making the data available to ~~the third party, the data holder~~***a data recipient, data holders*** should not abuse ~~its~~***their*** position to seek a competitive advantage in markets where ~~the~~***a*** data holder and ~~third party~~***data recipient*** may be in direct competition. ~~The data holder~~***Data holders*** should not therefore use any data ~~generated by the use of the product or~~***accessed from the connected product or generated during the provision of a*** related service in order to derive insights about the economic situation of the third party or its assets or production methods or the use in any other way that could undermine the commercial position of the third party on the markets it is active on. ***The user should have the right to share non-personal data with third parties for commercial purposes. Upon the agreement with the user, and subject to the provisions of this Regulation, data recipients should be able to transfer the data access rights granted by the user to third parties, including in exchange for compensation. Data intermediation***	(29) A third party to whom data is made available may be an enterprise, a research organisation **a not-for-profit organisation or an entity acting in a professional capacity** ~~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. **Data intermediation services [as regulated by Regulation (EU) 2022/868] may support users or third parties in establishing a commercial relation for any lawful purpose on the basis of data of products in scope of this Regulation e.g. by acting on behalf of a user. They could play an instrumental role in aggregating access to data from a large number of individual users so that big data analyses or machine learning can be facilitated, as long as such users remain in full control on whether to contribute their data to such aggregation and the commercial**	

Other than confirmed

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 30				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
40	(30) The use of a product or related service may, in particular when the user is a natural person, generate data that relates to an identified or identifiable natural person (the data subject). Processing of such data is subject to the rules established under Regulation (EU) 2016/679, including where personal and non-personal data in a data set are inextricably linked[1]. 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	(30) The use of a product or related service may, in particular when the user is a natural person, generate data that relates to an identified or identifiable natural person (the data subject). Processing of such data is subject to the rules established under Regulation (EU) 2016/679, including where personal and non-personal data in a data set are inextricably linked[1]. 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	(30) The use of a product or related service may, in particular when the user is a natural person, generate data that relates to an identified or identifiable natural person (the data subject). Processing of such data is subject to the rules established under Regulation (EU) 2016/679, including where personal and non-personal data in a data set are inextricably linked[1]. 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	

Opinion of the Council

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 31				

Obtenu par CONTEXTE

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

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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 32				
42	(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.	(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.	(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.	
Recital 33				

Obtenu par CONSEIL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
43	(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.	(33) In order to prevent the exploitation of users, ~~*third parties*~~***data recipients*** to whom data has been made available upon request of the user should only process the data for the purposes agreed with the user and ***not*** share it with another third party ~~*only if this is necessary to provide the service requested by the user*~~***without unequivocally informing the user in a timely manner and having its explicit agreement to such sharing***.	(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.	
Recital 34				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
44	(34) In line with the data minimisation principle, the third party should only access additional information that is necessary for the provision of the service requested by the user. Having received access to data, the third party should process it exclusively for the purposes agreed with the user, without interference from the data holder. It should be as easy for the user to refuse or discontinue access by the third party to the data as it is for the user to authorise access. The third party should not coerce, deceive or manipulate the user in any way, by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface with the user. in this context, third parties should not rely on so-called dark patterns in designing their digital interfaces. Dark patterns are design techniques that push or deceive consumers into decisions that have negative consequences for them. These manipulative techniques can be used to persuade users, particularly vulnerable consumers, to engage in unwanted behaviours, and to deceive users by nudging them into decisions on data disclosure transactions or to unreasonably bias the decision-making of the users of the service, in a way that subverts and impairs their autonomy, decision-making and choice. Common and legitimate	(34) ~~*In line with the data minimisation principle, the third party*~~***Data recipients*** should only access additional information that is necessary for the provision of the service requested by the user. Having received access to data, the ~~*third party*~~***data recipient*** should process it exclusively for the purposes agreed with the user, without interference from the data holder. It should be as easy for the user to refuse or discontinue access by the ~~*third party*~~***data recipient*** to the data as it is for the user to authorise access. ~~*The third party*~~***A data recipient or data holder*** should not ***make the exercise of the rights or choices of users unduly difficult including by offering choices to users in a non-neutral manner, or*** coerce, deceive or manipulate the user in any way, ***or*** by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface ***or a part thereof, including its structure, design, function or manner of operation*** with the user. In this context, third parties ***or data holders*** should not rely on so-called dark patterns in designing their digital interfaces. Dark patterns are design techniques that push or deceive consumers into decisions that have negative consequences for them. These manipulative techniques can be used to persuade users, particularly	(34) In line with the data minimisation principle, the third party should only access additional information that is necessary for the provision of the service requested by the user. Having received access to data, the third party should process it exclusively for the purposes agreed with the user, without interference from the data holder. It should be as easy for the user to refuse or discontinue access by the third party to the data as it is for the user to authorise access. The third party should not coerce, deceive or manipulate the user in any way, by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface with the user. in this context, third parties should not rely on so-called dark patterns in designing their digital interfaces. Dark patterns are design techniques that push or deceive consumers into decisions that have negative consequences for them. These manipulative techniques can be used to persuade users, particularly vulnerable consumers, to engage in unwanted behaviours, and to deceive users by nudging them into decisions on data disclosure transactions or to unreasonably bias the decision-making of the users of the service, in a way that subverts and impairs their autonomy, decision-making and choice. Common and legitimate	

Orientation Only

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 35				
45	(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.	(35) ~~*The third party*~~***Data holders and data recipients*** should also refrain from using the data to profile individuals unless these processing activities are strictly necessary to provide the service requested by the user. The requirement to delete ***personal*** data when no longer required for the purpose agreed with the user complements the right to erasure of the data subject pursuant to Article 17 of ~~*Regulation 2016/679*~~***Regulation (EU) 2016/679***. Where ~~*the third party*~~***a data recipient*** is a provider of a data intermediation service within the meaning of ~~*[Data Governance Act]*~~***Regulation (EU) 2022/868***, the safeguards for the data subject provided for by that Regulation apply. The third party may use the data to develop a new and innovative product or related service but not to develop a competing product.	(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.	
Recital 36				

Obtenu par COMETE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(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	(36) Start-ups, ~~small and medium-sized enterprises~~**SMEs** and companies from traditional sectors with less-developed digital capabilities struggle to obtain access to relevant data. This Regulation aims to facilitate access to data for these entities, while ensuring that the corresponding obligations are scoped as proportionately as possible to avoid overreach. At the same time, a small number of very large companies have emerged with considerable economic power in the digital economy through the accumulation and aggregation of vast volumes of data and the technological infrastructure for monetising them. These companies include undertakings that provide core platform services controlling whole platform ecosystems in the digital economy and whom existing or new market operators are unable to challenge or contest. The ~~[~~Regulation ~~on contestable and fair markets in the digital sector (Digital Markets Act)]~~**(EU) 2022/1925 of the European Parliament and of the Council**[1] 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	(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. **Regulation (EU) 2022/1925** ~~The [Regulation~~ on contestable and fair markets in the digital sector (Digital Markets Act)~~]~~[1] 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.	

Observer Copy

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 37				
47	(37) Given the current state of technology, it is overly burdensome to impose further design obligations in relation to products manufactured or designed and related services provided by micro and small enterprises. That is not the case, however, where a micro or small enterprise is sub-contracted to manufacture or design a product. In such situations, the enterprise, which has sub-contracted to the micro or small enterprise, is able to compensate the sub-contractor appropriately. A micro or small enterprise may nevertheless be subject to the requirements laid down by this Regulation as data holder, where it is not the manufacturer of the product or a provider of related services.	(37) ~~*Given the current state of technology, it is overly burdensome to impose further design*~~***Micro and small enterprises should be excluded from the*** obligations ~~*in relation to products manufactured or designed and related services provided by micro and small enterprises*~~***of Chapter II***. That is not the case, however, where a micro or small enterprise is sub-contracted to manufacture or design a product. In such situations, the enterprise, which has sub-contracted to the micro or small enterprise, is able to compensate the sub-contractor appropriately. A micro or small enterprise may nevertheless be subject to the requirements laid down by this Regulation as data holder, where it is not the manufacturer of the product or a provider of related services.	(37) Given the current state of technology, it is overly burdensome to impose further design obligations in relation to products manufactured or designed and related services provided by micro and small enterprises. That is not the case, however, where a micro or small enterprise is sub-contracted to manufacture or design a product. In such situations, the enterprise, which has sub-contracted to the micro or small enterprise, is able to compensate the sub-contractor appropriately. A micro or small enterprise may nevertheless be subject to the requirements laid down by this Regulation as data holder, where it is not the manufacturer of the product or a provider of related services. **Similarly, enterprises that just have passed the thresholds qualifying as a medium-sized enterprise as well as medium-sized enterprises bringing a new product on the market should benefit from a certain period before being exposed to the potential competition based on the access rights under this Regulation on the market for services around products they manufacture.**	
Recital 38				

Obtenu par CONSEIL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
48	(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.	(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.	(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~~**In order to take account of a variety of products in scope, producing data of different nature, volume and frequency, presenting different levels of data and cybersecurity risks, and providing economic opportunities of different value, this Regulation assumes that the data holder and the third party conclude a contractual agreement on the modalities under which the right to share data with third parties is to be fulfilled. Those modalities should be** fair, reasonable, non-discriminatory and transparent**. The non-binding model contractual terms for business-to-business** ~~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~~ **to be developed and recommended by the Commission may help the parties to conclude a contractual agreement including fair, reasonable and non-discriminatory terms and implemented in a transparent way. The conclusion of such an agreement should, however, not mean that the** right to **share data with third parties is in any way**	

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
48a			**(38a) For the purpose of ensuring 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, this Regulation provides for horizontal rules on modalities of access to data whenever a data holder is obliged by law to make data available to a data recipient. This should apply in addition to the rules that lay down the rights of access to data generated by products or related services 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.**	
Recital 39				

Obtenu par COREPER

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
49	(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.	(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.	(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. **Such terms could include technical and organisational issues, including in relation to data security.**	
Recital 40				
50	(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.	(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.	(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.	
Recital 41				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
51	(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.	(41) ***Any agreement concluded for making the data available should not discriminate between comparable categories of data recipients, independently whether they are large companies or micro, small or medium-sized enterprises.*** In order to compensate for the lack of information on the conditions of different contracts, which makes it difficult for the data recipient to assess if the terms for making the data available are non-discriminatory, it should be ~~on~~***the responsibility of*** the data ~~holder~~***holders*** to demonstrate that a contractual term is not discriminatory. ***The Commission, while involving all affected stakeholders, should establish practical guidelines on what constitutes non-discriminatory terms.*** It is not unlawful discrimination, where a data holder uses different contractual terms for making data available ~~*or different compensation*~~, if those differences are justified by objective reasons. These obligations are without prejudice to Regulation (EU) 2016/679.	(41) **Any agreement concluded in business-to-business relations for making the data available should also be non-discriminatory between comparable categories of data recipients, independently whether they are large companies or micro, small or medium-sized enterprises.** In order to compensate for the lack of information on the conditions of different contracts, which makes it difficult for the data recipient to assess if the terms for making the data available are non-discriminatory, it should be 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.	
Recital 42				

Orbit Private COMPANY

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
52	(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 ***and making available*** valuable data, including investments in relevant technical tools, this Regulation contains the principle that ~~*the data holder*~~***data holders*** may request reasonable compensation when legally obliged to make data available to the data recipient ***in business- to business relations***. These provisions should not be understood as paying for the data itself, but ***to allow data holders to be reasonably compensated for making data available or,*** in the case of micro, small or medium-sized enterprises ***and of research organisations using the data on a not-for-profit basis***, for the ***direct*** costs incurred and investment required for making the data available. ***The Commission should develop guidance detailing what qualifies as a reasonable compensation in the data economy.***	(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~~**while at the same time avoiding excessive burden for access and use of data which** make data ~~available to the data recipient. These provisions should not be understood as paying for~~**sharing no longer commercially viable, this Regulation contains the principle that** the data ~~itself, but in the case of micro, small or medium-sized enterprises, for the costs incurred and investment required for making~~**holder may request reasonable compensation when legally obliged to make data available to** the data ~~available~~**recipient**.	

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
52a		*(42a) Such reasonable compensation may include firstly the costs incurred and, except for micro and small enterprises, investment required for making the data available. Those costs can be technical costs, such as the costs necessary for data reproduction, dissemination via electronic means and storage, but not of data collection or production. Such technical costs could include also the costs for processing, necessary to make data available. Costs related to making the data available may also include the costs of facilitating concrete data sharing requests. They may also vary depending on the arrangements taken for making the data available. Long-term arrangements between data holders and data recipients, for instance via a subscription model or the use of smart contracts, could reduce the costs in regular or repetitive transactions in a business relationship. Costs related to making data available are either specific to a particular request or shared with other requests. In the latter case, a single data recipient should not pay the full costs of making the data available. Reasonable compensation may include, except for micro and small enterprises, secondly a margin. Such margin may vary depending on factors related to the data itself,*	**(42a) Such reasonable compensation may include firstly the costs incurred and investment required for making the data available. These costs can be technical costs, such as the costs necessary for data reproduction, dissemination via electronic means and storage, but not of data collection or production. Such technical costs could include also the costs for processing, necessary to make data available, including costs associated with anonymising or pseudonymising data, and formatting of data. Costs related to making the data available may also include the costs of organising answers to concrete data sharing requests. They may also vary depending on the volume of the data as well as the arrangements taken for making the data available. Long-term arrangements between data holders and data recipients, for instance via a subscription model or the use of smart contracts, could reduce the costs in regular or repetitive transactions in a business relationship. Costs related to making data available are either specific to a particular request or shared with other requests. In the latter case, a single data recipient should not pay the full costs of making the data available. Reasonable compensation may include**	

OUT OF CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 43				
53	(43) In justified cases, including the need to safeguard consumer participation and competition or to promote innovation in certain markets, Union law or national legislation implementing Union law may impose regulated compensation for making available specific data types.	(43) In ***duly*** justified cases, including the need to safeguard consumer participation and competition or to promote innovation in certain markets, Union law or national legislation implementing Union law may impose regulated compensation for making available specific data types.	(43) **It is not necessary to intervene in the case of data sharing between large companies, or when the data holder is a small or medium-sized enterprise and the data recipient is a large company. In such cases, the companies are considered capable of negotiating the**~~In justified cases, including the need to safeguard consumer participation and competition or to promote innovation in certain markets, Union law or national legislation implementing Union law may impose regulated~~ compensation ~~for making available specific data types~~**within the limits of what is reasonable**.	
Recital 44				

Obtenu par COREAE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
54	(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.	(44) To protect micro, small or medium-sized enterprises from excessive economic burdens which would make it commercially too difficult for them to develop and run innovative business models, the compensation for making data available to be paid by them should not exceed the direct cost of making the data available and be non-discriminatory. ***The same regime should apply to those research organisations that use the data on a not-for-profit basis.***	(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 **reasonable** compensation for making data available to be paid by them should not exceed the ~~direct cost of~~ **cost directly related to** making the data available ~~and be non-discriminatory~~.	
Recital 45				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
55	(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.	(45) Direct costs for making data available are the costs necessary for data reproduction, dissemination via electronic means and storage but not of data collection or production. Direct costs for making data available should be limited to the share attributable to the individual requests, taking into account that the necessary technical interfaces or related software and connectivity will have to be set up permanently by the data holder. Long-term arrangements between data holders and data recipients, for instance via a subscription model, could reduce the costs linked to making the data available in regular or repetitive transactions in a business relationship. ***The data holder, if not an SME, should actively provide the calculation showing that his price is a cost-based, when he knows, or should have known, that his counterparty is an SME. In any case, he should state that he is obliged to make the data available to an SME at cost price and that he is obliged to make detailed information available when requested.***	(45) ~~Direct costs for making data available are the~~**Directly related** costs ~~necessary for data reproduction, dissemination via electronic means and storage but not of data collection or production. Direct~~ **are those** costs ~~for making data available should be limited to the share~~ **which are** 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.~~	

Outside scope

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
55a			**(45a) In justified cases, including the need to safeguard consumer participation and competition or to promote innovation in certain markets, Union law or national legislation implementing Union law may impose regulated compensation for making available specific data types.**	
Recital 46				
56	(46) It is not necessary to intervene in the case of data sharing between large companies, or when the data holder is a small or medium-sized enterprise and the data recipient is a large company. In such cases, the companies are considered capable of negotiating any compensation if it is reasonable, taking into account factors such as the volume, format, nature, or supply of and demand for the data as well as the costs for collecting and making the data available to the data recipient.	(46) It is not necessary to intervene in the case of data sharing between large companies, or when the data holder is a small or medium-sized enterprise and the data recipient is a large company. In such cases, the companies are considered capable of negotiating any compensation if it is reasonable, taking into account factors such as the volume, format, nature, or supply of and demand for the data as well as the costs for collecting and making the data available to the data recipient. ***In the case of misuse or disclosure of data, the data recipient should be liable for the damages to the party suffering from it and should comply without undue delay with the requests of the data holder.***	*deleted*	
Recital 47				

OUTSIDE IN CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
57	*(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.	(47) Transparency is an important principle to ensure that the compensation requested by ~~the~~***a*** data holder is reasonable, or, ~~in case~~***if*** the data recipient is ~~a micro, small or medium-sized enterprise~~***an SME***, that the compensation does not exceed the costs directly related to making the data available to the data recipient and is attributable to the individual request. In order to put ~~the data recipient~~ ***data recipients*** in the position to assess and verify that the compensation complies with the requirements under this Regulation, the data holder should provide to the data recipient the information for the calculation of the compensation with a sufficient degree of detail.	(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.	
Recital 48				

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
58	(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.	(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.	(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. **While this Regulation only lays down the conditions that dispute settlement bodies need to fulfill to be certified, Member States are free to regulate any specific rules on the certification procedure, including the expiration or revocation of the certification. The provisions in this Regulation on dispute settlement should not require Member States to establish dispute settlement bodies.**	

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
58a			**(48a) The dispute settlement procedure under this Regulation is a voluntary procedure that enables both data holder and data recipient to agree on bringing their dispute before a dispute settlement body. In this regard, the parties should be free to address a dispute settlement body of their choice, be it within or outside of the Member States they are established in.**	
Recital 49				
59	(49) To avoid that two or more dispute settlement bodies are seized for the same dispute, particularly in a cross-border setting, a dispute settlement body should be able to reject a request to resolve a dispute that has already been brought before another dispute settlement body or before a court or a tribunal of a Member State.	(49) To avoid that two or more dispute settlement bodies are seized for the same dispute, particularly in a cross-border setting, a dispute settlement body should be able to reject a request to resolve a dispute that has already been brought before another dispute settlement body or before a court or a tribunal of a Member State.	(49) To avoid that two or more dispute settlement bodies are seized for the same dispute, particularly in a cross-border setting, a dispute settlement body should be able to reject a request to resolve a dispute that has already been brought before another dispute settlement body or before a court or a tribunal of a Member State.	

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
59a			**(49a) In order to ensure an uniform application of this Regulation, the dispute settlement bodies should take into account the non-binding model contractual terms developed and recommended by the Commission as well as sectoral regulation specifying data sharing obligations or guidelines issued by sectoral authorities for the application of such Regulation.**	
Recital 50				
60	(50) Parties to dispute settlement proceedings should not be prevented from exercising their fundamental rights to an effective remedy and to a fair trial. Therefore, the decision to submit a dispute to a dispute settlement body should not deprive those parties of their right to seek redress before a court or a tribunal of a Member State.	(50) Parties to dispute settlement proceedings should not be prevented from exercising their fundamental rights to an effective remedy and to a fair trial. Therefore, the decision to submit a dispute to a dispute settlement body should not deprive those parties of their right to seek redress before a court or a tribunal of a Member State. ***Dispute settlement bodies should make annual activity reports publicly available.***	(50) Parties to dispute settlement proceedings should not be prevented from exercising their fundamental rights to an effective remedy and to a fair trial. Therefore, the decision to submit a dispute to a dispute settlement body should not deprive those parties of their right to seek redress before a court or a tribunal of a Member State.	

Obtained by CONTACT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
60a			**(50a) In order to avoid misuse of the new data access rights, the data holder may apply technical protection measures in relation to the data made available to the recipient to prevent unauthorised access and ensure compliance with the framework of data access in Chapter II and III. However, those measures should not hinder the effective access and use of data for the data recipient. In the case of abusive practices on the part of the data recipient, such as misleading the data holder with inaccurate information or developing a competing product on the basis of data, the data holder can, for example, request the deletion of data and the end of production of products or services based on the data received.**	
Recital 51				

Obtenu par CONSEIL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
61	(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.	(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*~~***harm*** enterprises without a meaningful ability to negotiate the conditions for access to data, who may have no other choice than to accept 'take-it-or-leave-it' contractual terms. Therefore, unfair contract terms regulating the access to and use of data or the liability and remedies for the breach or the termination of data related obligations should not be binding on micro, small or medium-sized enterprises when they have been unilaterally imposed on them.	(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~~ **harm all** 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.	
Recital 52				

Obtenu par COREPER

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
62	(52) Rules on contractual terms should take into account the principle of contractual freedom as an essential concept in business-to-business relationships. Therefore, not all contractual terms should be subject to an unfairness test, but only to those terms that are unilaterally imposed on micro, small and medium-sized enterprises. This concerns 'take-it-or-leave-it' situations where one party supplies a certain contractual term and the micro, small or medium-sized enterprise cannot influence the content of that term despite an attempt to negotiate it. A contractual term that is simply provided by one party and accepted by the micro, small or medium-sized enterprise or a term that is negotiated and subsequently agreed in an amended way between contracting parties should not be considered as unilaterally imposed.	(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*~~***other*** enterprise cannot influence the content of that term despite an attempt to negotiate it. A contractual term that is simply provided by one party and accepted by the ~~*micro, small or medium-sized*~~***other*** enterprise or a term that is negotiated and subsequently agreed in an amended way between contracting parties should not be considered as unilaterally imposed. ***All contractual agreements should be in line with Fair, Reasonable and Non-Discriminatory (FRAND) principles.***	(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~~ **other** enterprise cannot influence the content of that term despite an attempt to negotiate it. A contractual term that is simply provided by one party and accepted by the ~~micro, small or medium-sized~~ **other** enterprise or a term that is negotiated and subsequently agreed in an amended way between contracting parties should not be considered as unilaterally imposed.	
Recital 53				

Observer copy

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
63	(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.	(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.	(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.	
Recital 54				
64	(54) Criteria to identify unfair contractual terms should be applied only to excessive contractual terms, where a stronger bargaining position is abused. The vast majority of contractual terms that are commercially more favourable to one party than to the other, including those that are normal in business-to-business contracts, are a normal expression of the principle of contractual freedom and shall continue to apply.	(54) Criteria to identify unfair contractual terms should be applied only to excessive contractual terms, where a stronger bargaining position is abused. The vast majority of contractual terms that are commercially more favourable to one party than to the other, including those that are normal in business-to-business contracts, are a normal expression of the principle of contractual freedom and ~~*shall*~~ continue to apply.	(54) Criteria to identify unfair contractual terms should be applied only to excessive contractual terms, where a stronger bargaining position is abused. The vast majority of contractual terms that are commercially more favourable to one party than to the other, including those that are normal in business-to-business contracts, are a normal expression of the principle of contractual freedom and shall continue to apply.	
Recital 55				

Orbitum IPR CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
65	(55) If a contractual term is not included in the list of terms that are always considered unfair or that are presumed to be unfair, the general unfairness provision applies. In this regard, the terms listed as unfair terms should serve as a yardstick to interpret the general unfairness provision. Finally, model contractual terms for business-to-business data sharing contracts to be developed and recommended by the Commission may also be helpful to commercial parties when negotiating contracts.	(55) If a contractual term is not included in the list of terms that are always considered unfair or that are presumed to be unfair, the general unfairness provision applies. In this regard, the terms listed as unfair terms should serve as a yardstick to interpret the general unfairness provision. Finally, model contractual terms for business-to-business data sharing contracts to be developed and recommended by the Commission may also be helpful to commercial parties when negotiating contracts.	(55) **In order to ensure legal certainty, this Regulation establishes a list with clauses that are always considered unfair and a list with clauses that are presumed unfair. In the latter case, the enterprise that imposed the contract term can rebut the presumption by demonstrating that the contractual term listed is not unfair in the specific case at hand.** If a contractual term is not included in the list of terms that are always considered unfair or that are presumed to be unfair, the general unfairness provision applies. In this regard, the terms listed as unfair terms should serve as a yardstick to interpret the general unfairness provision. Finally, model contractual terms for business-to-business data sharing contracts to be developed and recommended by the Commission may also be helpful to commercial parties when negotiating contracts. **If a clause is declared as being unfair, the contract should continue to apply without that clause, unless the unfair clause is not severable from the other terms of the contract.**	
Recital 56				

Obtenu par Contexte

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
66	(56) In situations of exceptional need, it may be necessary for public sector bodies or Union institutions, agencies or bodies to use data held by an enterprise to respond to public emergencies or in other exceptional cases. Research-performing organisations and research-funding organisations could also be organised as public sector bodies or bodies governed by public law. To limit the burden on businesses, micro and small enterprises should be exempted from the obligation to provide public sector bodies and Union institutions, agencies or bodies data in situations of exceptional need.	(56) In situations of exceptional need, it may be necessary for public sector bodies or Union institutions, agencies or bodies to use data held by an enterprise ***or that it is currently collecting or has previously obtained, collected or otherwise generated and which it retains at the time of the request,*** to respond to public emergencies or in other exceptional cases. Research-performing organisations and research-funding organisations could also be organised as public sector bodies or bodies governed by public law. To limit the burden on businesses, micro and small enterprises should be exempted from the obligation to provide public sector bodies and Union institutions, agencies or bodies data in situations of exceptional need.	(56) In situations of exceptional need, it may be necessary for public sector bodies**, the Commission, the European Central Bank** ~~,~~ or Union ~~institutions, agencies or bodies~~**bodies in the performance of their statutory duties in the public interest** to use **existing data including, where relevant, accompanying metadata,** ~~data~~ held by an enterprise **as a data holder** to respond to public emergencies or in other exceptional cases. **The notion of data holder generally does not include public sector bodies. However, it may include public undertakings. Exceptional needs are circumstances which are unforeseeable and limited in time, in contrast to other circumstances which might be planned, scheduled, periodic or frequent.** Research-performing organisations and research-funding organisations could also be organised as public sector bodies or bodies governed by public law. To limit the burden on businesses, micro and small enterprises should **only be under**~~be exempted from~~ the obligation to provide **data to** public sector bodies**, the Commission, the European Central Bank or Union** ~~and Union institutions, agencies or~~ bodies ~~data~~ in situations of exceptional need **to respond to a public emergency**.	

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 57				
67	(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.	(57) In case of public emergencies, such as public health emergencies, emergencies resulting from environmental degradation and major natural disasters including those aggravated by climate change, as well as human-induced major disasters, such as major cybersecurity incidents, the public interest resulting from the use of the data will outweigh the interests of the data holders to dispose freely of the data they hold. In such a case, data holders should be placed under an obligation to make the data available to public sector bodies or to Union institutions, agencies or bodies upon their request ***and subject to conditions and other safeguards set out in this Regulation or other Union or national law***. The existence of a public emergency is determined according to the respective procedures in the Member States or of relevant international organisations.	(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 **and environmental degradation**, as well as human-induced major disasters, such as major cybersecurity incidents, the public interest resulting from the use of the data will outweigh the interests of the data holders to dispose freely of the data they hold. In such a case, data holders should be placed under an obligation to make the data available to public sector bodies**, the Commission, the European Central Bank or Union** ~~or to Union institutions, agencies or~~ bodies upon their request. The existence of a public emergency **or its likely occurrence which would require mitigating measures should be** ~~is~~ determined **or declared** according to the respective procedures in the Member States or of relevant international organisations.	
Recital 58				

Obtained for CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
68	(58) An exceptional need may also arise when a public sector body can demonstrate that the data are necessary either to prevent a public emergency, or to assist recovery from a public emergency, in circumstances that are reasonably proximate to the public emergency in question. Where the exceptional need is not justified by the need to respond to, prevent or assist recovery from a public emergency, the public sector body or the Union institution, agency or body should demonstrate that the lack of timely access to and the use of the data requested prevents it from effectively fulfilling a specific task in the public interest that has been explicitly provided in law. Such exceptional need may also occur in other situations, for example in relation to the timely compilation of official statistics when data is not otherwise available or when the burden on statistical respondents will be considerably reduced. At the same time, the public sector body or the Union institution, agency or body should, outside the case of responding to, preventing or assisting recovery from a public emergency, demonstrate that no alternative means for obtaining the data requested exists and that the data cannot be obtained in a timely manner through the laying down of the necessary data provision obligations in new legislation.	(58) An exceptional need may also ~~arise~~***stem from non-emergency situations*** 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*~~ ***for the fulfilment of*** 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*~~***and defined by national law, such as preventing or assisting the recovery from a public emergency. Such a request can be made only*** when the ~~*burden on statistical respondents will be considerably reduced. At the same time, the*~~ public sector body or the Union institution, agency or body ~~*should, outside the case of responding to, preventing or assisting recovery from a public emergency, demonstrate that no*~~***has identified specific data which is***	(58) An exceptional need may also arise when a public sector body can demonstrate that the data are necessary either to ~~prevent~~ **mitigate** a public emergency, or to assist recovery from a public emergency, in circumstances that are reasonably proximate to the public emergency in question. **In such cases, the public sector body should demonstrate that the data in scope of the request could not be otherwise obtained in a timely and effective manner and under equivalent conditions, for instance by a voluntary provision of data by another company or via consulation of a public database.** Where the exceptional need is not justified by the need to respond to, prevent or assist recovery from a public emergency, the public sector body or the Union institution, agency or body should demonstrate that the lack of timely access to and the use of the data requested prevents it from effectively fulfilling a specific task in the public interest that has been explicitly provided in law. ~~Such exceptional need may also occur in other situations, for example in relation to the timely compilation of official statistics when data is not otherwise available or when the burden on statistical respondents will be considerably reduced.~~ **The specific task should be within the competence of the public sector body or Union**	

Out of Box Content

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 59				
69	(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.	(59) This Regulation should not apply to, nor pre-empt, voluntary arrangements for the exchange of ***non-personal*** data between private and public entities~~. Obligations placed on data holders to provide data that are motivated by needs of 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.	(59) This Regulation should not apply to, nor pre-empt, voluntary arrangements for the exchange of data between private and public entities**, including the provision of data by SMEs, and is without prejudice to Union acts providing for mandatory information requests by public entities to private 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~~**,** **or** 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.	

Obtenu par COREAT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
69a			**(59a) This Regulation complements and is without prejudice to the Union and national laws providing for the access to and enabling to use data for statistical purposes, in particular Regulation (EC) No 223/2009 on European statistics and its related legal acts as well as national legal acts related to official statistics.**	
Recital 60				
70	(60) For the exercise of their tasks in the areas of prevention, investigation, detection or prosecution of criminal and administrative offences, the execution of criminal and administrative penalties, as well as the collection of data for taxation or customs purposes, public sector bodies and Union institutions, agencies and bodies should rely on their powers under sectoral legislation. This Regulation accordingly does not affect instruments for the sharing, access and use of data in those areas.	(60) For the exercise of their tasks in the areas of prevention, investigation, detection or prosecution of criminal and administrative offences, the execution of criminal and administrative penalties, as well as the collection of data for taxation or customs purposes, public sector bodies and Union institutions, agencies and bodies should rely on their powers under sectoral legislation. This Regulation accordingly does not affect instruments for the sharing, access and use of data in those areas.	(60) For the exercise of their tasks in the areas of prevention, investigation, detection or prosecution of criminal and administrative offences, the execution of criminal and administrative penalties, as well as the collection of data for taxation or customs purposes, public sector bodies**, the Commission, the European Central Bank or Union** ~~and Union institutions, agencies and~~ bodies should rely on their powers under sectoral legislation. This Regulation accordingly does not affect instruments for the sharing, access and use of data in those areas.	
Recital 61				

Original for CONSULT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
71	(61) A proportionate, limited and predictable framework at Union level is necessary for the making available of data by data holders, in cases of exceptional needs, to public sector bodies and to Union institution, agencies or bodies both to ensure legal certainty and to minimise the administrative burdens placed on businesses. To this end, data requests by public sector bodies and by Union institution, agencies and bodies to data holders should be transparent and proportionate in terms of their scope of content and their granularity. The purpose of the request and the intended use of the data requested should be specific and clearly explained, while allowing appropriate flexibility for the requesting entity to perform its tasks in the public interest. The request should also respect the legitimate interests of the businesses to whom the request is made. The burden on data holders should be minimised by obliging requesting entities to respect the once-only principle, which prevents the same data from being requested more than once by more than one public sector body or Union institution, agency or body where those data are needed to respond to a public emergency. To ensure transparency, data requests made by public sector bodies and by Union institutions, agencies or bodies should be made public without undue delay by the entity	(61) A proportionate, limited and predictable framework at Union level is necessary for the making available of data by data holders, in cases of exceptional needs, to public sector bodies and to Union institution, agencies or bodies both to ensure legal certainty and to minimise the administrative burdens placed on businesses. To this end, data requests by public sector bodies and by Union institution, agencies and bodies to data holders should be ***based on Union or national law, specific,*** transparent and proportionate in terms of their scope of content and their granularity. The purpose of the request and the intended use of the data requested should be specific and clearly explained, while allowing appropriate flexibility for the requesting entity to perform its tasks in the public interest. The request should also respect the legitimate interests of the businesses to whom the request is made. The burden on data holders should be minimised by obliging requesting entities to respect the once-only principle, which prevents the same data from being requested more than once by more than one public sector body or Union institution, agency or body where those data are needed to respond to a public emergency. To ensure transparency ***and an appropriate coordination***, data requests made by public sector	(61) **In accordance with Article 6(1) and 6(3) of Regulation (EU) 2016/679,** a proportionate, limited and predictable framework at Union level is necessary **when providing for the legal basis** 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 principle of purpose limitation and other principles of data protection law should also apply to situations where the public sector body or EU institution, agency or body shares the data received under this Chapter with third parties to whom they have outsourced any function**. 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	

Original Compromise

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 62				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
72	(62) The objective of the obligation to provide the data is to ensure that public sector bodies and Union institutions, agencies or bodies have the necessary knowledge to respond to, prevent or recover from public emergencies or to maintain the capacity to fulfil specific tasks explicitly provided by law. The data obtained by those entities may be commercially sensitive. Therefore, Directive (EU) 2019/1024 of the European Parliament and of the Council[1] should not apply to data made available under this Regulation and should not be considered as open data available for reuse by third parties. This however should not affect the applicability of Directive (EU) 2019/1024 to the reuse of official statistics for the production of which data obtained pursuant to this Regulation was used, provided the reuse does not include the underlying data. In addition, it should not affect the possibility of sharing the data for conducting research or for the compilation of official statistics, provided the conditions laid down in this Regulation are met. Public sector bodies should also be allowed to exchange data obtained pursuant to this Regulation with other public sector bodies to address the exceptional needs for which the data has been requested. 1. Directive (EU) 2019/1024 of the European	(62) The objective of the obligation to provide the data is to ensure that public sector bodies and Union institutions, agencies or bodies have the necessary knowledge to respond to, prevent or recover from public emergencies or to maintain the capacity to fulfil specific tasks explicitly provided by law. The data obtained by those entities may be commercially sensitive. Therefore, ***Regulation (EU) 2022/868, as well as*** Directive (EU) 2019/1024 of the European Parliament and of the Council[1] should not apply to data made available under this Regulation and should not be considered as open data available for reuse by third parties. This however should not affect the applicability of Directive (EU) 2019/1024 to the reuse of official statistics for the production of which data obtained pursuant to this Regulation was used, provided the reuse does not include the underlying data. In addition, it should not affect the possibility of sharing the data for conducting research or for the compilation of official statistics, provided the conditions laid down in this Regulation are met. ***Where allowed by Union or national law,*** public sector bodies should also be allowed to exchange data obtained pursuant to this Regulation with other public sector bodies to address the exceptional needs for which the data has been requested***, provided***	(62) The objective of the obligation to provide the data is to ensure that public sector bodies**, the Commission, the European Central Bank or Union** ~~and Union institutions, agencies or~~ bodies have the necessary knowledge to respond to, prevent or recover from public emergencies or to maintain the capacity to fulfil specific tasks explicitly provided by law. The data obtained by those entities may be commercially sensitive. Therefore, Directive (EU) 2019/1024 of the European Parliament and of the Council[1] should not apply to data made available under this Regulation and should not be considered as open data available for reuse by third parties. This however should not affect the applicability of Directive (EU) 2019/1024 to the reuse of official statistics for the production of which data obtained pursuant to this Regulation was used, provided the reuse does not include the underlying data. In addition, it should not affect the possibility of sharing the data for conducting research or for the **development, production and dissemination** ~~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	

Observer not CONSULTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 63				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
73	(63) Data holders should have the possibility to either ask for a modification of the request made by a public sector body or Union institution, agency and body or its cancellation in a period of 5 or 15 working days depending on the nature of the exceptional need invoked in the request. In case of requests motivated by a public emergency, justified reason not to make the data available should exist if it can be shown that the request is similar or identical to a previously submitted request for the same purpose by another public sector body or by another Union institution, agency or body. A data holder rejecting the request or seeking its modification should communicate the underlying justification for refusing the request to the public sector body or to the Union institution, agency or body requesting the data. In case the sui generis database rights under Directive 96/6/EC of the European Parliament and of the Council[1] 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. 1. Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ	(63) Data holders should have the possibility to either ask for a modification of the request made by a public sector body or Union institution, agency and body or its cancellation in a period of 5 or 15 working days depending on the nature of the exceptional need invoked in the request. In case of requests motivated by a public emergency, justified reason not to make the data available should exist if it can be shown that the request is similar or identical to a previously submitted request for the same purpose by another public sector body or by another Union institution, agency or body ***or if the data holder is not currently collecting or has not previously collected, obtained or otherwise generated the requested data and does not retain it at the time of the request***. A data holder rejecting the request or seeking its modification should communicate the underlying justification for refusing the request to the public sector body or to the Union institution, agency or body requesting the data. In case the sui generis database rights under Directive ~~96/6/EC~~***96/9/EC*** of the European Parliament and of the Council[1] 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	(63) Data holders should have the possibility to either ask for a modification of the request made by a public sector body**, the Commission, the European Central Bank or Union** ~~or Union institution, agency and~~ body or its cancellation in a period of 5 or 15 working days depending on the nature of the exceptional need invoked in the request. In case of requests motivated by a public emergency, justified reason not to make the data available should exist if it can be shown that the request is similar or identical to a previously submitted request for the same purpose by another public sector body or by another Union institution, agency or body. A data holder rejecting the request or seeking its modification should communicate the underlying justification for refusing the request to the public sector body or to the Union institution, agency or body requesting the data. In case the ***sui generis***~~sui generis~~ database rights under Directive 96/6/EC of the European Parliament and of the Council[1] apply in relation to the requested datasets, data holders should exercise their rights in a way that does not prevent the public sector body**, the Commission, the European Central Bank or Union** ~~and Union institutions, agencies or~~ bodies from obtaining the data, or from sharing it, in accordance with	

Other than CONFIDENTIE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 64				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
74	(64) Where it is strictly necessary to include personal data in the data made available to a public sector body or to a Union institution, agency or body the applicable rules on personal data protection should be complied with and the making available of the data and their subsequent use should and be accompanied by safeguards for the rights and interests of individuals concerned by those data. The body requesting the data should demonstrate the strict necessity and the specific and limited purposes for processing. The data holder should take reasonable efforts to anonymise the data or, where such anonymisation proves impossible, the data holder should apply technological means such as pseudonymisation and aggregation, prior to making the data available.	(64) ~~*Where it is strictly necessary to include personal data in the data made available to a public sector body or to a Union institution, agency or body the applicable rules on personal data protection should be complied with and the making available of the data and their subsequent use should and be accompanied by safeguards for the rights and interests of individuals concerned by those data. The body requesting the data should demonstrate the strict necessity and the specific and limited purposes for processing. The data holder should take reasonable efforts to anonymise the data or, where such anonymisation proves impossible, the data holder should apply technological means such as pseudonymisation and aggregation, prior to making the data available.*~~	(64) ~~Where it is strictly necessary to include personal data in the data made available to a~~**In case of exceptional need related to public emergency, public sector bodies should use non-personal data, including anonymised data, wherever possible. In cases of requests based on an exceptional need not related to** public ~~sector body or to a Union institution, agency or~~**emergency, personal data can be used only if legal provisions in other Union or Member States law allocating to the requesting public sector** body the ~~applicable rules on~~**specific public interest task relevant for requesting** personal data ~~protection should be complied with and the making available of~~**exist . Whenever personal data is requested, the data holder should anonymise** the data and ~~their subsequent use should and be accompanied by safeguards for the rights and interests of individuals concerned by those data.~~**can request compensation for that, pursuant to the rules on the compensation in cases of exceptional need. Where it is strictly necessary to include personal data in the data to be made available to a public sector body or to a Union institution, agency or body or where anonymisation proves impossible,** the body requesting the data should demonstrate the strict necessity and	

Obtenu par Consilium

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 65				
75	(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.	(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. ***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.***	(65) Data made available to public sector bodies**, the Commission, the European Central Bank or Union** ~~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~~**erased** once it is no longer necessary for the purpose stated in the request, unless agreed otherwise, and the data holder should be informed thereof.	
Recital 66				

Obtenu par CONSEIL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
76	(66) When reusing data provided by data holders, public sector bodies and Union institutions, agencies or bodies should respect both existing applicable legislation and contractual obligations to which the data holder is subject. Where the disclosure of trade secrets of the data holder to public sector bodies or to Union institutions, agencies or bodies is strictly necessary to fulfil the purpose for which the data has been requested, confidentiality of such disclosure should be ensured to the data holder.	(66) When reusing data provided by data holders, public sector bodies and Union institutions, agencies or bodies should respect both existing applicable legislation and contractual obligations to which the data holder is subject. Where the disclosure of trade secrets of the data holder to public sector bodies or to Union institutions, agencies or bodies is strictly necessary to fulfil the purpose for which the data has been requested, confidentiality of such disclosure should be ensured ***in advance*** to the data holder ***or the trade secret holder, including as appropriate, by the use of model contractual clauses, technical standards and the application of codes of conduct. In cases where the public sector body or the Union institutions, agency or body or the third parties that received the data to perform the task that have been outsourced to it, fail to implement those measures or undermine the confidentiality of trade secrets, the data holder should be able to suspend the sharing of data identified as trade secrets. Such a decision to suspend the sharing of data might be challenged by the public sector body or the Union institutions, agency or body or the third parties to which data were transmitted and subject to review by the data coordinator of the Member State***.	(66) When reusing data provided by data holders, public sector bodies ~~and Union institutions, agencies or~~ **, the Commission, the European Central Bank or Union** bodies should respect both existing applicable legislation and contractual obligations to which the data holder is subject. Where the disclosure of trade secrets of the data holder to public sector bodies**, the Commission, the European Central Bank or Union** ~~or to Union institutions, agencies or~~ bodies is strictly necessary to fulfil the purpose for which the data has been requested, confidentiality of such disclosure should be ~~ensured to the data holder~~ **guaranteed** .	

Ok for consent

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 67				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
77	(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 ***provided that the request is limited in time and scope, proportionate to the state of the public emergency***. Public emergencies are rare events and not all such emergencies require the use of data held by enterprises. The business activities of the data holders are therefore not likely to be negatively affected as a consequence of the public sector bodies or Union institutions, agencies or bodies having recourse to this Regulation. However, as cases of an exceptional need other than responding to a public emergency might be more frequent, including cases of prevention of or recovery from a public emergency, data holders should in such cases be entitled to a reasonable compensation***. This Regulation*** ~~*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*~~***affect existing Union or national arrangements in which data is shared free of charge, or prevent*** public sector ~~*body or to the*~~***bodies.*** Union ~~*institution, agency or body. The compensation should*~~	(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. **At the same time, the obligation to provide data might constitute a considerable burden for micro and small enterprises. They should therefore be allowed to claim compensation even in the context of public emergency response.** 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~~ **, the Commission, the European Central Bank or Union** 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	

Orientation commune

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 68				

Obtenu par CONTEXTE

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

Orientation for COMPARE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
78a			**(68a) In order to deal with a cross-border public emergency or another exceptional need, data requests may be addressed to data holders in different Member States than the one of the requesting public sector body. In this case, the request should be communicated to the competent authority of the Member State where the data holder is based, in order to let it examine the request against the criteria established in this Regulation. The same would apply to requests made by the Commission, the European Central Bank or Union bodies. The competent authority would be entitled to advise the public sector body or the Commission, the European Central Bank or Union body to cooperate with the competent authority of the data holder's Member State on the need to ensure a minimised administrative burden on the data holder. When the competent authority has justified reservations in relation to compliance of the request with this Regulation, it should return the request to the public sector body or to the Commission, the European Central Bank or Union body which should take those reservations into account before resubmitting the request. Data holders may seek recourse against a decision by the Commission, the**	

Obtenu par CONSILIUM

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

OUT OF CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
79a		***(69a) Switching charges are charges imposed by providers of cloud computing on their customers for the switching process. Typically, those charges are intended to pass on costs, which the source provider may incur because of the switching process, to the customer that wishes to switch. Examples of common switching charges are costs related to the transfer of data from one provider to the other or to an on-premise system ('egress fees') or the costs incurred for specific support actions during the switching process. Unnecessarily high egress fees and other unjustified charges unrelated to actual switching costs, inhibit customers' switching, restrict the free flow of data, have the potential to limit competition and cause lock-in effects for the customers of data processing services, by reducing incentives to choose a different or additional service provider. As a result of the new obligations foreseen in this Regulation, the source provider of data processing services might outsource certain tasks and renumerate third party entities in order to comply with those obligations. The customer should not bare costs arising from the outsourcing of services concluded by the source provider of data processing services during the switching process and such costs should be considered as unjustified.***		

OUT OF CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
79b			**(69a) Interoperability between data processing services is also necessary to facilitate the in-parallel use of multiple data processing services with complementary functionalities. This is important, inter alia, for the successful deployment of 'multi-cloud' strategies, which allow customers to implement future-proof IT strategies and which decrease dependence on individual providers of data processing services.**	
Recital 70				

Obtenu par CONSEIL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
80	(70) Regulation (EU) 2018/1807 of the European Parliament and of the Council encourages service providers to effectively develop and implement self-regulatory codes of conduct covering best practices for, inter alia, facilitating the switching of data processing service providers and the porting of data. Given the limited efficacy of the self-regulatory frameworks developed in response, and the general unavailability of open standards and interfaces, it is necessary to adopt a set of minimum regulatory obligations on providers of data processing services to eliminate contractual, economic and technical barriers to effective switching between data processing services.	(70) Regulation (EU) 2018/1807 of the European Parliament and of the Council encourages ~~service~~ providers ***of data processing services*** to effectively develop and implement self-regulatory codes of conduct covering best practices for, inter alia, facilitating the switching of ***providers of*** data processing service ~~providers~~ and the porting of data. Given the limited ~~efficacy~~***uptake*** of the self-regulatory frameworks developed in response, and the general unavailability of open standards and interfaces, it is necessary to adopt a set of minimum regulatory obligations on providers of data processing services to eliminate contractual, ***commercial, organisational,*** economic and technical barriers***, which are not limited to an impeded speed of data transfer at the customer's exit, which hamper*** ~~to~~ effective switching between data processing services.	(70) Regulation (EU) 2018/1807 of the European Parliament and of the Council encourages service providers to effectively develop and implement self-regulatory codes of conduct covering best practices for, inter alia, facilitating the switching of data processing service providers and the porting of data. Given the limited efficacy of the self-regulatory frameworks developed in response, and the general unavailability of open standards and interfaces, it is necessary to adopt a set of minimum regulatory obligations on providers of data processing services to eliminate contractual, economic and technical barriers to effective switching between data processing services.	
Recital 71				

Obtained for CONSEIL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(71) Data processing services should cover services that allow on-demand and broad remote access to a scalable and elastic pool of shareable and distributed computing resources. Those computing resources include resources such as networks, servers or other virtual or physical infrastructure, operating systems, software, including software development tools, storage, applications and services. The capability of the customer of the data processing service to unilaterally self-provision computing capabilities, such as server time or network storage, without any human interaction by the service provider could be described as on-demand administration. The term 'broad remote access' is used to describe that the computing capabilities are provided over the network and accessed through mechanisms promoting the use of heterogeneous thin or thick client platforms (from web browsers to mobile devices and workstations). The term 'scalable' refers to computing resources that are flexibly allocated by the data processing service provider, irrespective of the geographical location of the resources, in order to handle fluctuations in demand. The term 'elastic pool' is used to describe those computing resources that are provisioned and released according to demand in order to rapidly	(71) Data processing services should cover services that allow ~~on-demand and broad remote~~***ubiquitous and on-demand network*** access to a ***configurable,*** scalable and elastic ***shared*** pool of ~~*shareable and*~~ distributed computing resources. Those computing resources include resources such as networks, servers or other virtual or physical infrastructure~~, operating systems~~, software, including software development tools, storage, applications and services. The ***deployment models of data processing services should include private and public cloud. Such services and deployment models should be the same as defined by international standards. The*** capability of the customer of the data processing service to unilaterally self-provision computing capabilities, such as server time or network storage, without any human interaction by the ~~service~~ provider ***of data processing services*** could be described as ~~*on-demand administration*~~***requiring minimal management effort and as entailing minimal interaction between provider and customer***. The term '~~*broad remote access*~~***ubiquitous***' is used to describe that the computing capabilities are provided over the network and accessed through mechanisms promoting the use of	(71) Data processing services should cover services that allow on-demand and broad remote access to a scalable and elastic pool of shareable and distributed computing resources. Those computing resources include resources such as networks, servers or other virtual or physical infrastructure, operating systems, software, including software development tools, storage, applications and services. The capability of the customer of the data processing service to unilaterally self-provision computing capabilities, such as server time or network storage, without any human interaction by the service provider could be described as on-demand administration. The term 'broad remote access' is used to describe that the computing capabilities are provided over the network and accessed through mechanisms promoting the use of heterogeneous thin or thick client platforms (from web browsers to mobile devices and workstations). The term 'scalable' refers to computing resources that are flexibly allocated by the data processing service provider, irrespective of the geographical location of the resources, in order to handle fluctuations in demand. The term 'elastic pool' is used to describe those computing resources that are provisioned and released according to demand in order to rapidly	

Outcome of COUNCIL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
81a		***(71a) Data processing services fall into one or more of the following three data processing service delivery models: IaaS (infrastructure-as-a-service), PaaS (platform-as-a-service) and SaaS (software-as-a-service). Those service delivery models represent a specific, pre-packaged combination of IT resources offered by a provider of data processing service. Three base cloud delivery models are further completed by emerging variations, each comprised of a distinct combination of IT resources, such as Storage-as-a-Service and Database-as-a-Service. For the purpose of this Regulation, data processing services can be categorised in more granular and a non-exhaustive multiplicity of different 'equivalent services', meaning sets of data processing services that share the same primary objective and main functionalities as well as the same type of data processing models, that are not related to the service operational characteristics. In an example two databases might appear to share the same primary objective, but after considering their data processing model, distribution model and targeted use-case, such databases should fall into a more granular subcategory of equivalent services. Equivalent services may have different and competing characteristics such as***		

OUT OF CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
81b		***(71b) Extracting the data that belongs to the customer from the source provider of data processing services remains one of the challenges that impedes restoration of the service functionalities in the destination provider infrastructure. In order to properly plan the exit strategy, avoid unnecessary and burdensome tasks and to ensure that the customer does not lose any of its data as a consequence of the switching process, the source provider of data processing services should include in the contract the mandatory information on the scope of the data that can be exported by the customer once he or she decides to switch to a different service, other provider of data processing services or move to on-premise ICT infrastructure. The scope of exportable data should include at a minimum input and output data, including relevant data formats, data structures and metadata directly or indirectly generated or co-generated by the customer's use of the data processing service, and that can be clearly assigned to the customer. The exportable data should exclude any data processing service, or third party's assets or data protected by intellectual property rights or constituting a trade secret or confidential information, such as data related to the integrity and security of the service provided by***		

OJ'EN'LANGUE CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
81c			**(71a) The generic concept 'data processing service' by definition covers a very large number of services, with a very broad range of different purposes, functionalities and technical set-ups. As commonly understood by providers and users and in line with broadly used standards, data processing services fall into one or more of the following three data processing service delivery models: IaaS (infrastructure-as-a-service), PaaS (platform-as-a-service) and SaaS (software-as-a-service). These service delivery models indicate the level and type of computing resources (hardware and/or software) offered by the provider of a given service, relative to the computing resources that remain in control of the user of that service. In a much more detailed categorisation, data processing services can be categorised in a non-exhaustive multiplicity of different 'service types', meaning sets of data processing services that share the same primary objective and main functionalities. Examples of such service types could be customer relationship management systems, office suites or cloud-based software suites tailored to a specific sector, such as cloud-based banking software. Typically, services falling under the same service type also share the same**	

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 72				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(72) This Regulation aims to facilitate switching between data processing services, which encompasses all conditions and actions that are necessary for a customer to terminate a contractual agreement of a data processing service, to conclude one or multiple new contracts with different providers of data processing services, to port all its digital assets, including data, to the concerned other providers and to continue to use them in the new environment while benefitting from functional equivalence. Digital assets refer to elements in digital format for which the customer has the right of use, including data, applications, virtual machines and other manifestations of virtualisation technologies, such as containers. Functional equivalence means the maintenance of a minimum level of functionality of a service after switching, and should be deemed technically feasible whenever both the originating and the destination data processing services cover (in part or in whole) the same service type. Meta-data, generated by the customer's use of a service, should also be portable pursuant to this Regulation's provisions on switching.	(72) This Regulation aims to facilitate switching between data processing services, which encompasses all ***relevant*** conditions and actions that are necessary for a customer to terminate a contractual agreement of a data processing service, to conclude one or multiple new contracts with different providers of data processing services, to port all its digital assets, including data, to the concerned other providers and to continue to use them in the new environment ~~*while benefitting*~~***and benefit*** from functional equivalence. ***It should be noted that the data processing services in scope are those where the data processing service, as defined under this Regulation, forms part of the core business of a provider.*** Digital assets refer to elements in digital format for which the customer has the right of use, including data, applications, virtual machines and other manifestations of virtualisation technologies, such as containers. ***Switching is a customer-driven operation consisting in three main steps, namely (i) data extraction, i.e. downloading data from a source provider's ecosystem; (ii) transformation, when the data is structured in a way that does not match the schema of the target location; and (iii) the uploading of the data in a new destination location. In a specific situation***	(72) This Regulation aims to facilitate switching between data processing services, which encompasses all conditions and actions that are necessary for a customer to terminate a contractual agreement of a data processing service, to conclude one or multiple new contracts with different providers of data processing services, to port all its digital assets, including data, to the concerned other providers and to continue to use them in the new environment while benefitting from functional equivalence. Digital assets refer to elements in digital format for which the customer has the **sustained** right of use, **independently from the contractual relationship of the data processing service it intends to switch away from,** including data, applications, virtual machines and other manifestations of virtualisation technologies, such as containers. Functional equivalence means the maintenance of a minimum level of functionality of a service after switching, and should be deemed technically feasible whenever both the originating and the destination data processing services cover (in part or in whole) the same service type. ~~Meta-data~~**Services can only be expected to facilitate functional equivalence for the functionalities that both the originating and destination services offer. This Regulation**	

OUTDOOR COMPLIANCE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
82a			**(72a) An extension - on the ground of technical unfeasibility to the switching obligations proposed in this Regulation – may only be invoked in exceptional cases. The burden of proof in this regard should be fully on the provider of the concerned data processing service.**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
82b			**(72b) After a transition period of three years after this Regulation enters into force, all 'switching charges' should be abolished. Switching charges are charges imposed by data processing providers to their customers for the switching process. Typically, those charges are intended to pass on costs, which the originating provider may incur because of the switching process, to the customer that wishes to switch. Examples of common switching charges are costs related to the transit of data from one provider to the other or to an on-premise system ('data egress costs') or the costs incurred for specific support actions during the switching process, for example in terms of additional human resources provided by the originating data processing service provider either in-house or outsourced. Nothing in the Data Act prevents a customer from remunerating third party entities for support in the migration process or parties from agreeing on contracts for data processing services of a fixed duration, including termination charges to cover the early termination of said contracts, in accordance with national and Union law.**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
82c		***(72a) An ambitious and innovation inspiring regulatory approach to interoperability is needed, in order to overcome vendor lock-in, which undermines competition and the development of new services. Interoperability between equivalent data processing services involves multiple interfaces and layers of infrastructure and software and is rarely confined to a binary test of being achievable or not. Instead, the building of such interoperability is subject to a cost-benefit analysis which is necessary to establish whether it is worthwhile to pursue reasonably predictable results. The ISO/IEC 19941:2017 is an important reference for the achievement of the objectives of this Regulation, as it contains technical considerations clarifying the complexity of such a process.***		
Recital 73				
83	(73) Where providers of data processing services are in turn customers of data processing services provided by a third party provider, they will benefit from more effective switching themselves, while simultaneously invariably bound by this Regulation's obligations for what pertains to their own service offerings.	(73) Where providers of data processing services are in turn customers of data processing services provided by a third party provider, they will benefit from more effective switching themselves, while simultaneously invariably bound by this Regulation's obligations for what pertains to their own service offerings.	(73) Where providers of data processing services are in turn customers of data processing services provided by a third party provider, they will benefit from more effective switching themselves, while simultaneously invariably bound by this Regulation's obligations for what pertains to their own service offerings.	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 74				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(74) Data processing service providers should be required to offer all assistance and support that is required to make the switching process successful and effective without requiring those data processing service providers to develop new categories of services within or on the basis of the IT-infrastructure of different data processing service providers to guarantee functional equivalence in an environment other than their own systems. Nevertheless, service providers are required to offer all assistance and support that is required to make the switching process effective. Existing rights relating to the termination of contracts, including those introduced by Regulation (EU) 2016/679 and Directive (EU) 2019/770 of the European Parliament and of the Council[1] should not be affected. 1. Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1).	(74) ***Providers of*** data processing ~~*service providers*~~***services*** should be required ***not to impose and to remove all relevant obstacles and*** to offer all assistance and support ***within their capacity and proportional to their respective obligations*** that is required to make the switching process successful***,*** ***safe*** and effective***. This Regulation does not require providers of*** ~~*without requiring those*~~ data processing ~~*service providers*~~***services*** to develop new categories of ***data processing*** services***, including*** within or on the basis of the IT-infrastructure of different data processing service providers to guarantee functional equivalence in an environment other than their own systems. ~~*Nevertheless, service providers are required to offer all assistance and*~~***A source provider of data processing services has no access and insights into the environment of the destination provider of data processing services and should not be obliged to rebuilt customer's service, according to functional equivalence requirements, within the destination provider's infrastructure. Instead, the source provider should take all reasonable measures within their power to facilitate the process of achieving functional equivalence through providing capabilities, adequate information, documentation,***	(74) Data processing service providers should be required to offer all assistance and support that is required to make the switching process **to a service of a different data processing service provider** successful**, effective and secure including in cooperation with the data processing service provider of the destination service.** ~~and effective without requiring those~~ Data processing service providers **should also be required to remove existing obstacles and not impose new for customers wishing to switch, also, to an on-premise system. Obstacles relate to, inter alia, hurdles of pre-commercial, commercial, technical, contractual and organisational nature. Throughout the switching process, a high level of security should be maintained. This means that the data processing service provider of the original**~~to develop new categories of services within or on the basis of the IT-infrastructure of different~~ data processing service ~~providers to guarantee functional equivalence in an environment other than their own systems.~~ ~~Nevertheless,~~**should extend the level of security to which it committed for the service to all technical modalities deployed in the related switching process (such as network connections or physical devices). This Regulation does not require data processing** service	

OEIL 68 - COMPLETE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 75				
85	(75) To facilitate switching between data processing services, providers of data processing services should consider the use of implementation and/or compliance tools, notably those published by the Commission in the form of a Rulebook relating to cloud services. In particular, standard contractual clauses are beneficial to increase confidence in data processing services, to create a more balanced relationship between users and service providers and to improve legal certainty on the conditions that apply for switching to other data processing services. In this light, users and service providers should consider the use of standard contractual clauses developed by relevant bodies or expert groups established under Union law.	(75) To facilitate switching between data processing services, providers of data processing services should consider the use of implementation and/or compliance tools, notably those published by the Commission in the form of a Rulebook relating to cloud services. In particular, standard contractual clauses are beneficial to increase confidence in data processing services, to create a more balanced relationship between users and ~~*service providers*~~***providers of data processing services*** and to improve legal certainty on the conditions that apply for switching to other data processing services. In this light, users and ~~*service providers*~~***providers of data processing services*** should consider the use of standard contractual clauses developed by relevant bodies or expert groups established under Union law.	(75) To facilitate **interoperability and** switching between data processing services, providers of data processing services should consider the use of implementation and/or compliance tools, notably those published by the Commission in the form of a Rulebook relating to cloud services. In particular, standard contractual clauses are beneficial to increase confidence in data processing services, to create a more balanced relationship between users and service providers and to improve legal certainty on the conditions that apply for switching to other data processing services.- In this light, users and service providers should consider the use of standard contractual clauses **or other self-regulatory compliance tools provided that they fully reflect the requirements of Chapter VI and relevant provisions of Chapter VIII of this Regulation,** developed by relevant bodies or expert groups established under Union law.	

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
85a		***(75a) In order to facilitate switching between cloud computing services, all parties involved, including providers of both source and destination data processing services, should collaborate in good faith with a view to enabling an effective switching process and the secure and timely transfer of necessary data in a commonly used, machine-readable format, and by means of an open standard data portability interface, and avoiding service disruptions.***		
85b		***(75b) Data processing services which concern services that are substantially altered to facilitate a specific customer's need (custom built), or data processing services that operate on a trial basis or only supply a testing and evaluation service for business product offerings, should be exempted from some of the obligations applicable to data processing service switching.***		

OUT OF CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
85c		*(75c) Without prejudice to their right to take action before a court, customers should have access to certified dispute settlement bodies to settle disputes related to switching between providers of data processing services.*		
85d			**(75a) In line with its minimum requirements to allow for switching between providers, this Regulation also aims to improve interoperability for in-parallel use of data processing services. This relates to situations where customers do not terminate a contractual agreement to switch to a different provider of data processing services, but where multiple services of different providers are used in-parallel, in an interoperable manner, to benefit from the complementary functionalities of the different services in the customer's system set-up.**	
Recital 76				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(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	(76) Open interoperability ***and portability*** specifications and standards developed in accordance with paragraph 3 and 4 of Annex II ~~of~~***to*** Regulation (EU) 1025/2021 ***of the European Parliament and of the Council[1]*** 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 ***and portability*** at the PaaS ~~*(platform-as-a-service)*~~ and SaaS ~~*(software-as-a-service)*~~ levels, the Commission should be able, ***where technically feasible,*** on the basis of this Regulation and in accordance with Regulation (EU) No 1025/2012, to request European standardisation bodies to develop such standards~~, particularly for service types~~ ***for equivalent services*** where such standards do not yet exist. In addition to this, the Commission will encourage parties in the market to develop relevant open interoperability ***and portability*** specifications. ***Following consultation with stakeholders and taking into account relevant international and European standards and self-regulatory initiatives,*** the Commission, by way	(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 **are expected to** enable a seamless multi-vendor cloud environment, which is a key requirement for open innovation in the European data economy. As **the market take-up of identified standards under the cloud standardisation coordination (CSC) initiative concluded in 2016 has been limited, the Commission also needs to rely on parties in the market to develop relevant open interoperability specifications to keep up with the fast pace of technological development in this industry. Such open interoperability specifications can then be adopted by the Commission in the form of common specifications. In addition, where** 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	

Council mandate

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 77				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
87	(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	(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	(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	

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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 78				
88	(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.	(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.	(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 **governmental** access to non-personal data **by third country authorities**, 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.	
Recital 79				

Obtenu par COMETE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(79) Standardisation and semantic interoperability should play a key role to provide technical solutions to ensure interoperability. In order to facilitate the conformity with the requirements for interoperability, it is necessary to provide for a presumption of conformity for interoperability solutions that meet harmonised standards or parts thereof in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council. The Commission should adopt common specifications in areas where no harmonised standards exist or where they are insufficient in order to further enhance interoperability for the common European data spaces, application programming interfaces, cloud switching as well as smart contracts. Additionally, common specifications in the different sectors could remain to be adopted, in accordance with Union or national sectoral law, based on the specific needs of those sectors. Reusable data structures and models (in form of core vocabularies), ontologies, metadata application profile, reference data in the form of core vocabulary, taxonomies, code lists, authority tables, thesauri should also be part of the technical specifications for semantic interoperability. Furthermore, the Commission should be enabled to mandate the development of	(79) Standardisation*, semantic and syntactic* ~~*and semantic*~~ interoperability should play a key role to provide technical solutions to ~~*ensure*~~*enable portability and* interoperability. In order to facilitate the conformity with the requirements for interoperability *within the common European data spaces which are purpose- or sector-specific or cross-sectoral, interoperable frameworks of common standards and practices to share or jointly process data for, inter alia, development of new products and services, scientific research or civil society initiatives should be developed. This Regulation lays down certain essential requirements for interoperability. Participants within the data spaces, which are entities facilitating or engaging in data sharing within the common European data spaces, including data holders, should comply with those requirements. Compliance with those rules can occur by adhering to the requirements laid down in this Regulation, or by adapting to already existing standards via a presumption of conformity. In order to facilitate the conformity with the requirements for interoperability*, it is necessary to provide for a presumption of conformity for interoperability solutions that meet harmonised standards or parts thereof in	(79) Standardisation and semantic interoperability should play a key role to provide technical solutions to ensure **interoperabilitywithin the common European data spaces, which are purpose- or sector-specific or cross-sectoral interoperable frameworks of common standards and practices to share or jointly process data for, inter alia, development of new products and services, scientific research or civil society initiatives. This Regulation lays down certain essential requirements for** interoperability. **Operators within the data spaces, which are entities facilitating or engaging in data sharing within the common European data spaces, including data holders, should comply with these requirements in as far as elements under their control are concerned. Compliance with these rules can be ensured by adhering to the essential requirements laid down in this Regulation, or presumed by complying with standards or common specifications.** 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	

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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
89a		***(79a) In order to further enhance coordination in the enforcement of this Regulation, the European Data Innovation Board should foster the mutual exchange of information amongst competent authorities as well as advise and assist the Commission in matters falling under this Regulation that fall within the competences of Article 30 of Regulation (EU) 2022/868. A subgroup for stakeholder involvement referred to in Article 29(2), point (c), of that Regulation should participate in the consultation on a continual basis.***		
Recital 80				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
90	(80) To promote the interoperability of smart contracts in data sharing applications, it is necessary to lay down essential requirements for smart contracts for professionals who create smart contracts for others or integrate such smart contracts in applications that support the implementation of agreements for sharing data. In order to facilitate the conformity of such smart contracts with those essential requirements, it is necessary to provide for a presumption of conformity for smart contracts that meet harmonised standards or parts thereof in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council.	(80) To promote the interoperability of smart contracts in data sharing applications, it ~~is~~***may be*** necessary to lay down essential requirements for smart contracts for professionals who create smart contracts for others or integrate such smart contracts in applications that support the implementation of agreements for sharing data. ~~*In order to facilitate the conformity of such*~~***For example,*** smart contracts ~~*with those essential requirements, it is necessary to provide for a presumption of conformity for*~~***should guarantee that conditions for data sharing are respected. Specific training programmes on*** 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*~~***for businesses, in particular SMEs, should be promoted***.	(80) To promote the interoperability of ~~smart contracts in~~**tools for the automated execution of** data sharing ~~applications~~**agreements** , it is necessary to lay down essential requirements for smart contracts ~~for~~ **which** 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. **The notion of "smart contract" in this Regulation is technologically neutral. Smart contracts can be connected to any kind of electronic ledger, be it a centrally operated ledger or a ledger operated in distributed manner. The obligation should apply only to the vendors of smart contracts, but not to the in-house development of smart contracts exclusively for internal use . The essential requirement to ensure that smart contracts can be interrupted and terminated implies mutual consent by the parties to the data sharing**	

Obtenu par CONSENT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
90a			**(80a) To demonstrate fulfilment of the essential requirements in this Regulation, 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, should perform a conformity assessment and issue an EU declaration of conformity. To avoid administrative burdens to the deployment of smart contracts and to ensure that vendors of smart contracts can scale up across the Union, the conformity assessment of a smart contract should be based on a self-assessment by the vendor of that 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. This conformity assessment should be subject to the general principles set out in Regulation (EC) No 765/2008 and Regulation (EC) No 768/2008.**	

Obtenu par CONSEIL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
90b			**(80b) Besides the obligation on professional developers of smart contracts to comply with essential requirements, it is also necessary to oblige those operators within data spaces that facilitate data sharing within and across the common European data spaces to support interoperability of tools for data sharing including smart contracts. Such operators shall, therefore, select only tools for the automated execution of data sharing agreements that comply with technical specifications so that all operators within data spaces can share data amongst one another.**	
Recital 81				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
91	(81) In order to ensure the efficient implementation of this Regulation, Member States should designate one or more competent authorities. If a Member State designates more than one competent authority, it should also designate a coordinating competent authority. Competent authorities should cooperate with each other. The authorities responsible for the supervision of compliance with data protection and competent authorities designated under sectoral legislation should have the responsibility for application of this Regulation in their areas of competence.	(81) In order to ensure the efficient implementation of this Regulation, Member States should designate one or more competent authorities ***and assign to them sufficient resources***. If a Member State designates more than one competent authority, it should also designate a coordinating competent authority. Competent authorities should cooperate with each other ***effectively and in a timely manner, in line with the principles of good administration and mutual assistance to ensure the effective implementation and enforcement of this Regulation***. The authorities responsible for the supervision of compliance with data protection and competent authorities designated under sectoral legislation should have the responsibility for application of this Regulation in their areas of competence. ***Competent authorities should cooperate upon request of the authorities within the European Data Protection Board and the European Data Innovation Board.***	(81) In order to ensure the efficient implementation of this Regulation, Member States should designate one or more competent authorities. If a Member State designates more than one competent authority, it should also designate a coordinating competent authority. Competent authorities should cooperate with each other. **Through the exercise of their powers of investigation in accordance with applicable national procedures, competent authorities should be able to search for and obtain information , in particular in relation to an entity's activity under their competence, and including in the context of joint investigations, with due regard to the fact that oversight and enforcement measures concerning an entity under the competence of another Member State should be adopted by the competent authority of that other Member State, where relevant in accordance with the procedures relating to cross-border cooperation. Competent authorities should assist each other in a timely manner, in particular when a competent authority in a Member State holds relevant information for an investigation carried out by the competent authorities in other Member States, or is able to gather such information to which**	

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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
91a		***(81a) In order to further enhance coordination in the enforcement of this Regulation, the European Data Innovation Board should foster the mutual exchange of information amongst competent authorities as well as advise and assist the Commission in matters falling under this Regulation with a focus on the matters falling under the competences of the Board in line with Article 30 of Regulation (EU) No 2022/868.***		
Recital 82				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
92	(82) In order to enforce their rights under this Regulation, natural and legal persons should be entitled to seek redress for the infringements of their rights under this Regulation by lodging complaints with competent authorities. Those authorities should be obliged to cooperate to ensure the complaint is appropriately handled and resolved. In order to make use of the consumer protection cooperation network mechanism and to enable representative actions, this Regulation amends the Annexes to the Regulation (EU) 2017/2394 of the European Parliament and of the Council[1] and Directive (EU) 2020/1828 of the European Parliament and of the Council[2]. _____ 1. Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1). 2. Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).	(82) In order to enforce their rights under this Regulation, natural and legal persons should be entitled to seek redress for the infringements of their rights under this Regulation by lodging complaints with ***the data coordinator, other relevant*** competent authorities ***and before the Courts***. Those authorities should be obliged to cooperate to ensure the complaint is appropriately handled and resolved ***swiftly and effectively***. In order to make use of the consumer protection cooperation network mechanism and to enable representative actions, this Regulation amends the Annexes to the Regulation (EU) 2017/2394 of the European Parliament and of the Council[1] and Directive (EU) 2020/1828 of the European Parliament and of the Council[2]. _____ 1. ***[1]*** Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1). 2. ***[2]*** Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).	(82) In order to enforce their rights under this Regulation, natural and legal persons should be entitled to seek redress for the infringements of their rights under this Regulation by lodging complaints with competent authorities. Those authorities should be obliged to cooperate to ensure the complaint is appropriately handled and resolved. In order to make use of the consumer protection cooperation network mechanism and to enable representative actions, this Regulation amends the Annexes to the Regulation (EU) 2017/2394 of the European Parliament and of the Council[1] and Directive (EU) 2020/1828 of the European Parliament and of the Council[2]. _____ 1. Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1). 2. Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).	
Recital 83				

Obsolete pour CONTENT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
93	(83) Member States competent authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by penalties. When doing so, they should take into account the nature, gravity, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, as well as the economic capacity of the infringer. They should take into account whether the infringer systematically or recurrently fails to comply with its obligations stemming from this Regulation. In order to help enterprises to draft and negotiate contracts, the Commission should develop and recommend non-mandatory model contractual terms for business-to-business data sharing contracts, where necessary taking into account the conditions in specific sectors and the existing practices with voluntary data sharing mechanisms. These model contractual terms should be primarily a practical tool to help in particular smaller enterprises to conclude a contract. When used widely and integrally, these model contractual terms should also have the beneficial effect of influencing the design of contracts about access to and use of data and therefore lead more broadly towards fairer contractual relations when accessing and sharing data.	(83) Member States competent authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by penalties. When doing so, they should take into account the nature, gravity, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, as well as the economic capacity of the infringer. They should take into account whether the infringer systematically or recurrently fails to comply with its obligations stemming from this Regulation. In order to help enterprises to draft and negotiate contracts, the Commission should develop and recommend non-mandatory model contractual terms for business-to-business data sharing contracts, where necessary taking into account the conditions in specific sectors and the existing practices with voluntary data sharing mechanisms. These model contractual terms should be primarily a practical tool to help in particular smaller enterprises to conclude a contract. When used widely and integrally, these model contractual terms should also have the beneficial effect of influencing the design of contracts about access to and use of data and therefore lead more broadly towards fairer contractual relations when accessing and sharing data.	(83) Member States competent authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by penalties**, which could be inter alia in the form of financial penalties, warnings, reprimands or orders to bring business practices in compliance with the obligations under this Regulation. Where appropriate, Member States' competent authorities should make use of interim measures to limit the effects of an alleged violation while the investigation of such violation is on-going**. When doing so, they should take into account the nature, gravity, recurrence and duration of the infringement in view of the public interest at stake, the scope and kind of activities carried out, as well as the economic capacity of the infringer. They should take into account whether the infringer systematically or recurrently fails to comply with its obligations stemming from this Regulation. In order to ~~help enterprises to draft and negotiate contracts, the Commission should develop and recommend non-mandatory model contractual terms for business-to-business data sharing contracts, where necessary taking into account the conditions in specific sectors and the existing practices with voluntary data sharing mechanisms. These model contractual terms should be~~	

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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
93a			**(83a) In order to help enterprises to draft and negotiate contracts, the Commission should develop and recommend non-mandatory model contractual terms for business-to-business data sharing contracts, where necessary taking into account the conditions in specific sectors and the existing practices with voluntary data sharing mechanisms. These model contractual terms should be primarily a practical tool to help in particular smaller enterprises to conclude a contract. When used widely and integrally, these model contractual terms should also have the beneficial effect of influencing the design of contracts about access to and use of data and therefore lead more broadly towards fairer contractual relations when accessing and sharing data.**	
Recital 84				

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
94	(84) In order to eliminate the risk that holders of data in databases obtained or generated by means of physical components, such as sensors, of a connected product and a related service claim the sui generis right under Article 7 of Directive 96/9/EC where such databases do not qualify for the sui generis right, and in so doing hinder the effective exercise of the right of users to access and use data and the right to share data with third parties under this Regulation, this Regulation should clarify that the sui generis right does not apply to such databases as the requirements for protection would not be fulfilled.	(84) In order to eliminate the risk that holders of ~~*data in databases*~~***databases containing data*** obtained or generated by means of physical components, such as sensors, of a connected product and a related service***, namely machine-generated data,*** claim the sui generis right under Article 7 of Directive 96/9/EC***, this Regulation clarifies that*** ~~*where such databases do not qualify for*~~ the sui generis right~~*, and in so doing hinder the effective exercise of the right of users to access and use data and the right to share data with third parties under this Regulation, this Regulation should clarify that*~~ ***does not apply to such databases as the requirements for protection of a substantial investment in either the obtaining, verification or presentation of the data as provided for in Article 7(1) of Directive 96/9/EC would not be fulfilled. That does not affect the possible application of*** the sui generis right ~~*does not apply to such*~~***under Article 7 of Directive 96/9/EC to*** databases ~~*as*~~***containing data falling outside the scope of this Regulation provided*** the requirements for protection ~~*would not be*~~***in accordance with Article 7(1) of that Directive are*** fulfilled.	(84) In order to eliminate the risk that holders of data in databases obtained or generated by means of physical components, such as sensors, of a connected product and a related service claim the ***sui generis***~~sui generis~~ right under Article 7 of Directive 96/9/EC ~~where such databases do not qualify for the sui generis right~~, and in so doing hinder the effective exercise of the right of users to access and use data and the right to share data with third parties under this Regulation~~, this Regulation~~ **it** should ~~clarify~~**be clarified** that the ***sui generis***~~sui generis~~ right does not apply ~~to such databases as the requirements for protection would not be fulfilled~~**in the situations covered by this Regulation** .	
Recital 85				

OK FOR CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
95	(85) In order to take account of technical aspects of data processing services, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of supplementing this Regulation to introduce a monitoring mechanism on switching charges imposed by data processing service providers on the market, to further specify the essential requirements for operators of data spaces and data processing service providers on interoperability and to publish the reference of open interoperability specifications and European standards for the interoperability of data processing services. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016[1]. 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. _____	(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~~***participants*** of data spaces ***that offer data or data services to other participants,*** and data processing service providers on interoperability and to publish the reference of open interoperability specifications and European standards for the interoperability of data processing services. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016[1]. 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	(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~~ **within** data spaces and data processing service providers on interoperability and to publish the reference of open interoperability specifications and ~~European~~ standards for the interoperability of data processing services. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016[1]. 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. _____	

Orientation commune

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 86				
96	(86) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of supplementing this Regulation to adopt common specifications to ensure the interoperability of common European data spaces and data sharing, the switching between data processing services, the interoperability of smart contracts as well as for technical means, such as application programming interfaces, for enabling transmission of data between parties including continuous or real-time and for core vocabularies of semantic interoperability, and to adopt common specifications for smart contracts. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[1]. _____ 1. Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).	(86) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of supplementing this Regulation to adopt common specifications to ensure the interoperability of common European data spaces and data sharing, the switching between data processing services, the interoperability of smart contracts as well as for technical means, such as application programming interfaces, for enabling transmission of data between parties including continuous or real-time and for core vocabularies of semantic interoperability, and to adopt common specifications for smart contracts. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[1]. _____ 1. Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).	(86) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of supplementing this Regulation to adopt common specifications to ensure the interoperability of common European data spaces and data sharing, the switching between data processing services, the interoperability of smart contracts as well as for technical means, such as application programming interfaces, for enabling transmission of data between parties including continuous or real-time and for core vocabularies of semantic interoperability, and to adopt common specifications for smart contracts. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[1]. _____ 1. Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).	
Recital 87				

Obtenido por CONSEIL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
97	(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 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.	(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 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.	(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 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 **or cybersecurity requirements**. This Regulation also should be without prejudice to more specific rules in the context of the development of	

Orientation Only

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 88				
98	(88) This Regulation should not affect the application of the rules of competition, and in particular Articles 101 and 102 of the Treaty. The measures provided for in this Regulation should not be used to restrict competition in a manner contrary to the Treaty.	(88) This Regulation should not affect the application of the rules of competition, and in particular Articles 101 and 102 of the Treaty. The measures provided for in this Regulation should not be used to restrict competition in a manner contrary to the Treaty.	(88) This Regulation should not affect the application of the rules of competition, and in particular Articles 101 and 102 of the Treaty. The measures provided for in this Regulation should not be used to restrict competition in a manner contrary to the Treaty.	
Recital 89				

Obtenu par CONTEXE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
99	(89) In order to allow the economic actors to adapt to the new rules laid out in this Regulation, they should apply from a year after entry into force of the Regulation.	(89) In order to allow the economic actors to adapt to the new rules laid out in this Regulation, ***and make the necessary technical arrangements,*** they should apply from ~~*a year*~~ ***18 months*** after entry into force of the Regulation. ***Only where the data holder and the manufacturer are the same entity the obligations related to the provision of related services provided for the connected products already placed in the market within the last five years from the entry into force of this Regulation should apply retroactively. Such obligations should be fulfilled, only when the provider of related services is able to remotely deploy mechanisms to ensure the fulfilment of the requirements pursuant to Article 1 and only when the deployment of such mechanisms would not place a disproportionate burden on the manufacturer.***	(89) In order to allow the economic actors to adapt to the new rules laid out in this Regulation, they should apply from ~~a year~~ **two years** after entry into force of the Regulation.	
Recital 90				
100	(90) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered a joint opinion on [XX XX 2022].	(90) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered a joint opinion on [XX XX 2022]~~.~~.	(90) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered a joint opinion on ~~[XX XX 2022]~~ **4 May 2022**.	
Formula				

Offentligt CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
101	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	
CHAPTER I				
102	CHAPTER I GENERAL PROVISIONS	CHAPTER I GENERAL PROVISIONS	CHAPTER I GENERAL PROVISIONS	
Article 1				
103	Article 1 Subject matter and scope	Article 1 Subject matter and scope	Article 1 Subject matter and scope	
Article 1(1)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
104	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:	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*~~:	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**, the Commission, the European Central Bank or Union** ~~or Union institutions, agencies or~~ bodies, where there is an exceptional need, for the performance of a task carried out in the public interest~~:~~**, on facilitating switching between data processing services, on introducing safeguards against unlawful third party access to non-personal data, and on providing for the development of interoperability standards for data to be accessed, transferred and used.**	
104a		***(a) the design of connected products to allow access to data generated by a connected product or generated during the provision of related services to the user of that product;***		

Obtenu par COREPER

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
104b		***(b) data holders making available data they accessed from a connected product or generated during the provision of a related service to data subjects, users or to data recipients, at the request of the user or data subject;***		
104c		***(c) fair contractual terms for data sharing agreements;***		
104d		***(d) the making available of data to public sector bodies or Union institutions, agencies or bodies, where there is an exceptional need in the public interest;***		
104e		***(e) facilitating switching between data processing services;***		
104f		***(f) introducing safeguards against unlawful international governmental access to non-personal data; and***		

Obenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
104g		*(g) providing for the development of interoperability standards and common specifications for data to be transferred and used.*		
104h		*1a. This Regulation covers personal and non-personal data, including the following types of data or in the following contexts:*	**1a. This Regulation covers personal and non-personal data, including the following types of data or in the following contexts:**	
104i		*(a) Chapter II applies to accessible data obtained, collected or otherwise generated by connected products or generated during the provision of related services;*	**(a) Chapter II applies to data concerning the performance, use and environment of products and related services.**	
104j		*(b) Chapter III applies to any private sector data subject to statutory data sharing obligations;*	**(b) Chapter III applies to any private sector data that is subject to statutory data sharing obligations.**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
104k		*(c) Chapter IV applies to any private sector data accessed and used on the basis of contractual agreements between businesses;*	**(c) Chapter IV applies to any private sector data accessed and used on the basis of contractual agreements between businesses.**	
104l		*(d) Chapter V applies to any private sector non-personal data;*	**(d) Chapter V applies to any private sector data with a focus on non-personal data.**	
104m		*(e) Chapter VI applies to any data and services processed by data processing services;*	**(e) Chapter VI applies to any data processed by data processing services.**	
104n		*(f) Chapter VII applies to any non-personal data held in the Union by providers of data processing services.*	**(f) Chapter VII applies to any non-personal data held in the Union by providers of data processing services.**	
Article 1(2)				
105	2. This Regulation applies to:	2. This Regulation applies to:	2. This Regulation applies to:	
Article 1(2), point (a)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
106	(a) manufacturers of products and suppliers of related services placed on the market in the Union and the users of such products or services;	(a) manufacturers of ***connected*** products and ~~*suppliers*~~***providers*** of related services placed on the market in the Union ~~*and the*~~***irrespective of their place of establishment and*** users of such ***connected*** products or ***related*** services ***or in the case of personal data, identified or identifiable natural persons the data obtained, collected, or generated by the use, relates to***;	(a) manufacturers of products and suppliers of related services placed on the market in the Union**, irrespective of their place of establishment, and the use of data generated in relation to the use** ~~and the users~~ of such products or **related** services **in the Union**;	
Article 1(2), point (b)				
107	(b) data holders that make data available to data recipients in the Union;	(b) ***users of connected products or related services in the Union and*** data holders***, irrespective of their place of establishment,*** that make data available to data recipients in the Union ***or in the case of personal data, identified or identifiable natural persons the data obtained, collected, or generated by the use, relates to***;	(b) data holders**, irrespective of their place of establishment,** that make data available to data recipients in the Union;	
Article 1(2), point (c)				
108	(c) data recipients in the Union to whom data are made available;	(c) data recipients in the Union to whom data are made available;	(c) data recipients**, irrespective of their place of establishment,** ~~in the Union~~ to whom data are made available;	
Article 1(2), point (d)				

Obtenu à CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
109	(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;	(d) public sector bodies ***of a Member State*** and Union institutions, agencies or bodies that request data holders to make data available where there is an exceptional need to that data for the performance of a ***specific*** task carried out in the public interest and the data holders that provide those data in response to such request;	(d) public sector bodies**, the Commission, the European Central Bank or Union** ~~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;	
Article 1(2), point (e)				
110	(e) providers of data processing services offering such services to customers in the Union.	(e) providers of data processing services***, irrespective of their place of establishment,*** offering such services to customers in the Union.	(e) providers of data processing services**, irrespective of their place of establishment, providing** ~~offering~~ such services to customers in the Union~~.~~**;**	
110a			**(ea) operators within data spaces and vendors of applications using smart contracts and persons whose trade, business or profession involves the deployment of smart contracts for others in the context of agreements to make data available.**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
110b			**2a. Where this Regulation refers to products or related services, such reference shall also be understood to include virtual assistants insofar as they interact with a product or related service.**	
Article 1(3)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
111	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.	3. Union law on the protection of personal data, privacy and confidentiality of communications and integrity of terminal equipment shall apply to ***any*** personal data processed in connection with the rights and obligations laid down in this Regulation. ***The obtaining, collection, or generation of personal data through the use of a product or related service shall require a legal basis pursuant to applicable data protection law.*** This Regulation ~~*shall not affect the applicability of*~~ ***does not constitute a legal basis for the processing of personal data. This Regulation is without prejudice to*** Union law on the protection of personal data ***and privacy***, in particular Regulation (EU) 2016/679***, Regulation (EU) 2018/1725,*** and Directive 2002/58/EC, including the ***rules concerning the*** powers and competences of supervisory authorities. ***In the event of a conflict between this Regulation and Union law on the protection of personal data or privacy or national law adopted in accordance with such Union law, the relevant Union or national law on the protection of personal data or privacy shall prevail.*** Insofar as the rights laid down in Chapter II of this Regulation are concerned, and where users are the data subjects of personal data***,*** subject to the rights and obligations under that Chapter, the provisions of this Regulation	3. Union law **and national 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~~ **is without prejudice to, in particular Regulations (EU) 2016/679 and (EU) 2018/1725 and Directives 2002/58/EC and (EU) 2016/680, including with regard to** 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~~ **and to the protection of rights of** data subjects**. Insofar as data subjects are concerned,** ~~of personal data subject to~~ the rights ~~and obligations under that~~**laid down in** Chapter~~, the provisions~~ **II** of this Regulation~~-~~ shall complement the right of data portability under Article 20 of Regulation (EU) 2016/679 **and shall not adversely affect data protection rights of others**.	

Observer Copy

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 1(4)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
112	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[1] 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. 1. 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).	4. This Regulation shall not affect Union and national legal acts providing for the sharing, access and use of data for the purpose of the prevention, investigation, detection or prosecution of criminal ***or administrative*** offences or the execution of criminal ***or administrative*** penalties, including Regulation (EU) 2021/784 of the European Parliament and of the Council[1] and the [e-evidence proposals [COM(2018) 225 and 226] once adopted, and international cooperation in that area. This Regulation shall not affect the collection, sharing, access to and use of data under Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing and Regulation (EU) 2015/847 of the European Parliament and of the Council on information accompanying the transfer of funds. This Regulation shall not affect the competences of the Member States regarding activities concerning public security, defence, national security, customs and tax administration and the ***public*** health and ***the*** safety of citizens in accordance with Union law. ***This Regulation shall not apply to data collected or generated in the context of defence-related activities or by defence products or services***	4. **This Regulation does not apply to, nor pre-empt, voluntary arrangements for the exchange of data between private and public entities.** 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[1] 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 **does not apply to activities or data in areas that fall outside the scope of Union law and in any event** shall not affect the competences of the Member States regarding activities **or data** concerning public security, defence~~,~~ **or** national security, **regardless of the type of entity carrying out the**	

Other per CAT text

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
112a			**4a. This Regulation adds generally applicable obligations on cloud switching going beyond the self-regulatory approach of Regulation (EU) 2018/1807 on the free flow of non-personal data in the European Union.**	
112b			**4b. This Regulation does not affect Directive 93/13/EEC on Unfair Terms in Consumer Contracts.**	
112c			**4c. This Regulation is without prejudice to Union and national legal acts providing for the protection of intellectual property, including 2001/29/EC, 2004/48/EC, and (EU) 2019/790 of the European Parliament and of the Council.**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
112d		***4a. This Regulation complements and does not affect the applicability of Union law aiming to promote the interests of consumers and to ensure a high level of consumer protection, to protect their health, safety and economic interests, including Directives 2005/29/EC, 2011/83/EU and 93/13/EEC.***		
112e		***4b. Data holders shall not be obliged to provide access to data to any natural or legal person, entity or body outside the Union, unless requested by the user or otherwise provided by the Union law or national law implementing the Union law.***		
112f		***4c. The obligations set out in the Regulation shall not preclude voluntary lawful reciprocal non personal data sharing between users, data holders and data recipients, agreed in contracts.***		
Article 2				

Ou nu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
113	Article 2 Definitions	Article 2 Definitions	Article 2 Definitions	
Article 2, first paragraph				
114	For the purposes of this Regulation, the following definitions apply:	For the purposes of this Regulation, the following definitions apply:	For the purposes of this Regulation, the following definitions apply:	
Article 2, first paragraph, point (1)				
115	(1) 'data' means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording;	(1) 'data' means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording; ***content, or data obtained, generated or collected by the connected product or transmitted to it on behalf of others for the purpose of storage or processing, shall not be covered by this Regulation.***	(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;	
115a		***(1a) 'personal data' means personal data as defined in Article 4, point (1), of Regulation (EU) 2016/679;***	**(1a) 'personal data' means personal data as defined in Article 4, point (1), of Regulation (EU) 2016/679;**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
115b		***(1b) 'non-personal data' means data other than personal data;***	**(1b) 'non-personal data' means data other than personal data;**	
115c		***(1c) 'consent' means consent as defined in Article 4, point (11), of Regulation (EU) 2016/679;***	**(1c) 'consent' means consent as defined in Article 4, point (11), of Regulation (EU) 2016/679;**	
115d		***(1d) 'data subject' means data subject as defined in Article 4, point (1), of Regulation (EU) 2016/679;***	**(1d) 'data subject' means data subject as referred to in Article 4, point (1), of Regulation (EU) 2016/679;**	
115e			**(1e) 'readily available data' means data generated by the use of a product or related service that the data holder obtains or can obtain without disproportionate effort, going beyond a simple operation;**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
115f		***(1e) 'data user' means a natural or legal person who has lawful access to certain personal or non-personal data and has a right to use that data for commercial or non-commercial purposes;***		
115g			**(1f) 'data generated by the use of a product or a related service' means data recorded intentionally by the user or as a by-product of the user's action, as well as data generated or recorded during the period of lawful use among others in standby mode or while the product is switched off. This shall not include the results of processing that substantially modifies the data, data recorded on the use of the product to access software applications other than related services and data generated on the recording, transmission, displaying or playing of content as well as such content;**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
115h			**(1g) 'making available on the market' means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;**	
115i			**(1h) 'placing on the market' means the first making available of a product on the Union market;**	
Article 2, first paragraph, point (2)				
116	(2) 'product' means a tangible, movable item, including where incorporated in an immovable item, that obtains, generates or collects, data concerning its use or environment, and that is able to communicate data via a publicly available electronic communications service and whose primary function is not the storing and processing of data;	(2) '***connected*** product' means ~~*a tangible, movable item, including where incorporated in an immovable*~~ ***an*** item, that obtains, generates or collects, ***accessible*** data concerning its use or environment, and that is able to communicate data via ***an electronic communications service, a physical, connection or on-device access*** ~~*a publicly available electronic communications service*~~ and whose primary function is not the storing, ***processing or transmission*** ~~*and processing*~~ of data ***on behalf of others***;	(2) 'product' means a tangible~~,~~ ~~movable item, including where incorporated in an immovable item,~~ **item** that obtains, generates or collects~~,~~ data concerning its use or environment, and that is able to communicate data **directly or indirectly** via a publicly available electronic communications service ~~and whose primary function is not the storing and processing of data~~**within the meaning of Article 2(4) of Directive (EU) 2018/1972**;	
Article 2, first paragraph, point (3)				

Ouverture CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
117	(3) 'related service' means a digital service, including software, which is incorporated in or inter-connected with a product in such a way that its absence would prevent the product from performing one of its functions;	(3) 'related service' means a digital service, including software ***, but excluding electronic communication services which is*** ~~, which is incorporated in or~~ inter-connected with a product in such a way that its absence would prevent the product from performing one ***or more*** of its functions***, and which involves accessing data from the connected product by the provider or the service***;	(3) 'related service' means a digital service, **other than an electronic communications service,** including software **and its updates**, which is ~~incorporated in or~~ **at the time of the purchase, rent or lease agreement** inter-connected with a product in such a way that its absence would prevent the product from performing one of its functions;	
Article 2, first paragraph, point (4)				
118	(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;	(4) 'virtual assistants' means software that can process demands, tasks or questions including ***those*** based on audio, written input, gestures or motions, and based on those demands, tasks or questions provides access ~~their own and third party~~***to other*** services or control ~~their own and third party devices~~***the functions of products***;	(4) 'virtual assistants' means **a** software that can process demands, tasks or questions including **those** based on audio, written input, gestures or motions, and **that,** based on those demands, tasks or questions**,** provides access ~~their own and third party~~ **to other** services or ~~control their own and third party~~ **controls connected physical** devices;	
118a		***(4a) 'consumer' means any natural person who, is acting for purposes which are outside that person's trade, business, craft or profession;***		
Article 2, first paragraph, point (5)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
119	(5) 'user' means a natural or legal person that owns, rents or leases a product or receives a services;	(5) 'user' means a natural or legal person that owns ***a connected product or receives a related service or to whom the owner of a connected product has transferred, on the basis of a rental or leasing agreement, temporary rights to use a connected*** ~~, rents or leases a~~ product or ~~receives a~~***receive related*** services ***and, where the connected product or related service involves the processing of personal data, the data subject***;	(5) 'user' means a natural or legal person**, including a data subject,** that owns, rents or leases a product or receives a ~~services~~**related service**;	
Article 2, first paragraph, point (6)				
120	(6) 'data holder' means a legal or natural person who has the right or obligation, in accordance with this Regulation, applicable Union law or national legislation implementing Union law, or in the case of non-personal data and through control of the technical design of the product and related services, the ability, to make available certain data;	(6) 'data holder' means a legal or natural person**,** who has ***accessed data from the connected product or has generated data during the provision of a related service and who has the contractually agreed right to use such data, and the obligation, in accordance with this Regulation, applicable Union law or national legislation implementing Union law*** ~~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 ***to the user or a data recipient***;	(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~~ **to make available certain data or** **- can enable access to the data** through control of the technical design **or means of access, in the case of non-personal** ~~of the product and related services, the ability, to make available certain~~ data;	

OUVERT AU CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 2, first paragraph, point (7)				
121	(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;	(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 ***connected*** product or related service, to whom ~~the~~***a*** data holder makes ***available data accessed from a connected product or generated during the provision of a related service*** ~~data available, including a third party~~ following ~~a~~***an explicit*** request by the user ~~to the data holder~~ or in accordance with a legal obligation under Union law or national legislation implementing Union law;	(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 **a** 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;	
Article 2, first paragraph, point (8)				
122	(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;	(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;	(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;	
Article 2, first paragraph, point (9)				

Obtenu par COMETT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
123	(9) 'public sector body' means national, regional or local authorities of the Member States and bodies governed by public law of the Member States, or associations formed by one or more such authorities or one or more such bodies;	(9) 'public sector body' means national, regional or local authorities of the Member States and bodies governed by public law of the Member States, or associations formed by one or more such authorities or one or more such bodies;	(9) 'public sector body' means national, regional or local authorities of the Member States and bodies governed by public law of the Member States, or associations formed by one or more such authorities or one or more such bodies;	
Article 2, first paragraph, point (10)				
124	(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);	(10) 'public emergency' means an exceptional situation***, limited in time such as public health emergencies, emergencies resulting from natural disasters, as well as human-induced major disasters, including major cybersecurity incidents,*** negatively affecting the population of the Union, a Member State or part of it, with a risk of serious and lasting repercussions on living conditions or economic stability, ***financial stability,*** or the substantial ***and immediate*** degradation of economic assets in the Union or the relevant Member State(s) ***and which is determined and officially declared according to the relevant procedures under Union or national law***;	(10) 'public emergency' means an exceptional situation **such as public health emergencies, emergencies resulting from natural disasters, as well as human-induced major disasters, such as major cybersecurity incidents,** negatively affecting the population of the Union, a Member State or part of it, with a risk of serious and lasting repercussions on living conditions or economic stability, or the substantial degradation of economic assets in the Union or the relevant Member State(s) **and the existence or likely occurrence of which is determined or officially declared according to the respective procedures under Union or national law**;	

OUT OF CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
124a		***(10a) 'official statistics' means 'European statistics' within the meaning of Regulation (EC) No 223/2009[1];*** *1. Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).*	**(10a) 'official statistics' means European statistics according to Regulation 223/2009 and statistics considered official according to national legislation;**	
Article 2, first paragraph, point (11)				
125	(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;	(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;	(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;	
Article 2, first paragraph, point (12)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
126	(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;	(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;	(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;	
126a			**(12a) 'customer' means a natural or legal person that has entered into a contractual relationship with a provider of data processing services with the objective of using one or more data processing services;**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
126b			**(12b) 'digital assets' mean elements in digital format for which the customer has the right of use, independently from the contractual relationship of the data processing service it intends to switch away from, including data, applications, virtual machines and other manifestations of virtualisation technologies, such as containers;**	
126c			**(12c) 'on-premise' means a digital data processing infrastructure operated by the customer itself to serve its own needs;**	
Article 2, first paragraph, point (13)				
127	(13) 'service type' means a set of data processing services that share the same primary objective and basic data processing service model;	(13) 'service type' means a set of data processing services that share the same primary objective and basic data processing service model;	(13) 'service type' means a set of data processing services that share the same primary objective and ~~basic data processing service model~~**main functionalities**;	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
127a			**(13a) 'data egress charges' mean charges imposed by a data processing provider on a customer for the transfer of data to the systems of another provider or to on-premise infrastructures;**	
127b			**(13b) 'switching charges' mean charges, other than data egress charges and early termination penalties, imposed by a data processing provider on a customer for the switching to the systems of another provider, as mandated by this Regulation;**	
Article 2, first paragraph, point (14)				
128	(14) 'functional equivalence' means the maintenance of a minimum level of functionality in the environment of a new data processing service after the switching process, to such an extent that, in response to an input action by the user on core elements of the service, the destination service will deliver the same output at the same performance and with the same level of security, operational resilience and quality of service as the originating service at the time of termination of the contract;	(14) 'functional equivalence' means the maintenance of a minimum level of functionality in the environment of a new data processing service after the switching process, to such an extent that, in response to an input action by the user on core elements of the service, the destination service will deliver the same output at the same performance and with the same level of security, operational resilience and quality of service as the originating service at the time of termination of the contract;	(14) 'functional equivalence' means the maintenance of a minimum level of functionality in the environment of a new data processing service after the switching process, to such an extent that, in response to an input action by the user on core elements of the service, the destination service will deliver the same output at the same performance and with the same level of security, operational resilience and quality of service as the originating service at the time of termination of the contract;	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 2, first paragraph, point (15)				
129	(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;	(15) 'open ~~*interoperability specifications' mean ICT*~~***standards', mean*** technical specifications, ~~*as defined in Regulation (EU) No 1025/2012,*~~ 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***;	(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;	
129a			**(15a) 'operators within data spaces' mean legal persons that facilitate or engage in data sharing within and across the common European data spaces;**	
Article 2, first paragraph, point (16)				
130	(16) 'smart contract' means a computer program stored in an electronic ledger system wherein the outcome of the execution of the program is recorded on the electronic ledger;	(16) ~~*'smart contract' means a computer program stored in an electronic ledger system wherein the outcome of the execution of the program is recorded on the electronic ledger;*~~	(16) 'smart contract' means a computer program stored in an electronic ledger system wherein the outcome of the execution of the program is recorded on the electronic ledger;	
Article 2, first paragraph, point (17)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
131	(17) 'electronic ledger' means an electronic ledger within the meaning of Article 3, point (53), of Regulation (EU) No 910/2014;	(17) ~~*'electronic ledger' means an electronic ledger within the meaning of Article 3, point (53), of Regulation (EU) No 910/2014;*~~	(17) 'electronic ledger' ~~-~~means ~~an~~**a sequence of** electronic ~~ledger within the meaning of Article 3, point (53), of Regulation (EU) No 910/2014~~**data records which ensures their integrity and the accuracy of their chronological ordering**;	
Article 2, first paragraph, point (18)				
132	(18) 'common specifications' means a document, other than a standard, containing technical solutions providing a means to comply with certain requirements and obligations established under this Regulation;	(18) 'common specifications' means a document, other than a standard, containing technical solutions providing a means to comply with certain requirements and obligations established under this Regulation;	(18) 'common specifications' means a document, other than a standard, containing technical solutions providing a means to comply with certain requirements and obligations established under this Regulation;	
Article 2, first paragraph, point (19)				
133	(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 serviced, including*** data spaces or communication networks, systems, products, applications or components to ***process,*** exchange and use data in order to perform their functions ***in an accurate, effective and consistent manner***;	(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;	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
133a		***(19a) 'portability' means the ability of a customer to move imported or directly generated data that can be clearly assigned to the customer between their own system and cloud services, and between cloud services of different cloud service providers;***		
Article 2, first paragraph, point (20)				
134	(20) 'harmonised standard' means a harmonised standard as defined in Article 2, point (1)(c), of Regulation (EU) No 1025/2012.	(20) 'harmonised standard' means a harmonised standard as defined in Article 2, point (1)(c), of Regulation (EU) No 1025/2012.**;**	(20) 'harmonised standard' means a harmonised standard as defined in Article 2, point (1)(c), of Regulation (EU) No 1025/2012.	
134a		***(20a) 'common European data spaces' means purpose- or sector-specific or cross-sectoral interoperable frameworks of common standards and practices to share or jointly process data for, inter alia, development of new products and services, scientific research or civil society initiatives;***		

Observateur CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
134b		***(20b) 'metadata' means a structured description of the contents of the use of data facilitating the discovery or use of that data;***		
134c		***(20c) 'data intermediation service' means data intermediation service as referred to in Article 2, point (8), of Regulation (EU) 2022/868;***		
134d		***(20d) 'data altruism' means the voluntary sharing of data as defined in Article 2(16)of Regulation (EU) 2022/868;***		
134e		***(20e) 'trade secret' means information which meets all the requirements of Article 2, point (1) of Directive (EU) 2016/943;***		
134f		***(20f) 'trade secret holder' should be understood as per Article 2, point (2) of Directive (EU) 2016/943.***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
134g			**(20a) 'Union bodies' means the Union bodies, offices and agencies set up in acts adopted on the basis of the Treaties.**	
CHAPTER II				
135	CHAPTER II BUSINESS TO CONSUMER AND BUSINESS TO BUSINESS DATA SHARING	CHAPTER II BUSINESS TO CONSUMER AND BUSINESS TO BUSINESS DATA SHARING	CHAPTER II ~~BUSINESS TO CONSUMER AND BUSINESS TO BUSINESS DATA SHARING~~ **RIGHT OF USERS TO USE DATA OF CONNECTED PRODUCTS AND RELATED SERVICES**	
Article 3				
136	Article 3 Obligation to make data generated by the use of products or related services accessible	Article 3 Obligation to make data ***accessed from connected products or*** generated ~~*by the use of products or*~~ ***during the provision of*** related services accessible ***to the user.***	Article 3 Obligation to make data generated by the use of products or related services accessible **to the user**	
Article 3(1)				

Obtenu par CONTEXTE

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

OUT OF COMMITTEE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
137a		***1a. Data holders may reject a request for data if access to the data is prohibited by Union or national law.***		
Article 3(2)				
138	2. Before concluding a contract for the purchase, rent or lease of a product or a related service, at least the following information shall be provided to the user, in a clear and comprehensible format:	2. Before concluding a contract for the purchase~~, rent or lease of a product or a related service,~~ ***of a connected product, the manufacturer, or where relevant the vendor, shall provide*** at least the following information ~~*shall be provided*~~ to the user, ***in a simple manner and*** in a clear and comprehensible format:	2. Before concluding a contract for the purchase, rent or lease of a product or a related service, **the data holder shall** at least **provide** the following information ~~shall be provided~~ to the user, in a clear and comprehensible format:	
Article 3(2), point (a)				
139	(a) the nature and volume of the data likely to be generated by the use of the product or related service;	(a) the ~~*nature and*~~ ***type of data, format, sampling frequency, the in-device storage capacity, and the estimated*** volume of ~~*the data likely to be generated by the use of the product or related service*~~***accessible data which the connected product is capable of collecting, generating or otherwise obtaining***;	(a) ~~the nature and~~ **type of data and the estimated** volume of the data likely to be generated by the use of the product or related service;	
Article 3(2), point (b)				

Outil eu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
140	(b) whether the data is likely to be generated continuously and in real-time;	(b) whether the ~~*data is likely to be generated*~~***connected product is capable of generating data*** continuously and in real-time;	(b) whether the data is ~~likely to be~~ generated continuously and in real-time;	
140a		***(ba) whether data will be stored on-device or on a remote server, including the period during which it shall be stored;***		
Article 3(2), point (c)				
141	(c) how the user may access those data;	(c) how the user may access ***free of charge, and, where relevant, retrieve and request the deletion of*** those data;	(c) how the user may access those data **including in view of the data holder's data storage and retention policy**;	
141a		***(ca) The technical means to access the data, such as Software Development Kits or application programming interfaces, and their terms of use and quality of service shall be sufficiently described to enable the development of such means of access;***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
141b		***(cb) Whether a data holder is the holder of trade secrets or other intellectual property rights contained in the data likely to be accessed from the connected product or generated during the provision of related service, and, if not, the identity of the trade secret holder, such as its trading name and the geographical address at which it is established.***		
Article 3(2), point (d)				
142	(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;	(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;*~~	(d) whether the ~~manufacturer supplying the product or the service provider providing the related service~~ **data holder** intends to use the data itself or allow a third party to use the data and~~, if so,~~ **in either case** the purposes for which those data will be used;	
Article 3(2), point (e)				
143	(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;	(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;*~~	(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;	
Article 3(2), point (f)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
144	(f) the means of communication which enable the user to contact the data holder quickly and communicate with that data holder efficiently;	(f) ~~*the means of communication which enable the user to contact the data holder quickly and communicate with that data holder efficiently;*~~	(f) the means of communication which ~~enable the user~~ **make it possible** to contact the data holder quickly and communicate with that data holder efficiently;	
Article 3(2), point (g)				
145	(g) how the user may request that the data are shared with a third-party;	(g) ~~*how the user may request that the data are shared with a third-party;*~~	(g) how the user may request that the data are shared with a third-party;	
Article 3(2), point (h)				
146	(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.	(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.*~~	(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.	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
146a		***2a. Related services shall be provided in such a manner that data generated during their provision, which represent the digitalisation of user actions or events, are free of charge to the user and, by default, easily, securely and, where relevant and technically feasible, directly accessible to the user in a structured, commonly used and machine-readable format, along with the relevant metadata necessary to interpret and use it.***		
146b		***2b. Before the user concludes an agreement with a provider of related services, which involves the provider's access to data from the connected product during the provision of such services, in line with Article 4(6) of this Regulation, the agreement shall address:***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
146c		***(a) the nature, volume, collection frequency and format of data accessed by the provider of related services from the connected product and, where relevant, the modalities for the user to access or retrieve such data, including the period during which it shall be stored;***		
146d		***(b) the nature and estimated volume of data generated during the provision of the related service, as well as modalities for the user to access or retrieve such data;***		
146e		***(c) granular, meaningful consent options for data processing, within the meaning of Article 4(11) of Regulation (EU) 2016/679;***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
146f		***(d) whether the service provider providing the related service, in its role as data holder, intends to use the data accessed from the connected product itself or allow one or more third parties to use the data for purposes agreed upon with the user;***		
146g		***(e) the trading name of the provider of the related service, its legal entity identifier, contact details and the geographical address at which it is established; and where applicable, other data processing parties;***		
146h		***(f) where relevant, the means of communication which enable the user to contact the provider quickly and communicate with its staff efficiently;***		
146i		***(g) how the user may request that the data are shared with a data recipient, and, where relevant, withdraw the consent for data sharing;***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
146j		***(h) Whether a data holder is the holder of trade secrets or other intellectual property rights contained in the data likely to be accessed from the connected product or generated during the provision of related service, and, if not, the identity of the trade secret holder, such as its trading name, legal identity identifier and the geographical address at which it is established;***		
146k		***(i) how the user is able to manage permissions to allow the use of data, where possible with granular permission options, and including the option to withdraw permissions to a data holder for the use of the user's data, to the third parties nominated by a data holder, or to exclude geographical addresses;***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
146l		***(j) the duration of the agreement between the user and the provider of the related service, as well as the modalities to terminate such an agreement prematurely; as well as the minimal period for which the related service is guaranteed to receive security and functionality updates;***		
146m		***(k) the user's right to lodge a complaint alleging a violation of the provisions of this Chapter with the data coordinator referred to in Article 31.***		
146n		***Article 3a Data Literacy***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
146o		***1. When implementing this Regulation, the Union and the Member States shall promote measures and tools for the development of data literacy, across sectors and taking into account the different needs of groups of users, consumers and businesses, including through education and training, skilling and reskilling programmes and while ensuring a proper gender and age balance, in view of allowing a fair data society and market.***		
Article 4				
147	Article 4 The right of users to access and use data generated by the use of products or related services	Article 4 The ~~right~~***rights and obligations*** of users ***and data holders*** to access, ***use and make available data accessed from connected products or*** ~~and use data~~ generated ~~by the use of products or~~***during the provision of*** related services	Article 4 The right of users to access and use data generated by the use of products or related services	
Article 4(1)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
148	1. Where data cannot be directly accessed by the user from the product, the data holder shall make available to the user the data generated by its use of a product or related service without undue delay, free of charge and, where applicable, continuously and in real-time. This shall be done on the basis of a simple request through electronic means where technically feasible.	1. Where data cannot be directly accessed by the user from the product, ~~*the data holder*~~***data holders*** shall make available to the user ~~*the data generated by its use of a*~~ ***any data accessed by them from a connected*** product or ***generated during the provision of a*** related service without undue delay, ***easily, securely, in a comprehensive, structured, commonly used and machine-readable format,*** free of charge and, where ~~*applicable*~~***relevant and technically feasible***, continuously and in real-time***, including making any personal data derived from such data available to a data subject pursuant to Article 15 of Regulation (EU) 2016/679, accompanied with relevant metadata. Data shall be provided in the form in which they have been accessed from the connected product or generated by the related service, with only the minimal adaptations necessary to make them useable by a third party, including related metadata necessary to interpret and use the data. Information derived or inferred from this data by means of complex proprietary algorithms, in particular where it combines the output of multiple sensors in the connected product,*** ~~*This*~~ shall ***not be considered within the scope of a data holder's obligation to share data with users***	1. Where data cannot be directly accessed by the user from the product **or related service**, the data holder shall make available to the user the data generated by ~~its~~ **the** use of a product or related service **that are readily available to the data holder, as well as the metadata that is necessary to interpret and use that data,** without undue delay, free of charge**, easily, securely, in a structured, commonly used and machine-readable format** and, where applicable**, of the same quality as is available to the data holder**, continuously and in real-time. This shall be done on the basis of a simple request through electronic means where technically feasible.	

Orange Blue CONFIDENTIAL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
148a		***1a. Data holders may reject a request for data if access to the data is prohibited by Union or national law;***		
148b		***1b. Users and data holders may agree contractually on restricting or prohibiting the access, use of or further sharing of data, which could undermine security of the product as laid down by law. Each party may refer the case to the data coordinator, to assess whether such restriction is justified, in particular in light of serious adverse effect on the health, safety or security of human beings. Sectoral competent authorities will be given the possibility to provide technical expertise in this context.***		

Obtenu de CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
148c		***1c. Where in compliance with all the provisions established within this Regulation, and the terms and conditions agreed in the contractual agreement between the parties, a data holder shall not be liable towards the user for any damage arising from data made available, provided that the data holder has processed the data lawfully in accordance with Union and national law and has complied with relevant cybersecurity requirements and where applicable, with the technical and organisational measures to preserve the confidentiality of the shared data. When complying with this Regulation, a user, who lawfully makes available data accessed from the connected product or received following a request under Article 4 paragraph 1 to a third party, or a data recipient, who is lawfully sharing data made available to it by a data holder, to a third party, shall not be liable for damage arising from sharing such data, provided that the user or data recipient have processed the data in accordance with Union and national laws and have complied with relevant cybersecurity requirement and where applicable, with the technical and organisational measures to preserve the confidentiality of the shared data.***		

OJ AMD CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
148d		***1d. Data holders shall not make the exercise of the rights or choices of users unduly difficult, including by offering choices to the users in a non-neutral manner or by subverting or impair the autonomy, decision-making or free choices of the user via the structure, design, function or manner of operation of a user interface or a part thereof.***		
148e			**1a. Any agreement between the data holder and the user shall not be binding when it narrows the access rights pursuant to paragraph 1.**	
Article 4(2)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
149	2. The data holder shall not require the user to provide any information beyond what is necessary to verify the quality as a user pursuant to paragraph 1. The data holder shall not keep any information on the user's access to the data requested beyond what is necessary for the sound execution of the user's access request and for the security and the maintenance of the data infrastructure.	2. ~~*The data holder*~~***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. ~~*The data holder*~~***Data holders*** shall not keep any information on the user's access to the data requested beyond what is necessary for the sound execution of the user's access request and for the security and the maintenance of the data infrastructure. ***Where identification is legally requires, data holders shall enable the possibility for users to identify and authenticate through the European Digital Identity Wallets, pursuant to Regulation (EU) No 914/2014.***	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**, in particular log data,** on the user's access to the data requested beyond what is necessary for the sound execution of the **individual** user's access request and for the security and the maintenance of the data infrastructure.	
149a			**2a. The data holder shall not coerce, deceive or manipulate in any way and at any time the user or the data subject where the data subject is not the user, by subverting or impairing the autonomy, decision-making or choices of the user or the data subject, including by means of a digital interface with the user or the data subject, to hinder the exercise of the user's rights under this Article.**	

Obtenu par COMMET

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 4(3)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
150	3. Trade secrets shall only be disclosed provided that all specific necessary measures are taken to preserve the confidentiality of trade secrets in particular with respect to third parties. The data holder and the user can agree measures to preserve the confidentiality of the shared data, in particular in relation to third parties.	3. Trade secrets shall ***be preserved and shall*** only be disclosed provided that all specific necessary measures ***pursuant to Directive (EU) 2016/943*** are taken ***in advance*** to preserve ~~*the*~~***their*** confidentiality ~~*of trade secrets*~~**,** in particular with respect to third parties. The data holder ~~*and the user*~~***or the trade secret holder if it is not simultaneously the data holder, shall identify the data which are protected as trade secrets and*** can agree ***with the user any technical and organisational*** measures to preserve the confidentiality of the shared data, in particular in relation to third parties***, as well as on liability provisions. Such technical and organisational measures include, as appropriate, model contractual terms, confidential agreements, strict access protocols, technical standards and the application of codes of conduct. In cases where the user fails to implement those measures or undermines the confidentiality of trade secrets, the data holder shall be able to suspend the sharing of data identified as trade secrets. In such cases, the data holder must immediately notify the data coordinator of the Member State in which the data holder is established, pursuant to Article 31 of this Regulation, that it has suspended the sharing of data and identify which measures have not***	3. Trade secrets shall only be disclosed provided that ~~all specific~~ **the data holder and the user take all** necessary measures **prior to the disclosure** ~~are taken~~ to preserve the confidentiality of trade secrets in particular with respect to third parties. **Where the data holder can show that such measures do not suffice,** the data holder and the user **shall agree on necessary additional** ~~can agree~~ measures**, such as technical and organisational measures,** to preserve the confidentiality of the shared data, in particular in relation to third parties. **The data holder shall identify the data which are protected as trade secrets, including in the relevant metadata.**	

Orbit Out of context

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
150a			**3a. In exceptional circumstances, when the data holder can demonstrate that it is highly likely to suffer serious damage from the disclosure of trade secrets , despite the technical and organisational measures taken by the user, the data holder may refuse the request for access. Such demonstration shall be duly substantiated, provided in writing and without undue delay. When the data holder refuses to share data pursuant to this Article, it shall notify the national competent authority designated in accordance with Article 31.**	
Article 4(4)				
151	4. The user shall not use the data obtained pursuant to a request referred to in paragraph 1 to develop a product that competes with the product from which the data originate.	4. The user shall not use ~~*the*~~ data obtained pursuant to a request referred to in paragraph 1 to develop a product that ***directly*** competes with the product**,** from which the data originate ***and shall not use such data to derive insights about the economic situation, assets and production methods of the manufacturer***.	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**, nor share the data with another third party for that purpose**.	

Obtenu par CONSEIL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
151a		***4a. The user shall not deploy coercive means or abuse gaps in the technical infrastructure of a data holder designed to protect the data in order to obtain access to data.***	**4a. The user 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.**	
151b		***4b. Users have the right to either directly share, through a data holder or through providers of data intermediation services as set in the Regulation (EU) 2022/868, non-personal data accessed from the connected product or obtained pursuant to a request referred in paragraph 1 to any data recipient for commercial or non-commercial purposes. The data sharing between a user and a data recipient shall be carried out by means of contractual agreements; the provisions of Chapter IV on fair, reasonable and non-discriminatory terms shall apply mutatis mutandis to the contractual agreements between users and data recipients.***		
Article 4(5)				

OUT OF CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
152	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 generated by the use of a product or related service shall only be made available by the data holder to the user where ***all conditions and rules provided by the applicable data protection law are complied with, in particular where*** there is a valid legal basis under Article ~~*6(1)*~~***6*** of Regulation (EU) 2016/679 and, where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 ***and Article 5(3) of Directive 2002/58/EC*** are fulfilled.	5. Where the user is not **the data subject whose personal data is requested** ~~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)~~**6** of Regulation (EU) 2016/679 and, where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 **and Article 5(3) of Directive (EU) 2002/58** are fulfilled.	
Article 4(6)				

Obtenu par COREPER

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
153	6. The data holder shall only use any non-personal data generated by the use of a product or related service on the basis of a contractual agreement with the user. The data holder shall not use such data generated by the use of the product or related service to derive insights about the economic situation, assets and production methods of or the use by the user that could undermine the commercial position of the user in the markets in which the user is active.	6. ~~*The data holder*~~***Data holders*** shall only use any non-personal data ***accessed from a connected product or*** generated ~~*by the use of a product or*~~ ***during the provision of a*** related service on the basis of a contractual agreement with the user. The data holder shall not ***make the use of the product or related service dependent on the user allowing it to process data not required for the functionality of the product or provision of the related service. The data holder shall delete the data when they are no longer necessary for the purpose contractually agreed. Data holders and the users shall not*** use such data ***obtained, collected or*** generated by the use of the product or related service to derive insights about the economic situation, assets and production methods of or the use ***of the product or related service*** by the ~~*user*~~***other party*** that could undermine the commercial position of the ~~*user*~~***other party*** in the markets in which the user is active.	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.	

Obtained from CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
153a		***6a. Data holders shall not make available non-personal data accessed by them from the connected product, referred to in point (a) of Article 3(2), to third parties for commercial or non-commercial purposes other than the fulfilment of their contractual obligations to the user. Where relevant, data holders shall contractually bind third parties not to further share data received from them.***		
153b		***6b. Where the contractual agreement between the user and a data holder allows for the use of non personal data accessed by them from the connected product, referred to in point (a) of Article 3(2a), the data holder shall be able to use that data for any of the following purposes:***		
153c		***(a) improving the functioning of the connected product or related services;***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
153d		***(b) developing new products or services;***		
153e		***(c) enriching or manipulating it or aggregating it with other data, including with the aim of making available the resulting data set to third parties, as long as such derived data set does not allow the identification of the specific data items transmitted to the data holder from the connected product, or allow a third party to derive those data items from the data set.***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
153f		***6c. Users, in business-to- business relations, have the right to make data available to data recipients or data holders under any lawful contractual condition, including by agreeing to limit or restrict further sharing of such data, and to be compensated proportionately in exchange for foregoing their right to use or share such data lawfully. Data recipients or data holders shall not make the offer of a related service, or its commercial terms, including pricing, contingent on such agreement by the user, or coerce, deceive or manipulate in any other way the user to make available data under such contractual conditions.***		
Article 5				
154	Article 5 Right to share data with third parties	Article 5 Right ***of the user*** to share data with third parties	Article 5 Right **of the user** to share data with third parties	
Article 5(1)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
155	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.	1. Upon request by a user, or by a party acting on behalf of a user, ***such as an authorised data intermediation service in the meaning of the Regulation (EU) 2022/868, data holders*** ~~*the data holder*~~ shall make available the data ~~*generated by the use of a*~~***accessed by them from a connected*** product or ***generated during the provision of a*** related service to a third party, without undue delay, ***easily, securely, in a comprehensive, structured, commonly used and machine-readable format,*** free of charge to the user, of the same quality as is available to the data holder and, where ~~*applicable,*~~***relevant and technically feasible*** continuously and in real-time. ***Where the user is a data subject, personal data shall be processed for purposes specified by the data subject, such as the following:***	1. Upon request by a user, or by a party acting on behalf of a user, the data holder shall make available the data generated by the use of a product or related service **that are readily available to the data holder** to a third party, **as well as the metadata that is necessary to interpret and use that data,** without undue delay, free of charge to the user, of the same quality as is available to the data holder**, easily, securely, in a structured, commonly used and machine-readable format** and, where applicable, continuously and in real-time. **The making available of the data by the data holder to the third party shall be done in accordance with the conditions and compensation rules set in Articles 8 and 9.**	
155a		***(a) the provision of after-market services, such as the maintenance and repair of the product, including after-market services in competition with a connected product or service provided by a data holder;***		

Outcome for CONSULT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
155b		***(b) enabling the user to update the software of the connected product or related services in particular to fix security and usability problems;***		
155c		***(c) specific data intermediation services recognised in the Union or specific services provided by data altruism organisations recognised in the Union under the conditions and requirements of Chapters III and IV of Regulation (EU) 2022/868.***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
155d		***. Data shall be provided in the form in which they have accessed from the product, with only the minimal adaptations necessary to make them useable by a third party, including related metadata necessary to interpret and use the data. Information derived or inferred from this data by means of complex proprietary algorithms, in particular where it combines the output of multiple sensors in the connected product, shall not be considered within the scope of a data holder's obligation to share data with users or data recipients, unless agreed differently between the user and the data holder.***		
Article 5(1a)				
155e		***1a. The right under paragraph 1 shall not apply to data resulting from the use of a product or related service in the context of testing of other new products, substances or processes that are not yet placed on the market unless use by a third party is permitted by the agreement with the enterprise with whom the user agreed to use one of its products for testing of other new products, substances or processes.***		
Article 5(2)				

Outil par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
156	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)[1]], shall not be an eligible third party under this Article and therefore shall not: _____ 1. OJ […].	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)[1]]~~ ***EU) 2022/1925***, shall not be an eligible ~~*third party*~~***data recipient*** under this Article and therefore shall not: _____ ~~*1. OJ […].*~~	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 [~~**3 of** Regulation **(EU) 2022/1925** ~~XXX~~ on contestable and fair markets in the digital sector (Digital Markets Act)~~[1]~~], shall not be an eligible third party under this Article and therefore shall not: _____ ~~1. OJ […].~~	
Article 5(2), point (a)				
157	(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 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 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);	
Article 5(2), point (b)				
158	(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;	(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;	(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;	
Article 5(2), point (c)				

Ongecorrigeerde versie

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
159	(c) receive data from a user that the user has obtained pursuant to a request under Article 4(1).	(c) receive data from a user that the user has obtained pursuant to a request under Article 4(1).	(c) receive data from a user that the user has obtained pursuant to a request under Article 4(1).	
Article 5(3)				
160	3. The user or third party shall not be required to provide any information beyond what is necessary to verify the quality as user or as third party pursuant to paragraph 1. The data holder shall not keep any information on the third party's access to the data requested beyond what is necessary for the sound execution of the third party's access request and for the security and the maintenance of the data infrastructure.	3. The user or ~~third party~~***the data recipient*** shall not be required to provide any information beyond what is necessary to verify the quality as user or as ~~third party~~***data recipient*** pursuant to paragraph 1. ~~The data holder~~***Data holders*** shall not keep any information on the ~~third party~~***data recipient***'s access to the data requested beyond what is necessary for the sound execution of the ~~third party~~***data recipient***'s access request and for the security and the maintenance of the data infrastructure.	3. The user or third party shall not be required to provide any information beyond what is necessary to verify the quality as user or as third party pursuant to paragraph 1. The data holder shall not keep any information on the third party's access to the data requested beyond what is necessary for the sound execution of the third party's access request and for the security and the maintenance of the data infrastructure.	
Article 5(4)				
161	4. The third party shall not deploy coercive means or abuse evident gaps in the technical infrastructure of the data holder designed to protect the data in order to obtain access to data.	4. The ~~third party~~***data recipient*** shall not deploy coercive means or abuse ~~evident~~ gaps in the technical infrastructure of ~~the~~***a*** data holder designed to protect the data in order to obtain access to data.	4. The third party shall not deploy coercive means or abuse evident gaps in the technical infrastructure of the data holder designed to protect the data in order to obtain access to data.	
Article 5(5)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
162	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.	5. The data holder shall not use any non-personal data ***obtained, collected or*** generated by the use of the product or related service to derive insights about the economic situation, assets and production methods of or use by the third party that could undermine the commercial position of the third party on the markets in which the third party is active, unless the third party has ***expressly*** consented to such use and has the technical possibility to ***easily*** withdraw that consent at any time.	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 **given permission** ~~consented~~ to such use and has the technical possibility to withdraw that consent at any time.	
Article 5(6)				
163	6. Where the user is not a data subject, any personal data generated by the use of a product or related service shall only be made available where there is a valid legal basis under Article 6(1) of Regulation (EU) 2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 are fulfilled.	6. ~~*Where the user is not*~~***In the case of*** a data subject ***who is not the user requesting access***, any personal data ***obtained, collected, or*** generated by ~~*the*~~***their*** use of a product or related service***, and data derived and inferred from that use,*** shall only be made available ***by the data holder to the third party*** where there is a valid legal basis under Article ~~*6(1)*~~***6*** of Regulation (EU) 2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 ***and Article 5(3) of Directive 2002/58/EC*** are fulfilled.	6. Where the user is not ~~a~~ **the** data subject **whose personal data is requested**, any personal data generated by the use of a product or related service shall only be made available where there is a valid legal basis under Article ~~6(1)~~**6** of Regulation (EU) 2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 **and Article 5(3) of Directive (EU) 2002/58** are fulfilled.	
Article 5(7)				

OUT OF CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
164	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.	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.	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.	
Article 5(8)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
165	8. Trade secrets shall only be disclosed to third parties to the extent that they are strictly necessary to fulfil the purpose agreed between the user and the third party and all specific necessary measures agreed between the data holder and the third party are taken by the third party to preserve the confidentiality of the trade secret. In such a case, the nature of the data as trade secrets and the measures for preserving the confidentiality shall be specified in the agreement between the data holder and the third party.	8. Trade secrets shall only be disclosed to third parties to the extent that they are strictly necessary to fulfil the purpose ***of the request*** agreed between the user and the third party and all specific necessary measures agreed between the data holder***, or between the trade secrets holder if it is not simultaneously the data holder,*** and the third party are taken ***prior to the disclosure*** by the third party to preserve the confidentiality of the trade secret. In such a case, the ~~*nature of*~~***data holder or the trade secret holder, shall identify*** the data ***which are protected*** as trade secrets and the ***technical and organisational*** measures for preserving ~~*the*~~***their*** confidentiality***, as well as on liability provisions. Such technical and organisational measures*** shall be specified in the agreement between the data ***or trade secret*** holder and the third party***, including, as appropriate through model contractual terms, strict access protocols, confidential agreements, technical standards and the application of codes of conduct. In cases where the third party fails to implement those measures or undermines the confidentiality of trade secrets, the data holder shall be able to suspend the sharing of data identified as trade secrets. In such cases, the data holder must immediately notify the data coordinator of the Member State in which the data holder is***	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 **including technical and organisational measures** agreed between the data holder and the third party are taken by the third party to preserve the confidentiality of the trade secret. ~~In such a case, the nature of the data as trade secrets and the measures for preserving the confidentiality~~**Where the data holder can show that such measures do not suffice, the data holder and the third party** shall ~~be specified in the agreement between~~**agree on necessary additional measures. The data holder shall identify** the data ~~holder and the third party~~**which are protected as trade secrets, including in the relevant metadata**.	

Observer copy

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
165a			**8a. In exceptional circumstances, when the data holder can demonstrate that it is highly likely to suffer serious damage from the disclosure of trade secrets , despite the technical and organisational measures taken by the third party, the data holder may refuse the request for access. Such demonstration shall be duly substantiated, provided in writing and without undue delay. When the data holder refuses to share data pursuant to this Article, it shall notify the national competent authority designated in accordance with Article 31.**	
Article 5(9)				
166	9. The right referred to in paragraph 1 shall not adversely affect data protection rights of others.	9. The right referred to in paragraph 1 shall not adversely affect ~~*data protection*~~***the*** rights of ***data subjects of*** others ***pursuant to the applicable data protection law***.	*deleted*	
Article 6				
167	Article 6 Obligations of third parties receiving data at the request of the user	Article 6 Obligations of ~~*third parties*~~***data recipients*** receiving data at the request of the user	Article 6 Obligations of third parties receiving data at the request of the user	

Obtenu par CONSEIL

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 6(1)				
168	1. A third party shall process the data made available to it pursuant to Article 5 only for the purposes and under the conditions agreed with the user, and subject to the rights of the data subject insofar as personal data are concerned, and shall delete the data when they are no longer necessary for the agreed purpose.	1. A ~~third party~~***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 ***where all conditions and rules provided by the applicable data protection law are complied with, notably where there is a valid legal basis under Article 6(1) of Regulation (EU) 2016/679 and, where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 and Article 5(3) of Directive 2002/58/EC are fulfilled, and*** subject to the rights of the data subject insofar as personal data are concerned~~, and~~. ***The data recipient*** shall delete the data when they are no longer necessary for the agreed purpose, ***unless otherwise agreed with the user***.	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.	
Article 6(2)				
169	2. The third party shall not:	2. The ~~third party~~***data recipient*** shall not:	2. The third party shall not:	
Article 6(2), point (a)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
170	(a) coerce, deceive or manipulate the user in any way, by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface with the user;	(a) ***make the exercise of the rights or choices of users unduly difficult including by offering choices to the users in a non-neutral manner, or*** coerce, deceive or manipulate the user in any way, ***or*** by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface with the user ***or a part thereof, including its structure, design, function or manner of operation***;	(a) coerce, deceive or manipulate **in any way and at any time** the user ~~in any way~~**or the data subject where the data subject is not the user,** , by subverting or impairing the autonomy, decision-making or choices of the user **or the data subject**, including by means of a digital interface with the user **or the data subject**;	
Article 6(2), point (b)				
171	(b) use the data it receives for the profiling of natural persons within the meaning of Article 4(4) of Regulation (EU) 2016/679, unless it is necessary to provide the service requested by the user;	(b) use the data it receives for the profiling of natural persons within the meaning of Article ~~4(4)~~***4, point (4),*** of Regulation (EU) 2016/679, ~~*unless it is necessary to provide the service requested by the user*~~***other than in accordance with that Regulation***;	(b) use the data it receives for the profiling of natural persons within the meaning of Article 4(4) of Regulation (EU) 2016/679, unless it is **objectively** necessary **for a purpose that is integral to the delivery of** ~~to provide~~ the service requested by the user;	
Article 6(2), point (c)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
172	(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 ***available*** to another third party~~, *in raw, aggregated or derived form, unless this is necessary to provide the service requested*~~ ***without making the user aware in a clear and easily accessible way and seeking its the explicit contractual permission*** by the user;	(c) make the data ~~available~~ it receives **available to other**~~to another~~ third ~~party~~ **parties**, in raw, aggregated or derived form, unless this is necessary to provide the service requested by the user **and provided that the other third parties take all necessary measures agreed between the data holder and the third party to preserve the confidentiality of trade secrets**;	
Article 6(2), point (d)				
173	(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)];	(d) make the data available it receives to an undertaking providing core platform services for which one or more of such services have been designated as a gatekeeper pursuant to Article ~~*[…]*~~***3*** of [Regulation ~~*on contestable and fair markets in the digital sector*~~***(EU) 2022/1925*** (Digital Markets Act)];	(d) make the data ~~available~~ it receives **available** 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 ~~[~~**3 of** Regulation ~~on contestable and fair markets in the digital sector (Digital Markets Act~~**EU**~~)]~~ **2022/1925**;	
Article 6(2), point (e)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
174	(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;	(e) use the data it receives to develop a product that competes with the product from which the accessed data originate or share the data with another third party for that purpose; ***data recipients shall also not use any non-personal data generated by the use of the product or related service to derive insights about the economic situation, assets and production methods of or use by the data holder that could undermine the commercial position of the data holder on the markets in which the data holder is active;***	(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;	
174a		***(ea) use the data it receives in a manner that adversely impacts the security of the product or related service(s);***		
174b		***(eb) where relevant, disregard the specific measures agreed with a data holder or with the trade secrets holder pursuant to article 5 (8) of this Regulation and break the confidentiality of trade secrets;***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
174c		***(ec) use the data to disrupt sensitive critical infrastructure protection information within the meaning of Article 2(d) of Directive 2008/114/EC.***		
Article 6(2), point (f)				
175	(f) prevent the user, including through contractual commitments, from making the data it receives available to other parties.	(f) ~~*prevent the user, including through contractual commitments, from making the data it receives available to other parties.*~~	(f) prevent the user, including through contractual commitments, from making the data it receives available to other parties.	
175a		***2a. The third party shall bear the responsibility to ensure the security and protection of the data it receives from a data holder.***		
Article 7				
176	Article 7 Scope of business to consumer and business to business data sharing obligations	Article 7 Scope of business to consumer and business to business data sharing obligations	Article 7 Scope of business to consumer and business to business data sharing obligations	
Article 7(1)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
177	1. The obligations of this Chapter shall not apply to data generated by the use of products manufactured or related services provided by enterprises that qualify as micro or small enterprises, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as a micro or small enterprise.	1. The obligations of this Chapter 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 ***and where the micro and small enterprise is not subcontracted to manufacture or design a product or provide a related service***.	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. **The same shall apply to data generated by the use of products manufactured or related services provided by enterprises that qualify as medium-sized enterprises as defined in that same Recommendation, for either medium-sized enterprises that meet the threshold of that category for less than one year or that where it concerns products that a medium-sized enterprise has been placed on the market for less than one year.**	
Article 7(2)				

Obtenu par COMPETE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
178	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.	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*	
178a			**2a. Any contractual term which, to the detriment of the user, excludes the application of, derogates from or varies the effect of the user's rights under this Chapter shall not be binding on the user.**	
CHAPTER III				
179	CHAPTER III OBLIGATIONS FOR DATA HOLDERS LEGALLY OBLIGED TO MAKE DATA AVAILABLE	CHAPTER III OBLIGATIONS FOR DATA HOLDERS LEGALLY OBLIGED TO MAKE DATA AVAILABLE	CHAPTER III OBLIGATIONS FOR DATA HOLDERS LEGALLY OBLIGED TO MAKE DATA AVAILABLE	
Article 8				
180	Article 8 Conditions under which data holders make data available to data recipients	Article 8 Conditions under which data holders make data available to data recipients-	Article 8 Conditions under which data holders make data available to data recipients	
Article 8(1)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
181	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, 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.	1. Where**, in business-to-business relations,** a data holder is obliged to make data available to a data recipient under Article 5 or under other Union law or national legislation **adopted in accordance with** ~~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.	
Article 8(2)				
182	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.	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.	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**, to the detriment of the user,** it excludes the application of, derogates from or varies the effect of the user's rights under Chapter II.	
Article 8(3)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
183	3. A data holder shall not discriminate between comparable categories of data recipients, including partner enterprises or linked enterprises, as defined in Article 3 of the Annex to Recommendation 2003/361/EC, of the data holder, when making data available. Where a data recipient considers the conditions under which data has been made available to it to be discriminatory, it shall be for the data holder to demonstrate that there has been no discrimination.	3. A data holder shall not discriminate ***with respect to the modalities of data sharing*** between comparable categories of data recipients, including partner enterprises or linked enterprises, as defined in Article 3 of the Annex to Recommendation 2003/361/EC, of the data holder, when making data available. Where a data recipient ~~considers~~***holds reasonable doubt that*** the conditions under which data has been made available to it to be discriminatory, ~~it~~***the data holder*** shall***, without undue delay, provide*** ~~be for~~ the data ~~holder to demonstrate~~***recipient with the evidence demonstrating*** that there has been no discrimination.	3. A data holder shall not discriminate between comparable categories of data recipients, including partner enterprises or linked enterprises, as defined in Article 3 of the Annex to Recommendation 2003/361/EC, of the data holder, when making data available. Where a data recipient considers the conditions under which data has been made available to it to be discriminatory, **the data holder** ~~it~~ shall ~~be for~~**without undue delay provide** the data ~~holder to demonstrate~~ **recipient, upon its request, with information showing** that there has been no discrimination.	
Article 8(4)				
184	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.	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.*~~	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.	
Article 8(5)				

Obtenu par CONTENTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
185	5. Data holders and data recipients shall not be required to provide any information beyond what is necessary to verify compliance with the contractual terms agreed for making data available or their obligations under this Regulation or other applicable Union law or national legislation implementing Union law.	5. Data holders and data recipients shall not be required to provide any information beyond what is necessary to verify compliance with the contractual terms agreed for making data available or their obligations under this Regulation or other applicable Union law or national legislation implementing Union law.	5. Data holders and data recipients shall not be required to provide any information beyond what is necessary to verify compliance with the contractual terms agreed for making data available or their obligations under this Regulation or other applicable Union law or national legislation **adopted in accordance with** ~~implementing~~ Union law.	
185a		***5a. Data holders and data recipients shall take all necessary legal, organisational and technical measures to ensure the security and integrity of the data transfers.***		
Article 8(6)				
186	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.	6. Unless otherwise provided by Union law, including ~~*Article*~~***Articles 4(3), 5(8) and*** 6 of this Regulation, or by national legislation implementing Union law, an obligation to make data available to a data recipient shall not oblige the disclosure of trade secrets within the meaning of Directive (EU) 2016/943.	6. Unless otherwise provided by Union law, including ~~Article~~**Articles 4(3), 5(8) and** 6 of this Regulation, or by national legislation **adopted in accordance with** ~~implementing~~ Union law, an obligation to make data available to a data recipient shall not oblige the disclosure of trade secrets within the meaning of Directive (EU) 2016/943.	
Article 9				

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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
187	Article 9 Compensation for making data available	Article 9 Compensation for making data available	Article 9 Compensation for making data available	
Article 9(1)				
188	1. Any compensation agreed between a data holder and a data recipient for making data available shall be reasonable.	1. Any compensation agreed between a data holder and a data recipient for making data available ***in business- to- business relations*** shall be ***non - discriminatory and*** reasonable. ***A data holder, a data recipient or a third party shall not directly or indirectly charge consumers or data subjects a fee, compensation or costs for sharing data or accessing it.***	1. Any compensation agreed **upon** between a data holder and a data recipient for making data available **in business-to-business relations** shall be reasonable **and may include a margin**.	
188a			**1a. The data holder and the data recipient shall take into account in particular:**	
188b			**(a) the costs incurred and investments required for making the data available, including, in particular, the costs necessary for the formatting of data, dissemination via electronic means and storage;**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
188c			**(b) the investments in data collection and production, taking into account whether other parties contributed to the obtaining, generating or collecting the data in question.**	
188d			**Such compensation may also depend on the volume, format and nature of the data.**	
Article 9(2)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
189	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.	2. Where the data recipient is a ~~*micro, small or medium enterprise*~~***non- profit research organisation or a SME***, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, ***provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC and do not qualify as an SME,*** any compensation agreed shall not exceed the costs directly related to making the data available to the data recipient and which are attributable to the request. Article 8(3) shall apply accordingly. ***In case of an SME, the data holder shall actively inform of the obligation to provide the data preferably on the basis of a cost-based model.***	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~~**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 ~~are attributable to the request. Article 8(3) shall apply accordingly~~**do not qualify as a micro, small or medium enterprise, any compensation agreed shall not exceed the costs set out in paragraph 1a(a)**.	
189a		***2a. The Commission shall develop guidelines to determine criteria for categories of costs related to making data available, which shall be the basis for awarding compensation pursuant to paragraph 1.***		
Article 9(3)				

Ομάδα προς COMPETE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
190	3. This Article shall not preclude other Union law or national legislation implementing Union law from excluding compensation for making data available or providing for lower compensation.	3. This Article shall not preclude other Union law or national legislation implementing Union law from excluding compensation for making data available or providing for lower compensation.	3. This Article shall not preclude other Union law or national legislation **adopted in accordance with** ~~implementing~~ Union law from excluding compensation for making data available or providing for lower compensation.	
Article 9(4)				
191	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 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~~ **assess whether** the requirements of paragraph 1 and, where applicable, paragraph 2 are met.	
191a			**4a. The Commission shall adopt guidelines on the calculation of reasonable compensation, taking into account the opinion of the European Data Innovation Board established under Regulation (EU) 2022/868.**	
Article 10				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
192	Article 10 Dispute settlement	Article 10 Dispute settlement	Article 10 Dispute settlement	
Article 10(1)				
193	1. Data holders and data recipients shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes in relation to the determination of fair, reasonable and non-discriminatory terms for and the transparent manner of making data available in accordance with Articles 8 and 9.	1. ***Users,*** data holders and data recipients shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes in relation to ***fulfilment of the data holder's obligation to make data available to the data recipient, upon the request of the user,*** the determination of fair, reasonable and non-discriminatory terms for and the transparent manner of making data available in accordance with Articles 8***, 9 and 13*** ~~*and 9*~~.	1. Data holders and data recipients shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes in relation to ~~the determination of~~ fair, reasonable and non-discriminatory terms for and the transparent manner of making data available in accordance with ~~Articles 8 and 9~~**Article 5(8), this Chapter and Chapter IV**.	
193a			**1a. Users 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 Articles 4(3a) and 5(8a).**	

Obtenu par CONSEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
193b			**1b. Dispute settlement bodies shall make the fees, or the mechanisms used to determine the fees, known to the parties concerned before those parties request a decision.**	
193c			**1c. For disputes referred to in paragraph 1a, where the dispute settlement body decides the dispute in favour of the user or the data recipient, the data holder shall bear all the fees charged by the dispute settlement body, and shall reimburse that user or data recipient for any other reasonable expenses that it has paid in relation to the dispute settlement. If the dispute settlement body decides the dispute in favour of the data holder, the user or data recipient shall not be required to reimburse any fees or other expenses that the data holder paid or is to pay in relation to the dispute settlement, unless the dispute settlement body finds that the user or data recipient manifestly acted in bad faith.**	
Article 10(2), first subparagraph				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
194	2. The Member State where the dispute settlement body is established shall, at the request of that body, certify the body, where the body has demonstrated that it meets all of the following conditions:	2. The Member State where the dispute settlement body is established shall, at the request of that body, certify the body, where the body has demonstrated that it meets all of the following conditions:	2. The Member State where the dispute settlement body is established shall, at the request of that body, certify the body, where the body has demonstrated that it meets all of the following conditions:	
Article 10(2), first subparagraph, point (a)				
195	(a) it is impartial and independent, and it will issue its decisions in accordance with clear and fair rules of procedure;	(a) it is impartial and independent, and it will issue its decisions in accordance with clear and fair rules of procedure;	(a) it is impartial and independent, and it will issue its decisions in accordance with clear**, non-discriminatory** and fair rules of procedure;	
Article 10(2), first subparagraph, point (b)				
196	(b) it has the necessary expertise in relation to the determination of fair, reasonable and non-discriminatory terms for and the transparent manner of making data available, allowing the body to effectively determine those terms;	(b) it has the necessary expertise in relation to the determination of fair, reasonable and non-discriminatory terms for and the transparent manner of making data available, allowing the body to effectively determine those terms;	(b) it has the necessary expertise in relation to the determination of fair, reasonable and non-discriminatory terms**, including compensation,** for and the transparent manner of making data available, allowing the body to effectively determine those terms;	
Article 10(2), first subparagraph, point (c)				
197	(c) it is easily accessible through electronic communication technology;	(c) it is easily accessible through electronic communication technology;	(c) it is easily accessible through electronic communication technology;	
Article 10(2), first subparagraph, point (d)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
198	(d) it is capable of issuing its decisions in a swift, efficient and cost-effective manner and in at least one official language of the Union.	(d) it is capable of issuing its decisions in a swift, efficient and cost-effective manner and in at least one official language of the ~~*Union*~~***Member State where the body is established***.	(d) it is capable of issuing its decisions in a swift, efficient and cost-effective manner and in at least one official language of the Union.	
Article 10(2), second subparagraph				
199	If no dispute settlement body is certified in a Member State by [date of application of the Regulation], that Member State shall establish and certify a dispute settlement body that fulfils the conditions set out in points (a) to (d) of this paragraph.	If no dispute settlement body is certified in a Member State by [date of application of the Regulation], that Member State shall establish and certify a dispute settlement body that fulfils the conditions set out in points (a) to (d) of this paragraph.	*deleted*	
Article 10(3)				
200	*3.* Member States shall notify to the Commission the dispute settlement bodies certified in accordance with paragraph 2. The Commission shall publish a list of those bodies on a dedicated website and keep it updated.	3. Member States shall notify to the Commission the dispute settlement bodies certified in accordance with paragraph 2. The Commission shall publish a list of those bodies on a dedicated website and keep it updated.	3. Member States shall notify to the Commission the dispute settlement bodies certified in accordance with paragraph 2. The Commission shall publish a list of those bodies on a dedicated website and keep it updated.	
Article 10(4)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
201	4. Dispute settlement bodies shall make the fees, or the mechanisms used to determine the fees, known to the parties concerned before those parties request a decision.	4. Dispute settlement bodies shall make the fees, or the mechanisms used to determine the fees, known to the parties concerned before those parties request a decision.	*deleted*	
Article 10(5)				
202	*5.* Dispute settlement bodies shall refuse to deal with a request to resolve a dispute that has already been brought before another dispute settlement body or before a court or a tribunal of a Member State.	5. Dispute settlement bodies shall refuse to deal with a request to resolve a dispute that has already been brought before another dispute settlement body or before a court or a tribunal of a Member State.	5. Dispute settlement bodies shall refuse to deal with a request to resolve a dispute that has already been brought before another dispute settlement body or before a court or a tribunal of a Member State.	
Article 10(6)				
203	6. Dispute settlement bodies shall grant the parties the possibility, within a reasonable period of time, to express their point of view on matters those parties have brought before those bodies. In that context, dispute settlement bodies shall provide those parties with the submissions of the other party and any statements made by experts. Those bodies shall grant the parties the possibility to comment on those submissions and statements.	6. Dispute settlement bodies shall grant the parties the possibility, within a reasonable period of time, to express their point of view on matters those parties have brought before those bodies. In that context, dispute settlement bodies shall provide those parties with the submissions of the other party and any statements made by experts. Those bodies shall grant the parties the possibility to comment on those submissions and statements.	6. Dispute settlement bodies shall grant the parties the possibility, within a reasonable period of time, to express their point of view on matters those parties have brought before those bodies. In that context, dispute settlement bodies shall provide those parties with the submissions of the other party and any statements made by experts. Those bodies shall grant the parties the possibility to comment on those submissions and statements.	
Article 10(7)				

Observador CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
204	7. Dispute settlement bodies shall issue their decision on matters referred to them no later than 90 days after the request for a decision has been made. Those decisions shall be in writing or on a durable medium and shall be supported by a statement of reasons supporting the decision.	7. Dispute settlement bodies shall issue their decision on matters referred to them no later than 90 days after the request for a decision has been made. Those decisions shall be in writing or on a durable medium and shall be supported by a statement of reasons supporting the decision.	7. Dispute settlement bodies shall issue their decision on matters referred to them no later than 90 days after the request for a decision has been made. Those decisions shall be in writing or on a durable medium and shall be supported by a statement of reasons supporting the decision.	
204a		***7a. Dispute settlement bodies shall make annual activity reports publicly available. Each annual report shall include in particular the following information:***	**7a. Dispute settlement bodies shall make publicly available annual activity reports. The annual report shall include in particular the following general information:**	
204b		***(a) the number of disputes received;***	**(a) the number of disputes received;**	
204c		***(b) an aggregation of the outcomes of those disputes;***	**(b) the outcomes of those disputes;**	
204d		***(c) the average time taken to resolve the disputes;***	**(c) the average time taken to resolve the disputes;**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
204e		*(d) the most common reasons that lead to disputes between the parties.*	**(d) common problems that occur frequently and lead to disputes between the parties; such information may be accompanied by recommendations as to how such problems can be avoided or resolved, in order to facilitate the exchange of information and best practices.**	
Article 10(7b)				
204f		*7b. In order to facilitate the exchange of information and best practices, the public dispute settlement body may decide to include recommendations as to how such problems can be avoided or resolved.*		
Article 10(8)				
205	8. The decision of the dispute settlement body shall only be binding on the parties if the parties have explicitly consented to its binding nature prior to the start of the dispute settlement proceedings.	8. The decision of the dispute settlement body shall only be binding on the parties if the parties have explicitly consented to its binding nature prior to the start of the dispute settlement proceedings.	8. The decision of the dispute settlement body shall only be binding on the parties if the parties have explicitly consented to its binding nature prior to the start of the dispute settlement proceedings.	
Article 10(9)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
206	9. This Article does not affect the right of the parties to seek an effective remedy before a court or tribunal of a Member State.	9. This Article does not affect the right of the parties to seek an effective remedy before a court or tribunal of a Member State.	9. This Article does not affect the right of the parties to seek an effective remedy before a court or tribunal of a Member State.	
Article 11				
207	Article 11 Technical protection measures and provisions on unauthorised use or disclosure of data	Article 11 Technical protection measures and provisions on unauthorised use or disclosure of data	Article 11 Technical protection measures and provisions on unauthorised use or disclosure of data	
Article 11(1)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
208	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).	1. The data holder may apply appropriate technical protection measures, including smart contracts ***and encryption***, to prevent unauthorised ***disclosure of and*** access to the data***, including metadata,*** and to ensure compliance with Articles ***4, 5, 6, 8,*** ~~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~~***neither discriminate between data recipients nor*** hinder***,*** the user's right to effectively ***obtain a copy, retrieve, use or access data or*** provide data to third parties pursuant to Article 5 or any right of a third party under Union law or national legislation implementing Union law as referred to in Article 8(1)***. Where a user or data holder provides tangible relevant evidence for unlawful use or unauthorised disclosure to a third party by the data recipient, the data recipient shall, upon request of the user or data holder, provide information on how the data has been used, or with whom it has been shared.***	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 **discriminate between data recipients or 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). **Users and data recipients shall not alter or remove such technical protection measures.**	
Article 11(2)				

Observer Copy

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
209	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:	2. ***Where*** 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***, including the development of a competing product within the meaning of Article 6 (2) (e)*** or has ***unlawfully*** disclosed ~~*those*~~ data to another party ~~*without*~~***,*** the data ~~*holder's authorisation,*~~ ***recipient shall be liable for the damages to the party suffering from the misuse or disclosure of such data and*** shall ***comply*** without undue delay~~*, unless*~~ ***with the requests of*** the data holder or the ~~*user instruct otherwise*~~***trade secret holder when they are not the same legal person to***:	2. **Where** a data recipient ~~that has,~~ **has,** - for the purposes of obtaining data, provided inaccurate or ~~false~~**incomplete** information to the data holder, deployed deceptive or coercive means or abused evident gaps in the technical infrastructure of the data holder designed to protect the data, ~~has~~ - used the data made available for unauthorised purposes**, including the development of a competing product in the sense of Article 6(2)(e),** - ~~or has~~ disclosed those data to another party without the data holder's authorisation, - **not maintained the technical and organisational measures taken by the data recipient in agreement with** ~~shall without undue delay,~~ ~~unless~~ the data holder **in order to preserve trade secrets in accordance with Article 5(8), or** - **altered or removed technical protection measures applied by the data holder in accordance with Article 11(1),** **the data holder may**~~or the user instruct otherwise~~:	
Article 11(2), point (a)				

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
210	(a) destroy the data made available by the data holder and any copies thereof;	(a) ~~*destroy*~~***erase*** the data made available ~~*by the data holder*~~ and any copies thereof;	(a) ~~destroy~~**available by the data holder and any copies thereof;request the data recipient to, without undue delay, erase** the data made available by the data holder and any copies thereof;	
Article 11(2), point (b)				
211	(b) end the production, offering, placing on the market or use of goods, derivative data or services produced on the basis of knowledge obtained through such data, or the importation, export or storage of infringing goods for those purposes, and destroy any infringing goods.	(b) end the production, offering, placing on the market or use of goods, derivative data or services produced on the basis of knowledge obtained through such data, or the importation, export or storage of infringing goods for those purposes, and destroy any infringing goods.	(b) **request the data recipient to, without undue delay,** end the production, offering, placing on the market or use ~~of goods~~**ofgoods**, derivative data or services produced on the basis of knowledge obtained through such data, or the importation, export or storage of infringing goods for those purposes, and destroy any infringing goods~~.~~**,**	
211a		***(ba) inform the user of the unauthorised use or disclosure of the data and measures taken to put an end to the unauthorised use or disclosure of the data.***		
211b		***(bb) notify the data holder about the disclosure of such data.***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
211c			**(c) seek compensation from the data recipient.**	
211d		***2a. The user shall enjoy the same prerogatives as the data holder, and the data recipient, the same obligation as those stated in paragraph 2 when the data recipient has infringed Article 6 (2) (a) and (b).***		
211e			**2a. Where a user violates the obligation in Article 4(4), alters or removes technical protection measures applied by the data holder or does not maintain the technical and organisational measures taken by the user in agreement with the data holder in order to preserve trade secrets, the data holder shall have the same rights against the user's behaviour under paragraph 2 and 3. The same shall apply to any other party having received the data from user violating the obligation in Article 4(4).**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
211f			**2b. Where the data recipient has acted in violation of Article 6(2)(a) and 6(2)(b), users shall have the same rights as data holders under paragraph 2. Paragraph 3 shall apply mutatis mutandis.**	
Article 11(3)				
212	3. Paragraph 2, point (b), shall not apply in either of the following cases:	3. ~~*Paragraph 2, point (b), shall not apply in either of the following cases:*~~	3. Paragraph 2, point (b), shall not apply in either of the following cases:	
Article 11(3), point (a)				
213	(a) use of the data has not caused significant harm to the data holder;	(a) ~~*use of the data has not caused significant harm to the data holder;*~~	(a) use of the data has not caused significant harm to the data holder **or the user respectively**; **or**	
Article 11(3), point (b)				
214	(b) it would be disproportionate in light of the interests of the data holder.	(b) ~~*it would be disproportionate in light of the interests of the data holder.*~~	(b) it would be disproportionate in light of the interests of the data holder **or the user**.	
Article 12				
215	Article 12 Scope of obligations for data holders legally obliged to make data available	Article 12 Scope of obligations for data holders legally obliged to make data available	Article 12 Scope of obligations for data holders legally obliged to make data available	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 12(1)				
216	1. This Chapter shall apply where a data holder is obliged under Article 5, or under Union law or national legislation implementing Union law, to make data available to a data recipient.	1. This Chapter shall apply where a data holder is obliged under Article 5, or under Union law or national legislation implementing Union law, to make data available to a data recipient.	1. This Chapter shall apply where**, in business-to-business relations,** a data holder is obliged under Article 5, or under Union law or national legislation **adopted in accordance with** ~~implementing~~ Union law, to make data available to a data recipient.	
Article 12(2)				
217	2. Any contractual term in a data sharing agreement which, to the detriment of one party, or, where applicable, to the detriment of the user, excludes the application of this Chapter, derogates from it, or varies its effect, shall not be binding on that party.	2. Any contractual term in a data sharing agreement which, to the detriment of one party, or, where applicable, to the detriment of the user, excludes the application of this Chapter, derogates from it, or varies its effect, shall ~~not be binding on that party.~~***be void.***	2. Any contractual term in a data sharing agreement which, to the detriment of one party, or, where applicable, to the detriment of the user, excludes the application of this Chapter, derogates from it, or varies its effect, shall not be binding on that party.	
217a		***2a. Any contractual term in a data sharing agreement between data holders and data recipients which, to the detriment of the data subjects, undermines the application of their rights to privacy and data protection, derogates from it, or varies its effect, shall be void.***		
Article 12(3)				

Obrenu pa CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
218	3. This Chapter shall only apply in relation to obligations to make data available under Union law or national legislation implementing Union law, which enter into force after [date of application of the Regulation].	3. This Chapter shall only apply in relation to obligations to make data available under Union law or national legislation implementing Union law, which enter into force after [date of application of the Regulation].	3. This Chapter shall only apply in relation to obligations to make data available under Union law or national legislation **adopted in accordance with** ~~implementing~~ Union law, which enter into force after [date of application of the Regulation].	
CHAPTER IV				
219	CHAPTER IV UNFAIR TERMS RELATED TO DATA ACCESS AND USE BETWEEN ENTERPRISES	CHAPTER IV UNFAIR TERMS RELATED TO DATA ACCESS AND USE BETWEEN ENTERPRISES	CHAPTER IV UNFAIR **CONTRACTUAL** TERMS RELATED TO DATA ACCESS AND USE ~~BETWEEN ENTERPRISES~~	
Article 13				
220	Article 13 Unfair contractual terms unilaterally imposed on a micro, small or medium-sized enterprise	Article 13 Unfair contractual terms unilaterally imposed on a ~~*micro, small or medium-sized*~~ enterprise	Article 13 Unfair contractual terms unilaterally imposed on ~~a micro, small or medium-sized~~ **another** enterprise	
Article 13(1)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
221	1. A contractual term, concerning the access to and use of data or the liability and remedies for the breach or the termination of data related obligations which has been unilaterally imposed by an enterprise on a micro, small or medium-sized enterprise as defined in Article 2 of the Annex to Recommendation 2003/361/EC shall not be binding on the latter enterprise if it is unfair.	1. A contractual term, concerning the access to and use of data or the liability and remedies for the breach or the termination of data related obligations which has been unilaterally imposed by an enterprise on ~~*a micro, small or medium-sized*~~***another*** enterprise ~~*as defined in Article 2 of the Annex to Recommendation 2003/361/EC*~~ shall not be binding on the latter enterprise***, the data recipient or user respectively,*** if it is unfair.	1. A contractual term, concerning the access to and use of data or the liability and remedies for the breach or the termination of data related obligations which has been unilaterally imposed by an enterprise ~~on a micro, small or medium-sized~~ **on another** 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.	
221a		***1a. A contractual term is not to be considered unfair where it arises from applicable Union law.***		
Article 13(2)				

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
222	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.	2. A contractual term is unfair if it is of such a nature that ***objectively impairs the ability of the party upon whom the term has been unilaterally imposed to protect its legitimate commercial interest in the data in question or*** its use grossly deviates from good commercial practice in data access and use, contrary to good faith and fair dealing. ***or creates a significant imbalance between the rights and the obligations of the parties in the contract.***	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.	
Article 13(3)				
223	3. A contractual term is unfair for the purposes of this Article if its object or effect is to:	3. A contractual term is unfair for the purposes of this Article if its object or effect is to:	3. ~~A~~**In particular** contractual term is unfair for the purposes of **paragraph 2,** ~~this Article~~ if its object or effect is to:	
Article 13(3), point (a)				
224	(a) exclude or limit the liability of the party that unilaterally imposed the term for intentional acts or gross negligence;	(a) exclude or limit the liability of the party that unilaterally imposed the term for intentional acts or gross negligence;	(a) exclude or limit the liability of the party that unilaterally imposed the term for intentional acts or gross negligence;	
Article 13(3), point (b)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
225	(b) exclude the remedies available to the party upon whom the term has been unilaterally imposed in case of non-performance of contractual obligations or the liability of the party that unilaterally imposed the term in case of breach of those obligations;	(b) exclude the remedies available to the party upon whom the term has been unilaterally imposed in ***the*** case of non-performance of contractual obligations or the liability of the party that unilaterally imposed the term in ***the*** case of ***a*** breach of those obligations;	(b) exclude the remedies available to the party upon whom the term has been unilaterally imposed in case of non-performance of contractual obligations or the liability of the party that unilaterally imposed the term in case of breach of those obligations;	
Article 13(3), point (c)				
226	(c) give the party that unilaterally imposed the term the exclusive right to determine whether the data supplied are in conformity with the contract or to interpret any term of the contract.	(c) give the party that unilaterally imposed the term the exclusive right to determine whether the data supplied are in conformity with the contract or to interpret any term of the contract.	(c) give the party that unilaterally imposed the term the exclusive right to determine whether the data supplied are in conformity with the contract or to interpret any term of the contract.	
Article 13(4)				
227	4. A contractual term is presumed unfair for the purposes of this Article if its object or effect is to:	4. A contractual term is presumed unfair for the purposes of this Article if its object or effect is to:	4. A contractual term is presumed unfair for the purposes of ~~this Article~~ **paragraph 2** if its object or effect is to:	
Article 13(4), point (a)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
228	(a) inappropriately limit the remedies in case of non-performance of contractual obligations or the liability in case of breach of those obligations;	(a) inappropriately limit the remedies in ***the*** case of non-performance of contractual obligations or the liability in ***the*** case of ***a*** breach of those obligations;	(a) inappropriately limit the remedies in case of non-performance of contractual obligations or the liability in case of breach of those obligations**, or extend the liability of the enterprise upon whom the term has been imposed**;	
Article 13(4), point (b)				
229	(b) allow the party that unilaterally imposed the term to access and use data of the other contracting party in a manner that is significantly detrimental to the legitimate interests of the other contracting party;	(b) allow the party that unilaterally imposed the term to access and use data of the other contracting party in a manner that is significantly detrimental to the legitimate interests of the other contracting party***, including when such data contains commercially sensitive data or are protected by trade secrets or by intellectual property rights, without the prior consent of the relevant parties***;	(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;	
Article 13(4), point (c)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
230	(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;	(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;	(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~~ **reasonable** manner;	
230a		***(ca) impose the unilateral choice of the competent jurisdiction or the payment of the cost related to the procedure;***		
230b		***(cb) prevent the party upon whom the term has been unilaterally imposed for terminating the agreement within a reasonable time period;***		
Article 13(4), point (d)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
231	(d) prevent the party upon whom the term has been unilaterally imposed from obtaining a copy of the data contributed or generated by that party during the period of the contract or within a reasonable period after the termination thereof;	(d) prevent the party upon whom the term has been unilaterally imposed from obtaining a copy of the data contributed or generated by that party during the period of the contract or within a reasonable period after the termination thereof;	(d) prevent the party upon whom the term has been unilaterally imposed from obtaining a copy of the data contributed or generated by that party during the period of the contract or within a reasonable period after the termination thereof;	
Article 13(4), point (e)				
232	(e) enable the party that unilaterally imposed the term to terminate the contract with an unreasonably short notice, taking into consideration the reasonable possibilities of the other contracting party to switch to an alternative and comparable service and the financial detriment caused by such termination, except where there are serious grounds for doing so.	(e) ***enable the party that unilaterally imposed the term to substantially vary the upfront price payable under the contract, or any other substantial condition on the data to be shared, without the right of the other party to terminate the contract, or*** enable the party that unilaterally imposed the term to terminate the contract with an unreasonably short notice, taking into consideration the reasonable possibilities of the other contracting party to switch to an alternative and comparable service and the financial detriment caused by such termination, except where there are serious grounds for doing so.	(e) enable the party that unilaterally imposed the term to terminate the contract with an unreasonably short notice, taking into consideration the reasonable possibilities of the other contracting party to switch to an alternative and comparable service and the financial detriment caused by such termination, except where there are serious grounds for doing so.	
Article 13(5)				

OUT OF CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
233	5. A contractual term shall be considered to be unilaterally imposed within the meaning of this Article if it has been supplied by one contracting party and the other contracting party has not been able to influence its content despite an attempt to negotiate it. The contracting party that supplied a contractual term bears the burden of proving that that term has not been unilaterally imposed.	5. A contractual term shall be considered to be unilaterally imposed within the meaning of this Article if it has been supplied by one contracting party and the other contracting party has not been able to influence its content despite an attempt to negotiate it. The contracting party that supplied a contractual term bears the burden of proving that that term has not been unilaterally imposed.	5. A contractual term shall be considered to be unilaterally imposed within the meaning of this Article if it has been supplied ~~-~~ by one contracting party and the other contracting party has not been able to influence its content despite an attempt to negotiate it. The contracting party that supplied ~~a~~ **the** contractual term bears the burden of proving that that term has not been unilaterally imposed.	
Article 13(6)				
234	6. Where the unfair contractual term is severable from the remaining terms of the contract, those remaining terms shall remain binding.	6. Where the unfair contractual term is severable from the remaining terms of the contract, those remaining terms shall remain binding.	6. Where the unfair contractual term is severable from the remaining terms of the contract, those remaining terms shall remain binding.	
234a		***6a. The party that supplied the contested term may not argue that the term is an unfair term.***		
Article 13(7)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
235	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 to contractual terms determining*~~***and shall not affect the parties' ability to negotiate*** the price to be paid.	7. This Article does not apply to contractual terms defining the main subject matter of the contract ~~or to contractual terms determining~~ **nor to the adequacy of** the price**, as against the data supplied in exchange** ~~to be paid~~.	
Article 13(8)				
236	8. The parties to a contract covered by paragraph 1 may not exclude the application of this Article, derogate from it, or vary its effects.	8. The parties to a contract covered by paragraph 1 ~~*may*~~***shall*** not exclude the application of this Article, derogate from it, or vary its effects.	8. The parties to a contract covered by paragraph 1 may not exclude the application of this Article, derogate from it, or vary its effects.	
236a		***8a. This Article shall apply to all new contracts entered into after ... [date of entry into force of this Regulation. Businesses shall be given three-years following that date to review existing contractual obligations that are subject to this Regulation.***		

Obtained for CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
236b		***8b. Given the rapidity in which innovations occur in the markets, the list of unfair contractual terms within Article 13 shall be reviewed regularly by the Commission and be updated to new business practices if necessary.***		
CHAPTER V				
237	CHAPTER V MAKING DATA AVAILABLE TO PUBLIC SECTOR BODIES AND UNION INSTITUTIONS, AGENCIES OR BODIES BASED ON EXCEPTIONAL NEED	CHAPTER V MAKING DATA AVAILABLE TO PUBLIC SECTOR BODIES AND UNION INSTITUTIONS, AGENCIES OR BODIES BASED ON EXCEPTIONAL NEED	CHAPTER V MAKING DATA AVAILABLE TO PUBLIC SECTOR BODIES, **THE COMMISSION, THE EUROPEAN CENTRAL BANK OR UNION** ~~AND UNION INSTITUTIONS, AGENCIES OR~~ BODIES BASED ON EXCEPTIONAL NEED	
Article 14				
238	Article 14 Obligation to make data available based on exceptional need	Article 14 Obligation to make data available based on exceptional need	Article 14 Obligation to make data available based on exceptional need	
Article 14(1)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
239	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 specified duly justified*** request ***limited in time and scope***, a data holder ***that is a legal person*** shall make ***non-personal data which are available at the time of the request, including metadata*** ~~*data*~~ available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested.	1. Upon request, a data holder shall make data**, which could include metadata that is necessary to interpret and use that data,** available to a public sector body or to **the Commission, the European Central Bank or Union bodies** ~~a Union institution, agency or body~~ demonstrating an exceptional need**, as laid out in Article 15,** to use the data requested **in order to carry out their statutory duties in the public interest**.	
Article 14(2)				
240	2. This Chapter shall not apply to small and micro enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC.	2. This Chapter shall not apply to small and micro enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC.	*deleted*	
240a		***2a. This Chapter shall not preclude voluntary arrangements between businesses and public sector bodies and union institutions, agencies or bodies for the sharing of data for purpose of delivering public services, including for exceptional needs if stipulated in their contracts.***		
Article 15				

Ohnu pri CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
241	Article 15 Exceptional need to use data	Article 15 Exceptional need to use data-	Article 15 Exceptional need to use data	
Article 15, first paragraph				
242	An exceptional need to use data within the meaning of this Chapter shall be deemed to exist in any of the following circumstances:	An exceptional need to use ***non-personal*** data within the meaning of this Chapter shall be ***limited in time and scope and shall be*** deemed to exist in ~~*any of*~~ the following circumstances:	**1.** ~~An~~ Exceptional need to use data within the meaning of this Chapter shall be **limited in time and scope and** deemed to exist **only in** ~~in any of~~ the following circumstances:	
Article 15, first paragraph, point (a)				
243	(a) where the data requested is necessary to respond to a public emergency;	(a) where the data requested is necessary to respond to ~~*a*~~ public emergency;	(a) where the data requested is necessary to respond to a public emergency **and the public sector body, the Commission, the European Central Bank or Union body is unable to obtain such data by alternative means in a timely and effective manner under equivalent conditions**;	
Article 15, first paragraph, point (b)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
244	(b) where the data request is limited in time and scope and necessary to prevent a public emergency or to assist the recovery from a public emergency;	(b) ***in non-emergency situations,*** where the ***public sector body or Union institution, agency or body is acting on the basis of Union or national law and has identified specific data, which is unavailable to it and which is*** ~~*data request is limited in time and scope and*~~ necessary to ~~*prevent a*~~ ***fulfil, a specific task in the*** public ~~*emergency or to assist the*~~ ***interest that has been explicitly provided by law such as the prevention or*** recovery from a public emergency ***and which the public sector body or Union institution, agency or body has been unable to obtain by any of the following means: voluntary agreement; by purchasing the data on the market or by relying on existing obligations to make data available.***	(b) where the data request is ~~limited in time and scope and~~ necessary to ~~prevent~~ **mitigate** a public emergency or to assist the recovery from a public emergency **and the public sector body, the Commission, the European Central Bank or Union body is unable to obtain such data by alternative means in a timely and effective manner under equivalent conditions**; **or**	
Article 15, first paragraph, point (c)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
245	(c) where the lack of available data prevents the public sector body or Union institution, agency or body from fulfilling a specific task in the public interest that has been explicitly provided by law; and	(c) ~~*where the lack of available data prevents the public sector body or Union institution, agency or body from fulfilling a specific task in the public interest that has been explicitly provided by law; and*~~	(c) where the lack of available data prevents the public sector body**, the Commission, the European Central Bank or Union bodies** ~~or Union institution, agency or body~~ from fulfilling a specific task in the public interest**, such as official statistics,** that has been explicitly provided by law; and **the public sector body the Commission, the European Central Bank or Union body has exhausted all other means at its disposal to obtain such data , including, but not limited to, purchase of the data on the market by offering market rates or relying on existing obligations to make data available, or the adoption of new legislative measures which could guarantee the timely availability of the data.**	
Article 15, first paragraph, point (c)(1)				
246	(1) the public sector body or Union institution, agency or body has been unable to obtain such data by alternative means, including by purchasing the data on the market at market rates or by relying on existing obligations to make data available, and the adoption of new legislative measures cannot ensure the timely availability of the data; or	(1) ~~*the public sector body or Union institution, agency or body has been unable to obtain such data by alternative means, including by purchasing the data on the market at market rates or by relying on existing obligations to make data available, and the adoption of new legislative measures cannot ensure the timely availability of the data; or*~~	*deleted*	
Article 15, first paragraph, point (c)(2)				

Obtenu par COMETT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
247	*(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.	(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*	
247a			**2. Letters (b) and (c) of paragraph 1 shall not apply to small and micro enterprises as defined in article 2 of the Annex to Recommendation 2003/361/EC.**	
247b			**3. The obligation to demonstrate that the public sector body was unable to obtain data by purchasing of the data on the market shall not apply in case the specific task in the public interest is the production of official statistics and where the purchase of data is not allowed by national law.**	
247c		***Article 15a*** ***Single point to handle public sector bodies' request***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
247d		***1. The data coordinator designated pursuant to Article 31 shall be responsible for coordinating the requests pursuant Article 14(1) from the sector bodies of the Member State concerned, in order to ensure that the requests meet the requirement laid down in this Chapter and shall transmit them to the data holder. It shall avoid multiple requests by different public sector bodies within their territory to the same data holder.***		
247e		***2. Member States shall regularly inform the Commission about requests pursuant to Article 14(1).***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
247f		***3. Where public sector bodies or Union institutions, agencies or bodies requires data from the same data holder in more than one Member State on the basis of an exceptional need pursuant Article 14(1), the competent authorities of the Member States shall cooperate in accordance with Article 22 to coordinate their requests where it is necessary to minimise the administrative burden on the data holders.***		
247g		***4. The Commission shall develop a model template for requests pursuant to Article 17.***		
Article 16				
248	Article 16 Relationship with other obligations to make data available to public sector bodies and Union institutions, agencies and bodies	Article 16 Relationship with other obligations to make data available to public sector bodies and Union institutions, agencies and bodies-	Article 16 ***Relationship with other obligations to make data available to public sector bodies and*** **the Commission, the European Central Bank and Union bodies**~~Relationship with other obligations to make data available to public sector bodies and Union institutions, agencies and bodies~~	
Article 16(1)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
249	1. This Chapter shall not affect obligations laid down in Union or national law for the purposes of reporting, complying with information requests or demonstrating or verifying compliance with legal obligations.	1. This Chapter shall not affect obligations laid down in Union or national law for the purposes of reporting, complying with information requests or demonstrating or verifying compliance with legal obligations.	1. This Chapter shall not affect obligations laid down in Union or national law for the purposes of reporting, complying with **access to** information requests or demonstrating or verifying compliance with legal obligations**, including the making available of data for the purpose of producing official statistics, not based on an exceptional need**.	
Article 16(2)				
250	2. The rights from this Chapter shall not be exercised by public sector bodies and Union institutions, agencies and bodies in order to carry out activities for the prevention, investigation, detection or prosecution of criminal or administrative offences or the execution of criminal penalties, or for customs or taxation administration. This Chapter does not affect the applicable Union and national law on the prevention, investigation, detection or prosecution of criminal or administrative offences or the execution of criminal or administrative penalties, or for customs or taxation administration.	2. ~~*The rights from*~~ This Chapter shall not ~~*be exercised by*~~***apply to*** public sector bodies and Union institutions, agencies and bodies ~~*in order to*~~***that*** carry out activities for the prevention, investigation, detection or prosecution of criminal or administrative offences or the execution of criminal penalties, or ~~*for*~~***to*** customs or taxation administration. This Chapter does not affect the applicable Union and national law on the prevention, investigation, detection or prosecution of criminal or administrative offences or the execution of criminal or administrative penalties, or for customs or taxation administration.	2. The rights from this Chapter **including the right to access, share and use of data** shall not be exercised by public sector bodies and **the Commission, the European Central Bank and Union** ~~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~~ **shall** 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	

ORIGINAL CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
250a		***2a. Enterprises that fall within the scope of this Chapter shall inform their users of the possibility that data may be shared in the case of exceptional circumstances.***		
Article 17				
251	Article 17 Requests for data to be made available	Article 17 Requests for data to be made available	Article 17 Requests for data to be made available	
Article 17(1)				
252	1. Where requesting data pursuant to Article 14(1), a public sector body or a Union institution, agency or body shall:	1. ~~*Where requesting*~~***In a request for*** data pursuant to Article 14(1), a public sector body or a Union institution, agency or body shall:	1. Where requesting data pursuant to Article 14(1), a public sector body or **the Commission, the European Central Bank or Union** ~~a Union institution, agency or~~ body shall:	
Article 17(1), point (a)				
253	(a) specify what data are required;	(a) ***request data within their remit and*** specify what ~~*data*~~***datasets*** are required;	(a) specify what data are required**, including metadata that is necessary to interpret and use that data**;	
Article 17(1), point (b)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
254	(b) demonstrate the exceptional need for which the data are requested;	(b) demonstrate the exceptional need for which the data are requested ***and compliance with the conditions mentioned in Article 15***;	(b) demonstrate **that the conditions necessary for the existence of** the exceptional need **as described in Article 15** for which the data are requested **are met**;	
Article 17(1), point (c)				
255	(c) explain the purpose of the request, the intended use of the data requested, and the duration of that use;	(c) explain the purpose of the request, the intended use of the data requested, and the duration of that use;	(c) explain the purpose of the request, the intended use of the data requested, **including when applicable by a third party in accordance with paragraph 4,** and the duration of that use;	
255a		***(ca) specify, if possible, when the data is expected to be deleted by all parties that have access to it;***		
255b		***(cb) justify the choice of data holder to which the request is addressed;***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
255c		***(cc) specify any other public sector bodies, Union institutions, agencies or bodies and the third parties with which the data requested is expected to be shared with;***		
255d		***(cd) disclose the identity of the third party referred to in paragraph 4 of this Article, and in Article 21 of this Regulation;***		
255e		***(ce) apply all relevant ICT security measures concerning the transfer and storage of data;***		
Article 17(1), point (d)				
256	(d) state the legal basis for requesting the data;	(d) state the legal basis for requesting the data;	(d) state the legal **provision allocating to the requesting public sector body or to the Commission, the European Central Bank or Union bodies the specific public interest task relevant** ~~basis~~ for requesting the data ;	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
256a		***(da) specify the geographical limits that apply to the request for data;***		
Article 17(1), point (e)				
257	(e) specify the deadline by which the data are to be made available or within which the data holder may request the public sector body, Union institution, agency or body to modify or withdraw the request.	(e) specify the deadline by which the data are to be made available ~~or~~***and*** within which the data holder may request the public sector body, Union institution, agency or body to modify or withdraw the request~~.~~***;***	(e) specify the deadline **referred to in Article 18 and** by which the data are to be made available or within which the data holder may request the public sector body, ~~Union institution, agency or~~**the Commission, the European Central Bank or Union** body to modify or withdraw the request.	
257a		***(ea) submit a declaration on the lawful and secure handling of the data requested, including the confidentiality of trade secrets;***		
257b		***(eb) ensure that making the data available does not put the data holder in a situation that violates Union or national law or confer liability on the data holder for any infringement or damage resulting from the data access that a public sector body or a Union institution, agency or body has requested.***		

Obtenu par courrier

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 17(2)				
258	2. A request for data made pursuant to paragraph 1 of this Article shall:	2. A request for data made pursuant to paragraph 1 of this Article shall:	2. A request for data made pursuant to paragraph 1 of this Article shall:	
Article 17(2), point (a)				
259	(a) be expressed in clear, concise and plain language understandable to the data holder;	(a) ***be made in writing and*** be expressed in clear, concise and plain language understandable to the data holder;	(a) be expressed in clear, concise and plain language understandable to the data holder;	
259a		***(aa) be submitted through the competent authority;***		
259b		***(ab) be specific with regards to the type of data is requested and correspond to data which the data holder has available at the time of the request;***		
Article 17(2), point (b)				
260	(b) be proportionate to the exceptional need, in terms of the granularity and volume of the data requested and frequency of access of the data requested;	(b) be ***justified and*** proportionate to the exceptional need, in terms of the granularity and volume of the data requested and frequency of access of the data requested;	(b) be proportionate to the exceptional need, in terms of the granularity and volume of the data requested and frequency of access of the data requested;	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 17(2), point (c)				
261	(c) respect the legitimate aims of the data holder, taking into account the protection of trade secrets and the cost and effort required to make the data available;	(c) respect the legitimate aims of the data holder, taking into account the protection of trade secrets and the cost and effort required to make the data available***, Where applicable, specify the measures to be taken pursuant to Article 19(2) to preserve the confidentiality of trade secrets, including, as appropriate, through the use of model contractual terms, technical standards and codes of conduct***;	(c) respect the legitimate aims of the data holder, taking into account the protection of trade secrets and the cost and effort required to make the data available;	
Article 17(2), point (d)				
262	(d) concern, insofar as possible, non-personal data;	(d) concern~~, *insofar as possible,*~~ ***only*** non-personal data;	(d) **in case of requests made pursuant to Article 15, points (a) and (b)** concern, insofar as possible, non-personal data; **in case personal data are requested, the request should justify the need for including personal data and set out the technical and organisational measures that will be taken to protect the data;**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
262a			**(da) in case of requests made pursuant to Article, 15 point (c), concern personal data only in case the data processing has a specific basis in Union or Member State law;**	
Article 17(2), point (e)				
263	(e) inform the data holder of the penalties that shall be imposed pursuant to Article 33 by a competent authority referred to in Article 31 in the event of non-compliance with the request;	(e) inform the data holder of the penalties that shall be imposed pursuant to Article 33 by a ~~competent authority~~***data coordinator*** referred to in Article 31 in the event of non-compliance with the request;	(e) inform the data holder of the penalties that shall be imposed pursuant to Article 33 by a competent authority referred to in Article 31 in the event of non-compliance with the request;	
Article 17(2), point (f)				
264	(f) be made publicly available online without undue delay.	(f) ***be transmitted to the data coordinator referred to in Article 31, who shall make the request publicly available online without undue delay. The data coordinator may inform the public sector body or Union institution, agency or body if the data holder already provided the requested data in response to previously submitted request for the same purpose by another public sector body or Union institution agency or body.*** ~~*be made publicly available online without undue delay.*~~	(f) be made publicly available online without undue delay**, unless this would create a risk for public security, and the requesting public sector body shall notify the competent authority referred to in Article 31, of the Member State where the requesting public sector body is established**. **The Commission, the European Central Bank and Union bodies shall make their requests available online without undue delay and inform the Commission thereof;**	

Only for Par CONTEXT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
264a			**(fa) in case personal data are requested, be notified without undue delay to the independent supervisory authority responsible for monitoring the application of Regulation (EU) 2016/679 in the member state where the data holder is established.**	
Article 17(3)				
265	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 ***and Regulation (EU) 2022/868*** shall not apply to the data held by public sector bodies obtained pursuant to this Chapter.	3. A public sector body or **the Commission, the European Central Bank or Union** ~~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 **or Regulation (EU) 2022/868**. Directive (EU) 2019/1024 **and Regulation (EU) 2022/868** shall not apply to the data held by public sector bodies obtained pursuant to this Chapter.	
Article 17(4), first subparagraph				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
266	4. Paragraph 3 does not preclude a public sector body or a Union institution, agency or body to exchange data obtained pursuant to this Chapter with another public sector body, Union institution, agency or body, in view of completing the tasks in Article 15 or to make the data available to a third party in cases where it has outsourced, by means of a publicly available agreement, technical inspections or other functions to this third party. The obligations on public sector bodies, Union institutions, agencies or bodies pursuant to Article 19 apply.	4. Paragraph 3 does not preclude a public sector body or a Union institution, agency or body to exchange data obtained pursuant to this Chapter with another public sector body, Union institution, agency or body, ~~*in view*~~***for the purpose*** of completing the tasks in Article 15 ***which was included the request in accordance with paragraph 1(cc),*** or to make the data available to a third party in cases where it has outsourced, by means of a publicly available agreement, technical inspections or other functions to this third party. ***It shall bind the third party contractually not to use the data for any other purposes and not to share is with any other third parties. Where a public sector body or a Union institution, agency or body transmits or makes data available under this paragraph, it shall notify the data holder from whom the data was received without undue delay. Within five working days of that notification, the data holder shall have the right to submit a reasoned objection to such transmission or making available of data. In the case of a rejection of the reasoned objection by the public sector body or a Union institution, agency or body, the data holder may bring the matter to the data coordinator referred to in Article 31. The receiving*** ~~*The obligations on*~~ public sector bodies, Union institutions,	4. Paragraph 3 does not preclude a public sector body or **the Commission, the European Central Bank or Union** ~~a Union institution, agency or~~ body to exchange data obtained pursuant to this Chapter with another public sector body, **the Commission, the European Central Bank or Union** ~~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**, the Commission, the European Central Bank or Union**~~, Union institutions, agencies or~~ bodies pursuant to Article 19 apply **also to such third parties**.	

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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
266a		***Data obtained pursuant this chapter shall be used only for the purpose specified in the request. Public sector bodies, Union institutions, agencies or bodies shall bind contractually third parties with whom they agreed to share data pursuant paragraph 4 not to use the data for any other purpose and not to share it with other parties.***		
Article 17(4), second subparagraph				
267	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.	~~*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.*~~	Where a public sector body or **the Commission, the European Central Bank or Union** ~~a Union institution, agency or~~ body transmits or makes data available under this paragraph, it shall notify **without undue delay** the data holder from whom the data was received.	
Article 18				
268	Article 18 Compliance with requests for data	Article 18 Compliance with requests for data	Article 18 Compliance with requests for data	
Article 18(1)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
269	1. A data holder receiving a request for access to data under this Chapter shall make the data available to the requesting public sector body or a Union institution, agency or body without undue delay.	1. A data holder receiving a request for access to data under this Chapter shall make the data available to the requesting public sector body or a Union institution, agency or body without undue delay***, taking into account provision of time and necessary technical, organisational and legal measures***.	1. A data holder receiving a request for access to data under this Chapter shall make the data available to the requesting public sector body or **the Commission, the European Central Bank or Union** ~~a Union institution, agency or~~ body without undue delay.	
Article 18(2)				
270	2. Without prejudice to specific needs regarding the availability of data defined in sectoral legislation, the data holder may decline or seek the modification of the request within 5 working days following the receipt of a request for the data necessary to respond to a public emergency and within 15 working days in other cases of exceptional need, on either of the following grounds:	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~~***five*** working days following the receipt of a request for the data necessary to respond to a public emergency and within ~~15~~***30*** working days in other cases of exceptional need, on either of the following grounds:	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 **without undue delay and not later than** within 5 working days following the receipt of a request for the data necessary to respond to a public emergency and **without undue delay and not later than** within 15 working days in other cases of exceptional need, on either of the following grounds:	
Article 18(2), point (a)				
271	(a) the data is unavailable;	(a) the data is ~~*unavailable*~~***not available to the data holder at the time of the request***;	(a) the data ~~is unavailable~~**holder does not have control over the data requested**;	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
271a		***(aa) provided security measures concerning transfer, storing and maintaining confidentiality are insufficient;***		
271b		***(ab) a similar request for the same purpose has been previously submitted by another public sector body or Union institution, agency or body and the data holder has not been notified of the destruction of the data pursuant to Article 19(1) point (c);***		
Article 18(2), point (b)				
272	(b) the request does not meet the conditions laid down in Article 17(1) and (2).	(b) the request does not meet the conditions laid down in Article 17(1) and (2).	(b) the request does not meet the conditions laid down in Article 17(1) and (2).	
Article 18(3)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
273	3. In case of a request for data necessary to respond to a public emergency, the data holder may also decline or seek modification of the request if the data holder already provided the requested data in response to previously submitted request for the same purpose by another public sector body or Union institution agency or body and the data holder has not been notified of the destruction of the data pursuant to Article 19(1), point (c).	3. ~~*In case of a request for data necessary to respond to a public emergency, the data holder may also decline or seek modification of the request if the data holder already provided the requested data in response to previously submitted request for the same purpose by another public sector body or Union institution agency or body and the data holder has not been notified of the destruction of the data pursuant to Article 19(1), point (c).*~~	3. In case of a request for data necessary to respond to a public emergency, the data holder may also decline or seek modification of the request if the data holder already provided the requested data in response to previously submitted request for the same purpose by another public sector body or **the Commission, the European Central Bank or Union** ~~Union institution agency or~~ body and the data holder has not been notified of the ~~destruction~~ **erasure** of the data pursuant to Article 19(1), point (c).	
Article 18(4)				
274	4. If the data holder decides to decline the request or to seek its modification in accordance with paragraph 3, it shall indicate the identity of the public sector body or Union institution agency or body that previously submitted a request for the same purpose.	4. If the data holder decides to decline the request or to seek its modification in accordance with paragraph 3, it shall indicate the identity of the public sector body or Union institution agency or body that previously submitted a request for the same purpose.	4. If the data holder decides to decline the request or to seek its modification in accordance with paragraph 3, it shall indicate the identity of the public sector body or **the Commission, the European Central Bank or Union** ~~Union institution agency or~~ body that previously submitted a request for the same purpose.	
Article 18(5)				

Obtenu par courriel

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
275	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.	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 ***personal*** data~~*, insofar as the request can be fulfilled with pseudonymised data*~~ ***to be made available***.	5. Where **the dataset requested includes personal data, the data holder shall properly anonymise the data, unless the** compliance with the request to make data available to a public sector body or **the Commission, the European Central Bank or Union** ~~a Union institution, agency or~~ body requires the disclosure of personal data~~,~~**. In that case** the data holder shall ~~take reasonable efforts to~~ pseudonymise the data, insofar as the request can be fulfilled with pseudonymised data.	
Article 18(6)				
276	6. Where the public sector body or the Union institution, agency or body wishes to challenge a data holder's refusal to provide the data requested, or to seek modification of the request, or where the data holder wishes to challenge the request, the matter shall be brought to the competent authority referred to in Article 31.	6. Where the public sector body or the Union institution, agency or body wishes to challenge a data holder's refusal to provide the data requested, or to seek modification of the request, or where the data holder wishes to challenge the request, the matter shall be brought to the ~~*competent authority*~~***data coordinator*** referred to in Article 31***, without prejudice to the right to submit a dispute to a civil or administrative court, in accordance with Union or national law***.	6. Where the public sector body or the **Commission, the European Central Bank or Union** ~~Union institution, agency or~~ body wishes to challenge a data holder's refusal to provide the data requested, or ~~to seek modification of~~**where the data holder wishes to challenge** the request, ~~or where the data holder wishes to challenge~~**and the matter cannot be solved by an appropriate modification of** the request, the matter shall be brought to the competent authority referred to in Article 31 **of the Member State where the data holder is established**.	
Article 19				

Outcome of COMMITTEE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
277	Article 19 Obligations of public sector bodies and Union institutions, agencies and bodies	Article 19 Obligations of public sector bodies and Union institutions, agencies and bodies	Article 19 ***Obligations of public sector bodies and*** **the Commission, the European Central Bank and Union *bodies*** ~~Obligations of public sector bodies and Union institutions, agencies and bodies~~	
Article 19(1)				
278	1. A public sector body or a Union institution, agency or body having received data pursuant to a request made under Article 14 shall:	1. A public sector body or a Union institution, agency or body having received data pursuant to a request made under Article 14 ***and statistical or research organisations receiving data pursuant to a request made under Article 21(1)*** shall:	1. A public sector body or **the Commission, the European Central Bank or Union body receiving** ~~a Union institution, agency or body having received~~ data pursuant to a request made under Article 14 shall:	
Article 19(1), point (a)				
279	(a) not use the data in a manner incompatible with the purpose for which they were requested;	(a) ~~*not use the data in a manner incompatible with the purpose for which they were requested;*~~	(a) not use the data in a manner incompatible with the purpose for which they were requested;	
Article 19(1), point (b)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
280	(b) implement, insofar as the processing of personal data is necessary, technical and organisational measures that safeguard the rights and freedoms of data subjects;	(b) implement, insofar as the processing of personal data is necessary, technical and organisational measures that safeguard the rights and freedoms of data subjects ***and guarantee a high level of security and prevent the unauthorised disclosure of data***;	(b) ~~implement, insofar as the processing of personal data is necessary~~**have implemented technical and organisational measures that preserve the confidentiality and integrity of the requested data, in particular personal data, as well as** ~~technical and organisational measures that~~ safeguard the rights and freedoms of data subjects;	
280a		***(ba) implement the necessary technical and organisational measures to manage cyber risk that could affect the confidentiality, integrity or availability of the requested data;***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
280b		***(bb) notify the data holder from whom has received the data of any cybersecurity incident affecting the confidentiality, integrity, or availability of the received data as soon as possible but not later than 72 hours after having determined that the incident has occurred without prejudice to the reporting obligations under Regulation(EU) XXX/XXXX (EUIBAL) and Directive (EU) 2022/2555. Those entities shall be liable by damages due to a cybersecurity breach if they have not had the measures in place pursuant to paragraph 1, point (ba);***		
Article 19(1), point (c)				
281	(c) destroy the data as soon as they are no longer necessary for the stated purpose and inform the data holder that the data have been destroyed.	(c) ~~*destroy*~~***erase*** the data as soon as they are no longer necessary for the stated purpose and inform ***without undue delay*** the data holder that the data have been ~~*destroyed*~~***erased***.	(c) ~~destroy~~ **erase** the data as soon as they are no longer necessary for the stated purpose and inform the data holder **and individuals or organisations that received the data pursuant to paragraph 1 of Article 21 without undue delay** that the data have been ~~destroyed~~**erased unless archiving of the data is required for transparency purposes in accordance with national law**.	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
281a		***1a. A public sector body, Union institution, agency, body, or a third party receiving data under this Chapter shall not:***		
281b		***(a) use the data to develop a product or a service that competes with the product or service or enhance an existing product or service from which the accessed data originates;***		
281c		***(b) derive insights about the economic situation, assets and production or operation methods of the data holder, or share the data with another third party for that purpose; or***		
281d		***(c) share the data with another third party for any of those purposes.***		
Article 19(2)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
282	2. Disclosure of trade secrets or alleged trade secrets to a public sector body or to a Union institution, agency or body shall only be required to the extent that it is strictly necessary to achieve the purpose of the request. In such a case, the public sector body or the Union institution, agency or body shall take appropriate measures to preserve the confidentiality of those trade secrets.	2. Disclosure of trade secrets ~~*or alleged trade secrets*~~ to a public sector body or to a Union institution, agency or body shall only be required to the extent that it is strictly necessary to achieve the purpose of ~~*the*~~***a*** request ***under Article 15***. In such a case, the ***data holder shall identify the data which are protected as trade secrets. The*** public sector body or the Union institution, agency or body shall take ***in advance all the necessary and*** appropriate ***technical and organisational*** measures ***agreed with the data holder or with the trade secrets holder if it is not simultaneously the same legal person,*** to preserve the confidentiality of those trade secrets ***including as appropriate through the use of model contractual terms, technical standards and the application of codes of conduct***.	2. Disclosure of trade secrets ~~or alleged trade secrets~~ to a public sector body or to **the Commission, the European Central Bank or Union** ~~a Union institution, agency or~~ body shall only be required to the extent that it is strictly necessary to achieve the purpose of the request. In such a case, the public sector body or the ~~Union institution, agency or~~ **Commission, the European Central Bank or Union** body shall take**, prior to the disclosure,** appropriate measures**, such as technical and organisational measures,** to preserve the confidentiality of those trade secrets. **The data holder shall identify the data which are protected as trade secrets, including in the relevant metadata.**	

Obtenu par courriel

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
282a		***2a. Where a public sector body or a Union institution, agency or body transmits or makes data available to third parties to perform the tasks that have been outsourced to it as a result of the outsourcing of technical inspections or other functions pursuant to Article 17(4), trade secrets as identified by the data holder, shall only be disclosed to the extent that they are strictly necessary for the third party to perform the tasks that have been outsourced and provided that all specific necessary measures agreed between the data holder and the third party are taken in advance, including technical and organisational measures to preserve the confidentiality of those trade secrets, including as appropriate through the use of model contractual terms, technical standards and the application of codes of conduct.***		

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
282b		***2b. In cases where the public sector body or a Union institution, agency or body that submitted the request for data or the third party to which data were made available pursuant to Article 17(4) fails to implement those measures or undermines the confidentiality of trade secrets, the data holder shall be able to suspend the sharing of data identified as trade secrets. In such cases, the data holder shall immediately notify the data coordinator of the Member State in which the data holder is established, pursuant to Article 31, that it has suspended the sharing of data and identify which measures have not been implemented or which trade secrets have had their confidentiality undermined. Where the public sector body or Union institution, agency or body or the third party wishes to challenge the data holder's decision to suspend the sharing of data, the data coordinator shall decide within a reasonable period of time, whether the data sharing shall be resumed or not and if yes, indicate under which conditions.***		

OUTSIDE CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
282c		***2c. A public sector body or a Union institution, agency or body shall be responsible for the security of the data that they receive.***		
282d		***2d. A public sector body or a Union institution, agency or body shall notify the data holder in the event of a security breach as soon as possible, but within 48 hours at the latest.***		
Article 20				
283	Article 20 Compensation in cases of exceptional need	Article 20 Compensation in cases of exceptional need	Article 20 Compensation in cases of exceptional need	
Article 20(1)				
284	1. Data made available to respond to a public emergency pursuant to Article 15, point (a), shall be provided free of charge.	1. ***Unless specified otherwise in Union or national law,*** data made available to respond to a public emergency pursuant to Article 15, point (a), shall be provided free of charge. ***The public sector body or the Union institution, agency or body that has received data shall provide public recognition to the data holder if requested by the data holder.***	1. Data ~~made~~ **holders other than small and micro enterprise as defined in article 2 of the Annex to Recommendation 2003/361/EC shall make** available **data necessary** to respond to a public emergency pursuant to Article ~~15~~**15(1)**, point (a), ~~shall be provided~~ free of charge.	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 20(2)				
285	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.	2. ~~*Where*~~ The data holder ~~*claims compensation*~~***shall be entitled to fair remuneration*** for making data available in compliance with a request made pursuant to Article 15, ~~*points (b) or (c)*~~***point (b)***, such compensation shall ~~*not exceed*~~***at least cover*** the technical and organisational costs incurred to comply with the request including, where ~~*necessary*~~***applicable***, the costs of anonymisation and of technical adaptation, plus a reasonable margin. Upon request of the public sector body or the Union institution, agency or body requesting the data, the data holder shall provide information on the basis for the calculation of the costs and the reasonable margin.	2. Where the data holder claims compensation for making data available in compliance with a request made pursuant to Article ~~15~~**15(1)**, 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**, pseudonymisation** and of technical adaptation, plus a reasonable margin. Upon request of the public sector body or **the Commission, the European Central Bank or Union** ~~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.	
285a		***2a. Where the public-sector body or the Union institution, agency or body wishes to challenge the level of remuneration requested by the data holder, the matter shall be brought to the attention of the data coordinator referred to in Article 31 of the Member State where the data holder is established.***		

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	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
285b			**2a. Paragraph 2 shall also apply where a small and micro enterprise as defined in article 2 of the Annex to Recommendation 2003/361/EC claims compensation for making data available.**	
285c			**2b. Data holders shall not be able to request compensation for making data available in compliance with a request made pursuant to Article 15, points (b) or (c) in case the specific task in the public interest is the production of official statistics and where the purchase of data is not allowed by national law.**	
285d			**2c. Where the public sector body or the Commission, the European Central Bank or Union body disagrees with the level of compensation requested by the data holder, they may submit a complaint to the competent authority referred to in Article 31 of the Member State where the data holder is established.**	
Article 21				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
286	Article 21 Contribution of research organisations or statistical bodies in the context of exceptional needs	Article 21 Contribution of research organisations or statistical bodies in the context of exceptional needs	Article 21 ~~Contribution of research organisations or statistical bodies~~**Further sharing of data obtained** in the context of exceptional needs **with *research organisations or statistical bodies***	
Article 21(1)				
287	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.	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*~~***necessary to fulfil*** the purpose for which the data was requested, or to national statistical institutes***, the members of the European System of Central Banks*** and Eurostat for the compilation of official statistics.	1. A public sector body or **the Commission, the European Central Bank or Union** ~~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.~~	
287a			**(a) with individuals or organisations in view of carrying out scientific research or analytics compatible with the purpose for which the data was requested, or**	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
287b			**(b) with national statistical institutes and Eurostat for the production of official statistics.**	
Article 21(2)				
288	2. Individuals or organisations receiving the data pursuant to paragraph 1 shall act on a not-for-profit basis or in the context of a public-interest mission recognised in Union or Member State law. They shall not include organisations upon which commercial undertakings have a decisive influence or which could result in preferential access to the results of the research.	2. Individuals or organisations receiving the data pursuant to paragraph 1 shall act ***exclusively*** on a not-for-profit basis or in the context of a public-interest mission recognised in Union or Member State law. They shall not include organisations upon which commercial undertakings have a ~~*decisive*~~***significant*** influence ~~*or*~~**,** which could result in preferential access to the results of the research.	2. Individuals or organisations receiving the data pursuant to paragraph 1 shall ~~act~~**use the data exclusively** on a not-for-profit basis or in the context of a public-interest mission recognised in Union or Member State law. They shall not include organisations upon which commercial undertakings have a decisive influence or which could result in preferential access to the results of the research.	
Article 21(3)				
289	3. Individuals or organisations receiving the data pursuant to paragraph 1 shall comply with the provisions of Article 17(3) and Article 19.	3. Individuals or organisations receiving the data pursuant to paragraph 1 shall comply with the provisions of Article 17(3) and Article 19.	3. Individuals or organisations receiving the data pursuant to paragraph 1 shall comply with the **same obligations that are applicable to the public sector bodies or the Commission, the European Central Bank or Union bodies pursuant to** ~~provisions of~~ Article 17(3) and Article 19.	

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
289a			**3a. Notwithstanding Article 19, paragraph 1 (c), individuals or organisations receiving the data pursuant to paragraph 1 may keep the data received for up to 6 months following erasure of the data by the public sector bodies, the Commission, the European Central bank and Union bodies.**	
Article 21(4)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
290	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.	4. Where a public sector body or a Union institution, agency or body ~~*transmits or makes*~~***intends to transmit or make*** data available under paragraph 1, it shall notify the data holder from whom the data was received. ***That notification shall include the identity and the contact details of individuals or organisations receiving the data, the purpose of the transmission or making available of the data and the period for which the data will be used by the receiving entity. Within five working days of the notification referred to in the first subparagraph of this paragraph, the data holder shall have the right to submit a reasoned objection to such transmission or making available of data. In the case of a rejection of the objection by the public sector body, Union institution, agency or body, the data holder may bring the reasoned objection to the data coordinator referred to in Article 31.***	4. Where a public sector body or **the Commission, the European Central Bank or Union** ~~a Union institution, agency or~~ body transmits or makes data available under paragraph 1, it shall notify **without undue delay** the data holder from whom the data was received**, stating the identity of the organisation or the individual receiving the data and the technical and organisational protection measures taken, including where personal data or trade secrets are involved**.	
Article 22				
291	Article 22 Mutual assistance and cross-border cooperation	Article 22 Mutual assistance and cross-border cooperation	Article 22 Mutual assistance and cross-border cooperation	
Article 22(1)				

Obtained from CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
292	1. Public sector bodies and Union institutions, agencies and bodies shall cooperate and assist one another, to implement this Chapter in a consistent manner.	1. Public sector bodies and Union institutions, agencies and bodies shall cooperate and assist one another, to implement this Chapter in a consistent manner.	1. Public sector bodies and ~~Union institutions, agencies and~~ **the Commission, the European Central Bank and Union** bodies shall cooperate and assist one another, to implement this Chapter in a consistent manner.	
Article 22(2)				
293	2. Any data exchanged in the context of assistance requested and provided pursuant to paragraph 1 shall not be used in a manner incompatible with the purpose for which they were requested.	2. Any data exchanged in the context of assistance requested and provided pursuant to paragraph 1 shall not be used in a manner incompatible with the purpose for which they were requested.	2. Any data exchanged in the context of assistance requested and provided pursuant to paragraph 1 shall not be used in a manner incompatible with the purpose for which they were requested.	
Article 22(3)				
294	3. Where a public sector body intends to request data from a data holder established in another Member State, it shall first notify the competent authority of that Member State as referred to in Article 31, of that intention. This requirement shall also apply to requests by Union institutions, agencies and bodies.	3. Where a public sector body intends to request data from a data holder established in another Member State, it shall first notify the ~~*competent authority*~~***data coordinator*** of that Member State as referred to in Article 31, of that intention. This requirement shall also apply to requests by Union institutions, agencies and bodies. ***The request shall be evaluated by the competent authority of the Member State where the data holder is established.***	3. Where a public sector body intends to request data from a data holder established in another Member State, it shall first notify the competent authority of that Member State as referred to in Article 31, of that intention **and transmit the request to that competent authority for examination**. This requirement shall also apply to requests by **the Commission, the European Central Bank and Union** ~~Union institutions, agencies and~~ bodies.	
Article 22(4)				

Obtenu par CONTEXTE

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
295	4. After having been notified in accordance with paragraph 3, the relevant competent authority shall advise the requesting public sector body of the need, if any, to cooperate with public sector bodies of the Member State in which the data holder is established, with the aim of reducing the administrative burden on the data holder in complying with the request. The requesting public sector body shall take the advice of the relevant competent authority into account.	4. After having been notified in accordance with paragraph 3, the ~~*relevant competent authority*~~***data coordinator*** shall advise the requesting public sector body of the need, if any, to cooperate with public sector bodies of the Member State in which the data holder is established, with the aim of reducing the administrative burden on the data holder in complying with the request. The requesting public sector body shall take the advice of the ~~*relevant competent authority*~~***data coordinator*** into account.	4. After having ~~been notified in accordance with paragraph 3, the relevant competent authority shall advise the requesting public sector body of the need, if any, to cooperate with public sector bodies of the Member State in which the data holder is established, with the aim of reducing the administrative burden on the data holder in complying with the request. The requesting public sector body~~**examined the request in the light of the requirements under Article 17, the relevant competent authority** shall ~~take the advice~~ **take one** of the ~~relevant competent authority into account.~~**following actions:**	
Article 22(4), first subparagraph, point (a)				

Obtenu par courriel

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
295a			**(a) transmit the request to the data holder and, if applicable, advise the requesting public sector body, the Commission, the European Central Bank or Union body of the need, if any, to cooperate with public sector bodies of the Member State in which the data holder is established, with the aim of reducing the administrative burden on the data holder in complying with the request. The requesting public sector body, the Commission, the European Central Bank or Union body shall take the advice of the relevant competent authority into account;**	
Article 22(4), first subparagraph, point (b)				
295b			**(b) reject the request of the public sector body requesting the data for duly substantiated reasons. The requesting public sector body shall take the advice of the relevant competent authority into account before possibly resubmitting the request;**	
Article 22(4), first subparagraph, point (c)				

Obtenu par CONSILIUM

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
295c			**(c) reject the request of the Commission, the European Central Bank or the requesting Union body for duly substantiated reasons. The Commission, the European Central Bank or the requesting Union body shall take the reservations into account before possibly resubmitting the request.**	
Article 22(4), second subparagraph				
295d			**The competent authority shall act without undue delay.**	
CHAPTER VI				
296	CHAPTER VI SWITCHING BETWEEN DATA PROCESSING SERVICES	CHAPTER VI SWITCHING BETWEEN DATA PROCESSING SERVICES	CHAPTER VI SWITCHING BETWEEN DATA PROCESSING SERVICES	
296a		***Article 22a*** ***Definitions*** ***For the purposes of this Chapter, the following definitions apply:***		

Obtenu par CONTEXTE

296b		***1. 'data processing service' means a digital service enabling ubiquitous, and on-demand network access to a shared pool of configurable, scalable and elastic computing resources of a centralised, distributed or highly distributed nature, provided to a customer, that can be rapidly provisioned and released with minimal management effort or service provider interaction;***		
296c		***2. 'on-premise' means an ICT infrastructure and computing resources leased or owned by the customer, located in its own data centre and operated by the customer or by a third-party;***		
296d		***3. 'equivalent service' means a set of data processing services that share the same primary objective and data processing service model;***		

Obtenu par CONTEXTE

296e		***4. 'data processing service data portability' means the ability of the cloud service to move and adapt its exportable data between the customer's data processing services, including in different deployment models;***		
296f		***5. 'switching' means the process where a data processing service customer changes from using one data processing service to using a second equivalent or other service offered by a different provider of data processing services, including through extracting, transforming and uploading the data, involving the source provider of data processing services, the customer and the destination provider of data processing services;***		

Obtenu par CONTEXTE

296g		***6. 'exportable data' means the input and output data, including metadata, directly or indirectly generated, or cogenerated, by the customer's use of the data processing service, excluding any data processing service provider's or third party's assets or data protected by intellectual property rights or constituting a trade secret or confidential information;***		
296h		***7. 'functional equivalence' means the possibility to re-establish on the basis of the customer's data a minimum level of functionality in the environment of a new data processing service after the switching process, where the destination service delivers comparable outcome in response to the same input for shared functionality supplied to the customer under the contractual agreement ;***		

Obtenu par CONTEXTE

296i		***8. 'egress fees' refers to data transfer fees charged to the customers of a provider of data processing services for extracting their data through the network from the ICT infrastructure of a provider of data processing services.***		
Article 23				
297	Article 23 Removing obstacles to effective switching between providers of data processing services	Article 23 Removing obstacles to effective switching between providers of data processing services	Article 23 Removing obstacles to effective switching between providers of data processing services	
Article 23(1)				
298	1. Providers of a data processing service shall take the measures provided for in Articles 24, 25 and 26 to ensure that customers of their service can switch to another data processing service, covering the same service type, which is provided by a different service provider. In particular, providers of data processing service shall remove commercial, technical, contractual and organisational obstacles, which inhibit customers from:	1. Providers of a data processing service shall***, within their capacity,*** take the measures provided for in Articles 24, ***24a, 24b,*** 25 and 26 to ~~*ensure that*~~***enable*** customers ~~*of their service can*~~***to*** switch to another data processing service, covering the ~~*same*~~***equivalent*** service ~~*type*~~, which is provided by a different ~~*service provider*~~***provider of data processing services or, where relevant, to use several providers of data processing services at the same time***. In particular, providers of ***a*** data processing service ***shall not impose and*** shall remove commercial, technical, contractual and organisational obstacles, which inhibit customers from:	1. Providers of a data processing service shall take the measures provided for in Articles 24, 25 and 26 to ensure that **all** customers of their service can switch to another data processing service, covering the same service type, which is provided by a different service provider. In particular, providers of data processing ~~service~~**services** shall **not pose obstacles, which can be, but not exclusively, of pre-commercial,** ~~remove~~ commercial, technical, contractual and organisational ~~obstacles~~**nature**, **and** which inhibit customers from:	

OUTDATED CONTEXTE

Article 23(1), point (a)				
299	(a) terminating, after a maximum notice period of 30 calendar days, the contractual agreement of the service;	(a) terminating, after a maximum notice period of ~~30~~***60*** calendar days, the contractual agreement of the service***, unless an alternative notice period is mutually and explicitly agreed between the customer and the provider where both parties are able equally to influence the content of the contractual agreement***;	(a) terminating, after ~~a~~ **the** maximum notice period **and the successful finalisation of the switching process, in accordance with Article 24**~~of 30 calendar days~~, the contractual agreement of the service;	
Article 23(1), point (b)				
300	(b) concluding new contractual agreements with a different provider of data processing services covering the same service type;	(b) concluding new contractual agreements with a different provider of data processing services covering the ~~same~~***equivalent*** service ~~type~~;	(b) concluding new contractual agreements with a different provider of data processing services covering the same service type;	
Article 23(1), point (c)				
301	(c) porting its data, applications and other digital assets to another provider of data processing services;	(c) porting ~~its~~***the customer's exportable*** data, applications and other digital assets to another provider of data processing services ***or to an on-premise ICT infrastracture, including after having benefited from a free-tier offering***;	(c) porting its data~~, applications and~~ **and metadata created by the customer and by the use of the originating service and/or the customer's applications and/or** other digital assets to another provider of data processing services **or to an on-premise system, including if the customer benefited from a free-tier offering**;	
Article 23(1), point (d)				

Observ par CONTEXT

302	(d) maintaining functional equivalence of the service in the IT-environment of the different provider or providers of data processing services covering the same service type, in accordance with Article 26.	(d) ~~*maintaining*~~***achieving*** functional equivalence ***in the use*** of the ***new*** service in the IT-environment of the different provider or providers of data processing services covering the ~~*same*~~***equivalent*** service ~~*type*~~, in accordance with Article 26.	(d) **in accordance with Article 23a,** maintaining functional equivalence of the service in the IT-environment of the different provider or providers of data processing services covering the same service type~~, in accordance with Article 26~~.	
Article 23(2)				
303	2. Paragraph 1 shall only apply to obstacles that are related to the services, contractual agreements or commercial practices provided by the original provider.	2. Paragraph 1 shall only apply to obstacles that are related to the services, contractual agreements or commercial practices provided by the ~~*original*~~***source*** provider ***of data processing services***.	*deleted*	
303a			**Article 23a** **Scope of the technical switching obligations**	
Article 23a, first subparagraph				
303b			**The responsibilities of data processing service providers as defined in Articles 23 and 26 shall only apply to the services, contractual agreements or commercial practices provided by the original provider.**	
Article 24				

Obtenu par CONTEXTE

304	Article 24 Contractual terms concerning switching between providers of data processing services	Article 24 Contractual terms concerning switching between providers of data processing services	Article 24 Contractual terms concerning switching between providers of data processing services	
Article 24(1)				
305	1. The rights of the customer and the obligations of the provider of a data processing service in relation to switching between providers of such services shall be clearly set out in a written contract. Without prejudice to Directive (EU) 2019/770, that contract shall include at least the following:	1. The rights of the customer and the obligations of the provider of a data processing service in relation to switching between providers of such services ***or, where applicable, to an on-premise ICT infrastructure*** shall be clearly set out in a written contract ***which is made available to the customer in a user-friendly manner prior to signing the contract***. Without prejudice to Directive (EU) 2019/770, ~~*that contract*~~***the provider of a data processing service*** shall ~~*include*~~***ensure that that contract includes*** at least the following:	1. The rights of the customer and the obligations of the provider of a data processing service in relation to switching between providers of such services **or to an on-premise system** shall be clearly set out in a written contract. Without prejudice to Directive (EU) 2019/770, that contract shall include at least the following:	
Article 24(1), point (a)				

Obtenu par CONTEXTE

306	(a) clauses allowing the customer, upon request, to switch to a data processing service offered by another provider of data processing service or to port all data, applications and digital assets generated directly or indirectly by the customer to an on-premise system, in particular the establishment of a mandatory maximum transition period of 30 calendar days, during which the data processing service provider shall:	(a) clauses allowing the customer, upon request, to switch to a data processing service offered by another provider of data processing ~~service~~***services*** or to port all ***exportable*** data~~,~~ applications and digital assets ~~*generated directly or indirectly by the customer to an on-premise system, in particular the establishment of a*~~***to an on-premise ICT infrastructure, without undue delay and in any event no longer than*** mandatory maximum transition period of ~~*30*~~***90*** calendar days, during which the ***provider of*** data processing ~~*service provider*~~***services*** shall:	(a) clauses allowing the customer, upon request, to switch to a data processing service offered by another provider of data processing service or to port all data, **including metadata,** applications and **other** digital assets generated directly or indirectly by the customer **and/or relating to the customer** to an on-premise system, in particular the establishment of a mandatory maximum transition period of 30 calendar days, **to be initiated after the maximum notice period referred to in point (aa),** during which **the service contract remains applicable and** the data processing service provider shall:	
Article 24(1), point (a)(1)				
307	(1) assist and, where technically feasible, complete the switching process;	~~*(1)*~~***(i)*** ~~*assist and, where technically feasible, complete*~~***reasonably assist through and facilitate*** the switching process;	(1) assist **the customer and third parties authorized by the customer in** ~~and~~, where technically feasible, ~~complete the switching~~ **completing the porting** process;	
Article 24(1), point (a)(2)				

Obtenu par courtoisie

308	(2) ensure full continuity in the provision of the respective functions or services.	~~(2)~~***(ii) act with due care to maintain business continuity and a high level of security of the service and, taking into account the advancement in the switching process,*** ensure***, to the greatest extent possible,*** ~~*full*~~ continuity in the provision of the ~~*respective*~~***relevant*** functions or services ***within the capacity of the source provider of data processing services and in accordance with contractual obligations***.	(2) ensure full continuity in the provision of the respective functions or services **under the contract;**	
308a		***(iia) provide clear information concerning known risks to continuity in the provision of the respective functions or services on the part of the provider of source data processing services.***		
308b			**(2a) ensure that a high level of security is maintained throughout the porting process, notably the security of the data during their transfer and the continued security of the data during the retention period specified in point (c);**	
308c				

Obtenu par CONTEXTE

308d		***(aa) a list of additional services that customers can obtain facilitating the switching process, such as the test of the switching process;***		
308e		***(ab) an obligation on the provider of data processing services to support the development of the customer's exit strategy relevant to the contracted services, including through providing all relevant information;***		
308f			**(aa) a maximum notice period for initiation of the switching process , which shall not exceed 2 months;**	
308g			**(ab) a clause specifying that the contract shall be deemed terminated and the customer shall be notified of the termination, in one of the following cases:**	

Obtenu par CONTEXTE

308h			**(i) upon the successful completion of the switching process to another provider of data processing services or an on-premise system;**	
308i			**(ii) at the end of the maximum notice period referred to in paragraph (aa), in the case that the customer does not wish to switch but to delete all its digital assets upon service termination.**	
Article 24(1), point (b)				
309	(b) an exhaustive specification of all data and application categories exportable during the switching process, including, at minimum, all data imported by the customer at the inception of the service agreement and all data and metadata created by the customer and by the use of the service during the period the service was provided, including, but not limited to, configuration parameters, security settings, access rights and access logs to the service;	(b) ~~*an exhaustive*~~***a detailed*** specification of all data and application categories ~~*exportable*~~***that can be ported*** during the switching process, including, at ***a*** minimum, all ~~*data imported by the customer at the inception of the service agreement and all data and metadata created by the customer and by the use of the service during the period the service was provided, including, but not limited to, configuration parameters, security settings, access rights and access logs to the service*~~***exportable data***;	(b) an exhaustive specification of all data and application categories exportable during the switching process, including, at minimum, all data imported by the customer at the inception of the service agreement and all data and metadata created by the customer and by the use of the service during the period the service was provided, including, but not limited to, configuration parameters, security settings, access rights and access logs to the service;	

Other than CONTEXTE

309a			**(ba) an exhaustive specification of categories of metadata specific to the internal functioning of provider's service that will be exempted from the exportable data under point (b), where a risk of breach of trade secrets of the provider exists. These exemptions shall however never impede or delay the porting process as foreseen in Article 23;**	
Article 24(1), point (c)				
310	(c) a minimum period for data retrieval of at least 30 calendar days, starting after the termination of the transition period that was agreed between the customer and the service provider, in accordance with paragraph 1, point (a) and paragraph 2.	(c) a minimum period for data retrieval of at least 30 calendar days, starting after the termination of the transition period that was agreed between the customer and the ~~*service provider*~~***provider of data processing services***, in accordance with paragraph 1, point (a) and paragraph 2~~.~~**;**	(c) a minimum period for data retrieval of at least 30 calendar days, starting after the termination of the transition period that was agreed between the customer and the service provider, in accordance with paragraph 1, point (a) and paragraph 2~~.~~**;**	
310a		***(ca) an obligation on the provider of data processing services to delete all of the former customer's exportable data after the expiration of the period set out in paragraph 1, point (c), of this Article;***		

Obtenu par CONTEXT

310b			**(ca) a clause guaranteeing full erasure of all data, including metadata, applications and other digital assets generated directly by the customer and/or relating to the customer directly after the expiration of the period set out in point (c) or after the expiration of an alternative agreed period later than the expiration of the period set out in point (c), provided that the porting process has been completed successfully;**	
310c			**(cb) reference to an up-to-date online register hosted by the data processing service provider, with details of all the data structures and data formats as well as the standards and open interoperability specifications, in which the exportable data described according to point (b) will be available;**	
310d			**(cc) information on any data egress charges and switching charges that may be imposed by providers of data processing services in accordance with Article 25.**	

Obtenu par CONSEIL

310e			**1a. The contract as defined in paragraph 1 shall include provisions providing that the customer has the exclusive right to invoke the mandatory notification period as defined in paragraph 1 and shall notify the data processing service provider of its decision to perform one or more of the following actions upon termination of the notification period:**	
310f			**(a) switch to another provider of data processing services, in which case the customer shall provide the necessary details of that provider;**	
310g			**(b) switch to an on-premise system;**	
310h			**(c) delete its digital assets.**	
Article 24(2)				

Obtenu par CONTEXTE

311	2. Where the mandatory transition period as defined in paragraph 1, points (a) and (c) of this Article is technically unfeasible, the provider of data processing services shall notify the customer within 7 working days after the switching request has been made, duly motivating the technical unfeasibility with a detailed report and indicating an alternative transition period, which may not exceed 6 months. In accordance with paragraph 1 of this Article, full service continuity shall be ensured throughout the alternative transition period against reduced charges, referred to in Article 25(2).	2. Where the mandatory transition period as defined in paragraph 1, points (a) and (c) of this Article is technically unfeasible, the provider of data processing services shall notify the customer within ~~7~~ ***14*** working days after the switching request has been made, ***and shall duly motivate*** ~~*duly motivating*~~ the technical unfeasibility ~~*with a detailed report and indicating*~~ ***and indicate*** an alternative transition period, which may not exceed ~~6~~ ***9*** months. In accordance with paragraph 1 of this Article, ~~*full*~~ service continuity shall be ensured throughout the alternative transition period against reduced charges, referred to in Article 25(2). ***The customer shall retain the right to extend that period, if needed, prior to or during the switching process.***	2. **The contract as defined in paragraph 1 shall include provisions providing that** where the mandatory transition period as defined in paragraph 1, points (a) and (c) of this Article is technically unfeasible, the provider of data processing services shall notify the customer within 7 working days after the switching request has been made, duly motivating the technical unfeasibility with a detailed report and indicating an alternative transition period, which may not exceed 6 months. In accordance with paragraph 1 of this Article, full service continuity shall be ensured throughout the alternative transition period ~~against reduced charges, referred to in Article 25(2)~~.	
311a			**2a. Without prejudice to paragraph 2, the contract as defined in paragraph 1 shall include provisions providing the customer with the right to extend the transition period with a period that the customer deems more appropriate for its own ends.**	

Obtenu par CONSEIL

311b		***Article 24a*** ***Information obligation of providers of destination data processing services***		
311c		***The provider of destination data processing services shall provide the customer with information on available procedures for switching and porting to the data processing service when it is a porting destination, including information on available porting methods and formats as well as restrictions and technical limitations which are known to the provider of destination data processing services.***		
311d		***Article 24b*** ***Good faith obligation***		
311e		***All parties involved, including providers of destination data processing services, shall collaborate in good faith to make the switching process effective, enable the timely transfer of necessary data and maintain the continuity of the service.***		

Obtenu par CONTEXTE

311f			**Article 24a Contractual transparency obligations on international access and transfer**	
311g			**1. Providers of data processing services shall make the following information available on their websites, and keep the information updated:**	
311h			**(a) the jurisdiction to which the IT infrastructure deployed for data processing of their individual services is subject;**	
311i			**(b) a general description of the technical, organisational and contractual measures adopted by the data processing service provider in order to prevent 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.**	

Obtenu par CONTEXTE

311j			**2. The websites defined in paragraph 1 of this Article shall be referenced in contractual agreements of all data processing services offered by data processing service providers.**	
Article 25				
312	Article 25 Gradual withdrawal of switching charges	Article 25 Gradual withdrawal of switching charges	Article 25 ***Gradual withdrawal of*** **data egress charges and** ***switching charges***~~Gradual withdrawal of switching charges~~	
Article 25(1)				
313	1. From [date X+3yrs] onwards, providers of data processing services shall not impose any charges on the customer for the switching process.	1. From [***the date of entry into force of this Regulation***~~*date X+3yrs*~~] onwards, providers of data processing services shall not impose any charges on ~~*the customer*~~***customers who are consumers*** for the switching process.	1. From [date ~~X~~**of entry into force** +3yrs] onwards, providers of data processing services shall not impose any **data egress charges or switching** charges on the customer for the switching process.	
Article 25(2)				

Obtenu par CONTEXTE

314	2. From [date X, the date of entry into force of the Data Act] until [date X+3yrs], providers of data processing services may impose reduced charges on the customer for the switching process.	2. From [date X, the date of entry into force of ~~the Data Act~~***this Regulation***] until [date X+3yrs], providers of data processing services may impose reduced charges on ***customers in the context of business-to-business relations*** ~~the customer~~ for the switching process***, with particular reference to egress fees***.	2. From [~~date X, the~~ date of entry into force of the Data Act] until [**date of entry into force**~~date X~~+3yrs], providers of data processing services may impose reduced **data egress and reduced switching** charges on the customer for the switching process.	
314a		***2a. From [3 years after the date of entry into force of this Regulation] onwards, providers of data processing services shall not impose any charges for the switching process.***		
Article 25(3)				
315	3. The charges referred to in paragraph 2 shall not exceed the costs incurred by the provider of data processing services that are directly linked to the switching process concerned.	3. The charges referred to in paragraph 2 shall not exceed the costs incurred by the provider of data processing services that are directly linked to the switching process concerned ***and shall be linked to the mandatory operations that providers of data processing services must perform as part of the switching process***.	3. The charges referred to in paragraph 2 shall not exceed the costs incurred by the provider of data processing services that are directly linked to the **data transfer and the** switching process concerned.	

Outil du par CONTEXTE

315a		***3a. Standard subscription or service fees and charges for professional transition services work undertaken by the provider of data processing services at the customer's request for support in the switching process shall not be considered switching charges for the purposes of this Article.***		
315b		***3b. Before entering into a contractual agreement with a customer, the provider of data processing services shall provide the customer with clear information describing the charges imposed on the customer for the switching process in accordance with paragraph 2, as well as the fees and charges referred to in paragraph 3a, and, where relevant, shall provide information on services that involve highly complex or costly switching or for which it is impossible to switch without significant interference in the data, application or service architecture. Where applicable, the provider of data processing services shall make this information publicly available to customers via a dedicated section of their website or in any other easily accessible way.***		
Article 25(4)				

OUTSIDE OF CONTEXTE

316	4. The Commission is empowered to adopt delegated acts in accordance with Article 38 to supplement this Regulation in order to introduce a monitoring mechanism for the Commission to monitor switching charges imposed by data processing service providers on the market to ensure that the withdrawal of switching charges as described in paragraph 1 of this Article will be attained in accordance with the deadline provided in the same paragraph.	4. The Commission is empowered to adopt delegated acts in accordance with Article 38 to supplement this Regulation in order to introduce a monitoring mechanism for the Commission to monitor switching charges imposed by ***providers of*** data processing ~~*service providers*~~***services*** on the market to ensure that the withdrawal ***and reduction*** of switching charges as described in ~~*paragraph 1*~~***paragraphs 1 and 2*** of this Article will be attained in accordance with the deadline provided in ~~*the same paragraph*~~***those paragraphs***.	4. The Commission is empowered to adopt delegated acts in accordance with Article 38 to supplement this Regulation in order to introduce a monitoring mechanism for the Commission to monitor **data egress charges and** switching charges imposed by data processing service providers on the market to ensure that the withdrawal of ~~switching~~ **these** charges as described in paragraph 1 of this Article will be attained in accordance with the deadline provided in the same paragraph.	
Article 26				
317	Article 26 Technical aspects of switching	Article 26 Technical aspects of switching	Article 26 Technical aspects of switching	
Article 26(1)				

Obtenu par CONSEIL

318	1. Providers of data processing services that concern scalable and elastic computing resources limited to infrastructural elements such as servers, networks and the virtual resources necessary for operating the infrastructure, but that do not provide access to the operating services, software and applications that are stored, otherwise processed, or deployed on those infrastructural elements, shall ensure that the customer, after switching to a service covering the same service type offered by a different provider of data processing services, enjoys functional equivalence in the use of the new service.	1. Providers of data processing services that concern scalable and elastic computing resources limited to infrastructural elements such as servers, networks and the virtual resources necessary for operating the infrastructure, but that do not provide access to the operating services, software and applications that are stored, otherwise processed, or deployed on those infrastructural elements, shall ~~*ensure*~~***take reasonable measures within their power to facilitate*** that the customer, after switching to a service covering the same service type offered by a different provider of data processing services, ~~*enjoys*~~***achieves*** functional equivalence in the use of the new service***, provided that the functional equivalence is established by the destination provider of data processing services. The source provider of data processing services shall facilitate the process through providing capabilities, adequate information, documentation, technical support and, where appropriate, the necessary tools***.	1. Providers of data processing services that concern scalable and elastic computing resources limited to infrastructural elements such as servers, networks and the virtual resources necessary for operating the infrastructure, but that do not provide access to the operating services, software and applications that are stored, otherwise processed, or deployed on those infrastructural elements, shall **take all measures in their power, including in cooperation with the data processing service provider of the destination service, to facilitate** ~~ensure~~ that the customer, after switching to a service covering the same service type offered by a different provider of data processing services, enjoys functional equivalence in the use of the ~~new~~ **destination** service.	
Article 26(2)				

Obtained COMMITTEE

319	2. For data processing services other than those covered by paragraph 1, providers of data processing services shall make open interfaces publicly available and free of charge.	2. ~~For~~***Providers of*** data processing services ~~other than those covered by paragraph 1~~, ***including*** providers of ***destination*** data processing services**,** shall make open interfaces publicly available and free of charge ***in order to facilitate switching between those services and data portability and interoperability. In accordance with paragraph 1 of this Article, those services shall also make it possible that a specific service, where there are no major obstacles, can be unbundled from the contract and made available for switching in an interoperable manner***.	2. For data processing services other than those covered by paragraph 1, providers of data processing services shall make open interfaces **available to an equal extent to all their customers and the concerned destination service providers** ~~publicly available and~~ free of charge**, including sufficient information about the concerned service to enable the development of software to communicate with the service, for the purposes of portability and interoperability**.	
Article 26(3)				
320	3. For data processing services other than those covered by paragraph 1, providers of data processing services shall ensure compatibility with open interoperability specifications or European standards for interoperability that are identified in accordance with Article 29(5) of this Regulation.	3. ~~For data processing services other than those covered by paragraph 1,~~ Providers of data processing services shall ensure compatibility with open interoperability ***and portability*** specifications or European standards for interoperability that are identified in accordance with Article 29(5) ~~of this Regulation~~.	3. For data processing services other than those covered by paragraph 1, providers of data processing services shall ensure compatibility with **common specifications and/or standards for** ~~open~~ interoperability **the references of which have been published in the Official Journal of the European Union and which** ~~specifications or European standards for interoperability that~~ are identified **in the central Union data processing service standards repository** in accordance with Article 29(5) of this Regulation.	

Obtenu par CONSILIUM

320a		***3a. Providers of data processing services for which a new open interoperability and portability specification or European standard was published in the repository referred to in Article 29(5) shall have the right to a one-year transition for compliance with the obligation referred to in paragraph 3 of this Article.***		
320b			**3a. Data processing service providers of services other than those covered by paragraph 1 shall update the online register as referred to in point (e) of Article 24(1) in accordance with their obligations under paragraph 3.**	
Article 26(4)				

Obtenu par CONTEXTE

321	4. Where the open interoperability specifications or European standards referred to in paragraph 3 do not exist for the service type concerned, the provider of data processing services shall, at the request of the customer, export all data generated or co-generated, including the relevant data formats and data structures, in a structured, commonly used and machine-readable format.	4. Where the open interoperability ***and portability*** specifications or European standards referred to in paragraph 3 ***of this Article*** do not exist for the ***equivalent*** service ~~type~~ concerned, the provider of data processing services shall, at the request of the customer, ***where technically feasible***, export all ***exportable data in a structured, commonly used and machine-readable format as indicated to the customer in accordance with the exit strategy referred to in Article 24(1), point (ab), unless another*** ~~data generated or co-generated, including the relevant data formats and data structures, in a structured, commonly used and machine-readable~~ format ***is accepted by the customer***.	4. Where ~~the~~ **no** open interoperability specifications or ~~European~~ standards **have been identified in the the central Union data processing service standards repository in accordance with paragraph 3** ~~referred to in paragraph 3 do not exist~~ for the service type concerned, the provider of data processing services shall, at the request of the customer, export all data generated or co-generated, including the relevant data formats and data structures, in a structured, commonly used and machine-readable format.	
321a		***4a. Providers of data processing services shall not be required to develop new technologies or services, disclose or transfer proprietary or confidential data or technology to a customer or to another provider of data processing services or compromise the customer's or provider's security and integrity of service;***		

Observé par CONSILIUM

321b		***Article 26a*** ***Exemptions for certain data processing services***		
321c		***1. The obligations set out in Article 23(1), point (d), and Articles 25 and 26 shall not apply to data processing services which have been custom-built to.***		
321d		***2. The obligations set out in this Chapter shall not apply to data processing services provisioned free of charge, that operate on a trial basis or only supply a testing and evaluation service for business product offerings.***		
321e		***Article 26b*** ***Dispute settlement***		

Obtenu par CONTEXTE

321f		***1. Customers shall have access to dispute settlement bodies, certified in accordance with Article 10(2), to settle disputes in relation to breaches of the rights of customers and the obligations of providers of data processing services in relation to switching between providers of such services. The customer shall have the right to allow a third party to pursue its legal claims on its behalf.***		
321g		***2. Article 10(3) to (9) shall apply to the settlement of disputes between customers and providers of data processing service in relation to switching between providers of such services.***		
CHAPTER VII				
322	CHAPTER VII INTERNATIONAL CONTEXTS NON-PERSONAL DATA SAFEGUARDS	CHAPTER VII INTERNATIONAL CONTEXTS NON-PERSONAL DATA SAFEGUARDS	CHAPTER VII **UNLAWFUL** INTERNATIONAL ~~CONTEXTS~~ **GOVERNMENTAL ACCESS AND TRANSFER OF** NON-PERSONAL DATA ~~SAFEGUARDS~~	
Article 27				

Obtenu par CONTEXTE

323	Article 27 International access and transfer	Article 27 International access and transfer	Article 27 ***International* governmental *access and transfer*** ~~International access and transfer~~	
Article 27(1)				
324	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.	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*~~***and third-country*** governmental access to ***such*** non-personal data held in the Union where such transfer or access would ~~*create a conflict with*~~ ***be in contravention of*** Union law or the national law of the relevant Member State, without prejudice to paragraph 2 or 3.	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~~ **and transfer of** 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.	
Article 27(2)				

Obtenu par COMPLYTE

325	2. Any decision or judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a provider of data processing services to transfer from or give access to non-personal data within the scope of this Regulation held in the Union may only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or any such agreement between the requesting third country and a Member State.	2. Any decision or judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a provider of data processing services to transfer from or give access to non-personal data ***falling*** within the scope of this Regulation held in the Union ~~*may*~~***shall*** only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or any such agreement between the requesting third country and a Member State.	2. Any decision or judgment of a **third-country** court or tribunal and any decision of ~~an administrative authority of a third country~~ **a third-country administrative authority** 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~~ **shall** be recognised or enforceable in any manner **only** 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.	
Article 27(3), first subparagraph				

Obtenu par COMETE

326	3. In the absence of such an international agreement, where a provider of data processing services is the addressee of a decision of a court or a tribunal or a decision of an administrative authority of a third country to transfer from or give access to non-personal data 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:	3. In the absence of such an international agreement, where a provider of data processing services is the addressee of a decision of a court or a tribunal or a decision of an administrative authority of a third country to transfer from or give access to non-personal data ***falling*** within the scope of this Regulation held in the Union and compliance with such a decision would risk putting the addressee in conflict with Union law or with the national law of the relevant Member State, transfer to or access to such data by that third-country authority shall take place only ***following a review by the relevant competent bodies or authorities, pursuant to this Regulation to assess if, in addition to complying with the provisions of any relevant Union or national o law, the following conditions have been met***:	3. In the absence of ~~such~~ an international agreement **as referred to in paragraph 2 of this Article**, where a provider of data processing services is the addressee of a decision **or judgement of a third-country** ~~of a~~ court or ~~a~~ tribunal or a decision of ~~an administrative authority of a third country~~ **a third-country administrative authority** 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 **where**:	
Article 27(3), first subparagraph, point (a)				
327	(a) where the third-country system requires the reasons and proportionality of the decision or judgement to be set out, and it requires such decision or judgement, as the case may be, to be specific in character, for instance by establishing a sufficient link to certain suspected persons, or infringements;	(a) where the third-country system requires the reasons and proportionality of the decision or judgement to be set out, and it requires such decision or judgement, as the case may be, to be specific in character, for instance by establishing a sufficient link to certain suspected persons, or infringements;	(a) ~~where~~ the third-country system requires the reasons and proportionality of **such a** ~~the~~ decision or judgement to be set out~~,~~ ~~and it~~ **and** requires such **a** decision or judgement~~, as the case may be,~~ to be specific in character, for instance by establishing a sufficient link to certain suspected persons~~,~~ or infringements;	

Obtenu par COTEDIT

Article 27(3), first subparagraph, point (b)				
328	(b) the reasoned objection of the addressee is subject to a review by a competent court or tribunal in the third-country; and	(b) the reasoned objection of the addressee is subject to a review by a competent court or tribunal in the third-country; and	(b) the reasoned objection of the addressee is subject to a review by a competent **third-country** court or tribunal ~~in the third-country~~; and	
Article 27(3), first subparagraph, point (c)				
329	(c) the competent court or tribunal issuing the decision or judgement or reviewing the decision of an administrative authority is empowered under the law of that country to take duly into account the relevant legal interests of the provider of the data protected by Union law or national law of the relevant Member State.	(c) the competent court or tribunal issuing the decision or judgement or reviewing the decision of an administrative authority is empowered under the law of that country to take duly into account the relevant legal interests of the provider of the data protected by Union law or national law of the relevant Member State.	(c) the competent **third-country** court or tribunal issuing the decision or judgement or reviewing the decision of an administrative authority is empowered under the law of that **third** country to take duly into account the relevant legal interests of the provider of the data protected by Union law or national law of the relevant Member State.	
Article 27(3), second subparagraph				

Obtenu par CONTEXTE

330	The addressee of the decision may ask the opinion of the relevant competent bodies or authorities, pursuant to this Regulation, in order to determine whether these conditions are met, notably when it considers that the decision may relate to commercially sensitive data, or may impinge on national security or defence interests of the Union or its Member States.	The addressee of the decision may ask the opinion of the ~~*relevant competent bodies or authorities,*~~ ***Commission, the data coordinator*** pursuant to this Regulation ***or relevant competent bodies or authorities***, in order to determine whether these conditions are met, notably when it considers that the decision may relate to ***trade secrets and other*** commercially sensitive data ***as well as to content protected by intellectual property rights***, or may impinge on national security or defence interests of the Union or its Member States. ***If the addressee has not received a reply within a month, or if the opinion of the competent authorities concludes that the conditions are not met, the addressee shall deny the request for transfer or access on those grounds.***	The addressee of the decision may ask the opinion of the relevant ~~competent bodies or authorities, pursuant to this Regulation~~ **national body or authority competent for international cooperation in legal matters**,- in order to determine whether these conditions are met, notably when it considers that the decision may relate to commercially sensitive data~~, or~~**. If the addressee considers that the decision** may impinge on **national security or defence interests of the Union or its Member States, it shall ask the opinion of the national competent bodies or authorities with the relevant competence, in order to determine whether the data requested concerns** national security or defence interests of the Union or its Member States.	
Article 27(3), third subparagraph				
331	The European Data Innovation Board established under Regulation [xxx – DGA] shall advise and assist the Commission in developing guidelines on the assessment of whether these conditions are met.	The European Data Innovation Board established under Regulation ~~*[xxx – DGA]*~~***(EU) 2022/868 and referred to in Article 31a of this Regulation*** shall advise and assist the Commission in developing guidelines on the assessment of whether these conditions are met.	The European Data Innovation Board established under Regulation ~~[xxx – DGA]~~ **(EU) 2022/868 (Data Governance Act)**[1] shall advise and assist the Commission in developing guidelines on the assessment of whether these conditions are met. **1. OJ L 152, 3.6.2022, p. 1**	
Article 27(4)				

Outcome pending EP TEXT

332	4. If the conditions in paragraph 2 or 3 are met, the provider of data processing services shall provide the minimum amount of data permissible in response to a request, based on a reasonable interpretation thereof.	4. If the conditions in paragraph 2 or 3 are met, the provider of data processing services shall provide the minimum amount of data permissible in response to a request, based on a reasonable interpretation thereof ***by the relevant competent body or authority***.	4. If the conditions **laid down** in paragraph 2 or 3 are met, the provider of data processing services shall provide the minimum amount of data permissible in response to a request, based on a reasonable interpretation ~~thereof~~**of the request**.	
332a		***4a. Where the provider of data processing services has reason to believe that the transfer of or access to non-personal data may lead to the risk of re-identification of non-personal, or anonymised data, the provider shall request the relevant bodies or authorities competent pursuant to applicable data protection legislation for authorisation before transferring or giving access to data.***		
Article 27(5)				

Obtenu par CONTEXTE

333	5. The provider of data processing services shall inform the data holder about the existence of a request of an administrative authority in a third-country to access its data before complying with its request, except in cases where the request serves law enforcement purposes and for as long as this is necessary to preserve the effectiveness of the law enforcement activity.	5. The provider of data processing services shall inform the data holder about the existence of a request of an administrative authority in a third-country to access its data before complying with its request, except in cases where the request serves law enforcement purposes and for as long as this is necessary to preserve the effectiveness of the law enforcement activity.	5. The provider of data processing services shall inform the data holder about the existence of a request of ~~an~~**a third-country** administrative authority ~~in a third-country~~ to access its data before complying with ~~its~~ **that** request, except ~~in cases~~ where the request serves law enforcement purposes and for as long as this is necessary to preserve the effectiveness of the law enforcement activity.	
CHAPTER VIII				
334	CHAPTER VIII INTEROPERABILITY	CHAPTER VIII INTEROPERABILITY	CHAPTER VIII INTEROPERABILITY	
Article 28				
335	Article 28 Essential requirements regarding interoperability	Article 28 Essential requirements regarding interoperability ***of data spaces***	Article 28 Essential requirements regarding interoperability	
Article 28(1), first subparagraph				

Obtenu par CONTEXTE

336	1. Operators of data spaces shall comply with, the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services:	1. ~~*Operators*~~***Participants*** of data spaces ***that offer data or data services to other participants,*** shall comply with, the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services:	1. Operators ~~of~~ **within** data spaces shall comply with, the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services **as well as of the common European data spaces, which are purpose- or sector-specific or cross-sectoral interoperable frameworks of common standards and practices to share or jointly process data for, inter alia, development of new products and services, scientific research or civil society initiatives**:	
Article 28(1), first subparagraph, point (a)				
337	(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;	(a) the dataset content, use restrictions, licences, data collection methodology, data quality and uncertainty shall be sufficiently described ***in a machine-readable format*** to allow the recipient to find, access and use the data;	(a) the dataset content, use restrictions, licences, data collection methodology, data quality and uncertainty shall be sufficiently described**, where applicable, in machine-readable format,** to allow the recipient to find, access and use the data;	
Article 28(1), first subparagraph, point (b)				
338	(b) the data structures, data formats, vocabularies, classification schemes, taxonomies and code lists shall be described in a publicly available and consistent manner;	(b) the data structures, data formats, vocabularies, classification schemes, taxonomies and code lists shall be described in a publicly available and consistent manner;	(b) the data structures, data formats, vocabularies, classification schemes, taxonomies and code lists**, where available,** shall be described in a publicly available and consistent manner;	
Article 28(1), first subparagraph, point (c)				

Obtenu par CONSILIUM

339	(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 shall be sufficiently described to enable automatic access and transmission of data between parties, including continuously or in real-time– in a machine-readable format ***where that is technically feasible and does not hamper the good functioning of the product***;	(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**, in bulk download** or in real-time– in a machine-readable format;	
Article 28(1), first subparagraph, point (d)				
340	(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 ~~*smart*~~ contracts ***for data sharing*** within their services and activities shall be provided.	(d) **where applicable,** the means to enable the interoperability of ~~smart contracts within their services and activities shall be provided~~**tools for automating the execution of data sharing agreements, such as smart contracts**.	
Article 28(1), second subparagraph				
341	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.	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.	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.	
Article 28(2)				

Obtenu par CONTEXTE

342	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.	2. The Commission is empowered to adopt delegated acts, ***after consulting the European Data Innovation Board pursuant to Article 29 and Article 30, points (f) and (h), of Regulation (EU) 2022/868 and*** in accordance with Article 38 ***of this Regulation,*** to supplement this Regulation by further specifying the essential requirements referred to in paragraph 1 ***of this Article***.	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 **in relation to those requirements that, by their nature, cannot produce the intended effect unless they are further specified in binding legal acts of the Union and in order to properly reflect technological and market developments**.	
Article 28(3)				
343	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.	3. ~~*Operators*~~***The participants of data spaces that offer data or data services to other participants*** of data spaces that meet the harmonised standards or parts thereof published by reference in the Official Journal of the European Union shall be presumed to be in conformity with the essential requirements referred to in paragraph 1 ~~*of this Article*~~, to the extent those standards cover those requirements.	3. Operators ~~of~~ **within** data spaces that meet the harmonised standards or parts thereof **the references of which have been published** ~~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 **in so far as those standards or parts thereof** ~~of this Article, to the extent those standards~~ cover those requirements.	
343a		***3a. Participants within a particular data space shall agree on the rules by which the accountabilities regarding those requirements are defined between the participants.***		

Obtained on CONFIDE

Article 28(4)				
344	4. The Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft harmonised standards that satisfy the essential requirements under paragraph 1 of this Article	4. The Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft harmonised standards that satisfy the essential requirements under paragraph 1 of this Article**,** ***developed in an open, transparent, technology-neutral, industry-led and inclusive manner, in accordance with Chapter II of Regulation (EU) No 1025/2012, taking into account, where relevant, existing international standards, good practices, norms, technical specifications and relevant open source norms as well as the needs of SMEs.***	4. The Commission ~~may~~ **shall**, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft harmonised standards that satisfy the essential requirements under paragraph 1 ~~of this Article~~**.**	
Article 28(5)				

Obtenu par CONTEXTE

345	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).	5. The Commission ~~*shall*~~***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*~~***if*** it considers that the relevant harmonised standards are insufficient to ensure conformity with the essential requirements in paragraph 1 of this Article, where necessary~~*, with respect to any or all of the requirements laid down in paragraph 1 of this*~~***. 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~~*. Those implementing acts shall*~~ ***30, point (f), of Regulation (EU) 2022/868 and*** be adopted in accordance with the examination procedure referred to in Article 39(2).	5. The Commission ~~shall~~ **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, with respect to~~ **covering** any or all of the **essential** requirements ~~laid down~~**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).~~**where the following conditions have been fulfilled:**	
Article 28(5), first subparagraph, point (a)				

Obtenu par CONSEIL

345a			**(a) the Commission has requested, pursuant to Article 10(1) of Regulation 1025/2012, one or more European standardisation organisations to draft a harmonised standard for the essential requirements set out in paragraph 1 and the request has not been accepted or the European standardisation deliverables addressing that request are not delivered within the deadline set in accordance with article 10(1) of Regulation 1025/2012 or the European standardisation deliverables standard do not comply with the request; and**	
Article 28(5), first subparagraph, point (b)				
345b			**(b) no reference to harmonised standards covering the relevant essential requirements set out in paragraph 1 is published in the Official Journal of the European Union in accordance with Regulation (EU) No 1025/2012 and no such reference is expected to be published within a reasonable period;**	
Article 28(5), second subparagraph				

Obtenu par CONTEXTE

345c			**Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).**	
Article 28(5a)				
345d			**5a. Before preparing a draft implementing act in accordance with paragraph 5, the Commission shall inform the committee referred to in Article 22 of Regulation EU (No) 1025/2012 that it considers that the conditions in paragraph 5 are fulfilled.**	
Article 28(5b)				
345e			**5b. When preparing the draft implementing act establishing the common specifications in accordance with paragraph 5, the Commission shall take into account the views of the European Data Innovation Board and other relevant bodies or expert groups and shall duly consult all relevant stakeholders.**	
Article 28(5c)				

Obtenu par CONSILIUM

345f			**5c. Operators within data spaces that meet the common specifications established by one or more implementing acts referred to in paragraph 5 or parts thereof shall be presumed to be in conformity with the essential requirements set out in paragraph 1 covered by those common specifications or parts thereof.**	
Article 28(5d)				
345g			**5d. Where a harmonised standard is adopted by an European standardisation organisation and proposed to the Commission for the publication of its reference in the Official Journal of the European Union, the Commission shall assess the harmonised standard in accordance with Regulation (EU) No 1025/2012. When reference of a harmonised standard is published in the Official Journal of the European Union, the Commission shall repeal implementing acts referred to in paragraph 5, or parts thereof which cover the same essential requirements set out in paragraph 1.**	
Article 28(5e)				

Obtenu par CONTEXTE

345h			**5e. When a Member State considers that a common specification does not entirely satisfy the essential requirements set out in paragraph 1, it shall inform the Commission thereof with a detailed explanation. The Commission shall assess that information and, if appropriate, amend the implementing act establishing the common specification in question.**	
Article 28(6)				
346	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.	6. The Commission may adopt guidelines ***proposed by the European Data Innovation Board in accordance with Article 30, point (h), of Regulation (EU) 868/2022*** laying down interoperability specifications for the functioning of common European data spaces, such as architectural models and technical standards implementing legal rules and arrangements between parties that foster data sharing, such as regarding rights to access and technical translation of consent or permission.	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.	

OUTSIDE DAT. CONTENT

346a			**Article 28a** **Interoperability for the purposes of in-parallel use of data processing services**	
346b			**1. The requirements set out in paragraphs 1 and 1(c) of Article 23, Article 23a, paragraphs 1(a)2, 1(a)3, 1(b), 1(ba) and 1(e) of Article 24 and paragraphs 2, 3, 3a and 4 of Article 26 shall also be applied mutatis mutandis to providers of data processing services to facilitate interoperability for the purposes of in-parallel use of data processing services.**	
346c			**2. Article 25 shall also apply mutatis mutandis in relation to data egress charges to facilitate interoperability for the purposes of in-parallel use of data processing services.**	
Article 29				
347	Article 29 Interoperability for data processing services	Article 29 Interoperability ***and portability*** for data processing services	Article 29 Interoperability for data processing services	
Article 29(1)				

Obtenu par CURIA

348	1. Open interoperability specifications and European standards for the interoperability of data processing services shall:	1. Open interoperability ***and portability*** specifications and European standards for the interoperability ***and portability*** of data processing services shall:	1. Open interoperability specifications and ~~European~~ **harmonised** standards for the interoperability of data processing services shall:	
Article 29(1), point (a)				
349	(a) be performance oriented towards achieving interoperability between different data processing services that cover the same service type;	(a) ***where technically feasible,*** be performance oriented towards achieving interoperability ***and portability*** between different data processing services that cover ~~*the same service type*~~ ***equivalent services***;	(a) be performance oriented towards achieving interoperability **in a secure manner** between different data processing services ~~that cover the same service type~~;	
Article 29(1), point (b)				
350	(b) enhance portability of digital assets between different data processing services that cover the same service type;	(b) enhance portability of digital assets between different data processing services that cover ~~*the same service type*~~ ***equivalent services***;	(b) enhance portability of digital assets between different data processing services that cover the same service type;	
Article 29(1), point (c)				
351	(c) guarantee, where technically feasible, functional equivalence between different data processing services that cover the same service type.	(c) ~~*guarantee*~~***facilitate***, where technically feasible, functional equivalence between different data processing services ~~*that cover the same service type.*~~***referred to in paragraph 1 of Article 26 that cover equivalent services;***	(c) ~~guarantee~~**ensure**, where technically feasible, functional equivalence between different data processing services that cover the same service type.	

Ottenuto per CONTEXTE

351a		***(ca) shall not adversely impact the security and integrity of services and data;***		
351b		***(cb) be designed in a way to allow for technical advances and inclusion of new functions and innovation in data processing services.***		
Article 29(2)				
352	2. Open interoperability specifications and European standards for the interoperability of data processing services shall address:	2. Open interoperability ***and portability*** specifications and European standards for the interoperability ***and portability*** of data processing services shall address:	2. Open interoperability specifications and ~~European~~ **harmonised** standards for the interoperability of data processing services shall **adequately** address:	
Article 29(2), point (a)				
353	(a) the cloud interoperability aspects of transport interoperability, syntactic interoperability, semantic data interoperability, behavioural interoperability and policy interoperability;	(a) the cloud interoperability aspects of transport interoperability, syntactic interoperability, semantic data interoperability, behavioural interoperability and policy interoperability;	(a) the cloud interoperability aspects of transport interoperability, syntactic interoperability, semantic data interoperability, behavioural interoperability and policy interoperability;	
Article 29(2), point (b)				

Obsnu pat CONTEXTE

354	(b) the cloud data portability aspects of data syntactic portability, data semantic portability and data policy portability;	(b) the cloud data portability aspects of data syntactic portability, data semantic portability and data policy portability;	(b) the cloud data portability aspects of data syntactic portability, data semantic portability and data policy portability;	
Article 29(2), point (c)				
355	(c) the cloud application aspects of application syntactic portability, application instruction portability, application metadata portability, application behaviour portability and application policy portability.	(c) the cloud application aspects of application syntactic portability, application instruction portability, application metadata portability, application behaviour portability and application policy portability.	(c) the cloud application aspects of application syntactic portability, application instruction portability, application metadata portability, application behaviour portability and application policy portability.	
Article 29(3)				
356	3. Open interoperability specifications shall comply with paragraph 3 and 4 of Annex II of Regulation (EU) No 1025/2012.	3. Open interoperability ***and portability*** specifications shall comply with paragraph 3 and 4 of Annex II ~~of~~***to*** Regulation (EU) No 1025/2012.	3. Open interoperability specifications shall comply with ~~paragraph 3 and 4 of~~ Annex II of Regulation (EU) No 1025/2012.	
356a		***3a. Open interoperability and portability specifications and European standards shall not distort the data processing services market or limit the development of any new competing and innovative technologies or solutions or any technologies or solutions that are based on them.***		
Article 29(4)				

Obsnu pst CONTEXTE

357	4. The Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft European standards applicable to specific service types of data processing services.	4. ***After taking into account relevant international and European standards and self-regulating initiatives,*** the Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft European standards applicable to ~~*specific service types*~~***equivalent services*** of data processing services. ***The standardisation shall take into account the needs of SMEs.***	4. The Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft ~~European~~ **harmonised** standards **that satisfy the essential requirements under paragraphs 1 and 2** ~~applicable to specific service types of data processing services~~.	
357a			**4a. The Commission may, by way of implementing acts, adopt common specifications on the basis of open interoperability specifications covering all of the essential requirements set out in paragraphs 1 and 2.**	

Obtenu par CONTEXTE

357b			**4b. When a Member State considers that a common specification does not entirely satisfy the essential requirements set out in paragraphs 1 and 2, it shall inform the Commission thereof with a detailed explanation. The Commission shall assess that information and, if appropriate, amend the implementing act establishing the common specification in question.**	
Article 29(5)				

Obtenu par CONTEXTE

358	5. For the purposes of Article 26(3) of this Regulation, the Commission shall be empowered to adopt delegated acts, in accordance with Article 38, to publish the reference of open interoperability specifications and European standards for the interoperability of data processing services in central Union standards repository for the interoperability of data processing services, where these satisfy the criteria specified in paragraph 1 and 2 of this Article.	5. For the purposes of Article 26(3) of this Regulation, the Commission**,** ***after consulting the European Data Innovation Board pursuant to Article 29 and Article 30, points (f) and (h), of Regulation (EU) 2022/868,*** shall be empowered to adopt delegated acts, ***supplementing this Regulation,*** in accordance with Article 38 ***of this Regulation***, to publish the reference of open ~~*interoperability specifications and European*~~ standards for the interoperability ***and portability*** of data processing services in central Union standards repository for the interoperability ***and portability*** of data processing services ***developed by relevant standardisation organisations or organisations referred to in paragraph 3 of Annex II to Regulation (EU) No 1025/2012,***, where these satisfy the criteria specified in paragraph 1 and 2 of this Article.	5. For the ~~purposes~~**purpose** of Article 26(3) ~~of this Regulation~~, the Commission shall ~~be empowered to adopt delegated acts, in accordance with Article 38, to~~ **, by way of implementing acts,** publish the reference of **harmonised standards and common specifications** ~~open interoperability specifications and European standards~~ for the interoperability of data processing services in **a** central Union standards repository for the interoperability of data processing services~~, where these satisfy the criteria specified in paragraph 1 and 2 of this Article~~.	

Obtenu par COURTINE

358a			**5a. When preparing the draft implementing act establishing the common specifications in accordance with paragraph 4a , the Commission shall take into account the views of the national competent authorities referred to in Article 31(3)(h) and other relevant bodies or expert groups and shall duly consult all relevant stakeholders.**	
358b			**5b. The implementing acts referred to in this Article shall be adopted in accordance with the examination procedure referred to in Article 39(2).**	
Article 30				
359	Article 30 Essential requirements regarding smart contracts for data sharing	Article 30 Essential requirements regarding smart contracts for data sharing	Article 30 Essential requirements regarding smart contracts for data sharing	
Article 30(1)				

Obtenu par CONTEXTE

360	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 ~~vendor of an application using~~***party offering*** 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 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:	
Article 30(1), point (a)				
361	(a) robustness: ensure that the smart contract has been designed to offer a very high degree of robustness to avoid functional errors and to withstand manipulation by third parties;	(a) robustness ***and access control***: ensure that the smart contract has been designed to offer ***rigorous access control mechanisms and*** a very high degree of robustness to avoid functional errors and to withstand manipulation by third parties;	(a) robustness: ensure that the smart contract has been designed to offer a very high degree of robustness to avoid functional errors and to withstand manipulation by third parties;	
Article 30(1), point (b)				

Obtenu par CONTEXTE

362	(b) safe termination and interruption: ensure that a mechanism exists to terminate the continued execution of transactions: the smart contract shall include internal functions which can reset or instruct the contract to stop or interrupt the operation to avoid future (accidental) executions;	(b) safe termination and interruption: ensure that a mechanism exists to terminate the continued execution of transactions: the smart contract shall include internal functions which can reset or instruct the contract to stop or interrupt the operation to avoid future (accidental) executions; ***in this regard, the conditions under which a smart contract could be reset or instructed to stop or interrupted, should be clearly and transparently defined. Especially, it should be assessed under which conditions non-consensual termination or interruption should***	(b) safe termination and interruption: ensure that a mechanism exists to terminate the continued execution of transactions: the smart contract shall include internal functions which can reset or instruct the contract to stop or interrupt the operation to avoid future (accidental) executions;	
362a		***(ba) equivalence: a smart contract shall afford the same level of protection and legal certainty as any other contracts generated through different means;***		
362b		***(bb) protection of confidentiality of trade secrets: ensure that a smart contract has been designed to ensure the confidentiality of trade secrets, in accordance with this Regulation.***		
Article 30(1), point (c)				

Obtenu par CONTEXTE

363	(c) data archiving and continuity: foresee, if a smart contract must be terminated or deactivated, a possibility to archive transactional data, the smart contract logic and code to keep the record of the operations performed on the data in the past (auditability); and	(c) ~~data archiving and continuity: foresee, if a smart contract must be terminated or deactivated, a possibility to archive transactional data, the smart contract logic and code to keep the record of the operations performed on the data in the past (auditability); and~~	(c) data archiving and continuity: foresee, if a smart contract must be terminated or deactivated, a possibility to archive transactional data, the smart contract logic and code to keep the record of the operations performed on the data in the past (auditability); and	
Article 30(1), point (d)				
364	(d) access control: a smart contract shall be protected through rigorous access control mechanisms at the governance and smart contract layers.	(d) ~~access control: a smart contract shall be protected through rigorous access control mechanisms at the governance and smart contract layers.~~	(d) access control: a smart contract shall be protected through rigorous access control mechanisms at the governance and smart contract layers.	
Article 30(2)				
365	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.	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.~~	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.	
Article 30(3)				

Orientation Par CONTEXTE

366	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.	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.*~~	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.	
Article 30(4)				
367	4. A smart contract that meets the harmonised standards or the relevant parts thereof drawn up and published in the Official Journal of the European Union shall be presumed to be in conformity with the essential requirements under paragraph 1 of this Article to the extent those standards cover those requirements.	4. ~~*A smart contract that meets the harmonised standards or the relevant parts thereof drawn up and published in the Official Journal of the European Union shall be presumed to be in conformity with the essential requirements under paragraph 1 of this Article to the extent those standards cover those requirements.*~~	4. A smart contract that meets the harmonised standards or the relevant parts thereof **and the references of which have been** ~~drawn up and~~ published in the Official Journal of the European Union shall be presumed to be in conformity with the essential requirements under paragraph 1 **in so far as those standards or parts thereof** ~~of this Article to the extent those standards~~ cover those requirements.	
Article 30(5)				

Obtenu par CONTEXTE

368	5. The Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft harmonised standards that satisfy the essential the requirements under paragraph 1 of this Article.	5. ~~*The Commission may, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft harmonised standards that satisfy the essential the requirements under paragraph 1 of this Article.*~~	5. The Commission ~~may~~ **shall**, in accordance with Article 10 of Regulation (EU) No 1025/2012, request one or more European standardisation organisations to draft harmonised standards that satisfy the essential the requirements under paragraph 1 ~~of this Article~~.	
Article 30(6)				
369	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).	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).*~~	~~6~~**5a**. ~~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 **covering any or all** ~~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).~~**where the following conditions have been fulfilled:**	

Obtenu par CONTEXTE

369a			**(a) the Commission has requested, pursuant to Article 10(1) of Regulation 1025/2012, one or more European standardisation organisations to draft a harmonised standard for the essential requirements set out in paragraph 1 and the request has not been accepted or the European standardisation deliverables addressing that request is not delivered within the deadline set in accordance with article 10(1) of Regulation 1025/2012 or the European standardisation deliverables standard does not comply with the request; and**	
369b			**(b) no reference to harmonised standards covering the relevant essential requirements set out in paragraph 1 is published in the Official Journal of the European Union in accordance with Regulation (EU) No 1025/2012 and no such reference is expected to be published within a reasonable period.**	

Obtenu par CONSEIL

369c			**Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).**	
369d			**5b. Before preparing a draft implementing act in accordance with paragraph 6, the Commission shall inform the committee referred to in Article 22 of Regulation EU (No) 1025/2012 that it considers that the conditions in paragraph 6 are fulfilled.**	
369e			**5c. When preparing the draft implementing act establishing the common specifications in accordance with paragraph 6, the Commission shall take into account the views of the European Data Innovation Board and other relevant bodies or expert groups and shall duly consult all relevant stakeholders.**	

Obtenu par CONSILIUM

369f			**5d. 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 that meet the common specifications established by one or more implementing acts referred to in paragraph 5 or parts thereof shall be presumed to be in conformity with the essential requirements set out in paragraph 1 covered by those common specifications or parts thereof.**	
369g			**5e. Where a harmonised standard is adopted by an European standardisation organisation and proposed to the Commission for the publication of its reference in the Official Journal of the European Union, the Commission shall assess the harmonised standard in accordance with Regulation (EU) No 1025/2012. When reference of a harmonised standard is published in the Official Journal of the European Union, the Commission shall repeal implementing acts referred to in paragraph 5, or parts thereof which cover the same essential requirements set out in paragraph 1.**	

Obtenu par COMETE

369h			**5f. When a Member State considers that a common specification does not entirely satisfy the essential requirements set out in paragraph 1, it shall inform the Commission thereof with a detailed explanation. The Commission shall assess that information and, if appropriate, amend the implementing act establishing the common specification in question.**	
CHAPTER IX				
370	CHAPTER IX IMPLEMENTATION AND ENFORCEMENT	CHAPTER IX IMPLEMENTATION AND ENFORCEMENT	CHAPTER IX IMPLEMENTATION AND ENFORCEMENT	
Article 31				
371	Article 31 Competent authorities	Article 31 ~~*Competent authorities*~~***Data coordinator***	Article 31 Competent authorities	
Article 31(1)				

Obtenu par CONSEIL

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

Obtenu par CONTEXTE

372a		***1a. The independent supervisory authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall be responsible for monitoring the application of this Regulation insofar as the protection of personal data is concerned. Chapters VI and VII of Regulation (EU) 2016/679 shall apply mutatis mutandis. The European Data Protection Supervisor shall be responsible for monitoring the application of this Regulation insofar as it concerns the Union institutions, bodies, offices and agencies. Where relevant, Article 62 of Regulation (EU) 2018/1725 shall apply mutatis mutandis. The tasks and powers of the supervisory authorities shall be exercised with regard to the processing of personal data.***		
Article 31(2)				
373	2. Without prejudice to paragraph 1 of this Article:	2. Without prejudice to paragraph 1 of this Article***, the data coordinator shall ensure cooperation among the national competent authorities that are responsible for the monitoring of other Union or national legal acts in the field of data and electronic communication services, namely***:	2. ~~Without prejudice to~~**Notwithstanding** paragraph 1~~ of this Article~~:	
Article 31(2), point (a)				

Ce texte est un outil de travail qui n'engage pas la responsabilité du CONTEXTE

374	(a) the independent supervisory authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall be responsible for monitoring the application of this Regulation insofar as the protection of personal data is concerned. Chapters VI and VII of Regulation (EU) 2016/679 shall apply mutatis mutandis. The tasks and powers of the supervisory authorities shall be exercised with regard to the processing of personal data;	(a) ~~*the independent supervisory authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall be responsible for monitoring the application of this Regulation insofar as the protection of personal data is concerned. Chapters VI and VII of Regulation (EU) 2016/679 shall apply mutatis mutandis. The tasks and powers of the supervisory authorities shall be exercised with regard to the processing of personal data;*~~	(a) the independent supervisory authorities responsible for monitoring the application of Regulation (EU) 2016/679 shall be responsible for monitoring the application of this Regulation insofar as the protection of personal data is concerned. Chapters VI and VII of Regulation (EU) 2016/679 shall apply mutatis mutandis. The tasks and powers of the supervisory authorities shall be exercised with regard to the processing of personal data;	
Article 31(2), point (b)				
375	(b) for specific sectoral data exchange issues related to the implementation of this Regulation, the competence of sectoral authorities shall be respected;	(b) for specific sectoral data ~~*exchange*~~***access*** issues related to the implementation of this Regulation, the competence of sectoral authorities shall be respected ***without prejudice to the rules on conflicts of competences***;	(b) for specific sectoral data exchange issues related to the implementation of this Regulation, the competence of sectoral authorities shall be respected;	
375a			**(ba) the national competent authorities responsible for the application and enforcement of Chapters III and V shall have expertise in either the field of price regulation or dispute resolution or both;**	

Obtenu par CONTEXTE

375b			**(bb) the national competent authority shall inform the Commission, on an annual basis, of the refusals notified under Article 4(3)(a) and Article 5(8)(a);**	
Article 31(2), point (c)				
376	(c) the national competent authority responsible for the application and enforcement of Chapter VI of this Regulation shall have experience in the field of data and electronic communications services.	(c) the national competent authority responsible for the application and enforcement of Chapter VI of this Regulation shall have experience in the field of data and electronic communications services.	(c) the national competent authority responsible for the application and enforcement of Chapter VI of this Regulation shall have experience in the field of data and electronic communications services.	
Article 31(3)				
377	3. Member States shall ensure that the respective tasks and powers of the competent authorities designated pursuant to paragraph 1 of this Article are clearly defined and include:	3. Member States shall ensure that the respective tasks and powers of the ~~*competent authorities designated pursuant to paragraph 1 of this Article*~~***data coordinator*** are clearly defined and include:	3. Member States shall ensure that the respective tasks and powers of the competent authorities designated pursuant to paragraph 1 of this Article are clearly defined and include**, as far as the competent authority is concerned**:	
Article 31(3), point (a)				
378	(a) promoting awareness among users and entities falling within scope of this Regulation of the rights and obligations under this Regulation;	(a) promoting awareness among users and entities falling within ***the*** scope of this Regulation of the rights and obligations under this Regulation;	(a) promoting awareness among users and entities falling within scope of this Regulation of the rights and obligations under this Regulation;	
Article 31(3), point (b)				

Obtenu par CONTEXTE

379	(b) handling complaints arising from alleged violations of this Regulation, and investigating, to the extent appropriate, the subject matter of the complaint and informing the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another competent authority is necessary;	(b) handling ***and deciding on*** complaints arising from alleged violations of this Regulation, and investigating, to the extent appropriate, the subject matter of the complaint and ***regularly*** informing the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another competent authority is necessary;	(b) handling complaints arising from alleged violations of this Regulation, and investigating, to the extent appropriate, the subject matter of the complaint and informing the complainant**, in accordance with national law,** of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another competent authority is necessary;	
Article 31(3), point (c)				
380	(c) conducting investigations into matters that concern the application of this Regulation, including on the basis of information received from another competent authority or other public authority;	(c) conducting investigations into matters that concern the application of this Regulation, including on the basis of information received from another competent authority or other public authority;	(c) conducting investigations into matters that concern the application of this Regulation, including on the basis of information received from another competent authority or other public authority;	
Article 31(3), point (d)				
381	(d) imposing, through administrative procedures, dissuasive financial penalties which may include periodic penalties and penalties with retroactive effect, or initiating legal proceedings for the imposition of fines;	(d) imposing ***effective, proportionate and*** ~~*through administrative procedures,*~~ dissuasive financial penalties which may include periodic penalties and penalties with retroactive effect, or initiating legal proceedings for the imposition of fines;	(d) imposing, through administrative procedures, dissuasive financial penalties which may include periodic penalties and penalties with retroactive effect, or initiating legal proceedings for the imposition of fines;	
Article 31(3), point (e)				

Obtenu par CONTEXTE

382	(e) monitoring technological developments of relevance for the making available and use of data;	(e) monitoring technological ***and commercial*** developments of relevance for the making available and use of data ***with a view of better enforcing this Regulation***;	(e) monitoring technological developments of relevance for the making available and use of data;	
Article 31(3), point (f)				
383	(f) cooperating with competent authorities of other Member States to ensure the consistent application of this Regulation, including the exchange of all relevant information by electronic means, without undue delay;	(f) cooperating with ***the data coordinators*** ~~competent authorities~~ of other Member States to ensure the consistent***, swift and effective*** application of this Regulation, including the exchange of all relevant information by electronic means, without undue delay;	(f) cooperating with competent authorities of other Member States to ensure the consistent application of this Regulation, including the exchange of all relevant information by electronic means, without undue delay;	
383a		***(fa) cooperating with all relevant competent authorities pursuant to other Union law, and with the European Data Protection Board and the European Data Innovation Board to ensure that the obligations of this Regulation are enforced coherently with other Union law;***		
Article 31(3), point (g)				

Obtenu par CONTEXTE

384	(g) ensuring the online public availability of requests for access to data made by public sector bodies in the case of public emergencies under Chapter V;	(g) ensuring the online public availability of requests for access to data made by public sector bodies in the case of public emergencies under Chapter V;	(g) ensuring the online public availability of requests for access to data made by public sector bodies in the case of public emergencies under Chapter V **and promoting voluntary data sharing agreements between public sector bodies and data holders**;	
Article 31(3), point (h)				
385	(h) cooperating with all relevant competent authorities to ensure that the obligations of Chapter VI are enforced consistently with other Union legislation and self-regulation applicable to providers of data processing service;	(h) cooperating with all relevant competent authorities to ensure that the obligations of Chapter VI are enforced consistently with other Union legislation and self-regulation applicable to providers of data processing service;	(h) cooperating with all relevant competent authorities to ensure that the obligations of Chapter VI **and Article 29** are enforced consistently with other Union legislation and self-regulation applicable to providers of data processing ~~service~~**services**;	
Article 31(3), point (i)				
386	(i) ensuring that charges for the switching between providers of data processing services are withdrawn in accordance with Article 25.	(i) ensuring that charges for the switching between providers of data processing services are withdrawn in accordance with Article 25.	(i) ensuring that charges for the switching between providers of data processing services are withdrawn in accordance with Article 25.**;**	
386a			**(ia) examining the requests for data made pursuant to Article 14(1), particularly in cross-border contexts.**	
Article 31(4)				

Obtenu par CONTEXTE

387	4. Where a Member State designates more than one competent authority, the competent authorities shall, in the exercise of the tasks and powers assigned to them under paragraph 3 of this Article, cooperate with each other, including, as appropriate, with the supervisory authority responsible for monitoring the application of Regulation (EU) 2016/679, to ensure the consistent application of this Regulation. In such cases, relevant Member States shall designate a coordinating competent authority.	4. Where a Member State designates more than one competent authority, the ~~*competent authorities*~~***data coordinator*** shall, in the exercise of the tasks and powers assigned to them under paragraph 3 of this Article, cooperate with each other ***and with the European Data Innovation Board***, including, as appropriate, with the supervisory authority responsible for monitoring the application of Regulation (EU) 2016/679 ***and with the European Data Protection Supervisor***, to ensure the consistent application of this Regulation. In such cases, relevant Member States shall designate a coordinating competent authority.	4. Where a Member State designates more than one competent authority, the competent authorities shall, in the exercise of the tasks and powers assigned to them under paragraph 3 of this Article, cooperate with each other, including, as appropriate, with the supervisory authority responsible for monitoring the application of Regulation (EU) 2016/679 **or sectoral authorities**, to ensure the consistent application of this Regulation. In such cases, relevant Member States shall designate a coordinating competent authority.	
Article 31(5)				
388	5. Member States shall communicate the name of the designated competent authorities and their respective tasks and powers and, where applicable, the name of the coordinating competent authority to the Commission. The Commission shall maintain a public register of those authorities.	5. Member States shall communicate the name of ~~*the designated competent authorities*~~***data coordinators*** and their respective tasks and powers and, where applicable, the name of the coordinating competent authority to the Commission ***and Data Innovation Board***. The Commission shall maintain a public register of those authorities.	5. Member States shall communicate the name of the designated competent authorities and their respective tasks and powers and, where applicable, the name of the coordinating competent authority to the Commission. The Commission shall maintain a public register of those authorities.	
Article 31(6)				

Ouvert par COMETT

389	6. When carrying out their tasks and exercising their powers in accordance with this Regulation, the competent authorities shall remain free from any external influence, whether direct or indirect, and shall neither seek nor take instructions from any other public authority or any private party.	6. When carrying out their tasks and exercising their powers in accordance with this Regulation, ~~*the competent authorities*~~***data coordinators*** shall ***in an independent and impartial manner and*** remain free from any external influence, whether direct or indirect, and shall neither seek nor take instructions from any other public authority or any private party.	6. When carrying out their tasks and exercising their powers in accordance with this Regulation, the competent authorities shall remain free from any external influence, whether direct or indirect, and shall neither seek nor take instructions **in individual cases** from any other public authority or any private party.	
Article 31(7)				
390	7. Member States shall ensure that the designated competent authorities are provided with the necessary resources to adequately carry out their tasks in accordance with this Regulation.	7. Member States shall ensure that the ~~*designated competent authorities are*~~***data coordinator is*** provided with ***sufficient human and technical*** ~~*the necessary*~~ resources, ***expertise, premises and infrastructure necessary for the effective performance*** to adequately carry out their tasks in accordance with this Regulation.	7. Member States shall ensure that the designated competent authorities are provided with the necessary resources to adequately carry out their tasks in accordance with this Regulation.	
390a		***7a. Entities falling within the scope of this Regulation shall be subject to the jurisdiction of the Member State where the entity is established.***		

Obtenu par CONTEXTE

390b		***7b. A user, data holder or data recipient that is a legal person and is not established in the Union, but which is subject to obligations under this Regulation, shall designate a legal representative in one of the Member States in which its relevant counterparties are established.***		
390c		***7c. The competent authorities under this Regulation shall have the power to request from users, data holders or data recipients, that are legal persons, or their legal representatives all the information that is necessary to verify compliance with the requirements of this Regulation. Any request for information shall be proportionate to the performance of the task and shall be reasoned.***		

Obtenu par CONTEXTE

390d		***7d. Where a user, data holder or data recipient, that is a legal person and not established in the Union fails to designate a legal representative or the legal representative fails, upon request of the competent authority, to provide the necessary information that comprehensively demonstrates compliance with this Regulation, the competent authority shall have the power to postpone the commencement of or to suspend the provision of related services by data holders or requests for data access from data holders by users or data recipients, that are legal persons, until the legal representative is designated or the necessary information is provided.***		
390e			**7a. In accordance with Regulation (EU) 2018/1725, the European Data Protection Supervisor shall be responsible for monitoring the application of Chapter V of this Regulation insofar as the processing of personal data by the Commission, the European Central Bank or Union bodies is concerned.**	

Obtenu par CONTEXTE

390f			**7b. Competent authorities under this Article 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 necessary information by electronic means, without undue delay, in particular to carry out the tasks referred to in paragraph (3), points (b), (c) and (d).**	
390g			**Where a competent authority in one Member State requests assistance or enforcement measures from a competent authority in another Member State, it shall submit a reasoned request. The competent authority shall, upon receiving such a request, provide a response, detailing the actions that have been taken or which are intended to be taken, without undue delay.**	

Obtenu par CONSEIL

390h			**Competent authorities shall respect the principles of confidentiality and of professional and commercial secrecy and shall protect personal data, in accordance with Union and national law. Any information exchanged in the context of assistance requested and provided under this Article shall be used only in respect of the matter for which it was requested.**	
390i			**7c. Entities falling within the scope of this Regulation shall be subject to the competence 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 competence of the Member State in which it has its main establishment, that is, where the entity has its head office or registered office within which the principal financial functions and operational control are exercised.**	

Obtenu par CONTEXTE

390j			**7d. 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 competence 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 under this Regulation for the same facts by another competent authority.**	
390k		***Article 31a*** ***Mutual assistance***		

Obtenu par CONSILIUM

390l		***1. Data coordinators and the Commission shall cooperate closely and provide each other mutual assistance in order to apply this Regulation in a consistent and efficient manner. Mutual assistance shall include, in particular, exchange of all information in accordance with this Article by electronic means and the duty of the Data Coordinator of the concerned Member State to inform all competent authorities and the Commission about the opening of an investigation.***		
390m		***2. For the purpose of an investigation, the Data coordinator of establishment may request other Data coordinators to provide specific information in their possession or to exercise their investigative powers with regard to specific information located in their Member State. Where appropriate, the data coordinator receiving the request may involve other competent authorities or other public authorities of the Member State in question.***		

OJ'ed for CONTEXTE

390n		***3. The Data coordinator receiving the request pursuant to paragraph 2 shall comply with such request and inform the competent authority of the concerned Member State about the action taken, without undue delay.***		
390o		***4. The European Data Innovation Board shall foster the mutual exchange of information amongst competent authorities as well as advise and assist the Commission in all matters falling under this Regulation., falling under the competence of the Board in accordance with Article 30 of the Regulation (EU) No 2022/868. The data coordinators shall represent the Member States at the European Data Innovation Board established under Regulation (EU) 2022/868.***		
Article 32				
391	Article 32 Right to lodge a complaint with a competent authority	Article 32 Right to lodge a complaint with a ~~*competent authority*~~ ***data coordinator***	Article 32 Right to lodge a complaint with a competent authority	
Article 32(1)				

Obtenu sur CONTEXTE

392	1. Without prejudice to any other administrative or judicial remedy, natural and legal persons shall have the right to lodge a complaint, individually or, where relevant, collectively, with the relevant competent authority in the Member State of their habitual residence, place of work or establishment if they consider that their rights under this Regulation have been infringed.	1. Without prejudice to any other administrative or judicial remedy, natural and legal persons shall have the right to lodge a complaint, individually or~~, where relevant,~~ collectively, with the ~~relevant competent authority~~***data coordinator*** in the Member State of their habitual residence, place of work or establishment if they consider that their rights under this Regulation have been infringed. ***Such complaint may arise from the suspension of sharing of data identified as trade secrets, after receiving the notification by the data holder pursuant to Articles 4(3), 5(8) or 19 (2b).***	1. Without prejudice to any other administrative or judicial remedy, natural and legal persons shall have the right to lodge a complaint, individually or, where relevant, collectively, with the relevant competent authority in the Member State of their habitual residence, place of work or establishment if they consider that their rights under this Regulation have been infringed.	
Article 32(2)				
393	2. The competent authority with which the complaint has been lodged shall inform the complainant of the progress of the proceedings and of the decision taken.	2. The ~~competent authority~~***data coordinator*** with which the complaint has been lodged shall inform the complainant***, in accordance with national law,*** of the progress of the proceedings and of the decision taken.	2. The competent authority with which the complaint has been lodged shall inform the complainant**, in accordance with national law,** of the progress of the proceedings and of the decision taken.	
Article 32(3)				

Obtenu par CONTEXTE

394	3. Competent authorities shall cooperate to handle and resolve complaints, including by exchanging all relevant information by electronic means, without undue delay. This cooperation shall not affect the specific cooperation mechanism provided for by Chapters VI and VII of Regulation (EU) 2016/679.	3. Competent authorities shall cooperate ***from the beginning of the process*** to handle and resolve complaints ***effectively and in a timely manner***, including ***by setting reasonable deadlines for adopting formal decisions, ensuring equality of the parties, ensuring the right to be heard from complainants and access to the file throughout the process, and*** by exchanging all relevant information by electronic means, without undue delay. This cooperation shall not affect the specific cooperation mechanism provided for by Chapters VI and VII of Regulation (EU) 2016/679.	3. Competent authorities shall cooperate to handle and resolve complaints, including by exchanging all relevant information by electronic means, without undue delay. This cooperation shall not affect the specific cooperation mechanism provided for by Chapters VI and VII of Regulation (EU) 2016/679 **and by Regulation (EU) 2017/2394**.	
394a		***Article 32a Representation***		

Obtenu par CONTEXTE

394b		***1. Without prejudice to Directive (EU) 2020/1828 or to any other type of representation under national law, users, data holders and data recipients shall at least have the right to mandate a body, organisation or association to exercise the rights conferred by this Regulation on their behalf, provided the body, organisation or association meets all of the following conditions:***		
394c		***(a) it operates on a not-for-profit basis;***		
394d		***(b) it has been properly constituted in accordance with the law of a Member State;***		
394e		***(c) its statutory objectives include a legitimate interest in ensuring that this Regulation is complied with.***		

Obtenu par CONTEXTE

394f		***Article 32b*** ***Right to an effective judicial remedy against a competent authority***		
394g		***1. Without prejudice to any other administrative or non-judicial remedy, each user, data holder and data recipient shall have the right to an effective judicial remedy against a legally binding decision of a competent authority concerning them.***		
394h		***2. Without prejudice to any other administrative or non judicial remedy, each user shall have the right to an effective judicial remedy where the competent authority does not handle a complaint swiftly or does not inform the user, data holder and data recipient within three months on the progress or outcome of the complaint lodged pursuant to Article 32.***		

Objet : CONTEXTE

394i		***3. Proceedings against a competent authority shall be brought before the courts of the Member State of the habitual residence, place of work or establishment of the user or their representative organisation.***		
394j		***4. Where proceedings are brought against a decision of a competent authority which was preceded by an opinion or a decision of the Board in the consistency mechanism, the supervisory authority shall forward that opinion or decision to the court.***		
394k		***Article 32c*** ***Right to an effective judicial remedy***		

Obtenu par CONTEXTE

394l		***1. Without prejudice to any available administrative or non-judicial remedy, including under Directive (EU) 2020/1828 and the right to lodge a complaint with a competent authority pursuant to Article 32b, user, data holder and data recipient shall have the right to an effective judicial remedy where they consider that their rights under this Regulation have been infringed as a result of the non-compliance with this Regulation.***		
394m		***2. Proceedings against a data holder, third party or data recipient shall be brought before the courts of the Member State where the user has their habitual residence, place or work or establishment.***		
Article 33				
395	Article 33 Penalties	Article 33 Penalties	Article 33 Penalties	
Article 33(1)				

Obtenu par CONTEXTE

396	1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.	1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.	1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. **Member States shall take into account the recommendations of the European Data Innovation Board. Member States shall, by [date of application of the Regulation], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.**	
396a		***1a. Member States shall take into account the following non-exhaustive criteria for the imposition of penalties for infringements of this Regulation;***		
396b		***(a) the nature, gravity, scale and duration of the infringement;***		

Obtenu par COREPER

396c		***(b) any action taken by the infringing party to mitigate or remedy the damage caused by the infringement;***		
396d		***(c) any previous infringements by the infringing party;***		
396e		***(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;***		
396f		***(e) any other aggravating or mitigating factors applicable to the circumstances of the case.***		
396g			**1a. Member States shall take into account the following non-exhaustive and indicative criteria for the imposition of penalties for infringements of this Regulation, where appropriate:**	

Obtenu par CONTEXTE

396h			**(a) the nature, gravity, scale and duration of the infringement;**	
396i			**(b) any action taken by the infringer to mitigate or remedy the damage caused by the infringement;**	
396j			**(c) any previous infringements by the infringer;**	
396k			**(d) the financial benefits gained or losses avoided by the infringer due to the infringement, insofar as such benefits or losses can be reliably established;**	
396l			**(e) any other aggravating or mitigating fators applicable to the circumstances of the case;**	

Obtenu par CONTEXTE

396m			**(f) the infringer's annual turnover of the preceeding financial year in the Union.**	
Article 33(2)				
397	2. Member States shall by [date of application of the Regulation] notify the Commission of those rules and measures and shall notify it without delay of any subsequent amendment affecting them.	2. Member States shall by [date of application of the Regulation] notify the Commission***, the European Data Protection Board and the European Data Innovation Board*** of those rules and measures and shall notify ~~it~~***them*** without delay of any subsequent amendment affecting them. ***The Commission shall regularly update and maintain an easily accessible public register of those measures.***	2. Member States shall by [date of application of the Regulation] notify the Commission of those rules and measures and shall notify it without delay of any subsequent amendment affecting them.	
Article 33(3)				
398	3. For infringements of the obligations laid down in Chapter II, III and V of this Regulation, the supervisory authorities referred to in Article 51 of the Regulation (EU) 2016/679 may within their scope of competence impose administrative fines in line with Article 83 of Regulation (EU) 2016/679 and up to the amount referred to in Article 83(5) of that Regulation.	3. For infringements of the obligations laid down in Chapter II, III and V of this Regulation, the supervisory authorities referred to in Article 51 of the Regulation (EU) 2016/679 may within their scope of competence impose administrative fines in line with Article 83 of Regulation (EU) 2016/679 and up to the amount referred to in Article 83(5) of that Regulation.	3. For infringements of the obligations laid down in Chapter II, III and V of this Regulation, the supervisory authorities referred to in Article 51 of the Regulation (EU) 2016/679 may within their scope of competence impose ~~administrative~~ fines in line with Article 83 of Regulation (EU) 2016/679 and up to the amount referred to in Article 83(5) of that Regulation.	
Article 33(4)				

Obtenu par CONTEXTE

399	4. For infringements of the obligations laid down in Chapter V of this Regulation, the supervisory authority referred to in Article 52 of Regulation (EU) 2018/1725 may impose within its scope of competence administrative fines in accordance with Article 66 of Regulation (EU) 2018/1725 up to the amount referred to in Article 66(3) of that Regulation.	4. For infringements of the obligations laid down in Chapter V of this Regulation, the supervisory authority referred to in Article 52 of Regulation (EU) 2018/1725 may impose within its scope of competence administrative fines in accordance with Article 66 of Regulation (EU) 2018/1725 up to the amount referred to in Article 66(3) of that Regulation.	4. For infringements of the obligations laid down in Chapter V of this Regulation, the supervisory authority referred to in Article 52 of Regulation (EU) 2018/1725 may impose within its scope of competence administrative fines in accordance with Article 66 of Regulation (EU) 2018/1725 up to the amount referred to in Article 66(3) of that Regulation.	
Article 34				
400	Article 34 Model contractual terms	Article 34 Model contractual terms	Article 34 ***Model contractual terms*** **and standard contractual clauses**~~Model contractual terms~~	
Article 34, first paragraph				
401	The Commission shall develop and recommend non-binding model contractual terms on data access and use to assist parties in drafting and negotiating contracts with balanced contractual rights and obligations.	The Commission shall develop and recommend non-binding model contractual terms on data access and use ***and standard contractual clauses for cloud computing contracts, based on Fair, Reasonable and Non-Discriminatory (FRAND) principles,*** to assist parties in drafting and negotiating contracts with balanced contractual rights and obligations. ***Such model contractual terms shall address at least the following elements:***	The Commission**, before [date of application of the Regulation], shall** ~~shall develop and~~ recommend non-binding model contractual terms on data access and use**, including reasonable compensation and the protection of trade secrets, and non-binding standard contractual clauses for cloud computing contracts** to assist parties in drafting and negotiating contracts with balanced contractual rights and obligations.	

OJ'ed par CONTE FF

401a		***(a) right to early termination of the contract and conditions for compensation in the case of early termination;***		
401b		***(b) data retention and storage policies;***		
401c		***(c) readability of the data for the user, including information on metadata and decryption;***		
401d		***(d) the protection and preservation of the confidentiality of trade secrets, in accordance with this Regulation.***		
401e		***The model contractual terms referred to in the first subparagraph shall be published and shall be available free of charge in easily usable electronic format.***		

Obtenu par CONTEXTE

401f			**Article 34a** **Role of the European Data Innovation Board**	
401g			**The European Data Innovation Board to be set up as a Commission expert group in accordance with Article 29 of Regulation (EU) 2022/868 shall support the consistent application of this Regulation by:**	
401h			**(a) advising and assisting the Commission with regard to developing a consistent practice of competent authorities relating to the enforcement of Chapters II, III, V and VII;**	

Obtenu par CONTEXTE

401i			**(b) facilitating cooperation between competent authorities through capacity-building and the exchange of information, in particular by establishing methods for the efficient exchange of information relating to the enforcement of the rights and obligations under Chapters II, III and V in cross-border cases, including coordination with regard to the setting of penalties;**	
401j			**(c) advising and assisting the Commission with regard to:**	
401k			**(i) whether to request the drafting of harmonised standards referred to in Article 28(4) and Article 30(5);**	
401l			**(ii) the preparation of the drafts of the implementing acts referred to in Article 28(5) and Article 30(6);**	

Obtenu par CONTEXTE

401m			**(iii) the preparation of the delegated acts referred to in Articles 25(4) and 28(2); and**	
401n			**(iv) the adoption of the guidelines laying down interoperability specifications for the functioning of common European data spaces referred to in Article 28(6).**	
CHAPTER X				
402	CHAPTER X SUI GENERIS RIGHT UNDER DIRECTIVE 1996/9/EC	CHAPTER X ***INAPPLICABILITY OF THE*** SUI GENERIS RIGHT UNDER DIRECTIVE ~~*1996/9/EC*~~***96/9/EC TO DATABASES CONTAINING CERTAIN DATA***	CHAPTER X SUI GENERIS RIGHT UNDER DIRECTIVE ~~1996/9/EC~~**96/9/EC**	
Article 35				
403	Article 35 Databases containing certain data	Article 35 Databases containing certain data	Article 35 Databases containing certain data	
Article 35, first paragraph				

Obtenu par CONTEXTE

404	In order not to hinder the exercise of the right of users to access and use such data in accordance with Article 4 of this Regulation or of the right to share such data with third parties in accordance with Article 5 of this Regulation, the sui generis right provided for in Article 7 of Directive 96/9/EC does not apply to databases containing data obtained from or generated by the use of a product or a related service.	~~*In order not to hinder the exercise of the right of users to access and use such data in accordance with Article 4 of this Regulation or of the right to share such data with third parties in accordance with Article 5 of this Regulation,*~~ The sui generis right provided for in Article 7 of Directive 96/9/EC does not apply to databases containing data obtained from or generated by the use of a product or a related service ***falling within the scope of this Regulation***.	~~In order not to hinder the exercise~~**For the purposes** of the ~~right of users to access and use such data in accordance with Article 4 of this Regulation or~~**exercise** of the ~~right to share such data with third parties in accordance with Article~~**rights provided for in Articles 4 and** 5 of this Regulation, the sui generis right provided for in Article 7 of Directive 96/9/EC ~~does~~ **shall** not apply **when data is** ~~to databases containing data~~ obtained from or generated by ~~the use of~~ a product or ~~a~~ related service.	
CHAPTER XI				
405	CHAPTER XI FINAL PROVISIONS	CHAPTER XI FINAL PROVISIONS	CHAPTER XI FINAL PROVISIONS	
Article 36				
406	Article 36 Amendment to Regulation (EU) No 2017/2394	Article 36 Amendment to Regulation (EU) No 2017/2394	Article 36 Amendment to Regulation (EU) No 2017/2394	
Article 36, first paragraph				
407	In the Annex to Regulation (EU) No 2017/2394 the following point is added:	In the Annex to Regulation (EU) No 2017/2394 the following point is added:	In the Annex to Regulation (EU) No 2017/2394 the following point is added:	
Article 36, first paragraph, amending provision, numbered paragraph (29)				

Obtenu par CONSEIL

408	‘ 29. [Regulation (EU) XXX of the European Parliament and of the Council [Data Act]]. ’,	‘ 29. [Regulation (EU) XXX of the European Parliament and of the Council [Data Act]]. ’,	‘ 29. [Regulation (EU) XXX of the European Parliament and of the Council [Data Act]]. ’,	
Article 37				
409	Article 37 Amendment to Directive (EU) 2020/1828	Article 37 Amendment to Directive (EU) 2020/1828	Article 37 Amendment to Directive (EU) 2020/1828	
Article 37, first paragraph				
410	In the Annex to Directive (EU) 2020/1828 the following point is added:	In the Annex to Directive (EU) 2020/1828 the following point is added:	~~In the~~ Annex **I** to Directive (EU) 2020/1828 the following point is added:	
Article 37, first paragraph, amending provision, numbered paragraph (67)				
411	‘ 67. [Regulation (EU) XXX of the European Parliament and of the Council [Data Act]] ’,	‘ 67. [Regulation (EU) XXX of the European Parliament and of the Council [Data Act]] ’,	‘ 67. [Regulation (EU) XXX of the European Parliament and of the Council [Data Act]] ’,	
Article 38				
412	Article 38 Exercise of the delegation	Article 38 Exercise of the delegation	Article 38 Exercise of the delegation	
Article 38(1)				

Obtenu par CONTEXTE

413	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	
Article 38(2)				
414	2. The power to adopt delegated acts referred to in Articles 25(4), 28(2) and 29(5) shall be conferred on the Commission for an indeterminate period of time from […].	2. The power to adopt delegated acts referred to in Articles 25(4), 28(2) and 29(5) shall be conferred on the Commission for an indeterminate period of time from […].	2. The power to adopt delegated acts referred to in Articles 25(4), 28(2) and 29(5) shall be conferred on the Commission for an indeterminate period of time from [~~…~~ **date of entry into force of this Regulation**].	
Article 38(3)				
415	3. The delegation of power referred to in Articles 25(4), 28(2) and 29(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	3. The delegation of power referred to in Articles 25(4), 28(2) and 29(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	3. The delegation of power referred to in Articles 25(4), 28(2) and 29(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	
Article 38(4)				

OFFICIAL USE ONLY

416	4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.	4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.	4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.	
Article 38(5)				
417	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	
Article 38(6)				
418	6. A delegated act adopted pursuant to Articles 25(4), 28(2) and 29(5) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.	6. A delegated act adopted pursuant to Articles 25(4), 28(2) and 29(5) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.	6. A delegated act adopted pursuant to Articles 25(4), 28(2) and 29(5) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.	
Article 39				

ONLY FOR CONTEXT

419	Article 39 Committee procedure	Article 39 Committee procedure	Article 39 Committee procedure	
Article 39(1)				
420	1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	
Article 39(2)				
421	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	
Article 40				
422	Article 40 Other Union legal acts governing rights and obligations on data access and use	Article 40 Other Union legal acts governing rights and obligations on data access and use	Article 40 Other Union legal acts governing rights and obligations on data access and use	
Article 40(1)				

Obtenu par CONTEXTE

423	1. The specific obligations for the making available of data between businesses, between businesses and consumers, and on exceptional basis between businesses and public bodies, in Union legal acts that entered into force on or before [xx XXX xxx], and delegated or implementing acts based thereupon, shall remain unaffected.	1. The specific obligations for the making available of data between businesses, between businesses and consumers, and on exceptional basis between businesses and public bodies, in Union legal acts that entered into force on or before [xx XXX xxx], and delegated or implementing acts based thereupon, shall remain unaffected.	1. The specific obligations for the making available of data between businesses, between businesses and consumers, and on exceptional basis between businesses and public bodies, in Union legal acts that entered into force on or before [~~xx XXX xxx~~ **date of entry into force of this Regulation**], and delegated or implementing acts based thereupon, shall remain unaffected.	
Article 40(2)				
424	2. This Regulation is without prejudice to Union legislation specifying, in light of the needs of a sector, a common European data space, or an area of public interest, further requirements, in particular in relation to:	2. This Regulation is without prejudice to Union legislation specifying, in light of the needs of a sector, a common European data space, or an area of public interest, further requirements, in particular in relation to:	2. This Regulation is without prejudice to Union legislation specifying, in light of the needs of a sector , a common European data space, or an area of public interest, further requirements, in particular in relation to:	
Article 40(2), point (a)				
425	(a) technical aspects of data access;	(a) technical aspects of data access;	(a) technical aspects of data access;	
Article 40(2), point (b)				
426	(b) limits on the rights of data holders to access or use certain data provided by users;	(b) limits on the rights of data holders to access or use certain data provided by users;	(b) limits on the rights of data holders to access or use certain data provided by users;	
Article 40(2), point (c)				

Obtenu par CONTEXTE

427	(c) aspects going beyond data access and use.	(c) aspects going beyond data access and use.	(c) aspects going beyond data access and use.	
427a			**2a. This Regulation is without prejudice to Union and national law providing for access to and authorising the use of data for scientific research purposes.**	
Article 41				
428	Article 41 Evaluation and review	Article 41 Evaluation and review		
Article 41, first paragraph				
429	By [two years after the date of application of this Regulation], the Commission shall carry out an evaluation of this Regulation and submit a report on its main findings to the European Parliament and to the Council as well as to the European Economic and Social Committee. That evaluation shall assess, in particular:	***1.*** By [two years after the date of application of this Regulation], the Commission shall carry out an evaluation of this Regulation and submit a report on its main findings to the European Parliament and to the Council as well as to the European Economic and Social Committee. That evaluation shall assess, in particular:	By [two years after the date of application of this Regulation], the Commission shall carry out an evaluation of this Regulation and submit a report on its main findings to the European Parliament and to the Council as well as to the European Economic and Social Committee. That evaluation shall assess, in particular:	

Observar CONTEXTE

429a		***(-a) the use of data by users, data holders, data recipients and third parties, the development of monetisation practices in the European data economy as well as the development of the arrangements for data sharing, including competitive dynamics in data spaces and data intermediation services;***		
429b		***(-aa) the effects of technical and administrative obligations to comply with this Regulation, in particular with Chapter II thereof on industry participants, also in view of the SME exemptions;***		
Article 41, first paragraph, point (a)				
430	(a) other categories or types of data to be made accessible;	(a) other categories or types of data to be made accessible;	(a) ~~other~~ categories or types of data to be made accessible;	
Article 41, first paragraph, point (b)				
431	(b) the exclusion of certain categories of enterprises as beneficiaries under Article 5;	(b) the exclusion of certain categories of enterprises as beneficiaries under Article 5;	(b) the exclusion of certain categories of enterprises as beneficiaries under Article 5;	

Obtenu par CONTEXTE

431a		***(ba) whether the provisions of this Regulation related to trade secrets ensure respect for trade secrets while not hampering the access to and sharing of data; in particular, the evaluation shall assess whether and how the confidentiality of trade secrets is ensured in practice despite their disclosure both in the context of data sharing with third parties and in the business-to-government context. This assessment shall be carried out in close relationship with the evaluation report on Directive (EU) 2016/943 expected by 9 June 2026 pursuant to Article 18(3) of the directive thereof;***		
Article 41, first paragraph, point (c)				
432	(c) other situations to be deemed as exceptional needs for the purpose of Article 15;	(c) other situations to be deemed as exceptional needs for the purpose of Article 15;	(c) ~~other~~ situations to be deemed as exceptional needs for the purpose of Article 15;	
Article 41, first paragraph, point (d)				
433	(d) changes in contractual practices of data processing service providers and whether this results in sufficient compliance with Article 24;	(d) changes in contractual practices of data processing service providers and whether this results in sufficient compliance with Article 24;	(d) changes in contractual practices of data processing service providers and whether this results in sufficient compliance with Article 24;	
Article 41, first paragraph, point (e)				

Obtenu par CONTEXTE

434	(e) diminution of charges imposed by data processing service providers for the switching process, in line with the gradual withdrawal of switching charges pursuant to Article 25.	(e) diminution of charges imposed by data processing service providers for the switching process, in line with the gradual withdrawal of switching charges pursuant to Article 25~~.~~ ***;***	(e) diminution of charges imposed by data processing service providers ~~for the switching process~~, in line with the gradual withdrawal of ~~switching~~ charges pursuant to Article 25~~.~~**;**	
434a		***(ea) the interaction between the this Regulation and other relevant Union law to assess possible conflicting regulation, overregulation or legislative gaps;***		
434b		***(eb) the contribution of this Regulation to ensuring the economic attractiveness of the collection and use of high quality data sets by Union companies;***		
434c		***(ec) the contribution of this Regulation to innovation and to promoting the development of high-tech start-ups and SMEs, as well as to enabling access for European users to state-of-the-art computing services;***		

Obsnu par CONTEXTE

434d		***(ed) the application and functioning of Article 27 on the international access and transfer of data.***		
434e			**(ea) products or categories of services to which access and use rights or the switching obligations could apply;**	
434f			**(eb) impacts on trade secrets;**	
434g			**(ec) impacts on intellectual property rights;**	
434h			**(ed) the efficacy of the enforcement regime required under Article 31;**	

Obtenu par CONTEXTE

434i			**(ee) impacts of the data access rights and data sharing obligations on the development of new products or related services;**	
434j			**(ef) impacts on micro, small and medium sized enterprises, on their capacity to innovate and on the availability of data processing services for European users.**	
434k		***1a On the basis of that report, the Commission shall, where appropriate, submit a legislative proposal to the Parliament and the Council to amend this Regulation.***		
Article 42				
435	Article 42 Entry into force and application	Article 42 Entry into force and application	Article 42 Entry into force and application	
Article 42, first paragraph				
436	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	
Article 42, second paragraph				

Obtenu par CONTEXTE

437	It shall apply from [12 months after the date of entry into force of this Regulation].	It shall apply from ~~[12~~***18*** months after the date of entry into force of this Regulation~~]~~.	It shall apply from [~~12~~ **24** months after the date of entry into force of this Regulation].	
437a		***The obligations resulting from Article 4(1) shall apply to related services placed on the market within five years prior to the entry into force of this Regulation and only where the provider of a related service is able to remotely deploy mechanisms to ensure the fulfilment of the requirements pursuant to Article 4(1) and where the deployment of such mechanisms would not place a disproportionate burden on the manufacturer or provider of related services.***		
437b			**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.**	

Obtenu par CONTEXTE

437c			**The provisions of Chapter IV shall apply to contracts concluded after [date of application of this Regulation].**	
Formula				
438	Done at Brussels,	Done at ~~*Brussels*~~,	Done at Brussels,	
Formula				
439	For the European Parliament	For the European Parliament	For the European Parliament	
Formula				
440	The President	The President	The President	
Formula				
441	For the Council	For the Council	For the Council	
Formula				
442	The President	The President	The President	

Obtenu par CONTEXTE