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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Data Act - Consolidated table of comments (doc. 12169/22)

Delegations will find in annex the consolidated table of comments on Data Act (doc. 12169/22).

Data Act

20 Member States : HR, FI, BG, PT, HU, DK, SK, PL, NL, MT, SI, SE, IE, DE, IT, EE, BE, ES, EL, FR

Last update : 5 October 2022

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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)	PT: (Comments): In addition to the specific comments below, we would like to stress the following overall concerns or suggestions: The importance of replacing “without undue delay” with a specific and objectively measurable time-period. Without this, there will be legal uncertainty and (possibly) litigation. DK: (Comments): DK supports the ambitions of the act and appreciates the Presidency’s changes and the progress made. Given the proposals wide scope and potential impact, it is essential that questions of substance are discussed adequately and that the text’s more

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	complex and technically difficult parts are analysed further, in order to find solutions that ensure clear rules that work in practice and as intended. While we appreciate the amendments made, we find that further work on the text is needed. To this end, and as a summary of our comments, we suggest that the WP Tele focus on: 1) Challenges with the requirements to share data generated from connected products: - Firstly, it is imperative that the <i>data</i>, which the data holder or manufacturer is obligated to share with the user, is properly defined. - Secondly, the text does not take into account that IoT-products are often utilised in complex ecosystems with several multi-layered parties (e.g. through leasing, subcontracting and collaboration agreements). Further clarity is thus needed to be able to identify the data holder and to whom the right of access applies. - Thirdly, the exemption for micro and SMEs in chapter 2 merits a closer look. We worry that limiting user access rights based on the size of the provider is incoherent with the underlying principles and goals of the act. Further, the exemption risks creating a loophole to circumvent the obligations. Instead, we recommend focusing on setting the right requirements in art. 3, which gives data holders legal clarity and

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	removes unnecessary burdens broadly. - Fourthly, as a main goal, the Data Act should promote the sharing of useful data within the Single Market and foster European innovation and technological development. A consent requirement as a prerequisite for using and sharing non-personal data would create a significant barrier to achieve such objectives. We call for a re-examination of the need of such a provision. 2) The Data Act should serve to open the cloud market, prevent lock-in effects and promote interoperability between services in a future proof manner. To achieve these goals, the increasingly complex nature of data processing services should be considered. As such, transition periods need to distinguish between simple and more complex services. In addition, attention should be given to the fact that many cloud systems function within greater ecosystems. This can pose significant interoperability challenges, which range from limiting customer choice to severely reducing competition. It may not even be possible for smaller operators – who have built their service upon the infrastructure of larger players – to port data without the assistance of other providers. Therefore, the viability and target of these requirements must be carefully considered. In this regard, DK looks with interest to the findings in the NL study of the cloud market, which offer a number of possible solutions.

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	3) DK strongly supports the aim to protect SMEs from unfair contractual terms, also when engaging in data sharing. It is, however, unfortunate that the greatest obstacle to voluntary data sharing is not addressed. DK strongly believes that Ch. 4 should include a provision to address unreasonable pricing of data, and we have proposed concrete text to that end. 4) With regards to the chapter V on B2G data sharing, we see a need to address a few key issues: - Firstly, a harmonised and specific definition of what constitutes a ‘public emergency’ is needed for legal clarity and cross-border data access. - Secondly, the definition of ‘exceptional need’ is too broad. In particular, for the purpose of pre-emptive measures and for the fulfilment of specific tasks, may provide a legal base for processing well beyond the intended scope. - Thirdly, the justification for or rationale behind art. 15(c) remains unclear. If, as submitted by some Member States, the goal is to ease data collection for official statistics purposes, then this – and any other intended use – should be specifically and exhaustively inscribed to better address these needs and exclude unintended uses of article 15.

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	- Finally, we still question the need for cross-border data access. As a minimum, a cross-border access right should be accompanied by a clear cooperation mechanism between Member States. 5) The requirements on unlawful international governmental access and transfer must be further clarified, in order to protect non-personal data flows from governmental access without restricting international data flows. This need is underscored by the many different interpretations of art. 27, expressed by Member States and stakeholders. While the changes made to the title of the chapter are helpful, we see a further need to make changes in the article text as well. 6) On interoperability requirements, we emphasise that the requirements on data space operators should apply <i>only</i> within Common European data spaces. In addition, it is important that a definition of such Common European data spaces is included for legal clarity. NL: (Comments):

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	In general, we welcome the proposal for a Data Act and further clarifications made in the compromise text. We are especially positive about the ambitious measures to give users of IoT-products access and use rights and to ensure switchability for data processing services. We believe such measures are essential to fully unlock the potential of data while also enhancing the control users of such products and services have over their data. Although we are generally positive about the proposal, there are a number of outstanding issues we would still like to see addressed in the Data Act. We strongly believe these issues warrant further discussion in the council working parties. Our most pressing outstanding issues are: • We are still deeply concerned about chapter 5 as it provides a very broad base for public bodies to request and use (personal) data at their own discretion. The risk of infringements in fundamental rights, among which the right to privacy and the right to property are disproportionate to the goal of the chapter. This warrants further discussion in council and fundamental changes need to be made to address these risks. • We welcome the measures to enable cloud switching, but in line with the findings from the cloud market study by the Dutch consumer and market authority¹, we believe in a truly competitive cloud market users should also be

¹ [Market study into cloud services | ACM.nl](#)

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	able to use services from different providers next to each other. We see a risk that under the current proposal users may remain locked in to a single provider's eco-system of services because the proposal does not further enable interoperability between services from different providers other than for switching services. We believe the Data Act could supplement the proposed measures to further stimulate interoperability and integration of cloud services. • While we welcome the created access and use rights for users of IoT-products we believe further adjustments need to be made to ensure users will be able to properly exercise these rights in practice and data holders can easily comply with the proposed measures. Firstly, we believe the Data Act should stimulate the development and implementation of interoperability standards and technical specifications for data sharing between IoT-products. This ensures the technical feasibility of the proposed measures. Secondly, we believe the Data Act should specify that the compensation data holder may require for making data available to third parties should be linked to costs incurred for making data available. This provides clarity to all parties involved and prevents lengthy disputes on compensation. Finally, further clarification is necessary on which data should be made available by data holders in order to provide data holders legal clarity. In addition to these pressing issues there are a number of other issues we believe warrant further discussion in council working parties. We have indicated those in our specific comments. IE:

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	(Comments): IE welcomes the objectives of the Data Act and its aim to facilitate increased data sharing in the digital economy. IE is supportive of the measures and progress made on the proposal and the ongoing work of the Commission and the Presidency. We believe that there are still areas which require further clarification which we have set out below. DE: (Comments): General Scrutiny Reservation: The proposal needs further analysis and discussion. The following remarks are preliminary and without prejudice to further changes and amendments. Further remarks at a later date reserved. Scrutiny Reservation: We ask the COM to clarify comprehensively the relationship between and the scopes of the Data Act on the one hand and the General Data Protection Regulation (GDPR) and other data protection legal acts (such as the ePrivacy Directive) on the other hand. Without a clear distinction, follow-up

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	questions throughout the proposal cannot be answered. This includes, but is not limited to, possible specific protection mechanisms for B2C relations, as well as possible access rights of natural persons being data subjects pursuant to the GDPR without being users pursuant to the Data Act. This further comprises the newly added definitions and in which chapters they are supposed to be applied. Also being examined is whether further regulation within the Data Act (especially protection mechanisms for B2C relations) are necessary. In this context, we generally examine whether a clear differentiation between B2B and B2C is necessary. In the B2C context, we especially examine how the aim of the data act (ensuring fairness in the allocation of value from data among actors in the data economy and to foster access to and use of data) can be best achieved taking into account the fundamental rights of protection of personal data, of freedom of science and of freedom to conduct a business. We furthermore ask for clarification if the Data Act already contains additional legal bases for processing personal data. The access of research organisations and researchers to privately held data (e.g. companies) should be strengthened with the Data Act. We are currently assessing, whether to for example include a new chapter on access to data for research organisations and researchers. The aim should be to ensure a level playing field in the

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	European Union and a common European approach for the access to data for research organizations and researchers. The funding of research takes for the most part place on the European level, research consortia and alliances do research in the European single market – across national borders. Therefore, common European rules are necessary. The access rights should be applicable to all fields of research and sectors, in other words shall cover research horizontally, that is why it is to be implemented in the Data Act. A concrete suggestion will follow. EL: (Comments): Please find below the comments and suggested modifications of Greece. We reserve the right to provide additional remarks in written form or during the WP Telecom meetings as the proposal is still under scrutiny not only as far its content is concerned but also regarding its relation to other legislative acts.
(Text with EEA relevance)	
THE EUROPEAN PARLIAMENT AND THE COUNCIL	

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OF THE EUROPEAN UNION,	
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	
Having regard to the proposal from the European Commission,	
After transmission of the draft legislative act to the national parliaments,	
Having regard to the opinion of the European Economic and Social Committee ² ,	
Having regard to the opinion of the Committee of the Regions ³ ,	

² OJ C , , p. .

³ OJ C , , p. .

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Acting in accordance with the ordinary legislative procedure,	
Whereas:	
(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.	
(2) Barriers to data sharing prevent an optimal allocation of data to the benefit of society. These barriers include a	

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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.	
(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.	

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(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.	DE: (Comments): What are the implications on the scope of competition law of recital 4, which stipulates that MS must not adopt or maintain additional national requirements on matters within the scope of the Data Act, in particular where competition law grants rights to data access?
(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	FI: (Comments): The last sentence ‘Instead, it takes as its starting point the control that the data holder effectively enjoys, de facto or de jure, over data generated by products or related services.’ does not always reflect /correspond to the reality. (Different relations and

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make data available to users and third parties nominated by the users in certain circumstances. It also ensures that data holders make data available to data recipients in the Union under fair, reasonable and non-discriminatory terms and in a transparent manner. Private law rules are key in the overall framework of data sharing. Therefore, this Regulation adapts rules of contract law and prevents the exploitation of contractual imbalances that hinder fair data access and use for micro, small or medium-sized enterprises within the meaning of Recommendation 2003/361/EC. This Regulation also ensures that data holders make available to public sector bodies of the Member States and to Union institutions, agencies or bodies, where there is an exceptional need, the data that are necessary for the performance of tasks carried out in the public interest. In addition, this Regulation seeks to facilitate switching between data processing services and to enhance the interoperability of data and data sharing mechanisms and services in the Union. This Regulation	different scenarios; sometimes the manufacturer does not have control etc.) Second, instead ‘of their choice’, the word user could be repeated so that it cannot be read in a way that the manufacturer (data holder) can choose. DE: (Drafting): (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

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should not be interpreted as recognising or creating any legal basis for the data holder to hold, have access to or process data, or as conferring any new right on the data holder to use data generated by the use of a product or related service. Instead, it takes as its starting point the control that the data holder effectively enjoys, de facto or de jure, over data generated by products or related services.	States and to Union institutions, agencies or bodies, where there is an exceptional need, the data that are necessary for the performance of tasks carried out in the public interest. In addition, this Regulation seeks to facilitate switching between data processing services and to enhance the interoperability of data and data sharing mechanisms and services in the Union. This Regulation should not be interpreted as recognising or creating any legal basis for the data holder to hold, have access to or process data, or as conferring any new right on the data holder to use data generated by the use of a product or related service. Instead, it takes as its starting point the control that the data holder effectively enjoys, de facto or de jure, over data generated by products or related services. DE: (Comments): What does “make data available” and “accessing” data mean in concrete terms - temporary read access? Reception of a copy of datasets?
(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	

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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.	
(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	SE: (Drafting):

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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.	
(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	

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technology that permits algorithms to be brought to the data and allow valuable insights to be derived without the transmission between parties or unnecessary copying of the raw or structured data themselves.	
(9) In so far as not regulated in this Regulation, this Regulation should not affect national general 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 Council⁴, Directive	PL: (Drafting): In so far as not regulated in this Regulation, this Regulation should not affect national ~~general~~-contract laws such as rules on formation, the validity or effects of contracts, including the consequences of the termination of a contract. SE: (Drafting): <i>Below highlighted in yellow and cursive is a proposed amendment to this</i>

⁴ 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).

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2011/83/EU of the European Parliament and of the Council ⁵ and Directive 93/13/EEC of the European Parliament and of the Council ⁶ .	<i>preamble (9):</i> In so far as not regulated in this Regulation, this Regulation should not affect national general contract laws such as rules on formation, the validity or effects of contracts, including the consequences of the termination of a contract. <i>Action under this regulation should be without prejudice to obligations and commitments in the international trade agreements concluded by the Union.</i> 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 Council⁷,

⁵ 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.

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

⁷ 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).

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	Directive 2011/83/EU of the European Parliament and of the Council⁸ and Directive 93/13/EEC of the European Parliament and of the Council⁹. SE: (Comments): We propose an amendments to this preamble. The Union has concluded trade agreements both at the multilateral level, such as the GATS, and at the regional and bilateral level. Such agreements contain obligations and binding commitment by the Union for example relating to services trade and digital trade. An identical reference to the proposed one is included in the Digital Governance Act, preamble (5) DE: (Drafting): (9) In so far as not regulated in this Regulation, this Regulation should not

⁸ 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.

⁹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

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	affect national general contract laws such as rules on formation, the validity or effects of contracts, including the consequences of the termination of a contract. This regulation should be without prejudice to obligations and commitments in the international trade agreements concluded by the Union. [...] BE: (Comments): BE welcomes the inclusion of this recital that explicitly states that the Data Act is without prejudice to the application of the existing rules with regard to consumer protection. BE suggests to explicitly include this clarification in the operative part of the Regulation, and not only in the recitals. This would give more legal effect to the content of these legal safeguards. FR: (Drafting): (9) ~~In so far as not regulated in this Regulation,~~ This Regulation should not affect national law to the extent that the matters concerned are not regulated by this Regulation, such as national rules on the formation, the validity, nullity or

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	effects of contracts, including the consequences of the termination of a contract. FR: (Comments): Cet ajout est peu clair quant à l'articulation entre cette proposition de règlement et les règles relatives au droit des contrats. La phrase est à notre sens équivoque et nous ne comprenons pas très bien si les règles du présent règlement viendraient exclure les règles relatives au droit des contrats ou si elles pourraient être cumulatives notamment s'agissant des dispositions des clauses abusives. Ainsi, en droit français, les clauses abusives connaissent diverses règles éparpillées dans plusieurs codes (code civil ou code de la consommation par exemple). En droit interne on est dans un logique cumulative et ces règles coexistent nous semblent-ils. Ici la question pourrait se poser de savoir si une règle énoncée dans cette proposition de règlement viendrait exclure l'application de notre droit commun (articles 1170 et 1171 du code civil) ? Sur la forme nous souhaitons en outre préciser que la première partie de la phrase « <i>In so far as not regulated in this Regulation</i> » est peu claire. Il conviendrait de préférer la rédaction utilisée au dans le considérant 12 de la directive 2019/770 : « <i>This Regulation should not affect national law to the extent that the matters concerned are not regulated by this Regulation</i>, such as national rules on the

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	formation, validity, nullity or effects of contracts, including the consequences of the termination of a contract ».
(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	

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the basis of the Council of Europe 2001 Convention on Cybercrime (“Budapest Convention”). This Regulation is without prejudice to the competences of the Member States regarding activities concerning public security, defence and national security in accordance with Union law, and activities from customs on risk management and in general, verification of compliance with the Customs Code by economic operators.	
(11) Union law setting physical design and data requirements for products to be placed on the Union market should not be affected by this Regulation.	
(12) This Regulation complements and is without prejudice to Union law aiming at setting accessibility requirements on certain products and services, in particular Directive 2019/882 ¹⁰ .	

¹⁰ 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.

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(13) This Regulation is without prejudice to Union 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.~~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.~~	PL: (Drafting): 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. DE: (Drafting): (13) Unless otherwise stated, this This Regulation is without prejudice to Union 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.~~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.~~ DE:

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	(Comments): Database Directive is part of Intellectual Property Right and is affected by Data Act (Art. 35). FR: (Drafting): (13) 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.
(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. Electronic communications services include land-based	HU: (Drafting): Information derived or inferred from this data, when the derivation is more complex than mere signal conditioning or encoding, where lawfully held, should not be considered within scope of this Regulation. HU:

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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. Information derived or inferred from this data, where lawfully held, should not be considered within scope of this Regulation.	(Comments): Mere signal conditioning and data encoding are widely used methods for data acquisition and they may fall under the “information derivation” category. The originally acquired data can usually get discarded due to storage constraints, and only the (pre)processed data are held for further use. This could generate a loophole for excluding any (pre)processed data from the scope of the Regulation. HR: (Comments): Regarding Recitals 14 and 15, we suggest to clarify the definition of the criteria for distinguishing the products that are the subject of this Act (smart phones / smart watches). Additionally, we suggest to clarify last sentence of this Recital and provide several examples of the information to which the last sentence refers. IE: (Comments): IE - This recital lists the electronic communications services that enable the

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	connectivity of IoT products covered by the Regulation, it should be clarified that the services named under this recital are examples and other ECS, such as mobile services, should be considered. DE: (Drafting): (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~~ are 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

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	circular economy, in particular though facilitating the maintenance and repair of the products in question. DE: (Comments): The exclusion of derived data includes the risk that barely modified processed and thus original-like data may not fall under this regulation. FR: (Comments): A la fin de ce considérant il est indiqué que « <i>Information derived or inferred from this data, where lawfully held, should not be considered within scope of this Regulation</i> » La Commission pourrait-elle préciser, avec des exemples, ce que cette exclusion recouvre exactement ?
(15) In contrast, certain products that are primarily designed to display or play content, or to record and	FI:

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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, smart televisions and speakers, 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. On the other hand, smart watches have a strong element of collection of data on human body indicators or movements and should thus be considered covered by the definition of “product”.	(Drafting): (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 at the time of the preparation of this Regulation OR currently, for example, personal computers, servers, tablets and smart phones, smart televisions and speakers, 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. On the other hand, smart watches have a strong element of collection of data on human body indicators or movements and should thus be considered covered by the definition of “product”. FI: (Comments): Comment: The risk here with a listing of products contains the risk that the text here might become obsolete and /or not correspond to the (future) market reality. --> Challenge to the aim of ensuring a ‘future-proof’ regulation. Maybe add ‘Such products include currently,...’ OR ‘at the time of the preparation of this Regulation’

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	That said, regarding dual use goods, should they be specifically excluded ? HU: (Drafting): On the other hand, smart watches have a strong element of collection of data on human body indicators or movements and should thus be considered covered by the definition of “product”, if they can connect directly to the Internet. HU: (Comments): In the definition of “product” internet connectivity is a decisive factor. Since the majority of available smart watches are not able to connect to the Internet (they have no IP address), but they only have local Bluetooth connectivity, they are excluded from the “product” category, unless internet connectivity is not a mandatory feature.

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	DE: (Drafting): (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, smart televisions and speakers, 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. On the other hand, smart watches if used as a fitness tracker and as a connected device are not primarily designed to display content but have a strong element of collection of data on human body indicators or movements and should thus be considered covered by the definition of “product”. DE: (Comments): The reasoning for including smart watches in scope of Data Act is arbitrary (“have a strong element of collection of data”). The differentiation should be along those lines,

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	whether they are primarily designed to play content (like a Smart TV, which they are not) or whether they are connected to the internet and collect and process data for the service they provide (like an IoT-device, which the are). Furthermore, are cameras installed in a car covered by the scope, but cameras connected via an interface are not? Similar questions arise when a smart device is controlled via an app installed on a smart phone or tablet. Does the data generated on a smart phone or tablet not fall under the Data Act? BE: (Comments): BE wonders why certain products like personal computers, servers, tablets, smart phones, etc. should be excluded from the scope, in the definition of product sets out in Art. 2.2. There is no legal certainty at all on which products will be included in the product scope and, as a consequence, a carveout in accordance to which some, such as smartphones, would fall outside the scope of the Data Act. The recital says they require human input to produce various forms of content. But this statement also applies to every product that falls

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	within the product scope, such as a car that collects data on the driver or the passengers in the car. It would be favourable and more clear not to make a distinction between these products and just include all products which include data about their users. Therefore we should focus on the data itself, that can be collected in any possible way. If this suggestion is not upheld, at least the distinction should be very clear between products that are included and products that are excluded from the scope of application. Moreover, the reasons for this distinction need to be explained more carefully. FR: (Drafting): (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, smart televisions and speakers, cameras, webcams, sound recording systems and text scanners.. FR:

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	(Comments): L'usage du mot "<i>certain</i>" est imprécis et donc facteur de confusion pour définir quels produits sont couverts et lesquels ne le sont pas. Nous comprenons que le vrai critère est celui de "<i>primary design</i>" et ce critère nous semble suffisant. La frontière entre les produits concernés et non concernés par le texte reste très floue. Ne faudrait-il pas plutôt raisonner à partir des types de données ? » En complément de cette interrogation (et à titre d'exemple), les smartphones sont exclus du champ du règlement car trop attentatoires à la vie privée. Mais dans le même temps, ce considérant propose de supprimer de la liste des exclusions les montres connectées (qui entrent du coup dans le champ d'application du règlement). Cela nous semble problématique au regard du risque de violation du droit au respect à la vie privée. Dès lors, la frontière entre les smartphones exclus et les montres connectées incluses semblent très difficiles à tracer.
(16) It is necessary to lay down rules applying to connected products that at the time of the purchase, rent or lease agreement incorporate or are interconnected with a service in such a way that the absence of the service	DE: (Comments):

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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.	

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	It has to be examined to which extent this is compatible with the Sale of Goods Directive and the Digital Content Directive.
(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.	FI: (Drafting): 17) Data generated by the use of a product or related service include data recorded intentionally by the user. Such data include also data generated as a by-product of the user's action, such as diagnostics data, sensor-generated data or data captured by embedded applications, and 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. EL: (Comments):

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	What about the data recorded from smart devices, with sensors. Smart watches with bio metric information and devices which can collect data when idle or even in standby mode. FR: (Drafting): (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. Functional system data, meaning data related to the internal functioning of the product, notably regarding interfaces between components, do not present any interest for users but can expose industry know-how and intellectual property. Such data should therefore be excluded from the scope of the Act.

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	FR: (Comments): Il est nécessaire d'exclure du champ d'application du texte les données de systèmes fonctionnels, qui sont des données internes au produit relatives à l'interface entre les composants. Les données des systèmes fonctionnels sont par nature très volatiles, produites en masse et non stockées. Elles reflètent, en quelque sorte, les connexions neuronales internes du produit. Ces données ne présentent pas d'intérêt pour les utilisateurs. Mais elles sont intrinsèquement liées à la conception des produits et, à ce titre, exposent très rapidement la conception des produits. Pour ces raisons, ces données nécessitent souvent une protection du point de vue de la sécurité et de la cybersécurité. Elles doivent être exclues du champ d'application du texte.
(18) The user of a product should be understood as the legal or natural person, such as a business or consumer, but also a public sector body, 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	DE: (Comments): GER welcomes changes of presidency. Does Presidency intentionally use “purchase”

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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.	instead of “own”? If so, why? Is “reception of service” omitted on purpose? If so, why? EL: (Comments): Defining the public sector body. Will be there any exceptions?
(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	FI: (Comments): (The starting point likely is that a manufacturer has decision making power over his device) Comment1: ‘This Regulation should thus not be understood as an obligation to store data additionally on the central computing unit of a product where this would be disproportionate in relation to the expected use.’ --> this is welcomed addition to clarify the requirement. Comment2: However, we wish to have clarification also on whether real time data generated from the use at the device can still be used for an application provided by a

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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 generated by their use and that are accessible 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 store data additionally on the central computing unit of a product where this would be disproportionate in relation to the expected use. This should not prevent the manufacturer or data holder to voluntarily agree with the user on making such adaptations.	third party or only in a case the manufacturer itself uses the same data for such purpose? To begin with, the data to which access will be provided to, can be saved to a device or in cloud. The right to use should thus be provided to the data which the manufacturer himself can assess. However, the manufacturer can e.g. have in the device an application which uses this data, so the question is, is that such data into which access does not need to be provided ? So if we also want that third parties would be entitled to offer applications or diagnostics also to such realtime data that the device collects from the user but which is not saved nor transferred nowhere, This should be then clarified. E.g. regarding car data (vehicle data), a lot of such data would then remain outside the scope here. DK: (Comments): Very supportive of the changes. DE: (Comments):

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	It is pointed out that in some cases the manufacturer has no right to the data; but instead of regulating when a manufacturer may or may not have such a right, and what rights users enjoy in relation to “their” data, only access rights for users are specified? Access rights must also be granted to the third parties of which users wish to avail themselves. Proposed amendment: “user especially in the case of users with special needs, or a party of his choice.”

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	It is necessary to ensure that users are able to access the data stored on the device if necessary, e.g., for the purpose of repairs.
(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	FI: (Comments):

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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.	DE: (Comments):

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	How can it be prevented that a manufacturer does not grant third parties access to user data when purchasing a device?
(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~~ Products may be designed to permit the user or a third party to process the data on the product ~~or~~ on a computing	ES: (Drafting): (21) Products may be designed to make certain data directly accessible available from an on-device data storage or from a remote server to which the data are communicated. [...] ES: (Comments): In order to enhance certainty, as the concept used in the articles is directly accessible.

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instance of the manufacturer or within an IT environment chosen by the user or the third party.	
(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	

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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.	
(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 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. 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	DE: (Drafting): (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 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. 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

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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, 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 seller, rentor or lessor to the user before concluding the contract for the purchase, rent, or lease of a product or the provision of a related service. It is in any case necessary that the user is enabled to store the information in a way that is accessible for future reference and that allows the unchanged reproduction of the information stored. This obligation to provide information does not affect the obligation for the controller	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, 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 seller, rentor or lessor to the user before concluding the contract for the purchase, rent, or lease of a product or the provision of a related service. It is in any case necessary that the user is enabled to store the information in a way that is accessible for future reference and that allows the unchanged reproduction of the information stored. This obligation to provide information does not affect the obligation for the controller to provide information to the data subject pursuant to Article 12, 13 and 14 of Regulation 2016/679.

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to provide information to the data subject pursuant to Article 12, 13 and 14 of Regulation 2016/679.	
(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	DE: (Comments):

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manufacturer to use non-personal data should be a contractual agreement between the manufacturer and the user. This agreement may be part of the sale, rent or lease agreement relating to the product. Any contractual term in the agreement stipulating that the data holder may use the data generated by the user of a product or related service should be transparent to the user, including as regards the purpose for which the data holder intends to use the data. This Regulation should not prevent contractual conditions, whose effect is to exclude or limit the use of the data, or certain categories thereof, by the data holder. This Regulation should also not prevent sector-specific regulatory requirements under Union law, or national law compatible with Union law, which would exclude or limit the use of certain such data by the data holder on well-defined public policy grounds.	To what extent is this regulated by the Data Act? Should such agreements also be covered by Article 13, which according to the COM draft only applies to agreements concluded between SMEs? If the user is a consumer, the provisions of Directive 93/137/EEC apply.
(25) In sectors characterised by the concentration of a small number of manufacturers supplying end users, there	

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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	

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that could undermine the commercial position of the user on the markets it is active on. This would, for instance, involve using knowledge about the overall performance of a business or a farm in contractual negotiations with the user on potential acquisition of the user's products or agricultural produce to the user's detriment, or for instance, using such information to feed in larger databases on certain markets in the aggregate (e.g. databases on crop yields for the upcoming harvesting season) as such use could affect the user negatively in an indirect manner. The user should be given the necessary technical interface to manage permissions, preferably with granular permission options (such as "allow once" or "allow while using this app or service"), including the option to withdraw permission.	
(26) In contracts between a data holder and a consumer as a user of a product or related service generating data, Directive 93/13/EEC applies to the terms of the contract to	DE: (Drafting):

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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/EC¹¹, this Regulation provides that such unfair terms should not be binding on that enterprise.	(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~~ another enterprise ~~as defined in Article 2 of the Annex to Recommendation 2003/361/EC~~¹², this Regulation provides that such unfair terms should not be binding on that enterprise. DE: (Comments): Amendments in line with GER proposal for Article 13.
(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	

¹¹ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

¹² Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

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processor.	
(28) The user should be free to use the data for any lawful purpose. This includes providing the data the user has received exercising the right under this Regulation, to a 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.	FI: (Drafting): (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. FI: (Comments): ‘This Regulation provides for no prohibition to develop a related service as this

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	would have a chilling effect on innovation.’ What is the relationship of this and the (earlier) comment FI provided on the prohibition to use the data to develop a competing product or service ? We would be willing to take a positive approach here, as the protection of trade secrets does not as such hinder the manufacturing of a competing product. DE: (Comments): Can the data holder limit the ways (by contract) in which the data can be used by means of contractual agreements?
(28a) As regards the protection of trade secrets, this Regulation should be interpreted in a manner to preserve the protection awarded to trade secrets under Directive (EU) 2016/943. 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. Data holders, however, cannot refuse a data access request	FI: (Drafting): (28a) As regards the protection of trade secrets, this Regulation should be interpreted in a manner to preserve the protection awarded to trade secrets under Directive (EU) 2016/943. 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. Data holders,

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under this Regulation on the basis of certain data considered as trade secrets, as this would undo the intended effects of this Regulation. 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. This Regulation provides for no prohibition to develop a related service as this would have a chilling effect on innovation.	however, cannot refuse a data access request under this Regulation solely on the basis of certain data considered as trade secrets, as this would undo the intended effects of this Regulation. The aim of this Regulation should accordingly be understood as to foster the - - FI: (Comments): Question: ‘Data holders, however, cannot refuse a data access request under this Regulation on the basis of certain data considered as trade secrets, as this would undo the intended effects of this Regulation.’ Should this however some softening of the language and taking into account also some (commercial or other interests) in the data ? Hence, our suggestion here. NL: (Drafting): 28a) As regards the protection of trade secrets, this Regulation should be interpreted in a manner to preserve the protection awarded to trade secrets under Directive (EU) 2016/943. For this reason, data holders can require the user or third parties of the

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	user's choice to preserve the secrecy of data considered as trade secrets, including through technical means. Also, the data holders can require that the confidentiality of a disclosure must be ensured by the user and any third parties of the user. Data holders, however, cannot refuse a data access request under this Regulation on the basis of certain data considered as trade secrets, as this would undo the intended effects of this Regulation. (...) NL: (Comments): NL acknowledge that a total exclusion of trade secrets would probably undo the intended effects of this Regulation. However, trade secrets contain valuable know-how and business information which are undisclosed and intended to remain confidential. Enterprises from small (falling within the scope) to big, value and rely on trade secrets regarding their innovations. The disclosure of a trade secret by 'the user or third parties of the user's choice' could have devastating effects on the legitimate trade secret holder, as once publicly disclosed, it would be impossible for that holder to revert to the situation prior to the loss of the trade secret. That's why NL urges for more powerful wording than only the 'preservation' of

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	the secrecy of data considered as trade secrets. Otherwise a chilling effect on innovation can become a reality. So, besides the possible requirement of 'preservation' by data holders, there should also be the possibility of 'ensuring' the confidentiality of a disclosure to the data holder by the users and the third parties of the users. It is the latter that increase the 'risk of dilution'. The ensurance is identical to the obligation of public sector bodies or to Union institutions, agencies or bodies in consideration 66. SE: (Comments): The Councils legal service should make a separate analysis on the tension between the Directive 2016/943 and the Dataact. The underlying arguments and intended effects does not seem sufficiently investigated.
(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	

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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.	
(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 linked¹³. 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	HR: (Drafting):

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under Regulation (EU) 2016/679 to access personal data concerning them, and such rights are unaffected by this Regulation. Under this Regulation, the user who is a natural person is further entitled to access all data generated by the product, personal and non-personal. Where the user is not the data subject but an enterprise, including a sole trader, and not in cases of shared household use of the product, the user will be a controller within the meaning of Regulation (EU) 2016/679. Accordingly, such a user as controller intending to request personal data generated by the use of a product or related service is required to have a legal basis for processing the data under Article 6(1) of Regulation (EU) 2016/679, such as the consent of the data subject or legitimate interest. This user should ensure that the data subject is appropriately informed of the specified, explicit and legitimate purposes for processing those data, and how the data subject may effectively exercise their rights. Where the data holder and the user are joint controllers within the	Where the data holder and the user who is not data subject are joint controllers within the meaning of Article 26 of Regulation (EU) 2016/679

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meaning of Article 26 of Regulation (EU) 2016/679, they are required to determine, in a transparent manner by means of an arrangement between them, their respective responsibilities for compliance with that Regulation. It should be understood that such a user, once data has been made available, may in turn become a data holder, if they meet the criteria under this Regulation and thus become subject to the obligations to make data available under this Regulation.	DE: (Comments): See above, scrutiny reservation on relationship between and scopes of Data Act and GDPR
(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	ES: (Drafting): [...]It also allows the data holder to set reasonable compensation to be met by third parties, but not by the user, for any cost incurred in providing direct transfer or access to the data generated by the user's product.[...] ES: (Comments):

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the basis of Article 6(1), point (a), or Article 9(2), point (a), or of a contract pursuant to Article 6(1), point (b). Data subjects also have the right to have the personal data transmitted directly from one controller to another, but only where technically feasible. Article 20 specifies that it pertains to data provided by the data subject but does not specify whether this necessitates active behaviour on the side of the data subject or whether it also applies to situations where a product or related service by its design observes the behaviour of a data subject or other information in relation to a data subject in a passive manner. The right under this Regulation complements the right to receive and port personal data under Article 20 of Regulation (EU) 2016/679 in several ways. It grants users the right to access and make available to a third party to any data generated by the use of a product or related service, irrespective of its nature as personal data, of the distinction between actively provided or passively observed data, and irrespective of the legal basis of	In order to enhance legal certainty.

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

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(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.	HR: (Comments): Having in mind that e-Privacy Regulation is in the legislative process and could define different legal basis for processing of data stored in terminal equipment, we suggest to simply refer to the e-Privacy Directive (and the e-Privacy Regulation), without specifying concrete legal basis for processing.
(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	DE: (Comments):

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agreed with the user and share it with another third party only if this is necessary to provide the service requested by the user.	If a particular purpose was contractually agreed between the user and a third party: Does this not already follow from the agreement?
(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	DE: (Comments):

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decisions that have negative consequences for them. These manipulative techniques can be used to persuade users, particularly vulnerable consumers, to engage in unwanted behaviours, and to deceive users by nudging them into decisions on data disclosure transactions or to unreasonably bias the decision-making of the users of the service, in a way that subverts and impairs their autonomy, decision-making and choice. Common and legitimate commercial practices that are in compliance with Union law should not in themselves be regarded as constituting dark patterns. Third parties should comply with their obligations under relevant Union law, in particular the requirements set out in Directive 2005/29/EC, Directive 2011/83/EU, Directive 2000/31/EC and Directive 98/6/EC.	

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	Should Directive 93/13/EEC not also be named here?
(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.	FR: (Comments): La présidence ou la Commission peuvent-elles clarifier ou donner des exemples de ce que serait un « <i>competing product</i> » ?

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(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	FI: (Comments): Question: ‘~~It does~~should not prevent these companies from obtaining and using the same data through other lawful means.’ is this (and above all the expression ‘through other lawful means’) clear ? We hope it could be still clarified further a bit.

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number of obligations on such designated gatekeepers, including a prohibition to combine certain data without consent, and an obligation to ensure effective rights to data portability under Article 20 of Regulation (EU) 2016/679. Consistent with the [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)], and given the unrivalled ability of these companies to acquire data, it would not be necessary to achieve the objective of this Regulation, and would thus be disproportionate in relation to data holders made subject to such obligations, to include such gatekeeper undertakings as beneficiaries of the data access right. Such inclusion would also likely limit the benefits of the Data Act for the SMEs, linked to the fairness of the distribution of data value across market actors. This means that an undertaking providing core platform services that has been designated as a gatekeeper cannot request or be granted access to users' data generated by the use of a product or related service or by a virtual assistant based on the provisions of Chapter II	

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of this Regulation. An undertaking providing core platform services designated as a gatekeeper pursuant to Digital Markets Act should be understood to include all legal entities of a group of companies where one legal entity provides a core platform service. Furthermore, third parties to whom data are made available at the request of the user may not make the data available to a designated gatekeeper. For instance, the third party may not sub-contract the service provision to a gatekeeper. However, this does not prevent third parties from using data processing services offered by a designated gatekeeper. The exclusion of designated gatekeepers from the scope of the access right under this Regulation means that they cannot receive data from the users and from third parties. It does-should not prevent these companies from obtaining and using the same data through other lawful means. Notably, it should continue to be possible for manufacturers to contractually agree with gatekeepers that data from products they manufacture can be used	

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by a gatekeeper company service. , including when desired by a user of such products.	
(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	FI: (Drafting): (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 or acts in a key position in an closed or open ecosystem with its product. In such situations, the enterprise, which has sub-contracted to the micro or small enterprise or the closed or open ecosystem, 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 through [beta] testing phase should benefit from a certain period before being exposed to

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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.	the potential competition based on the access rights under this Regulation on the market for services around products they manufacture. FI: (Comments): We welcome the adjustment made to soften the requirements for scaling businesses. However, having an exception for every new product (or for every time a company launches a new product) could undermine the “by default” approach we are trying to create to the internal market. However as to limit possibilities to utilize loop holes that water down the effectiveness of our regulation, we also see that the applicability of these rules should not necessarily be automatically determined solely based on the size of the company, but rather, take into account other factors, such as role in data ecosystems /value chains / data spaces etc. This should be somehow reflected in the text.
(38) In order to take account of a variety of products in scope, producing data of different nature, volume and speed, presenting different levels of data and	FI: (Drafting):

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cybersecurity risks, and providing economic opportunities of different value, tThis 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 data sharing 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 conditional upon the existence of such agreement. Should parties be unable to conclude an agreement on the modalities, including with the support of dispute settlement bodies, the right to share data with third	(38) In order to take account of a variety of products in scope, producing data of different nature, volume and generating data at different speeds speed, presenting different levels of data and cybersecurity risks, and providing economic opportunities of different value, tThis 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 data sharing 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 conditional upon the existence of such agreement. Should parties be unable to conclude an agreement on the modalities, including with the support of dispute settlement bodies, the right to share data with third parties is enforceable in national courts. ' In addition to the (mandatory) obligations of this Chapter, the parties can complement their mutual relationship via an agreement' FI:

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parties is enforceable in national courts.	(Comments): Comment: The proposal reads that “producing data of different nature, volume and speed”, however, as such, data does not have speed; so the data might read e.g. ‘generating data at different speeds’ (‘update or generation speed’?) Question: it seems assumed here that there is /will be a contract /contractual relationship. What about sharing without any contract ? We understand that this recital (and recital 39) refer to Chapter III, which excludes voluntary data sharing. Therefore, should this recital also declare that 'In addition to the (mandatory) obligations of this Chapter, the parties can complement their mutual relationship via an agreement'
(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	FI: (Drafting): ’ - - whenever a data holder is obliged under this Regulation by law to make data available to a data recipient. ‘

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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 ~~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.	FI: (Comments): Question on: ' - - whenever a data holder is obliged by law to make data available to a data recipient. ' to what does this refer to ? TBC (Articles 5(1) and 8(1) of the Data Act) ? DE: (Comments): It is currently being examined by GER, whether Article 8 should only apply to cases where a right to access exists; this is also indicated from the final half-sentence “whenever a data holder is obliged by law to make data available to a data recipient.”
(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	PT: (Drafting): (39) Based on the principle of contractual freedom, the parties should remain free to

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making data available. Such terms could include technical and organisational issues, including in relation to data security.	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 should ~~could~~ include technical and organisational issues, including in relation to data security. PT: (Comments): Although parties establish contracts between themselves, subject to the free will of the parties, it is our understanding that references in those contracts to technical and organizational measures related to data security must be part of these contracts. So instead of "could" the text should state "should". DE: (Drafting): (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

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	security. DE: (Comments): We ask to clarify whether this addition indicates that the level of security of processing required by e.g. GDPR or other relevant regulation is seen as negotiable
(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.	DE: (Comments): It is unclear what is meant here. Should this be read as a reference to Article 13? Or should the prohibition of unfair contract terms be included in the other legal acts in future, formulated as a prohibition as in the Data Act?
(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	DE: (Comments): Why is the burden of proof here placed on the data holder only in regard to “not

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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.	discriminatory”? Why not also in regard to the other criteria listed in Article 8, “fair” and “reasonable”?
(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.	NL: (Drafting): 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. NL:

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	(Comments): In line with comments made to article 9. Further explanation is provided there. Compensation should generally not be seen as paying for the data itself, not merely for SMEs.
(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.	
(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.	

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(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.	
(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	

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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.	
(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.	DE: (Comments): To what extent is the unfairness test pursuant to section 307 (1) sentence 2 of the German Civil Code (Buergerliches Gesetzbuch, BGB) also excluded by the Data Act?

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(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.	FI: (Comments): Just to clarify, is the intention here that both the standard itself and the process would be decided upon at EU -level?
(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	

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settlement body of their choice, be it within or outside of the Member States they are established in.	
(49) To avoid that two or more dispute settlement bodies are seized for the same dispute, particularly in a cross-border setting, a dispute settlement body should be able to reject a request to resolve a dispute that has already been brought before another dispute settlement body or before a court or a tribunal of a Member State.	
(50) Parties to dispute settlement proceedings should not be prevented from exercising their fundamental rights to an effective remedy and to a fair trial. Therefore, the decision to submit a dispute to a dispute settlement body should not deprive those parties of their right to seek redress before a court or a tribunal of a Member State.	
(51) Where one party is in a stronger bargaining position, there is a risk that that party could leverage such position	FI:

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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. The relevant moment to determine whether an enterprise is micro, small or medium-sized is the moment of conclusion of the contract.	(Comments): The applicability of these rules should not necessarily be automatically determined solely based on the size of the company, but take into account other factors, such as role in data ecosystems, value chains, data spaces etc. See also our comment for recital 37. PT: (Comments): " (...) The relevant moment to determine whether an enterprise is micro, small or medium-sized is the moment of conclusion of the contract." We believe this needs clarification. Understandably, the objective here is not nor should be the termination of a contract because an enterprise downsizes into a MSME.
(52) Rules on contractual terms should take into account the principle of contractual freedom as an essential concept	DE:

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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.	(Drafting): (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~~ other 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 enterprise or a term that is negotiated and subsequently agreed in an amended way between contracting parties should not be considered as unilaterally imposed. DE: (Comments): Change as a consequential amendment following Germany’s proposals for Article 13.
(53) Furthermore, the rules on unfair contractual terms	FI:

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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.	(Comments): Regarding the issue of liability and remedies: we think that it would be a good idea to discuss these further in the working party. This relates also to data spaces.
(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.	
(55) In order to ensure legal certainty, this Regulation establishes a list with clauses that are always	DE:

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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 contract 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.	(Drafting): (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 contract 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. DE: (Comments): Consequential amendment following Germany's proposal for Article 13.
	DE: (Drafting): (55a) Finally, model contractual terms for business-to-business data sharing contracts to be developed and recommended by the Commission may also be helpful to

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	commercial parties when negotiating contracts.
(56) In situations of exceptional need, it may be necessary for public sector bodies or Union institutions, agencies or bodies to use data held by an enterprise to respond to public emergencies or in other exceptional cases. 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 be exempted from the obligation to provide public sector bodies and Union institutions, agencies or bodies data in situations of exceptional need.	FI: (Comments): Should the exceptional need be EU-wide and /or affecting more than one member state only ? These situations should still need more preciseness and clarity to underline the necessity to use these powers. PL: (Comments): As this provision together with the revised recital 58 and changed Art. 15 underline that the exceptional need has to be temporal it excludes the regular data needs of official statistics and shifts it to sectoral legislation. Our preference is to include all the general rules in DA, as it was done in GDPR DE: (Comments): Scrutiny reservation on the scope of B2G data access rules.

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(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 or to Union institutions, agencies or bodies upon their request. The existence of a public emergency ~~is~~ should be determined according to the respective procedures in the Member States or of relevant international organisations.	FI: (Comments): Question on the second last sentence: Does the request include the research-performing organisations and research-funding organisations mentioned in the previous Chapter, or is the procedure such that public sectorbodies make the request on behalf of these, and are able to share the data with them ? DE: (Comments): Scrutiny reservation on the scope of B2G data access rules.
(58) An exceptional need may also arise when a public sector body can demonstrate that the data are necessary	HU:

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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. The specific task should be within the competence of the public sector body or Union institution, agency or body requesting the data, and explicitly laid down in their mandate. Such tasks could be, inter alia, related to local transport or city planning, improving infrastructural services (such as energy, waste and water management), or producing reliable and up to date statistics. The conditions and principles for requests established in Article 17 (such as purpose limitation,	(Comments): We appreciate mentioning official statistics as a public task, however, the time limitation can not be applied for statistics as it relies on regular data transmissions in order to fulfil its purpose. We suggest to remove the time limitation for official statistics. PL: (Drafting): (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. The specific task should be within the competence of the public sector body or Union institution, agency or body requesting the data, and explicitly laid down in

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proportionality, transparency, time limitation) should also apply to these requests. Such An 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.	their mandate. Such tasks could be, inter alia, related to local transport or city planning, improving infrastructural services (such as energy, waste and water management), or producing reliable and up to date statistics. The conditions and principles for requests established in Article 17 (such as purpose limitation, proportionality, transparency, time limitation) should also apply to these requests. Such An 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. PL: (Comments): Consistently with our comment on Recital 56, we are against time limit referring to data used for official statistics needs. Therefore, it should be removed. This provision allows for the wider interpretation – the official statistics are referred

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	to in a double role – 1 – as for the temporal need, 2 – in case of a regular data need. So the changes introduced by the Presidency text seem to limit the original thought behind. IT: (Drafting): (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. The specific task should be within the competence of the public sector body or Union institution, agency or body requesting the data, and explicitly laid down in their mandate. Such tasks could be, inter alia, related to local transport or city planning, to cybersecurity needs, improving infrastructural services (such as energy, waste and water management), or producing reliable and up to date

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	statistics. The conditions and principles for requests established in Article 17 (such as purpose limitation, proportionality, transparency, time limitation) should also apply to these requests. Such-An 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. IT: (Comments): We ask to include cybersecurity for reasons of public. ES: (Drafting):

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	[...] Such tasks could be, inter alia, related to local transport or city planning, improving infrastructural services (such as energy, waste and water management), ~~or~~ producing reliable and up to date statistics, or developing or monitoring public contracts or public concession contracts needed to fulfil a specific task in the public interest. [...] ES: (Comments): Public administrations often need to have access to data generated during the <u>execution of public contracts or concession contracts</u>, given that they might need information about their services. The compromise text includes in the recitals, as examples of tasks considered tasks in the general interest, some tasks related to public services and public concessions of public services, such as tasks related to local transport, city planning and improving infrastructural services (such as energy, waste and water management). In addition, the compromise text includes as an example of task in the general interest producing reliable and up to date statistics, which has a broader scope than official statistics.

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	Thus, the compromise text is including data generated during the execution of many public contracts and public concessions. Nevertheless, it would be convenient if the Data Act would explicitly indicate that public administrations might use the data access framework of the Data Act in order to access data generated during the execution of public contracts or concession contracts.
(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	IE: (Comments): IE - Can it be confirmed if <i>Recital (59)</i> relates to current existing arrangements for sharing data; with its purpose being to protect those arrangements so as not to assign costs/charges to them. If this isn't the case there could be an opportunity to update/remove <i>Recital (59)</i> to allow public bodies to request data from the private sector even outside of the emergency/exceptional circumstance conditions.

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verification of compliance to entities other than public sector bodies, should also not be affected by this Regulation.	DE: (Comments): Does this refer solely to the right of access as such? Or also to voluntary agreements on modalities?
(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.	FI: (Comments): It would be important that recital 59 a) and the corresponding article texts stating the relationship between this act and Regulation 223/2009 (Regulation on European Statistics) remain included in the further preparation of this act. PT: (Drafting): (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 necessary, namely for the regular production of official statistics, in

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	particular Regulation (EC) No 223/2009 on European statistics and its related legal acts as well as national legal acts related to official statistics. PT: (Comments): PT welcomes this new recital. However, the data needs for the production of official statistics go beyond the exceptional cases foreseen in Chapter V. We therefore suggest strengthening the wording in view of the sustainable access to privately held data sources, within well-established conditions and safeguards, being considered within the revision of regulation 223/2009. HU: (Comments): We strongly support the inclusion of this recital. PL: (Comments): PL highly appreciates taking into account our proposal as for introduction and

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	wording of the new recital. DE: (Comments): We welcome this clarifying addition. BE: (Comments): BE welcomes the inclusion of this recital but requests to explicitly include it in the operative part of the Regulation, and not only in the recitals. This would give more legal effect to the content of these legal safeguards.
(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	DK: (Comments): We appreciate the addition that the Data Act should not apply to situations concerning national security or defence.

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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. This Regulation should not apply to situations concerning national security or defence.	
(61) In accordance with Article 6(1)(e) and 6(3) of Regulation (EU) 2016/679, Aa 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	FI: (Drafting): - - ‘The principle of purpose limitation ‘and other principles of data protection law should apply for personal data - - Taking into account the time-sensitive nature of the data often at stake especially in emergencies, the threshold for the data holder to interpret requests for information as identical and thus refuse or amend the request, should therefore be high. FI:

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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 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 entities to respect the once-only principle, which prevents the same data from being requested more than once by more than one public sector body or Union institution, agency or body where those data are needed to respond to a public emergency. To ensure transparency, data requests made by public sector bodies and by Union institutions, agencies or bodies should be made public without undue delay by the entity requesting the data and online public availability of all requests justified by a public emergency should be	(Comments): Comment 1: In emergencies, timely access to information is of paramount importance. Although it should be noted that requests for information should not burden the data holder, it should be specified that requests for information by different public sector actors often concern data that expires quickly, especially in emergencies. The threshold for the data holder to interpret requests for information as identical and thus refuse or amend the request, should therefore be high. There is also reason to add a clear deadline for carrying out a data request in an emergency. Comment 2: why is ‘to ensure legal certainty’ deleted ? Comment 3: the last sentence (i.e. To ensure transparency, data requests made by public sector bodies and by Union institutions, agencies or bodies should be made public without undue delay by the entity requesting the data and online public availability of all requests justified by a public emergency should be ensured.) should not apply in case of danger to public security or in similar situations.

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ensured.	
(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 Council¹⁴ 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	

¹⁴ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).

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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.	
(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	DE: (Drafting): (63) [...] In case the sui generis database rights under Directive 96/6/EC of the European Parliament and of the Council apply in relation to the requested datasets, this Regulation constitutes a lex specialis to the sui generis right. ~~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.~~ DE:

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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 <i>sui generis</i> database rights under Directive 96/6/EC of the European Parliament and of the Council¹⁵ 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.	(Comments): The current wording in Recital 63 does not seem sufficient, as a clearer regulation of the relationship to the Database Directive in Art. 35 seems necessary so that the access rights from Chapter V can be enforced against the <i>sui generis</i> database right. GER advocates that the Data Act should take precedence as a <i>lex specialis</i> over the so-called "sui generis right" of the database producer under Art. 7 of Directive 96/9/EC, and has submitted a corresponding proposal for Art. 35 Data Act. EL: (Comments): Article 35 constitutes <i>lex specialis</i> to Article 7 of the Database Directive 96/9: Article 35 Data Act as drafted refers to databases containing raw data generated by IoT Devices. The <i>sui generis</i> right protects though also investments in verification and/or presentation of data (Case C-444/02, Fixtures Marketing Ltd v. Organismos Prognostikon Agonon Podosfairou (OPAP); Case C-338/02, Fixtures Marketing Ltd v AB Svenska Spel; Case C-46/02, Fixtures Marketing Ltd v Oy Veikkaus AB; Case C-

¹⁵ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

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	203/02, The British Horseracing Board Ltd v. William Hill Organisation Ltd.). This could lead to a conflict between Data Act and Article 7(1) of Directive 96/9 and legal uncertainty. Additionally, the definition of the data generated by the use of the “product” is arguably much broader than a typical IoT scenario.
(64) Public sector bodies should use non-personal data, including anonymised data, wherever possible. The data holder should anonymise the data and can request compensation for that. 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 the specific and limited purposes for processing. The applicable rules on personal data protection should be complied with. The data holder should apply technological means such as	FI: (Drafting): (64) Public sector bodies should use non-personal data, including anonymised data, wherever possible. The data holder should anonymise the data [and can request compensation for that pursuant to Article 20 of this Regulation]. 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 the applicable rules on personal data protection, in particular provisions under Regulations (EU) 2016/679 and (EU) 2018/1725 and Directives 2002/58/EC and (EU) 2016/680, should be complied with. The data holder should apply technological means such as pseudonymisation and

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pseudonymisation and aggregation, prior to making the data available, for which compensation can also be requested. ~~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.~~	aggregation, prior to making the data available, for which compensation can also be requested. The making available of the data and their subsequent use should be accompanied by safeguards for the rights and interests of individuals concerned by those data. FI: (Comments): It should be clarified, when it is an authority and when the data holder who decides on the technical and organizational measures to be taken. This applies to recital 64 and articles 17(2)(d), 18(5) and 19(b). Comment 2: Also, we wonder, whether the suggested amendment ‘or where anonymisation proves impossible, the body requesting the data should demonstrate the strict necessity and the specific and limited purposes for processing’ is actually necessary, as e.g. purpose limitation and necessity also appear elsewhere (resitals 61 and 65, articles 15, 17) ? PL:

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	(Drafting): (64) Public sector bodies should use non-personal data, including anonymised data, wherever possible. The data holder should anonymise the data and can request compensation for that with exception of data for official statistics needs which are free of charge. 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 the specific and limited purposes for processing. The applicable rules on personal data protection should be complied with. The data holder should apply technological means such as pseudonymisation and aggregation, prior to making the data available, for which compensation can also be requested with exception of data for official statistics needs which are free of charge. 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

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	~~anonymisation proves impossible, the data holder should apply technological means such as pseudonymisation and aggregation, prior to making the data available.~~ PL: (Comments): PL may accept the additions, as the possibility of personal data use is still maintained. It repeats what is added below, so it seems redundant per se. Moreover, we maintain our view that official statistics should be excluded from any payments for data. Therefore, if the two mentioned sentences are maintained they should be extended by the following: “with exception of data for official statistics needs which are free of charge.” DE: (Drafting): = DE: (Comments): See above, scrutiny reservation on relationship between and scopes of Data Act and

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	GDPR
(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~~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.	FI: (Comments): Question the proposed amended word ‘erased’: is there need to keep log of actions on the data in question ? Regarding data storage as such, there is the GDPR, and we would rather see that there should be a high threshold to store data. DK: (Comments): It should be specified that official statistics authorities are not required to destroy the data obtained on the basis of the Data Act, as such a requirement would defeat the purpose of giving statistical authorities access to the data in the first place. IT: (Drafting):

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	(65) Data made available to public sector bodies and to Union institutions, agencies and bodies on the basis of exceptional need should only be used for the purpose for which they were requested, unless the data holder that made the data available has expressly agreed for the data to be used for other purposes. The personal data should be ~~destroyed~~ erased destroyed when not anonymised and non-personal data should be 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. IT: (Comments): It is important to distinguish between personal and non personal data, so as to provide the distruction of personal data and the erasment of the non- personal one.
(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	

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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.	
(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	

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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.	
(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	FI: (Drafting): (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 statistical authorities ~~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

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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.	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. FI: (Comments): We propose that the notions 'national statistical institute' and 'statistical body' would be replaced with 'statistical authorities'. See also our comment for art. 21(1)(b). ES: (Comments): Although wording of article 2 has been modified in the first compromise text, this recital has not been amended accordingly.

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	In order to enhance certainty, <u>article 21 and recital 68 should be aligned.</u>
(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.	
(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, <i>inter alia</i> , 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	

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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.	
(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	FI: (Comments): Recitals 71 and 71a define ‘data processing service’ to describe the spectrum of ICT service production. These descriptions/definitions describe processing-related terms, e.g. (broad remote access, scalable, elastic pool, shareable, distributed). The text leaves the impression that these would only be realized if produced with cloud service models (SaaS, PaaS, IaaS). However, in practice, the services now in use produce the virtues of the above terms, with a “traditional” data center production model. Thus, should this last mention (i.e. “traditional” data center production model /something in between cloud and on-prem) also be defined in the proposal ?

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computing capabilities are provided over the network and accessed through mechanisms promoting the use of heterogeneous thin or thick client platforms (from web browsers to mobile devices and workstations). The term ‘scalable’ refers to computing resources that are flexibly allocated by the data processing service provider, irrespective of the geographical location of the resources, in order to handle fluctuations in demand. The term ‘elastic pool’ is used to describe those computing resources that are provisioned and released according to demand in order to rapidly increase or decrease resources available depending on workload. The term ‘shareable’ is used to describe those computing resources that are provided to multiple users who share a common access to the service, but where the processing is carried out separately for each user, although the service is provided from the same electronic equipment. The term ‘distributed’ is used to describe those computing resources that are located on different networked computers or devices and	

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which communicate and coordinate among themselves by message passing. The term ‘highly distributed’ is used to describe data processing services that involve data processing closer to where data are being generated or collected, for instance in a connected data processing device. Edge computing, which is a form of such highly distributed data processing, is expected to generate new business models and cloud service delivery models, which should be open and interoperable from the outset.	
(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	FI: (Comments): Recitals 71 and 71a define ‘data processing service’ to describe the spectrum of ICT service production. These descriptions/definitions describe processing-related terms, e.g. (broad remote access, scalable, elastic pool, shareable, distributed). The text leaves the impression that these would only be realized if produced with cloud service models (SaaS, PaaS, IaaS). However, in practice, the services now in use produce the virtues of the above terms, with a “traditional” data center production model.

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(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 data processing service model.	Should this last mention (i.e. “traditional” data center production model/something in between cloud and on-prem) also be defined in the proposal ? PL: (Drafting): In a much more detailed categorisation, data processing services can be categorised in a non-exhaustive multiplicity of different similar ‘services’ types, meaning sets of data processing services that share the same primary objective and main functionalities. Examples of such similar services 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, similar services ~~falling under the same service type~~ also share the same data processing service model. PL: (Comments): See our comment to art. 2(13)

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	MT: (Comments): For the avoidance of doubt and in order to attain legal clarity and certainty, it is being proposed that the scope of the definition of a 'data processing service' is clarified further within the operative provisions of the Regulation. The definition of 'data processing services' in Article 2(12) remains very broad and general. It is understood that Recital (71a) has been added to clarify the different service delivery types of a data processing service. This Recital provides an additional explanation of the concept of a data processing service, which indicates that “<i>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).</i>” This comprehensive explanation contrasts with the definition established in Article 2 of the Regulation of a 'data processing service'. Furthermore, Recital 72 below was amended to include the notion that “<i>This Regulation does not instate an obligation of facilitating functional equivalence for data processing services of the PaaS and/or SaaS service delivery model.</i>”

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	The recitals mentioned herein have added a number of clarifications and limitations in scope, however, this is done sporadically in the Recitals, with the operative provisions remaining very general and contrasting in interpretation in certain instances. In order for service providers to be aware of the obligations that will be imposed on them by means of this Regulation, it is being suggested that the scope of the definition of a data processing service and the subsequent obligations imposed on each type of service provider is clearly delineated within the operative provisions of the Regulation, to ensure legal certainty. IE: (Comments): IE - We welcome the additional text under the data processing services definition, however some further clarity is needed as there still remains an ambiguity of scope. EE: (Comments): This should be in the definitions, not in the recitals.

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(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	FI: (Drafting): - - ‘This Regulation does not instate an obligation of facilitating functional equivalence for data processing services of the PaaS and/or SaaS service delivery model nor any other service delivery model.’ - - PL: (Drafting): 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) similar ~~the same~~ service type PL: (Comments): See our comment to art. 2(13) MT:

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or in whole) the same service type. Services can only be expected to facilitate functional equivalence for the functionalities that both the originating and destination services offer. This Regulation does not instate an obligation of facilitating functional equivalence for data processing services of the PaaS and/or SaaS service delivery model. Metadata, generated by the customer's use of a service, should also be portable pursuant to this Regulation's provisions on switching.	(Comments): Kindly also refer to the above comment made in recital 71a.
(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.	
(72b) After a transition period of three years after this Regulation enters into force, all 'switching charges'	FR:

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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.	(Drafting): (72b) After a transition period of three years six months 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.
(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	

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their own service offerings.	
(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 and effective- including in cooperation with the data processing service provider of the destination service. Data processing service providers should also be required to remove obstacles for customers wishing to switch to an on-premise system. This Regulation does not require ~~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	ES: (Drafting): [...] Nevertheless, service providers are required to offer all assistance and support that is required to make the switching process effective.[...] ES: (Comments): The reference to the obligation to offer all assistance and support required to make the switching process effective in recital 74 should be kept.

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contracts, including those introduced by Regulation (EU) 2016/679 and Directive (EU) 2019/770 of the European Parliament and of the Council ¹⁶ should not be affected.	
(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. Alternatively, codes of conduct developed pursuant to Article 6 of Regulation (EU) 2018/1807 could be considered as implementation and/or compliance tools,	FI: (Comments): TBC: We remain somewhat sceptic that this would be enough to ensure the desired effects. The end result with this Act should be to force service providers to document and communicate more openly the services they offer as part of their complete offering, and through this Act create a process in which the transparency requirements, together with obligations, enable the client to make informed decisions on their service provider and about switching. FR: (Drafting):

¹⁶ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain digital services (OJ L 136, 22.5.2019, p. 1).

aspects concerning contracts for the supply of digital content and

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provided they fully reflect the requirements of Chapter VI of this Regulation. 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 and to improve legal certainty on the conditions that apply for switching to other data processing services. Alternatively, codes of conduct developed pursuant to Article 6 of Regulation (EU) 2018/1807 could be considered as implementation and/or compliance tools, provided they fully reflect comply with the requirements of Chapter VI of this Regulation. 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.
(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	PL: (Drafting): (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,

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market-driven processes have not demonstrated the capacity to establish technical specifications or standards that facilitate effective cloud interoperability at the PaaS (platform-as-a-service) and SaaS (software-as-a-service) levels, the Commission should be able, on the basis of this Regulation and in accordance with Regulation (EU) No 1025/2012, to request European standardisation bodies to develop such standards, particularly for service types where such standards do not yet exist. In addition to this, the Commission will encourage parties in the market to develop relevant open interoperability specifications. The Commission, by way of delegated acts, can mandate the use of European standards for interoperability or open interoperability specifications for specific service types through a reference in a central Union standards repository for the interoperability of data processing services. European standards and open interoperability specifications will only be referenced if in compliance with the criteria specified in this Regulation, which have	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 similar services 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 similar services types through a reference in a central Union standards repository for the interoperability of data processing services. PL: (Comments): See our comment to art. 1(13)

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

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protect such data under Union law or national law, in particular as regards the protection of fundamental rights of the individual, such as the right to security and the right to effective remedy, or the fundamental interests of a Member State related to national security or defence, as well as the protection of commercially sensitive data, including the protection of trade secrets, and the protection of intellectual property rights, and including its contractual undertakings regarding confidentiality in accordance with such law. In the absence of international agreements regulating such matters, transfer or access should only be allowed if it has been verified that the third country's legal system requires the reasons and proportionality of the decision to be set out, that the court order or the decision is specific in character, and that the reasoned objection of the addressee is subject to a review by a competent court in the third country, which is empowered to take duly into account the relevant legal interests of the provider of such data. Wherever possible under the terms of the data access	

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request of the third country's authority, the provider of data processing services should be able to inform the customer whose data are being requested in order to verify the presence of a potential conflict of such access with Union or national rules, such as those on the protection of commercially sensitive data, including the protection of trade secrets and intellectual property rights and the contractual undertakings regarding confidentiality.	
(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,	HU: (Drafting): In order to prevent unlawful ~~governmental~~ access to non-personal data by third country authorities, agencies and other organizations, 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.

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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.	HU: (Comments): Cloud and edge services should take preventive measures against <i>all kind of unlawful access</i>, not just against governmental organizations. In third countries not just judicial or regulatory <i>authorities</i> may try to seek access to data held in the EU, but various other <i>agencies</i> and other <i>organizations</i>. SE: (Comments): SE supports these additions (see also drafting proposals on article 27) (UD-HI). EL: (Drafting): (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

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	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 and other legal bodies/ organizations, 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. EL: (Comments): The protection under the Regulation should be extended also to other legal bodies and organizations and not only limited to third country authorities. Nevertheless the illegal access will most likely occur when third parties (non-governmental) will be involved
(79) Standardisation and semantic interoperability should play a key role to provide technical solutions to ensure	FI:

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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. 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. Compliance with these rules can occur by adhering to the requirements laid down, or by adapting to already existing standards via a presumption of conformity. In order to facilitate the conformity with the requirements for interoperability, it is necessary to provide for a presumption of conformity for interoperability solutions that meet harmonised standards or parts thereof in accordance with Regulation (EU) No	(Comments): Comment: It would still be important to clarify what is being applied for and who is being regulated, i.e. who is responsible for meeting the requirements. (and second, whether a separate definition is needed if only two points are used). Also, data holders vs. Presidency’s infopoint 3.6 in document 12169/22 --> some inconsistency? DK: (Drafting): (79) Standardisation and semantic interoperability should play a key role to provide technical solutions to ensure 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.~~ DK: (Comments):

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1025/2012 of the European Parliament and of the Council. The Commission should adopt common specifications in areas where no harmonised standards exist or where they are insufficient in order to further enhance interoperability for the common European data spaces, application programming interfaces, cloud switching as well as smart contracts. Additionally, common specifications in the different sectors could remain to be adopted, in accordance with Union or national sectoral law, based on the specific needs of those sectors. Reusable data structures and models (in form of core vocabularies), ontologies, metadata application profile, reference data in the form of core vocabulary, taxonomies, code lists, authority tables, thesauri should also be part of the technical specifications for semantic interoperability. Furthermore, the Commission should be enabled to mandate the development of harmonised standards for the interoperability of data processing services.	We understand the intent and support the Presidency's addition of the description of Common European data spaces from the DGA.. Since this regulation establishes obligations on operators of such data spaces (art. 28), a legally binding definition is necessary, which must therefore be in a provision. We thus suggest inserting the description from the recital directly into art. 2. See also our suggestion below to provide further clarity in a recital (79a). SK: (Comments): SK sees it as unfortunate to limit the requirements only to European data spaces and would welcome a recommendation for standardization and semantic interoperability also outside European data spaces as a future direction. This could eliminate possible conflicts in the future for data that simultaneously exists within and outside a data space. Data are not firmly anchored in defined spaces, and the market will demand services that work with data in and out of data spaces - which is subtly hinted at from our point of view in chap. XI, Art. 41 by adding point (f). DE:

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	(Drafting): (79) Standardisation and semantic interoperability should play a key role to provide technical solutions to ensure 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. 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. Compliance with these rules can occur by adhering to the requirements laid down, or by adapting to already existing standards via a presumption of conformity. In order to facilitate the conformity with the requirements for interoperability, it is necessary to provide for a presumption of conformity for interoperability solutions that meet harmonised standards or parts thereof in accordance with Regulation (EU) No 1025/2012 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

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	interoperability for the common European data spaces, application programming interfaces, cloud switching as well as smart contracts. Additionally, common specifications in the different sectors could remain to be adopted, in accordance with Union or national sectoral law, based on the specific needs of those sectors. Reusable data structures and models (in form of core vocabularies), ontologies, metadata application profile, reference data in the form of core vocabulary, taxonomies, code lists, authority tables, thesauri should also be part of the technical specifications for semantic interoperability. Furthermore, the Commission should be enabled to mandate the development of harmonised standards for the interoperability of data processing services. DE: (Comments): Unclear whether the category of “operators within data spaces” is needed. What’s needed is a definition of “data spaces”. ES: (Comments):

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	In order to enhance legal certainty, the definition of <i>common European data spaces</i> could be moved to Article 2.
	DK: (Drafting): (79a) ‘Common European data spaces’ bring together relevant data infrastructures and governance frameworks in order to facilitate data sharing and processing. Key features include (1) a secure and privacy-preserving infrastructure to access, share, process and use data; (2) a clear and practical structure for access to and use of data in a fair, transparent, proportionate and non-discriminatory manner and clear and trustworthy data governance mechanisms; (3) data that is made available can be reused against compensation, including remuneration, or for free; (4) participation of an open number of organisations or individuals; (5) data holders have the possibility to, in the data space, grant access to or to share certain data under their control (6) European rules and values, in particular personal data protection, consumer protection legislation and competition law, are fully respected; (7) official recognition by European Commission.” DK:

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	(Comments): This description of Common European data spaces is based on criteria from the Commission's Staff Working document on data spaces. It is in our opinion important for the clarity and legal consistency of the text to set out the key features of Common European data spaces in a legal act, especially when said act establishes criteria for the interoperability of such data spaces. We would further emphasise the importance of including a reference to official recognition, in order to clearly distinguish between Common European data spaces, which will have to comply with the obligations in article 28, and any other data space. The requirement that participation should not be restricted to a narrow group or predefined selection of organisations or individuals is in our opinion a core feature of the Common European data spaces.
(80) To promote the interoperability of tools for the automated execution of data sharing agreements ~~smart contracts in data sharing applications~~, 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	FI: (Comments): We consider it good that the definition takes into account both the current situation (centralised models) and novel setup ups (decentralised ones, including those based on distributed ledger technology). Our question here would be why are the inter-organisational ones excluded here ?

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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 not apply to tools for the automated execution of data sharing agreements that are used exclusively for internal purposes of an organisation, within closed systems. The essential requirement to ensure that smart contracts can be interrupted and terminated implies mutual consent by the parties to the data sharing agreement.	HU: (Drafting): Smart contracts can be connected to any kind of electronic ledger certified and having infrastructure in the EU, be it a centrally operated ledger or a ledger operated in distributed manner. HU: (Comments): The use of certified electronic ledgers should be mandatory, due to the recent security breaches in distributed electronic ledger based systems. In case of a distributed electronic ledger – for security reasons and 3rd country jurisdiction issues – the ledger should have physical infrastructure within the territory of an EU Member State.

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(80a) 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.	FI: (Comments): On the overall, we are very supportive on the idea to build obligations to comply with the standards or <i>de facto</i> standards and commons already available. However, we consider it important to link this also to sectoral legislation as well as to mandates for the standardization organisations in order to make this effective. To what article does this refer to ?
(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. Competent authorities should be able to search for and obtain	FI: (Comments): What about e.g. a data center of a global multinational (cloud) provider based in the member state x ? Hence, can the governmental /public authorities then be authorized to access to such data based on the data act ? The issue is also that there might arise needs to access data irrespective from which country the access takes place and where

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information that is located in their national territory, including in the context of joint investigations, with due regard to the fact that oversight and enforcement measures concerning an entity under the jurisdiction 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 located in its territory to which the competent authorities in the Member State where the entity is established do not have access. The authorities responsible for the supervision of compliance with data protection and competent authorities designated under sectoral legislation should have the responsibility for	the data is located; thus, (rather) where the main access provider or the key holder is, in case where there is need to access data in certain servers. The location of the data being of secondary relevance only. PT: (Comments): The references to “<i>information that <u>is located</u> in their national territory</i>” and “<i>information <u>located in</u> its territory</i>” seem unclear considering that, nowadays, information is mostly online and may not be located physically in a country. Therefore, we suggest rephrasing.

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application of this Regulation in their areas of competence.	
(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 ¹⁷ and Directive (EU) 2020/1828 of the European Parliament and of the Council ¹⁸ .	

¹⁷ 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).

¹⁸ Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).

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(83) Member States competent authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by penalties, which could be 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 ensure that the principle of <i>ne bis in idem</i> is respected, and in particular to avoid that the same infringement of the obligations laid down in	PT: (Comments): We suggest setting a specific time period instead of “<i>undue delay</i>”, to introduce more regulatory certainty and clarity. DE: (Drafting): (83) Member States competent authorities should ensure that infringements of the obligations laid down in this Regulation are sanctioned by penalties, which could be <i>inter alia</i> 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

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this Regulation is sanctioned more than once, each Member State that intends to exercise its competence in respect of such entity should, without undue delay, inform all other authorities, including the Commission.	infringer systematically or recurrently fails to comply with its obligations stemming from this Regulation. In order to ensure that the principle of <i>ne bis in idem</i> is respected, and in particular to avoid that the same infringement of the obligations laid down in this Regulation is sanctioned more than once, each Member State that intends to exercise its competence in respect of such entity should, without undue delay, inform all other authorities, including the Commission.
(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	

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about access to and use of data and therefore lead more broadly towards fairer contractual relations when accessing and sharing data.	
(84) In order to eliminate the risk that holders of data in databases obtained or generated by means of physical components, such as sensors, of a connected product and a related service claim the <i>sui generis</i> right under Article 7 of Directive 96/9/EC where such databases do not qualify for the <i>sui generis</i> 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 <i>sui generis</i> right does not apply to such databases as the requirements for protection would not be fulfilled.	SE: (Drafting): (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 <i>sui generis</i> right under Article 7 of Directive 96/9/EC ~~where such databases do not qualify for the <i>sui generis</i> 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~~ take precedence over ~~that the <i>sui generis</i> right does not apply to such databases as the requirements for protection would not be fulfilled.~~ SE: (Comments): See comments to article 35.

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	DE: (Drafting): (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 as well as the making available of data based on exceptional need in accordance with Chapter V, this Regulation constitutes a lex specialis to~~ the <i>sui generis</i> right. ~~does not apply to such databases as the requirements for protection would not be fulfilled.~~ DE: (Comments): DEU advocates that the Data Act should take precedence as a <i>lex specialis</i> over the so-called "sui generis right" of the database producer under Art. 7 of Directive 96/9/EC, and has submitted a corresponding proposal for Art. 35 Data Act. The reference to a clarification in Recital 84 only caters to databases containing raw data

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	generated by IoT-Devices. However, protection under the sui generis right is also available where there are investments in verification and / or presentation of data, which is industry practice.
(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	

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principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016¹⁹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.	
(86) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of supplementing this Regulation to adopt common specifications to ensure the interoperability of common European data spaces and data sharing, the switching between data processing services, the interoperability of smart contracts as well as for technical means, such as application programming interfaces, for enabling	

¹⁹ [OJ L 123, 12.5.2016, p. 1.](#)

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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 ²⁰ .	
(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,	

²⁰ 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).

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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.	
(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	

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manner contrary to the Treaty.	
(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.	
(90) The European Data Protection Supervisor and the European Data Protection Board were consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered a joint opinion on [XX XX 2022].	
HAVE ADOPTED THIS REGULATION:	
CHAPTER I GENERAL PROVISIONS	
Article 1 Subject matter and scope	PT:

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	(Comments): It should be clear that the scope of the regulation does not hinder the application of the “only once” principle foreseen in Regulation 2018/1724 (EU) (Single Digital Gateway), nor the reuse of data foreseen in the Data Governance Act We consider that the proposal should address the sharing of data between public entities, even if not under an exceptional need regime, for the performance of public services and satisfaction of public needs (which is also addressed in the Data Governance Regulation). DE: (Comments): See above, scrutiny reservation on relationship between and scopes of Data Act and GDPR
1. This Regulation lays down harmonised rules on making data generated by the use of a product or related	FI:

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service available to the user of that product or service, on the making data available by data holders to data recipients, ~~and~~ on the making data available by data holders to public sector bodies or Union institutions, agencies or bodies, where there is an exceptional need, for the performance of a task carried out in the public interest, on facilitating switching between data processing services, 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 transferred and used.	(Drafting): 1. This Regulation lays down harmonised rules on making data generated by the use of a product or related service available to the user of that product or service, on the making data available by data holders to data recipients, and on the making data available by data holders to public sector bodies or Union institutions, agencies or bodies, where there is an exceptional need, for the performance of a task carried out in the public interest, on facilitating switching between data processing services, 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. PT: (Drafting): 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~~

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	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 transferred and used.~~ (a) on making data generated by the use of a product or related service available to the user of that product or service; (b) on the making data available by data holders to data recipients; (c) 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; (d) on facilitating switching between data processing services; (e) on introducing safeguards against unlawful third-party access to non-personal data, and (f) on providing for the development of interoperability standards for data to be transferred and used.” PT: (Comments): We agree that it is necessary to enumerate all the issues addressed by the Data Act.

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	However, due to the extension of this number, we suggest simplifying the article to facilitate its application. IE: (Comments): IE - In context of Article 6(1) GDPR, does this present “exceptional need” as a separate matter to “public interest”? DE: (Drafting): 1. This Regulation lays down harmonised rules on making data generated by the use of a product or related service available to to users ~~the user of that product or service~~, on the making data available by data holders upon request by a user to data recipients, ~~and~~, on the making data available by data holders to public sector bodies or Union institutions, agencies or bodies, where there is an exceptional need, for the performance of a task carried out in the public interest, on facilitating switching between data processing services, on introducing international safeguards against unlawful third party access to non-personal data, and on providing for

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	the development of interoperability standards for data to be transferred and used. DE: (Comments): If safeguards refer to Art. 27 than they should be specified as international. BE: (Comments): BE wonders why certain products like personal computers, servers, tablets, smart phones, etc. should be excluded from the scope of this Chapter and the notion of product as sets out in Art. 2.2. This creates legal uncertainty on which products are included as well as a carveout. Indeed, certain products, such as smartphones, would fall outside the scope of the Data Act, without a comprehensible explanation. The recital says they require human input to produce various forms of content. But this statement also applies to every product that falls within the product scope, such as a car that collects data on the driver or the passengers in the car. It would be favourable and more clear not to

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	make a distinction between these products and just include all products which include data about their users. Therefore we should focus on the data itself, that can be collected in any possible way. FR: (Comments): Selon l'amendement de définition de produit.
1a. This Regulation covers personal and non-personal data, including the following types of data or in the following contexts:	DE: (Drafting): ~~1a. This Regulation covers personal and non-personal data, including the following types of data or in the following contexts:~~ DE: (Comments): Germany questions the need for this information here and suggests that it be added as a recital.

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(a) Chapter II applies to data concerning the performance, use and environment of products and related services.	DE: (Drafting): ~~—— (a) Chapter II applies to data concerning the performance, use and environment of products and related services.~~ FR: (Comments): Les autorités françaises souhaitent obtenir une clarification du périmètre des données concernées/soumises au chapitre II par rapport au périmètre prévu par la proposition initiale du texte : est-ce une simple clarification ou cela modifie-t-il le champ des données concernées de façon plus large ou plus restreinte ?
(b) Chapter III applies to any private sector data subject to statutory data sharing obligations.	FI: (Drafting): (b) Chapter III applies to any private sector data that is subject to statutory

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	data sharing obligations. FI: (Comments): Maybe add “that is” between data and subject to avoid misunderstandings, because “data subject” is a notion in itself. DE: (Drafting): ~~—— (b) Chapter III applies to any private sector data subject to statutory data sharing obligations.~~
(c) Chapter IV applies to any private sector data accessed and used on the basis of contractual agreements between businesses.	DE: (Drafting): ~~—— (c) Chapter IV applies to any private sector data accessed and used on the basis of contractual agreements between businesses.~~

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	EE: (Comments): Is “business” here the same as “enterprise”? If so, we recommend using the latter, as it is specifically defined.
(d) Chapter V applies to any private sector data with a focus on non-personal data.	PL: (Drafting): Chapter V applies to any private sector data with a focus on non-personal data serving the public interest needs. PL: (Comments): PL would prefer to remove that annotation, as it may be misleading. Access and use of personal data in exceptional cases is also allowed under this chapter what is particularly important for official statistics. In our view if the purpose of p.1a is to provide more detailed information on the scope of the regulation than it is proposed in

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	p.1, it should rather refer to public and European institutions to which the data are to be revealed. The wording could be as follows: “Chapter V applies to any private sector data serving the public interest needs”. DE: (Drafting): ~~—— (d) Chapter V applies to any private sector data with a focus on non-personal data.~~
(e) Chapter VI applies to any data processed by data processing services.	DE: (Drafting): ~~—— (e) Chapter VI applies to any data processed by data processing services.~~
(f) Chapter VII applies to any non-personal data held in the Union by providers of data processing services.	DE: (Drafting): ~~—— (f) Chapter VII applies to any non-personal data held in the Union by~~

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	~~providers of data processing services.~~
2. This Regulation applies to:	FI: (Comments): We welcome the additions aimed at clarifying the data in the scope of the Regulation. However, they still does not address the question of limiting the data in scope to such data that is not a result of refining or added value analytics. PT: (Comments): We suggest adding “controller and processors established in the Union” to this list. If it is understood that they are included in “data holders” or “data users”, we would suggest making an explicit reference to that in the relevant definitions.
	ES: (Comments): The Data Act applies to different providers offering services in the Union. A new

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	recital could be included in order to give some indication regarding the conditions to be taken into account to determine whether a given service is being offered to customers in the Union, as it has been included in other regulations, such as the DGA
(a) manufacturers of products and suppliers of related services placed on the market in the Union, irrespective of their place of establishment, and ~~the users~~ the use of such products or related services in the Union;	IE: (Drafting): irrespective of their place of establishment, and ~~the users~~ the use of data generated in relation to the use of such products or related services in the Union IE: (Comments): IE - This aligns Article 1.2(a) with Article 2(2) and 2(3). FR: (Drafting): (a) manufacturers of connected products and suppliers of related services placed on the market in the Union, after the entry into force of the present regulation, irrespective of their place of establishment, and ~~the users~~ the use of such products

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	or related services in the Union; FR: (Comments): Les obligations liées au chapitre 2 en ce qui concerne les objets connectés ne devraient pas avoir un effet rétroactif sur les produits déjà sur le marché. Chaque secteur a des cycles de vie différents pour ses produits (comme l'industrie automobile) et imposer des obligations rétroactives sur les objets connectés existants avant les discussions sur ce règlement serait une lourde charge. Toutefois, les autorités françaises ne sont pas opposées à une formulation ou à des suggestions visant à faire respecter ces obligations lorsque cela est techniquement possible.
(b) data holders, irrespective of their place of establishment , that make data available to data recipients in the Union;	
(c) data recipients in the Union to whom data are made available;	ES: (Comments):

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	In relation to the scope defined in Article 2(2), in particular, in letters a), b) and c), the question arises as to whether users in the Union who make use of products and related services offered in the Union, may transmit their data, subject to the provisions of the Data Act, to third party data recipients that are not established in the Union, as these third parties are not mentioned in letters b) or c) of Article 2(2). In the event that such transmissions are possible, the question arises as to whether these third party data recipients that are not established in the Union would be subject to the obligations and the supervision regime of the Data Act, since they are not mentioned in the letter c) of article 2(2).
(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;	
(e) providers of data processing services, irrespective of	PT:

Presidency compromise	Drafting Suggestions Comments
their place of establishment, offering such services to customers in the Union.	(Drafting): (e) providers of data processing services, irrespective of their place of establishment, offering providing such services to customers in the Union. PT: (Comments): Suggest rewording to "providing" as customers may choose not to benefit from services offered.
	PT: (Drafting): (f) controller and processors established in the Union; PT: (Comments): We suggest adding “controller and processors established in the Union” to this list. If it is understood that they are included in “data holders” or “data users”, we would

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	suggest making an explicit reference to that in the relevant definitions.(as above) ES: (Comments): Chapter VIII imposes obligations upon <u>operators of data spaces</u>, upon <u>vendors of applications using smart contracts</u> and upon persons whose trade, business or profession involves the deployment of smart contracts for others in the context of agreements to make data available. Nevertheless, those entities are not mentioned in article 1.2.
2a. 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.	IT: (Drafting): Where this Regulation refers to products or related services, such reference shall also be understood to include virtual assistants, insofar as they ~~are used~~ allow to access or control a product or related service IT: (Comments):

Presidency compromise	Drafting Suggestions Comments
	The provision shall be extended beyond actual us and shall be extended ES: (Drafting): 2a. 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, and other digital services and applications designed for the access and control of connected products. ES: (Comments): As explained in recital 22, virtual assistants were included in the scope of the Data Act because they are often used to control connected products, replacing the interface provided by manufacturers themselves. Following the same reasoning, other digital services and applications designed for the access and control of connected products should also be included within the scope of the Data Act.

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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. In particular, t~~This Regulation shall not affect the applicability of Union law on the protection of personal data~~ 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 data subjects are concerned, 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, and shall not adversely affect data protection rights of others.	FI: (Drafting): -- . Insofar as data subjects are concerned, 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 access, of information and of data portability under Article 20 of Regulation (EU) 2016/679: and shall not adversely affect data protection rights of others. -- FI: (Comments): These could be added as the Chapter contains also obligations relating to access and providing information, even though one of the main focus issues here is complementing article 20 of the GDPR. PT: (Comments): (...) In particular, t~~This Regulation shall not affect the applicability of Union law on~~

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	the ~~protection of personal data~~ 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.(...) We believe this sentence needs simple and clear rewording. DE: (Drafting): 3. EE: (Comments): We support the amendments in Article 1 (3), which better clarify the relationship between Data Act and the EU data protection rules. BE: (Comments):

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	Belgium welcomes the clarifications made on the interplay between this instrument and the EU instruments on data protection. However, we still need to explicitly clarify if the data protection rules prevail in case of conflicts between those rules.
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 Council²¹ 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	PT: (Drafting): 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 Council²² 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

²¹ 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).

²² 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).

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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. or their power to safeguard other essential State functions, including ensuring the territorial integrity of the State and maintaining law and order.	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. ~~or their power to safeguard other essential State functions, including ensuring the territorial integrity of the State and maintaining law and order.~~ PT: (Comments): We don't consider it is necessary to add in this number that this regulation does not affect the competences of the Member States regarding "their power to safeguard other essential State functions, including the territorial integrity of the State and maintaining law and order". We believe this should not be included given the fact it creates doubts and legal uncertainty – other European legislation on similar matters do not include this reference. SE:

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	(Drafting): 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 Council²³ 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 that fall outside the scope of Union law and in any event activities 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—or their power to

²³ 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).

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	safeguard other essential State functions, including ensuring the territorial integrity of the State and maintaining law and order. This Regulation does not apply to data which concern, or the exposure of which could pose risks to, defence or national security, regardless of who is requesting, generating, holding or processing the data, whether it is a public or private actor. SE: (Comments): <i>According to Article 4.2 TEU national security and defence remain the sole responsibility of each Member State. Therefore, this Regulation should not apply to activities or to data which concern these areas. However, from the ECJ's recent judgements in cases C-623/17 and joined cases C-511/18, C-512/18 and C-520/18 it is clear that, from the ECJ's perspective, reference to Article 4.2 TEU alone may not be sufficient to fully exclude these areas from the material scope of a legislative act. When formulating an exemption, it is therefore not sufficient to simply state that the act "shall not affect the competences of the Member States regarding activities concerning public security, defence, national security..." or "their power to safeguard other essential State functions ...". Such wording only mirrors the Treaty, especially Article 4.2 TEU which, as shown by the ECJ's judgements, unfortunately does not</i>

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	<i>yield the effect intended by Member States when they introduced this provision.</i> <i>Accordingly, the wording in the current draft of the Data Act will leave ambiguous e.g. (i) whether Member States may take actions for the protection of national security and defence, (ii) whether the rights from this Regulation may be exercised by national security and defence agencies to request information (which could very well be contrary to another Member State's interests of national security or defence) and (iii) whether a data holder could in some cases be obliged to make available data which concerns the national security or defence of a Member State.</i> <i>This is why we believe the proposed exclusion clause in the Data Act is not sufficient and should be further clarified. There is a need to explicitly exclude activities related to defence and national security from the scope of the Regulation, as well as data which concerns these areas, regardless of who is requesting, generating, holding or processing the data.</i> DE: (Drafting): ~~—— 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,~~

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	detection or prosecution of criminal offences or the execution of criminal penalties, including Regulation (EU) 2021/784 of the European Parliament and of the Council²⁴ 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. 4. 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. is without prejudice to the Member States' responsibilities to safeguard customs and tax administration and the health and safety of citizens, public security, defence and national security or their power to safeguard other essential State functions, including

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	ensuring the territorial integrity of the State and maintaining law and order. 4a. This Directive does not apply to: (a) entities that fall outside the scope of Union law and in any event all entities that carry out activities in the areas of defence, national security, public security or law enforcement regardless of which entity is carrying out those activities and whether it is a public entity or a private entity; (b) entities that carry out activities in the areas of the judiciary, parliaments or central banks. Where public administration entities carry out activities in these areas only as part of their overall activities, they shall be excluded in their entirety from the scope of this Directive. 4b. This Directive does not apply to: (a) activities of entities which fall outside the scope of Union law and in any event all activities concerning national security or defence, regardless of which entity is carrying out those activities and whether it is a public entity or a private entity; (b) activities of entities in the judiciary, the parliaments, central banks and in the area of public security, including public administration entities carrying out law enforcement activities for the purposes of the prevention, investigation, detection or

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	prosecution of criminal offences or the execution of criminal penalties. 4c. The obligations laid down in this Directive do not entail the supply of information the disclosure of which is contrary to the Member States' essential interests of national security, public security or defence. (4d) 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. 5. This Regulation does not affect Directive 93/13/EEC on Unfair Terms in Consumer Contracts. 6. In so far as not regulated therein, this Directive shall not affect national general contract laws such as rules on formation, the validity or effects of contracts, including the consequences of the termination of a contract.

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	DE: (Comments): Example for wording based on NIS 2 Directive.

Deadline: *26 September 2022*

Presidency compromise	Drafting Suggestions Comments

Deadline: *26 September 2022*

Presidency compromise	Drafting Suggestions Comments

Deadline: *26 September 2022*

Presidency compromise	Drafting Suggestions Comments



Presidency compromise	Drafting Suggestions Comments
	Relationship to Directive 93/13/EEC should be clarified insofar as Articles 4 to 6 are dispositive.

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	Relationship to general contract law should be clarified. EE: (Drafting): /--/ 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—or their power to safeguard other essential State functions, including ensuring the territorial integrity of the State and maintaining law and order. This Regulation does not apply to situations concerning national security or defence. EE: (Comments): We would like to make the exclusion of national security and defence as explicit as possible.

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	FR: (Drafting): 4. This Regulation does not release public sector bodies from their confidentiality obligations under Union or national law. This Regulation shall not affect Union and national legal acts providing for the sharing, access and use of data for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including Regulation (EU) 2021/784 of the European Parliament and of the Council and the [e-evidence proposals [COM(2018) 225 and 226] once adopted, 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 as well as activities, products and services which concern public security, defence, national security, customs and tax administration and the health and safety of citizens in accordance with Union law. or their power to

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	safeguard other essential State functions, including ensuring the territorial integrity of the State and maintaining law and order. This Regulation shall not affect Union and national legal acts providing for the protection and assignment of content protected by intellectual property, including 2001/29/EC, 2004/48/EC, and (EU) 2019/790 of the European Parliament and of the Council. FR: (Comments): Il convient de reprendre cette rédaction issue en partie de l'article 1^{er} §2 du règlement sur la gouvernance des données (DGA) adopté le 30 mai 2022, soit après la présentation de la proposition de la Commission européenne sur le règlement sur les données (<i>Data Act</i>). Le Data Act ne doit pas aboutir à libérer les entités publiques de leurs obligations de confidentialité relevant du droit européen ou du droit national, en particulier concernant la mise à disposition de données générées par des produits ou des services à des fins de défense, de sécurité nationale, etc. Ce règlement doit être sans préjudice des dispositions européennes et nationales relatives au droit de la propriété intellectuelle. Il ne devrait pas porter atteinte à la

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	liberté des titulaires de droits de propriété intellectuelle de restreindre l'utilisation et la reproduction de contenus protégés.
	DK: (Drafting): The obligations on 'data holders' laid down in Chapters II, II, V or VI in this Regulation shall not apply to public sector bodies. DK: (Comments): The definition of 'data holder' does not exclude public authorities. Hence, it should be made clear that public authorities are excluded from the obligations imposed on data holders. It would be unnecessarily burdensome for public authorities to, for instance, be required to give access to IoT-data and such obligations could pose ethical challenges. We have suggested a new provision to this end; however, we are open to other suggestions for exempting public authorities.
4a. This Regulation adds generally applicable obligations on cloud switching going beyond the self-regulatory approach of Regulation (EU) 2018/1807 on	BG:

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the free flow of non-personal data in the European Union.	(Comments): We find the wording “going beyond” to be unclear and it is generally confusing how both regimes would co-exist in practice. More importantly, would there be situations where some obligations under the proposal may be considered as fulfilled by (voluntarily) fulfilling similar obligations under Regulation (EU) 2018/1807? FR: (Comments): Les autorités françaises remercient la Présidence pour cet amendement, qui exprime l'ambition que les États membres doivent avoir en ce qui concerne le marché du cloud.
	DE: (Drafting): 4b. This Regulation does not affect Directive 93/13/EEC on Unfair Terms in Consumer Contracts.

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Article 2 Definitions	PT: (Comments): Preferable to set in alphabetical order. NL: (Comments): We would support the Danish amendment aiming at including a definition for “data spaces”. EE: (Comments): We would like to add a definition for “data space” and/or “common European data space” (including whether a data space in this sense is dedicated to personal or non-personal data), as well as to homogenize their usage across the proposal.
For the purposes of this Regulation, the following	DE:

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definitions apply:	(Comments): See above, scrutiny reservation on relationship between and scopes of Data Act and GDPR
(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;	FI: (Drafting): (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; and any underlying digital descriptions, or so-called metadata, of those digital representations. 'Metadata' means "data that provides information about other data". (1bis new) 'data generated by the use of a product or a related service' means any data recorded intentionally by the user or as a by-product of the user's action, as well as data generated or recorded without any action by the user (for example in standby mode or while the product is switched off). This includes sensor-generated data, data

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	captured by embedded applications and diagnostics data. (1ter new) Diagnostic data is data that is the product of diagnostics functions or algorithms which provide information on the correct functioning and performance of the product and potential malfunctions FI: (Comments): We still have concerns about the definition of data. Question: should this also explicitly state also metadata ? and any underlying digital descriptions ? or so called metadata of those digital representations ? Another option, which might bring in more clarity, would be to add a separate definition for metadata. Comment 2: on the left column, some suggestions for further wording. Comment 3: Also consistency with recital 17 should be ensured. ('data in the form and format in which they are generated') and with recital 14. SI:

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	(Drafting): ‘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; SI: (Comments): From this definition (and Article 1, paragraph 1) it is not clear that the data refers only to data, which is machine generated data. According to the recital 17 it includes data recorded intentionally by the user. This means that e. g. when using a camera, audio-visual recording is made and such recording could be audio-visual work protected by copyright. Or it could mean non-copyrighted data protected by sui generis right of the maker of the database. Information is usually based on data. SE: (Comments): It should be clarified that the type of data that is targeted by the act is the data that is communicated via a publicly available electronic communication service. The current

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	definition includes alla data, even such data that is not meant to be extracted from the product or service. IT: (Drafting): (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 communicated by a product or related service via a publicly available electronic communication service; - (1a) ‘accessible data’: data that the data holder can request and obtain, via a publicly available electronic communication service, in a digital, machine-readable format, from the product, onto an existing interface IT: (Comments): It is important to better specify that data refers to anything that could be

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	communicated electronically; moreover it is important to define accessible data. FR: (Comments): Les autorités françaises considèrent qu'il est important de caractériser le niveau de traitement des données auquel les parties peuvent raisonnablement s'attendre dans le cadre des mécanismes de partage prévus par le projet de règlement.
(1a) 'personal data' means personal data as defined in Article 4, point (1), of Regulation (EU) 2016/679;	
(1ab) 'non-personal data' means data other than personal data;	
(1ac) 'consent' means consent as defined in Article 4, point (11), of Regulation (EU) 2016/679;	DE: (Drafting):

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(1ad) ‘data subject’ means data subject as referred to in Article 4, point (1), of Regulation (EU) 2016/679;	FR: (Drafting): (1ae) ‘Accessible data’ means data that the data holder can request and obtain, via a publicly available electronic communication service, in a digital, machine-readable format, from the product, onto an existing interface (1af) ‘Directly accessible’ means access from an on-device data storage system or from a remote server to which the data are communicated. FR: (Comments): (1ae) Les données d'un produit ne peuvent être rendues accessibles que si la conception et l'architecture de ce produit le permettent. Ces données sont accessibles au fabricant comme à l'utilisateur et peuvent être utilisées pour fournir un service auquel le client a recours. Il s'agit de données "accessibles", c'est-à-dire de données que le détenteur des données peut obtenir du produit et partager, et dont l'utilisateur devrait donc avoir connaissance, auxquelles il devrait avoir accès et sur lesquelles il

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	devrait disposer des moyens de déterminer si, et avec qui, elles seront partagées. Cette proposition garantira que les utilisateurs pourront contrôler les données obtenues à partir de leurs produits et déterminer avec qui elles seront partagées. En outre, en prévoyant que les détenteurs de données et les fournisseurs de services tiers peuvent se voir accorder l'accès aux mêmes données par l'utilisateur, cette proposition garantit que tous les acteurs du marché ont accès aux mêmes données pour fournir des services concurrents à l'utilisateur. Cela créera des conditions de concurrence équitables, permettant aux acteurs du marché de se livrer à une compétition loyale et sur un pied d'égalité, et de continuer à innover d'une manière qui profite aux consommateurs et élargit leur choix. Elle permettra également aux fabricants de respecter le principe de la protection de la vie privée dès la conception et par défaut, ainsi que le principe de minimisation des données, en vertu duquel la collecte, le traitement et le stockage des données doivent être limités à ce qui est nécessaire au regard des finalités pour lesquelles ces données sont traitées, comme le prévoit l'article 5 du RGPD. (1af) L'absence de définition du concept de données "directement accessibles" invoqué dans la proposition créera une incertitude pour les fabricants quant au

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	système qu'ils devront mettre en place pour se conformer à cette obligation. Une certaine clarification est fournie au considérant 21 de la proposition, qui stipule que "les produits peuvent être conçus pour rendre certaines données directement accessibles à partir d'un stockage de données sur l'appareil ou d'un serveur distant auquel les données sont communiquées". Ce point est d'une importance capitale pour le consommateur et le fabricant, car la définition fournie au considérant 21 réduira le risque d'accès non autorisé aux données et de cybermenaces (par exemple, le piratage), puisque seules les parties autorisées pourront accéder au serveur de partage des données.
	SK: (Drafting): (1ae) 'Accessible data' means data that the data holder can request and obtain, in a digital, machine-readable format, from the product, onto an existing interface. SK: (Comments): SK proposes defining "Accessible data" since the 1st compromise now includes this

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	notion in Art 3/1.
(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~~ neither the storing and processing of data nor is it primarily designed to display or play content, or to record and transmit content;	FI: (Comments): TBC: Limiting the products to those that communicate via ‘publicly available electronic communications service’ still seems restricting; the choice between public or private communication channel in an industrial environment may depend on unrelated criteria. Question: Could this definition also contain a processing device (used primarily for data processing)? At the recital level, it should be noted that the definition of a product may also include a smart device if it is primarily used to accumulate data on its surroundings or use. Comment 2: A (clear) definition of a “product that competes” (referred in Art.6(2)) is lacking. DK: (Drafting): ‘product’ means a tangible, ~~movable~~ item, ~~including where incorporated in an~~

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	~~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 services ~~and whose primary function is not neither the storing and processing of data nor is it primarily designed to display or play content, or to record and transmit content;~~ DK: (Comments): We suggest that “<i>publicly available</i>” should be deleted in order for the provision to fulfil its purpose. It should be kept in mind that the use of connected products often involve several types and layers of systems and communication services. Consequently, the limitations set in this definition can, contrary to the intention, serve to introduce a high degree of ambiguity and exempt many connected products from the obligations in Ch. 2. Further, we question the logic that a user’s access to the data their device generates should be predicated on whether the data transfer of said device includes methods based on publicly available communication services or not. Such a definition may leave the provisions vulnerable to circumvention. A similar argument can be made for the sentence “<i>whose primary function is neither</i>

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	<i>the storing and processing of data nor is it primarily designed to display or play content, or to record and transmit content</i>". The different elements of a system will have different functions, while the overall function of the system is to store and process data. Again, this limitation may result in exempting more connected products from the requirements than intended. We support the deletion of references to mobility. In principle, almost anything can be moved. SK: (Comments): Based on the revised definition of "product", products being exempt from the scope shall include personal computers, servers, tablets, smart phones, webcams, sound recording systems or text scanners. As clear as this may sound, drawing the dividing line between products outside of this explicit set of examples might be difficult in practice. SK would welcome a more future proof approach, since devices might change rapidly in the following years and

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	taxative list could become outdated by that time. As FI has shown at the WP, smart watches were initially not included and there might be several more cases as well. NL: (Drafting): (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 directly or indirectly via a publicly available electronic communications service and whose primary function is ~~not~~ neither the storing and processing of data nor is it primarily designed to display or play content, or to record and transmit content; NL: (Comments): The current definition could inadvertently exclude products that rely on another product to communicate via a publicly available electronic communications service. There are already products in the market that make use of an IoT mesh network where only one or a few products (gateways) are connected to the internet, but others serve

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	as a repeater to pass data along or are an endpoint for data. In the current definition products all products in mesh networks except the gateways may inadvertently be excluded. This clarification would address that. IE: (Comments): IE asks if we could get some additional clarity on what is in scope of a product. This should be along the lines of indicating the criteria to fall in scope and facilitating a tech-neutral regulatory environment into the future that allows for the use of data. BE: (Comments): See our comment in Article 1. ES: (Drafting): (2) ‘product’ means a tangible, movable item, including where incorporated in an

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	~~immovable 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 [...] ES: (Comments): The current definition of product requires products to <i>communicate data via a publicly available electronic communications service</i>. Nevertheless, the connection of products to the Internet is often not a direct connection, but an indirect connection. FR: (Drafting): (2) 'data-generating product' OR 'connected 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 neither the storing and processing of data nor is it primarily designed to display or play content, or to record and transmit content;~~ Products, including data-generating products, whose primary function is not

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	neither the storing and processing of data nor is it primarily designed to display or play content, or to record and transmit content shall not be covered by this Regulation; FR: (Comments): Dans un souci de clarté, les autorités françaises proposent de créer un sous-article qui distingue les produits qui ne sont pas couverts par le règlement de ceux qui sont dans le champ d'application. Cette distinction est également reflétée dans les considérants 14 et 15.
	ES: (Drafting): (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 that data via a publicly available electronic communications service and whose primary function is not neither the storing and processing of data nor is it primarily designed to display or play content, or to record and transmit content;

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	ES: (Comments): Reading the definition of connected product and recital 15 the question arises as to whether products whose main function is recording, storing and transmitting data (i.e. scanners) are always and completely excluded from the scope of the Data Act; whether those products are excluded from the scope of the Data Act only if the only data recorded and transmitted is the data recorded and transmitted to perform its main function (i.e. scanners which only record and transmit images are excluded, whereas scanners which, in addition, record and transmit statistics regarding frequency of use and maintenance status, are included); o whether the Data Act only excludes data recorded and transmitted in order to perform the main function, but not other data that might be recorded and transmitted, such as use and maintenance data. The definition of connected products included within the scope of Chapter II could be further clarified and further examples in the recitals would be welcome.
(3) ‘related service’ means a digital service, including software, which is at the time of the purchase, rent or lease agreement incorporated in or inter-connected with	FI: (Drafting):

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a product in such a way that its absence would prevent the product from performing one of its functions;	FI: (Comments): Question 1: Should this be more aligned with the EU's product legislation, i.e. to refer to a product's 'intended purpose,' in line with EU product legislation ? Question 2: What about situations in which the [original] manufacturer later adds a service to a product – a service which is necessary for the product ? BG: (Drafting): (3) 'related service' means a digital service, including software, which is at the time of the purchase, rent or lease agreement incorporated in or inter-connected with a product in such a way that its absence would prevent the product from performing one of its main functions; BG:

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	(Comments): It is necessary to limit the types of covered functions to the “main” ones otherwise the scope would be disproportionate because for example any mobile phone app helps it perform specific functions and respectively its absence would prevent performance of the specific function. We would like to avoid covering any third party after sale installed software because for example in those situations the original manufacturer has no control over it although it might relate to the functions of the product. DK: (Comments): We support these changes. BE: (Comments): See our comment in Article 1. FR:

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	(Drafting): (3a) ‘digital service’ means a digital service as defined in point (2) of Article 2 of Directive (EU) 2019/770 FR: (Comments): La notion de services numériques n’est pas définie dans le Data Act, sauf par la négative à l’article 3(12). Une définition du service numérique existe dans la directive (UE) 2019/770 relative aux contrats de fourniture de services numériques : <i>a) un service permettant au consommateur de créer, de traiter ou de stocker des données sous forme numérique, ou d’y accéder; ou</i> <i>b) un service permettant le partage de données sous forme numérique qui sont téléversées ou créées par le consommateur ou d’autres utilisateurs de ce service, ou permettant toute autre interaction avec ces données;</i> Par ailleurs, il nous semble opportun de préciser dans cette définition le lien avec la définition du bien comportant des éléments numériques au sens de l’article 2 et de considérant 15 de la directive (UE) 2019/771. Un service connexe (tel qu'un logiciel) est-il soumis aux obligations du chapitre 2,

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	même si le produit avec lequel il est interconnecté ne relève pas du champ d'application de ce règlement ?
(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 to other ~~their own and third party~~ services or controls connected physical ~~their own and third party~~ devices;	PT: (Drafting): (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 to other ~~their own and third party~~ services or controls of connected physical ~~their own and third party~~ devices; PT: (Comments): As it is worded, it excludes connected physical devices whose control is provided by virtual assistants to be exercised by users. DE:

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	(Drafting): (4) ‘virtual assistants’ inter-connected with a product 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 to other ~~their own and third party~~ services or controls connected physical ~~their own and third party~~ devices; DE: (Comments): Important to note that Data Act doesn’t cover all virtual assistants but only those interconnected with a product in the sense of Art. 2 para 2. FR: (Comments): Les autorités françaises s’interrogent sur le choix de ne pas faire une référence explicite au règlement sur les marchés numériques (DMA) étant donné que les modifications visent à mettre en cohérence la définition d’un ‘<i>virtual assistant</i>’ avec celle du DMA.

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(5) ‘user’ means a natural or legal person, including a data subject, that owns, rents or leases a product or receives a related services;	FI: (Comments): In this regard, we still have concerns about the risk of confusion with the definition of ‘user’ in this regulation (art. 2(5)) and ‘data user’ in the DGA. Question: should the word ‘including’ here be deleted ? PT: (Drafting): (5) ‘user’ means a natural or legal person, ~~including a data subject~~, that owns, rents or leases a product or receives a related services; PT: (Comments): We disagree with this addition as it may lead to confusion. SK:

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	(Drafting): (5) ‘user’ means a natural or legal person, including a data subject, that purchases, owns, rents or leases a product or receives a related services from the data holder; SK: (Comments): Some products falling into the scope may be purchased by one user, only to be leased or rented to other users. Some of these products may be leased or rented multiple times under short-term leases or rentals, leading to situations in which multiple users may be in a position to request data, successively or even simultaneously. In situation such as these, the data holder may be unable to keep track of which persons acquire the right to access the data generated by the use of the product, and of when these persons lose this right. SI: (Drafting): ‘user’ means a natural or legal person that owns, rents or leases a product or receives

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	a services with a legal basis; SI: (Comments): This definition could also cover consumers, even though it was explained (at the workshops) that the consumers were excluded. In Recital 22 it is stated that virtual assistants play an increasing role in digitising consumer environments [...]. If Data Act is meant to cover industrial data only then consumers should be excluded. If it should cover consumers as well, there should be clear line if and/or how and to what extent Data Act affects consumer protection legislation. As the definition stands at the moment, it theoretically enables a situation, when a person lends a mobile phone to another. In this situation a question arises - who counts as a user in this situation? The legal owner still has legal basis in legal ownership while the "new user" has legal basis as a recipient of service. We think we should add to the definition that a user is the person who is an economic user of the product with a legal basis. IT: (Comments):

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	FR: (Drafting): (5) ‘user’ means a natural or legal person, including a data subject, that owns, rents or leases a product or receives a related services (5a) ‘professional user’ means a user that uses the product that they own, rent or lease for the purpose of their trade, business or profession
(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;	FI: (Comments): Please see recital 24 which makes data holders (also) data controllers (under the GDPR). PT:

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	(Drafting): (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; data holder as defined in Article 2, point (8), of Regulation (EU) 2022/686; PT: (Comments): The definition of data holder in this proposal is different from the definition of “data holder” in the Data Governance Act. Terminological consistency across related acts is an important feature of clear legislation, in accordance with the Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union Legislation. Therefore, it is essential to obtain legal certainty and clarity.

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	The definition in the DGA is “ ‘data holder’ means a legal person, including public sector bodies and international organisations, or a natural person who is not a data subject with respect to the specific data in question, which, in accordance with applicable Union or national law, has the right to grant access to or to share certain personal data or non-personal data;” SI: (Drafting): ‘data holder’ means a legal person, including public sector bodies and international organisations, or a natural person who is not a data subject with respect to the specific data in question, which, in accordance with applicable Union or national law, has the right to grant access to or to share certain personal data or non-personal data; SI: (Comments): We suggest additional reflection on a more clear definition of a term and all other roles related terms. Non-personal data could still be other legally protected data. We suggest to use definition from DGA.

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	SE: (Drafting): ‘data holder’ means a legal or natural person who <u>has access to the data</u> and 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 <u>that are accessible to them</u>; SE: (Comments): The proposed definition does not say who holds the data. To ensure that the user gets effective access to the data generated by their use of the product or related service, it is crucial for the Regulation to impose these obligations on the entity that actually holds and controls the data. The “data holder” should be defined as the entity who has access to the data. This would also support the idea that the data concerned is what is being currently collected.

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	DE: (Comments): Clarification needed: - Why is the differentiation between “right or obligation” and “control of the technical design” needed (“or”)? - Why is the differentiation between “in accordance with this Regulation, applicable Union law or national legislation implementing Union law” and “in case of non-personal data” needed (“or”)? - Why are “non-personal data” and “through control of the technical design” linked (“and”)? We support the point made by the EDSA (para. 33 of the Joint Opinion) that, “the Proposal includes a different definition than the one found in the in the DGA Commission Proposal for the term ‘data holder’ (“‘data holder’ means a legal person or data subject who, in accordance with applicable Union or national law, has the right to grant access to or to share certain personal or non-personal data under its control”), which may create legal uncertainty. Moreover, the definition of “data

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	holder” in the Proposal should be further clarified.“ BE: (Comments): For legal certainty, we would insist on the importance to avoid the use of a same notion but with a different meaning and scope. Indeed, in the Data Governance Act, the notion of ‘data holder’ is used to refer to the person with a legal right on the data, similarly to the owner of the data, while in the Data Act, we would like to refer to the person having the ability to make data available. In order to avoid any misleading on this notion, we would advise to modify the notion used in this instrument to refer to the person having the ability to make data available.
(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	DE: (Comments): Does “trade, business, craft or profession” cover all purposes of data recipients? What about e.g. public sector bodies or data altruism organisations?

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a legal obligation under Union law or national legislation implementing Union law;	Must a "data recipient always act for commercial purposes, etc.? What applies if a person is a third party within the meaning of Article 5? Does the third party also only fall under the definition , if he is acting commercially etc.? BE: (Comments): Similarly to our comment above, the definition of ‘data recipient’ is not matching with the definition in the DGA. We deem therefore useful to modify this notion in order to avoid any confusion. In addition, we reiterate our question related to the limitation to purposes related to trade, business, craft or profession activities and therefore envisage only in the framework of a commercial contract ? Could we envisage to also include other purposes not related to non-profit activities?
	ES: (Comments): Articles 3 and 4 alludes to the direct access of the user to data generated by the use of a product, whereas recital 31 alludes to direct availability of data to the user.

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	Meanwhile, recital 31 refers to the compensation of data holders for the costs incurred providing direct access to third parties. In order to enhance legal certainty, <u>a definition of direct access should be included in article 2.</u>
(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;	FI: (Comments): Question: Should also 'main establishment' be defined here ?
(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;	FI: (Comments): This can include also 'mixed' bodies (partly public; partly private); thus, should this somewhat be dependent upon the specific tasks of the body in question ? SI: (Drafting): 'public sector body' means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more

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	such bodies governed by public law; SI: (Comments): We suggest t use this definition from Open Data Directive. And also definition of 'bodies governed by public law.
	DE: (Drafting): (9a) research organisation means an organisation as defined in Article 2 (1) of Directive (EU) 2019/790 of the European Parliament and of the Council”;
(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	FI: (Drafting): (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

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in the Union or the relevant Member State(s) and which is determined according to the respective procedures under Union or national law;	serious and lasting repercussions on living conditions or economic stability, or the substantial degradation of economic assets in the Union or the relevant Member State(s) and which is determined according to the respective procedures under Union or national law; ‘but not threatening national security’ FI: (Comments): We find the amendments proposed by the Presidency here useful. Question: should to the end of the definition be added ‘but not threatening national security’? Just to make clear that we are not defining national security situations that are in the competence of the Member States. BG: (Drafting): (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

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	substantial degradation of economic assets in the Union or the relevant Member State(s) ~~and which is determined according to the respective procedures under Union or national law;~~ BG: (Comments): The definition is disproportionate and rather wide which creates potential risk of a large number of potentially unsubstantiated requests for data which would be burdensome for the data holder. Moreover, the reference to Union or national law makes the scope even wider and difficult to apply and coordinate due to the great variety of sectorial legislation and practices without placing a proper mechanism for the necessary coordination between the different national authorities. This proposal should provide for such coordination mechanism and not leave it to be solved by the sectorial legislation or through litigation which seems impractical. Furthermore, cybersecurity incidents and possible actions should be regulated in the cyber legislation (i.e. the Cyber Resilience Acts proposal). PT:

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	(Comments): The concept of “human-induced major disasters” is hard to define: what is the line that separated major from minor disasters, and who should make that determination? Therefore, we suggest that this concept is better defined or that the word “major” is removed. DK: (Comments): The definition is still too broad, which creates the possibility for various unintentional uses of the provisions in chapter 5. We would like to emphasise the importance of clarifying that only crises which are urgent and temporary in nature should apply. Moreover, it is essential that only the one definition applies in all the Member States, as it would be counterproductive to the goals of harmonization to base the decision on what constitutes a public emergency in accordance with the Data Act on the different procedures, standards and legislations of the Member States. This approach can further lead to disputes over what constitutes a public emergency especially in cases of cross-border data access. Finally, we do not support the addition that cybersecurity incidents can constitute a public emergency in accordance with chapter 5, as we worry that for companies may possess data related to cybersecurity incidents, the sharing of which may pose a threat

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	to the national security of another Member State. SK: (Drafting): (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 which is determined according to the respective procedures under Union or national law; SI: (Comments): human-induced major disasters, such as major cybersecurity incidents. We don’t agree with this text, because if cybersecurity incident occure, there are

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	other ways to get this data. For example via using law enforcement. Also IT: (Drafting): (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 and major cybersecurity incidents or cyber crises, 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 or essential services in the Union or the relevant Member State(s) and which is determined according to the respective procedures under Union or national law; IT: (Comments): Taking into account the recently approved NIS2 Directive which provides an all-

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	hazards approach to cybersecurity, it is reductive to limit major cybersecurity incidents to man-made factors. Moreover, referring to the term “cyber crises” better clarifies the scope. Finally, considering recent events, it would be best to not limit the scope to economic assets, but to essential services in general (e.g., energy). EL: (Drafting): 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 and 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 which is determined according to the respective procedures under Union or national law; EL:

Presidency compromise	Drafting Suggestions Comments
	(Comments): Important to point out that the emergencies could also be breaching of national security via cyber attacks.
(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;	PT: (Drafting): (11) ‘processing’ means processing as defined in Article 4, point (2), of Regulation (EU) 2016/679 ~~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;~~ PT: (Comments): The definition of “processing” is a transcription of the one set in the General Data Protection Regulation (article 4(2)) as so we recommend to do the same with the

Presidency compromise	Drafting Suggestions Comments
	definitions above. This principle should apply to all definitions in this article. DE: (Drafting): ‘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; DE: (Comments): Art. 4 (2) defines “processing” without need for an “electronic format”. Could become significant, if “making data available” is a category of “data processing” and if data is transferred in physical form (on a hard drive).

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	BE: (Comments): We notice that this definition is similar to the one included in the GDPR but differs to the one adopted in the DGA. For consistency sake, and taken into account the fact that this instrument refers not only to personal data but also non-personal data, would it not be better to use the same definition as in the DGA?
(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;	DK: (Comments): The Commission should be asked to explain the reason behind the limitation “to a scalable and elastic pool of shareable computing resources of”, as it is not clear. Our understanding is that many cloud services are not scalable. Thus, we worry that this will exempt quite a few cloud services from the obligations in Ch. 6 and 7. MT:

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	(Comments): Reference is being made to the previous comment included in Recital 71a which is also applicable for this provision. FR: (Drafting): Cf. (3a) ‘digital service’ means a digital service as defined in point (2) of Article 2 of Directive (EU) 2019/770. (12) ‘data processing service’ means a digital service as defined in point (2) of article 2 of Directive (UE) 2019/770, 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; FR: (Comments):

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	La notion de services numériques n'est pas définie dans le Data Act, sauf par la négative à l'article 3(12). Une définition du service numérique existe dans la directive (UE) 2019/770 relative aux contrats de fourniture de services numériques. Le lien doit être opéré avec cette définition, afin de faire comprendre au consommateur que ces contrats sont visés par les articles 23 et suivants du Data act. Dans un souci de clarté et de précision, les autorités françaises suggèrent que cette définition soit complétée par les définitions utilisées par la norme ISO/IEC 22123 pour la description des IaaS, PaaS et SaaS.
(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.	FI: (Comments): We note that a definition of 'consumer' is not in the Data Act. IE: (Comments): IE Can we confirm our understanding that this covers all contractual relationships, including

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	those without monetary exchange? DE: (Drafting): (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. DE: (Comments): The term “customer” is only used in Chapter VI. Germany currently examines the need for further differentiation between B2B- and B2C-rules (scrutiny reservation). What are the reasons why the Data Act doesn’t further differentiate between B2B und B2C including in other Chapters of the Data Act? In our opinion the term “customer” covers natural persons as well as businesses including solo self-employed platform workers.
(12b) ‘digital assets’ mean elements in digital format for which the customer has the right of use,	FI:

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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.	(Comments): We still think this definition would benefit from further clarification.
(12c) ‘on-premise’ means a digital data processing infrastructure operated by the customer itself to serve its own needs.	FI: (Comments): Here it seems that only cloud or on-prem systems are conceivable; even though in reality, a lot of solutions are based on industrial ICT (data center, computing farm, etc.) Thus, this should be reflected here too.
	SE: (Drafting): (12d) “customer applications” means applications developed by the customer. Applications or code developed by the data processing operator is not included. SE:

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	(Comments): If customer applications are defined, this would clarify the scope of the right to switch.
(13) 'service type' means a set of data processing services that share the same primary objective and main functionalities basic data processing service model;	PL: (Drafting): ~~(13) 'service type' means a set of data processing services that share the same primary objective and main functionalities basic data processing service model;~~ PL: (Comments): The concept of a 'same service type' reduces the complexity of cloud services into a number of discreet 'buckets' which do not reflect the reality of cloud services. While services may share a similar objective (e.g. storage or computing), by categorising them as fundamentally the same service (and requiring functional equivalence between services), services will be forced to standardise in a way which is not beneficial to the customer or competition between cloud service providers. Services risk becoming overly homogenised in order to comply with functional equivalence

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	requirements, rather than innovating in order to meet the customer's requirements.
(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;	BG: (Drafting): (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~~ agreed between the customer and the service provider and the customer shall be informed in advance of the level of functionality and quality of the destination service; BG: (Comments): In case that such "functional equivalence" would mean that any data processing service provider should immediately upgrade its services to an equivalent level when

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	accepting a new customer that would be impractical and largely impossible. In practice, there is a great variety of offers on the market and the customer should be able to choose but of course being well informed of the level of service in advance. Therefore, a requirement for informing the customer of the level of service and for a possible lower level of service should be enough. Normally, the level of service is regulated by a contract and freely between the parties. DK: (Drafting): ‘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; DK: (Comments):

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	It is unclear what purpose the user input reference serves. More importantly, it can be interpreted as only user generated data should be transferred. However, customers of data processing services will have a variety of data stored, which the actual user has not generated by themselves. NL: (Comments): We notice that this definition still causes some confusion with stakeholders. We support the intention of this definition as explained during the workshops and council working groups, but believe it would be useful to discuss how this definition and its functioning in chapter 6 could be further clarified here, in chapter 6 or in the recitals. SE: (Drafting): at the time of termination of the contract. Services can only be expected to facilitate functional equivalence for the functionalities that both the originating and destination services offer. This Regulation does not instate an obligation of facilitating functional equivalence for data processing services of the PaaS

Presidency compromise	Drafting Suggestions Comments
	and/or SaaS service delivery model. SE: (Comments): Include text from “preamble” 72 to explain functional equivalence. DE: (Comments): In order to allow competition of data procession services “functional equivalence” can only relate to services in the portfolio of the originating service and require “best effort”.
(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;	

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(15a) 'operators within data spaces' mean legal persons that facilitate or engage in data sharing within and across the common European data spaces;	FI: (Comments): Is this meant to cover all the actors under the DGA and then also the other actors outside the scope of the DGA ? We fear that this might lead to confusion. It seems this concept is used in the Chapter VIII only two times, so we would see it useful not to create a concept of its own to that, but instead repeat the definition there. Then in the recitals, there could be examples clarifying the scope. DK: (Comments): We are very supportive of the inclusion of this definition as well as the fact, that it refers to the Common European data spaces. DE: (Comments): Definition is too broad. This would in our understanding include users of data spaces (“engage in data sharing”). Germany suggests to reintroduce the term “operators of

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	data spaces” and include a definition of data spaces in the Data Act. FR: (Drafting): 15a) 'operators within data spaces' mean legal persons that facilitate or engage in data sharing or data exchange within and across the common European data spaces; FR: (Comments): Les autorités françaises comprennent que cette définition est limitée aux espaces de données européens communs développés dans le cadre institutionnel de l'UE. Les autorités françaises estiment que les dispositions du projet de règlement sur les espaces de données devraient être appliquées de manière large à tous les espaces de données développés en Europe. C'est pourquoi les autorités françaises invitent la Présidence à travailler sur une définition plus large des "opérateurs au sein des espaces de données".
	DK:

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	(Drafting): (15b) 'Common European data spaces' means purpose- or sector-specific or cross-sectoral interoperable frameworks of common standards and practices to share, use or jointly process data for, inter alia, development of new products and services, scientific research or civil society initiatives, and which are officially recognised by the European Commission. DK: (Comments): The proposal lacks a definition of “Common European data spaces”. We suggest to utilise the description in recital 79 (which is also aligned with the DGA) and to complement the definition with important criteria from the Commission Staff Working Document on data spaces in a corresponding recital (see our suggestion to update recital 79 above). We have further added “use” (to “to share or jointly process data”) in the definition in order to cover all uses beyond the official definition of data processing, as it e.g. excludes the mere act of accessing or reading information. ES:

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	(Drafting): (15b) ‘common European data spaces’ mean 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. ES: (Comments): The definition of “operator within data spaces” included in the first compromise text includes a reference to “common European Data Spaces”. In order to enhance legal certainty and enforceability of the Regulation, a definition of “common European Data Space” could be included in article 2.
(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;	DK: (Comments): The Commission should be asked to elaborate on this definition, which appears to go well beyond smart contracts and may therefore inadvertently cover a broader range of computer programs.

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	DE: (Comments): Scrutiny Reservation: Are provisions concerning smart contracts (e.g. definition) necessary, or should smart contracts be defined in another horizontal legal act for more than data portability purposes. Furthermore are smart contracts needed in the context of the Data Act? Clarification needed whether the scope of the definition of smart contract should contain both distributed and central ledger options.
(17) ‘electronic ledger’ means a sequence of electronic data records which ensures their integrity and the accuracy of their chronological ordering ~~an electronic ledger within the meaning of Article 3, point (53), of Regulation (EU) No 910/2014;~~	BG: (Comments): Are we referring to a different notion of “electronic ledger” that the one under the eIDAS revision? The deletion of the former reference to the eIDAS is confusing. DK: (Comments): We are concerned that the definition is too broad and not sufficiently technology

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	neutral. Blockchain is clearly still the intended reference, which is a technology with many issues in its practical application (e.g. excessive resources use and low speeds). DE: (Comments): See scrutiny reservation above on smart contracts.
(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;	EE: (Comments): How does this definition relate to the term “ICT specification” described in Regulation (EU) 1025/2012?
(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;	DK: (Drafting): ‘interoperability’ means the ability of two or more communication networks,

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	computer systems, data processing services, software or devices to exchange data and make use of it. data spaces, communication networks, systems, products, applications or components to exchange and use data in order to perform their functions; DK: (Comments): We find the suggested definition contains unnecessary references, which may serve to confuse rather than clarify. Some of the listed elements are too specific, overlap or has no clear definition. Fewer and broader terms should be used, to make it less exclusive and more future proof – although we believe data processing services should be included for emphasis and clarity in the context of the Data Act. The final section on “using data to perform a function” is not clearly linked to the exchange of data and its interoperability, but rather uselessly appear to describes an ability, which most digital systems possess. DE: (Drafting):

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	(19) ‘interoperability’ means the ability of two or more data spaces or communication networks, systems, products, applications or components to exchange, understand and use data in order to perform their functions; DE: (Comments): We suggest to supplement the definition of interoperability. The term "interoperability" can be understood in a multi-dimensional way. There is the organisational, semantic, syntactic and structural level of interoperability. All these levels contribute to achieving the aim of a full interoperability and have different, defined standards for this purpose. An important aspect of interoperability is that the data is understood (semantic level of interoperability). This shall be emphasized in the definition. Definition of data spaces needed, e.g. ”’data spaces’ are a federated, open infrastructure for the sovereign access to and exchange of data based on common rules and standards for interoperability.“

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(20) 'harmonised standard' means a harmonised standard as defined in Article 2, point (1)(c), of Regulation (EU) No 1025/2012.	HU: (Drafting): (21) 'official statistics' means European statistics according to Regulation 223/2009/EC and statistics considered official according to national legislation. HU: (Comments): In the context of Chapter V, in view of the function of a special data user in public interest, which is official statistics, and in view of the current and proposed references to the statistics in this proposal it would be appropriate to introduce a definition of this term.
	PT: (Drafting): 21) 'official statistics' means European statistics according to Regulation (EU) 223/2009 and statistics considered official according to national legislation. PT:

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	(Comments): PT proposes adding the definition of “official statistics”, given the specific references to it, namely in Chapter V. DK: (Drafting): Alternative 1: (21) ‘official statistics’ means European statistics according to Regulation 223/2009 and statistics considered official according to national legislation. Alternative 2: (21) official statistics: means statistics developed, produced and disseminated by the EU and national statistical authorities indicated in Chapter II of the Regulation 223/2009. DK: (Comments): Suggest including a definition on “official statistics” since it is referred to in chapter 5.

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	SK: (Drafting): (21) ‘Directly accessible’ means access from an on-device data storage system or from a remote server to which the data are communicated. SK: (Comments): The lack of definition of the concept of “directly accessible” data relied on in the proposal will create uncertainty for manufacturers as to what system they will be expected to put in place in order to comply with this obligation. PL: (Drafting): Option 1 21) official statistics means European statistics according to Regulation 223/2009 and statistics considered official according to national legislation. or

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	Option 2 21) official statistics: means statistics developed, produced and disseminated by the EU and national statistical authorities indicated in Chapter II of the Regulation 223/2009. PL: (Comments): PL would prefer that the “official statistics” definition is introduced, as previously proposed. The new references to it included in the Presidency text fully justify such step. We present 2 options of the new definition wording. The addition seems fully justified in the context of Chapter V and in view of the function of a special data user in public interest, which is official statistics. SE: (Drafting): (21) ‘competent authorities’ means authorities designated according to Article 31.1.

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	SE: (Comments): The EDPB and EDPS have in their joint opinion made the interpretation that data protection authorities are to be considered “competent authorities” for the purposes of the proposal (p. 100-105 in the joint opinion). SE understands that competent authorities only refers to authorities designated according to Article 31.1. In order to avoid uncertainty on how the regulation is to be applied, SE proposes that a definition of competent authorities is inserted. IE: (Drafting): (21) “official statistics” means statistics within the meaning of Regulation (EC) 223/2009 on European statistics and the production of statistics according to applicable national legislation. IE: (Comments):

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	IE suggests that the inclusion of this definition would align with suggested addition of Article 22a below.
CHAPTER II RIGHT OF USERS TO USE DATA OF CONNECTED PRODUCTS AND RELATED SERVICES ~~BUSINESS~~ ~~TO CONSUMER AND BUSINESS TO BUSINESS~~ DATA SHARING	DE: (Comments): We are examining whether a clearer distinction between B2B and B2C is necessary. In the B2C context, we are particularly examining how the goal of the Data Act can best be achieved while taking into account the protection of personal data, scientific freedom and entrepreneurial freedom.
Article 3 Obligation to make data generated by the use of products or related services accessible to the user	FI: (Comments): Here, the new proposed title ('user') seems somewhat in contradiction with the wording of art. 3(1) ('data holder'). Same question also to art. 5 the new proposed title ('user') and the wording of the art. 5(1) ('data holder'). Comment also: we also note that there are no provisions on the need to develop

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	secure access and transfer mechanisms, secure channels of communication, confidentiality, and obtaining consent. DK: (Comments): The text does not account for the fact that IoT-products are often utilised in an ecosystem involving several actors who owns or leases the product. Therefore, the text needs to further clarify who has the right to access the data and who is considered the data holder – and thus has the obligation to provide said access. We suggest asking the Commission to provide an account of how the rules would apply in situations where there are several actors and platforms involved and address questions by Member States in this regard. For example, would the right to data access follow the right of use, e.g. in a lease agreement? Further, in a lease agreement, would the original owner also maintain an access right against the data holder, or would the owner be considered a data holder in regards to the lessee? An expanded description with examples could be added in a corresponding recital if necessary.

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1. Products shall be designed and manufactured, and related services shall be provided, in such a manner that data generated by their use that are accessible to the data holder 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.	FI: (Drafting): ‘Where the user is a legal person, the data holder may seek limited compensation for making the data accessible. Such compensation shall not exceed the costs related to making the data accessible to such user.’ OR: ‘Where the user is a legal person, the data holder may seek compensation that shall not exceed the costs directly related to making the data available to the user and which are attributable to the request.’ FI: (Comments): Regarding our suggestion for redrafting: we would aim for symmetry with this and articles 8(1) and 9(2) (see also 5(1)). We still think the various roles, especially in industrial settings, should be addressed in the wording somehow, in order to ensure access rights also in situations where the manufacturer does not necessarily have access to the data generated by the products.

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	In our (earlier) written comments, we wrote ‘... from the data holder. The same applies to manufacturer of an installment or industrial setting (of products, components or separate technical systems) from which the data is directly generated to the responsible operator acting as a data holder through contractual or technical means.’ We do not support allowing access free of charge also in situations, where the user is a legal person. Instead, we suggest adding wording that would allow limited compensation for making data available to users that are legal persons. So the expression ‘free of charge’ we would rather see this with an option for a limited compensation. PT: (Comments): Can you please clarify the addition of the sentence “that are accessible to the data holder”? What data is generated by the use of the product or related service that the data holder does not have access? Moreover, please ensure free of charge is aligned with article 12(5) of GDPR

Presidency compromise	Drafting Suggestions Comments
	DK: (Drafting): 1. Products shall be designed and manufactured, and related services shall be provided, in such a manner that data generated by their use that are accessible to the data holder are, by default and free of charge, easily, securely ~~and, where relevant and appropriate, directly~~ accessible to the user. The data should be accessible in a format that allows the user to view, process it, either directly on the device itself, or, where not relevant or appropriate, on other commonly used devices separate from the product., in a structured, commonly used and machine-readable format. DK: (Comments): To ensure that real value can be gained by the user from the data in practice, it is imperative to properly describe which data should be shared and in which form. We suggest adding a corresponding recital and/or a new provision (inserted after art. 3.1) to: (1) find the right balance between requiring as raw data as possible while ensuring that the data is comprehensible and usable to the user. This could perhaps be solved

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	by requiring access to context relevant metadata or requiring manufacturers to use standard formats within the relevant domain. The description “<i>a structured, commonly used and machine-readable format</i>” is not sufficient to ensure that the user can utilise the generated data. This description would apply to a PDF document, which would in most cases not be very useful, thus failing to add the value strived for by this regulation. (2) the data holder should be allowed some flexibility about the form of the data. E.g. the data holder should be allowed to aggregate and limit data retention of large volumes of data to the benefit of both the data holder and the user. Certain IoT-products generate vast amounts of data – e.g. some industrial sensors take over 1000 measurements pr. second. Strict requirements to retain raw data would put an unreasonable strain on the producer’s systems, applications and storage capabilities, with little (if any) added benefit for the user. Rather, it would likely be to the detriment of both users and producers and ultimately, the environment. (3) A flow of real time data is rarely useful. In order to benefit from the data access, the user needs to be able to either get hold of and store the data on his own or have access rights to <i>historical data</i>.

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	On Art. 3.1, we have two main concerns: (1) The article indirectly obligates data holders to store users' data indefinitely. As mentioned above, this potentially creates unnecessary financial strains on the individual data holder and has environmental implications. As a solution, limits on retention obligations could be introduced, e.g. by giving users a right to collect their data within a reasonable timeframe. (2) It is not necessarily preferable that data be "<i>directly accessible</i>" from the IoT-product. The changes to recital 19 are helpful in preventing that manufacturers are obliged to incorporate screens and interfaces in their product wherever possible. However, we note that it will often be preferable – or even critical for further use – that the user is able to access and process the data on other devices, such as on a computer, phone or tablet. We therefore suggest, to require that data should be in a format that allows transfer to and access and processing from a (common) separate device from the product and, only where not relevant or appropriate, solely from the connected device itself. Finally, a requirement that data can be accessed "directly" on a device should be

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	avoided, as this is in technical terms rarely possible. SK: (Drafting): 1. Products shall be designed and manufactured, and related services shall be provided, in such a manner that ~~data generated by their use~~ that are accessible to the data holder 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. SK: (Comments): Access to data shall apply to those products whose design and technical provisions make it feasible. HR: (Drafting):

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	Products shall be designed and manufactured implementing data-protection principles, such as data minimisation, in an effective manner, and related services shall be provided, in such a manner that data generated by their use that are accessible to the data holder 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,. NL: (Comments): In line with comments made by our Danish colleagues, we would welcome further clarification in the proposal on which data should be stored and shared by data holders and in which form in order to: (1) find the right balance between requiring data that is understandable and data that is raw. (2) allow the data holder some flexibility about the form of the data if this is beneficial to both the user and data holder. (3) ensure the article does not indirectly obligates data holders to store users' data indefinitely.

Presidency compromise	Drafting Suggestions Comments
	DE: (Drafting): Products shall be designed and manufactured, and related services shall be provided, in such a manner that data generated by their use that are accessible to the data holder and to a third party within the meaning of Art. 5 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. DE: (Comments): What does “directly accessible to the user” mean? Does the addition “in a structured, commonly used and machine-readable format” refer to the direct accessibility? Then, putting in front “i.e.” would make sense. Otherwise, a specification of “directly accessible” would be desirable. What does free of charge relate to specifically? The product or service? Can a proportionate provision of privacy by design/ by default be added? IT:

Presidency compromise	Drafting Suggestions Comments
	(Drafting): Products shall be designed and manufactured, and related services shall be provided, in such a manner that data generated by their use that are accessible to the data holder are, by default and free of charge, easily, securely and, where relevant and appropriate, directly accessible and free of charge to the user, in a structured, commonly used and machine-readable format. FR: (Drafting): 1. ‘Connected OR data generating’ Products shall be designed and manufactured, and related services shall be provided, in such a manner that data generated by their use that are accessible to the data holder 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, and usable by the user. FR: (Comments):

Presidency compromise	Drafting Suggestions Comments
	Les autorités françaises tiennent à remercier la Présidence pour les précisions apportées dans sa proposition de compromis. Les autorités françaises considèrent que, dans l'intérêt de la prévisibilité pour les détenteurs de données, des travaux supplémentaires devraient être menés pour préciser le niveau de traitement des données auquel le détenteur de données doit se conformer. Les autorités françaises estiment également qu'il est nécessaire de clarifier et de restreindre les contours du type de "produits" entrant dans le champ d'application de ce règlement.
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 ~~at least~~ the following information ~~shall be provided~~ to the user, in a clear and comprehensible format:	FI: (Comments): We think that mandatory information duties/ requirements contribute to increasing transparency, which we see favourably. However, 'volume' would perhaps not need to be included here, right ? SK: (Comments):

Presidency compromise	Drafting Suggestions Comments
	In SK view, giving users information regarding their IoT products (eg. nature/volume of data generated) that relies on specific user use cannot be expressed precisely at the point of sale. Permitting QR/Online solutions at point of sale would better recognise the fluid nature of IoT eco-systems and user expectations. DE: (Comments): What if the data holder does not obtain or have access to the information to be provided under para. 2?
(a) ~~the nature~~ type of data and the estimated volume of the data likely to be generated by the use of the product or related service;	
(b) whether the data is ~~likely to be~~ generated continuously and in real-time;	
(c) how the user may access those data;	

Presidency compromise	Drafting Suggestions Comments
(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, in either case the purposes for which those data will be used;	DK: (Drafting): 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, in either case the purposes for which those data will be used; DK: (Comments): We still find that the requirement to state the purposes behind using the data should be deleted, as it invalidates the whole purpose with the Data Act. The manufacturer is restricted from utilising the data for other purposes than those they could identify when drafting the contract. It would potentially hinder their ability to use aggregated data and adapt to new circumstances, inadvertently damaging the IoT-manufacturers' ability to innovate. This further dismisses the idea that new services will be offered for products, both by the manufacturer and the service provider. See further our comments to art. 4(6).

Presidency compromise	Drafting Suggestions Comments
	DE: (Comments): In addition to manufacturer and service provider also obligation of data holder? The data holder, manufacturer (if different from data holder) or any third party may only use the data generated by the use of the product on the basis of a contractual agreement with the user or upon request of the user. Against this background, it should be clarified in what cases the obligation to provide information covered by lit. d) becomes relevant.
(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;	
(f) the means of communication which make it possible ~~enable the user~~ to contact the data holder quickly and communicate with that data holder efficiently;	DE: (Comments): Also means of communication of manufacturer/service provider, if different from

Presidency compromise	Drafting Suggestions Comments
	data holder?
(g) how the user may request that the data are shared with a third-party;	
(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.	
	NL: (Drafting): (i) How the user can erase the data generated by its use of the product or decouple its data from the product. NL: (Comments): This is especially of importance for products that are resold or re-used. Some products, such as smart phones already offer the possibility to revert the phone to factory settings, erasing all data and decoupling user accounts. This is not necessarily

Presidency compromise	Drafting Suggestions Comments
	completely covered by the GDPR as in a resale the user may know the previous user and therefore trace non-personal data to an individual. Therefore, also allowing for the erasure of non-personal data from IoT devices is of importance.
Article 4 The right of users to access and use data generated by the use of products or related services	SK: (Comments): SK would welcome a clearer definition of the relationship of the Data Act to the Cyber Resilience Act, particularly with regard to secure third party access to IoT data. IoT product features can be controlled remotely and the manufacturer should be assured that the third party is using a secure connection. Therefore, it is important to clarify cybersecurity conditions for third party access to data and the possibility to decline access to the data if the third party does not meet the obligations imposed by the Cyber Resilience Act. A third party could damage the functionality of the product through an application that does not meet the security requirements by its unskilled use. SI:

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	(Comments): The user shall not use the obtained data pursuant to a request referred to in paragraph 1 to develop product or obtain information that can jeopardise public or national security. DE: (Comments): In the event that the parties voluntarily enter into an agreement: To what extent can Article 4, 5 and 6 be deviated from? A corresponding provision is missing.
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 accessible to the data holder, as well as the relevant metadata, without undue delay, free of charge, easily, securely, in a structured, commonly used and machine-readable format and, where applicable, continuously and in real-time. This shall be done on the basis of a simple request	FI: (Drafting): ‘Where the user is a legal person, the data holder may seek limited compensation for making the data accessible. Such compensation shall not exceed the direct costs related to making the data accessible to such user.’ FI:

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through electronic means where technically feasible.	(Comments): It is good that metadata is mentioned at article level. It could thus be sensible to include a separate definition of metadata in the definition article. This could even work better than adding it to the general definition of data. Comment also: metadata should not mean an increase in the data to be accessed. Regarding the expression ‘free of charge’ we would rather see this with an option for a limited compensation. BG: (Drafting): 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 accessible to the data holder, as well as the relevant metadata, if requested explicitly, without undue delay, free of charge, easily, securely, in a structured, commonly used and machine-readable format 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. BG:

Presidency compromise	Drafting Suggestions Comments
	(Comments): On many occasions providing the relevant metadata would slow down the entire process of making the data available. Therefore, it should be conditioned upon explicit request. PT: (Comments): Please, see our comments above. Regarding the access to metadata please ensure that this complies with the relevant legislation and case law. SK: (Drafting): 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 accessible to the data holder, as well as

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	the relevant metadata, without undue delay, free of charge for, easily, securely, in a structured, commonly used and machine-readable format 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. DE: (Drafting): 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 accessible available to the data holder, as well as the relevant metadata, 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 and continuously and in real-time. This shall be done on the basis of a simple request through electronic means where technically feasible. EE: (Comments):

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	We are concerned about the security risks which may arise with the release of data (including metadata). Access to all generated data or their sharing can clearly be a security risk (e.g. logs of how to identify whether someone is a robot or not, automatic brake systems in cars, medical devices, etc.). The right to get data should not outweigh security risks. Sharing metadata might also have negative implications on trade secret protection. BE: (Comments): We notice that Article 1 defines the notion of data but does not include a definition of metadata. For legal certainty, it could be useful to add such definition of ‘metadata’ in Article 1.
	DK: (Drafting): Where requests from a user are manifestly unfounded or excessive, in particular because of their repetitive character, the data holder may either (1) charge a reasonable fee taking into account the administrative costs of

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	providing the data or taking the action requested; or (2) refuse to act on the request The data holder shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request. DK: (Comments): As shown by the GDPR, individual users can overburden the systems of organisations with excessive requests. We suggest adding a new provision, aligned with GDPR art. 12(5), in order to address situations where individual users request data excessively or on unfounded grounds. Given that such measures are considered justified for personal data – which are generally considered more sensitive – we find that it is both necessary and reasonable to include such safeguards for IoT-data. Guidance for when a data controller can refuse a request or charge a fee for providing the information can be found in the EDPB Guidelines on the right to “data portability” in document wp242. These guidelines could be used to help formulate a corresponding recital to guide data holders.

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	SE: (Drafting): data generated by ~~its~~ the <u>users</u> use of a product or related service SE: (Comments): It should be further clarified that this only relates to data generated by a specific user. DE: (Drafting): 1a. Any agreement between the data holder and the user shall not be binding when it narrows the access rights pursuant to paragraph 1.
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	PT: (Comments): The log data may be useful to be kept. It usually, helps to improve the product/service. Why is it excluded from this article?

Presidency compromise	Drafting Suggestions Comments
access request and for the security and the maintenance of the data infrastructure.	
2a. The data holder shall not coerce, deceive or manipulate in any way the user by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface with the user, to hinder the exercise of the user's rights under this Article.	FI: (Comments): The term 'digital interface' can have multiple meanings depending on the context. Thus, there could be differences e.g. whether the target (audience) is the end-user or professionals. IE: (Comments): IE welcomes the addition of this provision as it aligns with the wording in Article 29 of the DSA regarding recommender systems and is intended to address dark patterns and other forms of manipulation. ES: (Drafting):

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	2a. The data holder shall not coerce, deceive or manipulate in any way the user, or the data subject when the user is not the data subject, by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface with the user, to hinder the exercise of the user's rights under this Article. ES: (Comments): Regarding dark patterns, article 6 of the compromise text, prohibits third parties data recipients from manipulating, both users, and data subjects when they are not users. However, article 4 only contains the prohibition of data holders from manipulating users. We are concerned that this difference could lead to misinterpret that the prohibition of article 4 does not cover practices consisting of manipulating data subjects when they are not users. For example, practices consisting of making it difficult for data subjects to offer their consent, so that users who are legal entities cannot request access to the data.

Presidency compromise	Drafting Suggestions Comments
3. Trade secrets shall only be disclosed provided that all specific necessary measures are taken in advance 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. The data holder shall identify the data which are protected as trade secrets.	FI: (Drafting): The trade secrets of the data holder shall only be disclosed provided that all specific necessary measures are taken in advance 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. Such measures shall be utilized in a limited manner and only when the shared data includes trade secrets as defined by national or EU law. The data holder shall prove the existence of trade secrets when it invokes measures to preserve the confidentiality of the shared data. The data holder shall identify the data which are protected as trade secrets. FI: (Comments): This is a good addition. However, even more emphasis should be placed on preventing unjustified use of the protection of trade secrets to prevent access to and sharing of data. The paragraph could thus be continued as we here suggest (best suited before the amendment proposed by the Presidency).

Presidency compromise	Drafting Suggestions Comments
	Also, we would clarify of whose trade secrets we are referring to here (hence, the added 'of the data holder') PT: (Drafting): 3. Trade secrets shall only be disclosed provided that all specific necessary measures are taken in advance to preserve the confidentiality of trade secrets in particular with respect to third parties. The data holder and the user can agree on 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. PT: (Comments): We find that adding "on" brings clarity to the sentence. SK:

Presidency compromise	Drafting Suggestions Comments
	(Drafting): 3. Trade secrets shall only be disclosed provided that all specific necessary measures are taken in advance 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 trade secrets and the confidentiality of shared data, in particular in relation to third parties. The data holder shall identify the data which are protected as trade secrets. NL: (Drafting): 3. Trade secrets shall only be disclosed provided that all specific necessary measures are taken in advance 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. The data holders can also require that the confidentiality of a disclosure must be ensured by the user and any third parties of the user. The data holder shall identify the data which are protected as trade secrets.

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	NL: (Comments): NL refers to the explanation given at consideration 28a. DE: (Drafting): 3. Trade secrets shall only be disclosed provided that all specific necessary measures such as confidentiality agreements between the data holder and the user are taken in advance 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. The data holder shall identify the data which are protected as trade secrets. DE: (Comments): The relation between the Data Act and the TS-Directive should be clarified. Does the TS Directive or the Data Act apply as lex specialis?

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	Is the existence of a trade secret assessed according to objective criteria or is it up to the data holder to make a purely subjective decision? Regarding measures to preserve the confidentiality, can the data owner also arrange proprietary formats for accessing the data (e.g. via an software-as-a-service access), or does this violate Art. 11(1)? ES: (Comments): A balance must be sought between the protection of trade secrets of data holders and the right of users to exploit the data co-generated by themselves. Data holders should be able to require users and third parties to preserve the secrecy of the data considered trade secrets, including through the use of technical means; but those requirements should be reasonable and should not be a mean for the data holder to avoid or discourage giving access to data. FR: (Drafting): 3. Trade secrets shall only be disclosed provided that all specific necessary measures are taken in advance to preserve the confidentiality of trade secrets in

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	particular with respect to third parties. The data holder and the user can agree technical, legal and, or contractual 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.
	SE: (Drafting): 3. Trade secrets shall not be obliged only to be disclosed ~~provided that all specific necessary measures are taken in advance 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.~~ The data holder shall identify the data which are protected as trade secrets. SE: (Comments): On what grounds should companies be forced to disclose trade secrets? Even if measures are taken to secure trade secrets in the receiving end it cannot be controlled that adequate measures are taken to protect the trade secrets. Preamble 28a does not

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	seem to give sufficient grounds for this.
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.	FI: (Comments): From a general point of view, we are not in favour of having non-compete clauses to circumvent the data access, if it is not in violation of other rights of the manufacturer. Competition and innovation are important aims of this Act. PT: (Comments): We would like to inquire which measures will be placed to stop this conflict of interests? DK: (Drafting): ~~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.~~

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	DK: (Comments): The rationale of this provision is unclear. The data that the user has access to is the data generated by the user itself. Therefore, there should not be considerations in relation to e.g. free-riding effects that would make it appropriate to exclude the use of such data for the purpose of developing a new product. This should hold true even when the new product is in competition with the product from which the data originates. It is further unclear to us how it would be interpreted and enforced in practice. Mainly, it is difficult if not impossible to define what will come to constitute a ‘competing product’, especially in the digital age. E.g. from a description of a smartphone, one could not reasonably have foreseen that such a device would outcompete products such as alarm clocks, cameras or music players. Such legal uncertainty is not preferable. DE: (Comments): The non-compete clauses in Articles 4(4) and 6(2) lit. e, as currently drafted, are very

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	broad; it is doubtful whether they strike an appropriate balance. In particular, it is not clear, where the limits of the competitive relationship would have to be drawn in the case of vertically integrated undertakings or what applies in the event that a data recipient wishes to enter into competition with the primary product at a later point in time and/or independently of the data access. Finally, in light of increasingly individualized products, data generated from the use of products may provide insights that a competitor requires to tailor its product to the needs of the product user; it is unclear whether the prohibition applies in this case – with the consequence that the right to data portability under the Data Act would not protect the user from a data-driven lock in (unlike Art. 20 GDPR). FR: (Drafting): 4. The user and or the third party shall not use the data obtained pursuant to a request referred to in paragraph 1 to develop a product that competes with the product from which the data originate.
4a. The user shall not deploy coercive means or abuse evident gaps in the technical infrastructure of the data	FI:

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holder designed to protect the data in order to obtain access to data.	(Comments): Question: How is this proved ? how is this sanctioned ? PT: (Comments): We understand the need for this provision. However, we are concerned that this could be evidence of fragility in the provision of a safe and secure environment concerning data protection. Should a technical problem be found within the data holder's infrastructure which negatively influences data safety and protection, does the user have no alternative to this access? How is data protection guaranteed?
5. 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 by the data holder to the user where there is	FI: (Drafting): 5. Where the user is not a the data subject whose personal data is requested, any

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a valid legal basis under Article 6(4) of Regulation (EU) 2016/679 and, where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 and Article 5(3) of Regulation (EU) 2002/58 are fulfilled.	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 and Article 5(3) of the Directive Regulation (EU) 2002/58 are fulfilled. FI: (Comments): To be corrected into articles 4(5) and 5(6): directive 2002/58/EC. DK: (Comments): We support the changes. HR: (Comments): We suggest to correct the reference to e-Privacy Regulation (e-Privacy Directive).

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	IE: (Comments): IE suggests that guidance would be helpful to indicate instances where the data holder may give data to a user who is not the data subject. DE: (Drafting): ~~5. — 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 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 and Article 5(3) of Regulation (EU) 2002/58 are fulfilled.~~ Data holders should make best efforts to ensure that personal data is only accessed by users the data refers to and that there is a valid legal basis for the user to receive personal data of data subjects other than himself. DE: (Comments):

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	Scrutiny reservation: This question is answered by applicable data protection law and should not be addressed by the Data Act. FR: (Drafting): 5. 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 by the data holder to the user where there is a valid legal basis under Article 6(4) of Regulation (EU) 2016/679 and, where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 and Article 5(3) of Regulation Directive (EU) 2002/58 are fulfilled.
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	FI: (Comments): We are not in favour of general opt-in to generate data. This article would seem to allow the use of non-personal data only based on an agreement. It is unclear if this refers to secondary use only, as we already have article 3(2) to inform the user.

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the use by the user that could undermine the commercial position of the user in the markets in which the user is active.	Comment 2: Could the prohibition not to ‘derive insights about the economic situation, assets and production methods of or use by’ the user or third parties that could ‘undermine’ their ‘commercial position’ be mutually applicable to both the user and third parties vis-à-vis the data holder ? DK: (Drafting): ~~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. DK: (Comments): We still find that the consent requirement invalidates the purpose of the Data Act and

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	should be deleted. This provision restricts the manufacturer and data holder from utilising the data for other purposes than those they could identify when drafting the contract. It would potentially hinder their ability to use aggregated data, adapt to new circumstances and innovate. SI: (Comments): The prohibition of use of data should not cover only prohibition to derive insights about economic situation, assests and production methods of or use by the user (that could undermine commercial position of the user), it should include prohibition of use of data for the profiling of natural persons. DE: (Comments): The coherence of the requirements of Art. 4 Data Act on the processing of non-personal data for the data holder vis-à-vis the requirements of the GDPR for the controller of personal data needs further examination.

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	We are scrutinizing whether in certain sectors such as agriculture requirements/specifications for the contractual agreement in Art. 4(6) should be implemented in Art. 4. This could be a compulsory minimum content of such a contractual agreement or certain clauses that shall not be used in such a contractual agreement. Though this is a central aspect, Art. 4 (6) leaves the content to the parties (except for Art. 13, which has a limited scope). We see that in certain sectors as in agriculture there is no symmetric bargaining power. Therefore, safeguards should be implemented to ensure that users can obtain value from the co-generated data fully and to ensure the user's empowerment. This is relevant for constellations that do not fall within the scope of Art. 8 and 13. Also, Art. 8 and 13 do not foresee a minimum content of a contractual agreement. FR: (Drafting): 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

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	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.
Article 5 Right of the user to share data with third parties	FI: (Comments): Here, the new proposed title ('user') seems somewhat in contradiction with the wording of art. 5(1) ('data holder') PT: (Comments): These obligations are new costs for businesses (in particular SMEs) in organizing data in a way that is shareable, complies with all applicable rules, and does not compromise trade secrets. As such, we believe that the wording here seems quite broad and it may result in very different obligations for different sectors, which further raises the problem of legal certainty. We would also ask for the following clarification: Does the reference "(...) that are

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	accessible to the data holder (...) "refer to the data or to the product/service? Because in the first case it would seem positive - companies only sending the data they had access to - but in the other case it seems to us to widen the scope even more, including all relevant goods/services. DE: (Comments): Has the COM examined to what extent differentiated regulations would be appropriate for, on the one hand, physical products that are acquired by the user as purchaser and to which the purchaser acquires ownership, and, on the other hand, products that are merely used by the user? Why has a different system been chosen for Article 5 than for Article 4? Article 5 can be read that it (like Article 4) regulates a legal obligation to provide data, i.e. it creates a comprehensive legal claim in favor of the data recipient (third party), which is not limited in any way or made subject to a reservation, for example, of any contractual agreement that may have been reached. Moreover, this right to data access does not regulate any obligation to reimburse costs. Article 5 can therefore currently be read as meaning that data access can be based on Article 5 alone - and that a contractual

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	agreement is not required. Why does Article 5 not (as in Article 4) also conclusively regulate the obligation of the data controller to transfer the data and/or give access to data to the third party? To what extent is a contractual agreement within the meaning of Article 8 required at all, if the data recipient can also assert data access, if necessary, by means of an action based solely on Article 5? Or should Article 5 - contrary to what the wording and system currently indicate - merely grant a right to enter into a contract for data access, with the data owner being able to determine the scope and conditions of access as long as the conditions are "fair, reasonable and non-discriminatory? However, this restriction, that it is precisely the right to conclude a contract and thus to access data to the extent that must necessarily be determined by contract, is not reflected in Article 5 itself. Such a regulatory approach also considerably restricts the right of access, as the data holder can determine the scope of access. Despite the amendment “This shall be done in accordance with Articles 8 and 9.” the connection between Article 8 and Article 5 is not sufficiently clear. It must be expressed more clearly in Article 5 and/or Article 8 to what extent the

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	statutory claim exists and what the relationship is between this statutory claim and (additional/necessary) contractual agreements under Article 8. If Article 5 only grants the right to conclude a contract, this should also be clearly stated. Provided that in Article 5 (similar to Article 4) the scope of the statutory entitlement is made clearer, Article 8 could be limited to the regulations on deviation.
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 accessible to the data holder to a third party, as well as the relevant metadata, 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. This shall be done in accordance with Articles 8 and 9.	FI: (Drafting): To be added: ‘Where the user is a legal person, the data holder may seek limited compensation for making the data accessible. Such compensation shall not exceed the costs directly related to making the data accessible to such user.’ FI: (Comments): Please see here also our suggestion to art. 3(1)

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	Additionally, we welcome the inclusion of metadata in this paragraph; however, we still call for clarifying that the making data available can be subject to a fee for the third party. Trade secrets should be clearly identified. So for all three articles 3, and 4 and 5: the expression ‘free of charge’, we would rather see this with an option for a limited compensation. We also wonder whether there is a discrepancy in ‘free of charge’ vs. ‘This shall be done in accordance with Articles 8 and 9’ And also, what is the explanation for the words [free of charge]‘for the user’ here ? PT: (Comments): Since within the definitions listed, there are references to the definitions of personal data and non-personal data and admitting that the definition of "<i>relevant metadata</i>" is not possible because it is an open concept, it might be useful to include a definition regarding "metadata" only. DK:

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	(Comments): See our comments on defining the data, that the data holder is obliged to share with the user in art. 3.1. The same requirements for format etc. should apply in art. 5.1. SK: (Drafting): 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 accessible to the data holder to a third party, as well as the relevant metadata, 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. This shall be done in accordance with Articles 8 and 9. DE: (Drafting): 1. Upon request by a user, or by a party acting on behalf of a user, the data holder

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	shall make available the data generated by the use of a product or related service that are available accessible to the data holder to a third party, as well as the relevant metadata, 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. This shall be done in accordance with Articles 8 and 9. DE: (Comments): Can a "third party" also be a consumer, e.g. a hobbyist who repairs a product as a service? If "third party" can also be a consumer, how are the modalities of data provision regulated? We are examining the need and, if so, ways to legally incentivize data sharing practices that are in line with the stated purposes of the Data Act, as expressed in the recitals (aftermarket services, repair, maintenance). ES:

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	(Comments): Recitals could clarify the role of data intermediation service providers and data altruism organisations regulated by the DGA as <i>third parties acting on behalf of a user</i> and requesting the transmission of data to a data recipient, given that, according to article 5, data holders shall make data available to third parties “<i>upon request by a user, or by a party acting on behalf of a user</i>”, which might include, not just third parties receiving the data, but also other parties, such as DGA intermediaries.
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)²⁵], shall not be an eligible third party under this Article and therefore shall not:	FI: (Drafting): Any undertaking designated as a gatekeeper, pursuant to Article [...] of [Regulation XXX on contestable and fair markets in the digital sector (Digital Markets Act)] providing one or more 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

²⁵ OJ [...].

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	and fair markets in the digital sector (Digital Markets Act)¹⁸, shall not be an eligible third party under this Article and therefore shall not: FI: (Comments): This para. could be rendered clearer with the suggested clarification, since it is the <i>company</i> providing the core platform service which is designated as a gatekeeper, not the core platform <i>service</i> in question which should be at issue here, right ? PT: (Comments): In article 5.2 since the companies defined as gatekeepers are mainly based in a third country, we believe it would be important to clarify how these rules intertwine with the EU's non-discrimination commitments in the WTO's GATS (General Agreement on Trade in Services) (this clarification should also mirror in recital 36). SK: (Comments):

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	SK supports BEREC's view on the exception of data sharing rights for gatekeepers and the importance of coherently integrating the obligations related to data imposed on gatekeepers under the Data Act with those under the Digital Markets Act (DMA) and, more generally, the GDPR. SK would welcome a response on the call of BEREC for a profound analysis about the proportionality and the potential impact of such limitation on the right of users to choose the product or service of their choice and, more generally, on innovation. IE: (Comments): IE is keen to ensure that there is fairness and proportionality in all markets, including the digital market, that SMEs are supported and that consumers continue to have choice. DE: (Comments): Is there an empirical justification/impact assessment for Art. 5(2) and Art. 6(2)(d) prohibiting gatekeepers within the meaning of the DMA from being an eligible third

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	party under the respective provisions? What is the reasoning behind obliging gatekeepers (as undertakings), while the DMA only obliges such undertakings with regard to specific gateway CPS (cf. Art. 5 et seq. DMA)? Did the COM consider that this may prevent large companies from entering such new markets? Did the COM consider that this may lead to market exits by such companies, thus reducing consumer choice (in particular with regard to consumers benefitting from larger ecosystems)? EE: (Comments): We are concerned about Article 5 (2) which provides certain restrictions to gatekeepers but seemingly allows others to incite or stimulate the user for commercial purposes (see also Art. 6(2)(d).). It may also constitute an unproportionate interference with the gatekeepers' freedom to conduct business as well as potentially lead to harming the interests of consumers. OPTION A: Delete article 5 (2) entirely.

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	OPTION B: Another solution might be to delete Article 5(2)(c). In such case, the gatekeepers would be restricted from receiving the data from the data holder (art 5(1)) or third parties (art 6(2)(d)), which would achieve the goal that the data sharing enabled by the Data Act will not end up entrenching the market position of gatekeepers but would still enable users to actively provide gatekeepers the data. Article 5(1) sections (a) and (b) help to ensure that such possibility couldn't be exploited by the gatekeepers.
	SE: (Comments): Article 5.2 of the Data Act excludes so called “gate-keepers” from the right to receive data requested by users of IOT products and services. The exclusion is motivated with the unrivalled ability of gatekeepers to acquire data, making it is unnecessary and disproportionate to oblige data holders to share data with the gate keepers. The exclusion of gatekeepers from the access right under Data act does not prevent these companies from obtaining data through other lawful means, presumably through contract arrangements with the data holder. The article is important and will influence how the market for data related services

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	and secondary markets develop in the EU moving forward. We would appreciate if the EU commission could comment on the following FICTIVE examples: 1. I'm an entrepreneur running a trucking company. I purchase my trucks from Company X. I am looking to improve the efficiency of my fleet and want to hire a data analytics company to analyse fuel economy, need for maintenance, repairs, financing etc. The data holder in this scenario is Company X, who in addition to the trucks, also provides data analytics services. However, after using the data analytics of Company X, I conclude that they are substandard and that their predictions are inaccurate. I therefore want to go gatekeeper Y who offers the market leading data analytics service for trucks. Company X does not however want to share the data with gatekeeper Y. Since the gatekeeper is excluded from the data sharing obligation, I cannot switch to the market leading service provider. Is this a correct understanding of the proposal? The example could equally be about an airline that wants to change its data analytics provider from the airplane manufacturer to a gatekeeper. 2. I am the CEO of a European media company that has been designated as a gatekeeper pursuant to DMA. I am looking to improve my services by gaining data from my consumer usage of IOT products like smart-tvs, streaming adapters, virtual assistants etc. I am at a disadvantage since my competitor (also a gatekeeper) are

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	selling these IOT products and consequently has direct access to the data. Pursuant to Article 5.2 I am not able to request the data from the consumers since I have been designated as a gatekeeper. Is this a correct understanding of the proposal?
(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);	
	SE: (Drafting): ~~(a) — solicit or commercially incentivise a user in any manner, including by providing monetary or any other compensation, to make data available to one of its services that the user has obtained pursuant to a request under Article 4(1);~~
(b) solicit or commercially incentivise a user to request the data holder to make data available to one of its services pursuant to paragraph 1 of this Article;	
	SE:

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	(Drafting): ~~(b) — solicit or commercially incentivise a user to request the data holder to make data available to one of its services pursuant to paragraph 1 of this Article;~~
(c) receive data from a user that the user has obtained pursuant to a request under Article 4(1).	DE: (Comments): Does this also concern data obtained according to the data portability rule of Art. 20 GDPR? EE: (Drafting): ~~(e) — receive data from a user that the user has obtained pursuant to a request under Article 4(1).~~ EE: (Comments): Option B (please see explanation above).

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	SE: (Drafting): ~~(e) — receive data from a user that the user has obtained pursuant to a request under Article 4(1).~~ ES: (Drafting): <u>Alternative 1:</u> Remove paragraph 2 of article 5. <u>Alternative 2:</u> New paragraph 3 in article 5. 3. Paragraph 2 does not prevent undertakings providing core platform services for which one or more of such services have been designated as a gatekeeper from obtaining and using the data of connected products through other lawful means. In particular, paragraph 2 does not prevent undertakings providing core platform

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	services for which one or more of such services have been designated as a gatekeeper from obtaining and using the data of connected products, upon the request of the user, when the manufacturer has contractually agreed with the gatekeeper that data from products they manufacture can be used by a gatekeeper company. Gatekeepers receiving data from connected products shall comply with Article 6 of this Regulation. ES: (Comments): The total prohibition of gatekeepers of receiving data of connected products would have prevented users of connected products (eg. smart watches) from porting data to services provided by gatekeepers (eg. health apps), which might be considered as value added services by the user. This could have discouraged users from buying connected products from small manufacturers and encourage users to buy products manufactured by gatekeepers themselves.

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	Recital 36 of the compromise text clarifies that the Data Act does not prevent gatekeepers from receiving and using data of connected products through other lawful means, including contractual agreements with manufactures. Thus, users of connected products could, with this amendment, port their data to services provided by gatekeepers if the manufacturer has reached an agreement with the gatekeeper. Now, the question arises as to whether, in those cases where a gatekeeper receives data of a connected product based on a contractual agreement with a manufacturer, said gatekeeper would be subject to the obligations that the Data Act imposes on third parties receiving data. In particular, if gatekeepers would be subject to the obligations and prohibitions regulated in article 6 (i.e. prohibition to use the received data for profiling, unless it is necessary to provide the service requested; prohibition to make the data available to another third party in raw, aggregated or derived form, unless it is necessary to provide the service requested, etc.). If gatekeepers receiving data of connected products would be subject to the provisions, obligations and prohibitions of the Data Act, it should be clearly explained in the text.

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	Nevertheless, if gatekeepers receiving data of connected products would not be subject to the provisions and obligations of the Data Act, it would be an advantage for gatekeepers in comparison to other data recipients: gatekeepers would probably be able to use the data for profiling for advertising purposes and gatekeepers would probably be able to sell data in raw, aggregated or derived form; whereas the rest of data recipients would be forbidden to do so.
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.	
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.	

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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.	FI: (Comments): Could the prohibition not to ‘derive insights about the economic situation, assets and production methods of or use by’ the user or third parties that could ‘undermine’ their ‘commercial position’ be mutually applicable to both the user and third parties vis-à-vis the data holder ? ES: (Drafting): 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 given permission to such use and has the technical possibility to withdraw that consent at any time. ES:

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	(Comments): <u>PRIORITY</u> In this article, the term “consent” is used, not in the sense of the GDPR, as proposed by the definition of “consent” included in the amendment of the compromise text, but in relation to non-personal data. The term ‘permission’ should be used instead.
	NL: (Drafting): 8a. It should be as easy for the user to refuse or discontinue access by the third party as it is for the user to authorise access. NL: (Comments): This principle, which is already formulated in recital 34, is an important safeguard to ensure users retain control over the use of their data after granting a third party access. We would therefore welcome its inclusion in the articles rather than the recitals.

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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) of Regulation (EU) 2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 and Article 5(3) of Regulation (EU) 2002/58 are fulfilled.	FI: (Drafting): 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) of Regulation (EU) 2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 and Article 5(3) of the Directive Regulation (EU) 2002/58 are fulfilled. FI: (Comments): To be corrected in articles 4(5)and 5(6): directive 2002/58/EC. DE: (Drafting): ~~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) of Regulation (EU)~~

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	2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 and Article 5(3) of Regulation (EU) 2002/58 are fulfilled. (...) Data holders and recipients should make best efforts to ensure that where personal data of other data subjects are shared there is a valid legal basis for the sharing of personal data of other data subjects. DE: (Comments): Scrutiny reservation: This question is answered by applicable data protection law and should not be addressed by the Data Act. EE: (Comments): How is this realized in practice? In other words, how you can be convinced of the right to transfer this data under the GDPR? Is it sufficient that someone just confirms the existence of the right to processing that kind of data or we accept that data receiver has to disclose all the customers' data (basically something from their database)? A legal basis is also required to disclose the data.

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7. Any failure on the part of the data holder and the third party to agree on arrangements for transmitting the data shall not hinder, prevent or interfere with the exercise of the rights of the data subject under Regulation (EU) 2016/679 and, in particular, with the right to data portability under Article 20 of that Regulation.	
8. Trade secrets shall only be disclosed to third parties to the extent that they are strictly necessary to fulfil the purpose 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.~~ The data holder shall identify the data which are protected as trade secrets.	FI: (Drafting): 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. Such measures shall be utilized in a limited manner and only when the shared data includes trade secrets as defined by national or EU law. ~~In such a case, the nature of the data as trade secrets and the measures for preserving the confidentiality shall be~~

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	specified in the agreement between the data holder and the third party. The data holder shall identify the data which are protected as trade secrets. NL: (Drafting): 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. The data holder shall identify the data which are protected as trade secrets. NL: (Comments): Especially regarding the third parties the risk of the disclosure of a trade secret is bigger as they are further removed and sometimes less professional parties who

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	simply and unintendedly do not know what the point of a trade secret is and how easy it can be lost forever. An agreement will make this clear to the third parties, so NL prefers to restore the crossed out text. IE: (Comments): IE is concerned that this provision may undermine effectiveness of trade secrets in protecting intellectual property. DE: (Comments): What are the legal consequences if the data holder and the third party do not agree on a confidentiality agreement? Is the user required to refuse the disclosure of the data in this case? FR: (Comments):

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	Si le détenteur des données et le tiers ne s'accordent pas sur les mesures nécessaires pour garantir la confidentialité des secrets d'affaires, le détenteur des données est-il obligé de mettre à la disposition du tiers des données identifiées comme des secrets d'affaires ? La responsabilité du détenteur des données peut-elle être engagée devant les organes de règlement des litiges si les parties à l'échange au sens du chapitre ne parviennent pas à s'entendre sur les mesures de protection nécessaires ?
	SE: (Drafting): 8. Trade secrets shall ~~only~~ not be obliged to 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.~~ The data holder shall identify the data which are protected as trade secrets.

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	SE: (Comments): Is it ok that companies should disclose trade secrets? Even if measures are taken it is a sensitive question.
9. ~~The right referred to in paragraph 1 shall not adversely affect data protection rights of others.~~	
Article 6 Obligations of third parties receiving data at the request of the user	FI: (Comments): Comment 1: We note that while article 5(5) clearly prohibits the use of non-personal data by the data holder to obtain information about the economic situation of a third party, there is no equivalent prohibition for a third party in article 6. Comment 2: From the outset, the data recipient should always be transparent to the user and the data holder about how the data will be used.

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	SI: (Comments): <i>The user shall not use the obtained data pursuant to a request referred to in paragraph 1 to develop product or obtain information that can jeopardise public or national security.</i> IE: (Comments): IE wishes to ensure that Article 6 does not interfere with the ability of consumers to make independent choices which will help them to achieve their objectives. DE: (Comments): Do third parties also have to take security precautions to ensure that data is handled securely?
1. A third party shall process the data made available to	HR:

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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.	(Drafting): 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, where all conditions and rules provided by data protection legislation are complied with 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. DE: (Comments): Is Regulation (EU) 2016/679 applicable on personal data regardless of this provision?
2. The third party shall not:	DE: (Comments): We are examining ways to prevent certain commercial practices, most importantly those that are incompatible with fundamental right to data protection, and ask the Presidency, other Member States and the Commission for their opinion on this matter."

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(a) coerce, deceive or manipulate in any way the user or the data subject where the user is not a data subject, ~~in any way~~, 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;	PT: (Comments): The new definition has “data subject” as a subset of users. If the current definition is kept, this sentence must be reworded, as if someone is a data subject, he is also a user. If the current definition is changed, it should still be reworded as a user can be a natural person (and thus implicitly a data subject) DE: (Comments): Scrutiny Reservation on the scope of B2C rules. Does Art. 6(2)(a) already apply before access is granted to third parties under Art. 5? Are users also protected from dark patterns when exercising their access right under

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	Art. 4?
	DE: (Drafting): aa) use anonymised data for the processing of data in such a manner that it can be attributed to a specific data subject (de-anonymisation);
(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 to ~~provide~~ provide for a purpose that is integral to the delivery of the service requested by the user;	FI: (Drafting): (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 to ~~provide~~ provide for a purpose that is integral to the performance delivery of the service requested by the user; FI: (Comments): Should this be 'performance' rather than 'delivery' ? PT:

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	(Comments): Could you please clarify the meaning of objectively necessary? What metrics are to be used? DE: (Comments): See above, scrutiny reservation on relationship between and scopes of Data Act and GDPR EE: (Drafting): (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 to provide for a purpose that is integral to the delivery of the service requested by the user; <u>and where there is a valid legal basis under Article 6 of Regulation (EU) 2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679;</u>

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	EE: (Comments): This article should be formulated (similarly) like Article 4(5) and 5(6).
(c) make the data it receives 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;	FI: (Comments): Here, the proposal uses the word ‘raw data’ – is that inconsistent with the other parts of this proposal ? EL: (Comments): According to the definition we have in mind is it possible that raw data are beyond the scope of the regulation?
(d) make the data it receives available ~~it receives~~ to an undertaking providing core platform services for which	FI:

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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)];	(Drafting): 'Any undertaking providing core platform services ~~for which one or more of such services~~ and which has ~~have~~ been designated as a gatekeeper, pursuant to Article [...] of [Regulation XXX on contestable and fair markets in the digital sector (Digital Markets Act)⁷³], shall not be an eligible third party under this Article and therefore shall not: - - ' FI: (Comments): Please see our comment for article 5(2).
(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;	FI: (Comments): We want to allow for competition, in case rights are not violated, but not sharing to other third parties without separate agreement / permission from the user or the manufacturer.

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	DK: (Drafting): (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; DK: (Comments): Same as for article 4.4, it is unclear to us how it would be interpreted and enforced in practice. Mainly, it is difficult if not impossible to define what could constitute a competing product in the future, especially for digital products. DE: (Comments): See comment above Art. 4 (4).
(f) prevent the user, including through contractual	

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commitments, from making the data it receives available to other parties.	
Article 7 Scope of business to consumer and business to business data sharing obligations	
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	FI: (Drafting): 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

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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.	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.~~ FI: (Comments): Adding (or excluding) medium-sized enterprises to the scope of the derogation based on the size of the company is very open to interpretation. (Is it thus the idea that a company can enjoy the exception for one year from the moment it became medium-sized? The part of the sentence on placing products on the market is even more unclear.) Thus, we are not in favor of the proposed amendment to article 7(1), but prefer the Commission's proposal. (See also our comment for article 42). We would rather see that the scope of application of these duties would not depend (only) on size, but rather, for instance on the role of the company in a given data ecosystem and/or a value chain. We are also available to assist with further drafting, in case needed. At least the exception of every new product should be omitted. DK: (Drafting): ~~1. The obligations of this Chapter shall not apply to data generated by the use of~~

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	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. DK: (Comments): Limiting user rights based on the size of the enterprise, which provides the product, is in our view incoherent with the core principles of the Act. Worse, such an exemption risks creating a loophole to circumvent these new obligations. Further, we do not understand the reasoning behind the new addition regarding medium-sized enterprises. According to Recommendation 2003/361/EC article 4.2, companies only change status between micro, small and medium size when they have surpassed the

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	relevant criteria for two consecutive accounting years. Hence, the Recommendation itself already gives companies time to adapt to the new circumstances. This approach has also been used in regard to changing of status in the Accounting Directive. See also our suggestions regarding art. 14(2) cf. art. 20. NL: (Drafting): 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~~

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	~~medium-sized enterprise has been placed on the market for less than one year.~~ NL: (Comments): We are concerned that a year-long exemption for all products placed into market by medium enterprises will undermine the purpose of the regulation. Medium enterprises can put a lot of products into market in a year and new versions of IoT-products are often put into market. This exemption would therefore allow a large number of products which are non-compliant with this chapter to be put into market, rendering the users' rights to access and share data useless for such products. Additionally, to our understanding recommendation 2003/361/EC already includes a transition period for medium enterprises that only meet the threshold of that category for a short period of time. Furthermore, the implication of the legislation for all Iot-products already in the market before the Data Act comes into force should also be further clarified. ES:

Presidency compromise	Drafting Suggestions Comments
	(Drafting): ~~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.~~ ES: (Comments): We have doubts regarding the one-year deadline given to medium-size enterprises to comply with the obligations of the Data Act, in particular when the extended deadline applies to new products placed in the market by medium-size enterprises, as this provision would also have an impact on consumers. Clarification is needed on the scope of this exception, in particular, regarding whether they are only exempted from complying with access and transfer request during one year, or whether they are exempted from complying with all the provisions of the

Presidency compromise	Drafting Suggestions Comments
	Data Act, including design and transparency requirements, for all the products placed in the market during the first year.
2. ~~Where this Regulation Chapter 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.~~	
	DE: (Drafting): 3. A contractual term, [which does not fall under Chapter III and] which excludes the application of, derogates from or varies the effect of the user's rights under Chapter II shall not be binding.
CHAPTER III HORIZONTAL OBLIGATIONS FOR DATA HOLDERS LEGALLY OBLIGED TO MAKE DATA AVAILABLE IN BUSINESS-TO-BUSINESS RELATIONS	DK: (Comments): We are appreciative of how the headline now clarifies that this chapter concerns

Presidency compromise	Drafting Suggestions Comments
	horizontal obligations and only covers business-to-business relations, which makes it clear that public authorities are excluded.
Article 8 Conditions under which data holders make data available to data recipients	SK: (Comments): SK would welcome a response to the view of the EDPB/EDPS expressed in their position, specifically in paragraph 58. In this regard EDPB/EDPS argues, that the Article 8 foresees no role for, or reference to the data subject as terms and conditions for data sharing have to be determined in an agreement between the data holder and the data recipient. Indeed, in cases where the user is an entity other than the data subject, the latter is not part of the contract under the Proposal. This risks to severely compromise the effectiveness of data protection rights. Further risks in this context may stem from intermediation services and data brokerage, which could relate data that originally may be considered non-personal to specific data subjects.

Presidency compromise	Drafting Suggestions Comments
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 ~~implementing~~ adopted in accordance with 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.	PT: (Comments): We suggest adding “in accordance with ethical guidelines”. DK: (Comments): We support the changes DE: (Comments): Article 8 lays down conditions if "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". For reasons of transparency, it should be specified here in concrete terms and as an enumeration which access rights are affected by Article 8. Such a concrete indication should also be necessary with regard to the assessment of the extent to which the legal act can be based on the authorization under Art. 114 TFEU. The enumeration could be made directly in Article 8 or also by listing it in an

Presidency compromise	Drafting Suggestions Comments
	annex to the Data Act. What does "reasonable" mean? To what extent is reasonable required in addition to "fair"? Does reasonable refer only to compensation? If it refers only to compensation, isn't Article 9 sufficient? Is data provision “not discriminatory” if Article 8(3) is complied with? Then the mention of non-discriminatory in Article 8(1) could be omitted. COM is kindly asked to present a list of “other Union law or national legislation implementing Union law” according to paragraph 1. Further analysis required if "other Union law or national legislation implementing Union law” according to paragraph 1 should be listed in an Annex 10. ES: (Comments): According to Article 8, data sharing agreements shall be fair, reasonable, non-

Presidency compromise	Drafting Suggestions Comments
	discriminatory and transparent. Black and grey practices described in article 13, as well as model contract terms developed by the Commission, could be taken into account and used as guidance in order to evaluate whether B2B data sharing agreements are fair, reasonable, non-discriminatory and transparent, as imposed by article 8. A recital could be added to include this provision.
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.	DE: (Drafting): 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 is not fair[, not reasonable or discriminatory]. ~~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.~~ DE:

Presidency compromise	Drafting Suggestions Comments
	(Comments): It should be regulated in general, what applies if a contract condition is not fair, inappropriate or discriminatory. This should not only be regulated for contracts in which an SME is involved. FR: (Drafting): 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 is detrimental to the effectiveness of the user's rights under Chapter II. FR: (Comments): Les autorités françaises estiment que l'utilisation du verbe "varier" n'est pas suffisamment claire.

Presidency compromise	Drafting Suggestions Comments
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~~ shall without undue delay provide the data recipient, upon its request, with information showing the data holder to demonstrate that there has been no discrimination.	PT: (Comments): We suggest setting a specific time period instead of “<i>undue delay</i>”, to introduce more regulatory certainty and clarity. DE: (Comments): Does Art. 8(3) imply a general prohibition of self-preferencing? ES: (Comments): According to article 8(3), data holders shall not discriminate between comparable categories of data recipients. In order to enhance legal certainty, a recital should be included providing guidance interpreting the meaning of “comparable categories of data recipients”.

Presidency compromise	Drafting Suggestions Comments
	FR: (Drafting): 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~~ shall without undue delay provide the data recipient, upon its request, with information showing demonstrating ~~the data holder to demonstrate that there has been no~~ discrimination. FR: (Comments): Les autorités françaises estiment que l'utilisation du verbe "montrer" n'est pas suffisamment précise d'un point de vue juridique, et proposent à la Présidence de le remplacer par le verbe "démontrer".

Presidency compromise	Drafting Suggestions Comments
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.	DE: (Comments): See above scrutiny reservation on the scope of the Data Act and GDPR. Is this provision necessary? Concerning personal data Regulation (EU) 2016/679 applies. Concerning non-personal data, according to Art. 4 (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. Did the COM examine potential implications on competition associated with the prohibition of making data available to a data recipient on an exclusive basis, Art. 8(4)?
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	

Presidency compromise	Drafting Suggestions Comments
Regulation or other applicable Union law or national legislation ~~implementing~~ adopted in accordance with Union law.	
6. Unless otherwise provided by Union law, including Articles 4(3), 5(8) and 6 of this Regulation, or by national legislation ~~implementing~~ adopted in accordance with 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.	PT: (Comments): We suggest adding “in accordance with ethical guidelines”. (like we suggested in art. 8) DE: (Comments): Further analysis required if similar to Article 1(2) of Directive 93/13/EEC terms reflecting mandatory legislative or regulatory provisions and the provisions of the law of the European Union or the law of the Member States or principles of international conventions to which the Member States or the European Union are parties should be exempt from the standard and scrutiny of Article 8(2).

Presidency compromise	Drafting Suggestions Comments
	DE: (Drafting): 7. The contractual terms which reflect mandatory statutory or regulatory provisions of the law of the European Union and the provisions or principles of international conventions to which the Member States or the European Union are party shall not be subject to paragraph 2.
Article 9 Compensation for making data available	FI: (Comments): Compensation (moderate) is acceptable; while general price regulation is not. IE: (Comments): DE: (Comments):

Presidency compromise	Drafting Suggestions Comments
	The Data Act enables the reciprocity in the context of access to data, but may lead to an unlevel playing field in the context of the compensation. Even if Art. 9 (3) shall not preclude other Union law or national legislation implementing Union law from excluding compensation for making data available or providing for lower compensation, in reality this might lead to a situation where in the context of the PSD2 an institution has to provide the transaction data of the account free of costs, whereas the bank has to pay a compensation if it requires from the industry IoT-data of mobile devices. A consistent approach within the PSD2 review, open finance act as well as horizontal frameworks should be ensured. We suggest to give further guidelines on what might qualify a compensation as unreasonable in cases where the data concerned is personal data. (Also see above scrutiny reservation on scopes of Data Act and GDPR).
1. Any compensation agreed between a data holder and a data recipient for making data available in business-to-business relations shall be reasonable.	FI: (Drafting): 1. Any compensation agreed between a data holder and a data recipient for making data available in business-to-business relations shall be reasonable and shall not

Presidency compromise	Drafting Suggestions Comments
	exceed directly related to making the data available. FI: (Comments): We have also wondered, whether as an alternatively, this could refer to the FRAND terms (inc. for compensation)? DK: (Comments): We still find the reference to “<i>reasonable compensation</i>” too vague. We fear that it will cause legal uncertainty for both companies and enforcing authorities. We should further examine how the value of data can be determined, and whether existing legislation or business practices can help guide which criteria ought to be included. NL: (Drafting): Any compensation agreed between a data holder and a data recipient for making data available in business-to-business relations shall be reasonable, non-discriminatory

Presidency compromise	Drafting Suggestions Comments
	and linked to the costs directly related to making the data available to the data recipient and which are attributable to the request. These costs include the costs necessary for data reproduction, dissemination via electronic means and storage, but not of data collection or production. NL: (Comments): We are concerned the current provisions in paragraph 1 of article 9 will allow data holders to monetize individual users' (personal) data and will lead to lengthy disputes on compensation, undermining users' right to share data. The term 'reasonable compensation' should be further defined. While data holders should be able to receive some return-on-investment for costs incurred to make data available, the compensation should not be seen as paying for data itself. We believe possible improvements for this article could be that compensation should be non-discriminatory and explicitly linked to costs incurred. IE: (Comments): IE considers that "reasonable compensation" is too broad a concept and open to

Presidency compromise	Drafting Suggestions Comments
	interpretation. It should be more clearly defined to avoid legal uncertainty, especially for enforcement authorities. IE also wants greater clarity on how the mechanisms for compensation will work in practice? BE: (Comments): This notion of ‘compensation’ requires further examination and clarification, notably in light of the COM study. ES: (Comments): The concept of reasonable compensation should be further clarified. Further clarifications, examples or references could be included in the recitals. We are concerned that high compensation rates could be used by data holders as a way to hinder data portability rights.

Presidency compromise	Drafting Suggestions Comments
	FR: (Drafting): 1. Any compensation agreed between a data holder and a data recipient for making data available in business-to-business relations shall be reasonable, fair and non-discriminatory. FR: (Comments): Les autorités françaises suggèrent que les termes et conditions FRAND soient inclus dans cet article.
	DE: (Drafting): 1a. The costs associated with anonymising data which is made available directly to data recipients upon their request may be included in the compensation agreed. DE:

Presidency compromise	Drafting Suggestions Comments
	(Comments): We suggest to address these issues in the recitals.
2. Where the data recipient is a micro, small or medium enterprise, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as a micro, small or medium enterprise, 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. These costs include the costs necessary for data reproduction, dissemination via electronic means and storage, but not of data collection or production. Article 8(3) shall apply accordingly.	FI: (Comments): Comment: This section should not extent to intra-company settings ? Question: should it be specified here that ‘Paragraph 2 of article 9 applies only if the data recipient is an SME and the data holder is a large company ?’ PT: (Comments): Could you clarify the meaning of production? DK: (Comments): We support the clarifications made in this provision.

Presidency compromise	Drafting Suggestions Comments
	NL: (Comments): During the working parties the idea was posed to include public institutions in this paragraph. We are open to that idea and would welcome further discussions on it in council. IE: (Comments): IE has concerns that this may raise sector specific impacts for the use of data in relation to the health space. The proposed Data Act enhances portability of certain user-generated data, which can include health data, but does not provide rules for all health data. The current draft proposal for the EHDS Regulation, Article 3 (8) states that ‘By way of derogation from Article 9 of Regulation [...] [Data Act COM/2022/68 final], the data recipient shall not be required to compensate the data holder for making electronic health data available.’

Presidency compromise	Drafting Suggestions Comments
	However, this provision states that where the data recipient is a micro, small or medium enterprise any compensation agreed shall not exceed the costs directly related to making the data available to the data recipient - unless those enterprises do not have partner enterprises or linked enterprises (defined in Article 3 of the Annex to Recommendation 2003/361/EC). This additional provision could affect costs for GPs or smaller healthcare providers linked to larger partners, providing health information for primary use under the EHDS in the long term. DE: (Drafting): 2. Where the data recipient is a micro, small or medium enterprise, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as a micro, small or medium enterprise, 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. These costs include the costs necessary for data

Presidency compromise	Drafting Suggestions Comments
	reproduction, dissemination via electronic means and storage, but not of data collection or production. Article 8(3) shall apply accordingly; the data holder shall give the data recipient transparent information on the calculation of the costs directly related to making the data available. DE: (Comments): What about a data altruism organisation or a public body? Article 9 (2) provides only for SMEs that the compensation may not exceed the cost of making the data available. What applies to cases in which data are made available to consumers other than users as third parties within the meaning of Article 5? Do third parties who are users not have to pay any compensation, or do they at least also have to comply with the limitation under Article 9 (2)? Can a reasonable remuneration in individual cases also be lower than the remuneration regulated in Article 9 (2)? FR:

Presidency compromise	Drafting Suggestions Comments
	(Comments): Les autorités françaises sont favorables aux ajouts de la Présidence pour clarifier les coûts couverts par la rémunération des détenteurs de données par les destinataires des données, à condition que ces derniers répondent à la définition de l'article 2 de l'annexe de la recommandation 2003/361/CE. Les autorités françaises considèrent que des clarifications supplémentaires pourraient être apportées afin que les coûts liés à la reproduction, qui peuvent nécessiter des opérations de classification ou de séquençage, soient pleinement couverts par cet article. Ces clarifications concernant les opérations pouvant être induites par la reproduction de données pourraient être apportées dans le considérant 42.
	SE: (Drafting): 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. These costs include the costs necessary for data reproduction, dissemination via electronic means and storage, but not of including data collection and or production. Article 8(3) shall apply accordingly.

Presidency compromise	Drafting Suggestions Comments
	SE: (Comments): Enterprises have most often big costs/investments to collect, produce and store data. To at least get compensation that cover the cost of this data is reasonable even if the recipient is a SME.
3. This Article shall not preclude other Union law or national legislation ~~implementing~~ adopted in accordance with Union law from excluding compensation for making data available or providing for lower compensation.	FI: (Comments): Question: Should this para. detail under what conditions data holders can be obliged to share data with data recipients at a price lower than the actual cost or free of charge ? This would be to ensure that the possible elimination or reduction of compensation does not preclude the even enforcement of the Data act across the EU. DE: (Comments): Are there any examples of this?

Presidency compromise	Drafting Suggestions Comments
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.	DE: (Comments): When is the compensation reasonable? What are the factors to be used to determine reasonableness when Article 9(2) does not apply?
Article 10 Dispute settlement	FI: (Comments): We would just like to flag that we cannot yet fully support having a new dispute settlement mechanism and we might propose an alternative later on. NL: (Comments): This article should be supplemented by provisions that ensure certification is not eternal. Certifications should be renewed periodically and it should be possible to challenge a certification and revoke certification.

Presidency compromise	Drafting Suggestions Comments
	EE: (Comments): Establishing dispute settlement bodies under Article 10 is somewhat problematic, since it would potentially enable a private entity to make decisions concerning (among else) monetary claims referred to in Article 9. As we understand the logic of Article 10, these decisions would be binding and automatically enforceable. Since justice should generally be administered solely by the courts, the constitutionality of such a solution remains somewhat challengeable. Furthermore, it remains unclear how are these decisions enforced. For example, in Estonia, there is currently no mechanism that would enable automatic enforcement of a decision by such private dispute settlement body. Therefore, this solution would interfere with the domestic enforcement procedure law. In light of the principles of subsidiarity and proportionality, it is questionable whether a domain-specific regulation such as Data Act should and could prescribe that a Member State must create new entities administering justice that must have the power to make binding decisions and which require the Member State (as necessary) to amend their enforcement procedure law. FR:

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	(Comments): Afin de garantir le développement d'une jurisprudence cohérente et d'éviter une sorte d'effet d'aubaine, les autorités françaises suggèrent que la Présidence et la Commission envisagent la possibilité de publier des lignes directrices sur le règlement des litiges, auxquelles les organes de règlement des litiges devraient se conformer. Ces lignes directrices devraient donner des indications sur la manière dont les organes de règlement des litiges devraient traiter les types de litiges. L'introduction d'un mécanisme de règlements des différends semble opportune pour les autorités françaises pour traiter les différends technico-économiques entre acteurs qui vont survenir lors de la mise en œuvre du texte. Il permet aux parties en différend de bénéficier d'une analyse technique et spécialisée ainsi que d'une vitesse de traitement du litige que les tribunaux n'auront pas forcément. Cependant, (i) le caractère non systématiquement contraignant des décisions prises par les organismes de règlements différends, (ii) la multiplicité et la décentralisation des organismes, et (ii) la faiblesse des critères requis pour être un organisme nous semblent de nature à nuire à l'effectivité et à une implémentation harmonisée du Data Act. Nous serions ainsi preneurs de l'avis de la Commission et du Conseil sur les

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	propositions de (i) remplacer les organismes de règlements de différends par une autorité compétente pour chaque EM (§2), (ii) rendre contraignantes par défaut les décisions (§8). Les autorités françaises se tiennent à disposition de la Commission et du Conseil pour fournir des propositions d'amendements pour modifier en ce sens et mettre en cohérence l'article 10.
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.	BE: (Comments): The dispute settlement bodies are limited to disputes related to Articles 8 and 9. It seems advisable to extend its competence to Article 13.
2. The Member State where the dispute settlement body is established shall, at the request of that body, certify the body, where the body has demonstrated that it meets all of the following conditions:	FI: (Comments): ES:

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	(Comments): The Data Act should define in more detail the tasks and powers of dispute settlement bodies, as well as their certification requirements, the certification process and the revocation process. In particular, in order to avoid fragmentation, it is highly important that certification requirements are included in the Regulation in more detail. FR: (Comments): Les autorités françaises interrogent la Commission sur l'opportunité de remplacer les organismes chargés de régler les différends par une autorité compétente au sens de l'Article 31 du <i>Data Act</i>. Cette approche centralisée pourrait éviter une dispersion des instances entre plusieurs organismes privés certifiés, et permettrait de s'assurer que cette autorité ait les compétences techniques nécessaires pour juger d'un litige technique sur le partage des données.

Presidency compromise	Drafting Suggestions Comments
(a) it is impartial and independent, and it will issue its decisions in accordance with clear and fair rules of procedure;	FR: (Drafting): (a) it is impartial and independent, and it will issue its decisions in accordance with clear, non-discriminatory and fair rules of procedure;
(b) it has the necessary expertise in relation to the determination of fair, reasonable and non-discriminatory terms for and the transparent manner of making data available, allowing the body to effectively determine those terms;	BE: (Drafting): it has the necessary expertise in relation to the evaluation of fees and compensations , 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; BE: (Comments): Taking into account the tasks of the dispute settlement bodies, it is important that they have expertise in the field of evaluation of fee and compensation for

Presidency compromise	Drafting Suggestions Comments
	data sharing. We therefore suggest to explicitly include such requirement.
(c) it is easily accessible through electronic communication technology;	
(d) it is capable of issuing its decisions in a swift, efficient and cost-effective manner and in at least one official language of the Union.	
If no dispute settlement body is certified in a Member State by [date of application of the Regulation], that Member State shall establish and certify a dispute settlement body that fulfils the conditions set out in points (a) to (d) of this paragraph.	
3. Member States shall notify to the Commission the dispute settlement bodies certified in accordance with	

Presidency compromise	Drafting Suggestions Comments
paragraph 2. The Commission shall publish a list of those bodies on a dedicated website and keep it updated.	
4. Dispute settlement bodies shall make the fees, or the mechanisms used to determine the fees, known to the parties concerned before those parties request a decision.	
5. Dispute settlement bodies shall refuse to deal with a request to resolve a dispute that has already been brought before another dispute settlement body or before a court or a tribunal of a Member State.	FI: (Comments): Here paragraphs 5 and 9 should clarify if the parties can go directly to court or if they are obliged to go through a dispute settlement body as a first step. Also, there is no clarity on what happens if a user is requesting data to be made available, while there is an ongoing dispute between the data holders and the data recipients. SI: (Comments): This provision covers also the cross-border aspect (if dispute has been brought before

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	dispute settlement body in another Member State)? What if there are several disputes in different Member States with data holders and data recipients from different Member States)? Can users also use this dispute settlement body? FR: (Drafting): 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. bis) In order to ensure an uniform implementation of this Regulation, dispute settlement bodies shall take into account the guidelines issued by the Commission pursuant to article 9. When sectoral regulation specifying data sharing obligations already exists, dispute settlement bodies shall take it into account, as well as the existing guidelines issued by sectoral authorities. FR:

Presidency compromise	Drafting Suggestions Comments
	(Comments): Les autorités françaises souhaitent préciser que les organismes en charge des règlements de différends doivent prendre en compte les lignes directrices publiées par la Commission sur les conditions FRAND (cf. proposition d'amendement à l'article 9). Dans le cas où il y a déjà une régulation sectorielle qui précise des conditions de partage de données, les organismes doivent aussi prendre en compte cette régulation sectorielle et les éventuelles lignes directrices publiées par les autorités en charge de la régulation sectorielle. Cet amendement, en évoquant clairement la prise en compte d'autres textes, nous semble permettre : (i) d'améliorer la cohérence au sein de l'Union entre les différentes décisions prises par les organismes de règlement des litiges – et donc éviter le <i>forum shopping</i> des acteurs en fonction de l'indulgence des organismes et (ii) assurer une meilleure prise en compte de la régulation sectorielle, et donc une meilleure articulation du Data Act avec cette régulation sectorielle.
	FR: (Comments):

Presidency compromise	Drafting Suggestions Comments
6. Dispute settlement bodies shall grant the parties the possibility, within a reasonable period of time, to express their point of view on matters those parties have brought before those bodies. In that context, dispute settlement bodies shall provide those parties with the submissions of the other party and any statements made by experts. Those bodies shall grant the parties the possibility to comment on those submissions and statements.	
7. Dispute settlement bodies shall issue their decision on matters referred to them no later than 90 days after the request for a decision has been made. Those decisions shall be in writing or on a durable medium and shall be supported by a statement of reasons supporting the decision.	
7a. Dispute settlement bodies shall make publicly available annual activity reports. The annual report	

Presidency compromise	Drafting Suggestions Comments
shall include in particular the following information:	
(a) the number of disputes received;	
(b) the outcomes of those disputes;	FI: (Comments): NB: Usually dispute settlements are confidential.
(c) the average time taken to resolve the disputes;	
(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.	

Presidency compromise	Drafting Suggestions Comments
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.	FR: (Comments): Le caractère non systématiquement contraignant des décisions prises par les organismes de règlements différends nous semble de nature à nuire à l'effectivité du Data Act. En effet, la partie mise en cause (en particulier lorsqu'il s'agit de différends entre de grands et petits acteurs) pourra alors toujours refuser en amont d'accepter le caractère contraignant de la décision, en particulier si elle sait qu'elle profite de la situation. Elle a en effet intérêt à faire traîner son différend en justice pour profiter de sa situation. Nous serions donc preneurs de l'avis de la Commission et du Conseil sur l'opportunité de rendre ces décisions contraignantes dans tous les cas par exemple avec la formulation suivante : 8. The decision of the dispute settlement body shall be binding on the parties
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.	

Presidency compromise	Drafting Suggestions Comments
Article 11 Technical protection measures and provisions on unauthorised use or disclosure of data	FI: (Comments): Question: what about compensation for damages by the data recipient ? SK: (Comments): SK suggests further discussion on whom the burden of proof in relation to the protection of trade secrets lay. Once the relevant data has been passed to the user or data recipient it may be out of the data holders control. Therefore the data holder might not be able to oversee the sufficient protection of his trade secrets.
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	DE: (Comments): See above scrutiny reservation on smart contracts.

Presidency compromise	Drafting Suggestions Comments
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).	
2. Where a data recipient ~~that~~ has, for the purposes of obtaining data,	
- provided inaccurate or incomplete ~~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 in the sense of Article 6(2)(e), or	

Presidency compromise	Drafting Suggestions Comments
- has disclosed those data to another party without the data holder's authorisation,	
the data holder may request the data recipient to, without undue delay: ~~shall without undue delay, unless the data holder or the user instruct otherwise:~~	PT: (Comments): We suggest setting a specific time period instead of “<i>undue delay</i>”, to introduce more regulatory certainty and clarity.
(a) ~~destroy~~ erase the data made available by the data holder and any copies thereof;	
(b) end the production, offering, placing on the market or use of goods, derivative data or services produced on the basis of knowledge obtained through such data, or the importation, export or storage of infringing goods for those purposes, and destroy any infringing goods.	

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2a 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.	IE: (Comments): IE What rights do data subjects have in relation to this provision? DE: (Comments): Scrutiny Reservation: Given the scope ("user") and the consequences ("end the production, offering, placing on the market or use of goods, etc.") of the proposal the Commission is asked to clarify whether this provision is necessary and proportionate.
3. Paragraph 2, point (b), shall not apply in either of the following cases:	SK: (Drafting): ~~3. Paragraph 2, point (b), shall not apply in either of the following cases:~~ FR: (Drafting):

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	~~3. Paragraph 2, point (b), shall not apply in either of the following cases:~~
(a) use of the data has not caused significant harm to the data holder; or ;	SK: (Drafting): ~~(a) use of the data has not caused significant harm to the data holder; or ;~~ IE: (Comments): IE asks how will “significant harm” be defined? This is a concept with different meanings in different circumstances so some additional information/clarification would help here. FR: (Drafting): ~~(a) use of the data has not caused significant harm to the data holder; or ;~~

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(b) it would be disproportionate in light of the interests of the data holder.	SK: (Drafting): ~~(b) it would be disproportionate in light of the interests of the data holder.~~ FR: (Drafting): ~~(b) it would be disproportionate in light of the interests of the data holder.~~
	DE: (Drafting): (c) the data holder and the user of the product and related service have received payment by the data recipient for any damages incurred. DE: (Comments): In the interest of proportionality
Article 12	

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Scope of obligations for data holders legally obliged to make data available	
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 ~~implementing~~ adopted in accordance with Union law, to make data available to a data recipient.	
2. Any contractual term in a data sharing agreement which, to the detriment of one party, or, where applicable, to the detriment of the user, excludes the application of this Chapter, derogates from it, or varies its effect, shall not be binding on that party.	DE: (Comments): Would it be possible to clarify that a contract that is to the detriment of a party that is not part of the contractual agreement is non-binding? FR: (Drafting): 2. Any contractual term in a data sharing agreement which, to the detriment of one

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	party, or, where applicable, to the detriment of the user, excludes the application of this Chapter, derogates from it, or is detrimental to its effectiveness varies its effect, shall not be binding on that party. FR: (Comments): Les autorités françaises estiment que l'utilisation du verbe "varier" n'est pas suffisamment claire.
3. This Chapter shall only apply in relation to obligations to make data available under Union law or national legislation implementing Union law, which enter into force after [date of application of the Regulation].	
CHAPTER IV UNFAIR CONTRACTUAL TERMS RELATED TO DATA ACCESS AND USE ~~BETWEEN ENTERPRISES~~	

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Article 13 Unfair contractual terms unilaterally imposed on a micro, small or medium-sized enterprise	FI: (Comments): Question 1: Should this obligation (fairness test) be extended to all companies, no matter their size ? Adding (or excluding) medium-sized enterprises to the scope of the derogation based on the size of the company is very open to interpretation. (Is it thus the idea that a company can enjoy the exception for one year from the moment it became medium-sized? The part of the sentence on placing products on the market is even more unclear.) Thus, we would rather see that the scope of application of these duties would not depend (only) on size, but rather, for instance on the role of the company in a given data ecosystem and/or a value system. Comment 2: A new paragraph could be added as new last paragraph of this article: ‘The Commission shall conduct regular market investigation to review, and if necessary, revise, the unfair contractual terms listed in paragraph 3 and 4 of this Article.’ See further below, in the last comment section of this article. SI: (Comments):

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	There should be also a similar provision regarding unfair contractual terms unilaterally imposed on users. DE: (Drafting): Article 13 Unfair contractual terms unilaterally imposed on a ~~micro, small or medium-sized~~ another enterprise DE: (Comments): The scope of Article 13 should not be limited to terms used in contracts with SMEs. According to recital 51, the use of terms in contracts with large companies also entails a risk of the user leveraging its stronger bargaining position to exploit the weaker position of the other party. When a contract is concluded between two larger companies and one of the parties holds sufficient market power to impose contract terms on the other, Germany sees no reason to deny one company the protection of fairness checks. This also avoids the difficulties of defining companies in terms of

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	their size at the time of conclusion of the contract, as the criteria set out in Recommendation 2003/261/EC cannot be ascertained with legal certainty for all companies at the time of conclusion of the contract. It is especially difficult to reliably ascertain these criteria for the contracting party that unilaterally imposed the terms if a company's status has frequently shifted between SME and large company in the past. FR: (Drafting): Article 13 Unfair contractual terms unilaterally imposed ~~on a micro, small or medium-sized enterprise~~ on certain enterprises
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	DE: (Drafting): 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

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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, small or medium enterprise, shall not be binding on the latter enterprise if it is unfair.	unilaterally imposed by an enterprise on another enterprise a micro, small or medium-sized enterprise as defined in Article 2 of the Annex to Recommendation 2003/361/EC, ~~provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as a micro, small or medium enterprise~~, shall not be binding on the latter enterprise if it is unfair. DE: (Comments): <u>Insertion of “another enterprise” and deletion from “a micro...”</u>: Expansion of the scope of application to include all contracts and not just those with SMEs. <u>Substantive scope of application</u> According to information provided by the Commission, Article 13 should apply to all contractual agreements on data, even where there is no right of access pursuant to Article 5 of the Data Act. According to the definitions in Article 1 (1 to 3) this includes both personal and non-personal data. Why is Article 13 not limited to the cases specified in Article 8? The cases listed in Article 8 (right pursuant to Article 5 of the Data Act or rights arising from other legal acts) comprise material standards that could provide a benchmark in the matter of

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	fairness, and could thus serve as a model in the application of fairness checks in the courts of the individual Member States with respect to contractual agreements that go beyond statutory requirements. However, a uniform benchmark of this sort under European Union law is lacking for those contractual agreements that were concluded independently of existing access rights. Are uniform fairness checks on the basis of Article 13 even possible for “voluntary agreements” of this kind? Would such a broad provision still fall under the legal basis of Article 114 TFEU? Germany kindly requests an assessment by the Council’s Legal Service of the extent to which the provisions on unfair contract terms can be based on Article 114 TFEU if they are to be applicable to all contracts governing data use. On the scope of application, here: <u>“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”</u>: To what extent is Article 13 conclusive, with the result that national provisions governing fairness checks are ruled out by the Data Act? Would this limitation of scope mean that a contract containing provisions such as those specified <u>and</u> other contractual provisions might have to be subjected to two separate fairness checks? I.e., according to Article 13 for data-related terms, and according to

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	the fairness benchmark provided for by national law with regard to other terms (e.g. delayed monetary compensation, offsetting, etc.)? What is the legal status of mixed contracts? How are standard contract terms agreed both for data use and for other contractual services to be evaluated? Can they be deemed ineffective in their totality if they are in violation either of the Act or of national law, or must they be deemed effective with regard to data use if they are not in violation of Article 13? What is the relationship between the definition of “unfairness” in Article 13(2) and the FRAND requirement in Article 8(1)? BE: (Comments): a) The criterion of “unilaterally imposed” appears at first sight too vague. We see nevertheless that later in the text (art. 13.5.), this term is defined as “drafted in advance without possibility of the contracting party to influence its content”.

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	This is also the description of ‘not individually negotiated’ in article 3.2. of the Directive 93/13 on unfair terms in consumer contracts. We propose therefore to merge paragraphs 1 and 5 due to the fact that they are both related to the personal scope. We also recommend to complement this Article with the remaining ‘presumptions’ contained in Article 3.2 of the Directive 93/13: “The fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this Article to the rest of a contract if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract.” [...] In addition, we stress the need to have more “flexibility” for the definition of ‘individually imposed’. This is an important point for BE. <i>b)</i> Proposal to move art. 13.7. in an additional paragraph here, as this concerns the <i>scope</i> of the legal regime on unfair contract terms (exclusion of core terms) and is better at its place in the beginning, with the definition of the personal and

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	material scope: see infra. FR: (Drafting): 1(a). 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 designated as a gatekeeper, pursuant to Article [...] of [Regulation XXX on contestable and fair markets in the digital sector (Digital Markets Act)] on an enterprise ~~on a micro, small or medium-sized enterprise as defined in Article 2 of the Annex to Recommendation 2003/361/EC, provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as a micro, small or medium enterprise,~~ shall not be binding on the latter enterprise if it is unfair. FR:

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	(Comments): Au regard de l'objectif affiché par le Data Act, de permettre aux consommateurs et aux entreprises de prendre le contrôle de leurs données et d'accroître la circulation des données, les autorités françaises estiment qu'il est indispensable d'équilibrer les relations contractuelles dans le cadre du partage des données. Compte tenu de la position dominante dans laquelle se trouvent certains acteurs en matière de propriété des données et en raison de leur pouvoir de marché souvent très important, les autorités françaises estiment que des dispositions doivent être adoptées pour établir un équilibre dans les relations contractuelles entre ces opérateurs dominants et les autres acteurs économiques. Cette typologie d'acteurs a déjà été identifiée dans le règlement sur les marchés numériques (DMA) et est utilisée dans l'article 5 du Data Act. Les autorités françaises proposent donc un nouvel article (1. a) qui étend le champ d'application du chapitre IV aux relations contractuelles entre les entreprises désignées comme "gatekeepers" et toute autre entreprise.
2. A contractual term is unfair if it is of such a nature that its use grossly deviates from good commercial	FI:

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practice in data access and use, contrary to good faith and fair dealing.	(Comments): Comment: From a general point of view, we are not in favour of having non-compete clauses to circumvent the data access. We were also wondering if this para is needed: the legal obligation comes from para 1 and the content from paras 3 and 4. DE: (Drafting): 2. A contractual term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment to the party upon whom the contractual term has been unilaterally imposed. ~~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.~~ DE: (Comments): We consider Paragraph 2 as proposed not a suitable benchmark for fairness checks as

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	it raises too many questions and is not conducive to the desired harmonisation of laws. Which sphere of commercial practice is intended (regional, national or European commercial practice)? Can a European commercial practice emerge from different contract law systems? What happens until a commercial practice has emerged for new contracts? Who shapes commercial practice (the companies that succeed in imposing their contract terms on the market?) How can the relevant commercial practice be ascertained by the courts? Under what conditions is a commercial practice to be considered “good”? Why not consider every deviation from good commercial practice to be unfair, as opposed to merely gross deviations? What constitutes a gross deviation? Recital 2 points to the current existence of “abuse of contractual imbalances with regards to data access and use”. This suggests that whereas commercial practice exists, it is not necessarily good commercial practice. If there is no good commercial practice, where should a court seek the general benchmark by which to evaluate contract terms? Accordingly, Germany believes that it makes more sense to specify an assessment benchmark that carries greater legal weight. Such a standard has been in place for years in Directive 93/13/EEC. This standard permits verification against existing contract law. Given that the contract law applicable to b2b contracts is

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	different from that applicable to b2c contracts, the standard provides a separate benchmark for each case. BE: (Comments): In article 13.2., the general definition of unfair contractual term, the “material criterion” is described. We prefer, as in the directive 1993/13 on unfair terms and the common frame of reference (see Art. 9:402, a more concrete juridical criterion as “significantly disadvantages the latter enterprise, [contrary to good faith and fair dealing]”). FR: (Drafting): 2. A contractual term is unfair if, contrary to the requirement of good faith or fair dealing, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of a micro, small or medium-sized enterprise or if it is of such a nature that its use grossly deviates

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	from good commercial practice in data access and use, contrary to good faith and fair dealing. FR: (Comments): Il serait souhaitable de faire référence au concept de “déséquilibre significatif” qui est un concept commun pour définir la clause abusive en droit européen et français de la consommation (article 3.1 de la directive 93/13). Il est de même utilisé concernant les rapports B2B dans le droit civil (article 1171 du code civil) et dans le droit commercial français (article L.442-1 I 2° du code de commerce).
3. A contractual term is unfair for the purposes of ~~this Article~~ paragraph 2 if its object or effect is to:	DE: (Drafting): 3. In particular, a contractual term is unfair for the purposes of ~~this Article~~ paragraph 2 if its object or effect is to: DE:

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	(Comments): Germany's view is that all unfairness conditions should be specified in a "black list". "Grey lists" create considerable legal uncertainty for both contracting parties, as at the time of conclusion of the contract they are unable to predict with certainty whether a term included in a "grey list" will be deemed ineffective or, in light of the particular circumstances of each specific case, effective. Germany is therefore in favour of including only a "black list" in the catalogue, but rewording the terms in such a way as to make them fit for purpose and to allow sufficient leeway for evaluation in light of the facts of the case at hand. This also allows individual unfairness conditions to be listed together. The insertion of "especially" is suggested in order to make it clear that this is simply a specific manifestation of the general clause in paragraph 2.
(a) exclude or limit the liability of the party that unilaterally imposed the term for intentional acts or gross negligence;	DE: (Drafting): (a) inappropriately exclude or limit the liability of the party that unilaterally

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	imposed the term for intentional acts or gross negligence or extends the liability of the enterprise upon whom the term has been imposed DE: (Comments): A more general wording is needed here in order to better account for the nature of the breach and the resulting damages within the unfairness condition. Otherwise, verifications on the basis of this unfairness condition and the general clause in paragraph 2 will frequently yield different results. Moreover, the unfairness condition should be expanded: as it stands, only the exclusion of liability of the party that unilaterally imposed the terms is addressed. It should also be stipulated that the party that unilaterally imposed the terms cannot also be able to unreasonably extend the liability of the other party. BE: (Drafting): “...or excludes its liability in case of non-performance of its essential

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	obligations”. BE: (Comments): In Belgium civil law, also those terms that exclude liability of the main object of the contract are considered as unfair exoneration clauses.
(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;	DE: (Drafting): ~~(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;~~ DE: (Comments): Unnecessary if paragraph 4 (a) of the Commission’s proposal is included in the black

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	list (see letter c - new).
(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.	DE: (Drafting): (e) (b) give the party that unilaterally imposed the term the exclusive right to determine whether the data supplied are in conformity with the contract or to interpret any term of the contract.
4. A contractual term is presumed unfair for the purposes of ~~this Article~~ paragraph 2 if its object or effect is to:	DE: (Drafting): ~~4. A contractual term is presumed unfair for the purposes of <u>this Article</u> paragraph 2 if its object or effect is to:~~ DE: (Comments): See comment on paragraph 3. There should only be a black list.

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(a) inappropriately limit the remedies in case of non-performance of contractual obligations or the liability in case of breach of those obligations;	DE: (Drafting): ~~(a)~~ (c) inappropriately limit the remedies in case of non-performance of contractual obligations or the liability in case of breach of those obligations; DE: (Comments): Editorial amendment to the numbering.
(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;	DE: (Drafting): ~~(b)~~ (d) 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; DE:

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	(Comments): Such a term should be ineffective if it is in any way detrimental to the legitimate interests of the party whose data is to be made available.
(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;	DE: (Drafting): ~~(e)~~ (e) 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; DE: (Comments): For Germany it is unclear what is meant by “proportionate” here. In Germany’s view,

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	the question is whether the use and value of the data are to be weighed against each other (in which case “proportionate”), or whether a wider assessment of the overall circumstances is to be undertaken (in which case “reasonable” may be preferable).
(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;	DE: (Drafting): ~~(d)~~ (f) 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; DE: (Comments): Editorial amendment to the numbering.
(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	DE: (Drafting):

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comparable service and the financial detriment caused by such termination, except where there are serious grounds for doing so.	(e) (g) 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. DE: (Comments): Editorial amendment to the numbering.
5. A contractual term shall be considered to be unilaterally imposed within the meaning of this Article if it has been ~~supplied~~ drafted in advance 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~~ drafted in advance a contractual term bears the burden of proving that that term has not been unilaterally imposed.	DE: (Drafting): ~~5.~~ 4. A contractual term shall be considered to be unilaterally imposed within the meaning of this Article if it has been ~~supplied~~ drafted in advance by ~~or for~~ one contracting party and the other contracting party has therefore not been able to influence its content ~~despite an attempt to negotiate it~~. The contracting party that ~~supplied~~ supplied the in advance ~~drafted in advance~~ a contractual term bears the burden of proving that that term has not been unilaterally imposed.

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	DE: (Comments): The scope should include all contract terms drafted in advance if one party makes them the basis for the contract. This should also apply if that party unilaterally imposes contract terms drafted in advance by third parties (e.g. associations) on the other party. BE: (Comments): See above our proposal to merge this paragraph 1. FR: (Drafting): 5. A contractual term shall be considered to be unilaterally imposed within the meaning of this Article if it has been supplied drafted in advance by one contracting party and the other contracting party has not been able to influence its content despite

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	an attempt to negotiate it. The contracting party that supplied drafted in advance a contractual term bears the burden of proving that that term has not been unilaterally imposed. FR: (Comments): Les autorités françaises estiment que la formulation actuelle réduit inutilement le champ d'application des dispositions relatives aux clauses contractuelles abusives.
6. Where the unfair contractual term is severable from the remaining terms of the contract, those remaining terms shall remain binding.	DE: (Drafting): 6 5. Where the unfair contractual term is severable from the remaining terms of the contract, those remaining terms shall remain binding. The remaining terms shall not be binding, if upholding the remaining terms would be an unreasonable hardship for one party. DE:

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	(Comments): Germany asks whether the proposed wording is appropriate if, regardless of the applicable substantive law, the contract should always be upheld in such cases. If crucial terms of the contract become ineffective, it must be asked to what extent upholding the contract constitutes an unreasonable hardship for one or both parties. Germany therefore proposes a corresponding addition. The following question must also be asked: What conditions/legal situation apply if a contract term is declared ineffective? In Germany's view, the resulting legal situation is determined by the relevant applicable law. This could also be clarified.
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.	DK: (Drafting): 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.~~ DK:

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	(Comments): It is unfortunate that the main obstacle to voluntary data sharing is not addressed here. The Commission's stakeholder consultations revealed that SMEs primarily struggled to get access to data due to unreasonable prices unilaterally imposed by data holders. In Denmark, the industry reports that this also an issue for larger enterprises. While it may not be feasible to deem a contractual term determining the price "null and void" as is done for other terms on data sharing and access in art. 13, a more pragmatic solution might be possible. We have made some suggestions below. DE: (Drafting): ~~7.~~ 6. 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. DE: (Comments): Editorial amendment to the numbering.

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	BE: (Comments): First of all, we suggest to move this paragraph at the beginning of this Article, in paragraph 1. Moreover, we consider that the exclusion of “terms determining the price” is too broad. Price indexation clauses for example, are subject to control of their unfair character. Only the ratio price- performance is not to be controlled, it is upon the ‘market’ to determine that a given price is adequate. For this reason, it appears to be better to take over the formulation in the unfair terms directive: [...nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplies in exchange, on the other, in so far as these terms are in plain intelligible language.] FR: (Drafting): 2. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the

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	price and remuneration, on the one hand, as against the services, contents and data supplied in exchange, on the other, in so far as these terms are in plain intelligible language. FR: (Comments): Il conviendrait de préférer sur ce point la rédaction de la directive 93/13/CEE, qui est plus claire sur la question des clauses relatives au prix, qui est également reprise dans le Code civil français : “L'appréciation du caractère abusif des clauses ne porte ni sur la définition de l'objet principal du contrat ni sur l'adéquation entre le prix et la rémunération, d'une part, et les services ou les biens à fournir en contrepartie, d'autre part, pour autant que ces clauses soient rédigées de façon claire et compréhensible”.
	DK: (Drafting): 7a. Paragraph 1 of this Article does not apply to contractual terms determining the price to be paid. Where a micro, small or medium-sized enterprise as defined in Article 2 of the Annex to Recommendation 2003/361/EC considers the price to be paid for the access to and use of data unreasonable, and the contractual term has been

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	unilaterally imposed by the other contracting party, it shall be for the other contracting party to demonstrate that the price is reasonable. DK: (Comments): In order to reach the goals of removing barriers to the sharing and reuse of data as well as ensuring a fairer allocation of value in the data economy, we must address the greatest obstacle to voluntary data sharing which is unreasonable pricing. Especially SMEs struggle to get access to data as they are faced with unreasonable prices by parties with a greater bargaining power. We thus suggest including a new provision which addresses the imbalance in negotiating power of contracting parties on determining a price for the access to and use of data. Our suggestion clarifies that contractual terms regarding the price are not covered by Paragraph 1, hence unlike for other contractual terms regarding access to and use of data that are unfair, the contractual term regarding the price will not be nullified if deemed unfair. Instead, our suggestion gives SMEs a fair chance when contesting a price in court, by placing the burden of proof on the contracting party

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	that has unilaterally set the price. A similar obligation can be found in Article 8 of the Data Act. What constitutes a reasonable price can be based on a combination of what constitutes reasonable compensation in accordance with article 9, as well as a margin based on market prices. This could further be clarified in a recital. In order to provide SMEs with a more affordable method for addressing unfair price setting, it can further be considered to alter the scope of the dispute settlement bodies established in article 10 in order to allow them to determine prices for data access and use. Alternatively, the article could have a similar requirement as posed in Article 12 in the P2B Regulation, which requires online platform providers to name a minimum of two mediators that the provider would be willing to use to resolve a dispute.
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.	FI: (Drafting): Suggestion for a new para. 9: The Commission shall conduct a regular market investigation to review and, if necessary, revise the unfair contractual terms listed in paragraphs 3 and 4 of this Article.

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	DE: (Drafting): 8. 7. The parties to a contract covered by paragraph 1 may not exclude the application of this Article, derogate from it, or vary its effects.
CHAPTER V [MAKING DATA AVAILABLE TO PUBLIC SECTOR BODIES AND ~~UNION INSTITUTIONS, AGENCIES~~ THE COMMISSION OR UNION BODIES BASED ON EXCEPTIONAL NEED]	FI: (Comments): Chapter V could also be examined from the perspective of agility, including the requirements laid down in it for requests for information. For the data requests, it would be a good idea to define the minimum information needed and the timetable for responding to and implementing the request. Also, once the data is provided to the public sector body, it should have the responsibility over its use. Question: How has the "third sector" (associations, foundations etc.) been taken account in this ? this relates also to the end of article 1a. (c). Should that rather read: 'a business, a non-governmental organisation, a public sector body or consumer'. ? This could add clarity.

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	BG: (Drafting): CHAPTER V [MAKING DATA AVAILABLE TO PUBLIC SECTOR BODIES AND UNION INSTITUTIONS, AGENCIES THE COMMISSION OR UNION BODIES BASED ON EXCEPTIONAL NEED] BG: (Comments): It is still unclear what would be the actual scope of this Chapter in general. Moreover, normally a scope of a chapter may not be regulated through the title of the chapter itself but by amending the relevant articles. It anyhow seems to be rather wide in scope and allowing for any types of public bodies at national and EU level to request data under this mechanism. However, we would suggest a simplification of

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	the title and regulating the scope through the provisions of the articles in the chapter. DK: (Comments): We can support the change to the title and, consequently, the corresponding changes to be made throughout the chapter. We agree with the Presidency to narrow down the scope with regards to Union institutions' and agencies' access rights. SK: (Comments): SK would welcome the inclusion of an audit mechanism of the data provided in the scope of the chapter V. Such an auditing mechanism would be responsible for assessing, for example, the completeness or credibility of the data provided. The case law of the CJEU and the Slovak Constitutional Court has repeatedly stated how it envisages "independent oversight" in the provision of such data for the public sector. In short, it must be an entity "independent" from the one under review (e.g. a judge when reviewing wiretap orders from investigators) and at the same time this entity must have effective powers to intervene (i.e. not just to formally clear something, but

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	also to model, prohibit, reverse...). PL: (Drafting): CHAPTER V [MAKING DATA AVAILABLE TO PUBLIC SECTOR BODIES AND UNION INSTITUTIONS, AGENCIES THE COMMISSION OR UNION BODIES BASED ON PUBLIC INTEREST EXCEPTIONAL NEED] PL: (Comments): PL preference is to substitute “exceptional need” by “public interest” all over the chapter and other relevant references in DA NL: (Comments):

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	The Netherlands seriously doubts whether this chapter should be part of the proposal. The necessity and subsidiarity of this chapter has been insufficiently established, while the measures lack adequate foreseeability and safeguards against potential abuse. We are concerned the proposed measures provide a very broad base for public bodies to request and use (personal) data at their own discretion. The risk of infringements in fundamental rights, among which the right to privacy and the right to property, are considerable and disproportionate to the goal of the chapter. If such a mechanism to request data in cases of exceptional need is included, this chapter in itself should not constitute a legal base to process data. Public sector bodies should have a separate specific and proportionate legal base to process data in order to invoke the created mechanism. This would allow for a harmonized mechanism to request data across the EU, without creating substantial risks to fundamental rights. Additionally, the judgement of the requests should not be left to the data holder. An independent body should also have the competence to reject requests that do not comply with the requirements in this chapter. In addition to these fundamental but necessary changes to the chapter we have also proposed smaller amendments. While these amendments would mitigate the risks of

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	this chapter to a certain extent, our primary concern can only be completely addressed by removal of the legal base to process data and allowing the requests to be judged by an independent body. SI: (Comments): Since Article 35 and also Chapter V of the proposal of the regulation restrict the legal protection of the holders of related rights (sui generis) of the database creator, it is actually an amendment to Article 9 of Directive 96/9/EC on the legal protection of databases. Therefore, we would like an explanation of the relationship between Article 35 and Chapter V of the Draft Regulation in relation to Article 9 of Directive 96/9/EC on the legal protection of databases. Exceptional need is never defined. It just seems to exist? We propose it should be defined more narrowly. EE:

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	(Comments): This chapter is one of our main concerns. If we are to include it in the final proposal, it would have to be in a very minimized form. That is, only in exceptional circumstances (which is an emergency), and also free of charge (in this case to the administrative body).
<i>Article 14</i> <i>Obligation to make data available based on exceptional need</i>	DE: (Comments): Scrutiny reservation: Further analysis needed in order to ensure a clear, predictable and precise legal framework for affected data holders while at the same time also taking into account the public sector' legitimate interests for access to data to fulfil their legal obligations. Since Chapter V only covers cases of exceptional need carried out in the public interest, how could, in the opinion of the Commission, cases of common, regular requests for data access be regulated?

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	EL: (Comments): <i>A narrow definition of exceptional need must be provided. Otherwise the member states has to seperately define that, according to their respective legal framework.</i>
1. Upon request, a data holder shall make data, including relevant metadata, available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested in order to carry out their legal competencies in the public interest.	FI: (Drafting): Upon request, a data holder shall make the necessary data, including relevant metadata, available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested in order to carry out their ~~legal competencies~~ statutory duties in the public interest. FI: (Comments): Despite the seeming simplicity of the paragraph, it is legally a quite complex one. This is because this paragraph creates an exception to the freedom of contract and the

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	protection of property. Such an exception can be made, but there seem to be some conditions stemming from Article 52(1) of the Charter of Fundamental Rights: ‘Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.’ The condition of necessity also stems from the GDPR in those cases where the data would include personal data. Thus, we would propose to add the limitation to “necessary” data (this would also make this paragraph be in line with paras 15(a-b)). We would also suggest changing the notion of ‘legal competences’ to ‘statutory duties’ as it seems more appropriate and more strictly defined. BG: (Drafting): 1. Upon request, a data holder shall make data, including relevant metadata if requested explicitly, available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested in order to carry out their legal competencies in the public interest.

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	BG: (Comments): We believe that meta data should be provided upon explicit request and not by default with other data for the reasons already stated above. PT: (Drafting): 1. Upon request, a data holder shall make data, ~~including relevant metadata,~~ available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested in order to carry out their legal competencies in the public interest. PT: (Comments): This sentence is redundant. The proposal concerns the use of data. Metadata, being a subset of data, does not need

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	to be mentioned. DK: (Comments): We are very supportive of the clarification that the extraordinary need for data should be linked with the public sector body's legal competence. However, we do not see the legal reason for the addition that data holders are obliged to share metadata in this provision as there is nothing in the original text that excludes access to metadata. The reference to metadata would be more appropriately placed in article 18 regarding obligations for data holders. IE: (Comments): IE The term "exceptional" invites many different interpretations. More clarity should be given, perhaps by including examples of when this ruling would apply e.g. during a pandemic.

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	It also makes it difficult to envisage sustainable access for public sector bodies and national statistical institutes to access privately held data. DE: (Comments): Why are metadata explicitly mentioned in Art. Art. 14 (1) and Art. 17? IT: (Drafting): 1. Upon request, a data holder shall make data, including relevant metadata, available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested in order to carry out their legal competencies fulfill a specific task in the public interest provided by law. IT: (Comments):

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	“Legal competencies” could be misinterpreted and therefore the reference to the fulfilment of the public interest provided by law seems appropriate and consistent with related Recitals. BE: (Comments): The COM uses the notion of public sector body sets out in the Open data directive which does not explain what kind of bodies governed by public law may be included. Does the COM intend to have a broader notion of public sector body in this instrument than in the DGA and, in such a case, for what reasons? In addition, in accordance with recital 64, there should be a legal basis in accordance with Article 6.1 GDPR if the data consists of personal data. However, this Article 14 does not clarify if it constitutes, by itself, a legal basis for the processing of personal data as required in Article 6.1 GDPR. If yes, could the COM explain the reasons and consequences of this? In any case, this should be explicitly clarified in the text. EL:

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	(Comments): The form of the request should be dictated by the national authorities. Which will be the standards for such a request? FR: (Drafting): 1. Upon request, a data holder shall make data, including relevant metadata, available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested in order to carry out their legal competencies, defined in Union law or national law, in the public interest.
	NL: (Drafting): (1a) This chapter does not provide public sector bodies and union institutions, agencies or bodies with a legal basis to process personal data. To request personal data public sector bodies and union institutions, agencies or bodies need to have a legal basis in separate national or EU legislation, in line with Regulation (EU)

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	2016/679. NL: (Comments): If this chapter would provide a legal basis for processing (personal) data that legal basis would be too broad, disproportionate and unforeseeable. This would not be in compliance with the principles of the GDPR
2. This Chapter shall not apply to small and micro enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC.	FI: (Comments): Although we are in favor of some adjustment to the effects of this Act on smaller players in the economy, the ‘sharing of data’ should be seen as the new normal and necessity in the digital market. Therefore we see that adding (or excluding) medium-sized enterprises to the scope of the derogation based on the size of the company can have negative counter effects in the longer run and is also very open to interpretation. (Is it thus the idea that a company can enjoy the exception for one year from the moment it became medium-sized? The part of the sentence on placing products on the market is even more unclear.) Thus, we would rather see that the scope of application of these duties would not depend (only) on size, but rather, for instance on the role of

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	the company in a given data ecosystem. We would like to offer drafting help to formulate these into transitional requirements in a way that they better take these concerns into account. BG: (Comments): On many occasions SMEs would hold valuable data and such an exception seems disproportionate. Additional criteria should apply depending on the type or volume of data, etc. DK: (Drafting): ~~2. — This Chapter shall not apply to small and micro enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC.~~ DK: (Comments): In line with our comments above on art. 7, we find an exemption of small and micro-

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	sized enterprises from the provisions in chapter 5 incompatible with the objectives of the regulation. As such, we are not convinced that the arguments presented justify the exemption in situations of <i>exceptional need</i> due to public emergencies. The value of data held by small companies are not inherently less critical in such situations. As in Art. 7, to ensure that small and micro enterprises are not overburdened, we suggest to allow for them to seek compensation also for data made available to respond to a public emergency (see also our suggestion in art. 20). EE: (Comments): If data is requested from the private sector in an emergency to resolve the emergency, then the agency who is resolving the emergency should decide also the enterprises from whom it is relevant to request the data. Otherwise, the goal (to solve the emergency) may not be achieved if the data or most of the data in this field are in the hands of micro or small companies. If limited in time and possible only in an emergency, it can be admitted that such an obligation should encompass all enterprises (after all, when the state's activity is

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	aimed at solving an emergency, small businesses should also benefit from it). Therefore, we would support a wider obligation, but with a narrower scope (only a certain situation). BE: (Comments): In cases of exceptional need, and if specific and well-defined conditions are met, couldn't the data held by SMEs be necessary? We would like to further examine this point. ES: (Drafting): ~~2. — This Chapter shall not apply to small and micro enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC.~~ <u>ALTERNATIVE 1:</u> Micro and small enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC, upon request, shall make data, including

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	relevant metadata, available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested where the data requested is necessary to respond to a public emergency pursuant to Article 15 a). Micro and small enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC do not but may voluntarily, upon request, make data available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need in circumstances different to that of Article 15 a). <u>ALTERNATIVE 2:</u> Micro and small enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC do not have an obligation to make data available upon request based on exceptional need, but might voluntarily do so. ES: (Comments): According to the current wording of article 14(2), Chapter V of the Data Act does not

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	apply to micro and small enterprises, neither in case of public emergency, neither in other exceptional situations; and, apparently, neither as a mandatory B2G framework, neither as a voluntary B2G framework. Micro and small enterprises should have an obligation to make data available if it is necessary to respond to a public emergency, being in that case entitled to a compensation, which might include a reasonable margin. The Data Act could be amended in order to include this provision. In other situations of exceptional need, such as those referred to in 15(b) or 15(c), micro and small enterprises should be able to share data with public sector bodies if they wish so. In order to enhance legal certainty for micro and small enterprises willing to, voluntarily, share data with public sector bodies, wording of article 14(2) could be amended. If an obligation for micro and small enterprises to make data available is not acceptable, even if the obligation is restricted to public emergency situations and subject to compensation, as previously proposed, we believe that, at least, wording of article 14(2) should be amended so, instead of stating that Chapter V does not apply to micro and small enterprises, it states that micro and small enterprises are not obliged to provide data as referred to in Article 14(1), but might do it voluntarily.

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	This amendment would enhance legal certainty for micro and small enterprises willing to, voluntarily, share data with public sector bodies in cases of exceptional need.
<i>Article 15</i> <i>Exceptional need to use data</i>	FI: (Comments): We welcome these rules as new general rules, but we would like to highlight the exceptional nature of this right/obligation also in relation to applicable Union and national law. We see that the applicable sectoral or other ordinary powers should be the primary solution also in the case of public emergency. BG: (Comments): We find the entire notion of “exceptional need” to be disproportionate and rather wide and especially in combination with the definition for “public emergency” which on its turn is also wider than necessary as already pointed out in our comments above. Normally, this mechanism should be available to bodies and institutions traditionally

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	involved and responsible for emergency situations. NL: (Comments): As stated above, any legal basis to process (personal data) should be specific, proportionate and foreseeable. The legal basis provided by this article currently does not satisfy those criteria. While our proposed amendments tighten the legal basis, our preferred option remains that public sector bodies should have a legal basis to process data separate from this article EE: (Comments): We support the specification that ‘public emergency’ is determined according to the respective procedures under Union or national law. We also support that the right to use the data under Article 15 is limited in time and scope. However, we believe this limitation is not sufficient. We understand the logic that the public authority must submit a request, which ensures that there will exist a detailed description what data and for what purposes is collected under Article 15. However, that by itself does not

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	sufficiently limit the circumstances where this data may be used. Notably, Article 15(c) seems to establish an unreasonably extensive right of access to data. To the extent this data includes personal data, such access to data by a public sector body might not be foreseeable to data subjects and may constitute an unproportionate interference of the right to privacy and data protection. Consequently, we would support further narrowing the right of access to data under Article 15.
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 ~~any of~~ the following circumstances:	DK: (Comments): We support the changes to this provision. HR: (Comments): Due to the introduction of additional condition (“limited in time and scope”) for access to privately held data, which now has to be met also for point (c), i.e. official statistics, the function of privately held data as a sustainable source of data for the production of official statistics has been lost.

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	This change significantly limits the possibility to access privately held data in a way that only allows for ad hoc use of privately held data for development activities such as production of experimental statistics. PL: (Drafting): 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 any of the following circumstances: PL: (Comments): As above – this shift from point (b) to general part of Article makes the DA useful for official statistics only partially. It excludes the regular data needs. Therefore, we support the original provision text in this respect (also of point(b)). The other option would be – to remove the time limitation from point (b) and add a new provision at the end of the Article stating that the time limitation refers to letters (a) and (b) only or it does not refer to official statistics. The wording of such provision could be as follows:

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	Option 1 “An exceptional need referred to in points (a) and (b) shall be limited in time.” Option 2 “The exceptional need time limitation does not refer to data requested for official statistics purposes.” NL: (Comments): We would welcome that the requests are not only limited in time and scope, but that there is a maximum duration for which this competence can be invoked. We would welcome discussions in council on the length and rigidity of such a maximum. SI: (Comments): Exceptional needs should be defined narrowly. These conditions are set as very wide and undetermined alternatives (especially point (c)). IE:

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	(Comments): IE How does “exceptional use” interact with GDPR Article 6(e) where data required is personal data? DE: (Comments): The precaution of emergencies ("prevent a public emergency") could hardly be effectively taken into account if data provision is limited in time and scope at the same time ("limited in time and scope"). Could the Commission specify what “limited in time and scope” refers to in this regard. IT: (Drafting): An exceptional need to use data within the meaning of this Chapter shall be limited in time and proportionate in scope and deemed to exist only in ~~any~~ of the following circumstances:

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	IT: (Comments): A reference to proportionality of the request is needed to avoid excessive burdens to data holders. EE: (Drafting): 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 ~~any of~~ the following circumstances: EE: (Comments): The meaning of ‘exceptional need’ remains unclear. In our opinion, it would suffice to have a possibility to ask some data in limited time and scope and only if: a) the data is necessary to respond to a public emergency or help to prevent a public emergency or to assist the recovery from a public emergency <u>and</u> b) the public sector body or Union institution, agency or body has been unable to

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	obtain such data by alternative means, and the adoption of new legislative measures cannot ensure the timely availability of the data. We thus propose to merge points (a) and (b), as their goal is the same, remove point (c) and merge subparagraph (from point c) with points (a) and (b). The aforementioned points would be cumulative (there is an emergency situation and there are no reasonable options to get the data in any other way). BE: (Comments): Belgium welcomes the clarifications made by the Presidency. However, the current wording does not meet the requirement to be foreseeable as to its effects. Indeed, it is not formulated with sufficient precision to enable any business and individual to understand what and when data could be shared with government. There is therefore a need to further specify the situations where this Chapter will apply while providing, where necessary, more flexibility with regard to the modalities of this obligation.

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	FR: (Drafting): An exceptional need to use data within the meaning of this Chapter shall be strictly limited in time and scope and deemed to exist only in ~~any~~ of the following circumstances: FR: (Comments): Les autorités françaises considèrent que le mécanisme de partage prévu au chapitre V du Data Act doit rester exceptionnel et ne doit être utilisé que pour répondre à des besoins strictement limités et circonscrits.
	SE: (Drafting): where the data requested is deemed necessary by the requesting public sector body or Union institution, body or agency to respond to a public emergency SE:

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	(Comments): The criteria for “exceptional need” must be specified more clearly in order to avoid situations where a public sector body cannot properly respond to a public emergency due to a difference in opinions between the public sector body and the data holder on whether the requested data is necessary or not. EE: (Drafting): <u>a) the data is necessary to respond to a public emergency or help to prevent a public emergency or to assist the recovery from a public emergency; and</u> <u>b) the public sector body or Union institution, agency or body has been unable to obtain such data by alternative means, and the adoption of new legislative measures cannot ensure the timely availability of the data.</u>
(a) where the data requested is necessary to respond to a public emergency;	FI: (Drafting):

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	(a) where the data requested is necessary to respond to a public emergency and the applicable Union and national law do not provide sufficient legislative measures; FI: (Comments): In the translation of the Commission proposal, here terminology and translations are inconsistent. As regards Article 52(1) of the Charter, the necessary has been translated into necessary, but in this proposal it becomes (more like needed) (In Finnish ‘tarpeen’). When assessing the authorities’ disclosure of information, the Constitutional law Committee has paid particular attention to the differences between the definitions of essential and necessary information. This should be paid attention to when the completed legislative text is translated at the latest. However, the necessary as a criteria would limit this right to information to some extent. See also the following comment here. NL: (Drafting): (a) where the data requested is necessary to respond to a public emergency

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	formally declared according to local, national or international procedures; NL: (Comments): The recitals indicate that a public emergency should be declared by existing national or international processes. This is a crucial safeguard and should be stated more clearly here in the article. SI: (Comments): Who determines what is public emergency? How does this provision apply if public emergency is declared in one Member State but not in other Member State(s)? The term must be defined very conservatively and restrictive with very clear procedure established by law. In existing state the chapter is huge erosion of the rule of law. EE:

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	(Drafting): (a) — where the data requested is necessary to respond to a public emergency;
	SE: (Drafting): where the data request is limited in time and scope and by the requesting public sector body or Union institution, body or agency deemed necessary to prevent a public emergency or to assist the recovery from a public emergency; or SE: (Comments): The criteria for “exceptional need” must be specified more clearly in order to avoid situations where a public sector body cannot properly respond to a public emergency due to a difference in opinions between the public sector body and the data holder on whether the requested data is necessary or not.
(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; or	FI: (Drafting):

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	(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 and the applicable Union and national law do not provide sufficient legislative measures; <u>or</u> PL: (Drafting): (b) where the data request is limited in time and scope ~~limited in time and scope~~ and necessary to prevent a public emergency or to assist the recovery from a public emergency; or PL: (Comments): As above – this shift from point (b) to general part of Article makes the DA useful for official statistics only partially. It excludes the regular data needs. Therefore, we support the original provision text in this respect (also of point(b)). The other option would be – to remove the time limitation from point (b) and add a new provision at the end of the Article stating that the time limitation refers to letters (a) and (b) only

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	or it does not refer to official statistics. The wording of such provision could be as follows: Option 1 “An exceptional need referred to in points (a) and (b) shall be limited in time.” Option 2 “The exceptional need time limitation does not refer to data requested for official statistics purposes.” NL: (Drafting): (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 formally declared according to local, national or international procedures NL: (Comments): Similar to 15(a), even with this amendment we still see the risk of the created competence potentially being invoked too often to prevent a public emergency.

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	EE: (Drafting): ~~(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; or~~ BE: (Comments): Belgium raises some concerns to this broad reference to the prevention of a public emergency that could lead to a very broad and vague scope for this B2G mandatory data sharing.
	SE: (Drafting): from fulfilling a specific task in the public interest <u>related to a public emergency</u> SE: (Comments):

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	Important to limit the scope to those cases where access to data under the rules in this chapter to the most essential instances such as clearly defined public emergencies. E.g. c) does not seem to constitute exceptional need necessary to respond to public emergency and should not be used as a basis for access to data.
(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, such as official statistics, that has been explicitly provided by law; and	FI: (Drafting): (c) where the lack of necessary ~~available~~ data prevents the public sector body or Union institution, agency or body from fulfilling their statutory duties ~~a specific task~~ in the public interest, such as official statistics, ~~that has been explicitly provided by law~~; and FI: (Comments): This basis for the right to information appears rather broadly defined. It would appear to allow the authority to cover any gaps in information related to its statutory duties. However, our starting point is that these information needs of the authorities have been assessed and recorded in legislation when the duty is laid down, which means that this kind of ‘dump all in’ rule appears unnecessary. Nor does this include any

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	necessity criteria for the information. And it does not answer whether these could also be confidential private information on some grounds (e.g. information subject to banking secrecy). Similarly, we could consider also sensitive personal data. These have not been specifically mentioned here, which does not seem appropriate. In addition, from the national perspective, if the right of access to information now also extensively applies to national authorities, the principle of openness should be taken into account, and the fact that the data in question is, as a rule, public in the possession of the authorities, unless the secrecy principle is applied. As the right of access to data has been formulated so broadly, it is impossible to assess whether there are sufficient secrecy grounds for national authorities to protect all of these possible information requested under this extensive provision. As a minimum, there should be an obligation for the public sector bodies, upon the request of the data holder, to demonstrate they have used all possible measures to obtain the data before using the mechanism of Article 15(1)(c). Furthermore, public sector bodies should not be allowed to use private sector data to compete with the private sector. PT: (Comments):

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	PT appreciates the reference to official statistics. Nevertheless, instead of including official statistics as an example in this point (c) we suggest adding a specific point 3 under (c), dedicated to official statistics data needs. This would clearly separate official statistics from the provision in point 1 within which the purchasing of data on the market at market prices is foreseen. Official statistics are a public good, available to all for free. The access to private data should not be paid for official statistics purposes, as this access is aimed to produce official statistics for the benefit of all the society. The same principle applies as regards to the access of data from respondents and from administrative records. In this regard, PT share the concerns expressed by PL in WK 11570/2022, of 6 September. HU: (Drafting): Version A: “(d) where the data requested are needed for the production of official statistics and/or improving its quality.”

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	Version B: “(new 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, such as official statistics, that has been explicitly provided by law; ~~and-or~~” HU: (Comments): In case of statistics, purchasing data for market prices is impossible and additional legislation may also be burdensome and make it impossible to react swiftly to new and urgent data needs, therefore we would prefer to have a separate provision on access to data for official statistical purposes. In case this is not supported, we propose a change to point c as included in our version “B” text. DK:

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	(Comments): We fail to see how a public sector body in carrying out its tasks, provided by law, could suddenly have an exceptional need for data for these tasks, as all legislation requiring specific tasks to be fulfilled by public sector bodies ought to include an explicit and specified mandate to collect the data required. In a national context, we consider it to be the task of the national parliaments to ensure that public sector bodies have access to the data they need in order to fulfil specific tasks in the public interest that has been explicitly provided for by (national) law. There is further a risk that this provision could be widely interpreted, so that data access requests broadly would rely on this provision as a basis. That would have significant consequences for European companies, who could be overburdened by data access requests. We understand that a need may exist in some Member States to ease the collection of data for official statistics. In that respect, we are open to the addition of an article which specifically addresses such needs of access, if article 15(c) is deleted. SK:

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	(Drafting): (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 connected to the public emergency, such as official statistics, that has been explicitly provided by law; and SK: (Comments): SK would welcome narrowing down of the situations where a lack of data prevents fulfilling specific tasks in the public interest to situations connected to the public emergencies. For example, such data could be used to draft strategies on how to mitigate next emergencies in the future. PL: (Drafting):

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	PL: (Comments): PL appreciates including in this Article the reference to official statistics. However, it does not fully reflect statistical needs because under point (1) paid acquisition at market rates is maintained as one of the potential data sources. Statistics Poland does not have any legal possibility to buy and pay for data in the market, so keeping this option would mean these provisions would be a dead letter, which cannot be used as the basis for privately data access for official statistics purposes in Poland at all. Moreover, free of charge data for official statistics purposes are the rule all over the

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	world and including of such DA options may undermine currently existing commitments on free of charge data access for statistical purposes. Therefore, we maintain the proposal expressed previously – to single out official statistics needs as an additional point. Our alternative wording solutions were and are as in the second column in the line below: Option 1 – to add new point (3) under point (c) stipulating that (3) obtaining data is necessary for official statistics purposes. Option 2 – to add new point (d): (d) where the data requested are needed for the production of official statistics and/or improving its quality. SI: (Comments): Who defines when “lack of available data” occurs? Which “specific tasks in the public interest” are covered and who decides which specific task in the public interest is covered by this provision? Any and all specific tasks in public interest should not be considered as exceptional need.

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	If a special task in the public interest is explicitly provided by law, then also the obligation to provide available data should be determined in that same law. Exceptional need is not defined or at least somehow framed. We jump from public emergency to fulfilling a task in public interest, which are two totally different things and aspects. Recital 58 gives us a glimpse in very non urgent situations for such a harsh possible action. EE: (Drafting): ~~(e) — 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, such as official statistics, that has been explicitly provided by law; and~~
	PL: (Drafting): Option 1 – to add new point (3) under point (c) stipulating that (3) obtaining data is necessary for official statistics purposes.

Presidency compromise	Drafting Suggestions Comments
	Option 2 – to add new point (d): (d) where the data requested are needed for the production of official statistics and/or improving its quality. PL: (Comments): Vide comments above
(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	FI: (Drafting): (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 FI: (Comments):

Presidency compromise	Drafting Suggestions Comments
	There seems to be some discrepancy between articles 15 and 20 of the proposal: Article 20(1) provides for the data of Article 15 b) and c) that the data holders are entitled to reasonable compensation, which must not exceed the so-called removal costs plus a reasonable margin. Recital (67) also mentions that compensation should not be understood as payment for data. However, Article 15(c)(1) stipulates that, e.g. for statistical purposes, the precondition for data obtained on the basis of this article is that the data could not have been purchased from the market at a market price. In practice, this registration gives data holders free “pricing rights” for the data. Transparently (for prices) rarely occur on the (data) market. There are quite a few data providers and access to data is based on separately negotiated agreements between the user and the provider. The text ‘by Purchasing the data on the market at market rates’ should be removed from the proposal because it contradicts the cost reimbursement procedure and article 20 stated in the recitals. PT: (Drafting):

Presidency compromise	Drafting Suggestions Comments
	(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 SK: (Drafting): (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, if no other important public interest prevents it, and the adoption of new legislative measures cannot ensure the timely availability of the data, if the adoption of new legislation cannot be achieved, especially with regard to time availability; SK: (Comments): The Commission should explain whether the term "unable" can also be interpreted as

Presidency compromise	Drafting Suggestions Comments
	the inability of the public sector body (in particular statistical offices) to purchase data due to a limited budget or because it is prevented by national legislation. If this is not the case, we propose to introduce the exemption to this provision for the statistical authorities, as otherwise they cannot apply Data Act for obtaining the data at all; or to add words "if no other important public interest prevents it". NL: (Drafting): 1) the public sector body or Union institution, agency or body has exhausted all other means ~~has been unable~~ to obtain such data ~~by alternative means~~, including but not limited to the adoption of new legislative measures to ensure the timely availability of the data, ~~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~~ NL: (Comments): The explanation of the Commission indicated that this should be seen as a last resort

Presidency compromise	Drafting Suggestions Comments
	when all other means to reasonably acquire the data have been exhausted. The article should be more clear on that part, especially the fact that the ability to adopt legislative measures in a timely manner excludes a public sector body from invoking this mechanism. National parliaments should have final control over what legislation is considered necessary and proportional. A rejection of national legislation to make data available should lead to such data not being available under chapter V of the Data act, this should be included in the proposal. In addition, a clear ‘burden of proof’ for invoking this clause would be necessary in order to prevent abuse. SI: (Comments): Who determines that “existing obligation to make data available” is not enough and that this provision could override the existing legislation? EE: (Drafting): (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~~

Presidency compromise	Drafting Suggestions Comments
	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 BE: (Comments): We need to further examine this requirement and its practicability in every sector concerned.
(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.	PT: (Drafting): (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; or HU:

Presidency compromise	Drafting Suggestions Comments
	(Drafting): (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 and respondents of official statistical surveys. HU: (Comments): This proposal is relevant, in case there will be no special provision on official statistics in general (see the above suggestion version A). If an NSI obtains data from one enterprise, such as a mobile phone service provider, the burden on respondents may decrease, as the NSI does not have to ask for location data on its survey. SK: (Drafting): (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. SK:

Presidency compromise	Drafting Suggestions Comments
	(Comments): The notion of “other enterprises” leaves it unclear which other enterprises the proposal refers to. NL: (Drafting): ~~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.~~ NL: (Comments): We do not consider this to classify as an ‘exceptional need’. Moreover, a reduction in administrative burden does not justify the potential infractions in civilians’ and companies’ rights that could stem from the created competence. SI: (Comments):

Presidency compromise	Drafting Suggestions Comments
	This could mean overriding the existing legislation (administrative burden should be determined in existing legislation). Who would decide on this? EE: (Drafting): ~~(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.~~ EE: (Comments): The meaning of this provision is incompatible with the need and purpose of this chapter.
	PT: (Drafting): 3) obtaining data is necessary for official statistics purposes. PT:

Presidency compromise	Drafting Suggestions Comments
	(Comments): In line with our previous comments (WK 8703/2022 INIT, of 15 June). PL: (Drafting): Option 1 “An exceptional need referred to in points (a) and (b) shall be limited in time.” Option 2 “The exceptional need time limitation does not refer to data requested for official statistics purposes.” ES: (Drafting): d) where the data requested is needed for the compilation of official statistics ES: (Comments):

Presidency compromise	Drafting Suggestions Comments
	[PRIORITY] Given the importance of official statistics for the public interest, it would be convenient if the B2G data sharing framework of the Data Act could be used by statistical institutes for the compilation of official statistics, not just in exceptional situations, but in a more regular basis. In order to achieve that, provisions and exemptions specifically aimed at statistical bodies need to be included in the Data Act. For instance, data provided for the compilation of official statistics should be provided free of charge and statistical bodies should be exempted from the obligation to delete the data after the compilation of official statistics.
<i>Article 16</i> <i>Relationship with other obligations to make data available to public sector bodies and Union institutions, agencies and bodies</i>	SK: (Comments): SK emphasizes that several access of data regimes already exists under the EU law (including Article 15 of ePrivacy directive). However, access to data and metadata by public authorities is strictly limited in the context of decisions of the Court of Justice of the EU (see e.g. ECLI:EU:C:2014:238 Digital Rights Ireland; ECLI:EU:C:2020:790 Privacy International or ECLI:EU:C:2020:791 La Quadrature de Net). The standard held by the CJEU shall be also applied to access of data in the

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	Data Act including specific guarantees for rights, freedoms and interests of individuals.
1. This Chapter shall not affect obligations laid down in Union or national law for the purposes of reporting, complying with information requests or demonstrating or verifying compliance with legal obligations, including in relation to official statistics.	DK: (Comments): We appreciate the clarification that the chapter shall not affect obligations laid down in national law, including official statistics purposes. PL: (Comments): PL highly appreciates taking into account our proposal as for introduction of the wording. SI: (Comments): Could “fulfilling a specific task in the public interest” (from Article 15, point (c)) also

Presidency compromise	Drafting Suggestions Comments
	be one of the obligations determined in Article 16(1)? IE: (Comments): IE requests that this provision should be stronger in stating that other EU Regulations (such as a revised Regulation 223/2009) can specifically provide for sustainable access in a manner that meets the needs of Official Statistics, i.e., outside of exceptional need circumstances and not “limited in time and scope.” DE: (Drafting): 1- This Chapter shall not affect existing or future obligations laid down in Union or national law for the purposes of reporting, complying with information requests or demonstrating or verifying compliance with legal obligations, including in relation to official statistics. DE: (Comments):

Presidency compromise	Drafting Suggestions Comments
	For the purpose of clarification. The clarification with regard to statistics is welcomed. EE: (Comments): We support the addition.
	SE: (Drafting): 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~~ in the areas of defence and national security or 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 shall 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.~~

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	SE: (Comments): <i>It is unclear how this provision relates to Article 1.4. Why is there a need to exclude these areas when they are already excluded from the scope of the Regulation? If there is such a need, the areas listed in this Article should correspond with those listed in Article 1.4. Particularly, the areas of defence and national security must be explicitly excluded.</i>
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 shall ~~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	FI: (Drafting): 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 shall ~~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

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administration.	criminal or administrative penalties, or for customs or taxation administration <u>including sharing, access and use of data in those areas.</u> FI: (Comments): Comment on the last sentence: This fairly good clarification as such would seem more appropriate in paragraph 1, as it organises relations towards national legislation, whereas the beginning of the section makes it clear which of the rights referred to in this section should not be exercised.
<i>Article 17</i> <i>Requests for data to be made available</i>	
1. Where requesting data pursuant to Article 14(1), a public sector body or a Union institution, agency or body shall:	FI: (Comments): Article 15, sub Section 1 states that a condition is that the data has not been received

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	by other means. However, Article 17 does not require that this must somehow be proven. Should it?
(a) specify what data are required, including relevant metadata ;	FI: (Drafting): (a) specify what data are required, including relevant metadata and other necessary information relating to the data. FI: (Comments): The data requested will be used to address exceptional circumstances. Therefore, in order to make good decisions, the authorities must know not only the metadata but also other information related to its quality, such as its completeness and margin of errors. Is this included in the concept of metadata? If not, maybe add “and other necessary information relating to the data”. PT:

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	(Drafting): (a) specify what data are required, ~~including relevant metadata~~; PT: (Comments): Please see comment on article 14. DK: (Comments): The addition of "including relevant metadata" can be interpreted in several ways. It could read that the public authority should request specific metadata (uncertain as to whether anyone not holding the data would know what metadata to request) or that the public authority should always make a request for metadata, or simply that the public authority should request metadata where relevant. It is our understanding that in ad hoc instances – where the data requested does not necessarily follow a standard format or similar - it is necessary to have the related metadata which can give context to the data of interest, in order to understand and utilize said data.

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	Hence, we suggest to instead note in article 18 that the data holder should include the metadata relevant for giving context to the data. PL: (Comments): PL supports the addition
(b) demonstrate the exceptional need for which the data are requested;	SI: (Comments): Broad definition of a term gives way for arbitrary and nondemocratic decisions. Economic stability and substantial degradation of economic assets can be many things (not to get to climate conditions, where we obviously failed). According to our way of life it is very possible they will become ordinary parts of our lives.
	NL: (Drafting): (ba) when requesting data under Article 15(c)(1) of this Regulation;

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	i) explain why the absence of the requested data prevents the public sector body fulfilling a specific task provided by law; ii) indicate by which alternative means the public sector body or Union institution, agency or body has attempted to acquire the requested data and iii) explain which alternative means remain to obtain the requested data and why these would not allow for the timely execution of the specific task provided by law; NL: (Comments): Suggestion for a more stringent burden of proof for Article 15(c)(1).
(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;	SI: (Comments): We suggest to use similar mechanism as GDPR Data protection impact assessment.
(d) state the legal basis provision allocating to the requesting public sector body or to Union institutions, agencies or bodies the specific public interest task	FI: (Comments):

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relevant for requesting the data;	This has been specified and this is good. But regarding the proposal as a whole, it has remained unclear whether a data request can also concern special categories of personal data. Apparently it can ? EDPB/EDPS also pointed out that the Regulation does not specify the personal data that the requests may concern and that this should thus be specified. SI: (Comments): Does this mean, a special law should be enacted which would define the conditions, procedures and accountability of declaring public emergency and exceptional need? IE: (Comments): IE Can ‘specific public interest task’ be clarified? BE: (Comments):

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	Belgium welcomes this clarification. However, we still consider that this an reference to a legal basis for the processing, where relevant, of personal data is necessary, in addition to any legal provision on the public interest tasks.
(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.	FI: (Comments): It is noted that the data requesting party must specify the deadline by which the data holder may ask that the request be changed or withdrawn. However, Article 18, paragraph 2 provides for the time limits within which the data holder may refuse a request or request its amendment. Probably, and this more to clarify, these are in part about the same thing ? and if, under Article 17, the data requester notifies the data holder that the request to be changed, then is it so that under Article 18, this should not be done within 5 or 15 days ? HU: (Drafting): (e) specify the deadline and frequency by which the data are to be made available or within which the data holder may request the public sector body, Union institution,

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	agency or body to modify or withdraw the request. HU: (Comments): In case it is not just a one-time data transmission. EL: (Comments): We need specification and cases in which the (e) could be applicable. Potentially examples.
2. A request for data made pursuant to paragraph 1 of this Article shall:	
(a) be expressed in clear, concise and plain language understandable to the data holder;	

Presidency compromise	Drafting Suggestions Comments
(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;	FI: (Comments): This also links to how to vet necessary data only.
(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;	FI: (Comments): Here, it would seem that there is sort of the view was that this could also constitute confidential information or at least information protected by a trade secret. But there may also be other criteria (or basis) for secrecy than business secrecy only. Also, how the nature of a trade secret is taken into account, remains unclear in this context. SI: (Comments): We would kindly ask for clarification, in which actual case scenarios would the data holder be entitled to a payment for the transmission of data (especially under Chapter V)?

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	In case a public sector body would be aware that the mere publication of its request for data to be available would lead to the breach of intellectual property rights or disclosure of trade secrets, would it then in such situation still have to publish such request for data to be available?
(d) 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;	FI: (Drafting): (d) 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; [in case personal data are requested, applicable rules on Regulation (EU) 2016/679, Regulation (EU) 2018/1725, Directive 2002/58/EC and Directive (EU) 2016/680 apply]. FI: (Comments): It would be good to note expressly also special categories of personal data here.

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	Comment 2: It should be clarified, when it is an authority and when the data holder who decides on the technical and organizational measures to be taken. This applies to recital 64 and articles 17(2)(d), 18(5) and 19(b). PT: (Drafting): (d) 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; PT: (Comments): Portugal believes it is of utmost importance to guarantee a harmonization with regards with anonymization / pseudo-anonymization processes. What is the relationship between this article and the European Health Union legislative package? Given the speed with which the requests for data access will have to be complied with, it may be challenging to fulfil all necessary administrative

Presidency compromise	Drafting Suggestions Comments
	steps and data protection measures. We suggest the removal of the following part of the article: "and set out the technical and organisational measures that will be taken to protect the data". This part of the article seems to be applicable only to personal data and as such there are already set in the GDPR and EDPB guidelines the measures the data holders should comply with. Moreover, not all the data holders are able to apply the same measures, some apply different measures, which does not mean the level of protection is lower or that they are not complying with the GDPR. In our view, this provision may confuse the data holders and create an unnecessary burden for them. DK: (Comments): We support the changes PL: (Comments): The addition is acceptable as it follows PL suggestion to introduce the reference to

Presidency compromise	Drafting Suggestions Comments
	safeguards when individual data are at stake. However, we maintain the previously expressed comment - including a clarification (e.g. in recital) indicating that data for statistical purposes are often necessary in individual format. Making them non-personal or pseudonymised prior to their transmission to official statistics may adversely affect the possibility of using them. NL: (Drafting): (d) concern, ~~insofar as possible,~~ only non-personal data, unless personal data is strictly necessary for the purpose of the request, and the conditions of all relevant data protection legislation are fulfilled; 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; NL: (Comments): It is important to further strengthen the language in this chapter to clarify that personal data should in principle not be requested unless strictly necessary.

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	DE: (Comments): See above scrutiny reservation on scopes of Data Act and GDPR.
	NL: (Drafting): (da) in case personal data are requested, the requesting party shall without delay notify the independent supervisory authority responsible for monitoring the application of Regulation (EU) 2016/679 in the member state where the data holder is established. The supervisory authority can modify or reject the request insofar as the request is deemed to be in violation of Regulation (EU) 2016/679. Failure to notify the supervisory authority shall be subject to the same measures applicable to a breach of article 33 of Regulation (EU) 2016/679. NL: (Comments): The national supervisory authority should actively monitor requests for personal data

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	and intervene if necessary.
(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;	
(f) be made publicly available online without undue delay, unless this would create a risk for public security, and inform the competent authority referred to in Article 31.	FI: (Comments): Here, we still wondered whether this offers sufficient grounds for secrecy of the request, as the requested data has not been restricted in any way in this section. Could there be situations where a request made by an authority should also be kept secret on other grounds, for example, protecting personal privacy, within the limits of this regulation? HU: (Comments): This could be further clarified. Does this mean the website of the public sector body?

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	DK: (Comments): We support the changes ES: (Drafting): (f) be made publicly available online without undue delay, unless this would create a risk for public security, and inform the competent authority referred to in Article 31 of the Member state where the data holder is established. ES: (Comments): Articles 18(6) and 20(3) have been amended to clarify to which competent authority matters shall be brought to. Nevertheless, article 17(2) f) has not been amended. In order to enhance certainty, article 17(2) f) could be amended to clarify which competent authority should be informed of each new request for data: whether the

Presidency compromise	Drafting Suggestions Comments
	competent authority of the Member State of the public sector body requesting the data, or the competent authority of the Member State where the data holder is established.
	NL: (Drafting): (g) be limited to a maximum duration of 3 months NL: (Comments): To prevent misuse it is important that there is a maximum term during which data can be requested. After a certain period of time, a need for data is no longer exceptional or unforeseeable and the competence to request data should be provided for in a separate law. We welcome further discussions in Council on a maximum length for requests.
3. A public sector body or a Union institution, agency	FI:

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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.	(Drafting): 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 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. This paragraph is without prejudice to specific provisions in Union or national law with regard to the granting of access to and disclosure of official documents. FI: (Comments): Comment 1: Here, reference could also be made to the DGA ? Comment 2: As in the DGA, it should be clarified that the regulation does not affect the application of national public (access) systems (or records) when it comes to data received under this section. The addition is based on Article 1(2)(a) of the DGA. HU: (Drafting):

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	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 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 <u>and to official statistics produced from the obtained data.</u> HU: (Comments): Just a clarification that statistics produced from these data can be reused by users of official statistics. DE: (Comments): We ask the Commission for written explanation on how to deal with applications for access to environmental data at any agency obtained pursuant to this chapter. These data are much more open to the public than the ones covered by Directive (EU) 2019/1024.

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	Basically, only with a very few exemptions we consider environmental data, no matter from where they are accessible for the public, as long as they are kept by any public sector body. Therefore we suggest the following amendment: “This Chapter shall not affect obligations of a public sector body laid down in Directive 2003/4/EC or corresponding national law regarding the access to environmental information.”
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 also to such third parties.	FI: (Comments): This appears difficult at the national level, at least between national authorities, if it covered confidential information and especially e.g. sensitive personal data. According to the national doctrine (by our constitutional law committee), provisions on these must be laid down precisely, and this would likely not pass that test. It might be necessary to supplement this by the addition “as provided by national law”. We would probably not have national regulation that would enable the disclosure of the information in question precisely because national provisions on it should be laid down precisely, and this cannot be done when this section here leaves the information

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	covered by it so open. DK: (Comments): We support the changes SI: (Comments): In what relationship is this provision regarding the wording “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” in relations to the provisions of Article 16 (e.g. verifying compliance with legal obligations or prevention, investigation, detection and prosecution of administrative offences, etc.)?
Where a public sector body or a Union institution, agency or body transmits or makes data available under this paragraph, it shall notify without undue delay the	PT: (Comments):

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data holder from whom the data was received.	We suggest setting a specific time period instead of “ <i>undue delay</i> ”, to introduce more regulatory certainty and clarity.
<i>Article 18</i> <i>Compliance with requests for data</i>	
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.	SK: (Drafting): 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 technical, legal, and organizational constraints. SK: (Comments): Mere collection of data does not mean that such data can be easily made available to a public sector body within a short time frame. The time within which such data can be identified and processed will depend on available technical processes and resources.

Presidency compromise	Drafting Suggestions Comments
	DK: (Comments): It is our understanding that in ad hoc instances – where the data requested does not necessarily follow a standard format or similar - it is necessary to have the related metadata which can give context to the data of interest, in order to understand and utilize said data. Hence, we suggest to instead note in article 18 that the data holder should include the metadata relevant for giving context to the data. It should further be specified that the data holder should only be required to supply the existing metadata, as the data holders does not necessarily always hold the meta data relevant for their data sets. The data holder should not be required to create new metadata. SE: (Drafting): 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 53 working days following the receipt of a request for the data

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	necessary to respond to a public emergency and within 15 10 working days in other cases of exceptional need. SE: (Comments): Since these situations are already qualified by the presence of an “exceptional need”, it should not be possible for a data holder to be able to wait up to 1-3 weeks before even responding to the request, especially not in cases where there is a public emergency.
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:	NL: (Drafting): 2. Without prejudice to specific needs regarding the availability of data defined in sectoral legislation, the data holder or the competent authority of the Member State where the data holder is established 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:

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	NL: (Comments): In addition to the data holder an independent body should be able to judge the legality of the requests. This is crucial to reduce the risk of unlawful or disproportionate requests. We understand from Council meetings that the competent authority of the country of establishment of the data holder can proactively refuse requests made under this chapter. This should be clarified in the text. DE: (Comments): How is the right to data access enforced by the public sector body? According to which law, Union or national? And if national, according to which national law? Is there a reason why in this article the terminology “decline” is used and in article 18. 6 “refusal”? EE: (Drafting): 2. Without prejudice to specific needs regarding the availability of data defined in

Presidency compromise	Drafting Suggestions Comments
	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 without undue delay and not later than within 15 working days in other cases of exceptional need, on either of the following grounds: EE: (Comments): A proposal that tries to strike the balance between shortening the deadlines and still leaving a reasonable time for data holders to respond. It should be explicit that in the case of a public emergency, the data should be provided ASAP. BE: (Comments): Belgium underlines the need to set out a well-balanced B2G mandatory data sharing. In this regard, we are scrutinising if more flexibility couldn't be provided regarding the modalities of this obligation to share data, in particular with regard to the strict timeline set out in this Article.

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(a) ~~the data is unavailable~~ the data holder does not have control over the data requested;	DK: (Comments): We support the changes FR: (Drafting): (a) ~~the data is unavailable~~ the data holder does not have control or access over the data requested;
(b) the request does not meet the conditions laid down in Article 17(1) and (2).	IE: (Comments): IE We believe that there should be a reference to GDPR here to provide legal clarity for the data holder.
3. In case of a request for data necessary to respond to a public emergency, the data holder may also decline or seek	HR:

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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~~ erasure of the data pursuant to Article 19(1), point (c).	(Comments): We suggest to clarify the last condition related to the missing data deletion notice. If, in accordance with Article 19, paragraph 1, the data holder is obliged to delete the data, this situation should not occur.
4. If the data holder decides to decline the request or to seek its modification in accordance with paragraph 3, it shall indicate the identity of the public sector body or Union institution agency or body that previously submitted a request for the same purpose.	
5. Where the dataset requested includes personal data, the data holder shall properly anonymise the data, unless Where the 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 ~~7~~ . In that case the data holder shall take	FI: (Drafting): 5. Where the dataset requested includes personal data, the data holder shall properly anonymise the data, unless Where the compliance with the request to make data available to a public sector body or a Union institution, agency or body requires

Presidency compromise	Drafting Suggestions Comments
reasonable efforts to pseudonymise the data, insofar as the request can be fulfilled with pseudonymised data.	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. FI: (Comments): It should be clarified, when it is an authority and when the data holder who decides on the technical and organizational measures to be taken. This applies to recital 64 and articles 17(2)(d), 18(5) and 19(b). PT: (Drafting): 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 dataset requested includes personal data, the data holder shall take reasonable efforts to properly anonymise or pseudonymise the data, as per request of the public sector body or a Union institution, agency or body unless ~~Where the compliance with the request to make data available to a public sector body or a Union institution,~~

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	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 anonymised or pseudonymised data. PT: (Comments): We consider this wording reflects a more balance approach, especially taking into account that this may represent a huge burden to SMEs or startups. HR: (Comments): We propose to clarify what will happen in the situation when the request cannot be fulfilled with pseudonymized data. PL: (Comments): The additions in this paragraph are acceptable as the possibility of request for

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	individual data is maintained. However, we maintain the previously expressed comment – need to include a clarification (e.g. in recital) indicating that data for statistical purposes are often necessary in individual format. Making them non-personal or pseudonymised prior to their transmission to official statistics may adversely affect the possibility of using them. DE: (Comments): See above scrutiny reservation on the scopes of the Data Act and GDPR.
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, and the matter cannot be solved by an appropriate modification of the request,	FI: (Comments): Question: What happens after this ? What is the competence of the competent authority? Apparently, at least administrative penalties (payments) could be imposed? In this context, it would be good to take into account the national principles for

Presidency compromise	Drafting Suggestions Comments
the matter shall be brought to the competent authority referred to in Article 31 of the Member State where the data holder is established.	penalty payments and, of course, to assess whether the scale of the sum is reasonable. Could situations be problematic from the perspective of prohibiting double criminality, for example, if such a penalty payment can be imposed by the data protection authority and the competent authority for this act (for breach of the obligations of chapter V)? Are such situations possible within the framework of this regulation? In a data transfer, it should be noted that the data should be readable with basic software. It cannot be required that the public administration make procurements in order to obtain data. (this also relates to article 5) Also, how to ensure also the usability of the data? This should therefore need some cooperation in that the request should be specific enough but also with no obligation to build APIs. What about limitations to share data which are based on contracts and agreements ? The text of the data act does not say much about those. We understand that it can be tricky to prescribe here in a very detailed manner the rules. In Finland, the successful answers have been based on cooperation. Finally, should there also here be an amendment taking into account data security (along the lines as in into art. 19) ?

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	DK: (Comments): While we appreciate the clarification that disputes should be brought before the competent authority in the Member State where the data holder is established, we would like to raise a concern regarding the role given to the competent authority of the Data Act in this instance. There may very well be situations in which an authority requesting data pursuant to chapter 5 is the very same authority which will have to make decisions according to this paragraph. Hence, there may inherently exist a risk of a conflict of interest. We are uncertain as to whether the criteria in article 31.6 are sufficient to address this issue and would welcome if the Commission could elaborate on the implications of article 31.6 in this regard. DE: (Drafting): 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, and the

Presidency compromise	Drafting Suggestions Comments
	matter cannot be solved by an appropriate modification of the request, the matter may ~~shall~~ be brought to the competent authority referred to in Article 31 of the Member State where the data holder is established. DE: (Comments): Leaves open the possibility for directly addressing the courts.in the interest of accelerating the process. FR: (Drafting): 7. If the recipient of a request for access to data is a designated gatekeeper pursuant to Article [...] of [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)], any challenge or dispute in relation to the request shall be brought to the competent authority of the Member State where the public organism requesting the data is established. FR:

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	(Comments): Les autorités françaises estiment que la taille économique et la présence des <i>gatekeepers</i> sur le marché européen, et dans chaque État membre, justifient cette dérogation au principe du "pays d'origine". Les autorités compétentes locales devraient avoir la possibilité d'adresser leurs demandes directement à ces acteurs, fortement présents économiquement sur leurs marchés locaux, au lieu d'être obligées de faire appel à l'assistance d'autres autorités compétentes. Cet amendement n'exclut pas la possibilité pour les autorités compétentes de coopérer néanmoins sur des questions relevant du champ d'application du présent règlement.
<i>Article 19</i> <i>Obligations of public sector bodies and Union institutions, agencies and bodies</i>	
1. A public sector body or a Union institution, agency or body having received data pursuant to a request made under Article 14 shall:	DE: (Comments):

Presidency compromise	Drafting Suggestions Comments
	Germany kindly requests an assessment by the Council's Legal Service whether to use future or past tense: A public sector body or a Union institution, agency or body who will receive data pursuant to a request made under Article 14 shall:
	FI: (Drafting):
(a) not use the data in a manner incompatible with the purpose for which they were requested;	
(b) have implemented , ~~insofar as the processing of personal data is necessary~~ , technical and organisational measures that preserve the confidentiality and integrity of the requested data, including personal data, as well as safeguard the rights and freedoms of data subjects;	FI: (Drafting): (b) have implemented , ~~insofar as the processing of personal data is necessary~~ , technical and organisational measures that preserve the confidentiality and integrity of the requested data, in particular personal data, as well as safeguard the rights and freedoms of data subjects;

Presidency compromise	Drafting Suggestions Comments
	FI: (Comments): Article 19 has also been specified from the perspective of the processing of personal data, but should section b) “including personal data” rather be worded “in particular personal data”? Comment 2: It should be clarified, when it is an authority and when the data holder who decides on the technical and organizational measures to be taken. This applies to recital 64 and articles 17(2)(d), 18(5) and 19(b). Comment 3: It would be most clear that the requirement to e.g. primarily anonymize, secondarily pseudonymize, etc. would have been provided for clearly in one point. PT: (Drafting): (b) have implemented, ~~insofar as the processing of personal data is necessary,~~ technical and organisational measures that preserve the confidentiality and integrity of the requested data, including personal data, as well as safeguard the

Presidency compromise	Drafting Suggestions Comments
	rights and freedoms of data subjects; PT: (Comments): When we say data, it includes, in our view, personal and non-personal data. This interpretation should be clarified. If data includes personal data, the sentence "including personal data" should be eliminated. DE: (Drafting): (b) ~~have implemented, insofar as the processing of personal data is necessary,~~ technical and organisational measures that preserve the confidentiality and integrity of the requested data, including personal data, as well as safeguard the rights and freedoms of data subjects; DE: (Comments):

Presidency compromise	Drafting Suggestions Comments
	See above scrutiny reservation on scopes of the Data Act and GDPR.
(c) ~~erase destroy~~ the data as soon as they are no longer necessary for the stated purpose and inform the data holder without undue delay that the data have been erased ~~destroyed~~.	FI: (Comments): In terms of personal data, this is a good starting point, but otherwise this may be a challenging starting point. If the data are used to support a decision-making process, is it justified that the data would no longer be available at a later date (documentation and archiving obligations)? In terms of personal data, this is a good starting point, but otherwise this may be a challenging starting point. If the data are used to support a decision-making process, is it justified that the data would no longer be available at a later date? Comment 2: It should also be clarified whether a third party, such as a municipality, has an obligation to clarify what data has been used, especially when the data has been obtained about such value chains and information ecosystems in which smaller actors have been involved in creating data sets but do not have access to the data they have produced. (could potentially be a new para. (e.g. (19(1)(d).

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	PT: (Comments): We suggest setting a specific time period instead of “<i>undue delay</i>”, to introduce more regulatory certainty and clarity. Moreover, Portugal suggests a discussion on the topic of data erasure. Although we understand that erasing data is a useful mechanism to ensure data protection, immediately erasing data which will have taken time and resources to process before being received to public sector bodies or Union agencies can be counterproductive, as it can burden enterprises with repeated requests for data. HU: (Drafting): (c) erase ~~destroy~~ the data as soon as they are no longer necessary for the stated purpose and – with the exception of official statistics - inform the data holder without undue delay that the data have been erased ~~destroyed~~. HU:

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	(Comments): Informing the owner about the destruction of data, as provided for by this obligation, may be difficult to implement by official statistics. The exception of that kind is already included in GDPR (art. 17.3(d)). PL: (Drafting): (c) ~~erase destroy~~ the data as soon as they are no longer necessary for the stated purpose and inform the data holder without undue delay that the data have been ~~erased destroyed~~. Official statistics authorities are exempted from the latter obligation. PL: (Comments): We maintain our position that the provision should be supplemented by the additional one stating that: “Official statistics authorities are exempted from the latter obligation.” Informing the owner about the destruction of data, as provided for by this obligation,

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	may be difficult to implement by official statistics. The exception of that kind is already included in GDPR (art. 17.3(d)). With regard to data collected by official statistics, which always uses them for statistical purposes, it should be also clarified whether the re-use of the data can be considered as a purpose compatible with the one for which the data were collected. EE: (Drafting): (c) ~~erase~~ ~~destroy~~ the data as soon as they are no longer necessary for the stated purpose and inform the data holder without undue delay that the data have been ~~erased~~ ~~destroyed~~; when storing data in documents, then retention period should provided in the law of the Member State. EE: (Comments): It is important to underline that if a public sector body acquires the data in the case of an emergency and makes nationally important decisions based on this information, then the information will also end up in certain documents (memos, decisions,

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	protocols). In other words, signed or confirmed documents can contain this information in different ways and certainly cannot be erased from everywhere. Of course, data confidentiality must be ensured by the government, but the norm cannot force to erase data itself. It is practically not possible. The retention of such data depends on the document retention periods. ES: (Drafting): (c) unless the data was requested for the compilation of official statistics pursuant to Article 15 (a), erase ~~destroy~~ the data as soon as they are no longer necessary for the stated purpose and inform the data holder without undue delay that the data have been erased ~~destroyed~~. ES: (Comments): [PRIORITY] In line with the amendment proposed in Article 15 regarding data provision for the compilation of official statistics. FR:

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	(Comments): Les autorités françaises interrogent la Commission sur l'opportunité de prévoir une exception à ce paragraphe lorsqu'il est nécessaire d'archiver les données à des fins d'intérêts publics, scientifiques ou historiques.
	NL: (Drafting): d) only request data for a specific goal once NL: (Comments): The public sector can not use the Data Act to do repeated requests. New legislation should be made in order to handle this. This could also be further clarified in the recitals.
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	FI: (Comments): Here a position is taken on confidential information, but only on the basis of a trade

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case, the public sector body or the Union institution, agency or body shall take appropriate technical and organisational measures to preserve the confidentiality of those trade secrets.	secret. Could there be other confidentiality criteria that could be relevant in the application of this period? (e.g. banking secrecy)? IT: (Drafting): 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 technical, legal and organisational measures to preserve the confidentiality of those trade secrets. IT: (Comments): A reference to legal measures is needed to ensure the adequate protection of trade secrets.

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<i>Article 20</i> <i>Compensation in cases of exceptional need</i>	EE: (Comments): Must be changed according to changes in article 15.
1. Data made available to respond to a public emergency pursuant to Article 15, point (a), shall be provided free of charge.	FI: (Comments): PT: (Drafting): 1. Data made available to respond to a public emergency and to official statistics purposes , pursuant to Article 15, point (a), and point (c) (3) , shall be provided free of charge. PT: (Comments):

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	As stated in our comments to article 15, privately held data required for the production of official statistics should as a principle be provided free of charge. This rule applies to other data sources used for statistical purposes, having in mind that official statistics are a public good available to all for free and essential to support democratic decision-making process. HU: (Drafting): 1. Data made available to respond to a public emergency and official statistics needs pursuant to Article 15, point (a) and (b) and (c)(3) [or (d) depending on the alternative to amend Article 15], shall be provided free of charge HU: (Comments): Official statistics should not bear any costs for data. Introducing such an option in DA can have negative implications for the future. Moreover, it would result in impossibility in practice to obtain data by national statistical institutes which have limited financial resources.

Presidency compromise	Drafting Suggestions Comments
	It should also be underlined that there are relevant mechanisms and safeguards in the statistical system whose purpose is to limit requests for data and their scope to the absolute minimum. In this respect data transmission is also preceded by extensive consultations with various stakeholders (including both data holders and users). DK: (Drafting): 1. Data made available to respond to a public emergency pursuant to Article 15, point (a), shall be provided free of charge, except where the data recipient is a micro, small or medium enterprise, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, who shall have the right to claim compensation in accordance with paragraph 2 of this Article. Where the request includes personal data, the data holder shall be allowed to claim compensation for anonymisation or pseudonymisation. DK: (Comments):

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	To ensure that small and micro enterprises are not overburdened, they should be allowed to request compensation <i>also</i> for data made available to respond to a public emergency. Anonymising personal data can be a very burdensome task. While we agree that companies should contribute to society in situations of public emergency, however, we must take account for the fact that public emergency might also have severe consequences for companies, as with COVID-19. Hence, we suggest allowing for compensation for anonymization and pseudonymisation for all data holders. SK: (Drafting): 1. Data made available to respond to a public emergency pursuant to Article 15, point (a), shall be provided ~~free of charge~~ with a reasonable compensation not exceeding the costs related to making the data available to the public sector body. SK: (Comments): The cost and effort required to make the data available should be taken into account.

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	Therefore, in order to compensate for that cost and effort, it is justified to provide a reasonable compensation. PL: (Drafting): 1. Data made available to respond to a public emergency and official statistics needs pursuant to Article 15, point (a) and (c) (3) [or (d) depending on the alternative to amend Article 15], shall be provided free of charge. PL: (Comments): PL maintains the position that official statistics should not bear any costs for data. It is guaranteed by Articles 13 and 53 of the Polish Law on official statistics. Introducing such an option in DA can have negative implications for the future. Moreover, it would result in impossibility in practice to obtain data by national statistical institutes which have limited financial resources. It should also be underlined that there are relevant mechanisms and safeguards in the statistical system whose purpose is to limit requests for data and their scope to the

Presidency compromise	Drafting Suggestions Comments
	absolute minimum. In this respect data transmission is also preceded by extensive consultations with various stakeholders (including both data holders and users). Vide also comments to recital (58) Therefore, p.1. should be changed as follows: 1. Data made available to respond to a public emergency <u>and official statistics needs</u> pursuant to Article 15, point (a) <u>and (c)(3)</u> <i>[or (d) depending on the alternative to amend Article 15]</i>, shall be provided free of charge. IE: (Comments): IE suggests that this provision may be improved by making a reference to Article 15(c) so that data for Official Statistics falls outside the proposed amendment around payment for access. BE: (Comments): Belgium maintains a scrutiny reservation on this Article, its scope and the

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	impact for the businesses with regard to the costs of anonymisation or pseudonymisation. ES: (Drafting): 1. Data made available to respond to a public emergency pursuant to Article 15, point (a) shall be provided free of charge, unless the data holder is a micro or small enterprise. ES: (Comments): In line with the amendment proposed in article 14 regarding micro and small enterprises.
	ES: (Drafting): 1a. Data made available to respond to a public emergency pursuant to Article 15, point (d) shall be provided free of charge.

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	ES: (Comments): <u>PRIORITY</u> In line with the amendment proposed in article 15 regarding the compilation of official statistics.
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, pseudonymisation 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.	FI: (Comments): Here, aggregation is not mentioned (vs. recital 64). BG: (Comments): On many occasions it would be difficult to determine the “reasonable margin” for the purpose of this paragraph. HU: (Drafting):

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	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, pseudonymisation 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~~. HU: (Comments): It is too vaguely formulated. Production cost should be sufficient in these cases. HR: (Comments): Official statistics should be exempted from obligation to compensate data holders. Given that competent authorities produce official statistics as a public good, national and European legislation ensures free of charge access to traditional data sources.

Presidency compromise	Drafting Suggestions Comments
	Proposed obligation for compensation could jeopardize the arranged system and disproportionately increase production costs. Data sharing should aim at enabling a production and dissemination of official statistics in order to respond to increasing information needs by society and by policy makers and it is important to ensure easy and free of charge access to data. EE: (Drafting): ~~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, pseudonymisation 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.~~ EE:

Presidency compromise	Drafting Suggestions Comments
	(Comments): If it is an administrative task, then the making available of such data should be free of charge, especially in an exceptional need. ES: (Drafting): 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), or pursuant to Article 15, point (a) if the data holder is a micro or small enterprise, such compensation shall not exceed ES: (Comments): In line with the amendment proposed in Article 14 regarding micro and small enterprises. FR:

Presidency compromise	Drafting Suggestions Comments
	(Comments): Dans le cas de la production de statistiques publiques, les autorités françaises estiment que l'inclusion d'une " marge raisonnable" dans le calcul de la compensation présente un risque pour la pérennité globale du système de production de statistiques publiques. Elles estiment que seule une compensation égale au coût directement induit par la demande devrait être prévue dans le règlement dans les cas où les autorités statistiques accèdent à des données à des fins statistiques en vertu de l'article 15. De manière générale, elles estiment que cette notion de « marge raisonnable » gagnerait à être précisée et rigoureusement encadrée. En effet, les autorités françaises tiennent tout d'abord à préciser qu'elles ne remettent pas en cause le fait que le respect d'une demande de mise à disposition de données doit donner lieu à une juste compensation du coût directement induit par la demande. Cependant, elles sont fermement opposées à l'inclusion d'une " marge raisonnable " dans le calcul de la compensation dans le cas d'un accès pour la production de statistiques officielles. Sans compter que le concept de marge raisonnable est très vague (qu'est-ce qui est "raisonnable" ? Raisonnable par rapport à quoi ? Au coût engendré par la demande ?

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	Ou à l'investissement qui a été nécessaire pour construire le système informatique qui a collecté les données ?). Inclure une marge en plus du coût direct encouru revient à acheter des données aux détenteurs de données et présente donc un risque pour la durabilité globale de la production de statistiques officielles. Les statistiques officielles représentent un objectif d'intérêt public distinct. Elles sont nécessaires à l'accomplissement des activités de l'Union. Elles permettent aux décideurs politiques, aux acteurs économiques et sociaux et aux citoyens de prendre des décisions fondées sur des données probantes et de se forger des opinions éclairées. La mission des fournisseurs de statistiques officielles est de fournir des données et des statistiques fiables et de haute qualité sur l'économie, la société et l'environnement. Comme les statistiques officielles sont fournies à tout le monde, au même moment et gratuitement, elles représentent effectivement un bien public essentiel qui profite à tous. Pour que les statisticiens officiels soient en mesure de mener à bien cette mission d'intérêt commun, des règles sont en place (à commencer par le règlement n° 223/2009 relatif aux statistiques européennes) afin de garantir qu'ils puissent obtenir des données pertinentes - traditionnellement par le biais d'enquêtes ou de sources administratives - sans avoir à les acheter. La transformation numérique a profondément modifié les besoins en information et

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	les attentes des utilisateurs. L'accès et l'utilisation des nouvelles sources de données, qui sont des sous-produits de la transformation numérique, deviennent essentiels pour produire des statistiques officielles en temps voulu, de manière plus efficace et moins coûteuse. C'est pourquoi le règlement sur les statistiques européennes est actuellement en cours de révision afin d'inclure des dispositions qui accordent aux statisticiens un accès légal à ces nouvelles sources de données, sans avoir à acheter les données (comme c'est le cas actuellement pour les enquêtes et les données administratives et comme le recommande le groupe d'experts de la Commission chargé de faciliter l'utilisation de nouvelles sources de données pour les statistiques officielles dans son rapport final publié en juin 2022 pour les nouvelles sources de données). Cela créera certainement une grande confusion si l'accès dans des circonstances exceptionnelles implique le paiement d'une marge (comme le prévoit le Data Act dans sa rédaction actuelle) alors que les dispositions relatives au cas général indiquent que les données ne doivent pas être achetées par les autorités statistiques afin d'accomplir leur mission d'intérêt public. Enfin, nous souhaitons mentionner qu'il nous semble clair que les détenteurs de données, chargés d'estimer le coût de la demande, seront probablement tentés d'estimer à la hausse et que la marge raisonnable sera donc incluse sans qu'il soit nécessaire de l'écrire spécifiquement dans l'article, ce qui créerait à nouveau beaucoup

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	de confusion et pourrait compromettre la capacité des statisticiens officiels à remplir leur mission à l'avenir.
3. Where the public sector body or the Union institution, agency or body wishes to challenge the level of compensation requested by the data holder, the matter shall be brought to the competent authority referred to in Article 31 of the Member State where the data holder is established.	DK: (Comments): We appreciate the Presidency's intention of addressing situations of dispute regarding compensation, and we agree that such disputes should be brought before an authority in the Member State, where the data holder is established. However, same as for article 18, we have concerns regarding possible conflicts of interests, where the requesting authority may in fact also be the competent authority for the Data Act. IE: (Comments): IE supports an approach that the competent authority overseeing regulation of the level of compensation and dispute resolution will be the competent authority of the member state where the data holder is established as this aligns with the regulatory

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	approach of other digital files.
<i>Article 21</i> <i>Further sharing of data obtained in the context of exceptional needs with</i> ~~Contribution of research organisations or statistical bodies in the context of exceptional needs~~	FI: (Comments): This should be reconciled with the GDPR and it should be ensured that appropriate safeguards are in place in order to prevent any misuse, including for anticompetitive behaviour. EE: (Comments): It is not clear whether the goal of this provision is to limit the use of statistics or whether it is a special provision in addition to everything else (see also art. 16(1)). Could it be pointed out here again that it does not affect the doing of statistics and science in other situations? Using the data for statistical and scientific purposes should be allowed if there is a

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	sufficient legal basis for it in the MS law and if their confidentiality is guaranteed (similarly to Article 89 of the regulation (EU) 2016/679)). ES: (Comments): With the new wording of article 21 and its title, the question arises as to whether data can be shared to carry out <i>any</i> scientific research or official statistic, or whether data can only be shared to carry out scientific researches or official statistics <i>related to the exceptional need that lead to the initial request for data</i>. Further clarification in this regard would be welcome.
1. A public sector body or a Union institution, agency or body shall be entitled to share data received under this Chapter	
(a) with individuals or organisations in view of carrying out scientific research or analytics compatible with the purpose for which the data was	FI: (Comments):

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requested, or	Is there discrepancy between the heading ‘Research organisations or statistical bodies’, vs. in para. 1a, also ‘individual’ ? i.a. does the title correspond to the content, or can the individual be an organisation or body? (see also art. 19) SK: (Comments): Organisations carrying out scientific research that are eligible for sharing data shall be clearly defined with specific conditions. This concept is not novel in the EU law, as Digital Services Act contain specific requirements for “vetted researchers.”
(b) ~~to~~ with national statistical institutes and Eurostat for the compilation of official statistics.	FI: (Drafting): (b) ~~to~~ with statistical authorities ~~national statistical institutes~~ and Eurostat for the compilation of official statistics. FI: (Comments):

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	We propose that the notions 'national statistical institute' and 'statistical body' would be replaced with 'statistical authorities'. See also our comment in recital 69. HU: (Drafting): <u>(new b) A public sector body or a Union institution, agency or body shall share data received under this Chapter with national statistical institutes and Eurostat for the development, production and dissemination of official statistics.</u> HU: (Comments): The formulation is still not strong enough for statistics, it still is to be interpreted as shall be entitled to share, which is not the same as shall share. In case of official statistics, sharing the data should be an obligation not a possibility. DE: (Drafting): (b) ~~to with national statistical institutes~~ public bodies contributing to official

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	public statistics and Eurostat for the compilation of official statistics. DE: (Comments): There are not only the statistical agencies but other agencies like environmental agencies in charge of statistical tasks. In the meaning of the act we would understand official and public statistics provided by national statistical agencies and other public authorities, too.
2. Individuals or organisations receiving the data pursuant to paragraph 1 shall use the data exclusively ~~aet~~ 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.	ES: (Comments): With this amendment it is less clear whether organisations receiving the data must be non-for-profit organisations.

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3. Individuals or organisations receiving the data pursuant to paragraph 1 shall comply with the provisions of Article 17(3) and Article 19.	EE: (Comments): See also our comment with article 19 (erase data). This subparagraph raises practical questions: if the confidentiality of the data is guaranteed anyway when doing statistics and science, why should this data be deleted by others immediately? We propose to either delete this or refer to Member states' law.
4. Where a public sector body or a Union institution, agency or body transmits or makes data available under paragraph 1, it shall notify without undue delay the data holder from whom the data was received, 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.	PT: (Comments): We suggest setting a specific time period instead of “<i>undue delay</i>”, to introduce more regulatory certainty and clarity. DE: (Drafting): 4. Where a public sector body or a Union institution, agency or body transmits or makes data available under paragraph 1, it shall notify without undue delay the data

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	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. DE: (Comments): Concerning personal data: According to Art. 1 (3) GDPR general data protection law applies. Concerning trade secrets: Public sector bodies don't know which information they received are trade secrets and which are not. The business that provided the data in the first place does. Therefore the provision for the public sector body to inform the business about trade secrets is overly burdensome and not necessary. IT: (Drafting): 4. Where a public sector body or a Union institution, agency or body transmits or makes data available under paragraph 1, it shall notify without undue delay the data holder from whom the data was received, stating the identity of the organisation or the individual receiving the data and the technical, legal and organisational

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	protection measures taken, including where personal data or trade secrets are involved. IT: (Comments): A reference to legal measures is needed to ensure the adequate protection of trade secrets.
<i>Article 22</i> <i>Mutual assistance and cross-border cooperation</i>	DK: (Comments): We do not see the reasoning behind providing for cross-border access to privately held data for the purposes of Chapter V. The Commission should provide adequate justification for such provisions before we can discuss whether cross border access is necessary, and potentially what a framework for cooperation could look like. NL: (Comments):

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	A more clear and proactive role by the competent authority of the member state in which the data holder is established is therefore necessary to protect the rights of the data holder and data subjects. If such role is not foreseen we believe cross-border requests should not be facilitated.
1. Public sector bodies and Union institutions, agencies and bodies shall cooperate and assist one another, to implement this Chapter in a consistent manner.	BE: (Comments): Belgium considers that this cross-border application need further examination in relation to the broad and vague notion of public emergency is defined in accordance with national law.
2. Any data exchanged in the context of assistance requested and provided pursuant to paragraph 1 shall not be used in a manner incompatible with the purpose for which they were requested.	
3. Where a public sector body intends to request data from a data holder established in another Member State, it	NL:

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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.	(Drafting): 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. In accordance with articles 17(da) and 18(3) of this regulation the competent authority and the independent supervisory authority responsible for monitoring the application of Regulation (EU) 2016/679 of the Member State where the data holder is established may decline or seek the modification of the request. IT: (Drafting): 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.~~ 3a. Where a Union institution, agency or body intends to request data from a data holder, it shall first notify the competent authority of the Member State where the data

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	holder is established. The competent authority may deny the request. IT: (Comments): Provided that 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 (article 1, paragraph 4), national competent authority must be able to inhibit access from EU IBA.
4. After having been notified in accordance with paragraph 3, the relevant competent authority ~~shall~~ may without undue delay 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.	PT: (Drafting): 4. After having been notified in accordance with paragraph 3, the relevant competent authority shall ~~shall may~~ without undue delay 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

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	requesting public sector body shall take the advice of the relevant competent authority into account. PT: (Comments): We suggest setting a specific time period instead of “<i>undue delay</i>”, to introduce more regulatory certainty and clarity. If public bodies and EU institutions must: 1. cooperate with each other (n° 1); 2. not use any data exchanged in the context of the assistance requested under paragraph 1 (paragraph 2) in a manner incompatible with the purposes for which it was requested; 3. must first notify the competent authority of the Member State whenever a public authority wishes to request data from a data subject established in another Member State (paragraph 3); Therefore, it seems to make sense that after having been notified under paragraph 3,

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	the competent authority should (and not only be able to) inform the public sector body that has requested the need, if any, for cooperation with sector bodies public service of the Member State in which the data subject is established. IT: (Drafting): 4. After having been notified in accordance with paragraph 3, the relevant competent authority ~~shall~~ may shall without undue delay 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. IT: (Comments): It is important to ensure better coordination to reduce the administrative burden.

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	IE: (Drafting): Article 22a To make data available based on the needs of the national statistical institutes and Eurostat. By way of derogation from article 14(1) a data holder shall make data available to a national statistical institute or Eurostat if they demonstrate the need to use the data requested for the compilation of official statistics, including non-exceptional needs. This Chapter shall apply mutatis mutandis to requests for data to be made available for that purpose. IE: (Comments): IE considers that the production and dissemination of reliable independent official statistics is an important example of a data-driven public service which plays a fundamental role in today's society. As such, it is important that national statistical institutions can collect data for their primary purpose of collating official statistics,

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	which may fall outside the notion of “exceptional need”. Sustainable access to privately held data sources is crucial for the production of high quality and timely independent official statistics by national statistics institutes to serve the public interest more efficiently and less expensively, while protecting individual data confidentiality, privacy, commercial confidentiality and intellectual property rights. In order to respond to the increasing information needs of society and of policymakers, the Data Act proposal should be amended in terms of enabling sustainable access to privately held data needed for the production of Union and national official statistics.
CHAPTER VI	DK: (Comments): In general, we are very supportive of the ambitions with this chapter, and we welcome the changes introduced to clarify the obligations of providers. As a general comment to this chapter specifically, we support the suggestion raised by others that

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	it should apply retroactively. ES: (Comments): The definition of data processing services includes Software as a Service cloud solutions. Therefore, <u>switching and portability requirements cloud apply to business software deployed on premise</u>, as it will prevent lock-in effect and foster competition, creating fair conditions for business offering their services as cloud software and as on-premise software. In particular, developers and vendors of business software, as well as providers of support and maintenance for the business software, should <u>remove obstacles to the effective switching</u> to cloud providers or different on premise systems. For example, technical obstacles should be removed by <u>ensuring compatibility with open specifications and standards and by allowing users to export data in common, structured and machine-readable format</u>. And contracts should include detailed information about de exportable data. In addition, <u>providers of support and maintenance services for the business software should</u> remove contractual and economic obstacles, for example, by <u>allowing terminating the contract</u> after a limited notice period, <u>allowing to switch</u> data with a

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	maximum transition period and <u>assisting in the switching processes</u>
SWITCHING BETWEEN DATA PROCESSING SERVICES	NL: (Comments): We welcome the measures to enable cloud switching, but in line with the findings from the cloud market study by the Dutch consumer and market authority²⁶, we believe in a truly competitive cloud market users should also be able to use services from different providers next to each other. We see a risk that under the current proposal users may remain locked in to a single provider's eco-system of services because the proposal does not further enable interoperability between services from different providers other than for switching services. We believe the Data Act could supplement the proposed measures to further stimulate interoperability and integration of cloud services. The proposed amendments by our competition and market authority provide a good starting point for discussions in Council on how the Data Act can further stimulate interoperability and integration of cloud services. We do realize that these amendments touch upon some topics of ongoing of discussion in the Council, most importantly the functional equivalence obligation. We would welcome further discussions on how these amendments could be incorporated in a manner that reflects

²⁶ [Market study into cloud services | ACM.nl](#)

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	the various concerns and points of view with regard to functional equivalence. SE: (Comments): When developing the next compromise proposal it is important to limit the administrative burden and other costs for the businesses concerned to ensure that fulfilling the terms and conditions is a feasible alternative for these companies. This comment also applies to the act as a whole. ES: (Comments): <u>PRIORITY</u> The cloud market is a highly concentrated market with very few large providers providing multiple different services among the different cloud layers (SaaS, PaaS and IaaS). Portability provisions of the Data Act will enhance competition between providers offering the same service type. Thus, it will probably enhance competition between large providers, but might not be enough in order to allow small providers offering a single or few cloud services to enter the market and thrive.

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	Therefore, the Data Act could be more ambitious and <u>include interoperability requirements</u>, in addition to the switching requirements already included. If specific PaaS or SaaS cloud services from small providers could easily and fairly be interconnected with PaaS, IaaS or SaaS services from other providers, the competitive advantage that large cloud providers currently have of offering large packages or catalogues of services (eg. large SaaS packages for office and collaborative work; large catalogues of PaaS and IaaS services that can be integrated with each other, etc), could cease to be so decisive, and small providers that offer few cloud services could compete on the basis of price, innovation or quality. In particular, we believe that: • The Data Act should include the obligation to <u>remove obstacles to interoperability</u>, and not just to portability/switching between data processing services. • The Data Act should include an obligation to <u>make APIs available</u> for the purpose of interoperability, given that APIs are imperative in order to interconnect different data processing services and make them work together on a regular basis or in real time. • The Data Act should contemplate the use of interoperability and portability common specifications and <u>European standards which should not be restricted to data processing services of the same service types</u>, given that data processing services providing different services should be able to interoperate. • The Data Act should cap interoperability charges, given that, providers could,

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	for example, set artificially high data egress fees in order to discourage or impede the interconnection between their cloud services and cloud services provided by third parties. The concrete amendments proposed by the Netherlands Authority for Consumers and Markets could be assessed and included in the Regulation.
<i>Article 23</i> <i>Removing obstacles to effective switching between providers of data processing services</i>	BG: (Drafting): <i>Article 23</i> ~~Removing obstacles to effective switching between providers of data processing services~~ BG: (Comments): “Effective switching” better describes the main purpose of this article. DE:

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	(Comments): Any regulation on the switch of contracts should be aligned with DORA.
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 services shall remove commercial, technical, contractual and organisational obstacles, which inhibit customers from:	DK: (Drafting): 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 services shall remove not pose commercial, technical, contractual and organisational obstacles, which inhibit customers from: DK: (Comments): We are concerned that the phrasing of the general obligation to “remove commercial, technical, contractual and organisational obstacles”, assumes that providers can remove obstacles of all kinds under all circumstances. This is not always the case, e.g.

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	due to legal requirements or intellectual property rights. Legally, one cannot be obligated to do the impossible, but neither should one be unduly obligated to undertake efforts to remove barriers beyond one's control. Such a requirement would especially adversely affect smaller service providers – not only due resource constraints, but also because they are more likely to rely on the integration of hardware, software and services licensed by other parties. Therefore, we would prefer the text to be amended so the obligation to “remove” obstacles is changed to “not pose” obstacles. We noted the concerns expressed by the Commission at the WP Tele on 15 Sep, that this could allow companies to skirt their obligations. However, we believe this concern was based on a misconception that our suggestion used the term “not impose ... obstacles”. “Impose” could indeed be interpreted such that it requires a direct, deliberate and perhaps future action. Conversely, “pose” would, as per our understanding, encompass also existing and indirect obstacles, also those caused unwittingly or through inaction. However, we are open to suggestions of alternative wording, which better achieves the desired effect. Perhaps the Legal Services could be of assistance. PL: (Drafting):

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	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.~~ PL: (Comments): See our comments to art. 2 (13) re. definition of service type. DE: (Comments): We understand the provisions under Chapter VI as covering customers of a data processing service. These customers include both private individuals and enterprises, and as such would cover solo-self-employed platform workers
(a) terminating, after a maximum notice period of 30 calendar days, the contractual agreement of the service;	BG: (Drafting): (a) terminating, after a maximum notice period of 30 calendar days or as agreed

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	between the customer and the service provider, the contractual agreement of the service; BG: (Comments): In practice, it may take longer than 30 days and we should leave the parties to the contract to agree upon the period within a longer overall period of for example 9 months as suggested firther in the text. DK: (Comments): PL: (Drafting): (a) terminating, after a maximum notice period of 30 calendar days, the contractual agreement of the service (without the prejudice to any financial commitments by the customer regarding the service);

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	DE: (Comments): Are individual contractual agreements between providers and customers that provide for other transition periods possible, especially in the case of the implementation of complex projects? If not, how can the implementation costs of large projects be calculated and covered in a way that can be planned? FR: (Drafting): (a) terminating, after a maximum notice period of 30 60 calendar days, the contractual agreement of the service; FR: (Comments): Les autorités françaises souhaiteraient savoir si le mécanisme de résiliation de l'article 23, paragraphe 1, point a), s'applique à tous les contrats, qu'ils soient à durée déterminée ou indéterminée.

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	Compte tenu de la modification de l'article 24, paragraphe 1, point a), proposée par la Présidence et de l'effet de résiliation de l'expiration du délai prévu à l'article 23, paragraphe 1, point a), les autorités françaises estiment approprié de porter le délai de l'article 23, paragraphe 1, point a), de 30 à 60 jours.
(b) concluding new contractual agreements with a different provider of data processing services covering the same service type;	PL: (Drafting): (b) concluding new contractual agreements with a different provider of data processing services covering ~~the same service type~~ similar data procesing services DE: (Comments): Any regulation on the switch of contracts should be aligned with DORA.
(c) porting its data and metadata created by the customer and by the use of the originaing service, and/or the customer's applications and/or other digital assets to another provider of data processing services or to	BG: (Drafting):

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an on-premise system;	(c) porting its data and if explicitly requested the metadata created by the customer and by the use of the originaing 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;
(d) in accordance with paragraph 2 , 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.~~	PT: (Drafting): (d) ~~in accordance with paragraph 2~~, 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.~~ PT: (Comments): This point references paragraph 2, which in turn references paragraph 1, which contains this point. This constitutes a circular reference. The “Joint Practical Guide of the EP, CONS and COM for persons involved in the drafting of EU legislation” strongly discourages the use of circular references (point

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	16.19). Therefore, this text should be removed. SK: (Drafting): (d) in accordance with paragraph 2, maintaining functional equivalence of the IaaS 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.~~ SK: (Comments): It should be clarified that the provision does not apply to PaaS and SaaS services. PL: (Drafting): (d) in accordance with paragraph 2, maintaining functional equivalence of the service in the IT-environment of the different provider or providers of data processing services covering similar the same services type, ~~in accordance with Article 26.~~

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	PL: (Comments): See our comment to art. 2(13) DE: (Comments): • “Functional equivalence” needs to be defined. Are providers and customers able to make individual contractual arrangements that provide for different transition periods, especially in the case of the implementation of complex projects? If not, how should the implementation costs of large projects be calculated and covered in a plannable manner? FR: (Comments): Si le principe d'équivalence fonctionnelle est acceptable pour les autorités françaises, il semble crucial de s'assurer, dans le corps du texte ou dans les considérants, que la responsabilité du prestataire d'origine ne peut être engagée en raison de la qualité

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	inférieure du service du prestataire de destination.
2. Paragraph 1 shall only apply to obstacles that are related to the services, contractual agreements or commercial practices provided by the original provider.	DK: (Drafting): ~~2. Paragraph 1 shall only apply to obstacles that are related to the services, contractual agreements or commercial practices provided by the original provider.~~ DK: (Comments): Our suggested changes in para 1 would make this para, which concerns the relationship between the obstacle and the service, redundant, and could therefore be deleted. IT: (Drafting): ~~2. Paragraph 1 shall only apply to obstacles that are related to the services, contractual agreements or commercial practices provided by the original provider.~~

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	IT: (Comments): Switching rules shall be provided for all the actors of the value chain and not only the original provider.
<i>Article 24</i> <i>Contractual terms concerning switching between providers of data processing services</i>	FI: (Comments): This article could include a new para. with ‘an estimation of costs concerning switching data processing services’ (see below) EL: (Comments): <i>A general remark and /or a question. Will this switch entail also charges of additional fees? Will they be additional costs stemming from the switching between providers?</i>

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	SE: (Comments):
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:	SK: (Drafting): 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 and made available to the customer in advance of that customer entering into a written contract with the provider. Without prejudice to Directive (EU) 2019/770, that contract shall include at least the following: FR: (Comments): Une articulation plus claire doit être opérée avec la directive 2019/770 qui concerne les contrats de fourniture de services numériques.

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	Comme indiqué plus haut, la notion de services numériques n'est pas définie dans le Data Act, sauf par la négative à l'article 3(12). Une définition du service numérique existe dans la directive (UE) 2019/770. Le lien doit être opéré avec cette définition afin de faire comprendre au consommateur que ces contrats sont visés par les articles 23 et suivants du Data act. Cf. proposition faite à article 3(12) : ‘data processing means a digital service as defined in point (2) of article 2 of Directive (UE) 2019/770, 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;
	SE: (Drafting): or to port all data, customer applications and other 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 3 months ~~30 calendar~~ days

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	SE: (Comments): There is a broad range of data processing services. Some could probably be ported in 30 days but not as a general maximum period. Some companies have their whole IT-environment in data processing service. Making the switching to a very big project. It is also important to consider the impact on competition. The obligations should not require the inclusion of e.g. functions and solutions that are unique to a service provider.
(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 other 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, to be initiated after the maximum notice period referred to in Article 23, during which the data processing service provider shall:	BG: (Drafting): (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 other 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 days or as agreed between the customer and the service provider, to be initiated after the maximum notice period referred to in

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	Article 23, during which the data processing service provider shall: BG: (Comments): In practice, it may take longer than 30 days and we should leave the parties to the contract to agree upon the period within a longer overall period of for example 9 months as suggested further in the text. DK: (Comments): We are concerned that the maximum timeframes provided for throughout this chapter are too short. Data processing services provide services there are increasingly complex both on a technical and organisational level, to the point where it is impossible to port data and applications within just 30 days. As a consequence, the exemption in article 24, para 2 would soon become the rule rather than the exemption. Further, a short termination period is not always beneficial to the user. Business customers or public authorities who use more complex data processing services or who themselves have contributed to the design of their individual solutions, would need to take active part in the porting and might have a preference for a longer

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	timeframe in which to prepare the switch. In that respect, we would welcome a more detailed discussion on the termination period in order to decide upon a useful distinction between service types to allow for different timeframes for transferring data. The new addition to this provision does not solve the issue regarding the short transition period. We are further concerned that the consequence of the changes is that the transition period will be required to be placed after the expiration of the contract, rather than allowing for a longer transition period (as we understand was intended). PL: (Drafting): (a) ~~clauses allowing the customer, upon request,~~ the customer's rights, on the conclusion of its contractual agreement with the provider, to switch to a data processing service offered by another provider of data processing service or to port all data, applications and other 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 3060 calendar days, to be initiated after the

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	maximum notice period referred to in Article 23, during which the data processing service provider shall: PL: (Comments): We are of the opinion that the general transition period of 30 day is not feasible for most of providers and as the services will evolve over time to be more complex this difficulty will only grow.
	SE: (Drafting): (1) assist and, where technically feasible, complete in the switching porting process; SE: (Comments): The provider of the data processing service can not be obliged to complete the porting process. The process depends a lot of the new data processing service and the new operator has to be main counter part.

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(1) assist and, where technically feasible, complete the ~~switching~~ porting process;	PL: (Drafting): assist with the switching process that the provider can supply including, and where technically feasible, completion of the ~~switching~~ porting process from the provider's side DE: (Comments): Is porting and switching synonymous? If not what is the reason for the change?
	SE: (Drafting): ensure full continuity in the provision of the ~~respective functions or services~~ current data operating services. Until the porting is completed.
(2) ensure full continuity in the provision of the respective functions or services;-	PL: (Drafting):

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	ensure full continuity in the provision of the respective functions or services from the provider's side during the porting process
(3) 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 paragraph 1(c) of this article.	FI: (Comments): Also, to be considered: to add an obligation for the originating provider to delete user data after the switching is complete. SK: (Comments): SK considers the amendment to be useful but very generic. It might be worth considering clarifying in relation to "high level of security" - what is meant by it, how is it evaluated, checked in case of a dispute or a problem? Does this article refer to the Cyber Resilience Act?
	SK: (Comments):

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	SE: (Comments): Is there a risk that this will include confidential information or trade secrets belonging to the service providers? Important to safeguard such information..
(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;	SK: (Drafting): (b) ~~an exhaustive~~ a detailed 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's 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; PL:

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	(Drafting): (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's and by the use of the service for customer's own use or benefit during the period the service was provided, including, but not limited to, configuration parameters, security settings, access rights and access logs to the service;
(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-;	FI: (Comments): Should this 30 day period be extended if there is a reason for that/or agreement ? An extension seems more justified (also) based on the subpara (d) suggested by the Presidency. Alternatively, parties could agree upon another timeframe ? DK: (Comments):

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	Please also see our comments above to art. 24.1a on the need for increased time allowances due to the increasing complexity of solutions, which also apply here. SK: (Drafting): (c) a the 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-;
(d) a clause guaranteeing full deletion of all customer data directly after the expiration of the period set out in paragraph 1(c) of this Article or after the expiration of an alternative agreed period later than the expiration of the period set out in paragraph 1(c).	DK: (Comments): We note that the effect of this provision hinges on the definition of ‘customer data’, underlining the need to ensure that this is clearly defined, e.g. at what point the aggregation, correlation and other forms of enrichment of the data puts it out of scope. SK: (Comments):

Presidency compromise	Drafting Suggestions Comments
	SK welcomes the extension, however, in our view there should also be a " safeguard" that only after "verification" that the client data is properly transferred to the new provider will the deletion occur. I.e. there may be a situation where the new provider has not yet migrated everything properly and the original provider has to delete it already because of the deadline. IE: (Drafting): ...or after the expiration of an alternative specified agreed period later than the expiration of the period set... IE: (Comments): IE supports the addition of this provision but consider it would be useful to insert “specified” to get some further clarification for the parties on the obligations of the original service provider to delete the data at a certain point in time and the expectation of the customer on when that alternative period should expire – to ensure that the alternative agreed period does not remain open-ended.

Presidency compromise	Drafting Suggestions Comments
	DE: (Drafting): (d) a clause guaranteeing full ~~deletion~~ erasure of all customer data directly after the expiration of the period set out in paragraph 1(c) of this Article or after the expiration of an alternative agreed period later than the expiration of the period set out in paragraph 1(c). DE: (Comments): <u>Coherent use of term.</u>
	ES: (Comments): Contractual terms of data processing services should include an explanation of the security measures and functionalities available to the customer of the cloud service, including, among other, encryption capabilities of the cloud service, backup capabilities, access controls, authentication methods, granularity of permissions, etc.

Presidency compromise	Drafting Suggestions Comments
	This would empower informed choices, prevent customers from switching to providers with lower levels of security without their knowledge, enable users to know about the compatibility of security functionalities and foster security as a differentiating element to engage customers.
(e) details of all the standards and open interoperability specifications, data structures and data formats in which the exportable data described according to paragraph (1) b) will be available.	FI: (Drafting): Suggestion for a new para: With ‘an estimation of costs concerning switching data processing services’ DK: (Comments): We are concerned that this paragraph impose too rigid restrictions by requiring detailed descriptions of standards and specifications. Such standards often change or evolve over time. It is therefore important that this provision does not prevent the possibility to make adjustments to standards or choose new ones during the life of the system. While we maintain a scrutiny reservation, we tentatively support suggestions forwarded by NL, which may offer workable solutions to promote interoperability.

Presidency compromise	Drafting Suggestions Comments
	SE: (Drafting): which may not exceed 6 12 months. SE: (Comments): There is a broad range of data processing services. Some companies have their whole IT-environment with a data processing operator. Making the porting to a very big project. ES: (Drafting): f) information regarding data localisation g) information regarding no-EU laws with extraterritorial effects directly or indirectly applicable to the data processing service and its data h) description of the technical, legal and organisational measures adopted by the

Presidency compromise	Drafting Suggestions Comments
	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. ES: (Comments): [PRIORITY] In order to enhance transparency, foster trust in cloud services and increase customer's ability to make informed choices, data processing service providers should inform their clients, about <u>data localisation</u> and <u>non-EU laws with extraterritorial effects</u>. They should also inform about <u>management models and methodologies</u> of the cloud and about the <u>technology used</u> for the provision of data processing services. They should <u>include that information in the terms of the contract</u>. Therefore, a new letter should be added in article 24(1).
2. The contract as defined in paragraph 1 shall include provisions providing that wWhere the mandatory transition period as defined in paragraph 1, points (a) and (c) of this Article is technically unfeasible,	BG: (Drafting): 2. The contract as defined in paragraph 1 shall include provisions providing

Presidency compromise	Drafting Suggestions Comments
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).~~	that wWhere 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 agreed between the customer and the service provider, 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).~~ DK: (Comments): Please see our comments on Art. 24.1a, which also apply here. SK: (Drafting): 2. The contract as defined in paragraph 1 shall include provisions providing that wWhere the ~~mandatory~~ transition period as defined in paragraph 1, points (a) and (c) of this Article is technically unfeasible for the originating provider, the

Presidency compromise	Drafting Suggestions Comments
	provider of data processing services shall notify the customer within 7¹⁴ working days after the switching request has been made, duly motivating the technical unfeasibility with a detailed report justifying 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).~~ PL: (Drafting): 2. The contract as defined in paragraph 1 shall include provisions providing that wWhere 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 7¹⁴ 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. PL: (Comments):

Presidency compromise	Drafting Suggestions Comments
	As we want to extend the transition period it is understood that this notification period should be extended as well. FR: (Drafting): 2. The contract as defined in paragraph 1 shall include provisions providing that wWhere 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). FR: (Comments): Compte tenu du nouveau considérant (72 bis) proposé par la Présidence et de

Presidency compromise	Drafting Suggestions Comments
	l'objectif du présent chapitre de permettre un changement rapide entre les fournisseurs de services en nuage, il semble important de placer le fournisseur de services d'origine dans une position où il est fortement incité à veiller à ce que l'utilisateur puisse changer de fournisseur aussi rapidement que possible.
<i>Article 25</i> <i>Gradual withdrawal of switching charges</i>	DE: (Comments): - Does the withdrawal of switching charges mean that specific services from third-party providers to support migration processes may no longer be offered in the future? - Switching between cloud providers requires the cooperation of both the exporting and the importing data processing service. The Data Act places the obligations on the exporting provider, who is responsible for the switch and the migration process and who is supposed to maintain continuity of services and functionalities under the same conditions, but at the same time has no interest in the switch. How does COM intend to address this imbalance? - Furthermore, has it been considered that the regulations could have the undesirable side effect that the requirements may only be met by market-dominant companies

Presidency compromise	Drafting Suggestions Comments
	(and gatekeepers)? FR: (Comments): Il est essentiel que la définition des "switching charges" englobe tous les frais qui peuvent être facturés par le prestataire de services à la suite de la commutation, y compris les frais qui ne seraient pas directement corrélés aux coûts encourus par le prestataire.
1. From [date X+3yrs] onwards, providers of data processing services shall not impose any charges on the customer for the switching process.	DE: (Comments): Who does the COM expect to bear the “costs” of switching in the future? Did the COM consider that providers may pass on the costs to all customers via general pricing, including exceptional costs in large B2B projects? FR: (Drafting):

Presidency compromise	Drafting Suggestions Comments
	1. From ~~[date X+3yrs]~~ [date X + 6 months] onwards, providers of data processing services shall not impose any charges on the customer for the switching process. FR: (Comments): Compte tenu de l'effet dissuasif de ces "switching charges", qui prennent souvent la forme de frais de sortie, il semble incohérent de retarder leur suppression progressive au regard de l'objectif du chapitre VI.
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.	FR: (Drafting): 2. From [date X, the date of entry into force of the Data Act] until ~~[date X+3yrs]~~ [date X + 6 months], providers of data processing services may impose reduced charges on the customer for the switching process.
3. The charges referred to in paragraph 2 shall not exceed the costs incurred by the provider of data	

Presidency compromise	Drafting Suggestions Comments
processing services that are directly linked to the switching process concerned.	
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.	
<i>Article 26</i> <i>Technical aspects of switching</i>	DK: (Comments): We welcome the changes to article 26. NL:

Presidency compromise	Drafting Suggestions Comments
	(Drafting): <i>Technical aspects of switching and interoperability</i> NL: (Comments): We think the title of the article should reflect the proposed inclusion of interoperability in the scope of this chapter.
	SE: (Comments): The additions to 26.1 and 26.2 require competing businesses to collaborate. How does this correlate with the rules on competition?
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	FI: (Comments): Do we interpret correctly that the amendment aims to guarantee that the proposal sufficiently distinguish between different service models? Indeed, even if interoperability standards or specifications were to be defined, there remain

Presidency compromise	Drafting Suggestions Comments
processed, or deployed on those infrastructural elements, shall ~~ensure~~ take all measures in their power, including in cooperation with the data processing service provider of the destination service, 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 functional equivalence in the use of the ~~new~~ destination service.	operational and technical limits to switching because SaaS/PaaS services are not built onto identical architectures. SK: (Comments): SK would welcome complementary guidance, or examples of good practice, on what it should look like to “...take all measures in their power...” PL: (Drafting): (..)to facilitate that the customer, after switching to a service covering ~~the same~~ similar services type offered by a different provider of data processing services, enjoys functional equivalence in the use of the ~~new~~ destination service. PL: (Comments): See our comment to art. 2(13)

Presidency compromise	Drafting Suggestions Comments
	IT: (Drafting): 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 all measures in their power best efforts and all reasonable technical legal and organisational measures, including in cooperation with the data processing service provider of the destination service, 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 functional equivalence in the use of the ~~new~~ destination service IT: (Comments): To ensure an effective switching process, best efforts and all technical measures to grant cooperation are needed.

Presidency compromise	Drafting Suggestions Comments
	ES: (Drafting): [...] shall ~~ensure~~ take all measures in their power, including in cooperation with the data processing service provider of the destination service, to <u>facilitate</u> <u>ensure</u> that the customer, after switching [...] ES: (Comments): We acknowledge that portability, although not impossible, might be especially difficult in some specific scenarios. Nevertheless, data processing service providers should do best efforts in order to ensure effective portability. Thus, we preferred the previous wording. FR: (Comments): Il nous semble opportun de définir la notion de « ressources virtuelles » (<i>virtual resources</i>) ?

Presidency compromise	Drafting Suggestions Comments
	La lecture de cet article ne permet pas de comprendre que seuls sont visées les contrats IAAS (infrastructure as a service).
	SE: (Drafting): ~~For data processing services other than those covered by paragraph 1, providers of data processing services shall make open interfaces publicly available to an equal extent to all their customers and the concerned destination service providers and free of charge, including sufficient information about the concerned service to enable the development of software to communicate with the service.~~ SE: (Comments): What is “open interfaces”? Open interoperability is probably better to use and then para 26.3 is enough to use. ES: (Comments):

Presidency compromise	Drafting Suggestions Comments
	In order to guarantee that the Data Act is applicable and enforceable, portability and interoperability requirements for IaaS cloud models should be specified in more detail. There is a need to clarify whether data portability will be based on the use of a given data model, on a list of possible data models or on any standard under an open source license. Similarly, regarding application portability, there is a need to clarify which conditions will be used to evaluate its portability.
2. For data processing services other than those covered by paragraph 1, providers of data processing services shall make open interfaces publicly available to an equal extent to all their customers and the concerned destination service providers and free of charge, including sufficient information about the concerned service to enable the development of software to communicate with the service.	NL: (Drafting): For data processing services other than those covered by paragraph 1, providers of data processing services shall make open interfaces publicly available to an equal extent to all their customers and the concerned destination service providers 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. NL: (Comments):

Presidency compromise	Drafting Suggestions Comments
	The Netherlands supports measures to improve the interoperability of data processing services in order to enable multi-cloud. To this aim, interfaces that enable portability should also be oriented towards enabling interoperability. FR: (Drafting): 2. For data processing services other than those covered by paragraph 1, providers of data processing services shall make open interfaces publicly available ~~to an equal extent to all their customers and the concerned destination service providers and~~ free of charge, including sufficient information about the concerned service to enable the development of software to communicate with the service. FR: (Comments): Les autorités françaises sont favorables à une ouverture publique et gratuite, car cela permettrait de contrôler plus facilement le respect de l'obligation prévue à l'article 26, paragraphe 2, et garantirait une plus grande transparence vis-à-vis des futurs clients potentiels.

Presidency compromise	Drafting Suggestions Comments
3. For data processing services other than those covered by paragraph 1, providers of data processing services shall ensure compatibility with open interoperability specifications and/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, starting one year after the publication of the relevant open interoperability specifications and/or European standards in the repository.	FI: (Comments): This seems a good approach for this issue.
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.	PL: (Drafting): 4. Where the open interoperability specifications or European standards referred to in paragraph 3 do not exist for the services similar to the ones type concerned, the provider of data processing services shall...

Presidency compromise	Drafting Suggestions Comments
	PL: (Comments): See our comments to art. 2(13) NL: (Drafting): 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. The exporting data processing service shall take all measures in their power, including in cooperation with the data processing service provider of the destination service, to facilitate that the customer, after switching to a service covering the same service type offered by a different provider of data processing services, can enjoy functional equivalence in the use of the destination service. NL: (Comments):

Presidency compromise	Drafting Suggestions Comments
	This specific amendment relates directly to ongoing discussions on the functional equivalence obligation. We would welcome further discussions on how these amendments could be incorporated in a manner that reflects the various concerns and points of view with regard to functional equivalence. This amendment should eventually reflect the outcomes of the broader discussion on functional equivalence.
	NL: (Drafting): 5. 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 make APIs available for the purpose of interoperability. These APIs shall ensure, where technically feasible, that third-party services can enjoy the same functional equivalence as first-party services. <i>26A withdrawal of interoperability charges</i> 1. From [date X] onwards, providers of data processing services shall not impose charges for the interoperability process in excess of the costs incurred by the provider of data processing services that are directly linked to the interoperability process concerned.

Presidency compromise	Drafting Suggestions Comments
	2. 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 interoperability charges imposed by data processing service providers on the market to ensure that the limitation of interoperability charges as described in paragraph 1 of this Article will be attained in accordance with the deadline provided in the same paragraph. NL: (Comments): The Netherlands thinks the proposal should ensure that APIs are publicly available in order to facilitate interoperability. It is not always necessary that a single uniform standard is available for every service, but a provider of data processing services need to be able to know what specifications will be used. Financial barriers can limit the effect of interoperability provisions in the proposal. Since both portability and interoperability are of importance, financial barriers for interoperability can be addressed in the same manner as financial barriers inhibiting switching.

Presidency compromise	Drafting Suggestions Comments
CHAPTER VII UNLAWFUL INTERNATIONAL GOVERNMENTAL ACCESS AND TRANSFER OF ~~CONTEXTS~~ NON-PERSONAL DATA SAFEGUARDS	FI: (Drafting): CHAPTER VII UNLAWFUL <u>INTERNATIONAL</u> GOVERNMENTAL ACCESS AND <u>INTERNATIONAL</u> TRANSFER OF ~~CONTEXTS~~ NON-PERSONAL DATA SAFEGUARDS FI: (Comments): It seems to us that the word ‘international’ is in the wrong place. The wording of para 1 covers all government access, even from the EU and the very Member State. Only the latter paras deal with international governmental access. HU: (Drafting): CHAPTER VII

Presidency compromise	Drafting Suggestions Comments
	UNLAWFUL INTERNATIONAL GOVERNMENTAL ACCESS AND TRANSFER OF CONTEXTS NON-PERSONAL DATA SAFEGUARDS HU: (Comments): Any kind of data transfers to third countries without proper EU legal authorization should be prevented by data processing service providers, not only governmental ones. The obligations for data processing service providers in this paragraph are of general nature and not specific to government data transfer attempts. DK: (Drafting):

Presidency compromise	Drafting Suggestions Comments
	CHAPTER VII UNLAWFUL INTERNATIONAL GOVERNMENTAL ACCESS TO ~~AND TRANSFER OF~~ CONTEXTS NON- PERSONAL DATA SAFEGUARDS DK: (Comments): We appreciate the changes made to the title, as it better reflects what we wish to achieve with the chapter. However, further clarifications are needed in both title and article text to alleviate ambiguity regarding possible restrictions on international data flows – underscored by the many different interpretations of art. 27, expressed by Member States and stakeholders. We suggest deleting the term “transfer” from the title to avoid misconception of the article (see our comments to art. 27.1). Further deleting the term “unlawful” would be preferable. It is debatable and therefore legally imprecise, if such access is indeed unlawful if foreign government access can be expected to have a national legal basis.

Presidency compromise	Drafting Suggestions Comments
	NL: (Comments): In general, the Netherlands supports the overall aim and contents of this chapter. However, we would whether the amendments in the title and recitals provide sufficient legal clarity on the scope of the proposed measures.
<i>Article 27</i> <i>International access and transfer</i>	FI: (Comments): The risks involved in international access can be reduced in the most proportionate manner at EU level by introducing obligations for data processing service providers to notify business users within 24 hours whenever they receive a data access request. Question: how does this align with international trade agreements ? (under the auspices of which trade agreement (exception)? (see our comments also in para. 1) BG: (Comments):

Presidency compromise	Drafting Suggestions Comments
	The entire article would potentially create obstacles to international access and transfer, existing in parallel to the similar regime under the GDPR and especially in the situations of mixed data sets and when personal and non-personal data are inextricably linked. It has the potential to unnecessarily block access and transfer of non-personal data for the sake of properly applying the regime under the GDPR. PT: (Comments): We believe it is not clear what the economic consequences are for cloud companies (including users) of potentially limiting effects on the transfer of non-personal data from the EU to third countries, especially in view of the limitation of access to high-end services and price increases for the end consumer, but also the effects on competition within and outside the EU. - We are concerned about the scope of the wording in paragraph 1, 'all reasonable technical, legal and organisational measures', which we think needs a much clearer definition, also for the purposes of legal certainty, and specifically for data storage companies, which are not necessarily aware of the content of the data they hold.

Presidency compromise	Drafting Suggestions Comments
	- It is also unclear what effect this Article 27 has in relation to commitments and rules, including on non-discrimination, in GATS and other EU Free Trade Agreements. - We would like to understand better what constitutes "provider of data processing services"? Is it just cloud companies, platform providers, or any company? - It seems to us that a situation is created where companies will be obliged by law in a third country to transfer data to the authorities, but the Data Act prohibits this. We think it is important to have a solution in the Data Act, which we have not found. In line with the above, we would highlight that mentions to international transfers and to the fact that the data is held in the Union seem superfluous to the goal of preventing unlawful third country government access to data. Therefore, a way of making the language less broad would be to remove these references, as the main goal is to prevent unlawful government access. This change would not be insignificant, of course, as it would go a long way towards preventing perceived infringements of trade agreement commitments.
	PL:

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	(Comments): <i>The measures required from service providers under Article 27.1 are very far-reaching. This would require the service provider to set up a special system of legal compliance with “all laws” (Union and national). This contrasts with the situation under the GDPR, which only requires the data controllers to monitor compliance with one field of the law. Therefore, we believe that the DA should provide for a special mechanism to determine that a third country provides an adequate level of protection – we are considering adding a new paragraph to Art. 27 requiring the EC to issue (through a implementing or delegated act) a list of countries to which non-personal data may be transferred, guided by the level of the rule of law and the justice system in order to ensure the protection of this data.</i> SE: (Drafting): 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 in a readable format held in the Union where such transfer or access would create a conflict with

Presidency compromise	Drafting Suggestions Comments
	Union law or the national law of the relevant Member State, without prejudice to paragraph 2 or 3. Alternative 2: Providers of data processing services shall take all reasonable technical, legal and organisational measures, including contractual arrangements, in order to prevent international governmental transfer or governmental access to non-personal data in a readable format 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. SE: (Comments): SE requests removing the reference to international transfers as this is broader language than the purpose of the Article, as seen in recital 78. As mentioned in the impact assessment, p. 165, the proposal is not intended to regulate data transfers or data flows, but rather to require cloud companies to introduce reasonable measures, such as cryptography, to avoid unlawful governmental access to data in a readable format. It must also be clarified that such access concerns data that is readable, which is reflected in our proposed wording. It is important that the wording used is specific

Presidency compromise	Drafting Suggestions Comments
	and relates to the problem at hand to make it clear what is expected from companies. Our suggested wording avoids misconceptions and uncertainty, reducing economic costs. The fact that similar language was used in the DGA does not constitute a decisive argument as the regulations have different scope and avoiding legal uncertainty should always be a priority when drafting new legislation.
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.	FI: (Comments): We think that the DGA offers a solid base line for looking at this. Could the Commission confirm if the provisions are meant to be the identical /wider here as compared to the DGA? At least it seems that the first paragraph under 3(c) was omitted from the DGA. Could the Commission confirm also if the scope is overlapping with article 31 of the DGA? If so, the provisions should either be identical or the entities in the scope of the DGA should be omitted here. Regarding recital 78: Will the scope actually become narrower (with the change in the title of the article)? We would also like to get further clarification regarding which exception(s) of trade

Presidency compromise	Drafting Suggestions Comments
	conventions cover such the proposed limitation to transfer on non-personal data. In the end, it should be the business user who has the final say over which providers process its non-personal data and whether it approves or disapproves of processing its non-personal data in the EU or third countries. It would be advisable to redraft Chapter VII based on these suggestions. HU: (Drafting): 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 be prohibited by create a conflict with Union law or the national law of the relevant Member State, without prejudice to paragraph 2 or 3. HU: (Comments): Any kind of data transfers to third countries without proper EU legal authorization should be prevented by data processing service providers, not only governmental

Presidency compromise	Drafting Suggestions Comments
	ones. The obligations for data processing service providers in this paragraph are of general nature and not specific to government data transfer attempts. Proper regulation of collision between Union law and 3rd Country law should be regulated explicitly (e.g. collision with US CLOUD Act). The text ‘create a conflict’ is not precisely in line with the title ‘unlawful’. DK: (Drafting): 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. DK: (Comments): We agree with SE that the reference to “international transfers” should be removed. The provision is concerned with measures to prevent unlawful third country

Presidency compromise	Drafting Suggestions Comments
	government access to data. The wording is thus too general, by addressing all international transfers that could create a conflict with union or national law. As has been apparent in the recent debate, foreign governments' access to data is not necessarily determined by the geographical location of the data. We further agree with SE that in order to maintain competitiveness and avoid unnecessary economic costs, it is essential that we do not limit data transfers from data processing services more than necessary. It is important that the wording used is specific and relates to the problem at hand to make it clear what is expected from companies. It should additionally be clarified in a corresponding recital that the article does not limit or prevent the possibility for users to decide to transfer their non-personal data, on their own or through contract with a provider, in a way that makes it subject to the legal system of a third country. PL: (Drafting): 1. Providers of data processing services shall take all reasonable technical, legal and organisational measures, including contractual arrangements, in order to prevent

Presidency compromise	Drafting Suggestions Comments
	~~international transfer or governmental access~~ to non-personal data held in the Union where such ~~transfer or~~ access would create a violation of conflict with Union law or the national law of the relevant Member State, without prejudice to paragraph 2 or 3 PL: (Comments): This way the provision would focus on the need to counteract illegal transfer and access to EU data by government agencies (governments) of third countries. On the other hand, it would not limit the economic and social benefits that can be achieved through the uninterrupted transfer of non-personal data to countries with standards analogous to the EU (e.g. USA, Canada, South Korea, Japan or Singapore). The first compromise text of the DA seems to share this way of thinking on international data transfers since the title of the relevant chapter refers to the new narrower scope pointing out the governmental aspects of this processes. DE: (Comments): Clarification of the Commission's aim to not restrict international transfer but governmental access is still pending.

Presidency compromise	Drafting Suggestions Comments
	Whose rights and interests are being protected by the provisions of Chapter VII? That of the data processing service or that of national security? In case of the latter, aren't national security laws sufficient to prohibit transfer of non-personal data to third countries? Why do non-personal data need safeguards? When is a data transfer on non-personal data to third countries in conflict with Union or national law? Which forbidden data transfers does Art. 27 cover? If the international data transfer is forbidden, why is there need for additional prevention according to Art. 27? EE: (Comments): EE requests editing the article 27.1. to achieve a clear and unambiguous text which would correspond to the purpose of the initiative. The current wording that

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	addresses all international transfers is too general and might therefore be misleading. At its current state, the provision appears to be merely declarative, stating that international data transfers should be prevented <i>if they conflict Union or national law</i>. This raises the question of the desired effect of the provision. Additionally, it is not explicit if <i>governmental access</i> means only access by the governments of third countries. Generally, it would be reasonable to limit the regulation only to situations where the decision of a court or administrative authority of a third country requires the provider of data processing services to transfer data or provide access to it. We must avoid introducing disproportionate restrictions on the transfer of non-personalized data to third countries that could harm competitiveness. FR: (Drafting): Providers of data processing services shall take all reasonable necessary technical, legal and organisational measures, including contractual arrangements, in order to prevent international transfer or governmental access to non-personal data

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	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.
	DE: (Comments): Germany would like to discuss the issue of immunity /sovereignty requirements currently in development under the cybersecurity certification scheme for cloud services (EUCS) by ENISA and the Commission as a”measure to prevent international transfer or governmental access to non-personal data held in the Union”: • Explanation of the immunity requirements as proposed, including an explanation of the scope / categories of entities envisioned by ENISA / the Commission to fall under the assurance level high and thereby the immunity requirements • A view on possible alternatives of implementation as currently discussed (e.g. extension profiles), their benefits and disadvantages • Expected impacts on users and providers • Possible trade policy implications Possible effects with regard to the scope of NIS2

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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.	PL: (Drafting): 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.
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	FL: (Comments): PL: (Drafting):

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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 within the scope of this Regulation held in the Union and compliance with such a decision would risk putting the addressee in violation of ~~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 DE: (Comments): The obligation to take all reasonable technical, legal and organisational measures, including contractual arrangements, in order to prevent international transfers or governmental access to non-personal data held in the Union takes up resources and the business need predictability in their planning. When can the guidelines mentioned in Art. 27 (3) be expected to be announced and what exactly will they contain? FR: (Drafting):

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	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 judgment of a third-country court or a tribunal or a decision of a third-country ~~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 where: FR: (Comments): Formulation reprise de l'article 31 §3 du règlement sur la gouvernance des données (DGA).
(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	FR: (Drafting):

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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 such a decision or judgment to be set out and it requires such a decision or judgment to be specific in character, for instance by establishing a sufficient link to certain suspected persons or infringements FR: (Comments): Formulation reprise de l'article 31 §3, sous a) du DGA.
(b) the reasoned objection of the addressee is subject to a review by a competent court or tribunal in the third-country; and	FR: (Drafting): (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 FR: (Comments): Formulation reprise de l'article 31 §3, sous b) du DGA

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(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.	
	SE: (Drafting): 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.~~ <u>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 relevant competent bodies or authorities, pursuant to this Regulation, in order to determine whether these conditions are met.</u> SE:

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	(Comments): Related to comments on 1.4 and 16.2.
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.	FI: (Drafting): Delete FI: (Comments): This deletion would provide symmetry with the DGA. DK: (Drafting): 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.~~ If the addressee considers that the decision may

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	impinge on national security or defence interests of the Union or its Member States, it shall ask the opinion of the relevant competent bodies or authorities, pursuant to this Regulation, in order to determine whether these conditions are met. DK: (Comments): If the decision may impinge on national security or defense interests, it should not be optional to ask the opinion of the relevant competent bodies or authorities. ES: (Drafting): The addressee of the decision may ask the opinion of the Commission 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. ES:

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	(Comments): <u>PRIORITY</u> Article 27(3) establishes that the addressee of a decision of a third country authority to transfer data to that third country authority, may ask the opinion of its competent authority in order to determine if the three conditions laid down in article 27, regarding the judicial system of the third country, are met. Given that competent authorities are not supposed to be experts in the judicial system of third countries and notably that the result of the evaluation should be the same for all national authorities in the EU, by the principle of subsidiarity, the European Commission should perform these evaluations, in the same way it does for adequacy decisions under the GDPR framework or under article 5(12) of DGA. FR: (Drafting): The addressee of the decision may shall 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

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	commercially sensitive data, or may impinge on national security or defence interests of the Union or its Member States. FR: (Comments): Deux options : 1) soit l'article 27 §3 second sous-paragraphe du présent règlement est rendu conforme avec l'article 30 §3 de la proposition DGA (<i>"The addressee of the decision shall ask the opinion of the relevant competent bodies or authorities, pursuant to this Regulation, in order to determine if these conditions are met"</i>) ; 2) soit l'article 27 § 3, second sous-paragraphe est supprimé, tel qu'il résulte des trilogues du DGA. En effet, il apparaît que l'utilisation de « may » n'est pas suffisamment contraignante pour garantir qu'un destinataire d'une décision contraint de transférer des données non personnelles concernant la sécurité nationale soit obligée de demander l'avis des autorités compétentes afin de savoir si les conditions ci-dessus sont respectées.
	ES: (Comments):

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	In case the addressee of a decision of a third country authority decides to ask the opinion of the Commission according to the previous proposal, the Data Act should clarify whether the evaluation of the competent authority or the Commission shall be binding on the addressee who requested the opinion.
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.	FI: (Drafting): Move to Article 34a PT: (Drafting): The European Data Innovation Board established under Regulation 2022/868 of the European Parliament and of the Council shall advise and assist the Commission in developing guidelines on the assessment of whether these conditions are met. PT: (Comments): Data Governance Act has already been published and entered into force.

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	SK: (Comments): SK suggests that the European Data Protection Board or European Data Protection Supervisor may be included in the assistance to the Commission as these bodies have sufficient expertise and experience in “mirror” obligations regarding transnational transfers of personal data pursuant to GDPR and EU DPR. DE: (Comments): Since the obligation to 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 takes up resources and the business need predictability in their planning, when can we expect the guidelines by the European Data Innovation Board?
4. If the conditions in paragraph 2 or 3 are met, the provider of data processing services shall provide the	

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minimum amount of data permissible in response to a request, based on a reasonable interpretation thereof.	
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.	
	ES: (Drafting): 6. The provider of data processing services shall notify the Commission of all different laws of non-EU jurisdictions with extraterritorial effect to which they are subject. This information will then be published on an EU Transparency Portal.

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	PUBLIC Article 27a. Choice to store data within the Union Data processing service providers shall give their clients the option to store their data within the European Union. No extra cost shall be charged by providers of data processing services to clients choosing to store their data within the European Union. ES: (Comments):

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	<u>FIRST COMMENT</u> <u>PRIORITY</u> The Inception Impact Assessment on the Data Act published by the Commission considered, as a possible measure to enhance transparency and trust in cloud computing, the obligation of data processing service providers to notify the Commission of all different non-EU jurisdictions with extraterritorial effect to which they are subject, so the Commission could publish it. This safeguard has not been included in the Data Act proposal finally publish, although it would enhance transparency, enhance trust and increase users informed choices. <u>SECOND COMMENT</u> <u>PRIORITY</u> Strategic data, including, among others, industrial data and commercially sensitive data, shall remain in the EU, if companies or individuals wish so. Therefore, <u>the Data Act should include the possibility of individuals, companies and public administrations to request their data and security copies to be stored in the EU, at no extra cost.</u> Thus, a new article should be included in the Data Act imposing the <u>obligation of data</u>

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	<u>processing services to offer the customer the possibility to store data and security copies in the EU at no extra cost.</u> In addition, in order to enhance transparency and empower customer's informed choices, article 24.1 should be amended so contractual terms of data processing services include information about the possibility to store data in the EU and how to request it.
CHAPTER VIII INTEROPERABILITY	DE: (Comments): Do the provisions of Chapter VIII substantiate those for data portability pursuant to Art. 20 (2) GDPR? ES: (Comments): Interoperability is essential to guarantee that portability and switching rights regulated in the Data Act are effectively applied. In order to foster interoperability among operators of data spaces, cloud service providers and smart contracts, the Commission <u>shall prioritise standardization needs</u> and, accordingly, shall requests European standardisation organisations to draft harmonised interoperability standards or, in

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	their absence, shall adopt common interoperability specifications.
<i>Article 28</i> <i>Essential requirements regarding interoperability</i>	NL: (Comments): In line with the comments made by Denmark, we believe further clarification is needed on the scope of this article, most importantly by including a definition for common European data spaces. IE: (Comments): IE would like to request further clarity on “essential requirements” and its scope. EE: (Comments): Where applicable, the usage of data in data spaces should also be logged, which is a prerequisite of secure and trustworthy data sharing.

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1. Operators of within data spaces shall comply with, the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services:	FI: (Comments): We think that this seems a good amendment. Additionally, we have received feedback from some stakeholders that it would be important to examine further also liability issues for these. When assigning interoperability obligations to operators of data spaces, the primary starting point should be that everyone is responsible for the obligations for their own activities. This also supports the formation of internal governance of data spaces (e.g. rulebooks), because all actors have legal obligations in any case, so governance can answer how these are managed in practice. We would welcome this to be further discussed in the Working Party. DK: (Comments): We support how the requirements are now directed at operators <i>within</i> data spaces, and we are very supportive of how the definition is directed at operators within Common European data spaces, as opposed to data spaces in general. To ensure consistency and legal clarity, the term “data spaces” should either be

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	replaced with “Common European data spaces” throughout the act, both in the recitals and articles. Alternatively, it could be specified, e.g. in Art. 2, that for the purpose of this regulation “data space” shall refer to “Common European data spaces”. We refer to our suggested changes in this regard above in related recitals and article 2. DE: (Comments): Does the change imply an extension of obligations beyond "operators of data spaces"? Is it necessary to impose obligations on additional actors? What distinguishes an "operator within data spaces" from a "data sharing service" as defined by the DGA and what distinguishes it from a "controller" as defined by the GDPR? Operators of data spaces - insofar as they hold personal data - are likely to be responsible within the meaning of the GDPR. In terms of reducing bureaucratic costs, aligning the information requirements of Article 28 (1) with the information and documentation requirements of the GDPR (Articles 13, 14 and 30) would be

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	desirable.
(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;	FI: (Drafting): (a) the dataset content, use restrictions, licences, data collection methodology, data quality and uncertainty shall be sufficiently described in machine-readable format to allow the recipient to find, access and use the data; FI: (Comments): Other option could be ‘as machine-readable metadata’.
(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;	

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(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;	FI: (Drafting): (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, via a structured and standardised interface ~~in bulk download~~ or in real-time in a machine-readable format; FI: (Comments): Could the notion ‘bulk’ (download) here be changed to something else? Since it can imply that the system is not a very sophisticated one – suggestion for re-wording: ‘via a structured and standardised interface’
(d) where applicable, the means to enable the interoperability of tools for automating the execution of data sharing agreements, such as smart contracts ~~within their services and activities shall be provided.~~	DK: (Comments):

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	We are supportive of the changes.
These requirements can have a generic nature or concern specific sectors, while taking fully into account the interrelation with requirements coming from other Union or national sectoral legislation.	
2. The Commission is empowered to adopt delegated acts, in accordance with Article 38 to supplement this Regulation by further specifying the essential requirements referred to in paragraph 1.	
3. Operators ~~of~~ within 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.	

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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	FI: (Comments): Comment: Also the needs of small and medium enterprises should be taken into account in the standardization. ES: (Drafting): 4. The Commission shall prioritise standardization needs and, accordingly, 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
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	

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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).	
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.	DK: (Drafting): The Commission ~~shall~~ is empowered to, 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). DK: (Comments):

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	We believe that a horizontal approach to the empowerments of adopting common specifications is the most ideal, thus, we suggest changing “shall” to “empowered to”. DE: (Drafting): 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, taking into account inter alia the European Statistical System’s (ESS), established by Regulation (EU) 223/2009 on European Statistics, implementation of Common European Data Spaces (CEDS). ES: (Drafting): 6. The Commission shall assess interoperability barriers and accordingly may adopt guidelines laying down interoperability specifications for the functioning of

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	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.
<i>Article 29</i> <i>Interoperability for data processing services</i>	FI: (Comments): Question: Could the Commission elaborate, how would this go in practice with the different services and transition periods ? There should likely be a need for cooperation. NL: (Drafting): <i>Article 29</i> <i>Interoperability and portability for data processing services</i> NL: (Comments):

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	See comments on chapter 6 IE: (Comments): IE would like to see more clarity around interoperability. Perhaps if an international standard were developed this would be helpful.
	PL: (Comments): <i>It is our opinion that DA should contain provisions refering to the role of European Data Innovation Board with regards to interoperability and standard setting.</i>
1. Open interoperability specifications and European standards for the interoperability of data processing services shall:	SK: (Drafting): 1. Open interoperability specifications and European standards for the interoperability of data processing, while taking into account relevant international standards services shall:

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	NL: (Drafting): Open interoperability specifications and European standards for the interoperability and portability of data processing services shall:
(a) be performance oriented towards achieving interoperability in a secure manner between different data processing services that cover the same service type;	SK: (Comments): SK would welcome clearer explanation of what “in a secure manner” accounts for. For example in the recitals. PL: (Drafting): (a) be performance oriented towards achieving interoperability in a secure manner between different data processing services that cover similar the same services type; PL:

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	(Comments): See our comments to art. 2(13) NL: (Drafting): be performance oriented towards achieving interoperability and portability in a secure manner 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;	PL: (Drafting): (b) enhance portability of digital assets between different data processing services that cover similar the same services type; PL: (Comments): See our comments to art. 2(13)

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	NL: (Drafting): enhance portability and interoperability of digital assets between different data processing services ~~that cover the same service type~~;
(c) ~~guarantee~~ ensure, where technically feasible, functional equivalence between different data processing services that cover the same service type.	PL: (Drafting): (c) ~~guarantee~~ ensure, where technically feasible, functional equivalence between different data processing services that cover the similar ~~the same~~ services type. PL: (Comments): See our comments to art. 2(13) NL: (Drafting):

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	ensure, where technically feasible, functional equivalence between different data processing services ~~that cover the same service type~~.
2. Open interoperability specifications and European standards for the interoperability of data processing services shall adequately address:	PT: (Comments): We have some reserves as to what (and who) would qualify interoperability of data processing services as “adequate”; further clarification is needed (see comment to article 34). NL: (Drafting): Open interoperability specifications and European standards for the interoperability and portability of data processing services shall adequately address:
(a) the cloud interoperability aspects of transport interoperability, syntactic interoperability, semantic data interoperability, behavioural interoperability and policy	

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interoperability;	
(b) the cloud data portability aspects of data syntactic portability, data semantic portability and data policy portability;	
(c) the cloud application aspects of application syntactic portability, application instruction portability, application metadata portability, application behaviour portability and application policy portability.	
3. Open interoperability specifications shall comply with paragraph 3 and 4 of Annex II of Regulation (EU) No 1025/2012.	
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	FI: (Comments):

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processing services.	Here we need to take account also the needs of small and medium enterprises. PL: (Drafting): 4. Following consultation with industry and taking into account relevant international standards, 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. ES: (Drafting): 4. The Commission shall prioritise standardization needs and accordingly 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.

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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.	DK: (Drafting): 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.~~ DK: (Comments): The open interoperability specifications and European standards, which are supposed to address the purposes of article 26.3 (regarding portability between different types of services), should not satisfy criteria established in article 29.1 that is aimed towards achieving portability between services covering the same service type. PL:

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	(Drafting): 5. For the purposes of Article 26(3) of this Regulation, the Commission ~~may~~ 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. NL: (Drafting): 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 ~~and portability~~ of data processing services in central Union standards repository for the interoperability ~~and portability~~ of data processing services, where these satisfy the criteria specified in paragraph 1 and 2 of this Article.
	NL:

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	(Drafting): Article 29a Interoperability for sharing data generated by the use of connected products 1. Open interoperability specifications and European standards for interoperability for sharing data generated by the use of products shall: (a) be performance oriented towards achieving interoperability so that users and third parties can access and use data generated by the use of an product in a secure manner; (b) ensure data made available from products is of the same quality as available to the data holder; (c) ensure users and third parties can access data generated by the use of products without undue delay and where applicable, continuously and in real-time; 2. Open interoperability specifications and European standards for the

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	interoperability for sharing data generated by the use of products shall adequately address: (a) the data portability aspects of data syntactic portability, data semantic portability and data policy portability; 3. Open interoperability specifications shall comply with paragraph 3 and 4 of Annex II of Regulation (EU) No 1025/2012. 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 product types. 5. 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. Published standards shall serve as guidance for data holders for compliance with chapter 2 of

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	this legislation. NL: (Comments): For the measures in chapter 2 to be effective in practice it is crucial that interoperability standards for data sharing between IoT products are developed and implemented by the market. Therefore, the proposal should also provide the Commission with the competence to request standardization organizations to develop interoperability standards for data access and use from IoT-products and to indicate which standards developed by the market are compliant with the principles of the Data Act. This would allow the Commission to stimulate interoperability for specific IoT-products when the lack of it prevents users from exercising their rights and provide clarity to suppliers of IoT-products on how to comply with the Data Act when standards for specific products exist.
<i>Article 30</i> <i>Essential requirements regarding smart contracts for data sharing</i>	DE: (Comments): To what extent does COM see a specific need for regulation of smart contracts, that is not already covered by the existing standards for software and algorithms, like EN

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	ISO/IEC 17065 and EN ISO/IEC 17029, which could be referenced in this law? Or should smart contracts be regulated in another horizontal legal act? Also, are smart contracts necessary to reach the goals set out by Article 30?
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:	FR: (Drafting): The vendor provider 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: FR: (Comments): Le terme “<i>vendor</i>” est équivoque et a été traduit en français par “vendeur” qui est un terme impropre. Proposition de remplacer par « fournisseur ».
(a) robustness: ensure that the smart contract has been designed to offer a very high degree of robustness to avoid	

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functional errors and to withstand manipulation by third parties;	
(b) safe termination and interruption: ensure that a mechanism exists to terminate the continued execution of transactions: the smart contract shall include internal functions which can reset or instruct the contract to stop or interrupt the operation to avoid future (accidental) executions;	
(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	
(d) access control: a smart contract shall be protected through rigorous access control mechanisms at the governance and smart contract layers.	

Presidency compromise	Drafting Suggestions Comments
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.	DE: (Comments): Does the COM provide for a self-assessment of conformity or a third-party assessment of conformity? What are the COM's reasons for not making conformity assessment by an accredited body in accordance with EN ISO/IEC 17065 or EN ISO/IEC 17029 a standard requirement in Art. 30 (2)? Furthermore, how does the Commission assess the idea to require a third-party conformity assessment, which is not carried out for each individual product or each further development of the product, but only once to determine conformity with the type? If the type is confirmed to be in conformity, the manufacturer could then duplicate the products on his own responsibility and affix the CE mark. FR: (Drafting): The ~~vendor~~ provider 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

Presidency compromise	Drafting Suggestions Comments
	the context of an agreement to make data available shall perform a conformity assessment with a view to fulfilling the essential requirements under FR: (Comments): Le terme “<i>vendor</i>” est équivoque et a été traduit en français par “vendeur” qui est un terme impropre. Proposition de remplacer par « fournisseur ».
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.	FR: (Drafting): By drawing up the EU declaration of conformity, the vendor provider 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 FR: (Comments):

Presidency compromise	Drafting Suggestions Comments
	Le terme “ <i>vendor</i> ” est équivoque et a été traduit en français par “vendeur” qui est un terme impropre. Proposition de remplacer par « fournisseur ».
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.	
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.	FI: (Comments): Also the needs of small and medium enterprises should be taken into account in the standardization. ES: (Drafting):

Presidency compromise	Drafting Suggestions Comments
	5. The Commission shall prioritise standardization needs and accordingly 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.
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).	
	ES: (Drafting):

Presidency compromise	Drafting Suggestions Comments
	Article 30a. Interoperability of connected products and related services 1. 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 for the interoperability of connected products of a given type. 2. 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 connected products in central Union standards repository for the interoperability of connected products. ES: (Comments): <u>PRIORITY</u> For data access rights and data portability rights in the field of connected products to be effective, interoperability and standardisation are essential. Provisions regarding interoperability could be included for certain products or for products used in certain areas. The availability of interoperability standards developed through the European Standardization System should be encouraged and ensured. The Commission shall prioritise standardization needs and, accordingly, shall requests European

Presidency compromise	Drafting Suggestions Comments
	standardisation organisations to draft harmonised interoperability standards or, in their absence, shall adopt common interoperability specifications.
CHAPTER IX IMPLEMENTATION AND ENFORCEMENT	NL: (Comments): While we welcome that the compromise text includes provision for cross-border coöperation and coördination in enforcement, we are still scrutinizing the proposed amendments. ES: (Comments): The Data Act should further clarify the relationship between the Data Act and other horizontal and sectoral rules, such as the GDPR or the DGA, including regarding supervision and tasks of the different Boards. The Data Act should clearly define the roles and coordination between competent authorities according to the Data Act, data protection authorities and competent

Presidency compromise	Drafting Suggestions Comments
	authorities according to sectoral rules, in regards to the supervision, complaint handling and penalty regime, in particular regarding infringements of the Data Act, infringements of the GDPR in the context of the Data Act and infringements of Chapters III and IV in the context of data sharing obligations set in future sectoral legislation.
<i>Article 31</i> <i>Competent authorities</i>	IE: (Comments): IE supports the inclusion of the country-of-origin principle in this Article. The country-of-origin principle is fundamental in providing businesses with the necessary legal certainty and understanding as to the rules and regulations to which they must adhere. This principle has allowed companies to establish, grow and scale across the EU in an efficient and cost-effective way, especially for micro and small enterprises. This has taken on particular significance in digital sectors because digital business models are typically large in scale but low margin, and country of origin control avoids duplication of regulatory costs which would be inefficient and

Presidency compromise	Drafting Suggestions Comments
	damaging for such models. The country-of-origin principle is crucial to the continued innovation and growth of these digital services, in particular for smaller service providers in Europe. It is important to maintain this principle to align this regulation with other digital regulations such as, <i>inter alia</i>, the Digital Markets Act and Digital Services Act. DE: (Comments): Further assessment if an additional authority next to data protection bodies, competition bodies, network regulatory bodies, ordinary jurisdiction and dispute settlement bodies is needed. In any case cooperation mechanisms and distinction of competencies of the different bodies is necessary. ES: (Comments): Each Member State should be able to designate national competent authorities according to their national law.

Presidency compromise	Drafting Suggestions Comments
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.	FI: (Comments): Question: How to ensure that that data holders and providers of data processing services are only subject to the enforcement by one (lead) competent authority – instead of being concurrently exposed to enforcement by competent authorities in each Member State?
2. ~~Without prejudice to~~ Notwithstanding paragraph 1 of this Article:	DE: (Comments): Without prejudice on deciding the necessity of a Competent Authority: We suggest to lay down a mechanism to solve possible conflicts between the different authorities. With the addition of Art. 31 para. 9-11 this seems more necessary than before, on the one hand concerning the cooperation between data protection supervisors and other competent authorities, on the other hand between competent authorities of the member states. How is a coherent application of the Data Act ensured? Is this one of the tasks of the European Data Innovation Board (Art. 34a)?

Presidency compromise	Drafting Suggestions Comments
(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;	
(b) for specific sectoral data exchange issues related to the implementation of this Regulation, the competence of sectoral authorities shall be respected;	PL: (Drafting): b) for specific sectoral data exchange issues related to the implementation of this Regulation, the competence of sectoral authorities shall be respected; It refers particularly to the official statistics authorities and the activity and decisions of the competent authorities designated according to paragraph 1 shall not affect their professional independence.

Presidency compromise	Drafting Suggestions Comments
	PL: (Comments): The aim of the amendment is to confirm the independence of national statistical institutes in the field of statistics covered by the DA and to indicate that there is no hierarchical subordination of them in this respect.
(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.	ES: (Drafting): ~~(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.~~ ES: (Comments): Firstly, according to article 31(2) c), national competent authorities responsible for

Presidency compromise	Drafting Suggestions Comments
	the application and enforcement of Chapter VI shall have experience in the field of electronic communication services. The reason for this requirement should be clarified, as most of the requirements and obligations imposed upon data processing services are not related with electronic communications; instead, they deal with contractual terms, transition periods, charges and interoperability, including not just transport interoperability, but also syntactic interoperability, semantic data interoperability, behavioural interoperability, application interoperability and policy interoperability.
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:	
(a) promoting awareness among users and entities falling within scope of this Regulation of the rights and obligations under this Regulation;	
(b) handling complaints arising from alleged violations	

Presidency compromise	Drafting Suggestions Comments
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;	
(c) conducting investigations into matters that concern the application of this Regulation, including on the basis of information received from another competent authority or other public authority;	
(d) imposing, 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;	FI: (Comments): Comment: does ‘fines’ refer here to criminal proceedings ? If yes, the word is ok. If it refers to other penalties too, we would prefer to have the word ‘penalty’ instead.

Presidency compromise	Drafting Suggestions Comments
	DK: (Drafting): either 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; DK: (Comments): It is essential that it remains an option for the authorities to either initiate legal proceedings or administrative procedures. We further suggest adding “either” to clarify that it is indeed an option to apply only one of the two measures. [As background, according to the widely accepted interpretation of Section 3(3) of the Danish Constitutional Act, Danish administrative authorities cannot, with binding effect, impose fines or other sanctions characterized as punitive under Danish law.] We further suggest deleting “with retroactive effect”, as we do not see a reason for this kind of penalty. IE:

Presidency compromise	Drafting Suggestions Comments
	(Comments): IE seeks clarification on whether there is a requirement on data holders to self-declare infringements of the Act? What level of financial penalties can the competent authority issue without legal proceedings?
(e) monitoring technological developments of relevance for the making available and use of data;	
(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;	DE: (Comments): Without prejudice on deciding the necessity of a Competent Authority: We support Denmark's suggestion that a cooperation forum be established.
(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;	

Presidency compromise	Drafting Suggestions Comments
(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;	DK: (Drafting): (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; DK: (Comments): We do not see any reason to enforce self-regulation here.
(i) ensuring that charges for the switching between providers of data processing services are withdrawn in accordance with Article 25.	
4. Where a Member State designates more than one competent authority, the competent authorities shall, in the exercise of the tasks and powers assigned to them under	PT:

Presidency compromise	Drafting Suggestions Comments
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.	(Drafting): 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 or sectoral authorities 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. PT: (Comments): Since Regulation 2016/679 allows for more than one supervising authority (articles 51(1) and 68(4) therein) and sectoral application, we propose moving the reference earlier in the phrase. DE: (Drafting): 4. Where a Member State designates more than one competent authority, the

Presidency compromise	Drafting Suggestions Comments
	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 may ~~shall~~ designate a coordinating competent authority. DE: (Comments): Member states' sovereign competency.
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.	

Presidency compromise	Drafting Suggestions Comments
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.	PT: (Drafting): 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 or collective cases from any other public authority or any private party PT: (Comments): We propose addition of collective cases to broaden the scope. SK: (Comments): SK would welcome further clarification of what is meant by the “the competent authorities shall remain free from any external influence”. Should the authorities responsible for the DA be fully independent? What is the degree of independence that the DA envisages for the competent authorities? Precise definition of the degree of

Presidency compromise	Drafting Suggestions Comments
	independence in either the articles or recitals would be welcome. BE: (Drafting): When carrying out their tasks and exercising their powers in accordance with this Regulation, the competent authorities shall exercise their tasks in an impartial, transparent, consistent, reliable and timely manner, and shall safeguard fair competition and non-discrimination. BE: (Comments): Taking into account the strong interplay between this instrument and the Data governance Act, we suggest to align the requirements for the competent authorities to the one set out in the Data Governance Act.
7. Member States shall ensure that the designated competent authorities are provided with the necessary resources to adequately carry out their tasks in accordance	

Presidency compromise	Drafting Suggestions Comments
with this Regulation.	
8. In accordance with Regulation (EU) 2018/1725, the EDPS shall be responsible for monitoring the application of Chapter V insofar as the processing of personal data by the Commission or Union bodies is concerned.	FI: (Drafting): In accordance with Regulation (EU) 2018/1725, the European Data Protection Supervisor EDPS shall be responsible for monitoring the application of Chapter V of this Regulation insofar as the processing of personal data by the Commission or Union bodies is concerned. FI: (Comments): Question: Why has this not been added as a new sub para and formulated similarly as in para. 2, subsection a) on (powers)? Question 2: Should the new para 8 be moved to para 2, to a new subsection, and so that the formulation would correspond to that of the GDPR regarding data protection authorities ?

Presidency compromise	Drafting Suggestions Comments
	DE: (Drafting): ~~8. — In accordance with Regulation (EU) 2018/1725, the EDPS shall be responsible for monitoring the application of Chapter V insofar as the processing of personal data by the Commission or Union bodies is concerned~~ DE: (Comments): According to Art. 1 (3) Data Act general data protection law applies, including Art. 57 (1) (a) Regulation (EU) 2018/1725 on the tasks of the EDPS. Therefore this provision is not needed within the Data Act. Does the Data Act provide an EU wide central authority for the application of Chapter V concerning non-personal data?
9. Competent authorities shall cooperate with competent authorities of other Member States to ensure a consistent and efficient application of this	FI:

Presidency compromise	Drafting Suggestions Comments
Regulation. Such mutual assistance shall include the exchange of all relevant information by electronic means, without undue delay, in particular to carry out the tasks referred to in paragraph (3), points (b), (c) and (d).	(Drafting): Competent authorities shall cooperate with competent authorities of other Member States to ensure a consistent and efficient application of this Regulation. Such mutual assistance shall include the exchange of all [strictly] necessary ~~relevant~~ information by electronic means, without undue delay, in particular to carry out the tasks referred to in paragraph (3), points (b), (c) and (d). FI: (Comments): We suggest to replace the word ‘relevant’ by ‘necessary’ (or ‘strictly necessary’) information Also, in this para. 9, is the aim that there is cooperation with the EDPS ? (This relates also to the ‘competent authorities’ in member states (which are mentioned 4 times in this). PT: (Comments):

Presidency compromise	Drafting Suggestions Comments
	We suggest setting a specific time period instead of “<i>undue delay</i>”, to introduce more regulatory certainty and clarity. DK: (Comments): We support these changes. DE: (Drafting): 9. Competent authorities shall cooperate with competent authorities of other Member States to ensure a consistent and efficient application of this Regulation. Such mutual assistance shall include the exchange of all relevant information by secure electronic means, without undue delay, in particular to carry out the tasks referred to in paragraph (3), points (b), (c) and (d). DE: (Comments):

Presidency compromise	Drafting Suggestions Comments
	Sensitive data including inter alia trade secrets shall not be transmitted by unsecure electronic means.
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.	PT: (Comments): We suggest setting a specific time period instead of “<i>undue delay</i>”, to introduce more regulatory certainty and clarity. DK: (Comments): We support these changes.
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	DK: (Comments): We support these changes.

Presidency compromise	Drafting Suggestions Comments
respect of the matter for which it was requested.	
	SE: (Comments): SE appreciates the addition of this important Single Market principle. Very important to allocate jurisdiction. Otherwise risk of coordination difficulties as seen for example under the GDPR and the platform-to-business regulation
10. Entities falling within the scope of this Regulation shall be subject to the jurisdiction of the Member State where the entity is established. In case the entity is established in more than one Member State, it shall be deemed to be under the jurisdiction of the Member State in which 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.	FI: (Comments): Do we understand correctly that these a reference understood as jurisdictional EU-rules (if any) ? DK: (Comments): We support these changes. PL:

Presidency compromise	Drafting Suggestions Comments
	(Drafting): 10. Entities falling within the scope of this Regulation shall be subject to the jurisdiction of the Member State where the entity is incorporated. In case the entity is established in more than one Member State, PL: (Comments): Apparently the rule establishes the cascade of jurisdiction connections. In order to avoid misunderstanding there should be a distinction in first connector (place of registration) and second (where the entity operates, has its material establishments and runs operations) IE: (Comments): IE supports the inclusion of the country-of-origin principle to ensure legal harmonisation across digital files and to avoid legal fragmentation of the internal market. A decentralised system of enforcement would lead to different practices across the EU.

Presidency compromise	Drafting Suggestions Comments
	DE: (Comments): Does jurisdiction in the sense of para. 10 cover national competent authorities as well as courts? FR: (Drafting): 10. Entities falling within the scope of this Regulation shall be subject to the jurisdiction of the Member State where the entity is established. In case the entity is established in more than one Member State: 1. It shall be deemed to be under the jurisdiction 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. 2. It shall be deemed under the territorial jurisdiction of all Member states, if the entity is a designated gatekeeper pursuant to Article [...] of [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)].

Presidency compromise	Drafting Suggestions Comments
	FR: (Comments): Les autorités françaises estiment que la taille économique et la présence des <i>gatekeepers</i> sur le marché européen, et dans chaque État membre, justifient cette dérogation au principe du "pays d'origine" et à l'application de la compétence territoriale. Les autorités compétentes locales devraient avoir la possibilité d'adresser leurs demandes directement à ces acteurs, fortement présents économiquement sur leurs marchés locaux, au lieu d'être obligées de faire appel à l'assistance d'autres autorités compétentes. Cet amendement n'exclut pas la possibilité pour les autorités compétentes de coopérer néanmoins sur des questions relevant du champ d'application du présent règlement.
11. An entity falling within scope of this Regulation that offers products or services in the Union but is not established in the Union, nor has designated a legal representative therein, shall be under the jurisdiction	DK: (Comments): We can support that entities, which are neither established in the Union nor has a

Presidency compromise	Drafting Suggestions Comments
of all Member States, where applicable, for the purposes of ensuring the application and enforcement of this Regulation. Any competent authority may exercise its competence, provided that the entity is not subject to enforcement proceedings for the same facts by another competent authority.	designated legal representative therein, fall under the jurisdiction of all Member States, with regards to the parts of the regulation which are enforced via complaints. This allows for an easier process for those legal or natural persons, which consider rights under this Regulation infringed by non-EU entities. However, this provision does not clearly state which authority is responsible for the supervision of data processing services that are not established in the Union, pursuant to provisions in art. 31, para 1(h) and (i). Seeing as many of the data processing services will be under supervision of compliance with the DMA by the Commission, an argument can be made for also subjecting data processing services to their supervision of compliance with the Data Act. It may be challenging for individual Member State to initiate proceedings against companies of that scale, just as it may very well be that customers in several Member States could see their rights infringed by the same data processing service, which is why it would be preferable to centralise the supervision and enforcement of these entities. ES: (Comments): Article 31.11 includes a reference to “legal representatives” designated by entities not

Presidency compromise	Drafting Suggestions Comments
	established in the Union. Nevertheless, there is no other reference to “legal representatives” within the text. Do manufacturers and service providers within the scope of the Data Act have an obligation to designate a legal representative within the Union? Further clarification in this regard would be welcome.
<i>Article 32</i> <i>Right to lodge a complaint with a competent authority</i>	
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.	
2. The competent authority with which the complaint has been lodged shall inform the complainant, in	

Presidency compromise	Drafting Suggestions Comments
accordance with national law, of the progress of the proceedings and of the decision taken.	
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.	
<i>Article 33</i> <i>Penalties</i>	FI: (Comments): As a general remark, we would want this to be coherent with other EU rules above all the GDPR and DGA. DE:

Presidency compromise	Drafting Suggestions Comments
	(Comments): We suggest to lay down coherent tasks and powers of the competent authorities for the member states to avoid difficulties and discrepancies regarding the enforcement. We are concerned that there could be the possibility of forum shopping.
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.	FI: (Comments): Question: Should member states' public authorities be excluded from being subject to the sanctions (as under the DGA or GDPR (see e.g. GDPR, art. 83(7)))? Question 2: Should the Data act clarify that infringements can stem not only from data holders but also from data recipients ? IE: (Comments): IE seeks information on whether there should be a right to an effective judicial remedy for a data subject against data holders? What provision is there for penalties

Presidency compromise	Drafting Suggestions Comments
	for incorrect processing of non-personal data?
	ES: (Comments): The Data Act should include some harmonizing rules regarding penalties by setting minimum and maximum thresholds.
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:	
(a) the nature, gravity, scale and duration of the infringement;	
(b) any action taken by the infringer to mitigate or remedy the damage caused by the infringement;	
(c) any previous infringements by the infringer;	

Presidency compromise	Drafting Suggestions Comments
(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;	
(e) any other aggravating or mitigating factors applicable to the circumstances of the case.	
2. Member States shall by [date of application of the Regulation] notify the Commission of those rules and measures and shall notify it without delay of any subsequent amendment affecting them.	
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.	IE: (Comments): IE seeks clarity on what happens if the GDPR is infringed upon while undertaking an action under the Data Act. Can fines, as per Article 83 (5) of the GDPR, be issued against the party who caused the infringement? It may be worth considering that, if the Data Act is specifying the powers to issue

Presidency compromise	Drafting Suggestions Comments
	finer, perhaps it is useful to include text highlighting that the supervisory authorities have recourse to other corrective powers, as provided to them under GDPR Article 58 (2), for example such as under (e) where they can limit or ban further processing.
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.	
<i>Article 34</i> <i>Model contractual terms and standard contractual clauses</i>	DE: (Comments): Can the COM rule out that the model contractual terms envisioned in Art. 34 might foster parallel behaviour and reduce incentives for innovation?

Presidency compromise	Drafting Suggestions Comments
The Commission shall develop and recommend non-binding model contractual terms on data access and use and standard contractual clauses for cloud computing contracts to assist parties in drafting and negotiating contracts with balanced contractual rights and obligations	DK: (Comments): We can support this addition. DE: (Drafting): The Commission shall develop and recommend non-binding model contractual terms on data access and use and standard contractual clauses for cloud computing contracts to assist parties in drafting and negotiating contracts with balanced contractual rights and obligations. DE: (Comments): Are standard contractual clauses also non-binding as model contractual clauses are? How does the Data Act ensure that those (non-binding) clauses are valid under national contract laws?

Presidency compromise	Drafting Suggestions Comments
	BE: (Comments): Does the Commission consider to develop these model contractual terms and standard contractual clauses by the adoption of implementing or delegating acts? We consider necessary to specify it in this Article. ES: (Drafting): The Commission shall, by [date of application of the Regulation], develop and recommend non-binding model contractual terms on data access and use and standard contractual clauses for cloud computing contracts to assist parties in drafting and negotiating contracts with balanced contractual rights and obligations ES: (Comments): Given the importance of model contractual terms, especially for SMEs, the Commission shall develop model contractual terms on data access and use, as well as

Presidency compromise	Drafting Suggestions Comments
	on cloud services, before the date of application of this Regulation.
<i>Article 34a</i>	FI: (Comments): Should there be an article 37bis amending article 29(1) of the DGA so that also the competent authorities under this regulation could be part of the EDIB? (Of course, all the authorities would not attend at the same time, but the Commission as the president invites the relevant ones). DK: (Comments): We are very supportive of this article and the proposed tasks for the Data Innovation Board.
<i>Role of the European Data Innovation Board</i>	

Presidency compromise	Drafting Suggestions Comments
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:	HU: (Comments): The Data Act is enforced by data protection authorities in case personal data is involved. The European Data Innovation Board only includes the data protection authorities, in case they are also appointed for some specific authority role by member states under Regulation (EU) 2022/868. In order to allow the functions specified herein, the European Data Innovation Board must include all authorities responsible for enforcing the Data Act, even those that might not be members of the board under Regulation (EU) 2022/868. To avoid legal uncertainty, this should be addressed in this draft.
(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;	
(b) facilitating cooperation between competent authorities through capacity-building and the exchange	

Presidency compromise	Drafting Suggestions Comments
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;	
(c) advising and assisting the Commission with regard to:	
- whether to request the drafting of harmonised standards referred to in Article 28(4) and Article 30(5);	
- the preparation of the drafts of the implementing acts referred to in Article 28(5) and Article 30(6);	
- the preparation of the delegated acts referred to in Articles 25(4) and 28(2); and	

Presidency compromise	Drafting Suggestions Comments
- the adoption of the guidelines laying down interoperability specifications for the functioning of common European data spaces referred to in Article 28(6).	PT: (Drafting): - the adoption of the guidelines laying down interoperability specifications for the functioning of common European data spaces referred to in Article 28(6) and data processing services referred to in Article 29(2). PT: (Comments): Reference to article 29(2) should be included here so that it is clear that the EDIB can contribute to the definition of interoperability standards for data processing services.
CHAPTER X SUI GENERIS RIGHT UNDER DIRECTIVE 1996/9/EC	
Article 35	PT:

Presidency compromise	Drafting Suggestions Comments
<i>Databases containing certain data</i>	(Comments): We preferred the first proposed text, i.e., the restricted non-applicability of sui generis right to articles 4 and 5. DE: (Drafting): Article 35 Derogation of the Sui-generis-right under Article 7 of Directive 96/9/EC ~~Databases containing certain data~~
	SE: (Comments): Sweden welcomes the clarifications made in the compromise texts. Of the two alternatives, Sweden prefers the latter. However, article 35 Data Act in its drafted form, and as a alleged clarification, applies only to databases when data is “obtained from or generated by” IoT-devices. The term “generated” is not used in the database directive. Furthermore, protection under

Presidency compromise	Drafting Suggestions Comments
	the sui generis-right is also available where there are investments in verification or presentation of data. This leads to an inherent conflict and legal uncertainty. Hence, Sweden prefers if the relationship between Data Act and Sui generis-right could be further clarified. This could best be achieved by means of a lex-specialis-approach.
~~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,~~ [For the purposes of the exercise of the 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 to databases containing data when data is obtained from or generated by a product or related service.] OR [The sui generis right provided for in Article 7 of Directive 96/9/EC ~~does~~ shall not apply to databases containing data when data is obtained from or generated by the use of a product or a related service.]	FI: (Comments): It seems that the first option is more precise, the second one would narrow the directive's scope quite a lot. At this stage, we are flexible, but this might need some more thorough assessment. BG: (Drafting): ~~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,~~ [For the purposes of the exercise of the rights provided for in Articles 4 and 5 of this Regulation, the

Presidency compromise	Drafting Suggestions Comments
	sui generis right provided for in Article 7 of Directive 96/9/EC ~~does~~ shall not apply to ~~databases containing data~~ when data is obtained from or generated by a product or related service.} OR [The sui generis right provided for in Article 7 of Directive 96/9/EC ~~does~~ shall not apply to databases containing data ~~when data is~~ obtained from or generated by the use of a product or a related service.] BG: (Comments): We support the opinion of the Council Legal Service to be consistent with the approach already compromised under the Data Governance Act. We should avoid creating the impression of a major revision of Directive 96/9/EC but rather focus on the current proposal and facilitating its implementation. HR: (Comments): Croatia preliminarily supports the first option of the new draft text. NL:

Presidency compromise	Drafting Suggestions Comments
	(Drafting): The sui generis right provided for in Article 7 of Directive 96/9/EC shall not apply when data is obtained from or generated by the use of a product or a related service. NL: (Comments): NL prefers a broader article which is not limited to certain articles from the Data Act and therefor supports the second option. Even though NL makes a choice between the two given options, it still wants to make a scrutiny reservation as it heard that other MS may want make their own proposals which cover the NL preference (even) better. MT: (Comments): Option 1 is preferred. SI:

Presidency compromise	Drafting Suggestions Comments
	(Comments): This Article is amending Article 1 of the Database Directive, which determines its scope, or Article 7 of this Directive, which determines the sui generis right of the database producer. The Data Act restricts in Chapter V (five) the sui generis right of the maker of the database and thus affects Article 9 of the Database Directive. We would therefore kindly ask for clarification on the relationship between Chapter V of the Data Act in relation to Article 9 of the Database Directive (if a camera is used, it may collect data, which can result in copyright protected photography or audio-visual work). IE: (Comments): DE: (Drafting): This Regulation takes precedence over the sui generis right provided for in Article 7

Presidency compromise	Drafting Suggestions Comments
	of Directive 96/9/EC. 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 <i>sui generis</i> 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. OR [The <i>sui generis</i> right provided for in Article 7 of Directive 96/9/EC does shall not apply to databases containing data when data is obtained from or generated by the use of a product or a related service.] DE: (Comments): Germany proposes to define more precisely the relationship between Data Act and Sui-generis-right under Article 7 of the Database Directive 96/9 by means of a lex-specialis-approach. This seems necessary in particular to adress the following substantial conflicts: - Article 35 Data Act in its drafted form (as an alleged clarification, cf Rec 84) only caters to databases containing raw data generated by IoT-Devices. However, protection under the <i>sui generis</i> right is also available where there are investments in verification and / or presentation of data, which is industry practice. This leads to an

Presidency compromise	Drafting Suggestions Comments
	inherent conflict between Data Act and Article 7(1) of Directive 96/9 and legal uncertainty. - The conflicting relationship between the emergency access right of the public sector provided for in Chapter V to databases covered by the sui generis right is currently not addressed in a legally binding manner (cf. Recital 63), which leads to considerable legal uncertainty. Corresponding Recitals 63 and 84 should be changed to reflect clearly that the Data Act is lex specialis to the sui generis right. IT: (Drafting): ~~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, [For the purposes of the exercise of the 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 to databases containing data when data is obtained from or generated by a product or related service.] OR [The sui generis right provided for in Article 7 of Directive~~

Presidency compromise	Drafting Suggestions Comments
	96/9/EC ~~does~~ shall not apply ~~to databases containing data~~ when data is obtained from or generated by the use of a product or a related service.] IT: (Comments): For the sake of clarity, the second version is preferable but it is important to replace the deleted part (“to databases containing data”) EE: (Comments): We support the concept by which the intellectual property rights related to databases should not become an obstacle to data sharing or excuse for refusal. Our preference is the second option as it covers the current regulation entirely and is not limited to Art 4 and 5. BE:

Presidency compromise	Drafting Suggestions Comments
	(Drafting): <u>OPTION 1:</u> For the purposes of the exercise of the 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 shall not apply when data is ~~obtained from or~~ generated by a product or related service. BE: (Comments): At this stage Belgium prefers option 1, since option 1 clearly defines the goal of article 35 in relation to the Data act (ensuring the application of the new rights granted by the data act). We suggest deleting the words “obtained from”, since the same terminology is used in the database directive. After all, the database directive confers certain rights if there has been “<i>a substantial investment in either the <u>obtaining, verification or presentation</u> of the contents</i>” (art. 7, 1 DBD). To avoid all confusion and enhance clarity Belgium proposes to refer to “data generated by...” only.

Presidency compromise	Drafting Suggestions Comments
	In addition, Belgium urges the Commission to consider amending the database directive to support and stimulate the EU data economy. In our view this can be achieved by a genuine future-proof exception to the sui generis database right or by amending the scope of protection (by excluding certain types of data from the scope of protection, by clarifying the obtaining – creating distinction, ...). Amending the database directive will enhance legal certainty for all players involved, whereas adding “clarifications” to the database directive in other legal instruments will further complicate the application and understanding of the sui generis database right as it is. EL: (Drafting): The sui generis right provided for in Article 7 of Directive 96/9/EC ~~does~~ shall not apply to ~~databases containing data~~ when data is obtained from or generated by the use of a product or a related service. EL: (Comments):

Presidency compromise	Drafting Suggestions Comments
	Greece supports the second version since it seems broader and not limited to Articles 4 and 5. We acknowledge the fact that - for the time being at least- the amendment of the Database Directive cannot be discussed, although in fact the Data Act introduces a subject matter change of the Database Directive. Therefore, Greece is of the opinion that there is a need to clarify the relationship between Data Act and the <i>sui-generis</i> right under Article 7 of the Database Directive by characterizing the Data Act as <i>lex specialis</i>. See for this reason our proposal to Recital 63.
CHAPTER XI FINAL PROVISIONS	
<i>Article 36</i> <i>Amendment to Regulation (EU) No 2017/2394</i>	
In the Annex to Regulation (EU) No 2017/2394 the following point is added:	

Presidency compromise	Drafting Suggestions Comments
‘29. [Regulation (EU) XXX of the European Parliament and of the Council [Data Act]].’	
<i>Article 37</i> <i>Amendment to Directive (EU) 2020/1828</i>	
In the Annex I to Directive (EU) 2020/1828 the following point is added:	
‘67. [Regulation (EU) XXX of the European Parliament and of the Council [Data Act]].’	
<i>Article 38</i> <i>Exercise of the delegation</i>	
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	

Presidency compromise	Drafting Suggestions Comments
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].	
3. The delegation of power referred to in Articles 25(4), 28(2) and 29(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the	

Presidency compromise	Drafting Suggestions Comments
Interinstitutional Agreement on Better Law-Making of 13 April 2016.	
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	
6. A delegated act adopted pursuant to Articles 25(4), 28(2) and 29(5) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.	
<i>Article 39</i>	

Presidency compromise	Drafting Suggestions Comments
<i>Committee procedure</i>	
1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	
<i>Article 40</i> <i>Other Union legal acts governing rights and obligations on data access and use</i>	HR: (Comments): Taking into account the amendments to the Article 15, and to avoid a situation where the Data Act regulates access to data for purposes of official statistics differently/contrary to the framework regulation on European statistics, we propose to add a provision that explicitly mentions Regulation (EC) No 223/2009 of the European Parliament and of the Council on European statistics and its future amendments as the primary legislation for access to privately held data for purposes of official statistics.

Presidency compromise	Drafting Suggestions Comments
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.	DE: (Comments): It needs to be examined in more detail whether and to what extent (sector-) specific and complementary regulations on data access may be possible under Member State legislation.
2. This Regulation is without prejudice to Union legislation specifying, in light of the needs of a sector, a common European data space, or an area of public interest, further requirements, in particular in relation to:	
(a) technical aspects of data access;	
(b) limits on the rights of data holders to access or use certain data provided by users;	

Presidency compromise	Drafting Suggestions Comments
(c) aspects going beyond data access and use.	
<i>Article 41</i>	
<i>Evaluation and review</i>	
By [<i>two years after the date of application of this Regulation</i>], 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:	NL: (Drafting): In addition to evaluating the effectiveness of this regulation in reaching the goals set out in the Commission's Initial Impact Assessment that evaluation shall assess, in particular: DE: (Drafting): By [<i>two years after the date of application of this Regulation</i>], 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. In addition to evaluating the effectiveness of this regulation in reaching the goals set out in the Commission's Initial Impact Assessment Report

Presidency compromise	Drafting Suggestions Comments
	That evaluation shall also assess, in particular:
(a) other categories or types of data to be made accessible;	
(b) the exclusion of certain categories of enterprises as beneficiaries under Article 5;	
(c) other situations to be deemed as exceptional needs for the purpose of Article 15;	
(d) changes in contractual practices of data processing service providers and whether this results in sufficient compliance with Article 24;	
(e) diminution of charges imposed by data processing service providers for the switching process, in line with the gradual withdrawal of switching charges pursuant to Article 25;-	

Presidency compromise	Drafting Suggestions Comments
(f) other categories of services to which access and use rights or the switching obligations could apply.	NL: (Drafting): (f) other products or categories of services to which access and use rights or the switching obligations could apply. NL: (Comments): Given the discussions on the current definition of products we believe it would be prudent to revisit the chosen scope for chapter 2 in the evaluation.
<i>Article 42</i> <i>Entry into force and application</i>	
This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	FI: (Drafting):

Presidency compromise	Drafting Suggestions Comments
	<u>Suggestion for /new article or para:</u> Products that have been placed on the market before [date of application of this Regulation referred to in Article 42], shall be subject to requirements of this Regulation only if, from that date, those products are subject to substantial modifications in their design or intended purpose. FI: (Comments): Should the obligations of the Data act exclude (or include) products that have been placed on the market before the entry into application of the Regulation, and related services contracted before that date ? We propose a new article (or paragraph) on transition (based on the recent proposal for the cyber resiliency act). If this is changed, maybe medium-sized enterprises could stay in the scope? Therefore, we are not in favor of the generic formulation of proposed amendment to article 7(1). DE: (Comments):

Presidency compromise	Drafting Suggestions Comments
	With regards to IoT products the date of the entry into force should be further clarified. According to COM rules are applicable for products newly placed on the market. In order to fulfil design obligations, a longer transition than the intended 12 months phase is needed. EL: (Comments): We are concerned about the retroactivity of the Regulation, mainly regarding the products/services which are already circulating the market. What about the potential contractual outputs? Should we write down provision about that?? In addition: If there are some databases that fall under the definition of Article 4 that currently enjoy protection, then they need to be stripped of such protection. Therefore, it should be considered whether the Data Act in that respect also applies to pre-existing databases.
	SE:

Presidency compromise	Drafting Suggestions Comments
	(Drafting): It shall apply from [~~12~~ 36 months after the date of entry into force of this Regulation <i>for products manufactured after the date of application</i>]. SE: (Comments): We would like to see a longer implementation period because of the complexity of the act and a clarification that the act is not retroactive.
It shall apply from [12 months after the date of entry into force of this Regulation].	DK: (Drafting): It shall apply from [~~12~~ 24 months after the date of entry into force of this Regulation]. DK: (Comments): The time provided before the act enters into force is too short considering the considerable obligations introduced. We suggest changing the period to 24 months.

Presidency compromise	Drafting Suggestions Comments
	SK: (Drafting): It shall apply from [12²⁴ months after the date of entry into force of this Regulation]. SK: (Comments): The private sector should be given reasonable timeframe to adopt their production to the requirements stipulated in the Data Act. PL: (Drafting): It shall apply from [12¹⁸ months after the date of entry into force of this Regulation]. NL: (Drafting): It shall apply from [12²⁴ months after the date of entry into force of this Regulation].

Presidency compromise	Drafting Suggestions Comments
	NL: (Comments): Proper implementation requires a period of at least 24 months. IE: (Drafting): It shall apply from [12-15 months after the date of entry into force of this Regulation]. IE: (Comments): IE is concerned that the timeline to empower competent authorities to ensure the effective enforcement of this regulation is too short. Ireland continues to call for an extension of this period to allow for effective regulatory frameworks to be developed. BE: (Comments):

Presidency compromise	Drafting Suggestions Comments
	Belgium supports, as already mentioned by other member states, an extension of the date of the application of this Regulation.
Done at Brussels,	
<i>For the European Parliament</i> <i>For the Council</i>	
<i>The President</i> <i>The President</i>	
	End
