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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Data Act Regulation ES comments on 2nd compromise text

Delegations will find in the annex the ES comments on the 2nd compromise text on Data Act Regulation.

SPAIN comments on second compromise proposal on DA (document 14019/22)

PRIORITY COMMENTS:

Reference	Second compromise proposal	Drafting suggestion	Comment
CHAPTER V. MAKING DATA AVAILABLE TO PUBLIC SECTOR BODIES, THE COMMISSION, THE EUROPEAN CENTRAL BANK OR UNION BODIES BASED ON EXCEPTIONAL NEED			
Article 15 Exceptional need to use data	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: (a)-(c)	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: [...] d) where the data requested is needed for the compilation of official statistics	Use of the B2G framework for the compilation of official statistics: 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.
Article 19 Obligations of public sector bodies and Union institutions, agencies the Commission, the European Central Bank and Union bodies	1. A public sector body or a Union institution, agency or the Commission, the European Central Bank or Union body having received receiving data pursuant to a request made under Article 14 shall: [...] (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 .	1. A public sector body or a Union institution, agency or the Commission, the European Central Bank or Union body having received receiving data pursuant to a request made under Article 14 shall: [...] c) unless the data was requested for the compilation of official statistics pursuant to Article 15 (d), 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 .	

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Article 20 Compensation in cases of exceptional need	1. Data made available to respond to a public emergency pursuant to Article 15, point (a), shall be provided free of charge.	1.Data made available to respond to a public emergency pursuant to Article 15, point (a) and point (d) shall be provided free of charge	
CHAPTER VI SWITCHING BETWEEN DATA PROCESSING SERVICES			
Article 24 Contractual terms concerning switching between providers of data processing services	1. The rights of the customer and the obligations of the provider of a data processing service in relation to switching between providers of such services or 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: (a)-(e)	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: [...] f) information regarding data localisation; g) information regarding non-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 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.	Transparency requirements regarding data localisation, non-EU laws with extraterritorial effects and measures to prevent unlawful access 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 data localisation and non-EU laws with extraterritorial effects. They should also inform their clients about the measures adopted 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. They should include that information in the terms of the contract. Therefore, new letters should be added in article 24(1), which lists clauses and information that shall be included in the written contract between customers and data processing service providers.
Title	CHAPTER VI SWITCHING BETWEEN DATA PROCESSING SERVICES	CHAPTER VI SWITCHING AND INTEROPERABILITY BETWEEN DATA PROCESSING SERVICES	We welcome the amendments included in article 26(2) and article 29(1) a), as they will enable interoperability between data processing services and will enable multicloud solutions composed by interconnecting data processing services provided by different providers. Thus, small providers offering few cloud services will be able to compete based on price, quality or innovation of their

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			services, given that not offering big packages or catalogues of services will not be essential. This is bound to foster competition. Nevertheless, article 26 might be difficult to comprehend as it includes different concepts: switching, porting and interoperability. Legal certainty could be enhanced by amending the title of Chapter VI and article 26.
Title of Article 26	Article 26 Technical aspects of switching	Article 26 Technical aspects of switching and interoperability	
Article 26 Technical aspects of switching	Article 26 Technical aspects of switching [...] 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, for the purposes of portability and interoperability.		We welcome this amendment.
New article 26a.		Article 26A withdrawal of interoperability charges	Amendments included in the second compromise text will remove technical barriers to interoperability. Nevertheless, they will not remove economic barriers artificially imposed in order to discourage multicloud solutions. Thus, limiting interoperability charges could be considered. Interoperability charges could include charges such as data egress fees or fees for the use of interoperability APIs when they are clearly higher than costs and investments incurred by the provider.
CHAPTER VII			

Reference	Second compromise proposal	Drafting suggestion	Comment
UNLAWFUL INTERNATIONAL GOVERNMENTAL ACCESS AND TRANSFER OF NON-PERSONAL DATA			
Article 27 International access and transfer		<i>New paragraph 6:</i> 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.	<u>Notification of non-EU jurisdictions with extraterritorial</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.
(New article) Article 27a. Choice to store data within the Union at no extra cost		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.	<u>Choice to store data within the EU at no extra cost</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 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

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			the possibility to store data in the EU and how to request it.
CHAPTER VIII INTEROPERABILITY			
Article 29 Interoperability for data processing services	1. Open interoperability specifications and European standards for the interoperability of data processing services shall: (a) be performance oriented towards achieving interoperability in a secure manner between different data processing services <u>that cover the same service type;</u> (b) enhance portability 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.	1. Open interoperability specifications and European standards for the interoperability of data processing services shall: (a) be performance oriented towards achieving interoperability in a secure manner between different data processing services <u>that cover the same service type;</u> (b) enhance portability of digital assets between different data processing services that cover the same service type; or (c) guarantee ensure , where technically feasible, functional equivalence between different data processing services that cover the same service type.	We welcome the amendment of article 29(1), letter a). Nevertheless, it is unclear whether open interoperability specifications will have to comply with the objectives/requirements of every letter of the article, or just one of them.
(New article) Article 30a Interoperability of connected products and related services		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.	Interoperability of connected products 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 request European standardisation organisations to draft harmonised interoperability standards or, in their absence, shall adopt common interoperability specifications.

OTHER COMMENTS:

Reference	Second compromise proposal	Drafting suggestion	Comment
RECITALS			
Recitals 14 and 15	(14)[...] Such products may include vehicles, home equipment and consumer goods, medical and health devices equipment and wearables or agricultural and industrial machinery. [...] (15)In contrast, certain products that are primarily designed to display or play content, such as textual or audiovisual, often covered by intellectual property rights, or to record and transmit such 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. Additionally, products primarily designed to process and store data, such as personal computers, servers, tablets and smart phones, should not fall in scope of this Regulation. 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 this Regulation as far as they qualify as the definition of “product” in particular due to the ability to communicate data via a publicly available electronic communication service.		The definition of product and the criteria to be followed in order to include and exclude some specific products remains unclear. On the one hand, the concept of “display and play content, and record and transmit content” seems to be broad, given that the recital excludes smart TVs, cameras, webcams, sound recordings and text scanners. Nevertheless, at the same time, the recitals includes wearables and smart watches. It is unclear what is the criteria to distinguish between sound recordings, home sensors and wearables, as well as to distinguish smart TVs and smart watches. In addition, according to the current definition of “product”, scanners connected to the internet for the transmission to the manufacturer of data such as status, frequency of use, volume of copies, health status of the rollers, need of maintenance, etc, will not be within the scope of the Data Act given that they are primarily designed to record and transmit content. On the other hand, given that the concept of “process and store data” excludes PCs, servers, tablets and smart phones, the question will probably arise in the future regarding products which have a computer or microprocessor embedded (i.e navigators).

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	Given the share of investment in providing data-related functions in relation to other functions of these categories of products, the obligation to allow access or the sharing of data would be disproportionate in the light of the objective of this Regulation.		In order to enhance legal certainty, this list and the definition of product should be further clarified. In article 2, we propose clarifying the scope through the definition of product.
Recital 18	(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 on other than short-term basis .[...]		The exclusion from the concept of user, and thus from the rights of the Data Act, of persons that rent or lease products on short-term basis raises concerns. The reasoning and impact of this exclusion should be further assessed. In the exclusion is kept, in order to guarantee legal certainty and avoid loopholes, the concept of “short-term rental/lease” should be defined in more detail, either in the Regulation or in delegated acts adopted by the Commission.
Recital 19	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 readily available 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		According to recital 14a, raw and pre-processed data are within the scope of the Data Act and shall be made available to the user and third parties, whereas derive data is not. At the same time, according to recital 19, data which is not stored and data which is not transmitted outside the product (i.e. data processed internally in real time) is excluded from the data access and use

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	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.		rights, without the manufacturer being obliged to modify the design of the product. There might be products where raw data is processed internally in order to derive data, being the derived data the only data transmitted to the manufacturer. In those cases, according to recitals 14a and 19, the manufacturer would have access to the derived data, whereas, third parties would not have access to any data, neither derived, nor raw or pre-processed. Manufacturers not willing to give access to data of their products, especially complex products with computing capacity, could exploit this and design their products in a way that allows them to avoid giving access to data. Deriving data within products will probably become increasingly common as data processing capacity of products is increasing and artificial intelligence is becoming widespread. Thus, this issue should be further analysed.
Recital 23	[...] The data holder cannot be expected to store the data indefinitely in view of the needs of the user of the product, but should implement a reasonable data retention policy that allows for the effective application of the data access rights under this Regulation[...]		In order to enhance legal certainty and enforceability, the Commission should be empowered to adopt delegated acts defining minimum storage and retention periods needed in specific types of products. Thus, an amendment is proposed below, in article 3.

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Recital 29	[...]Data intermediation services [as regulated by Regulation (EU) 2022/868] may support users or third parties in establishing a commercial relation for any lawful purpose on the basis of data of products in scope of this Regulation e.g. by acting on behalf of a user. They could play an instrumental role in aggregating access to data from a large number of individual users so that big data analyses or machine learning can be facilitated, as long as such users remain in full control on whether to contribute their data to such aggregation and the commercial terms under which their data will be used.		We welcome this amendment.
Recital 37	[...] Similarly, enterprises that just have passed the thresholds qualifying as a medium-sized enterprise as well as medium-sized enterprises bringing a new product on the market should benefit from a certain period before being exposed to the potential competition based on the access rights under this Regulation on the market for services around products they manufacture.	Delete	As explained below, in article 7.
Recital 42a	(42a) Such reasonable compensation may include firstly the costs incurred and investment required for making the data available. These costs can be technical costs, such as the costs necessary for data reproduction, dissemination via electronic means and storage, but not of data collection or production. Such technical	(42a) Such reasonable compensation may include firstly the costs incurred and investment required for making the data available. These costs can be technical costs, such as the costs necessary for data reproduction, dissemination via electronic means and storage, but not of data collection or production. Such technical costs could include also the costs for processing, necessary to make data available. Costs	We welcome that a recital describing the concept of “reasonable compensation” has been included, as it will enhance legal certainty. We acknowledge the need to incentivise investment in data generation. Nevertheless, concern arises regarding the possibility of

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	costs could include also the costs for processing, necessary to make data available. Costs related to making the data available may also include the costs of organising answers to concrete data sharing requests. They may also vary depending on the arrangements taken for making the data available. Long-term arrangements between data holders and data recipients, for instance via a subscription model or the use of smart contracts, could reduce the costs in regular or repetitive transactions in a business relationship. Costs related to making data available are either specific to a particular request or shared with other requests. In the latter case, a single data recipient should not pay the full costs of making the data available. Reasonable compensation may include secondly a margin. Such margin may vary depending on factors related to the data itself, such as volume, format or nature of the data, or on the supply of and demand for the data. It may consider the costs for collecting the data. The margin may therefore decrease where the data holder has collected the data for its own business without significant investments or may increase where the investments in the data collection for the purposes of the data holder's business are high. The margin may also depend on the follow-on use of the data by the data recipient. It may be limited or even excluded in situations where the use of the data by the data recipient does not affect the own activities of the data holder.	related to making the data available may also include the costs of organising answers to concrete data sharing requests. They may also vary depending on the arrangements taken for making the data available. Long-term arrangements between data holders and data recipients, for instance via a subscription model or the use of smart contracts, could reduce the costs in regular or repetitive transactions in a business relationship. Costs related to making data available are either specific to a particular request or shared with other requests. In the latter case, a single data recipient should not pay the full costs of making the data available. Reasonable compensation may include secondly a margin. Such margin may vary depending on factors related to the data itself, such as volume, format or nature of the data, or on the supply of and demand for the data. It may consider the costs incurred and investment required for collecting the data. The margin may therefore decrease where the data holder has collected the data for its own business without significant investments or may increase where the investments in the data collection for the purposes of the data holder's business are high. The margin may also depend on the follow-on use of the data by the data recipient. It may be limited or even excluded in situations where the use of the data by the data recipient does not affect the own activities of the data holder. The fact that the data is co-generated by the user could also lower the amount of the compensation in comparison to other situations where the data are generated exclusively by the data holder.	data holders of setting high compensation rates that are in practice payment for the data, and that, in practice, inhibit users from exercising their right to share data with third parties. In particular, making compensation dependent on the supply and demand of the data, could transform compensations into payments. Likewise, making compensation dependent on the follow-up use of the data and whether a given follow-up use affects the own activities of the data holder, would enable manufacturers providing aftermarket services to set high compensation rates to third party providers of those same aftermarket services in order to, in practice, exclude, those third party service providers from the aftermarket market. Concern arises given that, discretionary high compensation rates could, in practice, render the Data Act ineffective.

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	data by the data recipient. It may be limited or even excluded in situations where the use of the data by the data recipient does not affect the own activities of the data holder. The fact that the data is co-generated by the user could also lower the amount of the compensation in comparison to other situations where the data are generated exclusively by the data holder.		
Recital 49a	(49a) In order to ensure an uniform application of this Regulation, the dispute settlement bodies should take into account, the non-binding model contractual terms developed and recommended by the Commission as well as sectoral regulation specifying data sharing obligations or guidelines issued by sectoral authorities for the application of such Regulation.		We welcome this amendment.
Recital 56	[...]Exceptional needs are circumstances which are unforeseeable and limited in time, in contrast to other circumstances which might be planned, scheduled, periodic or frequent.[...]		We welcome this amendment.
Recital 58	[...] 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.[...]	[...] 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. [...]	Public administrations often need to have access to data generated during the execution of public contracts or concession contracts, given that they might need information about their services. The compromise text includes in the recitals, as examples of tasks considered tasks in the public interest, some tasks related to public

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			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.- We welcome these amendments. With those amendments, 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.
Recital 59	(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, including in cases of complying with the targeted information requests under the single market emergency instrument (SMEI) and or where data use can take place	(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, including in cases of complying with the targeted information requests under the single market emergency instrument (SMEI) and or where data use can take place on a regular basis, as in the case of reporting obligations and internal market obligations, should not	Mandatory information requests within SMEI are information requests to respond to Single Market emergencies. Thus, the amendment included in the second compromise text is confusing, given that the exclusion of SMEI information requests is included as an example of obligation of non-exceptional nature, which is not the case.

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	on a regular basis, as in the case of reporting obligations and internal market obligations, should not be affected by this Regulation.	be affected by this Regulation. The obligation to comply with the targeted information requests under the single market emergency instrument (SMEI) should not be affected by this Regulation.	Moreover, in order to enhance legal certainty, this could be included in the articles.
Recital 72b	[...]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.		We welcome this amendment.
Recital 79	[...]The Commission should assess barriers to interoperability and prioritise standardisation needs, based on which it may request one or more European standardisation organisation in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council to draft harmonised standards which fulfil the essential requirements laid down in this Regulation. In case such requests do not result in harmonised standards or such harmonised standards are insufficient to ensure conformity with the essential requirements in the Regulation, the Commission should adopt common specifications in these areas		We welcome this amendment.
Recital 83	[...]Member States competent authorities should ensure that infringements of the obligations laid down in this Regulation are		We welcome this amendment.

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	sanctioned by penalties, which could be inter alia in the form of financial penalties, warnings, reprimands or orders to bring business practices in compliance with the obligations under this Regulation. Where appropriate, Member States' competent authorities should make use of interim measures to limit the effects of an alleged violation while the investigation of such violation is on-going [...]		
CHAPTER I GENERAL PROVISIONS			
Article 1 Subject matter and scope	2. This Regulation applies to:		We welcome that the compromise text already includes clarifications regarding the territorial scope of the Regulation.
Article 1 Subject matter and scope	2. This Regulation applies to: [...] (b) data holders, irrespective of their place of establishment , that make data available to data recipients in the Union;		With that provision, the scope of Chapters II of the Data Act is clear given that they apply in relation to products placed on the market in the Union. Nevertheless, the scope of Chapter V with this provision is unclear, given that, within Chapter V, data recipients are public sector bodies, which are the entities triggering the request and are always in the Union.
Article 1 Subject matter and scope	2. This Regulation applies to: [...] (e) providers of data processing services, irrespective of their place of establishment, offering providing such services to customers in the Union.;	If the concerto <i>offer</i> is used, a recital should be included: In order to determine whether a services provider is offering services within the Union, it should be ascertained whether it is apparent that the services provider is planning to offer services to persons in one or more Member States. The mere accessibility in the Union of the website or of an email address and other	According to the proposal of the Commission, the Data Act applies to providers of data processing services <i>offering</i> such services to customers in the Union. The second compromise text amends article 2.2 f), and, according to the amendments, the Regulation applies to providers <i>providing</i> such services to customers in the Union. Nevertheless, the

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		contact details of the services provider, or the use of a language generally used in the third country where the services provider is established, should be considered to be insufficient to ascertain such an intention. However, factors such as the use of a language or a currency generally used in one or more Member States with the possibility of ordering services in that language, or the mentioning of users who are in the Union, could make it apparent that the data intermediation services provider is planning to offer services within the Union.	concept used in article 31.11, which deals with jurisdiction, mentions entities that <i>offer products and services</i>. In order to enhance legal certainty, the concept used in both articles could be aligned, and, if the Regulation applies to providers <i>offering</i> services in the Union, a recital should be added clarifying the criteria that should be taken into account in order to assess whether a service is being offered in the Union, as it has been included in other Regulations.
Article 1 Subject matter and scope	2. This Regulation applies to: [...] (f) operators within data spaces and vendors of applications using smart contracts and persons whose trade, business or profession involves the deployment of smart contracts for others in the context of agreements to make data available.	2. This Regulation applies to: [...] (f) operators within data spaces and vendors of applications using smart contracts and persons whose trade, business or profession involves the deployment of smart contracts for others in the context of agreements to make data available, providing/offering those services in the Union, irrespective of their place of establishment.	In order to enhance legal certainty, the text could be amended in order to specify that the Regulation apply to operators and vendors offering/providing their services in the Union, irrespective of their place of establishment, in the same vein that it has been clarified in previous letters of article 1.
Article 1 Subject matter and scope	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 interact with a product or related service.	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 interact with a product or related service, and other digital services and applications designed to access, control or interact with connected products.	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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Article 2 Subject matter and scope	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, 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.	‘manufacturer’ means any natural or legal person who manufactures a product or has a product designed or manufactured, and markets that product under its name or trademark; ‘making available on the market’ means any supply of a product for distribution, consumption or use on the	Legal certainty regarding the relation between the Data Act and the GDPR is essential in order to reduce compliance cost and ensure applicability and enforceability of the Regulation. In order to enhance legal certainty, further clarifications would be welcome regarding the relation between the Data Act and the GDPR, for example, regarding provisions applicable in cases of conflict between the two regulations.
Article 2 Definitions		‘manufacturer’ means any natural or legal person who manufactures a product or has a product designed or manufactured, and markets that product under its name or trademark; ‘making available on the market’ means any supply of a product for distribution, consumption or use on the	Chapter II of the Data Act applies to manufacturers of products placed on the market after the date of application. In order to enhance legal certainty, a definition of “manufacturer” and “placing on the market” could be included, in the same vain that definitions have been included in other legislative proposals, such as the proposal

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		Union market in the course of a commercial activity, whether in return for payment or free of charge; ‘placing on the market’ means the first making available of a product on the Union market;	for a Directive on liability of defective products and the proposal for a Regulation on general product safety. As an alternative, a reference to the definitions used in Regulation (EU) 2019/1020 on market surveillance and compliance of products could be included.
Article 2 Definitions	‘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;	‘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 regarding its use and environment 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;	We welcome the inclusion of “direct and indirect” communications. As previously explained, the current definition of product and the exclusions described in the definition and recitals are unclear. For example, according to the current definition of “product”, scanners connected to the internet for the transmission to the manufacturer of data such as status, frequency of use, volume of copies, health status of the rollers, need of maintenance, etc, will not be within the scope of the Data Act given that they are primarily designed to record and transmit content. The criteria used to narrow the scope of the Data Act and avoid imposing disproportionate burdens, instead of being the primary function of the device, could be whether there are connected to the Internet to transmit data needed to perform their primary function of the device (i.e. scanning or printing a document), or whether they are

Reference	Second compromise proposal	Drafting suggestion	Comment
			connected to the internet to transmit additional data regarding the use, performance and environment of the device. It is highlighted that not every item of data processed by a product (i.e. smart TV) would within the scope of the Data Act, but only data regarding the performance, use and environment of the product, and only data readily available to the manufacturer, and excluding derived data.
Article 2 Definitions	(1ae) ‘readily available data’ means data generated by the use of a product that the data holder obtains or can obtain without disproportionate effort, going beyond a simple operation;		Given the key role of the concept of “readily available data” in defining the scope of Chapter II, a recital shall be including explain this concept. Is the “disproportionate effort” linked to obtaining (generating) the data? (i.e. preprocessing and processing activities carried out in order to clean the data or derive information from it.) Or is the “disproportionate effort” linked to the effort needed by the data holder in order to obtain (get) data that it can obtain, but is not currently obtaining? (i.e. the product is already design in order to make data available to the manufacturer, but the manufactures in currently not obtaining the data through that functionality of the product because, for example, the user has not given his consent).

Reference	Second compromise proposal	Drafting suggestion	Comment
			Is the concept of “obtain” limited to transmissions of data outside the product? Or does it include accessing to data stored in the product? What is considered to be <i>disproportionate effort</i> and what is not?
Article 2 Definitions	(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.		We welcome this amendment.
Article 2 Definitions	13) ‘service type’ means a set of data processing services that share the same primary objective and main functionalities basic data processing service model;		We welcome this amendment.
Article 2 Definitions	(15a) ‘operators within data spaces’ mean legal persons that facilitate or engage in data sharing within and across the common European data spaces;	(15a) ‘operators within data spaces’ mean legal persons that facilitate or engage in data sharing within and across the common European data spaces; (15b) ‘common European data spaces’, mean 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;	We welcome the inclusion of definitions of “operator within data spaces” and “common European data spaces”. Nevertheless, we propose including the definition of “common European data spaces” in Article 2 instead of within Article 28, as it will make Article 28 easier to understand.
Article 2 Definitions	(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;	(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;	Aligning the definition of “electronic ledger” used within the Data Act with the definition of “electronic ledger” included in the eIDAS2 Regulation could be convenient.

Reference	Second compromise proposal	Drafting suggestion	Comment
CHAPTER II RIGHT OF USERS TO USE DATA OF CONNECTED PRODUCTS AND RELATED SERVICES			
Articles 4 and 5	[...]as well as the relevant metadata[...]		We welcome these amendments.
Articles 3, 4 and 5	[...]in a structured, commonly used and machine-readable format[...]		We welcome these amendments.
Article 3 Obligation to make data generated by the use of products or related services accessible to the user	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 readily available 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.	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 readily available to the data holder, as well as relevant metadata, 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 where applicable, of the same quality as is available to the data holder.	Given that paragraph 1 of article 4 applies only “where data can not be directly accessed by the user from the product”, some of the quality requirements included in article 4.1. could be also included in article 3.1.
Article 3 Obligation to make data generated by the use of products or related services accessible to the user	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:		We welcome that the compromise text clarifies upon which entity is obligation of Article 2 imposed.
Article 3 Obligation to	[...]	(New paragraph 3)	According to recital 23, data holders should implement and reasonable data retention

Reference	Second compromise proposal	Drafting suggestion	Comment
make data generated by the use of products or related services accessible to the user	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: [...] (c) how the user may access those data including in view of the data holder's data storage and retention policy;	3. The Commission is empowered to adopt delegated acts, in accordance with Article 38 to supplement this Regulation by further specifying the storage and retention policies referenced to in paragraph 2, letter c) for specific types of products.	policy that allows for the effective application of the data access rights under this Regulation. And, according to article 3, data holders shall inform users about this data retention policy. In order to enhance legal certainty and enforceability, the Commission should be empowered to adopt delegated acts defining minimum storage and retention periods needed in specific types of products.
Article 4 The right of users to access and use data generated by the use of products or related services	2a. The data holder shall not coerce, deceive or manipulate in any way the user or the data subject where the user is not a data subject, by subverting or impairing the autonomy, decision-making or choices of the user or the data subject, including by means of a digital interface with the user or the data subject, to hinder the exercise of the user's rights under this Article.		We welcome this amendment.
Article 5 Right of the user to share data with third parties	2. Any undertaking designated as a gatekeeper, pursuant to Article 3 [...] of [Regulation XXX (EU) 2022/1925], shall not be an eligible third party under this Article and therefore shall not:[...]	ALTERNATIVE 1: Delete ALTERNATIVE 2: (New paragraph 2a) 2a. 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 services for which one or more of	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. Recital 36 of the compromise text clarifies that the Data Act does not prevent gatekeepers from

Reference	Second compromise proposal	Drafting suggestion	Comment
		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.	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.). Gatekeepers receiving data of connected products through other lawful means should be subject to the obligations and prohibitions of article 6 of the Data Act because, otherwise, gatekeepers would have important advantage in comparison with other third parties receiving data for the provision of aftermarket of value-added services.
Article 5	5. The data holder shall not use any non-personal data generated by the use of the product [.....], unless the third party has consented given		We welcome this amendment.

Reference	Second compromise proposal	Drafting suggestion	Comment
	permission to such use and has the technical possibility to withdraw that consent at any time.		
Article 7 Scope of business to consumer and business to business data sharing obligations	Article 7 Scope of business to consumer and business to business data sharing obligations 1. The obligations of this Chapter shall not apply to data generated by the use of products manufactured or related services provided by enterprises that qualify as micro or small enterprises, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as a micro or small enterprise. The same shall apply to data generated by the use of products manufactured or related services provided by enterprises that qualify as medium-sized enterprises as defined in that same Recommendation, for either medium-sized enterprises that meet the threshold of that category for less than one year or that where it concerns products that a medium-sized enterprise has been placed on the market for less than one year. [...]	Article 7 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 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. [...]	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 Data Act, including design and transparency requirements, for all the products placed in the market during the first year of placing in the market a given model of products.
CHAPTER III HORIZONTAL OBLIGATIONS FOR DATA HOLDERS LEGALLY OBLIGED TO MAKE DATA AVAILABLE IN BUSINESS-TO-BUSINESS RELATIONS			
Article 8	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. [...]		According to article 8, data holders can not discriminate among comparable categories of data recipients. Article 8 further explains that discrimination in comparison with partner o linked enterprises is not allowed and recital 44 explains that discrimination based on the size of the enterprise is not allowed.

Reference	Second compromise proposal	Drafting suggestion	Comment
			Nevertheless, the concept of “comparable categories of data recipients” remains unclear. According to recital 42a, compensation might vary depending on the service provided by the data recipient (follow-on use of the data). Does this mean that “comparable categories of data recipients” means data recipients providing the same or similar service, and therefore, that discrimination based on the service provided by the data recipient is possible?
Article 10 Dispute settlement	Article 10 Dispute settlement 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 and 13.	Article 10 Dispute settlement 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 4.3, 5.8, 8, and 9, 11 and 13.	In addition to solving disputes regarding the application of articles 8, 9 and 13, it could be useful if dispute settlement bodies could also resolve disputes regarding the need and measures necessary to protect trade secrets (art 4.3 and 5.8), or the technical protection measures and the provisions on unauthorised used and disclosure of data (art 11).
Article 10 Dispute settlement		New paragraph 2a in article 10 2a. The Commission shall, by [date of application of the Regulation] adopt delegated acts in accordance with Article 38 concerning the establishment of specific criteria to be met by the dispute settlement bodies referred to in this Article.	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.

Reference	Second compromise proposal	Drafting suggestion	Comment
Article 10 Dispute settlement	7a. Dispute settlement bodies shall make publicly available annual activity reports. The annual report shall include in particular the following general information: (a) the number of disputes received; (b) the outcomes of those disputes; (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.		We welcome this amendment.
CHAPTER IV UNFAIR CONTRACTUAL TERMS RELATED TO DATA ACCESS AND USE			
CHAPTER V. MAKING DATA AVAILABLE TO PUBLIC SECTOR BODIES, THE COMMISSION, THE EUROPEAN CENTRAL BANK OR UNION BODIES BASED ON EXCEPTIONAL NEED			
Article 14 Obligation to make data available based on exceptional need	Upon request, a data holder shall make data, which could include relevant metadata,		We welcome this amendment.
Article 14 Obligation to make data available based on	Article 14 Obligation to make data available based on exceptional need [...] 2. This Chapter shall not apply to small and micro enterprises as defined in Article 2 of	ALTERNATIVE 1: 2. This Chapter shall not apply to small and micro enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC.	According to the current wording of article 14(2), Chapter V of the Data Act does not apply to micro and small enterprises, neither in case of public emergency, neither in other exceptional situations; and, apparently,

Reference	Second compromise proposal	Drafting suggestion	Comment
exceptional need	the Annex to Recommendation 2003/361/EC.	2. Micro and small enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC, upon request, 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 where the data requested is necessary to respond to a public emergency pursuant to Article 15 a). 3. 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). ALTERNATIVE 2: 2. This Chapter shall not apply to small and micro enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC. 2. 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.	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. This

Reference	Second compromise proposal	Drafting suggestion	Comment
			amendment would enhance legal certainty for micro and small enterprises willing to, voluntarily, share data with public sector bodies in cases of exceptional need.
Article 15 Exceptional need to use data	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: [...] (c) where the lack of available data prevents the public sector body, or Union institution, agency or body the Commission, the European Central Bank or Union bodies from fulfilling a specific task in the public interest, such as official statistics , that has been explicitly provided by law; and [...] (1) [...]; or (2) obtaining the data in line with the procedure laid down in this Chapter would substantively reduce the administrative burden for data holders or other enterprises.	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: [...] (c) where the lack of available data prevents the public sector body, or Union institution, agency or body the Commission, the European Central Bank or Union bodies from fulfilling a specific task in the public interest, such as official statistics , that has been explicitly provided by law; and [...] (1) [...]; or (2) obtaining the data in line with the procedure laid down in this Chapter would substantively reduce the administrative burden for data holders or other enterprises or other physical persons, such as statistical respondents.	We welcome the explicit reference to the compilation of official statistics as an example of specific task in the public interest. Nevertheless, Article 15(c)(2) could be amended so that the obligation to make data available applies also if it reduces the burden, not just on data holder and other enterprises, but also on physical persons.
Article 16 Relationship with other obligations to make data available to public sector bodies, the Commission, the European	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 with legal obligations, including in relation to official statistics the obtaining of data for the purpose of compiling official statistics, not based on an exceptional need. 2. The rights from this Chapter including the right to access, share and use of data shall not be exercised by public sector bodies and Union	3. This Chapter shall not affect [Regulation SMEI]	The SMEI proposal regulates mandatory information requests. Nevertheless, those information requests are issued within the framework to respond to Single Market emergencies. Therefore, it is not clear enough whether they are included in article 16(1) as obligations “for the purpose of reporting, complying with information requests or

Reference	Second compromise proposal	Drafting suggestion	Comment
Central Bank and Union bodies	institutions, agencies and bodies the Commission, the European Central Bank and Union 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 administration.		demonstrating or verifying with legal obligations”. If SMEI information requests should not be affected by the Data Act, it should be more clear in the Regulation.
Article 17 Requests for data to be made available	(f) be made publicly available online without undue delay, unless this would create a risk for public security, and the requesting public sector body shall inform the competent authority referred to in Article 31, of the Member State where the requesting public sector body is established. The Commission, the European Central Bank and Union bodies shall make their requests available online without undue delay and inform the Commission thereof.		We welcome the amendment clarifying the authority of which Member State shall be informed.
Article 17 Requests for data to be made available	3. A public sector body Commission, the European Central Bank or Union 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		We welcome this amendment.

Reference	Second compromise proposal	Drafting suggestion	Comment
	sector bodies obtained pursuant to this Chapter.		
Article 20 Compensation in cases of exceptional need	3. Where the public sector body or the Union institution, agency or Commission, the European Central Bank or Union 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.		We welcome this amendment.
Article 21 Further sharing of data obtained in the context of exceptional needs with research organisations and statistical bodies	<i>Article 21 Further sharing of data obtained in the context of exceptional needs with Contribution of research organisations or statistical bodies in the context of exceptional needs</i> 1. A public sector body or a Union institution, agency or the Commission, the European Central Bank or Union 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 requested, or (b) to with national statistical institutes and Eurostat for the compilation of official statistics.		According to recital 68, public sector bodies may share the data they obtained pursuant to a request (and therefore, in the context of an exceptional need) “with other entities or persons when this is needed to carry out scientific research activities or analytical activities <i>it cannot perform itself</i>”. Nevertheless, this requirement is not included in article 21. In addition, according to the title of the Commission’s proposal, further sharing of data was “in the context of exceptional needs”. Nevertheless, 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 analytic, or whether data can only be shared to carry out scientific researches or analytics, <i>related to the exceptional need that lead to the initial request for data</i>.

Reference	Second compromise proposal	Drafting suggestion	Comment
			The requirement of those scientific researches and analytics to be <i>compatible with the purpose for which the data was requested</i> is not clear enough in that regard. Should this purpose compatibility be understood within the meaning of the GDPR? If not, what should be considered to be compatible and incompatible purpose?
Article 21 Further sharing of data obtained in the context of exceptional needs with research organisations and statistical bodies	2. Individuals or organisations receiving the data pursuant to paragraph 1 shall use the data exclusively act on a not-for-profit basis or in the context of a public-interest mission recognised in Union or Member State law. They shall not include organisations upon which commercial undertakings have a decisive influence or which could result in preferential access to the results of the research.		How do requirements of article 21(2) apply to individuals? Should individuals required to be linked to not-for-profit organisations or organisations acting in public interest mission?
Article 21 Further sharing of data obtained in the context of exceptional needs with research organisations and statistical bodies	Article 21 of the compromise text : 3. Individuals or organisations receiving the data pursuant to paragraph 1 shall comply with the provisions of Article 17(3) and Article 19. Article 19(1) c) of the compromise text : (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 .		A difference could be made between further sharing of data with national statistical institutes for the compilation of official statistics, and persons and organisations for carrying out scientific research and analytics. There may be no need for imposing on national statistical institutes an obligation to erase data, neither a strict deadline for the compilation of the official statistics, given that: the purpose of the processing is narrow (compilation of official statistics); the scope of entities receiving data is limited and narrow (national statistical institutes and

Reference	Second compromise proposal	Drafting suggestion	Comment
	Proposals presented by the Presidency : 1.The data requested (under Article 14) could be shared with research organisations and national statistical institutes (and Eurostat), in accordance with Article 21. The data, after fulfilling the purpose of the request, would then be erased by all entities involved (in accordance with Article 19(1)c)). This option means that the requested data will be available only for the time, when they are used by the requesting public sector body, the Commission or Union body. 2. The data requested (under Article 14) could be shared with research organisations and national statistical institutes (and Eurostat) in accordance with Article 21, and they would be allowed to keep them for additional 6 months after the purpose of the request would be fulfilled. The data would be erased afterwards.		Eurostat); and the functioning and activities of those entities is regulated. It should be possible for national statistical institutes to erase data according to the data retention policies that they apply for the compilation of the rest of the official statistics. Nevertheless, regarding further sharing of data with entities for carrying out scientific research and analytics, amendments to guarantee that data is erase and processing is eventually finished could be useful, given that, the scope of potential persons and organisations receiving data is broad; there is no vetting mechanism for them; the purpose of the processing, researches and analytics is broad; and researches and analytics are activities which are not always clearly limited in time. Both options of the Presidency could be used, although the second option will give them more flexibility.
CHAPTER VI SWITCHING BETWEEN DATA PROCESSING SERVICES			
(New articles)			<u>Requirements of business software deployed onpremise (new articles)</u> The definition of data processing services includes Software as a Service cloud solutions. Therefore, switching and

Reference	Second compromise proposal	Drafting suggestion	Comment
			portability requirements cloud apply to business software deployed on premise, 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 remove obstacles to the effective switching to cloud providers or different on premise systems. For example, technical obstacles should be removed by ensuring compatibility with open specifications and standards and by allowing users to export data in common, structured and machine-readable format. And contracts should include detailed information about de exportable data. In addition, providers of support and maintenance services for the business software should remove contractual and economic obstacles, for example, by allowing terminating the contract after a limited notice period, allowing to switch data with a maximum transition period and assisting in the switching processes
Article 23 Removing obstacles to	(c) porting its data and metadata created by the customer and by the use of the originating service, and/or the		We welcome amendments of articles 23 and 24 explicitly declaring the right of clients to

Reference	Second compromise proposal	Drafting suggestion	Comment
effective switching between providers of data processing services	customer's applications and/or other digital assets to another provider of data processing services or to an on-premise system ;		port data and switch to on-premise systems, in addition to other cloud service providers.
Article 24 Contractual terms concerning switching between providers of data processing services	1. The rights of the customer and the obligations of the provider of a data processing service in relation to switching between providers of such services or 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: [....]		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. 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.
Article 24 Contractual terms concerning switching between providers of data	[....] (aa) a maximum notice period for termination of the contract by the user, which shall not exceed 2 months; [...] (a) clauses allowing the customer, upon request, to switch to a data processing service offered by another provider of data	[....] (aa) a maximum notice period for termination of the contract by the user or for the initiation of the switching process, which shall not exceed 2 months;	According to the amendment included in article 24(1) a) the service contract remains applicable during the transition period. We acknowledge that there needs to be contract clauses ruling the responsibilities and compromises of the different parts of the contract during the transition period.

Reference	Second compromise proposal	Drafting suggestion	Comment
processing services	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 point (aa), during which the service contract remains applicable and the data processing service provider shall:		Nevertheless, according to article 24(1)(a), the transition period is initiated after the notice period, but, according to article 24(1)(aa) the notice period is the period previous to the termination of the contract. Further <u>clarification regarding those periods</u> and contractual clauses applicable during them would be welcome. On the other hand, given that, according to the amendment, the service contract remains applicable during the transition period, providers will during the transition period keep charging for the service provided, which will include, for example in IaaS, not just charges for computing and storage resources, but also for data egress. Further clarification regarding charges imposed during the transition period would be welcome in order to <u>differentiate between charges for the provision of the cloud service and charges for switching actions.</u> It should be clear that <u>data egress fees applied during the 'normal' provision of the cloud service should not apply to data traffic due to the exportation of digital assets during the switching process.</u>
Article 24 Contractual terms concerning switching between	(e) reference to an up-to-date online register hosted by the data processing service provider, with details of all the standards and open interoperability specifications, data structures and data formats as well as the standards and		We welcome this amendment, as it will ensure that clients have information regarding formats, data structures, standards and interoperability specifications.

Reference	Second compromise proposal	Drafting suggestion	Comment
providers of data processing services	open interoperability specifications, in which the exportable data described according to paragraph (1) point (b) will be available.		
Article 26 Technical aspects of switching	1. Providers of data processing services that concern scalable and elastic computing resources limited to infrastructural elements such as servers, networks and the virtual resources necessary for operating the infrastructure, but that do not provide access to the operating services, software and applications that are stored, otherwise processed, or deployed on those infrastructural elements, shall 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.	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, including in cooperation with the data processing service provider of the destination service, to facilitate ensure that the customer, after switching to a service covering the same service type offered by a different provider of data processing services, enjoys functional equivalence in the use of the new destination service.	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 switching.
Article 26 Technical aspects of switching	1. Providers of data processing services that concern scalable and elastic computing resources limited to infrastructural elements such as servers, networks and the virtual resources necessary for operating the infrastructure, but that do not provide access to the operating services, software and applications that are stored, otherwise processed, or deployed on those infrastructural elements [...]		We would welcome explanations why different requirements were imposed upon IaaS on the one hand, and PaaS and SaaS on the other hand. On the one hand, the requirement applicable to IaaS providers is to take measures to facilitate functional equivalence. The question arises regarding

Reference	Second compromise proposal	Drafting suggestion	Comment
	2. For data processing services other than those covered by paragraph 1, providers of data processing services shall make open interfaces publicly available [...] 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[...] 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 [...]		the criteria to follow in order to assess and enforce this requirement. On the other hand, when no standard or common specification has been identified by the Commission, the requirement applicable to PaaS and IaaS providers is to provide open interfaces and enable exportation of generated data in structured format. The question arises regarding whether this is enough in order to enable the customer to switch without losing functional equivalence. For example, data regarding configuration and settings could be exportable, but not exportable in a format or with the degree of completeness or context needed in order to make it usable for effective switching purposes. Finally, according to the current wording, articles 26(2) and 26(3) do not apply to IaaS providers. Therefore, amendments made regarding interoperability would not apply to IaaS providers: IaaS providers would not have an obligation to provide open interfaces for interoperability purposes and would not have an obligation to comply with standards of interoperability. We wonder if interoperability requirements could also apply to IaaS providers, in order to foster multicloud solutions, for example, for backup or high availability solutions.

Reference	Second compromise proposal	Drafting suggestion	Comment
Article 26 Technical aspects of switching	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.		We welcome this amendment, as it will enhance legal certainty.

CHAPTER VII

UNLAWFUL INTERNATIONAL GOVERNMENTAL ACCESS AND TRANSFER OF NON-PERSONAL DATA

Article 27 International access and transfer	Article 27 International access and transfer [...] The addressee of the decision may ask the opinion of the relevant competent <u>national bodies</u> or <u>authorities competent for international cooperation in legal matters</u> , 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 impinge on national security or defence interests of the	Article 27 International access and transfer [...] <i>The addressee of the decision may ask the opinion of the Commission relevant competent national bodies or authorities competent for international cooperation in legal matters, 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 impinge on national security or defence interests of the Union or its Member States, it shall ask the opinion of the national competent bodies or authorities with the relevant competence, in order to determine whether these conditions are met.</i>	Given 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. In addition, it should be clarified whether those opinions will be binding.
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Reference	Second compromise proposal	Drafting suggestion	Comment
	Union or its Member States, it shall ask the opinion of the national competent bodies or authorities with the relevant competence, in order to determine whether these conditions are met.	Opinions adopted by the Commission shall be binding on the addressee of the decision that asked the opinion of the Commission.	
CHAPTER VIII INTEROPERABILITY			
Article 28 Essential requirements regarding interoperability	1. Operators of within data spaces shall comply with, the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services as well as of the common European data spaces, which are purpose- or sector-specific or cross-sectoral interoperable frameworks of common standards and practices to share or jointly process data for, inter alia, development of new products and services, scientific research or civil society initiatives:	1. Operators of within data spaces identified by the Commission according to paragraph 0 shall comply with, the following essential requirements to facilitate interoperability of data, data sharing mechanisms and services as well as of the common European data spaces, which are purpose- or sector-specific or cross-sectoral interoperable frameworks of common standards and practices to share or jointly process data for, inter alia, development of new products and services, scientific research or civil society initiatives:	We propose moving the definition of “common European data space” to Article 2.
CHAPTER IX IMPLEMENTATION AND ENFORCEMENT			
Article 31 Competent authorities	2. Without prejudice to Notwithstanding paragraph 1 of this Article: (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		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 authorities according to sectoral rules, in

Reference	Second compromise proposal	Drafting suggestion	Comment
	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;		regards to the supervision, complaint handling and penalty regime, <u>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.</u>
Article 31 Competent authorities	(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.	Delete.	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. If no clear justification exists, the cited requirement could be removed.
Article 31 Competent authorities	Article 31 Competent authorities [...] 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: [...] (b) handling complaints arising from alleged violations of this Regulation, and investigating, to the extent appropriate, the		We welcome this amendment.

Reference	Second compromise proposal	Drafting suggestion	Comment
	subject matter of the complaint and informing the complainant, in accordance with national law , of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another competent authority is necessary;		
Article 31 Competent authorities	10. Entities falling within the scope of this Regulation shall be subject to the jurisdiction competence of the Member State where the entity is established. In case the entity is established in more than one Member State, it shall be deemed to be under the jurisdiction competence of the Member State in which it has its main establishment, that is, where the entity has its head office or registered office within which the principal financial functions and operational control are exercised. 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 competence of all Member States, where applicable, for the purposes of ensuring the application and enforcement of this Regulation. Any competent authority may exercise its competence, provided that the entity is not subject to enforcement proceedings under this Regulation for the same facts by another competent authority.	10. Entities falling within the scope of this Regulation shall be subject to the jurisdiction competence of the Member State where the entity is established. In case the entity is established in more than one Member State, it shall be deemed to be under the jurisdiction competence of the Member State in which it has its main establishment, that is, where the entity has its head office or registered office within which the principal financial functions and operational control are exercised. 10a. Entities not established in the Union but which offer services within the scope of this Regulation may designate a legal representative in one of the Member States in which those services are offered. For the purpose of ensuring compliance with this Regulation, the legal representative shall be mandated by the provider to be addressed in addition to or instead of it by competent authorities, with regard to all issues related to the application of this Regulation. The services provider shall be deemed to be under the competence of the Member State in which the legal representative is located. The designation of a legal representative by the services provider shall be without prejudice to any legal actions which could be initiated against the services provider. 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	We welcome the inclusion of paragraphs 10 and 11 clarifying under the competence of which Member State will providers be deemed to be. Nevertheless, Article 31.11 includes a reference to “legal representatives” designated by entities not established in the Union. Nevertheless, there is no other reference to “legal representatives” within the text. Further clarification in this regard would be welcome.

Reference	Second compromise proposal	Drafting suggestion	Comment
		competence of all Member States, where applicable, for the purposes of ensuring the application and enforcement of this Regulation. Any competent authority may exercise its competence, provided that the entity is not subject to enforcement proceedings under this Regulation for the same facts by another competent authority.	
Article 31 Competent authorities		Article 31 Competent authorities [...] New paragraph 12. 12. Entities falling within the scope of this Regulation which are designated Article 3 of Regulation XXX (EU) 2022/1925 for their cloud computing services shall be subject to the competence of the Commission for the supervision and enforcement of Chapter VI.	<u>Supervision and enforcement of Chapter VI against gatekeepers</u> The cloud computing market is a highly concentrated market. In particular, the market is concentrated around a very small number of providers that offer their services cross-border in all the Member States, and which will probably reach the thresholds for the designation as gatekeepers for their cloud services according to the DMA. Given the high concentration of the cloud market, for the Data Act to achieve its objectives, it is essential that the Regulation is applied by the providers that dominate the market. And, given the size of these providers and given that they offer their services in multiple Member States, the possibility of those providers being supervised by the Commission should be assessed, especially considering that these providers will already be subject to the supervision of the Commission with regard to the application of the DMA.
Article 32. Right to lodge a complaint	Article 32. Right to lodge a complaint	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	In order to align articles 31 and 32, article 32 could be amended.

Reference	Second compromise proposal	Drafting suggestion	Comment
		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, for alleged infringements of this Regulation.	
Article 32. Right to lodge a complaint	Article 32. Right to lodge a complaint [...] 2. The competent authority with which the complaint has been lodged shall inform the complainant, in accordance with national law , of the progress of the proceedings and of the decision taken.		We welcome this amendment.
Article 33 Penalties			The Data Act should include some harmonizing rules regarding penalties by setting minimum and maximum thresholds.
Article 34 Model contractual terms and standard contractual clauses	Article 34 Model contractual terms and standard contractual clauses The Commission shall develop and recommend non-binding model contractual terms on data access and use and non-binding standard contractual clauses for cloud computing contracts to assist parties in drafting and negotiating contracts with balanced contractual rights and obligations	Article 34 Model contractual terms and standard contractual clauses The Commission shall, before [date of application of the Regulation] , develop and recommend non-binding model contractual terms on data access and use and non-binding standard contractual clauses for cloud computing contracts to assist parties in drafting and negotiating contracts with balanced contractual rights and obligations	We welcome this amendment. Nevertheless, given the importance of model contractual terms, especially for SMEs, the Commission should develop them, before the date of application of this Regulation.
Article 34a Role of the European Data Innovation Board			We welcome the inclusion of this article.
Article 34a Role of the	The European Data Innovation Board to be set up as a Commission expert group in	The European Data Innovation Board to be set up as a Commission expert group in accordance with Article	According to article 34a, letter a), the EDIB shall advise and assist the Commission with

Reference	Second compromise proposal	Drafting suggestion	Comment
European Data Innovation Board	accordance with Article 29 of Regulation (EU) 2022/868 shall support the consistent application of this Regulation by: (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; [...]	29 of Regulation (EU) 2022/868 shall support the consistent application of this Regulation by: (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 this Regulation; [...]	regard to developing a consistent practice of competent authorities relating to the enforcement of Chapters II, III, V and VII. Why are Chapters IV, VI and VIII not mentioned?
Article 34a Role of the European Data Innovation Board	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: [....] (b) facilitating cooperation between competent authorities through capacity-building and the exchange of information, in particular by establishing methods for the efficient exchange of information relating to the enforcement of the rights and obligations under Chapters II, III and V in cross-border cases, including coordination with regard to the setting of penalties;	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: [....] (b) facilitating cooperation between competent authorities through capacity-building and the exchange of information, in particular by establishing methods for the efficient exchange of information relating to the enforcement of the rights and obligations under Chapters II, III and V this Regulation in cross-border cases, including coordination with regard to the setting of penalties;	According to article 34a, letter a), the EDIB shall facilitate cooperation between competent authorities through capacity-building and the exchange of information, in particular by establishing methods for the efficient exchange of information relating to the enforcement of the rights and obligations under Chapters II, III and V in cross-border cases. Why are Chapters IV, VI, VII and VIII not mentioned?
Article 34a Role of the European Data Innovation Board			According to article 29.2 of the DGA, the EDIB will consist of three subgroups, being the first one composed of competent authorities for data intermediation services and competent authorities for the registration of data altruism organisations.

Reference	Second compromise proposal	Drafting suggestion	Comment
			Given that, according to the amendments of the Data Act, the EDIB will have tasks related to the application of the Data Act, the involvement of national competent authorities for the supervision of the Data Act within the first subgroup of the EDIB regulated in the DGA should be assessed.
CHAPTER X SUI GENERIS RIGHT UNDER DIRECTIVE 96/9/EC			
CHAPTER XI FINAL PROVISIONS			