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A8-0201/ 001-046

AMENDMENTS 001-046

by the Committee on the Internal Market and Consumer Protection

Report

Anna Maria Corazza Bildt

A8-0201/2018

Free flow of non-personal data in the European Union

Proposal for a regulation (COM(2017)0495 – C8-0312/2017 – 2017/0228(COD))

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

Amendment

(1) The digitisation of the economy is accelerating. Information and Communications Technology (ICT) is no longer a specific sector but the foundation of all modern innovative economic systems and societies. Electronic data is at the centre of those systems and can generate great value when analysed or combined with services and products.

(1) The digitisation of the economy is accelerating. Information and Communications Technology (ICT) is no longer a specific sector but the foundation of all modern innovative economic systems and societies. Electronic data is at the centre of those systems and can generate great value when analysed or *when* combined, *under secure conditions*, with services and products.

Amendment 2

Proposal for a regulation

Recital 3

Text proposed by the Commission

Amendment

(3) The freedom of establishment and the freedom to provide services under the Treaty on the Functioning of the European

(3) The freedom of establishment and the freedom to provide services under the Treaty on the Functioning of the European

Union apply to data **storage or other** processing services. However, the provision of those services is hampered or sometimes prevented by certain national requirements to locate data in a specific territory.

Union apply to data processing services, **including porting of data**. However, the provision of those services is hampered or sometimes prevented by certain national, **regional or local** requirements to locate data in a specific territory.

Amendment 3

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) Such obstacles to the free movement of data **storage or other** processing services and to the right of establishment of data **storage or other** processing providers originate from requirements in the national laws of Member States to locate data in a specific geographical area or territory for the purpose of **storage or other** processing. Other rules or administrative practices have an equivalent effect by imposing specific requirements which make it more difficult to **store or otherwise** process data outside a specific geographical area or territory within the Union, such as requirements to use technological facilities that are certified or approved within a specific Member State. Legal uncertainty as to the extent of legitimate and illegitimate data localisation requirements further limits the choices available to market players and to the public sector regarding the location of data **storage or other** processing.

Amendment

(4) Such obstacles to the free movement of data processing services and to the right of establishment of data processing providers originate from requirements in the national laws of Member States to locate data in a specific geographical area or territory for the purpose of processing. Other rules or administrative practices have an equivalent effect by imposing specific requirements which make it more difficult to process data outside a specific geographical area or territory within the Union, such as requirements to use technological facilities that are certified or approved within a specific Member State. Legal uncertainty as to the extent of legitimate and illegitimate data localisation requirements further limits the choices available to market players and to the public sector regarding the location of data processing. ***This Regulation in no way limits the freedom of businesses to make contractual agreements specifying where data is to be located. This Regulation is merely intended to enhance that choice by ensuring that an agreed location may be situated anywhere within the Union.***

Amendment 4

Proposal for a regulation

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) The combination of those obstacles has led to a lack of competition between cloud service providers in Europe, to various vendor locking issues, and to a serious lack of data mobility. Likewise, data-localisation policies have undermined the ability of research and development companies to facilitate collaboration between firms, universities, and other research organisations with the aim of driving their own innovation.

Amendment 5

Proposal for a regulation Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Free flow of data within the Union will play an important role in achieving data-driven growth and innovation. Like businesses and consumers, the public authorities and bodies of Member States stand to benefit from increased freedom of choice regarding data-driven service providers, from more competitive prices and from a more efficient provision of services to citizens. Given the large amounts of data that public authorities and bodies handle, it is of the utmost importance that they lead by example by taking up data-processing services and that they refrain from making data localisation restrictions when they make use of data-processing services. Therefore public authorities and bodies should also be covered by this Regulation, including, without prejudice to Directive 2014/24/EU of the European Parliament and the Council^{1a}, in the context of public procurement. At the same time, this Regulation creates no obligation for public entities to outsource data processing.

^{1a} Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance (OJ L 94, 28.3.2014, p. 65).

Amendment 6

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) The legal framework on the protection of natural persons with regard to the processing of personal data, in particular Regulation (EU) 2016/679³⁰, Directive (EU) 2016/680³¹ and Directive 2002/58/EC³² **should not be** affected by this Regulation.

³⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

³¹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

³² Directive 2002/58/EC of the European

Amendment

(9) The legal framework on the protection of natural persons with regard to the processing of personal data, **and on respect for private life and the protection of personal data in electronic communications**, in particular Regulation (EU) 2016/679³⁰, Directive (EU) 2016/680³¹ and Directive 2002/58/EC³², **are not** affected by this Regulation.

³⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

³¹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

³² Directive 2002/58/EC of the European

Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

Amendment 7

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) Under Regulation (EU) 2016/679, Member States may neither restrict nor prohibit the free movement of personal data within the Union for reasons connected with the protection of natural persons with regard to the processing of personal data. This Regulation establishes the same principle of free movement within the Union for non-personal data except when a restriction or a prohibition would be justified for security reasons.

Amendment

(10) Under Regulation (EU) 2016/679, Member States may neither restrict nor prohibit the free movement of personal data within the Union for reasons connected with the protection of natural persons with regard to the processing of personal data. This Regulation establishes the same principle of free movement within the Union for non-personal data except when a restriction or a prohibition would be justified for **public** security reasons. ***Regulation (EU) 2016/679 and this Regulation provide a coherent set of rules that cater for the free movement of different types of data. Where data sets contain both personal and non-personal data, Regulation (EU) 2016/679 should apply to the personal data part of the set, and this Regulation should apply to the non-personal data part of the set. Where non-personal and personal data in a mixed data set are inextricably linked, this Regulation should apply without prejudice to Regulation (EU) 2016/679. If technological advancements, such as artificial intelligence, machine learning, internet of things, and big data analysis, make it possible to turn anonymised data into personal data, such data are treated as personal data and Regulation (EU) 2016/679 applies accordingly. Furthermore, this Regulation does not impose an obligation to store the different***

types of data separately or an obligation to unbundle mixed data sets.

Amendment 8

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) Data localisation requirements represent a clear barrier to the free provision of data *storage or other* processing services across the Union and to the internal market. As such, they should be banned unless they are justified based on *the* grounds of public security, as defined by Union law, in particular Article 52 of the Treaty on the Functioning of the European Union, and satisfy the principle of proportionality enshrined in Article 5 of the Treaty on European Union. In order to give effect to the principle of free flow of non-personal data across borders, to ensure the swift removal of existing data localisation requirements and to enable for operational reasons *storage or other* processing of data in multiple locations across the EU, and since this Regulation provides for measures to ensure data availability for regulatory control purposes, Member States should not be able to invoke justifications other than public security.

Amendment

(12) Data localisation requirements represent a clear barrier to the free provision of data processing services across the Union and to the internal market. As such, they should be banned unless they are justified based on *imperative* grounds of public security, as defined by Union law, in particular Article 52 of the Treaty on the Functioning of the European Union, and satisfy the principle of proportionality enshrined in Article 5 of the Treaty on European Union. In order to give effect to the principle of free flow of non-personal data across borders, to ensure the swift removal of existing data localisation requirements and to enable for operational reasons *the* processing of data in multiple locations across the EU, and since this Regulation provides for measures to ensure data availability for regulatory control purposes, Member States should not be able to invoke justifications other than public security.

Amendment 9

Proposal for a regulation

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The concept of ‘public security’, within the meaning of Article 52 TFEU, as interpreted by the Court of Justice, covers both the internal and external security of a Member State. It presupposes

the existence of a genuine and sufficiently serious threat affecting one of the fundamental interests of society, such as a threat to the functioning of institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests. The concept of ‘imperative grounds of public security’ presupposes a threat to public security that is of a particularly high degree of seriousness. In accordance with the principle of proportionality, data localisation requirements that are justified in exceptional cases by imperative grounds of public security should be suitable for attaining the objective pursued, and should not go beyond what is necessary to attain that objective.

Amendment 10

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) In order to ensure the effective application of the principle of free flow of non-personal data across borders, and to prevent the emergence of new barriers to the smooth functioning of the internal market, Member States should **notify** to the Commission any draft act that contains a new data localisation requirement or modifies an existing data localisation requirement. Those **notifications** should be submitted and assessed in accordance with **the procedure laid down in** Directive (EU) 2015/1535³³.

³³ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field

Amendment

(13) In order to ensure the effective application of the principle of free flow of non-personal data across borders, and to prevent the emergence of new barriers to the smooth functioning of the internal market, Member States should **immediately communicate** to the Commission any draft act that contains a new data localisation requirement or modifies an existing data localisation requirement. Those **draft acts** should be submitted and assessed in accordance with Directive (EU) 2015/1535³³.

³³ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field

of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

Amendment 11

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) Moreover, in order to eliminate potential existing barriers, during a transitional period of 12 months, Member States should carry out a review of existing national data localisation requirements and **notify** to the Commission, together with a justification, any data localisation requirement that they consider being in compliance with this Regulation. These **notifications** should enable the Commission to assess the compliance of any remaining data localisation requirements.

Amendment

(14) Moreover, in order to eliminate potential existing barriers, during a transitional period of 12 months, Member States should carry out a review of existing national data localisation requirements and **communicate** to the Commission, together with a justification, any data localisation requirement that they consider being in compliance with this Regulation. These **communications** should enable the Commission to assess the compliance of any remaining data localisation requirements, **and to adopt decisions, where appropriate, requesting Member States to amend or to repeal such data localisation requirements.**

Amendment 12

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) In order to ensure the transparency of data localisation requirements in the Member States for natural and legal persons, such as providers and users of data storage or other processing services, Member States should publish on a single online information point **and** regularly update **the information on such measures**. In order to appropriately inform legal and natural persons of data localisation requirements across the Union, Member States should notify to the Commission the

Amendment

(15) In order to ensure the transparency of data localisation requirements in the Member States for natural and legal persons, such as providers and users of data storage or other processing services, Member States should publish **details of such requirements** on a single online information point **or should provide such details to a Union-level information point established under another Union act, [such as Regulation (EU) No ... of the European Parliament and of the**

addresses of such online points. The Commission should publish this information on its own website.

Commission the Digital Single Gateway]. Member States should regularly update this information. In order to appropriately inform legal and natural persons of data localisation requirements across the Union, Member States should notify to the Commission the addresses of such online points. The Commission should publish this information on its own website, along with a consolidated list of data localisation requirements in force in Member States. The Commission should, in addition, publish information on those requirements in its official working languages.

Amendment 13

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) Data localisation requirements are frequently underpinned by a lack of trust in cross-border data ***storage or other*** processing, deriving from the presumed unavailability of data for the purposes of the competent authorities of the Member States, such as for inspection and audit for regulatory or supervisory control. Therefore, this Regulation should clearly establish that it does not affect the powers of competent authorities to request and receive access to data in accordance with Union or national law, and that access to data by competent authorities may not be refused on the basis that the data is stored or otherwise processed in another Member State.

Amendment

(16) Data localisation requirements are frequently underpinned by a lack of trust in cross-border data processing, deriving from the presumed unavailability of data for the purposes of the competent authorities of the Member States, such as for inspection and audit for regulatory or supervisory control. Therefore ***the security of data hosting systems should be reinforced in all Member States, and*** this Regulation should clearly establish that it does not affect the powers of competent authorities to request and receive access to data in accordance with Union or national law, and that access to data by competent authorities may not be refused on the basis that the data is stored or otherwise processed in another Member State.

Amendment 14

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) Where a natural or legal person subject to obligations to provide data fails to comply with them ***and provided that a competent authority has exhausted all applicable means to obtain access to data***, the competent authority should be able to seek assistance from competent authorities in other Member States. In such cases, competent authorities should use specific cooperation instruments in Union law or international agreements, depending on the subject matter in a given case, such as, in the area of police cooperation, criminal or civil justice or in administrative matters respectively, Framework Decision 2006/960³⁴, Directive 2014/41/EU of the European Parliament and of the Council³⁵, the Convention on Cybercrime of the Council of Europe³⁶, Council Regulation (EC) No 1206/2001³⁷, Council Directive 2006/112/EC³⁸ and Council Regulation (EU) No 904/2010³⁹. In the absence of such specific cooperation mechanisms, competent authorities should cooperate with each other with a view to provide access to the data sought, through designated single points of contact, ***unless it would be contrary to the public order of the requested Member State***.

³⁴ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p. 89).

³⁵ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

³⁶ Convention on Cybercrime of the Council of Europe, CETS No 185.

Amendment

(18) Where a natural or legal person subject to obligations to provide data fails to comply with them, the competent authority should be able to seek assistance from competent authorities in other Member States. In such cases, competent authorities should use specific cooperation instruments in Union law or international agreements, depending on the subject matter in a given case, such as, in the area of police cooperation, criminal or civil justice or in administrative matters respectively, Framework Decision 2006/960³⁴, Directive 2014/41/EU of the European Parliament and of the Council³⁵, the Convention on Cybercrime of the Council of Europe³⁶, Council Regulation (EC) No 1206/2001³⁷, Council Directive 2006/112/EC³⁸ and Council Regulation (EU) No 904/2010³⁹. In the absence of such specific cooperation mechanisms, competent authorities should cooperate with each other with a view to provide access to the data sought, through designated single points of contact.

³⁴ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p. 89).

³⁵ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

³⁶ Convention on Cybercrime of the Council of Europe, CETS No 185.

³⁷ Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

³⁸ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

³⁹ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L268, 12.10.2010, p.1).

³⁷ Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

³⁸ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

³⁹ Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L268, 12.10.2010, p.1).

Amendment 15

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) In order to take full advantage of the competitive environment, professional users should be able to make informed choices and easily compare the individual components of various data ***storage or other*** processing services offered in the internal market, including as to the contractual conditions of porting data upon the termination of a contract. In order to align with the innovation potential of the market and to take into account the experience and expertise of the providers and professional users of data storage or other processing services, the detailed information and operational requirements for data porting should be defined by market players through self-regulation, encouraged ***and*** facilitated by the Commission, in the form of Union codes of conduct which may entail model contract terms. ***Nonetheless, if such*** codes of conduct ***are not put in place and effectively implemented within a reasonable period of time***, the Commission should ***review the situation***.

Amendment

(21) In order to take full advantage of the competitive environment, professional users should be able to make informed choices and easily compare the individual components of various data processing services offered in the internal market, including as to the contractual conditions of porting data upon the termination of a contract. In order to align with the innovation potential of the market and to take into account the experience and expertise of the providers and professional users of data storage or other processing services, the detailed information and operational requirements for data porting should be defined by market players through self-regulation, encouraged, facilitated ***and monitored*** by the Commission, in the form of Union codes of conduct which may entail model contract terms. Codes of conduct ***should be comprehensive, should make clear that vendor lock-in is not an acceptable business practice, should provide for trust-increasing technologies, and should***

be regularly updated in order to keep pace with technological developments. The Commission should ensure that all relevant stakeholders, including small and medium-sized enterprises and start-ups are consulted throughout the process. The Commission should evaluate the development, and the effectiveness of the implementation, of such codes of conduct.

Amendment 16

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) The Commission should **periodically review** this Regulation, in particular with a view to determining the need for modifications in the light of technological or market developments.

Amendment

(28) The Commission should **submit a report on the implementation of** this Regulation, in particular with a view to determining the need for modifications in the light of technological or market developments, **such as artificial intelligence, machine learning, internet of things, and big data analysis. Such report should in particular evaluate the experience gained in applying this Regulation to mixed data sets, in order to ensure that innovation flourishes, and should evaluate the implementation of the public security exception. The Commission should also publish guidelines, before the other rules of this Regulation apply, on how it applies to mixed data sets, in order for companies, including SMEs, to better understand the interaction between this Regulation and Regulation (EU) 2016/679.**

Amendment 17

Proposal for a regulation Article 2 – paragraph 1 – introductory part

Text proposed by the Commission

1. This Regulation shall apply to the

Amendment

1. This Regulation shall apply to the

storage or other processing of electronic data other than personal data in the Union, which is

processing of electronic data other than personal data in the Union, which is

Amendment 18

Proposal for a regulation

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

Text proposed by the Commission

Amendment

In the case of mixed data sets, this Regulation shall apply to the non-personal data part of the set. Where personal and non-personal data in a mixed data set are inextricably linked, this Regulation shall apply without prejudice to Regulation (EU) 2016/679.

Amendment 19

Proposal for a regulation

Article 3 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

1a. ‘mixed data set’ means a data set composed of both personal and non-personal data;

Amendment 20

Proposal for a regulation

Article 3 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

2. ‘data storage’ means any storage of data in electronic format;

deleted

Amendment 21

Proposal for a regulation

Article 3 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

2a. 'processing' means any operation or set of operations which is performed on data or on sets of data in electronic format, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

Amendment 22

Proposal for a regulation

Article 3 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

4. 'provider' means a natural or legal person who provides data **storage or other** processing services;

4. 'provider' means a natural or legal person who provides data processing services;

Amendment 23

Proposal for a regulation

Article 3 – paragraph 1 – point 5

Text proposed by the Commission

Amendment

5. 'data localisation requirement' means any obligation, prohibition, condition, limit or other requirement provided for in the laws, regulations or administrative provisions of the Member States, which imposes the location of data **storage or other** processing in the territory of a specific Member State or hinders **storage or other** processing of data in any other

5. 'data localisation requirement' means any obligation, prohibition, condition, limit or other requirement provided for in the laws, regulations or administrative provisions, **or resulting from the administrative practices**, of the Member States **and their emanations, including in the field of public procurement**, which imposes the location of data processing in

Member State;

the territory of a specific Member State or hinders *the* processing of data in any other Member State;

Amendment 24

Proposal for a regulation Article 3 – paragraph 1 – point 6

Text proposed by the Commission

6. 'competent authority' means an authority of a Member State that has the power to obtain access to data *stored or* processed by a natural or legal person for the performance of its official duties, as provided for by national or Union law;

Amendment

6. 'competent authority' means an authority of a Member State that has the power to obtain access to data processed by a natural or legal person for the performance of its official duties, as provided for by national or Union law;

Amendment 25

Proposal for a regulation Article 3 – paragraph 1 – point 7

Text proposed by the Commission

7. 'user' means a natural or legal person using or requesting a data *storage or other* processing service;

Amendment

7. 'user' means a natural or legal person, *including a public sector entity*, using or requesting a data processing service;

Amendment 26

Proposal for a regulation Article 3 – paragraph 1 – point 8

Text proposed by the Commission

8. 'professional user' means a natural or legal person, including a public sector entity, using or requesting a data *storage or other* processing service for purposes related to its trade, business, craft, profession or task.

Amendment

8. 'professional user' means a natural or legal person, including a public sector entity, using or requesting a data processing service for purposes related to its trade, business, craft, profession or task.

Amendment 27

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

1. **Location of data for storage or other processing within the Union shall not be restricted to the territory of a specific Member State, and storage or other processing in any other Member State shall not be prohibited or restricted**, unless **it is** justified on grounds of public security.

Amendment

1. **Data localisation requirements** shall be prohibited, unless, **on an exceptional basis, and in compliance with the principle of proportionality, they are** justified on **imperative** grounds of public security.

Amendment 28

Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission

2. Member States shall **notify** to the Commission any draft act which introduces a new data localisation requirement or makes changes to an existing data localisation requirement in accordance with the procedures set out in **the national law implementing** Directive (EU) 2015/1535.

Amendment

2. Member States shall **immediately communicate** to the Commission any draft act which introduces a new data localisation requirement or makes changes to an existing data localisation requirement in accordance with the procedures set out in **Articles 5, 6 and 7 of** Directive (EU) 2015/1535.

Amendment 29

Proposal for a regulation
Article 4 – paragraph 3

Text proposed by the Commission

3. **Within** 12 months after the **start of application** of this Regulation, Member States shall ensure that any data localisation requirement that is not in compliance with paragraph 1 **is** repealed. If a Member State considers that a data localisation requirement is in compliance with paragraph 1 and may therefore remain in force, it shall **notify** that measure to the Commission, together with a justification for maintaining it in force.

Amendment

3. **By ... [12 months after the date of entry into force of this Regulation]**, Member States shall ensure that any data localisation requirement that is not in compliance with paragraph 1 **has been** repealed. **By ... [12 months after the date of entry into force of this Regulation]**, if a Member State considers that a data localisation requirement is in compliance with paragraph 1 and may therefore remain in force, it shall **communicate** that measure

to the Commission, together with a justification for maintaining it in force.

Amendment 30

Proposal for a regulation

Article 4 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Without prejudice to Article 258 TFEU, the Commission shall, within a period of three months from the date of receipt of such communication, examine the compliance of that measure with paragraph 1 and shall, where appropriate, adopt a decision requesting the Member State in question to amend or repeal the measure.

Amendment 31

Proposal for a regulation

Article 4 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall make the details of any data localisation requirements applicable in their territory publicly available online via a single information point which they shall keep up-to-date.

4. Member States shall make the details of any data localisation requirements applicable in their territory publicly available online via a single information point which they shall keep up-to-date, ***or, where available, via a Union-level information point established under another Union act.***

Amendment 32

Proposal for a regulation

Article 4 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall inform the Commission of the address of their single information point referred to in paragraph

5. Member States shall inform the Commission of the address of their single information point referred to in paragraph

4. The Commission shall publish the links to such points on its website.

4. The Commission shall publish the links to such points on its website, ***along with a regularly updated consolidated list of all data localisation requirements referred to in paragraph 4, including information on those requirements in its official working languages.***

Amendment 33

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

2. Where a competent authority ***has exhausted all applicable means to obtain*** access to the data, it may request the assistance of a competent authority in another Member State in accordance with the procedure laid down in Article 7, ***and*** the requested competent authority shall provide assistance in accordance with ***the procedure laid down in Article 7, unless it would be contrary to the public order of the requested Member State.***

Amendment

2. Where a competent authority ***does not receive*** access to the data ***after having contacted the user of the data processing service, and if no specific cooperation mechanism exists under Union law or international agreements to exchange data between competent authorities of different Member States, that competent authority*** may request the assistance of a competent authority in another Member State in accordance with the procedure laid down in Article 7. The requested competent authority shall provide assistance in accordance with ***that*** procedure.

Amendment 34

Proposal for a regulation Article 5 – paragraph 3

Text proposed by the Commission

3. Where a request for assistance entails obtaining access to any premises of a natural or legal person including to any data ***storage or other*** processing equipment and means, by the requested authority, such access must be in accordance with Union or ***Member State*** procedural law.

Amendment

3. Where a request for assistance entails obtaining access to any premises of a natural or legal person including to any data processing equipment and means, by the requested authority, such access must be in accordance with Union ***law*** or procedural law ***of the Member State in which the premises or equipment is located.***

Amendment 35

Proposal for a regulation Article 5 – paragraph 4

Text proposed by the Commission

4. Paragraph 2 shall only apply if no specific cooperation mechanism exists under Union law or international agreements to exchange data between competent authorities of different Member States.

Amendment

deleted

Amendment 36

Proposal for a regulation Article 6 – paragraph 1 – introductory part

Text proposed by the Commission

1. The Commission shall encourage and facilitate the development of self-regulatory codes of conduct at Union level, in order to **define** guidelines **on best practices in facilitating the switching of providers and to ensure that they provide professional users with sufficiently detailed, clear and transparent information before a contract for data storage and processing is concluded, as regards** the following issues:

Amendment

1. The Commission shall encourage and facilitate the development of self-regulatory codes of conduct at Union level, in order to **contribute to a competitive data economy, that are based on the principle of transparency and that establish** guidelines **covering inter alia** the following issues:

Amendment 37

Proposal for a regulation Article 6 – paragraph 1 – point -a (new)

Text proposed by the Commission

Amendment

(-a) best practices for facilitating the switching of providers and porting data in a structured, commonly used, interoperable and machine-readable format, including open standard formats

where required or requested by the service provider receiving the data;

Amendment 38

Proposal for a regulation Article 6 – paragraph 1 – point a

Text proposed by the Commission

(a) the processes, technical requirements, timeframes and charges that apply in *case* a professional user wants to switch to another provider or port data back to its own IT systems, ***including the processes and location of any data back-up, the available data formats and supports, the required IT configuration and minimum network bandwidth; the time required prior to initiating the porting process and the time during which the data will remain available for porting;*** and the guarantees for accessing data in the case of the bankruptcy of the provider; ***and***

Amendment

(a) ***minimum information requirements to ensure that professional users are provided with sufficiently detailed, clear and transparent information before a contract for data storage and processing is concluded, regarding*** the processes, technical requirements, timeframes and charges that apply in ***the case that*** a professional user wants to switch to another provider or port data back to its own IT systems, and the guarantees for accessing data in the case of the bankruptcy of the provider.

Amendment 39

Proposal for a regulation Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) ***the operational requirements to switch or port data in a structured, commonly used and machine-readable format allowing sufficient time for the user to switch or port the data.***

Amendment

deleted

Amendment 40

Proposal for a regulation Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Commission shall ensure that

the codes of conduct referred to in paragraph 1 are developed in close cooperation with all relevant stakeholders, including associations of small and medium-sized enterprises and start-ups, users and providers of cloud services.

Amendment 41

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

2. The Commission shall encourage providers to **effectively implement** the codes of conduct referred to in paragraph 1 **within one year** after the **start of application** of this Regulation.

Amendment

2. The Commission shall encourage providers to **complete the development of** the codes of conduct referred to in paragraph 1 **by ... [12 months after the date of publication of this Regulation], and to effectively implement them by ... [24 months after the date of publication of this Regulation].**

Amendment 42

Proposal for a regulation Article 6 – paragraph 3

Text proposed by the Commission

3. **The Commission shall review the development and effective implementation of such codes of conduct and the effective provision of information by providers no later than two years after the start of application of this Regulation.**

Amendment

deleted

Amendment 43

Proposal for a regulation Article 7 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. The single points of contact shall provide users with general information on

this Regulation, and in particular on the drawing up of codes of conduct, as referred to in Article 6.

Justification

The know-how of the single points of contact can be used not only as a link between the Member States and the Commission, but also to connect the institutions with users.

Amendment 44

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

1. No later than [5 years after the date *mentioned in Article 10(2)*], the Commission shall *carry out a review of this Regulation and present a report on the main findings* to the European Parliament, the Council and the European Economic and Social Committee.

Amendment

1. No later than [3 years *and 6 months* after the date *of publication of this Regulation*], the Commission shall *submit* a report to the European Parliament, the Council and the European Economic and Social Committee *evaluating the implementation of this Regulation, in particular in respect of:*

(a) the application of this Regulation to mixed data sets, especially in the light of market developments and technological developments which may expand the possibilities for deanonymising data;

(b) the implementation by Member States of Article 4(1), in particular the public security exception; and

(c) the development and effective implementation of the codes of conduct referred to in Article 6 and the effective provision of information by providers.

Amendment 45

Proposal for a regulation Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. By ... [6 months after the date of publication of this Regulation] the Commission shall publish guidelines on

the interaction of this Regulation and Regulation (EU) 2016/679 as regards mixed data sets.

Amendment 46

Proposal for a regulation Article 10 – paragraph 2

Text proposed by the Commission

2. This Regulation shall apply six months after its publication.

Amendment

2. This Regulation shall apply six months after its publication.

However, Article 9(2a) shall apply from ... [1 day after entry into force of this Regulation].