



2017/0228(COD)

1.3.2018

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council
on a framework for the free flow of non-personal data in the European Union
(COM(2017)0495 – C8-0312/2017 – 2017/0228(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Anna Maria Corazza Bildt

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on a framework for the free flow of non-personal data in the European Union (COM(2017)0495 – C8-0312/2017 – 2017/0228(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0495),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0312/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the French Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 15 February 2018,
 - having regard to the opinion of the Committee of the Regions of xxxxx,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Industry, Research and Energy (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 3

Text proposed by the Commission

(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.

Amendment

(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, ***regional or local*** requirements to locate data in a specific territory.

Or. en

Justification

Clarification that data localisation requirements that hamper freedom under the treaty originate not only at national level but other levels of government as well.

Amendment 2

Proposal for a regulation Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) 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 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.

Or. en

Justification

Moving data within the European Union is voluntary, it is not an obligation but a possibility. All parts of society should be able to benefit from this possibility, including the public sector. It is important to clarify that public authorities and bodies fall within the scope of this Regulation, in order to avoid the risk of vast amounts of non-personal data being locked up in national silos, which would significantly undermine the benefits of this Regulation.

Amendment 3

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 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. In the case of mixed data sets, 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, without prejudice to Regulation (EU) 2016/679, apply to the whole set. Furthermore, this Regulation imposes neither an obligation to store the different types of data separately nor an obligation to unbundle mixed data sets.***

Justification

It is crucial to clarify the interplay between this Regulation and the GDPR in order to provide legal certainty and be future proof. See also amendment to Article 2(1).

Amendment 4**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 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 *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 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.

Or. en

Justification

Considering the harmful effects of data localisation requirements to the European economy, the exception 'public security' should be specified as 'imperative grounds of public security'. See also amendments to recital 12a and Article 4(1).

Amendment 5

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 compliance 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.

Or. en

Justification

This amendment draws on the Treaties and applicable case law in order to increase legal certainty regarding the concepts of ‘public security’ and ‘imperative grounds of public security’. See also amendments to Article 4(1).

Amendment 6

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

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).

Or. en

Justification

Aligning language to that of the Transparency Directive 2015/1535/EU.

Amendment 7

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

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

notifications should enable the Commission to assess the compliance of any remaining data localisation requirements.

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.**

Or. en

Justification

The amendment aligns language to that of the Transparency Directive 2015/1535/EU to ensure consistency, and clarifies the powers and obligations of the Commission regarding data localisation requirements that Member States wish to keep after the entry into force of this Regulation.

Amendment 8

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

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 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**

Justification

Clarification where and what format information about remaining data localisation requirements can be found after the entry into force of this regulation. See amendments to Article 4(4) and (5).

Amendment 9

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.***

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).

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).

Or. en

Justification

Obliging competent authorities to exhaust all other means before being allowed to contact their counterparts for help would unnecessarily prolong the process. See also amendment to Article 5(2).

Amendment 10

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 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, facilitated **and monitored** by the Commission, in the form of Union codes of conduct which may entail model contract terms. ***The Commission should evaluate the development, and the effectiveness of the implementation, of such codes of conduct.***

Or. en

Justification

The Clarification that the Commission should not only encourage and facilitate, but also monitor the creation and effectiveness of the Code of Conduct. See also amendments on Article 9.

Amendment 11

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

Amendment

(28) The Commission should ***submit a report on the implementation of*** this Regulation, in particular with a view to

need for modifications in the light of technological or market developments.

determining the need for modifications in the light of technological or market developments. ***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 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.***

Or. en

Justification

This amendment emphasises the need for a thorough evaluation of the application of this Regulation to mixed data sets and the public security exception (Article 4). To submit a report to the co-legislators is better than just reviewing. The amendment also asks the Commission to present guidelines on how to apply this Regulation to mixed data sets in order to minimise uncertainty and facilitate interpretation of the grey zones for companies, in particular SMEs . See also amendments to Article 9.

Amendment 12

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, without prejudice to Regulation (EU) 2016/679, apply to the whole set.

Or. en

Justification

This amendment clarifies that this Regulation and the GDPR are complementary, as they have different purpose and address different issues. They do not overlap since the GDPR

always applies to personal data no matter where the data is stored in the EU. Most data sets combine both personal and non-personal data with the large majority of data being non-personal, but containing personal data such as names and/or email addresses included for administrative purposes only. Excluding such mixed data sets from the scope of this Regulation would severely limit its benefits. Therefore, for mixed data sets for which it is technically impossible to unbundle the personal and non-personal data, this Regulation should apply to the whole data set. It is also important that this Regulation applies to mixed data sets to avoid hindering innovation and causing unnecessary burdens for companies, especially SMEs and start-ups.

Amendment 13

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

A definition of 'mixed data set' is added for the sake of clarity and legal certainty.

Amendment 14

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

(The part of this amendment deleting the words ‘data storage’ applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. en

Justification

As specified in point 2a of Article 3(1), the concept of 'data storage' is covered by "processing" and therefore does not need a separate definition.

Amendment 15

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;

Or. en

Justification

The amendment aligns the text with the data processing definition in Article 4(2) of the GDPR.

Amendment 16

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

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, **including in the field of public procurement, or resulting from**

of a specific Member State or hinders storage or other processing of data in any other Member State;

administrative practices, 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 Member State;

Or. en

Justification

Public procurement is one of the main areas where data localisation requirements create the most harm and uncertainty for companies. This amendment therefore emphasises that this Regulation also applies to public procurement.

Amendment 17

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 authority or body***, using or requesting a data storage or other processing service;

Or. en

Justification

All parts of society should benefit from the free movement of data on the Internal Market, including the public sector.

Amendment 18

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***

Amendment

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

State shall not be prohibited *or restricted*, unless *it is* justified *on* grounds of public security. *proportionality*.

Or. en

Justification

The scope for Member States to impose harmful data localisation requirements in exceptional cases should be specified.

Amendment 19

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.

Or. en

Justification

Aligning the language to that of the Transparency Directive 2015/1535/EU.

Amendment 20

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

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

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.

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.

Or. en

Justification

This amendment clarifies the deadline by which Member States have to justify maintaining existing data localisation requirements.

Amendment 21

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.

Or. en

Justification

This amendment sets out the powers of the Commission in cases where Member States seek to maintain such requirements.

Amendment 22

Proposal for a regulation

Article 4 – paragraph 4

Text proposed by the Commission

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.

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, ***or via a Union-level information point established under another Union act if and when available.***

Or. en

Justification

Member States should make public any localisation requirements in force there, preferably through the future Single Digital Gateway. This Article will be adjusted depending on the adoption of the Regulation for the Single Digital Gateway.

Amendment 23

**Proposal for a regulation
Article 4 – paragraph 5**

Text proposed by the Commission

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.

Amendment

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, ***along with a consolidated list of all data localisation requirements referred to in paragraph 4, which it shall regularly update.***

Or. en

Justification

A consolidated list of all data localisation requirements in force in every Member State would make the information more accessible , especially for SMEs.

Amendment 24

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, 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 **that** procedure.

Or. en

Justification

Obliging competent authorities to exhaust all other means before being allowed to contact their counterparts for help would unnecessarily prolong the process of obtaining legitimate access to the data in question, which could undermine trust in the system.

Amendment 25

Proposal for a regulation

Article 5 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

However, where a specific cooperation mechanism exists under Union law or international agreements for exchanging data between competent authorities of different Member States, that mechanism shall be used and the first subparagraph of this paragraph shall not apply.

Or. en

Justification

The substance from the second subparagraph has been moved here from Article 5(4).

Amendment 26

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 storage or other processing equipment and means, by the requested authority, such access must be in accordance with **the** procedural law **of the Union or of the Member State in which the premises or equipment is located**.

Or. en

Justification

Clarification that access must be given in accordance with the national law of the 'host Member State'.

Amendment 27

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

Or. en

Justification

The substance of this paragraph has been moved to Article 5(2) to simplify and improve readability.

Amendment 28

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 interoperability, that take due account of open standards and that define*** guidelines ***covering inter alia*** the following issues:

Or. en

Justification

It is the principle of interoperability that is the key concept. How this is achieved is for the market players involved in the creation of the Codes of Conduct to decide.

Amendment 29

Proposal for a regulation

Article 6 – paragraph 1 – point -a (new)

Text proposed by the Commission

Amendment

(-a) best practices in facilitating the switching of providers;

Or. en

Justification

The substance of this amendment has been moved from Article 6(1) (introductory part) to increase clarity.

Amendment 30

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.***

Or. en

Justification

The substance of this amendment has been moved from Article 6(1) (introductory part), with part of the text being removed in order not to be too prescriptive.

Amendment 31

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

Or. en

Justification

It is important to not be too prescriptive and leave for the industry how the self-regulation

should be formulated.

Amendment 32

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 effectively implement the codes of conduct referred to in paragraph 1 by ... [***24 months*** after the date of publication of this Regulation].

Or. en

Justification

Experience shows that more time is needed to create a well functioning Code of Conduct. As the application of this regulation is after 6 months, market players will have 2 years to implement the Codes of Conduct.

Amendment 33

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

Or. en

Justification

The obligation of the Commission to monitor and evaluate the effective implementation of the Codes of Conduct is moved to Article 9 to make it more coherent.

Amendment 34

Proposal for a regulation Article 9 – title

Text proposed by the Commission

Amendment

Review

Evaluation and guidelines

Or. en

Amendment 35

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

Amendment

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.

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:*

Or. en

Justification

Due to fast technical developments, the evaluation period should be shortened in order to ensure up-to-date and fit-for-purpose rules.

Amendment 36

Proposal for a regulation Article 9 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(a) *the application of this Regulation to mixed data sets, especially in the light of technological and market developments;*

Justification

Given the high speed of digital innovation and the available techniques for handling and processing different types of data, the Commission should pay special attention to mixed data sets when doing its evaluation to ensure rules are future proof.

Amendment 37

Proposal for a regulation

Article 9 – paragraph 1 – point b (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

It is crucial that the application of the 'public security exception' be evaluated, in order to ensure that it is not interpreted too broadly, which could largely undermine this Regulation.

Amendment 38

Proposal for a regulation

Article 9 – paragraph 1 – point c (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

The third area of extra attention for the Commission's evaluation is the progress in adopting an effective Code of Conduct.

Amendment 39

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 application of this Regulation to mixed data sets.

Or. en

Justification

The Commission should present guidelines in order to facilitate a correct and effective application of this Regulation for mixed data sets.

Amendment 40

Proposal for a regulation Article 10 – paragraph 2

Text proposed by the Commission

Amendment

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

2. This Regulation shall apply six months after its publication, **with the exception of Article 9(2a) which shall apply from [1 day after entry into force of this Regulation].**

Or. en

EXPLANATORY STATEMENT

I. Introduction

The Digital Single Market (DSM) is a cornerstone of the European economy with enormous potential to create growth and jobs. This Regulation on the Free flow of non-personal data de facto establishes data as the fifth freedom in the Single Market. With the emergence of new technologies such as cloud computing, big data, and artificial intelligence, the possibility to move data freely has become a key issue for European companies. This is of course a possibility, not an obligation. Localisation requirements put in place by Member States reduce competition and increase storage costs by an estimated 120 percent. However, by removing these requirements the EU could benefit from up to €8 billion, or 0.06 percent, in GDP gains per year. That is the equivalent of the GDP gains from the recent free trade agreements with Canada and South Korea put together.

The Rapporteur has focused on simplifying, clarifying and make the Regulation easy to apply. The Rapporteur aims at making the text legally certain and future proof in order to maximize the benefits of free movement of data.

II. The Rapporteur's position

A. Public Security exception

The Rapporteur recognises that, in exceptional cases, Member States have legitimate reasons to restrict the free movement of data. However, considering the harmful effects to the EU's digital economy, the Rapporteur considers it vital to keep these requirements to a minimum. By introducing the well-established concept of 'imperative grounds of public security' the Rapporteur seeks to ensure that Member State do not over interpret the Public Security exception. As there is no definition of Public Security, the Rapporteur draws on the Treaty and applicable case law by the ECJ in order to clarify this concept, and increase legal certainty.

The Rapporteur also clarifies that all parts of society should benefit from free movement of data, including public sector entities. As many localisation requirements do not originate on national level it is clarified that this Regulation will apply on all levels of governance, including in the area of public procurement which is one of the main concerns especially for SMEs.

The Commission is given the power and obligation to monitor the application of the exception and ensure that it is not interpreted in a disproportionate way. The Rapporteur wishes to introduce a clear deadline by which Member States have to report data localisation requirements that they wish to maintain. The Commission should examine the draft act and decide whether the Member State in question should amend or repeal the data localisation requirement. Any remaining data localisation requirements should be published on the Commission's website to ensure easy accessibility of this information.

B. Access to data for public authorities

The possibility for companies and public sector entities to process their data outside of their Member State of establishment should under no circumstances be used as a way to keep information from competent authorities. The Rapporteur believes that obliging competent authorities to exhaust all other means before being allowed to contact their counterparts for help would unnecessarily prolong the process of obtaining legitimate access to the data in question. Facilitating access to data should also be achieved by the new system of Single Points of Contact. The draft report also clarifies that access to the premises where data is stored must be given in accordance with the national law of the Member State where the premises or equipment is located.

C. Mixed data sets

This Regulation and the GDPR are complementary and do not overlap. Together they provide a coherent set of rules that cover all types of data and that lead to a “Single EU Dataspace”. Most data sets contain both personal and non-personal data with the majority of data being non-personal, but with personal data such as names and/or email addresses included for administrative purposes only. Excluding such mixed data sets from the scope would seriously limit the benefits of this Regulation. Where mixed data sets can easily be unbundled, this Regulation should apply to the non-personal data part of the set. In a mixed data set where non-personal and personal data is inextricably linked, this Regulation should apply to the whole data set without prejudice to the GDPR. Since the scope of the GDPR is limited to personal data, and does not cover non-personal data, it would be disproportionate and legally incorrect to apply the GDPR instead of this Regulation to the whole mixed data set. It would create unnecessary burdens for companies such as SMEs and start-ups required to follow more stringent rules and would hamper innovation. The application of this Regulation to non-personal data does not mean that privacy protections under the GDPR would cease to apply in mixed data sets no matter where the data is stored in the EU. At the same time this Regulation does not impose an obligation to store the different types of data separately nor an obligation to unbundle mixed data sets.

D. Porting of data

To reap the full potential of the DSM, competition must be increased. One part of this is to ensure portability between different cloud service providers. The Rapporteur agrees with the idea of giving the market players the task of producing Codes of Conduct to regulate the possibility for professional users to switch service and port data. This process should be encouraged, facilitated and monitored by the Commission.

For the creation of balanced and well-functioning Codes of Conduct (CoC) it is imperative that both users and service providers are included in the process. Furthermore, the Rapporteur underlines that the essence of a CoC is interoperability and transparency, and has therefore chosen to remove some of the more prescriptive parts of the Commission’s text and leaves room for market players to define how self-regulation should be formulated. The Rapporteur has also extended the deadline by 6 months as experience shows that more time is needed to create and implement a CoC.

E. Review

Given the importance of keeping up with technological developments, the Rapporteur proposes to shorten the evaluation period, in particular concerning mixed data sets as the grey zones are likely to increase over time. We do not yet know how data sets will look in the future and it is therefore important to assess whether this Regulation is up-to-date and fit-for-purpose. The Rapporteur wishes to clarify that the outcome of the Commission's evaluation should be to present a report with its assessment to the co-legislators.

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPOREUR HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the draft report:

Entity and/or person
Allied for Startups
Almega (Employers' Organisation for the Swedish Service Sector)
Ametic
Association of Swedish Engineering Industries
AT&T
Bisnode
Bitkom
BSA - The software alliance
Bulgarian Permanent Representation to the EU
Business Europe
CERCA - European Council for Motor and Repairs
Cercle de l'Industrie
Computer & Communications Industry Association (CCIA Europe)
Confederation of Swedish Enterprise
Confindustria
Danish Chamber of Commerce
Deutsche Telekom
Digital Europe
Dr Kristina IRION - University of Amsterdam (IMCO Workshop of 20th of February)
Dr Simon Forge - SCF Associates (IMCO Workshop of 20th of February)
European Economic and Social Committee
Ericsson
Estonian Permanent Representation to the EU
European Commission
European Telecommunications Network Operators' Association (ETNO)
EyeEm
Federation of European Direct and Interactive Marketing (FEDMA)
FIGIEFA - Automotive Aftermarket Distributors
Företagarna
France Digitale
French Permanent Representation to the EU
German Insurance Association (GDV)
Google
GSMA
IBM
IDC-European Government Consulting
Information Technology & Innovation Foundation

INTUG
Intuit Inc.
Irish Department of Communications, Climate Action and Environment
Microsoft
National Board of Trade
Orange Group
Polish Permanent Representation to the EU
Schneider Electric Services International
Spanish Permanent Representation to the EU
SUP46
Swedbank
Swedish IT and Telecom Industries
Swedish Trade Federation
The European Lotteries Association (EL)
The Federation of Swedish Farmers (LRF)
UEAPME – the European craft and SME employers’ organisation
UK Federation of Small Businesses
UK Permanent Representation to the EU
Veolia
Vodaphone