

XII. Final Provisions (Art. 45-48)

Chapter XI ('Final Provisions') encompasses *inter alia* rules for the Commission to adopt delegated acts on monitoring switching charges and on further specifying standards for interoperability and smart contracts.⁹⁰⁹

1. Exercise of the Delegation (Art. 45)

Art. 45(1) confers the power on the Commission to adopt delegated acts in accordance with Art. 290 TFEU. Rec. 113 concisely sums up the areas specified in Art. 29(7) and Art. 33(2) to which this regulatory power applies. The Commission shall by these means

“establish a monitoring mechanism on switching charges imposed by providers of data processing services on the market, and [...] further specify the essential requirements in respect of interoperability for participants in data spaces that offer data or data services to other participants.”

The power to adopt delegated acts starts with the enactment of the Data Act (cf. Art. 45(2)).

When preparing a delegated act, experts designated by each member state as well as those from the European Parliament and of the Council are invited to relevant meetings of Commission expert groups, which is followed by a timely consultation of the member state-appointed experts on the draft of the delegated act in question (Art. 45(4); referring to the Interinstitutional Agreement on Better Law-Making of 13 April 2016, of which Sec. 28 and Sec. 3 of the Annex are pertinent). Upon adoption of the delegated act, the Commission is then to notify the European Parliament and the Council as per Art. 45(5) so that these institutions are in a position to object to the piece of legislation in question within three months (Art. 45(6) and Art. 290(2)(b) TFEU).

Ultimately, either the European Parliament or the Council can revoke the delegated power conferred upon the Commission, albeit with no retro-

909 Please see above sub II. 7.-9. for Art. 45, 49, and 50.

active effect on delegated acts which are already in force (Art. 45(3) and Art. 290(2)(a) TFEU).

2. Committee Procedure and Implementing Powers (Art. 46 and Rec. 114)

According to rec. 114 implementing powers should be conferred on the Commission to ensure uniform conditions for the implementation of the Data Act. Where it is permitted to do so in the absence of (adequate) harmonised standards, the Commission should adopt

“common specifications to ensure the interoperability of data, of data sharing mechanisms and services, as well as of common European data spaces, common specifications on the interoperability of data processing services, and common specifications on the interoperability of smart contracts”.

It should also publish “the references of harmonised standards and common specifications for the interoperability of data processing services in a central Union standards repository for the interoperability of data processing services”.

Art. 46 states that the Commission should be assisted by a committee within the meaning of Regulation (EU) No 182/2011⁹¹⁰.

3. Amendments (Art. 47 and 48)

In order to make use of the consumer protection cooperation network mechanism and to enable representative actions, Art. 47 and Art. 48 amend the Annexes to the Regulation (EU) 2017/2394 and Directive (EU) 2020/1828, as explained in rec. 108.

⁹¹⁰ Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by member states of the Commission’s exercise of implementing powers.