



26/04/2023

AMENDMENTS: 6

Horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020

Proposal for a regulation COM(2022)0454 - C9-0308/2022 – 2022/0272(COD)

Amendments of Karen Melchior

\\000000EN.doc

Amendment 1

Karen Melchior, Sandro Gozi, Svenja Hahn

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) In order not to hamper innovation or research, *free* and open-source software *developed or* supplied outside the course of a commercial activity should not be covered by this Regulation. ***This is in particular the case for software, including its source code and modified versions, that is openly shared and freely accessible, usable, modifiable and redistributable.*** In the context of software, a commercial activity might be characterized not only by charging a price for a product, but also by charging a price for technical support services, by providing a software platform ***through*** which the manufacturer monetises ***other services***, or by the use of personal data for reasons other than exclusively for improving the security, compatibility or interoperability of the software.

Amendment

(10) ***Research by the European Commission shows that Open Source software contributes between €65bn - €95bn to the European Union's GDP, and provides significant growth opportunities for the Union economy. Therefore,*** in order not to hamper innovation or research, ***freeware*** and open-source software supplied outside the course of a commercial activity should not be covered by this Regulation. In the context of software, a commercial activity might be characterized not only by charging a price for a product, but also by charging a price for technical support services, by providing a software platform ***the core functionality of which relies on other services*** which the manufacturer monetises, or by the use of personal data for reasons other than exclusively for improving the security, compatibility or interoperability of the software.

Or. en

Justification

The addition of freeware means that developers of propitiatory software that is provided free of charge shall not be subject to liability. Change in what can be defined as "commercial activity" so as to exclude open-source software repositories provided as a public good while including the intended targets (Android Operating System, Propitiatory services with open source clients etc..)

Amendment 2
Karen Melchior, Sandro Gozi, Svenja Hahn

Proposal for a regulation
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10 a) Due to the permissive nature of open-source licences, open-source software can be used as a component in products without need for the consent or knowledge of the original author, allowing for manufacturers to build new products and services quickly, however open-source software developers are not compensated for this use and often work on the software in their free time. Therefore, when a manufacturer uses open-source software as a component in a product, they should be subject to the obligations of manufacturers for that component, unless otherwise agreed through the provision of commercial technical support either by the developer or a third-party.

Or. en

Justification

In software development, use of unvetted software libraries of part of products without review has become a serious issue in recent years, leading to security flaws in numerous products. This amendment ensures open-source developers are not burdened with the responsibilities of manufacturers, and that manufacturers of products which use open source components do their due diligence.

Amendment 3
Karen Melchior, Sandro Gozi, Svenja Hahn

Proposal for a regulation
Recital 10 b (new)

Text proposed by the Commission

Amendment

(10 b) Public open-source code and software repositories allow developers to access a wide range of resources for software development, and allow for developers to share their code with the wider open-source community. These repositories operate as a public good, and therefore should not be considered as providers, manufacturers, importers or distributors, nor should their activity be considered as commercial within the meaning of this regulation.

Or. en

Justification

Public open-source code and software repositories store code and software from various developers which is accessible to developers all over the world for free, and are at the heart of the Open Source ecosystem. They should not be subject to this regulation as they do not control all the code on their repositories. Fundraising activities that ensure these platforms can continue to provide access to code for free, such as offering coding classes or selling tickets to conferences, should not be considered as commercial activities.

Amendment 4
Karen Melchior, Sandro Gozi, Svenja Hahn

Proposal for a regulation
Article 2 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. This regulation does not apply to freeware and open-source software unless:

(a) the developer or a third-party has agreed to the provision of technical support services, either with a user, or with a manufacturer who wishes to use the software as a component in their own products.

(b) the software is provided in the course of commercial activity, either by:

(i) charging a price for a product;

(ii) providing a software platform reliant on other services which the manufacturer monetises

(iii) using personal data generated by the software for reasons other than exclusively for improving the security, compatibility or interoperability of the software.

Or. en

Justification

Given how large a role open source software plays in software development today, it should be included as an article and not just as a recital for the sake of clarity.

Amendment 5
Karen Melchior, Sandro Gozi, Svenja Hahn

Proposal for a regulation
Article 3 – paragraph 1 – point 6 a (new)

Text proposed by the Commission

Amendment

(6 a) 'freeware' means proprietary software that is provided at no cost to the user, but cannot be distributed, studied, changed, improved, integrated into other products or provided as a service without the consent of the author.

Or. en

Justification

A definition of freeware for the purposes of exempting it

Amendment 6
Karen Melchior, Sandro Gozi, Svenja Hahn

Proposal for a regulation
Article 3 – paragraph 1 – point 6 b (new)

Text proposed by the Commission

Amendment

(6 b) "open-source software" means software distributed under a licence which allow users to run, copy, distribute, study, change and improve it freely, as well as to integrate it as a component in other products, provide it as a service, or provide commercial support for it.

Or. en

Justification

A definition of open source software for the purpose of exempting it