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From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Data Governance Act : LU comments on Chapters I-IV

Delegations will find in annex LU comments on Chapters I-IV of Data Governance Act.

Consolidated preliminary questions from LU on chapters I-IV

General remarks

Luxembourg welcomes the Commission's new proposal on the Data Governance Act (DGA) and fully supports its objectives to further stimulate our European data economy. Luxembourg considers DGA as an integral part of an overall data framework the purpose of which is to support the European data-driven economy. In this context, Luxembourg thinks that the new proposal has to be embedded and build on the existing framework and it has to be as targeted and precise as possible. One of the main aims of the proposal should be to create a coherent legislative environment that provides the necessary legal clarity and security for all the different stakeholders, whether they are on the giving or on the demand side of the data.

In addition, all new measures have to aim at unlocking the potential of data and support innovation, without lowering the level of protection of end-users. It is essential that the new measures are clear in scope and application and do not constitute additional burden for the different stakeholders involved.

Finally, the question of international data flows has to be meticulously studied in order to be coherent with the overall ambitions in the context of bilateral and multilateral negotiations in the field of digital trade.

Although we are still studying the proposal in detail, some general and preliminary questions arose:

- How does the new proposal on DGA articulate with the existing legal framework, especially with the PSI/Open Data Directive, the Regulation on a framework for the free flow of non-personal data in the European Union (FFD) and the GDPR?

Chapter I

- Article 1 seems to introduce a number of new definitions and concepts around the notion of data and data processing. What is the potential impact of the introduction of new concepts on the existing legal framework (PSI, FFD, GDPR)? Does the Commission consider to further align and streamline the terminology with the existing acquis (e.g. data use vs data processing)?

Chapter II

- Article 5 (9) and (10) seems to introduce new rules and mechanism for the transfer of non-personnel held by public sector bodies outside the Union. Could the Commission clarify the scope of these new rules and mechanism, whether they only apply to non-personal data held by public sector bodies? Could the Commission give concrete examples for the categories of data that are targeted by these new rules and mechanism?
Do the new rules and mechanism also apply if the data does not leave the corporate structure of the re-user but the data processing is happening outside the Union?
- Article 5 (11) introduces an new category of highly sensitive non-personal data.
Could the Commission clarify the criteria/threshold for highly sensitive non-personal data? Could the Commission give concrete examples of data that could be qualified as highly sensitive non-personal data?
- Article 6 (4) stipulates that : Where they apply fees, public sector bodies shall take measures to incentivise the re-use of the categories of data referred to in Article 3 (1) for non-commercial purposes and by small and medium-sized enterprises in line with State aid rules.
In this context, does the Commission intend to publish specific guidelines on how to incentivize the re-use of data, in order to avoid non-compliance with state-aid rules?
In addition, does the Commission intend to publish recommendations on how to ensure compliance with competition law?

- Article 7 (2) (c) on assisting public sector bodies in obtaining consent or permission by re-users could be further clarified in order to specify that, concerning personal data, the consent should be given by the data subject.

Chapter IV

- Article 19 (3) requires data altruism organisations to specify the jurisdiction or jurisdictions in which the data use is intended to take place. Does this requirement to specify the intended localisation of processing also apply to jurisdiction(s) inside the Union?