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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Data Act : BE comments 4th compromise (doc. 5586/23)

Delegations will find in the Annex the BE comments on 4th compromise (doc. 5586/23).

BELGIUM comments of the fourth compromise proposal on Data Act (document 5586/23)

Reference	Fourth compromise proposal	Drafting suggestion	Comment
			BE supports the balance found in the text regarding the majority of the different issues discussed in the options paper. However, we still would like to underline our position with regard to Articles 13 and 15.
Art. 13.1	A contractual term, concerning the access to and use of data or the liability and remedies for the breach or the termination of data related obligations which has been unilaterally imposed by an enterprise on a micro, small or medium-sized enterprise as defined in Article 2 of the Annex to Recommendation 2003/361/EC, provided those enterprises do not have partner enterprises or linked enterprises as defined in Article 3 of the Annex to Recommendation 2003/361/EC which do not qualify as a micro, small or medium on another enterprise, shall not be binding on the latter enterprise if it is unfair.		We insist on the need to maintain the broadened scope in Art. 13 which is crucial to BE. Indeed, we suggested several modification to further strengthen this provision and consider that the text included in the 4th compromise constitutes an acceptable compromise.
Art. 15.1.c)	Exceptional need to use data within the meaning of this Chapter shall be limited in time and scope and deemed to exist only in the following circumstances: (c) where the lack of available data prevents the public sector body, the Commission, the European Central Bank or Union bodies from fulfilling a specific task in the		BE maintains some concerns about the inclusion of a broad notion of public interest, a notion that may be subject to diverging interpretations in different MS, in the scope of exceptional need situations,

Reference	Fourth compromise proposal	Drafting suggestion	Comment
	public interest, such as official statistics , that has been explicitly provided by law and the public sector body the Commission, the European Central Bank or Union body has exhausted all other means at its disposal to obtain such data, including, but not limited to purchase of the data on the market by offering market rates or by relying on existing obligations to make data available, or the adoption of new legislative measures which could guarantee the timely availability of the data.		in particular when referring to the strong link between this notion of exceptional need and the notion of public emergency in the Single Market Emergency Instrument (SMEI), as mentioned by the Legal Service. In this sense, we would support any suggestion moving towards a further restriction of the notion of exceptional need, such as proposals made by DK, IE, NL, LU, EE.”

Kindly indicate the Member State you are representing in the Title and when renaming the document. For specifying the relevant provision, please indicate the relevant Article or Recital in 1st column and copy the relevant sentence or sentences as they are in the current version of the text in 2nd column. For drafting suggestions, please copy the relevant sentence or sentences from a given paragraph or point into the 3rd column and add or remove text. **Please do not use track changes**, but **highlight your additions in yellow** or use ~~strikethrough~~ to indicate deletions. You do not need to copy entire paragraphs or points to indicate your changes, copying and modifying the relevant sentences is sufficient. For providing an explanation and reasoning behind your proposal, please take use of 4th column.