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**MEETING DOCUMENT**

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

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

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

| Reference               | Fourth compromise proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Drafting suggestion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| Article 33<br>Penalties |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|                         | <p>1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. <b>Member States shall take into account the recommendations of the European Data Innovation Board. Member States shall, by [date of application of the Regulation], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.</b></p> | <p>1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. <del>Member States shall take into account the recommendations of the European Data Innovation Board. Member States shall, by [date of application of the Regulation], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.</del></p> | <p>We propose not including the indicated formulation (strikethrough) in this provision as it extends the remit of the European Data Innovation Board (EDIB) to making recommendations regarding the measures to implement penalty provisions.</p> <p>Such an amendment would impose an obligation on the Member States to take into account the recommendations of the EDIB when adopting measures to lay down the rules on penalties.</p> <p>The EDIB is of great value, also for the application and functioning of this Regulation.</p> <p>However, the proposed approach does not comply with the tasks of the EDIB set out in Article 30 of the Data Governance Act. According to provision 30(j) of the DGA, the tasks of the EDIB include, among others, "facilitating cooperation between</p> |

| Reference | Fourth compromise proposal | Drafting suggestion | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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|           |                            |                     | <p><i>competent authorities for data brokering services and competent authorities for the registration of data altruism organisations through capacity building and exchange of information,...,including coordination on the setting of fees or penalties,...".</i></p> <p>In accordance with our understanding of Articles 29 and 30 of DGA, adopting recommendations, which are obligatory for the Member States, relating to implementation of penalties in national legislations, is not listed among the foreseen tasks of EDIB.</p> <p>Imposing an obligation to comply with the recommendations of the EDIB on penalties would be contrary to the provisions of the applicable EU acquis and would imply an indirect harmonisation of penalties through a committee, in the form of an expert group.</p> <p>Furthermore, the provision establishing the obligation to notify the Commission is already envisaged in paragraph 2 of this article and is therefore unnecessary in paragraph 1.</p> |
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