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WORKING PAPER

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MEETING DOCUMENT

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

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

CZ

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

Reference	Fourth compromise proposal	Drafting suggestion	Comment
PRIORITY COMMENTS			
Data in scope of Chapter II (Article 2 (1af), recitals 14a, 15)			CZ considers proper specification of the scope of Chapter II to be a crucial aspect, especially after the changes in the last compromise text were introduced (for example the inclusion of smart phones and computers). We understand from the Commission's explanation at the WP on 31st January, that only data from hardware (i.e. for example sensors) are in scope and we would appreciate if this could be clarified in the text.
Article 7 (1)	The obligations of this Chapter shall not apply to data generated by the use of products manufactured or related services provided by enterprises that qualify as micro or small enterprises, 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 or small enterprise. The same shall apply to data generated by the use of products manufactured or related services provided by enterprises that qualify as medium-sized enterprises as defined in that same Recommendation, for either medium-sized enterprises that meet the threshold of that category for less than		CZ strongly supports the existing provision in Article 7, protecting SMEs from the excessive burden.

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	one year or that where it concerns products that a medium-sized enterprise has been placed on the market for less than one year.		
Article 10 (2)	If no dispute settlement body is certified in a Member State by [date of application of the Regulation], that Member State shall establish and certify a dispute settlement body that fulfils the conditions set out in points (a) to (d) of this paragraph.	If no dispute settlement body is certified in a Member State by [date of application of the Regulation], that Member State shall may establish and certify a dispute settlement body that fulfils the conditions set out in points (a) to (d) of this paragraph.	Several Member States expressed at the WP on 31 st January, that the establishment of dispute settlement body should not be mandatory. CZ can also support greater level of flexibility.
Article 14 (2)	2. This Chapter shall not apply to small and micro enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC.		CZ has concerns about this extension, as we believe micro and small enterprises should be protected from excessive burden. Therefore, we would not support any further inclusion of micro and small businesses to the scope.
Article 29	Interoperability for data processing services		CZ shares doubts raised about the reasoning behind different approach in Articles 28 and 30 compared to Article 29. We don't see the specificity of this sector compared to others, where we also create standards involving standardization organizations.
ADDITIONAL SUGGESTIONS			
Article 19 (1) (c)	(c) erase destroy the data as soon as they are no longer necessary for the stated purpose and inform the data holder without undue delay that the data have been erased-destroyed unless archiving of the data is required for transparency purposes in accordance with national law.	(c) erase destroy the data as soon as they are no longer necessary for the stated purpose and inform the data holder and individuals or organisations that received the data pursuant to paragraph 1 of Article 21 without undue delay that the data have been erased-destroyed unless archiving of the data is required for transparency purposes in accordance with national law.	CZ: Since the research organisations or statistical institutes are now allowed to keep the data for six extra months after the original data are erased by the competent authority (pursuant to Art. 19(1)c)), we believe it is necessary to notify, when this 6-month phase starts.

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			In the current wording, this element of notification is missing. Therefore, we suggest to include, that the competent authority shall notify not only the data holder but also the research organisations or statistical institutes about the erasure of the data.
Article 15 (1) (b)	(b) where the data request is limited in time and scope and necessary to prevent <u>mitigate</u> a public emergency or to assist the recovery from a public emergency <u>and the public sector body, the Commission, the European Central Bank or Union body is unable to obtain such data by alternative means in a timely and effective manner under equivalent conditions; or</u>	(b) where the data request is limited in time and scope and necessary to prevent <u>mitigate</u> a public emergency <u>before it occurs</u> or to assist the recovery from a public emergency <u>and the public sector body, the Commission, the European Central Bank or Union body is unable to obtain such data by alternative means in a timely and effective manner under equivalent conditions; or</u>	CZ thinks that the replacement of “prevent” by “mitigate” can lead to incomprehension of the difference between points a) and b), as it is not clear that “mitigation” relates to a situation before the emergency occurs. We therefore propose to specify it in the text or in relevant recital.
Article 24 (1) (d)	(d) a clause guaranteeing full deletion erasure of all data, <u>and including metadata, applications and other digital assets generated directly by the customer and/or relating to created by the customer directly after the expiration of the period set out in paragraph 1 point (c) of this Article or after the expiration of an alternative agreed period later than the expiration of the period set out in paragraph 1 point (c), provided that the porting process has been completed successfully;</u>		CZ is of the opinion that data processing service providers should have the possibility to keep data generated indirectly by the use of the service, which are used to improve the services. Given the Commission’s explanation at the WP on 31 st January, that cloud services provider could retain customer metadata indirectly created, we propose to reflect it in the text or in the recital.
Article 24a (1) (b)	<u>b. a description of the technical, legal and organisational measures adopted by the data processing service provider in</u>		When it comes to the expected level of detail of the description, we believe that

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	<u>order to prevent governmental access to non-personal data held in the Union where such transfer or access would create a conflict with Union law or the national law of the relevant Member State.</u>		in some cases, too detailed specification of such measures might possibly bring security risks.
Article 28 (6)	<u>When preparing the draft implementing act establishing the common specifications established by one or more implementing acts referred to in paragraph 5, the Commission shall take into account the views of the national competent authorities referred to in Article 31(3)(h) and other relevant bodies or expert groups and shall duly consult all relevant stakeholders.</u>		CZ: As we discussed with CLS at the WP on 31 st January, we would like to point out that implementing act establishing the common specifications is not referred to in paragraph 5, but 4a.

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 ~~striketrough~~ 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.