



Council of the European Union
General Secretariat

Brussels, 06 February 2023

WK 1703/2023 INIT

LIMITE

TELECOM

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

MEETING DOCUMENT

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

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

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

Reference	Fourth compromise proposal	Drafting suggestion	Comment
			<u>General comments</u> Luxembourg welcomes the fourth compromise proposal of the Swedish Presidency. However, in our view two main issues require further work. First, we are still assessing the articulation between the Data Act and the Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets directive). In this context, stakeholder consultation and inter-ministerial coordination still ongoing. As a result, we remain open to continue discussions in order to further improve the text in this regard. Secondly, we believe that the scope of Chapter V, in particular article 15.1.(c) needs further refining (see written suggestion below).
	<i>Article 15</i> <i>Exceptional need to use data</i> 1.____ exceptional need to use data within the meaning of this Chapter shall be limited in time and scope and deemed to exist only in any of the following	<i>Article 15</i> <i>Exceptional need to use data</i> 1.____ exceptional need to use data within the meaning of this Chapter shall be limited in time and scope and deemed to exist in situations of public emergency and only in any of the following	In our view, the scope of Chapter V seems too broad. As a result, Luxembourg wishes to further narrow the scope of application of point (c) in article 15.1. by adding the condition of a public emergency to the exceptional

Reference	Fourth compromise proposal	Drafting suggestion	Comment
	circumstances: (a) where the data requested is necessary to respond to 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;</u> (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;</u> or (c) where the lack of available data prevents the public sector body, or Union	circumstances: (a) where the data requested is necessary to respond to 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;</u> (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;</u> or (c) where the lack of available data prevents the public sector body, or Union institution, agency or body <u>the Commission, the European Central Bank or Union bodies</u> from fulfilling a specific task in the public interest, <u>such as official statistics</u>, that has been explicitly provided by law; and (4) the public sector body or Union institution, agency or body <u>the Commission, the European</u>	need in the context of fulfilling a specific task in the public interest.

Reference	Fourth compromise proposal	Drafting suggestion	Comment
	institution, agency or body the Commission, the European Central Bank or Union bodies from fulfilling a specific task in the public interest, such as official statistics, that has been explicitly provided by law; and (1) the public sector body or Union institution, agency or body the Commission, the European Central Bank or Union body has exhausted all other means at its disposal has been unable to obtain such data by alternative means, including, but not limited to, by purchasing of the data on the market at by offering market rates or by relying on existing obligations to make data available, and or the adoption of new legislative measures	Central Bank or Union body has exhausted all other means at its disposal has been unable to obtain such data by alternative means, including, but not limited to, by purchasing of the data on the market at by offering market rates or by relying on existing obligations to make data available, and or the adoption of new legislative measures which could guarantee cannot ensure the timely availability of the data. or (2) obtaining the data in line with the procedure laid down in this Chapter would substantively reduce the administrative burden for data holders or other enterprises.	

Reference	Fourth compromise proposal	Drafting suggestion	Comment
	which could guarantee cannot ensure the timely availability of the data; or (2) obtaining the data in line with the procedure laid down in this Chapter would substantively reduce the administrative burden for data holders or other enterprises.		

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.

