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MEETING DOCUMENT

From: To:	General Secretariat of the Council 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
			General comments 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).
	Article 15 Exceptional need to use data 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	Article 15 Exceptional need to use data 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

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	circumstance	s:	circumstance	s:	need in the context of fulfilling a specific
		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1			task in the public interest.
	(a)	where the data requested is	(a)	where the data requested is necessary	
		necessary to respond to a		to respond to a public emergency and	
		public emergency and the		the public sector body, the	
		public sector body, the		Commission, the European Central	
		Commission, the		Bank or Union body is unable to	
		European Central Bank		obtain such data by alternative	
		or Union body is unable		means in a timely and effective	
		to obtain such data by		manner under equivalent	
		alternative means in a	(1.)	conditions;	
		timely and effective	(b)	where the data request is limited in	
		manner under equivalent		time and scope and necessary to	
		conditions;		prevent mitigate a public emergency	
	(b)	where the data request is		or to assist the recovery from a public	
		limited in time and scope		emergency and the public sector	
		and necessary to prevent		body, the Commission, the	
		<u>mitigate</u> a public		European Central Bank or Union	
		emergency or to assist the		body is unable to obtain such data	
		recovery from a public		by alternative means in a timely	
		emergency and the public		and effective manner under	
		sector body, the		equivalent conditions; or	
		Commission, the	(c)	where the lack of available data	
		European Central Bank		prevents the public sector body, or	
		or Union body is unable		Union institution, agency or body the	
		to obtain such data by		Commission, the European Central	
		<u>alternative means in a</u>		Bank or Union bodies from fulfilling	
		timely and effective		a specific task in the public interest,	
		manner under equivalent		such as official statistics, that has	
		<u>conditions;</u> or		been explicitly provided by law; and	
	(c)	where the lack of available		(1) the public sector body or Union	
		data prevents the public		institution, agency or body the	
		sector body, or Union		Commission, the European	

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

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	which could		
	guarantee cannot		
	ensure the timely		
	availability of the		
	data <u>.; or</u>		
	(2) obtaining the data in	// C1 >>	
	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.