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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society

Subject:	Data Act - Presidency option paper
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Delegations will find in the annex the Presidency option paper on the Data Act.

Presidency option paper on the Data Act

Introduction

In preparation for drafting the fourth compromise and as a complement to the written comments, that will be provided by the Member states by the 12th of January, the Presidency invite the Member States to give their opinion on a few topics where guidance is needed to move forward in an efficient way.

At the Telecom Working Party on the 17th of January, the Member States will be asked to indicate their preferred options on the topics below. Based on both the written comments on the third compromise text and on the options indicated at the Working Party on the 17th, the Presidency will draft a fourth compromise text. This will be presented to Member states ahead of the Telecom Working Party on the 31st of January where, tentatively, the fourth compromise proposal will be discussed.

The third version of the compromise text (15035/22) is used as a reference point in the options below.

Topics

1. Micro, small and medium-sized enterprises

Member States have voiced different concerns regarding rights and obligations of micro, small and medium-sized enterprises in the Data Act. The focus has mainly been on the scope of chapter II, article 7(1), and of chapter V, article 14(2), and also in relation to chapter IV, article 13, regarding contractual fairness.

The Presidency seeks the view of the delegations on the following options

1.1 Obligations under chapter II

Option 1: Keep the third compromise text (15035/22) in article 7(1), and exclude micro, small and to a certain extent medium-sized enterprises from the scope of chapter II.

Option 2: Revert back to COM original proposal in article 7(1) and only exclude micro or small enterprises from the scope of chapter II.

Option 3: Extend scope of obligations in chapter II to include companies of all sizes, without exceptions.

1.2 Chapter IV, contractual fairness

Option 1: Keep the limitation in chapter IV (article 13) to include only micro, small and medium-sized enterprises.

Option 2: Extend chapter IV to include all contractual situations, regardless of the size of the companies.

1.3 Obligations under chapter V

Option 1: Keep the third compromise text (15035/22) in article 14(2) and exclude micro and small enterprises from the scope of chapter V.

Option 2: Extend the exclusion in article 14(2) to medium-sized enterprises to the same extent as is in the third compromise text of article 7(1).

Option 3: Extend scope of obligations in chapter V to include companies of all sizes, without exceptions.

2. Exceptional need to use data to fulfil a task in the public interest

Under the proposal, statistical offices enjoy the same rights as any other public sector body, meaning that they can exercise their rights in situations described in art 15 and their requests must fulfil the conditions of art 17. Statistical offices (and research organisations) also have the right to receive data for official statistics, as stipulated in article 21(1)(b).

Member States have expressed different views regarding the scope in article 15(c), when there's an exceptional need to use data to fulfil a specific task in the public interest, both with regards to the potential misuse of accessing data with reference to a specific task in the public interest and to adding official statistics. Some Member states have asked to narrow the scope of chapter V further, while others wish to extend the scope of chapter V in relation to official statistics and provide statistical offices with additional rights to access data.

The Presidency seeks the view of the delegations on the following options

2.1 Statistics

Option 1: Keep the third compromise text (15035/22) with regards to statistics in articles 15(c) and 21(1)(b).

Option 2: Exclude statistical offices from article 15(c), but keep the possibility of further sharing of data to statistical offices in accordance with article 21(1)(b).

Option 3: Exclude statistical offices and institutes altogether from the scope of the Data Act and refer the question to separate legislation.

2.2 Task in the public interest

Option 1: Keep the third compromise text (15035/22) in article 15(c), which specifies that the specific task in the public interest has to be explicitly provided by law.

Option 2: Limit the scope of article 15(c)(2) to only apply to production of official statistics.

Option 3: Delete article 15(c) in its entirety.

3. Trade secrets

The proposal provides that economic operators cannot refuse to make such data available on the basis of considering such data to be trade secrets in the sense of Directive (EU) 2016/943, incorporating into Union law the

international law definition of trade secrets (Article 39 TRIPS agreement). This approach seeks to ensure that economic operators can't escape from their obligations under the Data Act by a unilateral declaration of certain data to be their trade secret.

Member States have expressed a need to strengthen the protection of trade secrets in addition to the provisions already included in the Data Act that seek to mitigate the impact of the rights and obligations on holders of trade secrets. Some adjustments have been made in the compromise text (15035/22).

The Presidency seeks the view of the delegations on the following options

Option 1: Keep the third compromise text (15035/22).

Option 2: Further clarify the confidentiality obligations of data users and third parties, in relation to trade secrets.

Option 3: Alternative solution, please specify what that would entail.