

Date: 2022-06-02

To the Ministry of Infrastructure

E-mail to: i.remissvar@regeringskansliet.se

Copy to: i.esd.remisser@regeringskansliet.se

103 33 Stockholm

Diary number: I2022/01039

AB Volvo's response to EUCOM's "Proposal for a regulation of the European Parliament and of the Council on harmonised rules on fair access and use of data (Data Act)", COM(2022) 68 final

AB Volvo, here after referred to as 'Volvo Group', appreciates and welcomes the opportunity to submit comments to the Ministry of Infrastructure on the proposed Data Act. Volvo Group response, below, consists of two parts:

Volvo Group position on the Data Act proposal

Volvo Group proposed amendments to the Data Act proposal

Volvo Group position on EU Data Act proposal

General comments

In February 2022, the European Commission adopted its legislative proposal for a Data Act. The main objective of this regulation is to enlarge the pool of public and private stakeholders who have access to data. In particular, users will be entitled to decide on how data generated by the use of products should be shared with and used by various stakeholders.

Volvo Group welcomes the European Commission's proposal to assign users wider rights to oversee third parties' access to data generated by their products. At the same time, Volvo Group is of the opinion that some of the requirements included in the proposed Data Act build upon a limited view of users' interests. We do understand that the European Commission aims to promote fair, reasonable, and non-discriminatory access to data across all sectors of the data economy. However, that aim should not be pursued by restricting manufacturers' business models. Ensuring that users have availability on the market of high-quality products at competitive prices should remain equally important.

The manufacturers' sharing of data from commercial products should first and foremost serve the business and the productivity in the customer ecosystem. This ecosystem includes customers' own applications, their service providers, and other manufacturers in the system (e.g., competitor products, bodybuilders etc.). It is therefore important to find a business model that is beneficial and sustainable for all stakeholders in the ecosystem. The Data Act seems to mainly focus on creating opportunities for micro, small and medium enterprises and their need for data for extended and new businesses, with only limited consideration for *customers'* total costs and needs.

Volvo Group already provides customer data on request to customers and engages in voluntary agreements to share data. In the automotive sector, interested parties can negotiate commercial agreements on data access through private contracts in line with the principles of willingness and freedom of contract. Not only is in-vehicle generated data accessible to third parties, but vehicle manufacturers also close deals with data aggregators and data marketplaces, including public authorities. This contributes to making data widely accessible for the creation of improved products and services, also facilitating the emergence of new business models.

Volvo Group agree that there is a need to share data generated by vehicles and machines, especially in light of the increasing need for productivity services, where different service providers are dependent on each other's data and services. With the emergence of new intelligent transport systems and connected and automated mobility solutions, vehicles will have to communicate with one another, with pedestrians, the road and charging infrastructure and so on. Nevertheless, it is the manufacturer in collaboration with customers and society that will ultimately know the needs of its own products. Thus, the choice of what data to share should be with the manufacturer.

Impacted businesses and products

Vehicles are explicitly mentioned in the Preamble of the Data Act as among the products in scope of the Data Act. Furthermore, agricultural and industrial machinery are also explicitly mentioned. This leaves no uncertainty as to whether products and services offered by the Volvo Group will be impacted by this proposed regulation.

According to the Data Act proposal, Volvo Group, as a manufacturer *and* service provider, would be required to share data, sometimes for free, sometimes under FRAND terms, with users, third party businesses and public bodies. In this respect, Volvo Group believes that companies sharing data should receive reasonable and fair compensation, covering the full costs of making data available.

The measures proposed by the European Commission include comprehensive rules controlling various types of data-related transactions. The proposal fails, however, to envisage effective mechanisms for monitoring, dispute resolution and enforcement. The burden to ensure that data is not misused is put on the product manufacturer/data holder. On the contrary, any user or third party can raise a complaint with the data holder for not being compliant. The Data Act should include clear rules and courts to settle principles and consistently across the EU determine what responsibilities and rights each stakeholder has.

The Data Act is a horizontal type of regulation setting out basic rules on data access and use for all sectors and industries, making no differentiation between consumer and commercial products. Contrary to consumer products which are generally purchased for domestic use, commercial products are purchased by companies to operate their businesses. Commercial products may also be purchased by companies to manufacture their own products. The Data Act will be complemented by sector-specific regulations, which will need to be balanced with the content of the Data Act to ensure consistency and applicability for such broad coverage as the Data Act.

The Data Act, as it is currently drafted, does not take into account the complexity of commercial vehicles and machines where there often are multiple solution providers that cooperate to fit the customer's needs. In many cases, the first manufacturer is not the end manufacturer. Furthermore, the manufacturer does not have to be the seller or provider of the product. Current contractual agreements will be overridden by the Data Act and new business relationships with the Data Act definition of users' needs to be established. Therefore, the relation between manufacturer, data holder and users must be clarified, specifically with respect to who is accountable for what and to whom.

It is notable that the Data Act provides that users of products and third parties cannot use the data obtained, pursuant to a request to receive it, to develop a *product* that competes with the product from which the data originates. However, they are allowed to develop a competing *service*. This may become problematic for companies that today offer both products and related services to their customers.

Some articles provide ambiguity e.g. by mentioning "where applicable" without defining when the provision would apply.

The Data Act refers broadly to both "service" and "related service". It should be clarified that it is in fact "related services" that is intended in all cases.

Product strategies and business models.

The innovativeness of EU product developments must be ensured by allowing product manufactures to benefit economically from their data generating innovations. If a product manufacturer cannot profit from developments in a sustainable business model, or must share trade secrets, there is a risk that future products will become less innovative than they could be.

The definition of "user" should be clarified to ensure it is the actual customer of the manufacturer of the product that is given the rights. The existing definition of user included

in the Data Act allows for several simultaneous users (e.g. owner and renter/lesser). This could be detrimental to certain practices in the data sharing system. This would pose a substantial burden on companies to keep track of who has the right to what data. Furthermore, there are many unanswered questions regarding the relationship between Data Act and GDPR. For commercial products the “user” is often different from the “data subject”.

Necessary mechanisms that allow separate user accounts for individual persons, where relevant, or the possibility for several persons to use the same user account – are not covered by this regulation.

The Data Act will potentially impact certain business decisions in particular regarding how to secure returns on investments in data and service developments. This may force companies to change business models for products and services. The majority of EU enterprises are micro/small/medium, which, according to the Data Act, should get access to data at a price not profitable for the manufacturer. As previously mentioned, it is essential to ensure that the manufacturer is fairly compensated for its investments in data-related developments.

Technical implications

Much of the data generated by the internal components of a product are functional data not intended to be extracted. From a technical point of view, transferring additional data points would often require deep modifications of the physical architecture and the software of a product, which in turn will require oversizing its computing power. Such measures would have a significant negative impact on the total cost, resources and optimization of the product and, through the use of materials and energy, on the environment.

Consistent with the requirements of operating in a competitive market, manufacturers design their products based on the needs they foresee. The Data Act requires that *“Products shall be designed and manufactured, and related services shall be provided, in such a manner that data generated by their use are, by default, easily, securely and, where relevant and appropriate, directly accessible to the user”*. However, the notion of ‘generated data’, without any accompanying definition in the provisions of the proposal, raises questions as to the exact nature of the data that must be made available to the user. If the intention is to transfer control of data sharing to the user, it should be limited to what the manufacturer had intended to make available and/or have possibility to retrieve data themselves. The regulation should not require additional data transfers than what the manufacturer already does.

It needs to be clarified that users' right to data is limited to what the manufacturer of the product can reasonably easily make available, and then share equally among users. For products that are not intended to have data easily available to users, the added time to create user interfaces may make implementation time longer. This in turn can lead to delayed implementation of important technologies to the market, such as modern communication or green transition technologies.

Any requirements to provide data directly from the product could be in conflict with Data Privacy regulations given that a product manufacturer cannot know if a user directly accessing data is authorized to view potentially personal data. On the same notion, a product manufacturer cannot know if the user is authorized to read business sensitive data stored in the product. Volvo Group recommends that since the coverage is limited to “connected products” it should not include any direct access since the manufacturer has no control of such interfaces after the product has left the retailer.

Trade Secrets

The Data Act as it is currently drafted does not offer sufficient protection for trade secrets. Attempted measures to protect trade secrets provided in some articles are dismissed in other articles. Trade secrets are instruments specifically designed to enable the possessor of such trade secrets to exclude others from accessing confidential information.

The suggested obligation under the Data Act to disclose data to users and third parties eliminates one of the key protections for trade secrets: the trade secret holder's ability to choose who to disclose it to. While we do recognize that the draft Data Act includes measures to preserve the confidentiality of trade secrets with respect to third parties, a key aspect of trade secrets protection is the ability to control the use of the trade secret by a recipient. Normally this is achieved by contractually defining a limited purpose for which the trade secret can be used. However, under the draft Data Act, a user appears to be free to use the data they receive for any purpose other than the creation of a competing product, and it is unclear if a trade secrets holder can limit the use of their trade secrets by the user.

As for third parties, there is a real concern that if a third party is able to agree broad usage terms with users, they would appear to be free to extract the value of the manufacturer's trade secret, provided they do not use the data to create a competing product.

The Data Act should not compromise trade secrets protection. On the contrary, this proposal should ensure that trade secrets are provided with legal protection. Trade secrets protections should not differ depending on whether a user (which in many cases is a business) or a third party is at the receiving end, or whether trade secrets relate to a product or a related service.

The Sui Generis right

The proposal for the Data Act contains a single article, Article 35,¹ that suggests that the sui generis database right introduced by the Database Directive does not apply to databases containing data obtained from or generated by the use of a product or related service. It must be acknowledged that this exception, as it reads, may be going far beyond what is necessary to protect the right to access and use data set out in Article 4 and the right to share data under Article 5. Article 35 goes much further in that it dismisses the protection of databases which may presently qualify for protection if the original source of the data comes from the use of a connected product.

Cleaned and structured data that is ready for use can be extremely valuable, but on the Data Act proposal it no longer receive protection under the sui generis right. Therefore, Volvo Group strongly recommends that relationships between different data in databases are regulated in an update of the Database Directive, and not patched with the Data Act.

Implementation timetable

Volvo Group recommends to not cover existing products and related services in the Data Act, but rather limit it to new products yet to be put on the market. Advanced products such as vehicles and machines are planned many years in advance. Therefore, the implementation period of 12 months provided by the Data Act should be extended to 36 months.

Ending note

Volvo Group is not just a manufacturer. We are committed to “drive prosperity through transport and infrastructure solutions”, and will always support our customer needs.

We would also like to emphasize that we are living in a fast-changing world with digitalization and services, in particular related to the green transition, which will create new challenges but also many new opportunities. These can completely change the current value chains and who will become a competitor tomorrow.

Volvo Group proposed amendments to the Data Act proposal

	European Commission proposal	Volvo Group proposed amendments	Justification
Article 1.1	This Regulation lays down harmonised rules on making data generated by the use of a product or related service available to the user of that product or service, on the making data available by data holders to data recipients, and on the making data available by data holders to public sector bodies or Union institutions, agencies or bodies, where there is an exceptional need, for the performance of a task carried out in the public interest:	Define: exceptional need Define: Public interest Change from “product or service” to “product or related service”	Consistency in the usage of “related service”.
Article 1.2(a)	manufacturers of products and suppliers of related services placed on the market in the Union and the users of such products or services;	Change to: manufacturers of products and suppliers of related services placed on the market in the Union and the users of such products or related services;	Consistency in the usage of “related service”.
Article 1.3	Union law on the protection of personal data, privacy and confidentiality of communications and integrity of terminal equipment shall apply to personal data processed in connection with the rights and obligations laid down in this Regulation. This Regulation shall not affect the applicability of Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC, including the powers and competences of supervisory authorities. Insofar as the rights laid down in Chapter II of this Regulation are concerned, and where users are the data subjects of personal data subject to the rights and obligations under that Chapter, the provisions of this Regulation shall complement the right of data portability under Article 20 of Regulation (EU) 2016/679.	Clarify relation between Data Act and (EU) 2016/679.	For commercial products, it is often the case the “user” (owner, renter, leaser) is not the same as the data subject under (EU) 2016/679. Therefore, clarification is needed how these, and other regulations shall be working together. It is also notable that enforcement of GDPR and Data Act are very much different.

	European Commission proposal	Volvo Group proposed amendments	Justification
Article 2.1	'data' means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording;	'data' means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording; communicated by a product or a related service via a publicly available electronic communication service; or add new definition and replace all "data" to "product data"	Given the "product" definition in 2.2 it must be clarified that "product data" is limited to what is communicated via a publicly available electronic communications service. Either by updating "data" definition or add new definition and replace all "data" to "product data"
Article 2.2	'product' means a tangible, movable item, including where incorporated in an immovable item, that obtains, generates or collects, data concerning its use or environment, and that is able to communicate data via a publicly available electronic communications service and whose primary function is not the storing and processing of data;	No change if 2.1 is changed according to proposal	Products not connected to publicly available electronic communications are not included. But when products are connected to publicly available electronic communications, all data is included per article 2.1 and subsequent "data" references, even if it is not transmitted externally to the product.
Article 2.3	'related service' means a digital service, including software, which is incorporated in or inter-connected with a product in such a way that its absence would prevent the product from performing one of its functions;	Write 'related service' everywhere in the regulation	In several occasions the Data Act refers to 'service' which has no definition.
Article 2.5	'user' means a natural or legal person that owns, rents or leases a product or receives a services;	Too broad definition of 'users'. Clarify the relationship between owner and renter/lessor, and between manufacturer and owner. We recommend creating data access rights for renters/lessors with regards to the owner, as the owner has in relation to the manufacturer. Change from "product or service" to "product or receives a related service".	In this definition there can be several simultaneous users. While we understand the need for "operators" of a product to have access to data generated by their use, the customer to the manufacturer should be the owner of the product. From a data holder or manufacturer perspective, there is risk of conflicting interests, and unnecessary need to add business relationships with 'users' that do not have a business relationship with the product manufacturer today. Consistency in the usage of "related service".

	European Commission proposal	Volvo Group proposed amendments	Justification
Article 2.6	'data holder' means a legal or natural person who has the right or obligation, in accordance with this Regulation, applicable Union law or national legislation implementing Union law, or in the case of non-personal data and through control of the technical design of the product and related services, the ability, to make available certain data;	replace: 'data holder' means a legal or natural person who holds the data and has the right or obligation, in accordance with this Regulation, applicable Union law or national legislation implementing Union law, or in the case of non-personal data and through control of the technical design of the product and related services , the ability, to make available certain held data;	This definition does not say who holds the data. Any product manufacturer that designs their products are data holders per this definition, even if they collect zero data. An improvement would be, instead, to refer "data holder" to someone holding the data. This would also support the idea that the data concerned is what is being currently collected.

	European Commission proposal	Volvo Group proposed amendments	Justification
Article 3.1	Products shall be designed and manufactured, and related services shall be provided, in such a manner that data generated by their use are, by default, easily, securely and, where relevant and appropriate, directly accessible to the user	Delete	<p>Much of the data generated by the internal components of a product are functional data not intended to be extracted. From a technical point of view, transferring additional data points would often require deep modifications of the physical architecture and the software of a product, which in turn will require oversizing its computing power. Such measures would have a significant negative impact on the total cost, resources and optimization of the product and, through the use of materials and energy, on the environment.</p> <p>Consistent with the requirements of operating in a competitive market, manufacturers design their products and share data based on the needs they foresee.</p> <p>However, the notion of 'generated data', without any accompanying definition in the provisions of the proposal, raises questions as to the exact nature of the data that must made available to the user. If the intention is to transfer control of data sharing to the user, it should be limited to what the manufacturer had intended to make available and/or have possibility to retrieve data themselves. The regulation should not require additional data transfers than what the manufacturer already does.</p>

	European Commission proposal	Volvo Group proposed amendments	Justification
Article 3.2	<p>Before concluding a contract for the purchase, rent or lease of a product or a related service, at least the following information shall be provided to the user, in a clear and comprehensible format:</p> <p>(a) the nature and volume of the data likely to be generated by the use of the product or related service;</p> <p>(b) whether the data is likely to be generated continuously and in real-time;</p> <p>(c) how the user may access those data;</p> <p>(d) whether the manufacturer supplying the product or the service provider providing the related service intends to use the data itself or allow a third party to use the data and, if so, the purposes for which those data will be used;</p> <p>(e) whether the seller, renter or lessor is the data holder and, if not, the identity of the data holder, such as its trading name and the geographical address at which it is established;</p> <p>(f) the means of communication which enable the user to contact the data holder quickly and communicate with that data holder efficiently;</p> <p>(g) how the user may request that the data are shared with a third-party;</p> <p>(h) the user's right to lodge a complaint alleging a violation of the provisions of this Chapter with the competent authority referred to in Article 31.</p>	<p>Add</p> <p>Before concluding a contract for the purchase, rent or lease of a product or a related service, at least the following information shall be provided to the user, when the information is known to the seller, renter or lessor, in a clear and comprehensible format....</p>	<p>The obligations in article 3.2 are only practical to enforce where there is a direct relationship between the manufacturer and the user (customer).</p> <p>In several industries, the manufacturer uses non-owned retailers, or the product passes so called multi stage processes.</p> <p>The obligations also seems to ignore where there is a "used product" market.</p> <p>If the obligations are impossible to comply with, the result may be the opposite of the intent and the user will be even less informed than before or the disclaimers becomes extensive.</p> <p>(d) also seem to invalidate the purpose of the Data Act and dismiss the idea that new services will be offered to products, both by manufacturer/service provider and third party service provider.</p>

	European Commission proposal	Volvo Group proposed amendments	Justification
Article 4.1	Where data cannot be directly accessed by the user from the product, the data holder shall make available to the user the data generated by its use of a product or related service without undue delay, free of charge and, where applicable, continuously and in real-time. This shall be done on the basis of a simple request through electronic means where technically feasible.	<p>Replace/delete: Where data cannot be directly can only be remotely accessed by the user from the product, the data holder shall make available to the user the data generated by its use of a product or related service without undue delay, free of charge and, where applicable, continuously and in real-time. This shall be done on the basis of a simple request through electronic means where technically feasible.</p> <p>Clarify where “where applicable” would be applicable.</p>	<p>”data that cannot be directly accessed by the user from the product” reads: either the data is a) not existing on an interface, or b) is only available remotely</p> <p>a) will require extensive work to make available, and cannot be made real with a “simple request”</p> <p>b) refers to data presumably on a server, meaning “continuously” and “real-time” can be impossible or expensive. Thus “where applicable” needs to be clarified.</p> <p>I would also make sense to limit data to what the data holder have.</p> <p>Data transfers are bound by costs.</p>
Article 4.3	Trade secrets shall only be disclosed provided that all specific necessary measures are taken to preserve the confidentiality of trade secrets in particular with respect to third parties. The data holder and the user can agree measures to preserve the confidentiality of the shared data, in particular in relation to third parties.	Clarify how compliance will be enforced	<p>How will compliance with these restrictions be monitored? Data holders will have limited means to prevent further uncontrolled sharing or use of data from their services, and therefore protection of possible trade secrets is watered down.</p> <p>If not described in purpose, user violates law by providing all data “unchecked” for trade secrets.</p>
Article 4.4	The user shall not use the data obtained pursuant to a request referred to in paragraph 1 to develop a product that competes with the product from which the data originate.	The user shall not use the data obtained pursuant to a request referred to in paragraph 1 to develop a product or related service that competes with the product or related service from which the data originate.	Consistency in the usage of “related service”.

	European Commission proposal	Volvo Group proposed amendments	Justification
Article 4.5	Where the user is not a data subject, any personal data generated by the use of a product or related service shall only be made available by the data holder to the user where there is a valid legal basis under Article 6(1) of Regulation (EU) 2016/679 and, where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 are fulfilled.	Clarify Data Act and (EU) 2016/679 relation	While the intention is clear, this needs further clarification. There will be a mix of personal and non-personal data in the same data-set. The data holder may not know if there is a legal basis for the user to request data, including personal data.
Article 5.1	Upon request by a user, or by a party acting on behalf of a user, the data holder shall make available the data generated by the use of a product or related service to a third party, without undue delay, free of charge to the user, of the same quality as is available to the data holder and, where applicable, continuously and in real-time.	Add/delete/clarify Upon request by a user, or by a party acting on behalf of a user, the data holder shall make available, if available to the data holder , the data generated by the use of a product or related service to a third party, without undue delay, free of charge to the user , of the same quality as is available to the data holder and, where applicable, continuously and in real-time. Clarify “where applicable”	It should not be ambiguous that data that must be made available, is available to the data holder. Data holders should be compensated for developing data, interfaces and making it available. Without clear definition of “where applicable” it is a risk that different stakeholders interpret the requirements or needs differently.
Article 5.6	Where the user is not a data subject, any personal data generated by the use of a product or related service shall only be made available where there is a valid legal basis under Article 6(1) of Regulation (EU) 2016/679 and where relevant, the conditions of Article 9 of Regulation (EU) 2016/679 are fulfilled.	Clarify Data Act and (EU) 2016/679 relation	While the intention is clear, this needs further clarification. There will be a mix of personal and non-personal data in the same data-set. The data holder may not know if there is a legal basis for the user to request data, including personal data.

	European Commission proposal	Volvo Group proposed amendments	Justification
Article 5.8	Trade secrets shall only be disclosed to third parties to the extent that they are strictly necessary to fulfil the purpose agreed between the user and the third party and all specific necessary measures agreed between the data holder and the third party are taken by the third party to preserve the confidentiality of the trade secret. In such a case, the nature of the data as trade secrets and the measures for preserving the confidentiality shall be specified in the agreement between the data holder and the third party.	Add Trade secrets shall only be disclosed to third parties to the extent that they are strictly necessary to fulfil the purpose agreed between the user and the third party, and has been approved by the trade secret holder, and all.....	Current formulation eliminates one of the key protections for trade secrets: the trade secret holder's ability to choose who to disclose it to. The formulations does nothing to protect trade secrets to leak from data holder to third party. The data stills needs to be disclosed, but under confidentiality arrangements. The Data Act creates a real concern that if a third party is able to agree broad usage terms with users, they would appear to be free to extract the value of the manufacturer's trade secret, provided they do not use the data to create a competing product. If not described in the purpose, the user violates the law by providing all data "unchecked" for trade secrets.
Article 6.1	A third party shall process the data made available to it pursuant to Article 5 only for the purposes and under the conditions agreed with the user, and subject to the rights of the data subject insofar as personal data are concerned, and shall delete the data when they are no longer necessary for the agreed purpose.	Clarify how these obligations will be monitored and enforced	There is a risk this leads to "broad usage" agreements. Enforcements of these measures to protect further use are toothless

	European Commission proposal	Volvo Group proposed amendments	Justification
Article 6.2	<p>The third party shall not:</p> <p>(a) coerce, deceive or manipulate the user in any way, by subverting or impairing the autonomy, decision-making or choices of the user, including by means of a digital interface with the user;</p> <p>(b) use the data it receives for the profiling of natural persons within the meaning of Article 4(4) of Regulation (EU) 2016/679, unless it is necessary to provide the service requested by the user;</p> <p>(c) make the data available it receives to another third party, in raw, aggregated or derived form, unless this is necessary to provide the service requested by the user;</p> <p>(d) make the data available it receives to an undertaking providing core platform services for which one or more of such services have been designated as a gatekeeper pursuant to Article [...] of [Regulation on contestable and fair markets in the digital sector (Digital Markets Act)];</p> <p>(e) use the data it receives to develop a product that competes with the product from which the accessed data originate or share the data with another third party for that purpose;</p> <p>(f) prevent the user, including through contractual commitments, from making the data it receives available to other parties.</p>	<p>Clarify how these prohibitions will be monitored and enforced</p> <p>add</p> <p>(e) use the data it receives to develop a product or related service that competes with the product or related service from which the accessed data originate or share the data with another third party for that purpose;</p>	<p>Consistency in the usage of "related service".</p>
Article 8.2	<p>A data holder shall agree with a data recipient the terms for making the data available. A contractual term concerning the access to and use of the data or the liability and remedies for the breach or the termination of data related obligations shall not be binding if it fulfils the conditions of Article 13 or if it excludes the application of, derogates from or varies the effect of the user's rights under Chapter II.</p>	<p>Clarify what right the data holders have for the terms for making the data available.</p>	<p>Considering that data sharing is forced upon data holders, how can they leverage terms?</p>

	European Commission proposal	Volvo Group proposed amendments	Justification
Article 9.2	Where the data recipient is a micro, small or medium enterprise, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, any compensation agreed shall not exceed the costs directly related to making the data available to the data recipient and which are attributable to the request. Article 8(3) shall apply accordingly.	Delete/add Where the data recipient is a micro, small or medium enterprise, as defined in Article 2 of the Annex to Recommendation 2003/361/EC, any compensation agreed shall not exceed the compensate for costs directly related to develop, collect, store and making the data available to the data recipient and which are attributable to the request. Article 8(3) shall apply accordingly.	The cost of developing, collecting, storing and sharing data is not neglectable. If data is developed and maintained for the purpose of third party services, it will be important to find a business model that is beneficial and sustainable for all stakeholders in the ecosystem. The Data Act focus mainly on creating opportunities for micro, small and medium enterprises and their need for data for extended and new businesses, with only limited consideration for <i>customers'</i> total costs and needs.
Article 9.4	The data holder shall provide the data recipient with information setting out the basis for the calculation of the compensation in sufficient detail so that the data recipient can verify that the requirements of paragraph 1 and, where applicable, paragraph 2 are met.	delete	Developing data, collect and storage for hundreds of thousands of products, and split it to individual costs – is a) business sensitive information b) unlikely to be very exact for each individual product c) impossible to verify. We suggest this is deleted completely.
Article 10.1	Data holders and data recipients shall have access to dispute settlement bodies, certified in accordance with paragraph 2 of this Article, to settle disputes in relation to the determination of fair, reasonable and non-discriminatory terms for and the transparent manner of making data available in accordance with Articles 8 and 9.	Establish official EU bodies to settle precedent cases	It is of most importance that the provisions of Data Act are interpreted in harmony across the EU.
Article 14.1	Upon request, a data holder shall make data available to a public sector body or to a Union institution, agency or body demonstrating an exceptional need to use the data requested.	Add confidentiality requirements	It must be a legal requirement that information shared by companies to public sector bodies is covered by confidentiality and thus cannot be passed on to other actors. Swedish law: all data held by public bodies is public data. Trade secrets, but also customer data sensitive to their business.

	European Commission proposal	Volvo Group proposed amendments	Justification
Article 15.1	<p>An exceptional need to use data within the meaning of this Chapter shall be deemed to exist in any of the following circumstances:</p> <p>(a) where the data requested is necessary to respond to a public emergency;</p> <p>(b) where the data request is limited in time and scope and necessary to prevent a public emergency or to assist the recovery from a public emergency;</p> <p>(c) where the lack of available data prevents the public sector body or Union institution, agency or body from fulfilling a specific task in the public interest that has been explicitly provided by law; and</p> <p>(1) the public sector body or Union institution, agency or body has been unable to obtain such data by alternative means, including by purchasing the data on the market at market rates or by relying on existing obligations to make data available, and the adoption of new legislative measures cannot ensure the timely availability of the data; or</p> <p>(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.</p>	<p>Delete (2)</p> <p>Or</p> <p>Delete (c) including (1) and (2)</p>	<p>(2) “reduce administrative burden” is very broad and can easily be abused.</p>

	European Commission proposal	Volvo Group proposed amendments	Justification
Article 35	In order not to hinder the exercise of the right of users to access and use such data in accordance with Article 4 of this Regulation or of the right to share such data with third parties in accordance with Article 5 of this Regulation, the sui generis right provided for in Article 7 of Directive 96/9/EC does not apply to databases containing data obtained from or generated by the use of a product or a related service.	Replace with: In order not to hinder the exercise of the right of the users to access and use such data in accordance with Article 4 of this Regulation or of the right to share such data with third parties in accordance with Article 5 of this Regulation, the subject of the sui generis right provided in Article 7 of Directive 96/9/EC shall not invoke this sui generis right to deny to the user access to the data generated by its use of a product or a related service.	Art. 35 heavily restricts database protection and the associated investment incentives as the whole database, regardless of whether the data it contains is covered under Article 4 and 5 of this Regulation, is left unprotected. Such far-reaching restriction seems neither necessary nor appropriate to achieve the stated objective of safeguarding the rights of the user under Article 4 and Article 5. Rather than creating an exception to Article 7 of Directive 96/9/EC, thereby denying the protection afforded by this Directive to the entire database, the database protection right should be excluded specifically regarding the data generated by the use of the product that fall under the scope of Article 4 and Article 5 of this Regulation, and that is contained in such a Database.
Article 42	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from [12 months after the date of entry into force of this Regulation].	Replace This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from [42 36 months after the date of entry into force of this Regulation for products manufactured after the date of application].	The Data Act should not retroactively cover existing products and related services (may be impossible to comply with), but rather limit it to new products yet to be put on the market. Advanced products such as vehicles and machines are planned many years in advance. Therefore, the implementation period of 12 months provided by the Data Act should be extended to 36 months for new products.

Göteborg 2022-06-02

for Volvo Group

Mikael Johansson

Public policy and regulatory affairs