

(BILAGA REMISSVAR SCANIA CV AB DATAAKTEN DNR  
I2022/01039)

## LO34PROPOSAL FOR A DATA ACT

### SCANIA PROPOSAL FOR AMENDMENTS

#### I. B2B AND B2C DATA SHARING

Empowering users to manage the data of their products

Providing consumers with access to the data they need

| Article 2, point (1)                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                      |
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| Text proposed by the Commission                                                                                                                                                                                                                                                                                                                                                                                                               | Amendment                                                                                                                                                                                                                                                                                                            |
| (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;                                                                                                                                                                                                                                           | (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<br><b>communicated by a product or related service via a publicly available electronic communication service;</b> |
| <b>Justification:</b><br>The definition of data is too broad and may encompass data that is not directly linked to a product or a related service. It should be understood in, and limited to, the subject matter and scope of the Data Act, as defined under Article 1. Therefore, it should be understood exclusively as data emanating from a product or a related service that falls within the scope and definitions of this Regulation. |                                                                                                                                                                                                                                                                                                                      |

| Article 2, point (1a) NEW                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                       |
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| Text proposed by the Commission                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Amendment                                                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>(1a) 'Accessible data' means data that the data holder can request and obtain, via a publicly available electronic communication service, in a digital, machine-readable format, from the product, onto an existing interface.</b> |
| <b>Justification:</b><br>Data from a product can only be made accessible where the design and architecture of this product allow for it. This data is accessible to the manufacturer and the user alike and can be used to provide a service of which the customer avails. This is 'accessible' data, i.e. data that the data holder can obtained from the product and be shared, and that the user should therefore be aware of, which they should have access to, and over which they should be provided with the means to determine whether, and with whom, it will be shared.<br>This proposal will ensure that users can control the data that is obtained from their products and determine who it is shared with. Furthermore, by providing that data holders and third-party services providers can be granted access to the same data by the user, this proposal ensures that all market players have access to the |                                                                                                                                                                                                                                       |

same input to provide competing services to the user. This will create a level playing field, allowing market players to compete fairly and on equal grounds, and continue to innovate in a way that benefits consumers and broadens their choice.

It will also ensure that manufacturers are able to comply with the principle of privacy by design and by default, and the principle of data minimisation, pursuant to which the collection, processing and storage of data should be limited to what is necessary in relation to the purpose for which this data is processed, as provided under Article 5 GDPR.

#### Article 2, point (6)

##### *Text proposed by the Commission*

(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;

##### *Amendment*

(6) '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, the ability to make available certain data **that they hold;**

##### **Justification:**

The definition does not adequately describe the entity that actually holds the data generated by the use of the product or related service and is thus expected to make this data available to the user. Indeed, under the current definition, any manufacturer is deemed a data holder by virtue of the fact that they design their product, regardless of whether they actually hold any data generated by the use of this product or not. To ensure that the user gets effective access to the data generated by their use of the product or related service, it is crucial for the Regulation to impose these obligations on the entity that actually holds the data.

#### Article 3, para.1

##### *Text proposed by the Commission*

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.

##### *Amendment*

1. Products shall be designed and manufactured, and related services shall be provided, in such a manner that **accessible** data generated by their use are, by default, easily, **safely**, securely and, where relevant and appropriate, directly accessible to the user.

##### **Justification:**

Data from a product can only be made accessible where the design and architecture of this product allow for it. This data is accessible to the manufacturer and the user alike and can be used to provide a service of which the customer avails. This is 'accessible' data, i.e. data that can be obtained from the product and be shared, and that the user should therefore be aware of, which they should have access to, and over which they should be provided with the means to determine whether, and with whom, it will be shared.

This proposal will ensure that users can control the data that is obtained from their products and determine who it is shared with. Furthermore, by providing that data holders and third-party services providers can be granted access to the same data by the user, this proposal ensures that all market players have access to the same input to provide competing services to the user. This will create a level playing field, allowing market players to compete fairly and on equal grounds, and continue to innovate in a way that benefits consumers and broadens their choice.

The manufacturer not only has a duty to secure the product from unauthorised access, but it must also ensure that the user and potential authorised third parties access the data a safe way, that is to say in a way that does not endanger the product and its user(s). This safety requirement is paramount and should be included in the provisions of Article 3(1).

#### Article 3, para. 2

| <i>Text proposed by the Commission</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <i>Amendment</i>                                                                                                                                                                                                                                                                                                                                |
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| 2. Before concluding a contract <del>for the purchase, rent or lease of a product or a related service</del> , at least the following information <del>shall be provided to the user</del> , in a clear and comprehensible format:                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 2. Before concluding a contract, <b>the seller, renter or lessor of a product, or the provider of a related service</b> , shall at least <b>provide the user with</b> following information, <b>when it is known to the seller, renter or lessor of a product, or the provider of a related service</b> , in a clear and comprehensible format: |
| <p><b>Justification:</b></p> <p>The proposal does not specify the subject of the obligation laid down in this article. The obligation to inform the user should be imposed on the entity that has a direct contractual relationship with them through which it has provided the product or related service the use of which entitles the user to get access to the data. In their capacity, the vender, lessor or leaser of a product may not have be in a position to provide access to all the information which they are expected to provide to the user under this article, and should not be put in a position where they will be expected to provide information which they do not have.</p> |                                                                                                                                                                                                                                                                                                                                                 |

| <b>Article 4, para. 1</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <i>Text proposed by the Commission</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <i>Amendment</i>                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 1. Where data cannot be <del>directly</del> accessed by the user <del>from</del> 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 1. Where data cannot be accessed by the user on the product, the data holder shall make available to the user the <b>accessible</b> data generated by its use of a product or related service without undue delay, free of charge <b>for non-professional users</b> 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><b>Justification:</b></p> <p>Data from a product can only be made accessible where the design and architecture of this product allow for it. This data is accessible to the manufacturer and the user alike and can be used to provide a service of which the customer avails. This is 'accessible' data, i.e. data that can be obtained from the product and be shared, and that the user should therefore be aware of, which they should have access to, and over which they should be provided with the means to determine whether, and with whom, it will be shared.</p> <p>This proposal will ensure that users can control the data that is obtained from their products and determine who it is shared with. Furthermore, by providing that data holders and third-party services providers can be granted access to the same data by the user, this proposal ensures that all market players have access to the same input to provide competing services to the user. This will create a level playing field, allowing market players to compete fairly and on equal grounds, and continue to innovate in a way that benefits consumers and broadens their choice.</p> <p>The operational cost involved in the collection, storage, management, and dissemination via electronic means of data generated by products are substantial for the data holder. Furthermore, the volume of data required by commercial company is typically higher than for individual consumers and will likely increase exponentially as the EU data economy continues to develop. Such costs may become unsustainable for individual manufacturers and will severely undermine the investment incentives.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                    |

| <b>Article 5, para. 1</b>                                                                       |                                                                                                 |
|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| <i>Text proposed by the Commission</i>                                                          | <i>Amendment</i>                                                                                |
| 1. Upon request by a user, or by a party acting on behalf of a user, the data holder shall make | 1. Upon request by a user, or by a party acting on behalf of a user, the data holder shall make |

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| available the data generated by the user 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | available the <b>accessible</b> data generated by the user of a product or related service to a third party, without undue delay, free of charge to the <b>non-professional</b> user, of the same quality as is available to the data holder and, where applicable, continuously and in real-time |
| <p><b>Justification:</b></p> <p>Data from a product can only be made accessible where the design and architecture of this product allow for it. This data is accessible to the manufacturer and the user alike and can be used to provide a service of which the customer avails. This is ‘accessible’ data, i.e. data that can be obtained from the product and be shared, and that the user should therefore be aware of, which they should have access to, and over which they should be provided with the means to determine whether, and with whom, it will be shared.</p> <p>This proposal will ensure that users can control the data that is obtained from their products and determine who it is shared with. Furthermore, by providing that data holders and third-party services providers can be granted access to the same data by the user, this proposal ensures that all market players have access to the same input to provide competing services to the user. This will create a level playing field, allowing market players to compete fairly and on equal grounds, and continue to innovate in a way that benefits consumers and broadens their choice.</p> |                                                                                                                                                                                                                                                                                                   |

## Defining the means of access to their data by the user

| <b>Article 2, para. (22) NEW</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                  |
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| <i>Text proposed by the Commission</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <i>Amendment</i>                                                                                                                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>(22) ‘Directly accessible’ means access from an on-device data storage system or from a remote server to which the data are communicated.</b> |
| <p><b>Justification:</b></p> <p>The lack of definition of the concept of “directly accessible” data relied on in the proposal will create uncertainty for manufacturers as to what system they will be expected to put in place in order to comply with this obligation.</p> <p>Some clarification is provided under recital 21 of the proposal, which states that ‘Products may be designed to make certain data directly available from an on-device data storage or from a remote server to which the data are communicated’.</p> <p>This is from paramount importance for the consumer and the manufacturer as the definition provided in recital 21 will reduce the risk of unauthorized data access and cyberthreats (e.g. hacking) since only authorized parties would be able to access the data sharing server.</p> <p>This definition should be added to the Article 2 to give it legal effect.</p> |                                                                                                                                                  |

## II. PROTECTING COMPETITIVENESS AND INNOVATION

### Managing user access to data

| <b>Article 2, para. (5)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                     |
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| <i>Text proposed by the Commission</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <i>Amendment</i>                                                                                                                                    |
| (5) ‘user’ means a natural or legal person that owns, rents or leases a product <del>or</del> receives a <del>services</del> ;                                                                                                                                                                                                                                                                                                                                                         | (5) ‘user’ means a natural or legal person that owns, rents or leases a product <b>and</b> receives a <b>related service from the data holder</b> ; |
| <p><b>Justification:</b></p> <p>Some products falling into the scope of the Data Act may be purchased by one user, only to be leased or rented to other users. Some of these products may be leased or rented multiple times under short-term leases or rentals, leading to situations in which multiple users may be in a position to request data, successively or even simultaneously. In situation such as these, the data holder may be unable to keep track of which persons</p> |                                                                                                                                                     |

acquire the right to access the data generated by the use of the product, and of when these persons lose this right.

Companies that operate such businesses should be expected to manage access permissions for these users and the relevant access rights that should be granted to them to the data generated by their use of the product. The definition of user should be amended to establish the user as the person with the primary link to the data holder. This person is, in turn, responsible for managing permissions for subsequent users, and direct the data holder to provide or withdraw access to the data generated by the use of the product to other users.

The owner, leaser or renter of a vehicle should only be considered a user insofar as they also receives a service from the data holder which provides their product with the connectivity required for the product to share the data generated by its use with the data holder, the user and, where relevant, third parties.

#### **Article 2, para. (5a) NEW**

*Text proposed by the Commission*

*Amendment*

**(5a) 'professional user' means a user that uses the product that they own, rent or lease for the purpose of his or her trade, business or profession;**

#### **Justification:**

The operational cost involved in the collection, storage, management, and dissemination via electronic means of data generated by products are substantial for the data holder. Furthermore, the volume of data required by commercial company is typically higher than for individual consumers and will likely increase exponentially as the EU data economy continues to develop. Such costs may become unsustainable for individual manufacturers and will severely undermine the investment incentives.

Users that use products that fall within the scope of this act for commercial purposes should not be entitled to request that the data holder make available the data generated by the use of these products, which they will then be entitled to use for their commercial activities, free of charge.

## Trade secrets

#### **Article 3, para. 3 NEW**

*Text proposed by the Commission*

*Amendment*

**3. Trade secrets shall only be disclosed provided that all specific necessary measures required by the trade secret holder are taken to preserve the confidentiality of trade secrets, in particular with respect to the 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.**

#### **Justification:**

The provisions of Article 3 do not provide any protection regarding trade secrets, contrary to the provisions applicable to the user in Article 4 and to third party data recipients in Article 6. The provisions of Article 3 may provide a user with the means to bypass the protection afforded to trade secrets holder.

#### **Article 4, para. 3**

*Text proposed by the Commission*

*Amendment*

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 the 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.

3. Trade secrets shall only be disclosed provided that all specific necessary measures **required by the trade secret holder** are taken to preserve the confidentiality of trade secrets in particular with respect to the third parties. The data holder and the user can agree measures to preserve the

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | confidentiality of the shared data, in particular in relation to third parties. |
| <p><b>Justification:</b></p> <p>The proposal does not provide sufficient protection for trade secrets. It does not provide any definition of the “specific necessary measures” expected to be agreed between the data holder and users or third parties, nor does it provide any indication as to how compliance to the will be monitored and enforced.</p> <p>No indication is provided as to who will be expected to determine whether the disclosure of trade secrets is strictly necessary to fulfil such purpose agreed between the user and the third party. Should the user or the third party, or in fact any other party than the trade secrets holder, be deemed competent to make this determination, it would represent a major threat to the protection of trade secrets afforded by the Trade Secrets Directive.</p> |                                                                                 |

| <b>Article 4, para. 3</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <i>Text proposed by the Commission</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <i>Amendment</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 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 <del>agreed between the data holder and the third party</del> 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.                                                                                                                                                                                                                                                                        | 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, <b>that this disclosure has been approved by the trade secret holder, and that</b> all specific necessary measures <b>required by the trade secret holder</b> 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. |
| <p><b>Justification:</b></p> <p>The proposal does not provide sufficient protection for trade secrets. It does not provide any definition of the “specific necessary measures” expected to be agreed between the data holder and users or third parties, nor does it provide any indication as to how compliance to the will be monitored and enforced.</p> <p>No indication is provided as to who will be expected to determine whether the disclosure of trade secrets is strictly necessary to fulfil such purpose agreed between the user and the third party. Should the user or the third party, or in fact any other party than the trade secrets holder, be deemed competent to make this determination, it would represent a major threat to the protection of trade secrets afforded by the Trade Secrets Directive.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

## Protection of the data holder

| <b>Article 4, para. 4</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                   |
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| <i>Text proposed by the Commission</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <i>Amendment</i>                                                                                                                                                                                                                                                  |
| 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 4. The user shall not use the data obtained pursuant to a request referred to in <b>Article 3(1) and</b> paragraph 1 to develop a product <b>or a related service</b> that competes with the product <b>or the related service</b> from which the data originate. |
| <p><b>Justification:</b></p> <p>The provisions of Article 3 may provide a user with the means to bypass the data holder, by passing-on data obtained pursuant to Article 3 to third parties.</p> <p>Furthermore, while the proposal provides that the data obtained shall not be used to develop a competing product, it fails to extend it to related services. A user would therefore be able to use the data obtained from the product or related service to develop a competing related service, such as the operating software or any other software incorporated or interconnected with the product or its components.</p> |                                                                                                                                                                                                                                                                   |

| <b>Article 4, para. 6</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <i>Text proposed by the Commission</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <i>Amendment</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 6. The data holder shall only use any non-personal data generated by the use of a product or related service on the basis of a contractual agreement <del>with the user</del> . The data holder shall not use such data generated by the use of the product or related service to derive insights about the economic situation, assets and production methods of or the use by the user that could undermine the commercial position of the user in the markets in which the user is active.      | 6. The data holder <b>and the user</b> shall only use any non-personal data generated by the use of a product or related service on the basis of a contractual agreement. The data holder shall not use such data generated by the use of the product or related service to derive insights about the economic situation, assets and production methods of or the use by the user that could undermine the commercial position of the user in the markets in which the user is active. |
| <b><u>Justification:</u></b><br>The provisions of Article 3 may provide a user with the means to bypass the data holder, by passing-on data obtained pursuant to Article 3 directly to third parties. This would nullify all protections afforded to the data holder and trade secrets holder under article 5. The protection of confidential business data and trade secrets is paramount to a well-functioning internal market. Therefore, the Data Act should not compromise their protection. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

| <b>Article 6, para. 2(c)</b>                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                   |
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| <i>Text proposed by the Commission</i>                                                                                                                                                                                                                                                                                                                                                                                                             | <i>Amendment</i>                                                                                                                                                                                                                                                                  |
| 2. The third party shall not:(c) 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.                                                                                                                                                                                                                                  | 2. The third party shall not:<br>(c) use the data it receives to develop a product <b>or the related service</b> that competes with the <b>product or the related service</b> from which the accessed data originate or share the data with another third party for that purpose. |
| <b><u>Justification:</u></b><br>While the proposal provides that the data obtained shall not be used to develop a competing product, it fails to extend it to related services. A third party would therefore be able to use the data obtained from the product or related service to develop a competing related service, such as the operating software or any other software incorporated or interconnected with the product or its components. |                                                                                                                                                                                                                                                                                   |

### III. BUSINESS TO GOVERNEMENT DATA SHARING

#### Exceptional need for public sector bodies

| <b>Article 2, para. (10)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                        |
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| <i>Text proposed by the Commission</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <i>Amendment</i>                                                                                                                                                                                                                                                       |
| (10) ‘public emergency’ means an exceptional situation negatively affecting the population of the Union, <del>a Member State or part of it</del> , with a risk of serious and lasting repercussions on living conditions <del>or</del> economic stability, <del>or</del> substantial degradation of economic assets in the Union <del>or the relevant Member State(s)</del> ;                                                                                                                                                     | (10) ‘public emergency’ means an exceptional situation negatively affecting the population of the Union with a risk of serious and lasting repercussions on living conditions, economic stability, <b>and</b> substantial degradation of economic assets in the Union; |
| <b><u>Justification:</u></b><br>The provisions of Article 15 should target public emergencies that would have severe and durable repercussions on the EU and its citizens. Yet, the definition of ‘public emergency’ provided under Article 2(10) provides for situations affecting an individual member state, or part of it, and provides for a set of alternative conditions. This definition should be amended so that it targets exclusively situations affecting the Union at large and provides for cumulative conditions. |                                                                                                                                                                                                                                                                        |

These provisions are disproportionate to the objective served and are counterproductive to the Commission's objective of encouraging data sharing and fostering the EU data economy

#### Article 15, para (c)

*Text proposed by the Commission*

*Amendment*

~~(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~~  
~~(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~~  
~~(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.~~

*Deleted*

#### **Justification:**

The provisions of Article 15(c) require data holders to provide data upon request to public sector bodies, not in case of exceptional needs, but rather so that they can carry out their data-to-day duties under the law. This would provide a blank check for public sector bodies to request access to privately held data, at cost (Article 20(2)), whenever it is less burdensome or costly for them than to acquire this data at market rates, or by relying on existing obligations under EU or national law (Article 15(c)(1)). This would be the case even where this data is covered by trade secrets (Article 19(2)).

These provisions are disproportionate to the objective served and are counterproductive to the Commission's objective of encouraging data sharing and fostering the EU data economy.

#### Article 19, para. 2

*Text proposed by the Commission*

*Amendment*

2. Disclosure of trade secrets or alleged trade secrets to a public sector body or to a Union institution, agency or body shall only be required to the extent that it is strictly necessary to achieve the purpose of the request. ~~In such a case, the public sector body, or the Union institution, agency or body shall take appropriate measures to preserve the confidentiality of those trade secrets.~~

2. Disclosure of trade secrets or alleged trade secrets to a public sector body or to a Union institution, agency or body shall only be required to the extent that it is strictly necessary to achieve the purpose of the request, **provided that all specific necessary measures required by the trade secret holder are taken to preserve the confidentiality of trade secrets, in particular with respect to the third parties. The data holder and the public sector body, or the Union institution, agency or body can agree measures to preserve the confidentiality of the shared data, in particular in relation to third parties.**

#### **Justification:**

Data holders have an interest in ensuring that the protection and confidentiality of the data they hold. Therefore, it must be ensured that the data are protected against access by unauthorised third parties or cyber-attacks. It is therefore essential to ensure that appropriate technical and organizational measures (TOMs) are adopted by public sector bodies to ensure the confidentiality and integrity of the data shared by private entities.



In any case, trade secrets should only be disclosed where the data holder agrees to it, and where all specific measures agreed between the data holder and the public sector body are taken by the latter to preserve the confidentiality of the trade secrets.

#### **Article 27, para 3**

*Text proposed by the Commission*

*Amendment*

~~3. In the absence of such an international agreement, where a provider of data processing services is the addressee of a decision of a court or a tribunal or a decision of an administrative authority of a third country to transfer from or give access to non-personal data within the scope of this Regulation held in the Union and compliance with such a decision would risk putting the addressee in conflict with Union law or with the national law of the relevant Member State, transfer to or access to such data by that third country authority shall take place only:~~

*Deleted*

- ~~(a) where the third country system requires the reasons and proportionality of the decision or judgement to be set out, and it requires such decision or judgement, as the case may be, to be specific in character, for instance by establishing a sufficient link to certain suspected persons, or infringements;~~
- ~~(b) the reasoned objection of the addressee is subject to a review by a competent court or tribunal in the third country; and~~
- ~~(c) the competent court or tribunal issuing the decision or judgment or reviewing the decision of an administrative authority is empowered under the law of that country to take duly into account the relevant legal interests of the provider of the data protect by Union law or national law of the relevant Member State.~~

~~The addressee of the decision may ask the opinion of the relevant competent bodies or authorities, pursuant to this Regulation, in order to determine whether these conditions are met, notably when it considers that the decision may relate to commercially sensitive data, or may impinge on national security or defence interests of the Union or its Member States.~~

#### **Justification:**

This paragraph contradicts paragraph 2 by allowing data sharing with a third country where no international agreement exists between the third country and the EU or one of its Member States. The assessment process provided under this paragraph is unworkable, as a private entity cannot reasonably be expected to carry out what effectively amounts to a judicial review of a judgment or decision, and an assessment of the procedural law and legal system of a third country, every time it is faced with a data access request. The legal burden imposed on such an entity, especially where such an entity would be a micro, small or medium enterprise, is untenable.

#### **Article 21, para. 4**

*Text proposed by the Commission*

*Amendment*

|                                                                                                                                                                                                          |                                                                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4. Where a public sector body or a Union institution or body <del>transmits or makes</del> data available under paragraph 1, it shall <del>notify</del> the data holder from whom the data was received. | 4. Where a public sector body or a Union institution or body <b>intends to transmit</b> or <b>make</b> data available under paragraph 1, it shall <b>first inform</b> the data holder from whom the data was received. |
| <b>Justification:</b>                                                                                                                                                                                    |                                                                                                                                                                                                                        |

| <b>Article 21, para. 4</b>                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Text proposed by the Commission</i>                                                                                                                                                                                                                                                                                                                                                                                       | <i>Amendment</i>                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 4. Where a public sector body or a Union institution or body <del>transmits or makes</del> data available under paragraph 1, it shall <del>notify</del> the data holder from whom the data was received.                                                                                                                                                                                                                     | 4. Where a public sector body or a Union institution or body <b>intends to transmit</b> or <b>make</b> data available under paragraph 1, it shall <b>first inform</b> the data holder from whom the data was received <b>and provide all necessary information regarding the identity of the data recipient and the activities that will be carried out by the data recipient based on the data received pursuant to paragraph 1.</b> |
| <b>Justification:</b><br>The guarantees regarding the confidentiality of the data and trade secrets are provided under this provision, which fall short of offering the legal protection and certainty that private stakeholders that share data to serve the public interest should be afforded. Data shared with a public sector body under Article 14 should not be passed-on without prior agreement of the data holder. |                                                                                                                                                                                                                                                                                                                                                                                                                                       |

| <b>Article 21, para. 5 NEW</b>                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <i>Text proposed by the Commission</i>                                                                                                                                                                                                                                                                                                                               | <i>Amendment</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|                                                                                                                                                                                                                                                                                                                                                                      | <b>5. Disclosure of trade secrets or alleged trade secrets to individuals or organisations receiving the data pursuant to paragraph 1 shall only be required to the extent that it is strictly necessary to achieve the purpose of the request, provided that all specific necessary measures required by the trade secret holder are taken to preserve the confidentiality of trade secrets, in particular with respect to the third parties. The data holder and individuals or organisations receiving the data pursuant to paragraph 1 can agree measures to preserve the confidentiality of the shared data, in particular in relation to third parties.</b> |
| <b>Justification:</b><br>Additional protection should be afforded to trade secrets shared by the data holder. Trade secrets should only be passed on with the agreement of the data holder, and where all specific measures agreed between the data holder and the public sector body are taken by the third party to preserve the confidentiality of trade secrets. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

## IV. SUI GENERIS RIGHT UNDER THE DATABASE DIRECTIVE

| <b>Article 35</b>                                                                                       |                                                                                                         |
|---------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| <i>Text proposed by the Commission</i>                                                                  | <i>Amendment</i>                                                                                        |
| In order not to hinder the exercise of the right of the users to access and use such data in accordance | In order not to hinder the exercise of the right of the users to access and use such data in accordance |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                               |
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| 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 in Article 7 of Directive 96/9/EC does not apply to <del>databases containing data obtained from or generated by the use of a product or a related service.</del>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 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 <b>subject of the</b> sui generis right provided in Article 7 of Directive 96/9/EC <b>shall not invoke this sui generis right to deny to the user access to the</b> data generated by its use of a product or a related service. |
| <p><b>Justification:</b></p> <p>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.</p> |                                                                                                                                                                                                                                                                                                                                                                               |

## V. ENTRY INTO FORCE AND APPLICATION

| <b>Article 42</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Text proposed by the Commission</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <i>Amendment</i>                                                                                                                                                                                                                                                                                                                                   |
| <p>This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p> <p>It shall apply from [<del>12</del> months after the date of entry into force of this Regulation].</p>                                                                                                                                                                                                                                               | <p>This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p> <p>It shall apply from [<b>36</b> months after the date of entry into force of this Regulation], <b>to products placed on the market after the date of application of this Regulation.</b></p> |
| <p><b>Justification:</b></p> <p>The requirements imposed in this Regulation are extensive and far-reaching, even should the recommendations proposed in this document be adopted, which will require businesses to implement complex and costly processes to ensure compliance. Additional lead-time should be provided to companies to ensure compliance with this Regulation.</p> <p>This lead time would be in line with similar EU legislation creating new and extensive legislation (e.g. GDPR).</p> |                                                                                                                                                                                                                                                                                                                                                    |