CALL FOR APPLICATIONS FOR THE SELECTION OF MEMBERS OF THE EXPERT GROUP ON B2B DATA SHARING AND CLOUD COMPUTING CONTRACTS

NEW DEADLINE: 30 APRIL 2022

The Commission's Directorate-General for Justice and Consumers ('DG JUST') and Directorate-General for Communications Networks, Content and Technology ('DG CNECT') extend the call for applications and welcome further applications until 30 April 2022 (included).

The applicants who already sent their applications between 23 February 2022 and 23 March 2022 do not need to re-apply under this extended call.

This call is extended in order to collect more applications with the required expertise and reach a more balanced representation of interests

New deadline: 30 April 2022

1. Background

The Commission's Directorate-General for Justice and Consumers ('DG JUST') and Directorate-General for Communications Networks, Content and Technology ('DG CNECT') have set up an **expert group on Business-to-Business (B2B) data sharing and cloud computing contracts** ('the expert group').

The expert group shall be managed by DG JUST and DG CNECT, hereinafter referred to as 'Commission services'.

The Commission is **calling for applications** to select the **members** of the expert group.

1.1. General Context

B2B Data Sharing

The digital transition is one of the key objectives of the European Commission. To support companies, especially Small and Medium Enterprises (SMEs), to have an easier access to data and give them the opportunity to build on it to develop their full potential, the Data Strategy aims to ensure fair and clear rules for access and use of data, in full

respect of the General Data Protection Regulation (GDPR)¹, in a single European data space².

Some sector-specific initiatives acknowledging the importance of balanced contracts to facilitate data sharing, in particular for the SMEs, have already developed principles and recommendations for B2B data sharing in their specific sector. For example, in the technological sector, the Legal Guide on Industrial Data³ includes not only key principles and recommendations for B2B data sharing, but also a section with actual model contractual terms on data use that could apply to data sharing agreements in the manufacturing sector. Another example is the Code of Conduct on Agricultural Data Sharing⁴, which includes principles for balanced data sharing contracts, but not actual model contract terms.

The European Commission has already taken steps to facilitate access to and use of data in B2B domain and developed guidelines for data sharing between businesses⁵. The Support Centre for data sharing has compiled existing contractual clauses used in data sharing agreements in some sectors (including smart energy, mobility, agriculture, and financial services) and proposed a set of model contract terms⁶.

Despite these specific measures, most economic sectors lack any practice or guidance for data sharing, while for data sharing across sectors such guidance is even rarer and little expertise and standardised legal practice exist. Smaller companies may find it difficult to engage in data sharing because they lack resources or expertise to develop or review complex contracts.

The Proposal for a Regulation on European Data Governance⁷ creates a horizontal governance framework to harmonise some data sharing practices. It also addresses sharing of data among businesses against remuneration in any form. Among the key features of the common European data spaces is a data governance mechanism comprising a set of legislative, administrative and contractual rules determining the rights to process, access, use and share data in a trustful, fair and transparent manner. In addition, data sharing shall be based on fair, transparent, reasonable, proportionate and/or non-discriminatory terms⁸.

The Data Strategy envisages to promote B2B data sharing based on contracts, which is taken forward in the Data Act⁹. The Data Act provides for several measures to support data sharing: non-binding model contractual terms for voluntary data sharing, a contractual unfairness test for business-to-business (B2B) data-sharing contracts and

¹ Regulation (EU) 216/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119/1, 4.5.2016.

² Data Strategy, p. 5.

³ Orgalim legal guide on industrial data | Orgalim

⁴ EU Code 2018.pdf (fefac.eu)

⁵ SWD(2018) 125 final.

⁶ Report on collected model contract terms | Support Centre for Data Sharing (eudatasharing.eu)

⁷ COM(2020) 767 final.

⁸ SWD(2022) 45 final

⁹ COM(2022) 68 final

general access rules for horizontal data access rights created in the Data Act and data access rights created in sectoral legislations.

The public consultation on the Data Act also showed that more than half of the stakeholders, including some large companies, were in favour of voluntary model contractual terms while underlying the importance of the stakeholders' involvement in their development¹⁰.

Considering the above and to facilitate data sharing, notably, for start-ups and SMEs, this expert group shall support the development of balanced model contract terms that the companies can use and adapt according to their needs. As these model contract terms will be voluntary, the contractual parties will decide whether and to what extent to integrate them into their contracts.

Therefore, the members of this expert group have the chance to directly contribute to elaborating a practical tool which, if taken over by the business practice, could shape how data is shared between businesses in Europe and boost fair contractual conditions. Moreover, the successful use of such model contact terms by businesses could reduce costs for concluding the contract and its performance and could encourage smaller companies, to explore more confidently the opportunities and reap the benefits of the data economy.

Cloud computing

Cloud computing is an essential infrastructure needed for running an innovative digital economy and the cloud infrastructure is among the strategic digital capacities and capabilities towards which recovery instalments will be channelled¹¹. Building a European cloud as part of NextGenerationEU is an essential step to successfully achieve Europe's digital decade.¹²

Businesses need access to the cloud, especially if their business models depend on artificial intelligence or other data-intensive technologies. However, cloud uptake in Europe is not high and could be improved, especially among start-ups and SMEs. The latest data show integration of the cloud by enterprises is 42% ¹³. One of the factors that discourages cloud adoption is the economic detriment that SMEs suffer from unfair and unbalanced contract terms ¹⁴.

The Data Strategy underlines the importance of competitive, secure and fair European cloud services. It acknowledges that contract-related problems such as unfair contract

¹² State of the Union Address, p. 13.

European Commission (2021) Public consultation on the Data Act: https://digital-strategy.ec.europa.eu/en/public-consultation-data-act-summary-report

¹¹ COM(2020) 456 final, p. 8.

¹³EUROSTAT (December 2021), see here: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Cloud_computing_-_statistics_on_the_use_by_enterprises

https://ec.europa.eu/info/publications/study-economic-detriment-small-and-medium-sized-enterprises-arising-unfair-and-unbalanced-cloud-computing-contracts_en

terms cause economic detriment to micro-enterprises and SMEs.¹⁵ In this regard, the strategy foresees a 'Cloud Rulebook' – a coherent framework around the different applicable rules for cloud services (Q2 2022) – and the set-up of a European Cloud Services Marketplace (Q4 2022), where cloud service providers can offer their services as long as they comply with the requirements compiled in the EU Cloud Rulebook.

Fairness in cloud computing contracts can also be promoted by standard contractual clauses¹⁶ which could be included in the 'Cloud Rulebook', therefore becoming an entry requirement for the Cloud Services Marketplace(s).

Fair contractual terms guarantee that no unbalanced conditions will be imposed on any party so they are essential to stimulate cloud uptake by raising trust. They can improve the negotiating position of cloud users during contractual negotiations with hyperscale providers and facilitate compliance with legislation (for instance, related to cyber security). Such clauses can be a practical tool to implement sector-specific requirements in cloud contracts. Work on sector-specific standard contractual clauses for cloud contracts has already started in the European Commission. In addition to this, the development of a set of generally applicable standard contractual clauses would be necessary.

Every discussion about data¹⁷ must take into account the heterogeneity of data and the different legal regimes that apply besides contract law, e.g. competition law and the GDPR. The compliance with the applicable legal framework and where personal data are concerned with the GDPR must be respected.

1.2. TASKS

The expert group shall assist the Commission by:

- 1. analysing existing B2B data sharing models and practices, identifying problems and commonalities and recommending to the Commission a general horizontal set of balanced model contract terms for B2B data sharing that could be applicable for sharing data across sectors, including for data generated by machines and the use of products and related services;
- 2. analysing data sharing practices in some sectors where there is a need for model contract terms and recommending to the Commission model contract terms tailored for these sectors;
- 3. analysing existing practices for cloud contract terms and recommending to the Commission a general set of standard contractual clauses for cloud contracts.
- 4. issuing recommendations/suggestions to the Commission on other subjects related to fair contractual relations in B2B data sharing as follow-up to the Data Act and Cloud Marketplace, following a proposal by the Commission services.

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¹⁵ Data Stategy, p. 9.

¹⁶ Standard contractual clauses are to be taken as such, hence their suitability for the cloud context, whereas the model contract terms could be customised for different sectoral needs, hence their suitability for the B2B data sharing. Furthermore, the term "standard contractual clauses" is consistent with the terminology already used e.g. for financial services, data protection, etc.

¹⁷ The discussion was launched by the Communication Building a European Data Economy" COM (2017) 9 final and the accompanying SWD on the free flow of data and emerging issues of the European Data Economy SWD(2017) 2 final.

<u>Model Contract Terms for B2B data sharing and Standard Contractual Clauses for cloud contracts</u>

To help businesses, especially SMEs, the expert group shall develop a set of balanced contract terms which businesses can use as a model for their B2B data sharing contracts. Existing market practice for data sharing should be used as a starting point for the discussion, also taking into account the work of the Support Centre for Data Sharing and the rules on B2B data sharing contracts in the Data Act proposal. Inspired by legal and economic research as well as practical experience, the expert group should propose balanced model contract terms which can be used to address horizontal aspects of data sharing contracts. In addition and where necessary, sector-specific model contract terms, taking into account sector-specific needs, could be considered. For the development of the sector-specific model contract terms, if needed, the expert group shall take into account existing practices and guidance for the respective sector.

Model contract terms for B2B data sharing involving the providers of core platform services designated as gatekeepers shall be outside the scope of the expert group, to the extent they are already covered by the proposal on the Digital Markets Act¹⁹.

In the process of drafting the model contract terms, the expert group shall consider how best to reflect the stakeholders needs and how to align them with the business practices/recommendations in the specifed sector. To ensure that the stakeholders' views and needs are reflected in the model contract terms, the expert group shall have regular exhanges and discussions with relevant stakeholders. For this purpose, the expert group shall be in contact with Commission stakeholders' groups where topics relevant for its work and deliverables would be discussed; regular mutual exchanges would be organised.

While drafting the model contract terms for B2B data sharing, the expert group shall take into account and reflect the provisions of the Data Act on horizontal general rules for access to data. The Data Act would make operational the principles on which data sharing should be based: fair, transparent, reasonable, proportionate and/or non-discriminatory terms as modalities under which sector-specific mandatory data access can be exercised. These principles are laid down in the Data Strategy, which has drawn from the existing EU legislation in different areas.

In their work, the experts should also take into account that in a common European data space the data is made available on a voluntary basis and can be reused for free or against remuneration and that the data sharing and reuse should be based on fair, transparent, reasonable, proportionate and/or non-discriminatory terms.

The expert group shall develop standard contractual clauses for cloud computing contracts which could be used by the Commission to define fair and balanced conditions with regard to cloud contracts. These clauses could be included in the EU Cloud Rulebook and potentially become an entry requirement for the future EU online cloud

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¹⁸ The Support Centre for Data Sharing focuses on researching, documenting, and reporting about the data sharing practices, EU legal frameworks, and access and distribution technologies that imply novel models, and legal or technological challenges. For more information see https://eudatasharing.eu.

¹⁹ EUR-Lex - 52020PC0842 - EN - EUR-Lex (europa.eu)

marketplace. It is essential that the standard contractual clauses cover the contractual aspects that cloud user (associations) flag as most problematic. Examples of such aspects are: (i) auditability of cloud providers and the right to access the provider's infrastructures for this purpose, (ii) unilateral change of terms and conditions, (iii) suboutsourcing/chain outsourcing, (iv) exit strategies and portability, (v) security, (vi) termination and (vii) business continuity.

The European Commission is currently exploring whether a legislative intervention to facilitate the switching of cloud providers is necessary. In this light, the expert group may also be asked to focus its work on standard contractual clauses on exit strategies, portability and termination in a separate set of clauses.

For the development of standard contractual clauses for the cloud computing contracts, the expert group shall take into account existing models/practices as well as the work of other fora in this area; for example, the standard contractual clauses for outsourcing cloud services in the financial sector.

The expert group shall look into relevant studies such as the DG JUST study on model contract terms and fairness control in data sharing and cloud contracts and on data access rights²⁰. The model contract terms /standard contractual clauses must be in full compliance with the GDPR as far as personal data are involved.

The Commission services will organise workshops, webinars or will use other appropriate consultation tools to discuss preliminary findings of the expert group with the relevant stakeholders. The expert group shall take the results of these consultations into account for its further work.

The expert group's recommendations to the Commission for standard contractual clauses for cloud contracts shall be finalized at the latest 1 year after its first meeting.

The expert group's recommendations to the Commission for general and, if needed, sectoral model contract terms for B2B data sharing shall be finalized at the latest 1 year after its first meeting based on the priorities to be agreed with the relevant Commission services (DG JUST and DG CNECT).

Following its work, the expert group, within the time of its existence, may be asked to assist the Commission with expert advice in the discussion on and possible implementation of its recommendations.

2. Features of the group

2.1. Composition

The group shall consist of up to 20 members.

Members shall be individuals appointed in a personal capacity, who shall act independently and in the public interest.

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²⁰ JUST/2020/RCON/FW/CIVI/0098

2.2. APPOINTMENT

Members shall be jointly appointed by the Director-General of DG JUST and Director-General of DG CNECT from applicants complying with the requirements referred to in chapter 3 of this call.

Members shall be appointed for two years. They shall remain in office until replaced. Their term of office may be renewed.

In order to ensure continuity and the smooth functioning of the expert group, the Commission services shall establish a reserve list of suitable candidates that may be used to appoint permanent replacements. The Commission services shall ask applicants for their consent before including their names on the reserve list.

Members who are no longer capable of contributing effectively to the group's deliberations, who in the opinion of the Commission services do not comply with the conditions set out in Article 339 of the Treaty on the Functioning of the European Union or who resign, shall no longer be invited to participate in any meetings of the group and may be replaced for the remainder of their term of office.

2.3 RULES OF ENGAGEMENT AND OPERATION OF THE GROUP

The expert group shall be co-chaired by representatives of DG JUST and DG CNECT.

The group shall act at the request of DG JUST and DG CNECT, in compliance with the Commission's horizontal rules on expert groups²¹ ('the horizontal rules').

In principle, the expert group should meet for one day every month during the first year of its mandate. Afterwards, the number and frequency of the meetings are expected to decrease. Meetings will be organised as virtual online meetings. Depending on the sanitary situation, some meetings could be organised as physical meetings on Commission premises. The online meetings can be organised in two half days instead of one full day. DG JUST shall provide secretarial services.

Members should be prepared to attend meetings systematically, to contribute actively to discussions in the expert group, to be involved in preparatory work ahead of meetings, to examine and provide comments on documents under discussion, and to act, as appropriate, as 'rapporteurs' wherever necessary. The rapporteurs will provide preparatory papers to facilitate discussions at meetings and draft conclusions from meetings.

As a general rule, working documents will be drafted in English and meetings will also be conducted in English.

After finalising the work on the model contract terms for B2B data sharing and the standard contractual clauses for cloud contractsfor the remainder of their mandate, the members of the expert group might still be required to provide input to other aspects

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²¹ C(2016) 3301.

concerning fair contractual relations in B2B data sharing and cloud contracts as might arise from the follow-up to the Data Act and Cloud Marketplace respectively.

After finalising the work on the model contract terms for B2B data sharing and the standard contractual clauses for cloud contracts, the members of the expert group will still be expected to occasionally participate in discussions, workshops, meetings or conferences with interested stakeholders, in particular industry representatives, in order to present and explain their recommendations, as part of the effort to promote uptake.

In principle, the expert group shall adopt opinions, recommendations or reports. When adopting these documents, the group shall do so by consensus. In the event of a vote, the outcome of the vote shall be decided by simple majority of the members. Members who have voted against or abstained shall have the right to have a document summarising the reasons for their position annexed to the opinions, recommendations or reports.

In agreement with DG JUST and DG CNECT, the expert group may, by simple majority of its members, decide that deliberations shall be public.

Participants in the activities of the expert group and its sub-groups shall not be remunerated for the services they offer. In case of physical meetings travel and sub-sistence expenses incurred by participants in the activities of the expert group and sub-groups shall be reimbursed by the Commission. Reimbursement shall be made in accordance with the provisions in force within the Commission and within the limits of the available appropriations allocated to the Commission departments under the annual procedure for the allocation of resources.

The members of the expert group, as well as invited experts and observers, are subject to the obligation of professional secrecy, which by virtue of the Treaties and the rules implementing them applies to all members of the institutions and their staff, as well as to the Commission's rules on security regarding the protection of Union classified information, laid down in Commission Decisions (EU, Euratom) 2015/443²² and 2015/444²³. Should they fail to respect these obligations, the Commission may take all appropriate measures.

On a proposal by, and in agreement with Commission services, the expert group shall adopt its rules of procedure on the basis of the standard rules of procedure for expert groups.

The Commission services, the expert group or its sub-groups may invite experts with specific expertise in a subject matter to take part in the work of the Group or sub-groups on an ad hoc basis.

If it is necessary for the work of the the expert group, DG JUST and DG CNECT may invite individuals, organisations and public entities other than Member States' authorities as observers. Individuals, organisations and public entities other than Member States' authorities may be granted an observer status, in compliance with the horizontal rules, by

Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

direct invitation. Organisations appointed as observers shall nominate their representatives.

Observers and their representatives may be permitted by the Chairs to take part in the discussions of the group and sub-groups, and provide expertise. However, they shall not have voting rights and shall not participate in the formulation of recommendations or advice of the group and sub-groups.

The expert group may set up sub-groups for the purpose of examining specific questions on the basis of terms of reference agreed with DG JUST and DG CNECT. Sub-groups shall operate in compliance with the horizontal rules and shall report to the main group. They shall be dissolved as soon as their mandate is fulfilled. The members of sub-groups shall be selected from the members of the expert group. The members of sub-groups that are not members of the main group shall be selected via a public call for applications, in compliance with the horizontal rules.

2.4. TRANSPARENCY

The group and its sub-groups shall be registered in the Register of Commission expert groups and other similar entities ('the Register of expert groups')²⁴.

As concerns the expert group composition, the Commission services shall publish the following data on the Register of expert groups:

- the name of the members, individuals appointed in a personal capacity;
- the name of observers.

The Commission services shall make available all relevant documents, including the agendas, the minutes and the participants' submissions, on the Register of expert groups. In particular, the Commission services shall ensure publication of the agenda and other relevant background documents in due time ahead of the meeting, followed by timely publication of minutes. Exceptions to publication shall only be foreseen where it is deemed that disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) N° 1049/2001²⁵.

Personal data shall be collected, processed and published in accordance with Regulation (EU) No 2018/1725.

3. Application procedure

Interested individuals are invited to submit their application to the European Commission.

Applications must be completed in one of the official languages of the European Union.

http://ec.europa.eu/transparency/regexpert/index.cfm

These exceptions are intended to protect public security, military affairs, international relations, financial, monetary or economic policy, privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections/investigations/audits and the institution's decision-making process.

However, applications in English would facilitate the evaluation procedure. If another language is used, it would be helpful to include a summary of the application in English.

An application will be deemed admissible only if it is sent by the deadline and includes the documents referred to below. All documents submitted by applicants should be duly filled in, legible, signed and numbered sequentially.

Supporting documents

Each application shall include the following documents:

- a cover letter explaining the applicant's motivation for answering this call and stating what contribution the applicant could make to the group. The letter could, for example, outline the applicant's expertise on contracts for B2B data sharing or cloud contracts or the applicant's practical experience in this field, for instance in drafting such contracts. Based on their experience/expertise, the applicants are invited to mention their ideas and suggestions for the recommendations to the Commission to be developed by the expert group;
- a list of publications or letters of recommendations from companies/clients regarding the applicants' work, which are relevant for the scope of the expert group's work;
- a classification form duly filled in specifying the member category for which the application is made (Annex I).
- a selection criteria form duly filled in, documenting how the applicant fulfills the selection criteria listed in chapter 4 of this call (Annex II).
- a *curriculum vitae* (CV), preferably not exceeding three pages. All CVs shall be submitted in the European format (https://europass.cedefop.europa.eu/en/documents/curriculum-vitae/templates-instructions).

Individuals applying to be appointed as members of the expert group in a personal capacity must disclose any circumstances that could give rise to a conflict of interest by submitting a declaration of interests ('DOI') form on the basis of the standard DOI form for expert groups attached to this call (Annex III). Submission of a duly completed DOI form is necessary in order to be eligible to be appointed in a personal capacity. Individuals who answer in the affirmative questions included in the DOI form are required to supply further **details** by filling in the section 'Description'. The Commission services shall perform the conflict of interest assessment in compliance with the horizontal rules²⁶.

Additional supporting documents (e.g. publications) may be requested at a later stage.

Deadline for applications

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²⁶ Article 11 of the horizontal rules.

The duly signed applications must be sent by 06.04.2022 at the latest²⁷. The date of sending will be established as follows²⁸:

- Where applications are sent by e-mail to the following e-mail address: <u>JUST-EXPERT-GROUP-DATA-SHARING-JUST-A2@ec.europa.eu</u>, the date of the e-mail will be the date of sending.
- Where applications are sent by post to the following address: European Commission,
 Directorate-General for Justice and Consumers, Unit A2 Contract Law, secretariat Rue Montoyer 59, 01/075, B-1049 Brussels, the postmark will be considered the date of sending.

4. Selection criteria

The Commission services will take the following criteria into account when assessing applications:

- proven and relevant expertise and contractual practice (for example by drafting, negotiating, advising or litigating contracts), possibly at European and/or international level, in legal and/or economic areas related to data sharing and/or cloud computing;
- absence of circumstances that could give rise to a conflict of interest;
- good knowledge of the English language allowing active participation in the discussions and written work of the expert group.

5. Selection procedure

The selection procedure shall consist of an assessment of the applications performed by DG JUST and DG CNECT against the selection criteria listed in this call, followed by the establishment of a list of the most suitable applicants, and concluded by the appointment of the members of the group.

When defining the composition of the group, the Commission services shall aim at ensuring, as far as possible, a high level of expertise, as well as a balanced representation of relevant know how and areas of interest, while taking into account the specific tasks of the group, the type of expertise and practice required, as well as the relevance of the applications received.

DG JUST and DG CNECT shall also seek a geographical and gender balance.

For any further information please telephone: (32-2-2966110 or 32-2-2962386) or e-mail to:

ANNEXES:

Annex I: Classification form

²⁷ The horizontal rules provide for a minimum deadline of four weeks.

- Annex II: Selection criteria form
- Annex III: Standard declaration of interests²⁹
- Annex IV: Guidance for filling in the declaration of interests³⁰
- Annex V: Privacy statement

To be inserted as required. To be used <u>only</u> in relation to individuals applying to be appointed in a personal capacity. See updated version of the standard DOI form on https://myintracomm.ec.europa.eu/sg/expert/Pages/templates.aspx

30 Idem.

Annex I - Classification form³¹

To be filled in by all applicants

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	This application is made as:
	An individual applying to be appointed in a personal capacity (Type A member); if appointed I shall act independently and in the public interest.
	To be filled in by individuals applying to be appointed as Type A
	Please select one or more policy areas in which you operate:
	Agriculture Archaeology Architecture Audiovisual and media Audit Banking Biodiversity Civil protection Civil service Climate Competition Conservation Consumer affairs Culture Cultural heritage Cultural landscape Customs Development Disaster risk reduction Economy Education Employment and social affairs Energy Engineering (chemical) Engineering (infrastructure) Engineering (IT)
	Engineering (maritime) Engineering (space policy)
	Engineering (space research) Enlargement
	Environment
Ш	Equal opportunities

This form <u>must</u> be filled in, signed and returned with the application.

	External relations
	External trade
	Finance
	Fisheries and aquaculture
	Food safety
	Forestry
	Fundamental rights
	Humanitarian aid
	Industry
	Information society
	Innovation
	Insurance
	Labour
	Land management
	Law (civil)
	Law (corporate)
	Law (criminal)
	Law (taxation)
	Linguistics and terminology
	Livestock
	Medical profession
	Migration
	Natural resources
	Plant production
	Public affairs
	Public health
	Public relations
	Raw materials
	Research
	Science
	Science diplomacy
	Security
	Smart specialisation
	Social service
	Space and satellites (policy)
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	Sport Sport
	Statistics
	Sustainable development
	Tax
	Trade
	Training
	Transport
	Urban development
	Water
	Youth
	Other
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	For individuals applying to be appointed as Type A members

Title:
Surname:
First name:
Date:
Signature

Annex II: Selection criteria form³²

Applicants are requested to describe how they fulfil the selection criteria listed in this call.

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Proven and relevant expertise and contractual practice (for example by drafting, negotiating, advising or litigating contracts), possibly at European and/or international level, in legal and/or economic areas related to data sharing and/or cloud computing.			
Absence of circumstances that could give rise to a conflict of interest			
Good knowledge of the English language allowing active participation in the discussions and written work of the expert group.			
For individuals applying to be appointed as T	ype A members		
Title:			
Surname:			
First name:			
Nationality:			
Professional title:			
Date:			
Signature			
ANNE	ex III		
Standard declaration of interests (DOI) form			
members of expert groups or sul	11 7 9 11		

Legal basis:	:
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 $^{^{32}}$ This form <u>must</u> be filled in, signed and returned with the application.

Commission Decision C(2016)3301 establishing horizontal rules on the creation and operation of Commission expert groups, Articles 2(4) and 11.

Definitions:

"Conflict of interest" means any situation where an individual has an interest that may compromise or be reasonably perceived to compromise the individual's capacity to act independently and in the public interest when providing advice to the Commission in relation to the subject of the work performed by the expert group or sub-group in question.

"Immediate family member" means the individual's spouse, children and parents. "Spouse" includes a partner with whom the individual has a registered non marital regime. "Children" means the child(ren) the individual and the spouse have in common, the own child(ren) of the individual and the own child(ren) of the spouse.

"Legal entity" means any commercial business, industry association, consultancy, research institution or other enterprise whose funding is significantly derived from commercial sources. It also includes independent own commercial businesses, law offices, consultancies or similar.

"**Body**" means a governmental, international or non-profit organisation.

"Meeting" includes a series or cycle of meetings.

Please answer each of the questions below. If the answer to any of the questions is "yes", please provide details on relevant interests and circumstances, as appropriate.

If you do not do so, your DOI form will be considered incomplete and, therefore, your application to be appointed as a member of an expert group or sub-group in a personal capacity shall be rejected.

First name:	
Family name:	
Expert group/sub-group:	

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2b Participation in the work of a Scientific Advisory Body □ □ Activity Time period (from until or body Description					
2b	Participation in the	ne work of a Scientific	Advisory Body		
2a	Participation in a	decision-making proc	ess		
	Within the past 5 years, have you participated in the internal decision-making of a legal entity or other body with an interest in the field of activity of the expert group/sub-group in question or have you participated in the works of a Scientific Advisory Body with voting rights on the outputs of that entity?				no
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Acti	vity	Time period (from until month/year)	Name of entity or body	Descript	ion
1d	Legal representati	ion			
1c	Non-remunerated				
1b		uding services as an ac	lvisor		
1a	Employment				
	Within the past 5 other professional held any non-remuan interest in the f question?	$\begin{vmatrix} h \\ h \end{vmatrix}$	no		

		month/year)			
RES	EARCH SUPPO	RT			
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3a		port, including grain-monetary support	nts, rents, sponso	orships,	
Activ	vity	Time period (from until month/year)	Name of legal or body	entity Descrip	otion
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FINA	Do you have cut the field of ac- including holding than 10,000 EU	rrent investments in a le	oup/sub-group in q and which amounts	uestion, to more	ľ
FINA 4a	Do you have cut the field of ac- including holding than 10,000 EU	rrent investments in a le tivity of the expert gr ng of stocks and shares, R per legal entity or enti	oup/sub-group in q and which amounts	uestion, to more	r

INT	ELLECTUAL PROPERTY					
	Do you have any intellectual p by the outcome of the work of group in question?	_			yes	no
5a	Potent trademarks or conve	iahta				
	Patent, trademarks, or copyr	ignts				
5b	Others					
-						
inte	llectual property		Description			
		I				
PUB	ELIC STATEMENTS AND POS	SITIC	ONS			
	Within the past 5 years, have testimony in the field of active question, for a legal entity or legislative or judicial process position, paid or unpaid, we defended an opinion in the fiel group in question?	ity of othe ? Ha here	the expert group/sub- r body as part of a re we you held an office you represented into	group in gulatory, or other erests or	Yes	no
	1				1	ı
6a	For a legal entity or other legislative or judicial process		dy as part of a reg	gulatory,		
6b	Represented interests or defe	nded	an opinion			
	II				1	1

Activity		Time period (from until month/year)	Name of legal entity or body	Descriptio	n
7	7 INTERESTS OF IMMEDIATE FAMILY MEMBERS				no
7a	To your knowledge, are there any interests of your immediate family members which could be seen as undermining your independence when providing advice to the Commission in the field of activity of the expert group/sub-group in question?				
Inter	rests	Time period (from until month/year)	Name of legal entity or body	Descriptio	n
7b	If interests of your immediate family members are declared, it is your responsibility to inform them about the collection and publication of information on their interests included in the DOI and to provide them with the privacy statement attached to the guidance for filling in this DOI, and this at the latest when you file the DOI form with the Commission.				
8	OTHER RELEVANT INFORMATION yes no				no
8a	Are there any other elements that could be seen as undermining your independence when providing advice to the Commission in the field of activity of the expert group/sub-group in question?				

Description:

I hereby declare on my honour that I have read the guidance for completing this form.

I also declare on my honour that the information disclosed in this form is true and complete to the best of my knowledge.

Should there be any change to the above information, including as regards upcoming activities, I will promptly notify the competent Commission department and complete a new DOI form describing the changes in question.

I am informed that my personal data are stored, processed and published by the Commission in accordance with Regulation (EU) $2018/1725^{33}$ and Commission Decision C(2016) 3301^{34} .

I have been provided with the corresponding privacy statement which provides further information on how the Commission processes my personal data.

Date:	Signature:
	also also also also also

Your DOI form shall be made publicly available on the Register of Commission Expert Groups and Other Similar Entities, as long as you are appointed as member of the expert group or sub-group in a personal capacity. Technical measures will be taken to indicate to search engines that your DOI form should not appear in search results.

Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data

Commission Decision C(2016) 3301 establishing horizontal rules on the creation and operation of Commission expert groups.

Annex IV

Guidance for filling in the declaration of interests (DOI) form by individuals applying to be appointed as members of expert groups or sub-groups in a personal capacity

According to the Commission's horizontal rules on expert groups ('the horizontal rules'), Commission expert groups and other similar entities are consultative bodies³⁵, the role of which is to provide advice and expertise to the Commission and its departements in relation to a number of tasks³⁶. Individuals appointed as members of expert groups or sub-groups in a personal capacity are due to act independently and in the public interest³⁷.

In order to ensure the highest integrity of experts, you are requested to duly complete the DOI form. You are required to disclose any circumstances that could give rise to a conflict of interest, i.e. any situation where your interests may compromise or may reasonably be perceived to compromise your capacity to act independently and in the public interest in providing advice to the Commission, in relation to the subject of the work performed by the expert group or sub-group in question. In particular, you must disclose in this DOI form any relevant professional and financial interests.

You must also declare relevant interests of your immediate family members. If interests of your immediate family members are declared, it is your responsibility to inform them about the collection and publication of information on their interests included in this DOI form and to provide them with the privacy statement attached to this guidance, and this at the latest when you file the DOI form with the Commission.

Please submit the completed DOI form to the competent Commission department, together with your CV, as part of your application to become member of an expert group or sub-group in a personal capacity. If there is any change concerning the information provided in the form, including on upcoming activities, you must promptly inform the competent Commission departments by completing a new DOI form which describes the changes in question.

Please note that having a declared interest does not necessarily mean having a conflict of interest. Answering "Yes" to a question on this DOI form does not automatically disqualify you or limit your participation in an expert group or sub-group. The competent Commission departments will review your answers in accordance with the horizontal rules and determine whether a conflict of interest relevant to the subject at hand exists³⁸.

Where the competent Commission departments conclude that no conflict of interest exists, you are eligible to be appointed in a personal capacity. Where the competent Commission departments conclude that your interests may compromise or be reasonably perceived to compromise your capacity to act independently and in the public interest when providing advice to the Commission in relation to the subject of the work

³⁵ C(2016) 3301, Article 2.1.

³⁶ Idem, Article 3.

³⁷ Idem, Article 7.2. (a).

³⁸ Idem, Article 11.

performed by the expert group or sub-group in question, they shall take one of the following measures to deal with the conflict of interest detected, depending on the specific circumstances:

- You shall not be appointed in a personal capacity to the expert group or sub-group in question; in such case the competent Commission department shall inform you about the outcome of the conflict of interest assessment performed;
- You shall be appointed as member of the expert group or sub-group in a personal capacity with a number of specific restrictions: you may be excluded from certain meetings and/or activities carried out by the group, such as drafting opinions or recommendations; you may also be required to abstain from discussing certain agenda items and/or from any vote on those items;
- You shall be appointed as member of the expert group or sub-group representing a common interest shared by a number of stakeholders, after consultation of the stakeholders concerned.

Your DOI form shall be made publicly available on the Register of Commission Expert Groups and Other Similar Entities, as long as you are appointed as member of the expert group or sub-group in a personal capacity. Technical measures will be taken to indicate to search engines that your DOI form should not appear in search results.

If you decline to complete a DOI form, you are not eligible to be appointed as a member of the expert group or sub-group in question in a personal capacity.

Personal data shall bestored, processed and published by the Commission in accordance with Regulation (EU) 2018/1725³⁹ and Commission Decision C(2016) 3301⁴⁰.

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Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.

⁴⁰ Commission Decision C(2016) 3301 establishing horizontal rules on the creation and operation of Commission expert groups.

Annex V Privacy Statement



EUROPEAN COMMISSION

PROTECTION OF YOUR PERSONAL DATA

This privacy statement provides information about the processing and the protection of your personal data.

Processing operation: Selection of members of Commission expert groups and other similar entities⁴¹ and publication of personal data on the Register of Commission expert groups and other similar entities ("the Register of expert groups").

Data Controller:

- Secretariat-General, Unit F4 (for the processing operation "Providing a public register of Commission expert groups and other similar entities", DPR-EC-00656), and
- Directorate-General for Justice and Consumers, Directorate A, Unit A2, secretariat of the expert group (for the processing operation "Selection of members of Commission expert groups and other similar entities", DPR-EC-01066).

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- 3. On what legal ground(s) do we process your personal data?
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- 5. How long do we keep your personal data?
- 6. How do we protect and safeguard your personal data?

Provisions included in this privacy statement referring to expert groups equally apply to their subgroups.

- 7. Who has access to your personal data and to whom is it disclosed?
- 8. What are your rights and how can you exercise them?
- 9. Contact information
- 10. Where to find more detailed information?

1. Introduction

The European Commission (hereafter 'the Commission') is committed to protect your personal data and to respect your privacy. The Commission collects and further processes personal data pursuant to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.

This privacy statement explains the reasons for the processing of your personal data, the way we collect, handle and ensure protection of all personal data provided, how that information is used and what rights you have in relation to your personal data. It also specifies the contact details of the responsible Data Controller with whom you may exercise your rights, of the Data Protection Officer and of the European Data Protection Supervisor.

This privacy statement concerns the following processing operations:

- (1) "selection of members of Commission expert groups and other similar entities" undertaken by the Commission department which runs the selection process for your expert group and which is the Data Controller for the selection process DG JUST, Unit A2, and
- (2) "publication of personal data on the Register of expert groups and other similar entities" undertaken by the Commission, Secretariat-General, Unit G.4 which is the Data Controller together with the Commission department managing your expert group.

As a rule, the selection of expert group members is carried out via public calls for applications, except for Member States' authorities and other public entities and for certain representative bodies established by Union legislation for advice in specific areas.

The Register of expert groups and other similar entities is a public database containing a list of Commission expert groups and other similar entities and their sub-groups. For each expert group, the Register provides valuable information including personal data on the members of the expert groups, and their alternate, if any, members' representatives, as well as of the groups' observers and their representatives. The Register also includes documents that are produced and discussed by expert groups and which can contain personal data.

For the purpose of this privacy statement and the corresponding records, the term "expert groups" describes Commission expert groups in the sense of Article 2(1) of Commission Decision $C(2016)3301^{42}$ and their sub-groups, as well as other similar entities in the sense of Article 2(2) of Commission Decision C(2016)3301 and their sub-groups.

2. Why and how do we process your personal data?

Purpose of the processing operations:

The Data Controllers collect and use your personal data to manage Commission expert groups, in particular by selecting their members and observers, and to ensure transparency on expert

⁴² Commission Decision C(2016)3301 of 30 May 2016 establishing horizontal rules on the creation and operation of Commission expert groups.

groups' membership and activities. In that context, in order to select among the applicants who best fulfil the selection criteria mentioned in the call for applications, Commission services collect and assess personal information of candidate members and observers of the expert groups, of representatives of candidate members and observers, and of immediate family members of candidate members and observers appointed in personal capacity.

Furthermore, Commission services collect and assess personal information of observers and members' and observers' representatives of the expert groups which are not selected through a public call for applications.

For candidates, personal data is stored by the Commission service managing the expert group. Some types of personal data of individuals appointed as members (either appointed in personal capacity to act independently and in the public interest or to represent a common interest shared by stakeholders in a particular policy area) are made publicly available on the Register of expert groups (as described under Headings 4 and 5 of this privacy statement). The names of the representatives of organisations, Member States and other public entities, as well as the name of specific national departments or other public authority which they represent may also be made publicly available on the Register of expert groups.

Your personal data will not be used for an automated decision-making including profiling.

3. On what legal ground(s) do we process your personal data

We process your personal data, because processing is necessary for the performance of a task carried out in the public interest (Article 5(1)(a) of Regulation (EU) 2018/1725), since it allows for the selection of members of expert groups (individuals appointed as members in a personal capacity, individuals appointed to represent a common interest and organisations) and also increases the transparency on expert groups. Processing is also necessary to comply with a legal obligation to which the controller is subject (Article 5(1)(b) of Regulation (EU) 2018/1725). The Union act for such necessary processing under Article 5(1)(a) and (b) of Regulation (EU) 2018/1725 is Commission Decision C(2016)3301 of 30 May 2016 establishing horizontal rules on the creation and operation of Commission expert groups and in particular Articles 10 and 22 thereof.

As regards, in particular, the declarations of interests filled in by candidate members to be appointed in a personal capacity in expert groups, the processing of personal data serves the public interest of enabling the Commission to verify in the process of selection the experts' independence in providing advice to the Commission. Furthermore, the public disclosure of declarations of interests of those experts once appointed allows for public scrutiny of the interests declared by these experts, which is necessary in order to ensure public confidence in the independence of these experts. The public disclosure of declarations of interests also ensures a high degree of transparency with respect to the membership of expert groups and aims at contributing to fostering the integrity of the experts in question.

Any publication of names of the representatives of organisations, Member States' authorities and other public entities in the Register of expert groups is based on consent (Article 5(1)(d) of Regulation (EU) 2018/1725).

4. Which personal data do we collect and further process?

In order to carry out these processing operations, the Data Controller may collect the following categories of personal data:

Name;

- Function;
- Contact details (for example, e-mail address, telephone number, mobile telephone number, fax number, postal address, company and department, country of residence, IP address);
- Information for the evaluation of selection criteria or eligibility criteria (for example, expertise, technical skills and languages, educational background, professional experience, including details on current and past employment);
- Nationality;
- Gender;
- Interest represented (only for individuals applying to be appointed as members of expert groups or sub-groups representing a common interest shared by stakeholders in a particular policy area and for organisations applying to be appointed as members of expert groups or sub-groups, as well as for their designated representatives);
- Information included in the declarations of interests, including personal data of immediate family members as required in the declaration of interests (only for individuals applying to be appointed as members of expert groups or sub-groups in a personal capacity).

The provision to the Commission service of the personal data required is mandatory to meet a legal requirement of selecting members of expert groups as set in Commission Decision C(2016)3301. In principle, the types of personal data listed above (with the exception of contact details and information for the evaluation of selection criteria or eligibility criteria) are made publicly available on the Register of expert groups, in order to comply with the legal requirement to ensure transparency on the composition and functioning of Commission expert groups. If you do not provide the personal data required, possible consequences are that you will not be considered for selection as a member of an expert group or, if already selected, your membership will be suspended.

With the prior freely given, specific, informed and unambiguous consent of the representatives of organisations, Member States' authorities and other public entities, their names may also be published on the Register.

5. How long do we keep your personal data?

The Data Controller only keeps your personal data for the time necessary to fulfil the purpose of collection or further processing. The following modalities apply:

- The competent Commission services keep personal data submitted to them as part of rejected applications for three years after the end of the selection process and do not process them for other purposes; these personal data are not published on the Register of expert groups.
- The expert group and some types of personal data of its members and observers, as described in Heading 4, are published on the Register of expert groups during the duration of existence of the expert group.
- When an individual is no longer member or observer or representative of a member or observer of an expert group listed in the Register of expert groups, all personal data related to this individual, including a declaration of interests, is removed from the Register and is therefore not public anymore.
- The competent Commission services keep personal data for the period during which the relevant individual is a member or an observer or a representative of a member or of an

- observer of the group and for five years after the date on which the individual is no longer member or observer or representative of a member or observer of the group.
- When a group is closed down, it remains published in the Register of expert groups for five years, with the indication 'Closed'. Those types of personal data other than the declarations of interests of members appointed in personal capacity that were published while the group was active remain visible on the Register of expert groups during these five years. On the contrary, the said declarations of interests are removed from the Register after closure of a group and are therefore not public anymore; they are however kept by the competent Commission service for a period of five years after the closure of the group.
- An XML file is created daily with all the information regarding active groups. All versions
 of this file, showing the situation of the Register of expert groups as of the day it was
 created, are stored in a file server for 5 years and are not public.

6. How do we protect and safeguard your personal data?

Personal data submitted in paper form is stored in the competent Commission service. All personal data in electronic format (e-mails, documents, databases, uploaded batches of data, etc.) are stored on the servers of the Commission. All processing operations are carried out pursuant to the Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission.

In order to protect your personal data, the Commission has put in place a number of technical and organisational measures. Technical measures include appropriate actions to address online security, risk of data loss, alteration of data or unauthorised access, taking into consideration the risk presented by the processing and the nature of the personal data being processed. Organisational measures include restricting access to the personal data solely to authorised persons with a legitimate need to know for the purposes of this processing operation.

7. Who has access to your personal data and to whom is it disclosed?

Access to your personal data collected in the course of the process of selection of members of expert groups is provided to the Commission staff authorised for carrying out this processing operation and to other authorised Commission staff according to the "need to know" principle. Such staff abide by statutory, and when required, additional confidentiality agreements.

Certain personal data collected, as explained in Headings 4 and 5, is publicly available on the Register of expert groups.

The XML files referred to in Heading 5 are only accessible to a reduced number of users in the Secretariat-General (System Owner) and IT development team within the Commission (System Supplier).

Please note that pursuant to Article 3(13) of Regulation (EU) 2018/1725, public authorities (e.g. Court of Auditors, EU Court of Justice) which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients. The further processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing.

The information we collect will not be given to any third party, except to the extent and for the purpose we may be required to do so by law.

8. What are your rights and how can you exercise them?

You have specific rights as a 'data subject' under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access your personal data and to rectify them in case your personal data is inaccurate or incomplete. Under certain conditions, you have the right to erase your personal data, to restrict the processing of your personal data, to object to the processing and the right to data portability.

You have the right to object to the processing of your personal data on grounds relating to your particular situation in accordance with Article 23(1) of Regulation (EU) 2018/1725.

As indicated in Heading 4, if you are a representative of an organisation, Member State or another public entity, you may consent to have your name published on the Register of expert groups. You can withdraw your consent at any time by notifying the Data Controller. The withdrawal will not affect the lawfulness of the processing carried out before you have withdrawn the consent.

Finally, and only as regards the publication of your name on the Register of expert groups, you may submit a request to the competent Commission service for a derogation where justified on compelling legitimate grounds in relation to your specific situation (such as the case where the publication of your name on the Register of expert groups could endanger your security or integrity).

You can exercise your rights by contacting the Data Controller or, in case of conflict, the Data Protection Officer. If necessary, you can also address the European Data Protection Supervisor. Their contact information is given under Heading 9 below.

Where you wish to exercise your rights in the context of one or several specific processing operations, please provide their description (i.e. their Record reference(s) as specified under Heading 10 below) in your request.

Any request for access to personal data will be handled within one month. Any other request mentioned above will be addressed within 15 working days.

9. Contact information

The Data Controller

Regarding the personal data collected in the course of the process of selection of the members of the expert groups, if you would like to exercise your rights under Regulation (EU) 2018/1725, or if you have comments, questions or concerns, or if you would like to submit a complaint, please contact [functional mailbox of the Directorate-General for Justice and Consumers, Directorate A, Unit A2 at JUST-EXPERT-GROUP-DATA-SHARING-JUST-A2@ec.europa.eu

Likewise, as regards the data published on the Register of expert groups, please contact the corresponding Data Controller Secretariat-General, Unit F4: SG-EXPERT-GROUPS@ec.europa.eu.

The Data Protection Officer (DPO) of the Commission

You may contact the Data Protection Officer (<u>DATA-PROTECTION-OFFICER@ec.europa.eu</u>) with regard to issues related to the processing of your personal data under Regulation (EU) 2018/1725.

- The European Data Protection Supervisor (EDPS)

You have the right to have recourse (i.e. you can lodge a complaint) to the European Data Protection Supervisor (edps@edps.europa.eu) if you consider that your rights under Regulation (EU) 2018/1725 have been infringed as a result of the processing of your personal data by the Data Controller.

10. Where to find more detailed information?

The Commission Data Protection Officer (DPO) publishes the register of all processing operations on personal data by the Commission, which have been documented and notified to him. You may access the register via the following link: http://ec.europa.eu/dpo-register.

These specific processing operations will be included in the DPO's public register with the following Record references: DPR-EC-01066 and DPR-EC-00656.