

## **PRIVACY STATEMENT**

This statement refers to the processing of personal data in the context of anti-trust investigations carried out by the Commission. The data that are collected and further processed in such investigations include information relating to identified or identifiable natural persons and the processing of such data is subject to Regulation (EU) 2018/1725<sup>1</sup>. The processing occurs under the responsibility of the Unit Registry and Transparency in DG Competition, acting as the Controller.

### **The name and the contact details of the controller:**

Unit R1- Registry and Transparency, DG Competition

[COMP-R1-MAIL@ec.europa.eu](mailto:COMP-R1-MAIL@ec.europa.eu)

### **The name and the contact details of the data protection officer:**

[data-protection-officer@ec.europa.eu](mailto:data-protection-officer@ec.europa.eu) .

### **What is the purpose of the data collection? What is the legal basis for the processing?**

The purpose of a Commission antitrust investigation is to determine whether the undertaking(s) (and associations of undertakings) or Member States subject to the investigation act in conformity with the antitrust rules of the Treaty (Articles 101, 102, 106 TFEU).

For the purpose of enabling the Commission to conduct antitrust investigations, the Council has granted the Commission, through Regulation (EC) No 1/2003 ('Regulation 1/2003'), enforcement powers to collect information (e.g., through public sources, by sending requests for information, taking statements, carrying out inspections and sector inquiries or by receiving voluntary submissions by companies or individuals). The targets of an antitrust investigation and any related administrative proceedings will be undertakings (and associations of undertakings) or Member States and not individuals. However, necessary information that is collected and further processed by the Commission pursuant to its inspection and investigative powers unavoidably includes personal data. Personal data is used

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<sup>1</sup> 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39–98.

only to the extent that it is included in documents that may constitute evidence that the undertaking(s) or Member States concerned have committed infringements of the antitrust rules. As a result of the investigation, and when an infringement of the competition rules has been established, the Commission may impose a fine on the undertakings concerned, but is not competent to impose sanctions of any kind on individuals. It may also impose or agree on specific remedies to be implemented by the undertaking or Member State concerned in order to bring an alleged infringement to an end.

Furthermore, the Commission may process contact details for other compatible purposes, such as conducting market surveys, consultations and evaluations of its procedures, in order to improve its practice and legislation. The data subject's input is provided on a voluntary basis on such occasions. The Commission may also process personal data in exchanges with third country authorities and organisations.

### **What personal data do we collect? The categories of personal data concerned**

Personal data that are collected and further processed in the context of antitrust investigations include names, contact details (work (e-mail) address, telephone and fax number and occasionally also private contact details), the position and functions of the natural person in an undertaking (e.g., CEO, marketing manager, etc.) and potentially statements and records made by or attributed to individuals. If commitments pursuant to Article 9 of Regulation 1/2003 are envisaged, the personal data collected may include the role in a (potentially) to be divested business, as well as data typically inserted in a CV in the context of an application for trustee (mainly relevant professional experience).

### **Recipients and transfers**

#### **Who has access to your personal data and to whom are they disclosed?**

##### *Within the Commission*

Access to anti-trust files is restricted to Commission personnel. The documents collected are stored electronically and, when applicable, in paper files. Access to the electronic files stored in the case management applications is restricted to Commission personnel. The original paper files are kept at the Antitrust Registry, in a specific location, which is locked outside the office hours. In addition, entrance to the Commission premises is restricted. Beyond the personnel from the DG in charge of the investigation, certain data may also be made available to other Commission services, on a strictly need-to-know basis, for example in the context of inter-service consultations, with the purpose of assessing the antitrust case.

##### *Other EU institutions, bodies, offices and agencies*

Where a complaint is sent to an EU institution for information, comments or an opinion, the personal data may be transferred to that institution, body, office or agency (e.g. complaints to

OLAF, to the Ombudsman or to the EDPS). These recipients are subject to the Regulation (EU) 2018/1725.

### *Member States and EFTA Surveillance Authority*

Transfer of information in the antitrust file to competition authorities within the EU and to national courts within the EU is possible under certain conditions. Both are subject to GDPR<sup>2</sup> and national implementation regulations that contain similar obligations as Regulation (EU) 2018/1725. Transfer of information to the EFTA Surveillance Authority is possible under the cooperation provisions of the EEA Agreement.

Articles 12 and 28 of Regulation 1/2003 guarantee that the information exchanged can only be used by national competition authorities in evidence for the purpose of applying Articles 101 and 102 of the TFEU in respect of the subject matter for which it was collected. According to Article 12(3) of Regulation 1/2003, information transferred by the Commission can only be used by national authorities to impose pecuniary (not custodian) sanctions on natural persons if it has been collected in a way which respects the same level of protection of rights of defence of natural persons as provided for under the national rules of the receiving authority.

There are also further safeguards for the protection of personal data of natural persons where national courts in the EU, when applying Articles 101 and 102 TFEU, ask for information from the Commission's competition file. In principle the Commission should produce documents from its file if the national court can assure appropriate protection of confidentiality of the information covered by the Commission's obligation of professional secrecy (Article 339 TFEU) and thus to uphold the rights which that provision confers on natural and legal persons. The national court must specify its request and set out why the documents would be of relevance to the national proceedings and whether it could guarantee protection of the requested information (Article 15 of Regulation 1/2003 and Commission Notice on cooperation with national courts). According to the case law, the Commission may refuse to provide the information where the national court cannot provide confidentiality guarantees or for overriding reasons relating to the need to avoid interference with the functioning and independence of the EU. In case authorisations from national judicial authorities are necessary, such as for conducting inspections, the Commission may have to provide to the respective judicial authority detailed explanations regarding the subject matter of inspections. However, the national judicial authority may not demand to be provided with information in the Commission's file (Article 20(8) of Regulation 1/2003).

The Commission can also transfer information under the cooperation provisions of the EEA Agreement to the EFTA Surveillance Authority. According to Article 9 of Protocol 23 to the EEA Agreement such information can only be used for the purposes of procedures under

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<sup>2</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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, 4.5.2016, p. 1–88.

Articles 53 and 54 of the EEA Agreement and in respect of the subject matter for which it was collected. Like the TFEU, the EEA Agreement only concerns antitrust proceedings against undertakings.

#### *Exchanges with third country authorities and organisations*

The Commission may exchange information with third country authorities and has entered, with a number of third countries, into a variety of international agreements and instruments concerning competition law enforcement. At times, personal data may be included in that information material. In order to transfer such information, the Commission relies on the following: on adequacy for information exchanges containing personal data with the Swiss competition authorities, which take place in the framework of the 2<sup>nd</sup> generation cooperation agreement in force since 2014. Regarding other jurisdictions, in the absence of adequacy, the Commission must ensure appropriate safeguards before transferring personal data, or international transfers can take place where this is necessary for "*important reasons of public interest*".

#### *Access to the file*

In the context of the rights of defence, undertakings,/parties involved in an alleged infringement of the competition rules (generally the addressees of a statement of objections: or, in certain circumstances, the complainant) and their representatives may have access to the file (excluding confidential information and business secrets), in accordance with the procedure and safeguards provided in the antitrust legislation. Documents obtained through the 'access to file' procedure may only be used for the purpose of applying Articles 101 or 102 TFEU.

According to the Implementing Regulation (EC) 773/2004, the complainant, through its involvement in the proceedings, may also have access to the non-confidential version of the statement of objections (Article 6) and the documents on which the Commission bases its provisional assessment of intending to reject the complaint (Article 8), and is entitled to be informed of the reasons of rejection of its complaint (Articles 7 to 9).

#### *Consultants*

For certain consultation and evaluation purposes in view of increasing effectiveness of the Commission procedures, the contact details of individuals may be transferred to contractors who will be bound to observe the same data protection and confidentiality standards as the institutions.

### **How do we protect and safeguard your personal data?**

Pursuant to Article 28 (1) of Regulation 1/2003 information collected [...] shall be used only for the purpose for which it was acquired. Applicable regulations list the specific enforcement tools of the Commission in this regard (e.g. the possibility to send written requests for

information, carry out inspections and conduct interviews) and set out the applicable procedures and conditions.

Regulation 1/2003 and its implementing Regulation (EC) No 773/2004, as well as the case-law of the EU Court of Justice, set out clear limits to the powers of investigation of the Commission. In inspections conducted in antitrust cases for example, inspectors are only allowed to take from the undertakings copies of documents relevant for the purpose of their investigation, i.e., of documents falling within the scope defined by the inspection decision (or mandate). This limit applies not only to paper documents but also to electronic documents.

Furthermore, information covered by the obligation of professional secrecy may not be disclosed. When deciding on the disclosure of information on natural persons in the context of their decisional powers, the Hearing Officers also need to take into account Regulation (EU) 2018/1725. There are special procedures that protect interested third parties where a balancing of interests requires the disclosure of information that is considered to be confidential by those parties.

The various competition regulations also guarantee that any data are collected for specified, explicit and legitimate purposes. The data may only be collected and further processed for the purpose of applying the EU antitrust rules and in respect of the subject matter for which it was collected.

### **How can you verify the accuracy of your personal data and, if necessary, rectify it?**

Granting to data subjects a right of access or erasure of their data present in the Commission's case files would hinder the monitoring and inspection tasks of the Commission when enforcing competition law, which is necessary to safeguard important economic or financial interests of the European Union (i.e., the proper functioning of competitive markets). The possibility of restrictions under Article 25 of Regulation (EU) 2018/1725 applies in these cases and the Commission has specified such restrictions in internal rules laid down in Commission decision (EU) 2018/1927 of 5.12.2018<sup>3</sup>. However the data subject will have the chance to address to the mailbox mentioned in the privacy statement a request for restriction of processing or erasure of his/her data which had allegedly been unlawfully processed.

### **How long does the Commission keep your personal data?**

The Commission retains competition files until closure of the case which is necessary for a sound administrative procedure. The electronic file is closed in the case management application. While the documents and case metadata remain accessible to the Commission

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<sup>3</sup> Commission Decision (EU) 2018/1927 of 5 December 2018 laying down internal rules concerning the processing of personal data by the European Commission in the field of competition in relation to the provision of information to data subjects and the restriction of certain rights, OJ L 313, 10.12.2018, p. 39–44.

personnel, full text searches (using a separate tool) are not available anymore within two years after the closure of the case. With regard to the answers provided to the Commission through the electronic questionnaire application (eQuestionnaire), such answers are stored in the application for a certain period, as follows: (i) with regard to contact details, one year after the closure of the case, and (ii) with regard to other answers, 5 years after the closure of the case.

After closure of the case, the file is sent to the Commission's historical archives. This is necessary in order to comply with the Commission's general obligation to preserve the documents that it has obtained within the exercise of its duties and which relate to EU activities. This should be seen in the broader context of the archiving policy of the Commission.

Personal data processed in the context of consultations, evaluations and other type of feedback regarding the activities of the Commission will be stored for a period of time necessary to be able to contact the stakeholders for feedback. For each specific consultation, evaluation or other type of feedback, the retention period for a contractor would not exceed 6 months after the date when the final report/ output was provided by the contractor to the Commission or when the contract otherwise ended between the contractor and the Commission.

### **Contact Information**

Should you have any question or request concerning the information submitted or on your rights, feel free to contact the Data Protection Coordinator of DG Competition of the European Commission by sending an email message to the following contact mailbox: [comp-data-protection@ec.europa.eu](mailto:comp-data-protection@ec.europa.eu) or contact the Commission's Data Protection Officer by sending an email message to [data-protection-officer@ec.europa.eu](mailto:data-protection-officer@ec.europa.eu) .

### **Recourse**

In case of conflict, complaints can be addressed to the European Data Protection Supervisor. All details can be found on the following website <http://www.edps.europa.eu/EDPSWEB> .