



Brussels, 6.6.2023
C(2023) 3647 final

COMMISSION DECISION

of 6.6.2023

setting up a high-level group on access to data for effective law enforcement

COMMISSION DECISION

of 6.6.2023

setting up a high-level group on access to data for effective law enforcement

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Whereas:

- (1) It has become apparent that complex and sensitive questions arise in relation to the access of law enforcement authorities in the Union to the data, covering both personal data and non-personal data, that they need to carry out their tasks effectively and lawfully, particularly in the digital age. The involvement of all relevant actors is necessary to address those questions.
- (2) At the Informal meeting of Justice and Home Affairs ministers, held on 26 January 2023, the ministers supported a Presidency's proposal to establish a forum gathering all relevant actors to take forward the issue of effective and lawful access to data, electronic evidence, and information in the digital age for judicial and law enforcement purposes. The Standing Committee on Operational Cooperation on Internal Security (COSI) endorsed the Presidency's proposal and its Chair invited the Commission to undertake the necessary steps to that aim within the broad parameters endorsed by COSI, as laid down in its 'Scoping Paper' issued on 13 April 2023.
- (3) It is therefore appropriate to set up a High-Level Group on access to data for effective law enforcement ('the group') consisting of high-level experts in the field of access to data for effective law enforcement and define its tasks and its structure, in order to explore the challenges that law enforcement practitioners face in their daily work and to potential solutions to overcome them, with the aim of ensuring the adequate access to data, to fight crime and enhance public security in the digital age.
- (4) In order to ensure that it can achieve the objective for which it was established, the group should be given a number of tasks. The group should establish and operate a collaborative and inclusive platform for stakeholders from all relevant sectors, including law enforcement and criminal justice, data protection and privacy, cybersecurity, private sector, non-governmental organisations, and academia, to overcome silos and work towards commonly accepted solutions. In addition, the group should help formulate a strategic forward-looking vision on how to address current and anticipated challenges against the background of technological developments, enabling a comprehensive and legally sound EU approach to ensure access to data for effective law enforcement. Furthermore, the group should propose recommendations including for the further development of Union policies and legislation to enhance and improve law enforcement authorities' access to data. In this context, the group should explore the possibilities to integrate a law enforcement perspective, having regard to privacy and personal data protection requirements, in all relevant Union policies and actions ('public security by design').

- (5) The group's objective of contributing to enhancing public security in the digital age should be pursued in full compliance with applicable law, including all fundamental rights protected under Union law, including as regards liberty and security, personal data protection, privacy as well as justice procedural safeguards and procedural rights. The tasks of the group should also be undertaken with due respect to potential administrative burden and costs for the private sector.
- (6) The group should be composed of high-level representatives of the Member States and the Commission. To ensure an inclusive approach, Member States should nominate one head of delegation and up to two additional representatives to participate in the plenary meetings of the group. The nominees should work at strategic level and in principle represent different ministries at national level, while the head of delegation should ensure that all interests within the Member State are incorporated in the work of the group. Relevant Union bodies and agencies, and the Counter Terrorism Coordinator, should also nominate a member of the group.
- (7) Rules on disclosure of information by members of the group should be laid down.
- (8) Personal data should be processed in accordance with Regulation (EU) No 2018/1725 of the European Parliament and of the Council¹.
- (9) It is appropriate to fix a period for the application of this Decision. The Commission will in due time consider whether to extend the functioning of the group.

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

The high-level group on access to data for effective law enforcement ('the group'), is set up.

Article 2

Tasks

The group shall be tasked to explore any challenges that law enforcement in the Union face in their daily work in connection to access to data and explore and contribute to finding potential solutions to overcome them, with the aim of ensuring the availability of effective law enforcement tools to fight crime and enhance public security in the digital age. The group shall focus in particular on the need for those authorities to have adequate access to data as necessary to perform their tasks, while respecting fully the applicable law and all fundamental rights protected under Union law, including as regards personal data protection, privacy as well as justice procedural safeguards and procedural rights.

The specific tasks of the group shall be to:

¹ 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).

- (a) establish and operate a collaborative and inclusive forum for stakeholders and experts from all relevant sectors, including law enforcement and criminal justice, data protection and privacy, cybersecurity, the private sector, non-governmental organisations, and academia, to overcome silos and work towards effective, lawful and commonly accepted solutions in respect of law enforcement authorities' access to data;
- (b) formulate a strategic forward-looking vision on how to address in a proportionate way the current and anticipated future challenges against the background of technological developments, enabling a comprehensive Union approach to ensure law enforcement authorities' access to data;
- (c) put forward recommendations on ways to address the identified challenges.

Article 3

Membership

- (1) The group shall be composed of high-level representatives of the Member States and the Commission.
- (2) Relevant Union bodies and agencies, notably the European Union Agency for Law Enforcement Cooperation ('Europol'), the European Union Agency for Criminal Justice Cooperation ('Eurojust'), the European Union Agency for Cybersecurity ('ENISA'), the European Union Agency for Fundamental Rights ('FRA') and the European Union Agency for Law Enforcement Training ('CEPOL'), and the EU Counter - Terrorism Coordinator, shall also be members of the group.
- (3) Member States shall nominate one head of delegation and up to two additional representatives to participate in the plenary meetings of the group. The nominees shall work at strategic level and in principle represent different ministries at national level, while the head of delegation shall ensure that all interests within the Member State are incorporated in the work of the group.

Article 4

Chair

The group shall be co-chaired by the Deputy Director-General for Security in the European Commission's Directorate-General for Migration and Home Affairs ('DG HOME') and the member nominated by the Member State that holds at the relevant moment in time the Presidency of the Council.

Article 5

Operation

- (1) The group shall be supported by a secretariat in the Commission services (DG HOME). In consultation with the co-chairs, the secretariat shall prepare discussion papers and background documents for each of the meetings. The co-chairs may also

invite other members of the group to contribute in writing to the proceedings of the group.

- (2) The discussions of the group shall be recorded in minutes on each point on the agenda and on the opinions delivered by the group or its members. The minutes shall be meaningful and complete. Minutes shall be drafted by the secretariat under the responsibility of the co-chairs.
- (3) In the concluding meeting of the group, recommendations on ways to address the identified challenges shall be formulated. Members shall be given the opportunity to issue further statements that shall be annexed to the concluding report of the group.
- (4) A Commission interservice task force shall be set up to support the group in its proceedings. Through this task force, DG HOME will seek the cooperation and support of the other Commission services concerned, notably the Directorate-General for Justice and Consumers ('DG JUST'), the Directorate-General for Communications Networks, Content and Technology ('DG CNECT'), the Directorate-General for Internal Market, Industry, Entrepreneurship and Small Medium Size Enterprises ('DG GROW'), the European Anti-Fraud Office ('OLAF'), the Commission Legal Service and the Secretariat General of the Commission.
- (5) The task force referred to in paragraph 4 shall coordinate the Commission's participation in the group and to support the Commission's co-chair. It shall meet on a regular basis throughout the lifespan of the group. The task force shall ensure that the views and expertise of all relevant Commission services are heard and duly considered by the group on all issues, including on issues such as the agenda, the selection of invited experts from the various constituencies, the preparation of the required input documents, the articulation of conclusions, recommendations and take-aways from group discussions, and the preparation of the concluding report on the work of the group.

Article 6

Sub-groups

- 1 The group shall be supported by technical sub-groups ('working groups') set up by the group, to enable deeper discussions on specific topics in a more restricted format, around ten Member States experts per working group, supplemented by representatives of the Commission and relevant Union agencies and bodies, observers, and other invited experts.
- 2 Participants in the working groups shall be nominated by the co-chairs, after having consulted the task force, based on proven expertise and experience, with an appropriate balance between the various stakeholders.
- 3 The working groups shall receive guidance from the group on the topics to be discussed and shall report to it.

Article 7

Invited experts

The group may invite non-institutional stakeholders, such as representatives of the private sector, academia, non-governmental organisations, criminal lawyers, personal data protection experts, with specific expertise with respect to a subject matter on the agenda, to take part in the work of the group, and its sub-groups, on an ad hoc basis. In selecting which non-

institutional stakeholders to invite, the group shall ensure a balanced representation, with expertise on the different aspects with respect to a subject matter on the agenda.

Article 8

Observers

- 1 The European Data Protection Supervisor ('EDPS') and the European Parliament's Committee on Civil Liberties, Justice and Home Affairs ('LIBE') may be granted an observer status by direct invitation of the co-chairs.
- 2 Observers and their representatives may be permitted by the co-chairs to take part in the discussions of the group and provide expertise. They shall not participate in the formulation of recommendations.

Article 9

Rules of procedure

On a proposal by and in agreement with DG HOME the group shall adopt its rules of procedure by simple majority of its members present. The group and the sub-groups shall operate in compliance with the group's rules of procedure.

Article 10

Professional secrecy and handling of classified information

The members of the 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) 2015/443² and 2015/444³. Should they fail to respect these obligations, the Commission may take all appropriate measures.

Article 11

Transparency

DG HOME shall ensure an equivalent degree of transparency to that applicable to Commission expert groups within the meaning of the Commission Decision C(2016) 3301⁴, through dedicated webpages.

² Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

³ 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).

⁴ Commission Decision C(2016) 3301 of 30 May 2016 establishing horizontal rules on the creation and operation of Commission expert groups.

Article 12

Meeting expenses

- 1 Participants in the activities of the group and sub-groups shall not be remunerated for the services they offer.
- 2 Travel and subsistence expenses incurred by participants in the activities of the group and sub-groups may, where considered appropriate and necessary based on the importance and type of the activities, as defined by the co-chairs, 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.

Article 13

Applicability

This Decision shall apply until 31 December 2024.

Done at Brussels, 6.6.2023

For the Commission
Ylva JOHANSSON
Member of the Commission