

**DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INNOVATION
COMMITTEE ON DIGITAL ECONOMY POLICY****Informal drafting group on government access to personal data held by the private sector****Terms of Reference**

This document provides terms of reference for the informal drafting group on personal data held by the private sector, which the CDEP decided to form in the context of its statement on this issue [[DSTI/CDEP\(2020\)22/FINAL](#)].

Action requested: CDEP delegates are invited to note the document and provide any comments by **12 March** (digitaleconomypolicy@oecd.org).

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1. Background

1. On 22 December 2020, the Committee on Digital Economy Policy (CDEP) issued a statement reflecting its views, concerns and future plans with regard to government access to personal data held by the private sector.¹ In particular, it raised concerns about “government practices that fail to preserve trust, namely through unconstrained, unreasonable, or disproportionate requirements by governments that compel access to personal data held by the private sector”. It also noted “that the absence of common principles for trusted government access to personal data may lead to undue restrictions on data flows resulting in detrimental economic impacts”. To address these concerns, the Committee decided to “conduct further work to deepen the understanding of approaches in OECD countries” and to examine “the possibility of developing as a matter of priority, an instrument setting out high-level principles or policy guidance for trusted government access to personal data held by the private sector”. The work will seek to “elaborate a set of common and coherent good practices and legal guarantees from across OECD countries for best reconciling law enforcement and national security needs for data with protection of individual rights”.

2. It is envisioned that these principles and practices will address the legitimate public purposes that may justify government access to personal data held by the private sector and relevant safeguards for reconciling those needs with protection of individual rights. Such safeguards and their application would facilitate the promotion and protection of data free flow with trust.

2. Intended outcomes

3. In addition to identifying commonly shared principles and practices, the CDEP also decided to explore the possibility of embodying these principles and practices in an instrument. Subject to the CDEP’s decision, this could be an OECD legal instrument (e.g. Council Recommendation, Declaration).

3. Informal drafting group

4. The CDEP decided to establish an informal drafting group to support this work.

5. The drafting group will be comprised of representatives of government and regulatory authorities from interested OECD Members and the European Union (maximum of 3 representatives from each). It should include experts with relevant knowledge and competence regarding their governments’ domestic laws, policies and practices related to government access to personal data held by the private sector, and related restrictions on the transborder flow of data, including experts from national security and law enforcement agencies.

6. The drafting group is expected to work mostly electronically and via videoconference. A dedicated OECD ONE Community site will be used to share

¹ <https://www.oecd.org/sti/ieconomy/trusted-government-access-personal-data-private-sector.htm>

documents, comments and other relevant information. The drafting group's discussions and exchanges will be restricted to OECD Member representatives and the European Union; its discussions will be conducted under the Chatham House Rule.

7. To gather information about current principles and practices and provide input for or feedback on the development of a possible draft instrument, one or more questionnaires may be circulated and one or more expert workshops organised.

8. The OECD Secretariat will support the work of the drafting group and update the CDEP on its discussions and activities on a regular basis, including in the 83rd session of the CDEP in April 2021. To reinforce the link between the ongoing work of CDEP and its Working Parties and the drafting group, the Chairs of CDEP and of its Working Parties on Data Governance and Privacy and on Security in the Digital Economy will be invited to attend the meetings of the drafting group as observers.

9. The drafting group will begin its work as soon as possible in 2021, and will operate until the final presentation of a proposal to the CDEP, or as otherwise determined by the CDEP.

10. The CDEP will discuss the findings and the proposal presented by the drafting group, as well as their potential embodiment in an instrument, with a view to their approval and/or adoption in line with relevant OECD rules and procedures.