



EUROPEAN COMMISSION
EUROSTAT

Directorate G: Business and trade statistics
The Director

Non-disclosure agreement

The European Commission (hereinafter referred to as "the Commission"), represented for the purposes of signing this Agreement by Ms. Sophie LIMPACH, Director - Business and trade statistics, Eurostat – the Receiving Party

on the one part, and

[redacted], having its officially registered seat at [redacted] bearing the VAT number of [redacted] (hereinafter referred to as "the Disclosing Party"), represented for the purposes of signing this Agreement by its duly authorised representative [redacted] - the Disclosing Party

on the other part,

1. BACKGROUND

This non-disclosure agreement concerns the transmission of data or information of confidential nature held by the Disclosing Party to the Commission (Eurostat).

The Parties recognize that

- The Disclosing Party is willing to disclose such information to Eurostat under terms of strict confidentiality, of non-disclosure to third-parties, and of non-use in any manner not explicitly authorized, (in particular for enforcement purposes);
- The willingness to disclosure the confidential information under this Agreement is subject to the condition that this information is used only jointly with similar information disclosed by other parties.
- The Commission (Eurostat) is responsible for maintaining a list of platforms that have agreed to provide confidential information for the purpose of this Agreement.
- The Commission (Eurostat) and the Disclosing Party understand that nothing in this Agreement should result in the breach of any financial reporting obligations to which the Disclosing Party is subject and the parties will seek to ensure that such rules, where applicable, are complied with at all times.
- The Commission (Eurostat) is responsible for the development, production and dissemination of European statistics within the partnership of the European

Statistical System (ESS). The Commission (Eurostat) is maintaining on its website a list of the National statistical institutes that are members of the ESS (NSIs).

- This non-disclosure agreement specifies the conditions under which information collected by the Disclosing Party may be used by Eurostat and the NSIs for development, production, and dissemination of European statistics. Further agreements will be needed on technical issues to ensure the sustainable production of European statistics.

The Parties have agreed to be bound by the following conditions and obligations:

2. DEFINITIONS

1. The definitions specified in Article 3 of Regulation (EC) no 223/2009 of the European Parliament and of the Council on European statistics apply to this agreement, in particular for the concepts of 'statistics', 'development', 'production', 'dissemination', 'data collection', 'confidential data', and 'use for statistical purposes', see annex.
2. In addition, for the purposes of this agreement, 'European statistics' means statistics produced and/or disseminated by Eurostat or a NSI in accordance with Regulation (EC) no 223/2009, 'reference period' means the time period for which the confidential information transmitted refers to and, 'platform' means an intermediating platform listing accommodation service providers and enabling booking transactions.

3. SCOPE

1. This non-disclosure agreement concerns confidential information provided by the Disclosing Party to the Commission (Eurostat) for the [sole] purpose of developing, producing, and disseminating European statistics. The confidential information provided to Eurostat shall be protected in accordance with Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics.
2. In order to avoid duplication, the Parties agree that Eurostat may transmit aggregated confidential information to NSIs provided that
 - a) Eurostat and the concerned NSIs take all necessary regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential information (statistical disclosure control).
 - b) Any further transmission beyond the first transmission from Eurostat to a NSI shall require the explicit prior written authorisation of the Disclosing Party and, under no circumstances shall the confidential information be disclosed to third parties without consent of the Disclosing Party
 - c) Confidential information transmitted shall only be accessible to staff working in statistical activities within their specific domain of work. Staff having access to confidential information shall be subject to compliance with such confidentiality, even after cessation of their functions. Under the supervision of the Data Protection Officer (DPO) of the Commission/Eurostat and the DPOs of the concerned NSIs members of the ESS, the Disclosing Party may request to know the name of the staff having access to their confidential information.

3. The confidential information transmitted by the Disclosing Party shall not include “personal data” as defined by Article 4(1) of Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation, “GDPR”). The processing of any personal data by the Commission/Eurostat would fall under Regulation (EC) 2018/1725 of the European Parliament and of the Council 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 Regulation provides for the introduction of the new data protection rules of the GDPR for data processing by European Institutions and bodies.
4. The Parties agree that the confidential information will be treated as business secret and be protected by Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, as pertaining to the commercial interests of the Disclosing Party. Once processed by Eurostat and NSIs for statistical purposes contemplated herein, this information will only be disseminated in aggregated form alongside information of other platforms or other statistical sources, in full respect of the statistical confidentiality in accordance with Regulation (EC) No 223/2009 on European statistics.
5. If, after aggregating the confidential information transmitted by the Disclosing Party with data from other platforms and other statistical sources, the aggregate data is considered sensitive according to statistical disclosure control methods, Eurostat and the concerned NSIs will apply an embargo on the aggregate data and not disseminate it until 13 months after the reference period at the earliest. Eurostat will inform the Disclosing Party after the first transmission of data and before the first publication of statistics, about possible cases of sensitive aggregate data as identified by the statistical disclosure control methods.
6. Separate documents outlining the information to be transmitted by the Disclosing Party and describing the measures put in place by Eurostat regarding the treatment of confidential information transmitted by the Disclosing Party are to be considered as supporting documents.
7. For quality assurance, and particularly with a view to addressing the issue of doubling counting of capacity data, the Parties agree that there may be a need to access other Disclosing Party’s data in addition to those transmitted by the Disclosing Party. Such additional access is subject to the consent of the Disclosing Party and may take different forms such as webscraping (automated extraction of data), API (Application Programming Interface) or a 'Black Box' model. The Parties intend to review the best approach to ensure such access, also considering the need to preserve a level playing field with other Disclosing Parties.

4. LIMITATIONS

1. The obligations of confidence and non-use herein shall not apply to any part of the confidential information if:
 - a) It can be evidenced in writing that such confidential information was already available to the receiving Party before its disclosure by the disclosing Party;

- b) Such confidential information was already in the public domain or was made available to the public before the date of disclosure by the disclosing Party;
- c) Such confidential information enters the public domain or becomes available to the public after the date of disclosure by the disclosing Party not as a consequence of an act or failure attributable to the receiving Party;
- d) It can be evidenced in writing that such confidential information is obtained by the receiving Party from a third party not bound by any confidentiality obligation to the disclosing Party;
- e) It can be evidenced in writing that such confidential information has been developed, independently and without use of any part of the confidential information, by the receiving Party after the date of disclosure by the disclosing Party.

5. APPLICATION DATE, DURATION AND TERMINATION

- 1. This Agreement shall become applicable upon the signature of the last Party. Either party may terminate this Agreement by giving at least 12 months written notice of termination to the other party.
- 2. If the condition that the confidential information transmitted by the Disclosing Party is used only jointly with similar information disclosed by other parties is not fulfilled, the Disclosing Party may terminate this Agreement before the 12 months written notice.

6. OWNERSHIP AND INTELLECTUAL PROPERTY

- 1. All confidential information, and any proprietary and related right contained therein, including any intellectual property right, shall continue to belong to their respective owners. Nothing contained in this Agreement shall be interpreted to imply any transfer of ownership.
- 2. This article shall survive the expiration or termination of this Agreement.

7. RETURN OF INFORMATION

- 1. The Receiving Party shall, at request of the Disclosing Party, destroy or return all confidential information in its possession.

8. APPLICABLE LAW

- 1. This Agreement shall be governed by and construed in accordance with the law of the European Union, complemented where necessary by the substantive law of Belgium. In case any dispute, controversy or claim arising out of or relating to this Agreement cannot be settled amicably between the Parties, it shall be subject to the jurisdiction of the General Court of the European Union in Luxembourg.

9. MISCELLANEOUS PROVISIONS

- 1. Neither Party can assign, waive, revoke or otherwise transfer its respective rights or obligations under this Agreement without prior written consent of the other Party.
- 2. If any provision or clause of this Agreement is held unenforceable by a competent court of law, or is precluded by the applicable law, the remaining provisions or

clauses shall continue to be in full force and effect to the extent that such invalidity does not fundamentally prevent the Parties from continuing to observe their rights or obligations under this Agreement.

3. The failure of a Party to enforce any rights resulting from breach by the other Party of any provision of this Agreement will not be deemed as a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder.
4. Any communication and correspondence with reference to this Agreement shall be made in writing and addressed to the following addresses:

For _____:

For the European Commission:

European Commission, Eurostat
Unit G2 – European businesses
L-2920 Luxembourg
Luxembourg

To the attention of the

To the attention of

5. This is the entire Agreement between the Parties relating to the subject matter hereof, and may only be modified by a written amendment signed by the authorised Representatives of each Party.

Done in two originals in the English language,

For _____,

For the European Commission (Eurostat),

Place and Date:

Place and Date:

Signature:

Signature:

Ms. Sophie LIMPACH
Director - Business and trade statistics
Eurostat

Annex

Definitions

1. 'statistics' means quantitative and qualitative, aggregated and representative information characterising a collective phenomenon in a considered population;
2. 'development' means the activities aiming at setting up, strengthening and improving the statistical methods, standards and procedures used for the production and dissemination of statistics as well as at designing new statistics and indicators;
3. 'production' means all the activities related to the collection, storage, processing, and analysis necessary for compiling statistics;
4. 'dissemination' means the activity of making statistics and statistical analysis accessible to users;
5. 'statistical unit' means the basic observation unit, namely a natural person, a household, an economic operator and other undertakings, referred to by the data;
6. 'confidential data' means data which allow statistical units to be identified, either directly or indirectly, thereby disclosing individual information. To determine whether a statistical unit is identifiable, account shall be taken of all relevant means that might reasonably be used by a third party to identify the statistical unit;
7. 'use for statistical purposes' means the exclusive use for the development and production of statistical results and analyses;
8. 'direct identification' means the identification of a statistical unit from its name or address, or from a publicly accessible identification number;
9. 'indirect identification' means the identification of a statistical unit by any other means than by way of direct identification.