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COMMUNICATION TO THE COMMISSION

Approval of the draft Commission Recommendation on non-binding model contractual terms on data access and use and non-binding standard contractual clauses for cloud computing contracts (with Annexes), annexed hereto

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Regulation (EU) 2023/2854 on harmonised rules on fair access to and use of data (Data Act)¹ entered into force on 11 January 2024. It establishes a harmonised framework specifying who is entitled to use product data or related service data, under which conditions and on what basis. It also sets out rules concerning the rights of customers to switch from one data processing service provider (*i.e.* cloud computing services) to another, and it requires providers to remove contractual obstacles that would prevent such switching.

The Data Act will be a powerful engine enabling businesses to develop innovative and competitive data-driven products and services and for creating new jobs. It will allow the EU to ensure that it is at the forefront of the second wave of innovation based on data and can realise the full benefits of a data economy in Europe. It will also ensure that European businesses and public administrations can adopt cloud computing services in an environment of trust and in the absence of undue vendor lock-in.

The central tool that the Data Act uses for this purpose are model contracts. This is done to create legal certainty as regards the rights and obligations of the parties, to promote data sharing broadly and to ensure a fair share of the benefits for all parties within the data value chain.

As set out in Article 41 of the Data Act, the Commission will develop and recommend non-binding model contractual terms on data access and use and non-binding standard contractual clauses for cloud computing contracts, as a tool to support the parties in concluding such contracts.

The draft Recommendation annexed to this Communication aims to help enterprises, in particular SMEs, to draft and negotiate contracts, and promote models that contain fair, reasonable and non-discriminatory contractual rights and obligations.

In view of the Data Act's entry into application on 12 September 2025 and the time necessary for the translation into all languages of the Recommendation, the Commission is called upon to approve the content of the draft Recommendation on non-binding model contractual terms on data sharing and non-binding standard contractual clauses for cloud computing contracts.

The Recommendation would be formally adopted by the Commission at a later date, when all language versions are available.

The text of the draft Recommendation is enclosed as an Annex to this Communication.

¹ Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act), OJ L, 2023/2854, 22.12.2023, ELI: <http://data.europa.eu/eli/reg/2023/2854/oj>