



EUROPEAN COMMISSION  
DG COMPETITION

The Director-General

Brussels, **19 October 2021**  
COMP/C.6/SS/RI/vvd

Gaia-X European Association for  
Data and Cloud AISBL  
Francesco Bonfiglio  
Chief Executive Officer  
Pierre Gronlier  
Chief Technical Officer  
Avenue des Arts 6-9,  
B-1210 Brussels

Via:  
Gleiss Lutz  
For the attention of Ms Linsmeier

By e-mail:  
[petra.linsmeier@gleisslutz.com](mailto:petra.linsmeier@gleisslutz.com)

**Subject: Feedback on the membership criteria and internal working rules of GAIA-X**

Dear Madams, Dear Sirs,

On 23 March 2021, the representatives of GAIA-X AISBL (“GAIA-X”) contacted the Commission’s Directorate-General for Competition (“DG Competition”) to request guidance in relation to the membership criteria and internal working rules of the newly formed organisation. Following requests for additional clarification by the services of DG Competition, further documentation was provided by GAIA-X representatives on 5 July 2021 and 30 August 2021.

## **1. Introduction**

As you know, since the entry into force of Council Regulation (EC) No 1/2003 (“Regulation 1/2003”), undertakings (or their associations) can no longer notify their agreements to the Commission in order to receive an individual exemption from Article 101 TFEU, but are themselves responsible for assessing the legality of their agreements and practices. This system of self-assessment, framed by the extensive guidance provided by the Commission, is now well established.

Expanding the deployment of cloud computing and cloud-based services to enhance Europe's competitiveness is a key objective that has been emphasised in various Commission strategies, such as the Commission’s Data Strategy, the Digital Strategy, the Industrial Strategy and the EU Recovery Plan. In support of that objective and building on the Commission’s Data Strategy, the Commission launched a European Alliance on

Industrial Data, Edge and Cloud whose creation was endorsed by the European Council in October 2020, followed by the Declaration on European Cloud signed by all Member States on 15 October 2020. In December 2020, Member States declared their intention to engage in an Important Project of Common European Interest (“IPCEI”) on Next Generation Cloud Infrastructure and Services, which is currently in preparation. In that general context, GAIA-X’s aim to promote and facilitate an open software data infrastructure and federated cloud services in the European Union is a significant development of European interest.

For these reasons, and in order to facilitate GAIA-X’s self-assessment, I have decided to provide you on an exceptional basis with observations on the organisation’s membership criteria and internal working rules. I must emphasise that the observations below do not in any way constitute a decision of the Commission. These observations merely reflect the opinion of the services of DG Competition and are strictly based on information provided to DG Competition by GAIA-X representatives on the membership and internal working rules of the organisation, relevant to its activities in relation to the identification, development and adoption of rules and technical specifications (“standardisation activity”).

## **2. Observations**

GAIA-X is an international, non-profit organisation incorporated in Belgium in January 2021, and funded solely by contributions from its members. We understand that GAIA-X’s core activities entail developing technical specifications and harmonised rules to allow for the secure sharing, interoperability and portability of users’ data between the different cloud service providers and users of cloud services. GAIA-X proposes to follow an open-source approach, providing open access to its technical specifications to members and non-members alike, under the condition of certification by GAIA-X. We also understand that the organisation does not prevent its members from using other standards or competing technologies.

GAIA-X’s current membership represents a broad spectrum of stakeholders relevant to cloud services in the European Union, including service providers and business users. Whilst membership is open to all entities, the organisation makes a distinction between European Members, whose ultimate parent company is headquartered in the European Economic Area (EEA), and International Members. We understand that this distinction is partly based on GAIA-X’s objective of fostering cloud-based services in the European Union, and is mainly relevant for the following rights:

- in the General Assembly, all members have equal voting rights, with the exception of voting rights in relation to (i) the amendment of the Articles of Association, and (ii) the dissolution and liquidation of the Association, which are exclusively conferred upon the European Members.<sup>1</sup>
- the Board of Directors is exclusively composed of representatives of GAIA-X’s European Members, but they are appointed and can be removed by both European and International members of the General Assembly.<sup>2</sup>

Given GAIA-X’s intention to identify the standards on which the GAIA-X architecture would rely, to set rules and technical specifications, and to provide certification of

---

<sup>1</sup> GAIA-X Articles of Association, Article 6.

<sup>2</sup> GAIA-X Articles of Association, Article 19.

GAIA-X compliance, the question could arise as to the compliance of GAIA-X's membership rules with Article 101(1) TFEU, particularly in light of paragraphs 281 to 286 of the Horizontal Guidelines,<sup>3</sup> which set out the conditions under which standard-setting agreements normally fall outside the scope of Article 101(1) TFEU. These conditions require that effective access to a standard be ensured on fair, reasonable and non-discriminatory terms.<sup>4</sup> With respect to transparency, the standard-setting organisation needs to ensure that stakeholders can effectively inform themselves of upcoming, on-going and finalised standardisation work in a timely manner.<sup>5</sup> Moreover, to ensure unrestricted participation all competitors in the affected markets should be able to participate in the process leading to the selection of the standard.<sup>6</sup> The standard-setting organisation must also establish objective and non-discriminatory procedures for allocating voting rights.<sup>7</sup>

Taking these principles into account, we note that the potential antitrust risks stemming from the tiered membership in GAIA-X appear to be mitigated by a number of safeguards contained within your submissions, where you have provided further clarifications and assurances that the membership criteria and working rules will ensure adequate access, transparency and participation of relevant industry stakeholders, both within and external to the organisation. In that context, the following factors appear particularly relevant:

- GAIA-X membership is open, and the GAIA-X membership requirements are fully transparent, objective and non-discriminatory.<sup>8</sup> We understand that to date, GAIA-X has not rejected any of the over 200 applicants that have requested to become members of the organisation.
- Whilst the voting processes of the organisation are still in development, GAIA-X is committed to devising a system that guarantees inclusiveness and a transparent decision-making process.<sup>9</sup> We understand that this will provide all members of the organisation, irrespective of their membership status, an opportunity to participate in all GAIA-X committees and working groups, and to submit their comments and observations, as well as voting rights in each group in which they are a member, knowledge and oversight of GAIA-X's activities, and access to an appropriate dispute resolution mechanism within the organisation.
- Both members and non-members will be able to access, in a non-discriminatory manner, all specifications developed by GAIA-X.
- GAIA-X's rules as shared with DG Competition also require any documents produced by any working group or committee, to be made available to all members. A transparent, automated system is set up to track all changes to the produced documents.

---

<sup>3</sup> Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements "Horizontal Guidelines", OJ C 11/1.

<sup>4</sup> Horizontal Guidelines, paragraph 283.

<sup>5</sup> Horizontal Guidelines, paragraph 282.

<sup>6</sup> Horizontal Guidelines, paragraph 281.

<sup>7</sup> Horizontal Guidelines, paragraph 281.

<sup>8</sup> GAIA-X Articles of Association, Article 5; Objective Criteria for Admission of Gaia-X Members and related Guiding Principles (Annex to GAIA-X Bylaws).

<sup>9</sup> GAIA-X response to Commission request for information, 31 August 2021.

We consider that with respect to standard-setting organisations, membership rules such as those put in place by GAIA-X seem unlikely to produce any appreciable anticompetitive effects within the meaning of Article 101(1) TFEU, provided that the internal working rules are able to effectively guarantee the organisation's open membership, the full accessibility of technical specifications to all members and non-members, the necessary transparency, as well as the application of non-discriminatory rules of participation, voting rights and third-party contribution.

We understand that GAIA-X continues to elaborate the scope of its activities and functions, as well as its rules of operations and their practical interpretation. Any future development of its activities and in particular any amendment to the membership and internal working rules, should at minimum take into account the principles mentioned above.

The present observations are thus limited to commenting on GAIA-X's organisational structure, in light of the information provided to DG Competition, and do not cover GAIA-X's subsequent activities, for which GAIA-X and its members will remain responsible to self-assess the compatibility with EU competition law.

I hope you and the GAIA-X members will find the foregoing observations useful in guiding your self-assessment and the proper implementation of the agreements and practices described in your submissions, in line with EU competition law.

If you have any questions or comments in relation to this letter, please contact either Mr. Thomas Kramler ([thomas.kramler@ec.europa.eu](mailto:thomas.kramler@ec.europa.eu)) or Mrs. Szilvia Szekely ([szilvia.szekely@ec.europa.eu](mailto:szilvia.szekely@ec.europa.eu)) of my services.

Yours sincerely,

[e-signed]  
Olivier GUERSENT