



To: Michel Barnier
Chief Negotiator, European Commission Taskforce on Article 50 negotiations with the United Kingdom

Věra Jourová
Commissioner for Justice, Consumers and Gender Equality

Tiina Astola
Diretor General, European Commission Directorate-General for Justice and Consumers

Our
reference: EXCO-BREX-18-034

Subject: Transfer of personal data across the Channel post-Brexit

Brussels, 26 July 2018

Dear Mr Barnier, Dear Ms Jourová, Dear Ms Astola,

Many businesses, including financial services providers, transfer personal data from the UK to the EU/EEA and vice-versa in order to conduct their business. Post-Brexit, the UK will become a third country in relation to the EU and the transfer of personal data from the EU/EEA to the UK will consequently no longer be allowed. Should personal data transfer between the EU/EEA and the UK stop, not only will business be disrupted, but consumers will be severely impacted.

The General Data Protection Regulation (GDPR), which fully applies as of 25 May 2018 in all EU member states including the UK, provides several solutions which allow the transfer of personal data from the EU/EEA to the UK.

The undersigned associations believe that **the adoption of an adequacy decision under Article 45 of the GDPR is the most appropriate solution**. Adequacy decisions are comprehensive, ensure a high level of protection for individuals, and offer clear legal certainty.

In contrast, the other solutions provided by the GDPR do not represent suitable alternatives:

- **Appropriate safeguards** set out under Article 46 are limited in their application. Binding corporate rules (BCRs) only address transfers within a group, so are therefore not a realistic option for SMEs as underlined by the Article 29 Working Party in recent guidelines¹, and standard contractual conditions (SCCs) do not cover intra-group transfers.

These appropriate safeguards also lack the necessary legal certainty, as data controllers would have to adapt their existing BCRs in line with new GDPR requirements. Similarly, the referral from the Irish High Court to the CJEU on the validity of the current SCCs confirms that this is not a sound legal instrument and could mean that they too need to be updated.

In addition, codes of conduct and certification mechanisms have never been tested for transferring personal data to third countries and are insufficient by themselves as third country controllers or

¹ Article 29 Working Party Guidelines on Article 49 of Regulation 2016/679 - http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=614232

processors would have to make binding, enforceable commitments (via contractual or other legally binding instruments) to apply those appropriate safeguards.

Most of these instruments would require approval from competent authorities, which past experience indicates would be a lengthy process possibly taking several years. It is therefore unlikely that such instruments would be ready before the UK becomes a third country.

- **Derogations** set out under Article 49 of the GDPR would only be used in exceptional circumstances, and strictly interpreted. This was again confirmed by the Article 29 Working Party in its guidelines adopted on 6 February 2018.

Legal certainty for personal data transfer is absolutely necessary well ahead of the Brexit date in order to avoid disruption to business and adverse effects for European consumers.

The undersigned associations therefore **call on the European Commission to launch the adequacy assessment process as soon as possible, and to adopt an adequacy decision maintaining the free flow of personal data from the EU/EEA to the UK post-Brexit.**

If an adequacy decision cannot be finalised in time, an interim measure must be put in place in order to allow for continuity in personal data flows until a full adequacy decision is adopted.

Considering the importance of personal data flows between the EU/EEA and the UK, we are also calling on British authorities to ensure on the one hand that the UK meets all the conditions for the European Commission to issue swiftly an adequacy decision, and on the other that personal data transfer from the UK to the EU/EEA will continue post-Brexit.

We remain at your disposal for any further clarification and hope that you could take these concerns into consideration.

Kind regards,



Michaela Koller
Director general
Insurance Europe



Cecilia Bonefeld-Dahl
Director general
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Ignasi Guardans
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Véronique Willems
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