



International Data Transfers Aspects of the EU General Data Protection Regulation Feedback on implementation

The Global Data Alliance¹ welcomes the opportunity to provide feedback on the EU General Data Protection Regulation (GDPR). The Global Data Alliance is a cross-industry coalition of companies, headquartered in different regions of the world, that are committed to high standards of data privacy and security. Alliance companies rely on the ability to transfer data responsibly around the world to design, create, and export new products and services; to enhance business processes and increase productivity; to ensure seamless global customer experience and reach new customers; and to engage in research, development, and innovation. This movement of information also supports scientific advances and improved health and safety outcomes. Data transfers enable the digital tools and insights that are critical to enabling entrepreneurs and companies of all sizes to create jobs, boost efficiency, drive quality, and improve output. As the Commission conducts its evaluation, the Global Data Alliance would like to offer some feedback on international data transfers aspects of the GDPR.

The GDPR has brought valuable harmonization of applicable rules, increased transparency of data handlers' responsibilities in the EU and beyond and has raised general public awareness of privacy. It has also given Data Protection Authorities (DPAs) the tools to effectively monitor and enforce requirements for international data transfers.

The GDPR also enshrines free movement of personal data as an important pillar of the EU acquis. The Global Data Alliance welcomes the leading role that the European Commission is taking on the global scene to support the emergence of "modern data protection regimes [...] designed to afford individuals a high level of protection while facilitating data flows in a way that maximizes economic opportunity and consumer interests²."

Cross-border data flows are necessary for companies to operate globally and to provide services to their customers, across sectors and geographies.³ The GDPR provides a list of mechanisms that can be used by organizations to comply with the Regulation's general principles and specific requirements when transferring personal data outside the EU and EEA.

¹ The Global Data Alliance is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. The Alliance supports policies that help instill trust in the digital economy while safeguarding the ability to transfer data across borders and refraining from imposing data localization requirements that restrict trade. Alliance members include BSA members and American Express, Amgen, AT&T, ITB360, Mastercard, Panasonic, United Airlines, Verizon, Visa, and WD-40 Company. BSA | The Software Alliance administers the Global Data Alliance.

² https://eeas.europa.eu/delegations/india/53963/node/53963_zh-hans?Consumers_to_the_Ministry_of_Electronics_and_Information_Technology_%28MeitY%29=

³ <https://www.globaldataalliance.org/downloads/GDAeverysector.pdf>

Different organization types and business models require the use of different transfer mechanisms that are not interchangeable. It is important that businesses be able to continue using the full range of existing GDPR-compliant data transfer mechanisms, such as: adequacy decisions; certifications; codes of conduct; Binding Corporate Rules (BCRs); and Standard Contractual Clauses SCCs. All these mechanisms are critical to support global data flows and are built with strong safeguards.

The Global Data Alliance supports the Commission's work on adequacy but notes that the underlying process that determines whether a country is adequate remains too time consuming and should be accelerated: as of April 2020, the EU had finalized 13 adequacy decisions, including for commercial transfers to Japan, as well as the United States through the EU-US Privacy Shield framework (Privacy Shield). As of April 2020, more than 5,300 companies from across the US are using the Privacy Shield, including at least 21 Global Data Alliance members. More than 70 percent of the companies certified are small or medium-sized businesses, across industries. The Global Data Alliance encourages the European Commission to finalize rapidly its adequacy proceedings with South Korea and with the UK to ensure EU-UK data transfers are not disrupted once the UK effectively becomes a third country.

EU lawmakers developed the SCCs so that organizations could transfer data to all the other countries whose regimes may not be recognized as essentially equivalent to that of the European Union. In this case, the GDPR puts the burden on companies to apply strong safeguards when using the clauses, so that data is protected at high levels wherever it travels. SCCs are an essential part of the day-to-day operations of companies across Europe, to transfer data with affiliates, vendors, customers and suppliers. According to a 2019 IAPP-EY report⁴, approximately 88% of companies transferring data out of the EU rely on SCCs, while 60% use Privacy Shield.

With SCCs, the EU has also made an important contribution to global standards that other regions have sought to emulate. Personal data protection regulation proposals in the Association of Southeast Asian Nations (ASEAN) countries incorporate similar concept. It is important that the EU set a clear example for the effective use of SCCs, as other countries continue to draft or amend their personal data laws.

Both the SCCs and the Privacy Shield are subject to legal challenges before European Courts, raising significant concerns about the viability of both mechanisms and suitable alternatives. Were SCCs and/or Privacy Shield to be invalidated, it would not only cause massive disruption to economic operators in Europe and beyond, it would also deprive Data Protection Authorities of important tools to enforce EU individuals' rights under the GDPR. It is important for these mechanisms to be practical and reliable to create trust and confidence in the system. They must be robust to withstand ongoing and potential future legal challenges. The Global Data Alliance therefore welcomes the European Commission's firm commitment to defend both the Privacy Shield and SCCs as critically important transfer mechanisms which should be upheld.

Article 46 of the GDPR foresees additional tools to provide the necessary safeguards such as BCRs, codes of conduct and certification mechanisms. BCRs are an important tool for intra-corporate transfers of many companies that operate around the world. However, the DPA review and adoption process is burdensome and lengthy and should benefit from additional

⁴ IAPP-EY Annual Governance Report 2019, <https://iapp.org/resources/article/iapp-ey-annual-governance-report-2019/>

dedicated resources. To this day, codes of conduct and certification mechanisms remain largely theoretical. The Commission should encourage initiatives that make use of Article 46 to create additional tools to help address business needs in a legally and operationally sound manner to bridge gaps between business models and legal traditions. Global Data Alliance members would be pleased to provide input to inform the development of such codes and certification mechanisms that could provide robust and reliable transfers schemes.

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