

COMP AM Article 41

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Article 41

Transfers with an adequacy decision

1. A transfer may take place where the Commission has decided that the third country, or a territory or a processing sector within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any *specific further* authorisation.

2. When assessing the adequacy of the level of protection, the Commission shall give consideration to the following elements:

(a) the rule of law, relevant legislation in force, both general and sectoral, including concerning public security, defence, national security and criminal law *as well as the implementation of this legislation*, the professional rules and security measures which are complied with in that country or by that international organisation, *jurisprudential precedents*, as well as effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred;

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or international organisation in question responsible for ensuring compliance with the data protection rules, *including sufficient sanctioning powers*, for assisting and advising the data subjects in exercising their rights and for co-operation with the supervisory authorities of the Union and of Member States; and

(c) the international commitments the third country or international organisation in question has entered into, *in particular any legally binding conventions or instruments with respect to the protection of personal data*.

3. The Commission *shall be empowered to adopt delegated acts in accordance with Article 86 to may* decide that a third country, or a territory or a processing sector within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2. ~~*Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2). Such delegated acts shall provide for a sunset clause if they concern a processing sector and shall be revoked according to paragraph 5 as soon as an adequate level of protection according to this Regulation is no longer ensured.*~~

4. The *delegated implementing* act shall specify its *territorial geographical* and sectoral application, and, where applicable, identify the supervisory authority mentioned in point (b) of paragraph 2.

4a. The Commission shall, on an on-going basis, monitor developments in third countries and international organisations that could affect the elements listed in paragraph 2 where a delegated act pursuant to paragraph 3 has been adopted.

5. The Commission *shall be empowered to adopt delegated acts in accordance with Article 86 to may* decide that a third country, or a territory or a processing sector within that third country, or an international organisation does not ensure *or no longer ensures* an adequate level of protection within the meaning of paragraph 2 of this Article, in particular in cases where the relevant legislation, both general and sectoral, in force in the third country or international organisation, does not guarantee effective and enforceable rights including effective administrative and judicial redress for data subjects, in particular for those data subjects residing in the Union whose personal data are being transferred. ~~*Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2), or, in cases of extreme urgency for individuals with respect to their right to personal data protection, in accordance with the procedure referred to in Article 87(3).*~~

6. Where the Commission decides pursuant to paragraph 5, any transfer of personal data to the third country, or a territory or a processing sector within that third country, or the international organisation in question shall be prohibited, without prejudice to Articles 42 to 44. At the appropriate time, the Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation resulting from the Decision made pursuant to paragraph 5 of this Article.

6a. Prior to adopting a delegated act pursuant to paragraphs 3 and 5, the Commission shall request the European Data Protection Board to provide an opinion on the adequacy of the level of protection. To that end, the Commission shall provide the European Data Protection Board with all necessary documentation, including correspondence with the government of the third country, territory or processing sector within that third country or the international organisation.

7. The Commission shall publish in the *Official Journal of the European Union and on its website* a list of those third countries, territories and processing sectors within a third country and international organisations where it has decided that an adequate level of protection is or is not ensured.

8. Decisions adopted by the Commission on the basis of Article 25(6) or Article 26(4) of Directive 95/46/EC shall remain in force until *five years after the entry into force of this Regulation unless amended, replaced or repealed by the Commission before the end of this period.*

Recitals

(80) The Commission may decide with effect for the entire Union that certain third countries, or a territory or a processing sector within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations which are considered to provide such level of protection. ~~*In these cases, transfers of personal data to these countries may take place without needing to obtain any further authorisation. The Commission may also decide, having given notice and a complete justification to the third country, to revoke such a decision.*~~

(81) In line with the fundamental values on which the Union is founded, in particular the protection of human rights, the Commission should, in its assessment of the third country,

take into account how a given third country respects the rule of law, access to justice as well as international human rights norms and standards.

(82) The Commission may equally recognise that a third country, or a territory or a processing sector within a third country, or an international organisation offers no adequate level of data protection. ***Any legislation which provides for extra-territorial access to personal data processed in the Union without authorisation under Union or Member State law should be considered as an indication of a lack of adequacy.*** Consequently the transfer of personal data to that third country should be prohibited. In that case, provision should be made for consultations between the Commission and such third countries or international organisations.