

## **EXPLANATORY MEMORANDUM**

### **COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON EXCHANGING AND PROTECTING DATA IN A GLOBALISED WORLD**

**Submitted by Department for Culture, Media & Sport**

**7 February 2017**

#### **SUBJECT MATTER**

1. The General Data Protection Regulation ((EU) 2016/679) (GDPR) and the Directive on data protection in the police and criminal justice sector ((EU) 2016/680) (Law Enforcement Directive) will become applicable in May 2018. Both contain measures to strengthen personal data protection in the context of cross-border transfers of personal data for commercial and law enforcement purposes. Both measures were formally adopted on the 27th April 2016 and will come into force in May 2018.
2. The GDPR provides a suite of mechanisms to transfer personal data from the EU to third countries, including binding corporate rules (BCRs), standard contractual clauses (SCC) and adequacy decisions. Whilst these measures are already available under the current Directive, the reforms seek to simplify and expand their use and encourage the development and use of new approved codes of conduct and certification mechanisms to legitimise data transfers.
3. The present Communication published on 10 January 2017 sets out the Commission's strategy for engaging selected third countries in the future to reach adequacy decisions and promoting data protection standards through international data protection instruments.
4. This Communication is not legally binding.

#### **SCRUTINY HISTORY**

5. Not applicable as the document is merely a Communication.

#### **MINISTERIAL RESPONSIBILITY**

6. Matt Hancock, the Minister of State for Digital and Culture, is responsible for data protection policy.

#### **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

7. Data protection is a reserved policy issue.

## **LEGAL AND PROCEDURAL ISSUES**

8. There are no legal or procedural issues in this Commission Communication because it is not legally binding, and is not a proposal for legislation.

## **APPLICATION TO THE EUROPEAN ECONOMIC AREA**

9. The Commission Communication is not applicable to the EEA, although the GDPR and Law Enforcement Directive both are.

## **SUBSIDIARITY**

10. This Commission Communication does not raise issues of subsidiarity.

## **POLICY IMPLICATION**

11. On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
12. The Government welcomes the Commission's Communication. It provides a broad outline of the reformed EU data protection regime in the context of cross-border data transfers. It outlines the mechanisms available for transfer, such as adequacy agreements, standard contractual clauses and binding corporate rules under the existing regime. It also discusses how these have been broadened under the new regime, and sets out a number of new transfer measures, such as certification mechanisms and approved codes of conduct; which are designed to provide tailor-made solutions for companies which could enable them to benefit from the competitive advantages associated, for example, with a privacy seal or mark.
13. The Communication presents the Commission's approach to adequacy decisions, which allow for the free flow of personal data between the EU or EEA and third countries that are recognised as providing "adequate protection" for personal data comparable to that in the EU. It notes what the process of an adequacy finding involves and outlines the criteria to be taken into account when assessing with which third countries a dialogue on adequacy is to be pursued.
14. As part of the discussion the Commission indicates its intention to engage with Latin American countries (in particular Mercosur) and non-EU European neighbours that have expressed an interest in receiving an adequacy decision from the EU. The promotion of data protection standards internationally and international law enforcement co-operation are also addressed. Furthermore, it discusses the Commission's plans to work with and support countries interested in adopting strong data protection laws to converge with EU data protection principles and interoperable global standards; and notes steps the Commission will take to enhance enforcement cooperation, including through mutual assistance arrangements.

15. As part of plans for the UK's exit from the EU, the Government will consider carefully how best to maintain its continued ability to share, receive and protect EU data with other EU member states (and, indeed, with nations outside the EU). The Government is keen to ensure that data flows with the EU are not interrupted after the UK leaves the EU and therefore is considering all the options on the most beneficial way of ensuring that the UK's data protection regime continues to build a culture of data confidence and trust that safeguards citizens and supports business in a global economy. The Government views the Communication as important in highlighting the Commission's approach to these matters.

## **CONSULTATION**

16. Not applicable.

## **IMPACT ASSESSMENT**

17. Not applicable.

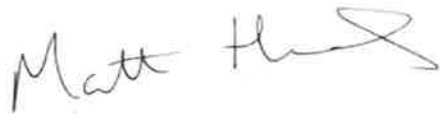
## **FINANCIAL IMPLICATIONS**

18. Not applicable.

## **TIMETABLE**

19. Not applicable.

**Signed: Matt Hancock**

A handwritten signature in cursive script that reads "Matt Hancock".

