

KEEP EUROPE GROWING

August 24, 2015

Re: International data transfers

Dear GDPR trialogue stakeholders of the European Institutions,

The European Data Coalition (Coalition) welcomes the improvements made to Chapter V during the July trialogue negotiations. As the digital revolution picks up speed, a successful European data-driven economy founded on trust and transparency needs adequate rules. The Coalition is a strong supporter of the modernisation of data protection rules and is keen to contribute positively in finding a balanced and progressive legal text.

Article 43.a (new) – prohibition of data disclosure requests by third countries

The proposed version of Art. 43a is still problematic, as it continues to force European companies operating in third countries to choose which legislation to disregard when receiving lawful requests for information. While we applaud the use of mutual legal assistance treaties (MLAT), the proposed version still promotes an extra-territorial conflict of law. By unilaterally assuming universal jurisdiction, the Regulation would put European companies in an unsolvable dilemma, and would be in conflict with the concept of interoperability that, while recognizing different privacy concepts, is necessary in international data flows. Moreover, Art. 43a does not offer genuine legal redress for EU citizens, as it does not create competencies over EU or non-EU national security and law enforcement agencies. Without it, European companies are ultimately forced to “choose” to leave the EU market or leave the global market, making the digital economy in Europe not safer, but less competitive.

The Coalition recommends deleting Article 43a. Any concerns with law-enforcement access to commercial data processing should be dealt with in the relevant frameworks, and not in the context of commercial data processing.

Article 44/1.h – legitimate interest as a transfer mechanism

The Coalition is supportive of the Council’s willingness to preserve the derogation contained in Art. 44/1.h. Others have mistakenly made the case that this clause risks lowering the level of protection currently provided under the EU *acquis*. Such arguments, however, do not adequately account for the restrictiveness and the merit of the conditions under which this transfer mechanism would operate. Crucially, this derogation does not apply to:

- bulk or mass transfers of personal data;
- frequent small scale transfers of personal data;
- permanent transfers of personal data.

Furthermore, the purpose of the transfers envisioned under the derogation are not to process or disseminate personal data but rather to enable support functions, troubleshooting or routine controls. For such functions, the transfer of personal data is purely incidental.

The European Union¹ needs to align its goals with the reality of today’s digital world. ICT-systems are complex and composed of hardware and software parts from many different countries. Likewise, the expertise to create and maintain these different components is scattered around the world. Given this global dispersion of expert

¹ See Treaty on European Union Art. 3(3), The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

technicians and support personnel for specific products, applications and solutions for a system, it is paramount that we permit them to perform their work remotely, including from a third country. This is a basic requirement for system providers wishing to remain competitive in today's global distribution value chains.

In conclusion, privacy protection as well as European society in general, require IT-systems to be up and running 24/7. As random, temporary and non-bulk transfers are necessary and do not pose unacceptable privacy threats, the Coalition agrees with the Council position on Art. 44/1.h and encourages the other triologue negotiators to support its preservation in the final text. This derogation is not only desirable to achieve economic benefits such as stimulating EU based investments, competitiveness, job creation and EU based operations, but also does not contradict the overall GDPR objective of safeguarding EU citizens' fundamental rights.



Rene Summer, Coalition Spokesperson

ABOUT THE COALITION

Our Coalition is made up of twenty European companies, from SMEs to Global Multinationals and non-profit organisations operating in a variety of sectors on a national, regional and global scale. With an aggregate turnover (2013) of over € 158 billion and some 752,000 employees worldwide, our footprint allows us to bring growth, progress and jobs to the EU's economy. Our membership includes...

- ... a global leader in power and automation solutions...*
- ... the leading Central and Eastern European e-commerce company...*
- ... a productivity solutions provider of compressors, vacuum solutions, construction and mining equipment...*
- ... a non-profit organisation dedicated to collecting money to prevent and combat child cancer diseases...*
- ... a global leader in household appliances...*
- ... two providers of communications technology and services...*
- ... a designer, engineer, manufacturer and distributor of outdoor power products...*
- ... an investment company...*
- ... a SME provider of online marketing through search engine marketing, conversion and lead generation...*
- ... an e-commerce company providing payment services for online storefronts...*
- ... an engineering group in tooling, materials technology, mining and construction ...*
- ... an enterprise software corporation...*
- ... a global provider of heavy trucks and buses, engines and services...*
- ... a provider of assured, secure cloud services to the UK public sector...*
- ... a global provider of renewable solutions in packaging, biomaterials, wood and paper...*
- ... the leading university in technology and digital arts programmes...*
- ... a provider of business software and services to more than 340 000 business in the Nordics...*
- ... a producer and distributor of trucks, buses and construction equipment...*
- ... the leading company in advanced mobile services...*

Our businesses are profoundly different but deeply united by the need for clear roles and responsibilities, open cross-border data flows, balanced codified sanction guide lines, effective one stop shop and absence of overly prescriptive rules as fundamental conditions for long-term growth, competitiveness and prosperity, for both us and the economies in which we operate.

For further information please visit us www.europeandatacoalition.eu or contact us at info@europeandatacoalition.eu