

Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

CHAPTER V

Transfers of personal data to third countries or international organisations

Article 36

Transfers on the basis of an adequacy decision

1 Member States shall provide that a transfer of personal data to a third country or an international organisation may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection. Such a transfer shall not require any specific authorisation.

2 When assessing the adequacy of the level of protection, the Commission shall, in particular, take account of the following elements:

- a the rule of law, respect for human rights and fundamental freedoms, relevant legislation, both general and sectoral, including concerning public security, defence, national security and criminal law and the access of public authorities to personal data, as well as the implementation of such legislation, data protection rules, professional rules and security measures, including rules for the onward transfer of personal data to another third country or international organisation, which are complied with in that country or international organisation, case-law, as well as effective and enforceable data subject rights and effective administrative and judicial redress for the data subjects whose personal data are transferred;
- b the existence and effective functioning of one or more independent supervisory authorities in the third country or to which an international organisation is subject, with responsibility for ensuring and enforcing compliance with data protection rules, including adequate enforcement powers, for assisting and advising data subjects in exercising their rights and for cooperation with the supervisory authorities of the Member States; and
- c the international commitments the third country or international organisation concerned has entered into, or other obligations arising from legally binding conventions or instruments as well as from its participation in multilateral or regional systems, in particular in relation to the protection of personal data.

3 The Commission, after assessing the adequacy of the level of protection, may decide, by means of implementing act, that a third country, a territory or one or more specified sectors within a third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2 of this Article. The implementing act shall provide a mechanism for periodic review, at least every four years, which shall take into account all relevant developments in the third country or international organisation. The implementing

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act shall specify its territorial and sectoral application and, where applicable, identify the supervisory authority or authorities referred to in point (b) of paragraph 2 of this Article. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 58(2).

4 The Commission shall, on an ongoing basis, monitor developments in third countries and international organisations that could affect the functioning of decisions adopted pursuant to paragraph 3.

5 The Commission shall, where available information reveals, in particular following the review referred to in paragraph 3 of this Article, that a third country, a territory or one or more specified sectors within a third country, or an international organisation no longer ensures an adequate level of protection within the meaning of paragraph 2 of this Article, to the extent necessary, repeal, amend or suspend the decision referred to in paragraph 3 of this Article by means of implementing acts without retro-active effect. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).

On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 58(3).

6 The Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation giving rise to the decision made pursuant to paragraph 5.

7 Member States shall provide for a decision pursuant to paragraph 5 to be without prejudice to transfers of personal data to the third country, the territory or one or more specified sectors within that third country, or the international organisation in question pursuant to Articles 37 and 38.

8 The Commission shall publish in the *Official Journal of the European Union* and on its website a list of the third countries, territories and specified sectors within a third country and international organisations for which it has decided that an adequate level of protection is or is no longer ensured.