

BRUSSELS, 2 May 2017

Commissioner Věra Jourová
Commissioner for Justice, Consumers and Gender Equality
European Commission
Rue de la Loi 200
1049 Brussels - Belgium

RE: Exchanging and Protecting Personal Data in a Globalised World

Dear Commissioner Jourová

DIGITALEUROPE has long championed the positive effects of global data flows not only for Europe's digital technology sector, but for all European industry sectors across the entire value chain. We firmly believe that a key component of a successful EU digital strategy is a solid framework enabling smooth cross-border transfers of personal data between the EU and its trading partners. In this context, DIGITALEUROPE welcomes the January 2017 publication by the European Commission of a Communication on 'Exchanging and Protecting Personal Data in a Globalised World'¹.

Having completed the reform of Europe's data protection regime with the adoption of the General Data Protection Regulation ("GDPR"), DIGITALEUROPE believes it is the right time for the European Commission to begin utilising all parts of the international data transfer 'toolkit' available under the GDPR. In this regard, DIGITALEUROPE also welcomes the creation of an 'international data flows' unit within DG JUSTICE

We believe that 'adequacy' has been an under-utilised mechanism with only 12 third countries² having obtained 'adequacy' standing since 1995. Although a high-bar is required for a third country to achieve 'adequacy', including a resource intensive exercise, once granted 'adequacy' offers an efficient environment for businesses to transfer data from Europe to third countries. We therefore welcome the European Commission's announcement to prioritise discussions on possible adequacy decisions with key trading partners, such as Japan and Korea. Such an exercise will help to better secure outbound data flows of EU citizens' personal data to non-EU countries. We also welcome that the reform provides flexibility in future adequacy decisions (e.g., sector-specific).

While adequacy is a component of an accountability based international data transfer system, the use of other transfer mechanism, including Standard Contractual Clauses ("SCCs"), will remain an important tool for organisations. DIGITALEUROPE is therefore encouraged by the potential development of processor-to-processor SCCs to complement the existing set of SCCs. Europe's digital technology sector would openly welcome the drawing up of additional SCCs and encourages the European Commission to embark on such an exercise in cooperation with the Article 29 Working Party.

¹ COM(2017) 7 final

² List of European Commission decisions on the adequacy of the protection of personal data in third countries

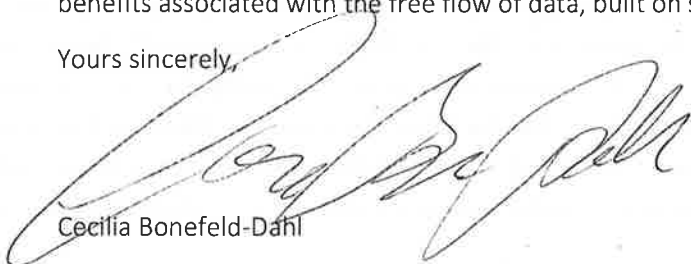
DIGITALEUROPE also supports the exploration of potential convergence between EU Binding Corporate Rules (“BCRs”) and Asia Pacific Economic Cooperation (“APEC”) Cross Border Privacy Rules (“CBPRs”). We would encourage the European Commission to go beyond a general ‘mapping’ of similarities between the two mechanisms and instead strive for an ambitious goal of mutual recognition. We call on the European Commission to make this a priority topic during the next Data Protection Commissioners Conference in September 2017. It would be a concrete deliverable if during that meeting, a formalised roadmap could be agreed upon. Such potential mutual recognition would not only support the activities of European companies, but also contribute to promoting high data protection standards globally.

We would also encourage the European Commission to explore potential ‘convergence’ between existing EU transfer mechanisms. While DIGITALEUROPE welcomes that the GDPR expands the role of BCRs to a group of enterprises engaging in a joint economic activity, we believe the European Commission should pursue the possibility of ‘mutual recognition’ of data transfers between two BCR approved organisations even if they are not engaging in a joint economic activity.

However, to fully make use of transfer mechanisms, we encourage the European Commission to increase the efficiency and predictability of administrative lead times for the approval process of mechanisms such as BCRs. We believe BCRs would benefit from the securing of administrative processes that follow published processing periods and are based on information requirements that are limited to what is necessary for the approval procedure.

We support the European Commission in its work on international data transfers and stand ready to aid the European Commission in all bilateral and multilateral discussions in order to better facilitate data flows to and from the EU in a reasonable timeframe. We are convinced that the European economy can prosper from the benefits associated with the free flow of data, built on strong data protection.

Yours sincerely,



Cecilia Bonefeld-Dahl

Director General

CC:

Ms Tiina Astola, Director General – DG JUSTICE

Mr Emmanuel Crabit, Acting Director – Fundamental Rights and the Rule of Law, DG JUSTICE

Mr Olivier Micol, Head of Unit – Data Protection, DG JUSTICE

Mr Bruno Gencarelli, Head of Unit – International Data Flows and Protection, DG JUSTICE

ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 61 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

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