



Der Bundesbeauftragte  
für den Datenschutz und  
die Informationsfreiheit

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DATE Bonn, 24.04..2019  
BUSINESS. **12-510-1/001#0491**

Please quote the above reference  
number in all  
replies.

**SUBJECT Approval of the Multilateral Administrative Arrangement**

## APPROVAL

1. In accordance with Article 46(3)(b) of the General Data Protection Regulation (GDPR), I hereby approve the multilateral Administrative Arrangement ("ESMA-AA") (**Annex 1**) attached by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht) (applicant) as appropriate safeguards within the meaning of Article 46(1) of the GDPR.
2. The approval referred to in point 1 is hereby accompanied by the following incidental provisions in accordance with Section 36(1) of the Administrative Procedures Act:
  - 2.1 Prior to any data transfer, the Administrative Arrangement requires the signature of the applicant and the data importer to whom personal data are to be transferred.



2.2. The applicant is required, for the duration of the concluded multilateral Administrative Arrangement (“ESMA-AA”), to submit the following documents to me at the end of each calendar year - for the first time by 31 December 2019 –:

- a) a list of data breach notifications of the relevant calendar year, that means incoming and also outgoing notifications (Section III point 4 ESMA-AA);
- b) a list of requests and complaints from data subjects of the relevant calendar year (Section III, point 5, ESMA-AA);
- c) an overview of all requests and authorisations for data transfers to third parties in the relevant calendar year (Section III, point 6.3, paragraph 1 ESMA-AA)
- d) a list of notifications received in accordance with Section III, point 6.2, paragraph 4, ESMA-AA of the relevant calendar year;
- e) a copy of the relevant current deletion concept (Section III, point 7, ESMA-AA);
- f) an overview of the cases of each calendar year which could be clarified by the Assessment Group.

2.3 The applicant is required to provide the Assessment Group and me without delay with a copy of the results of periodic reviews conducted in accordance with Section IV, point 1, ESMA-AA.

2.4 The applicant is required to inform me without delay of any recommendations made by the Assessment Group.

2.5 The applicant is required to inform me immediately if his/her authority is concerned by an appeal procedure according to Section III, point 8, ESMA-AA, and in the event of suspension according to Section IV, point 6, ESMA-AA.

The applicant’s attention is drawn to the fact that the approval may be revoked or the data transfer may be prohibited under Article 58(2)(j) of the GDPR if the provisions of the Administrative Arrangement (ESMA-AA) are not complied with, or if the applicant fails to comply with the submission- and notification requirements set out in points 2.2 to 2.5 or other data protection provisions.



## I.

The International Organisation of Securities Commissions (IOSCO) and the European Securities and Markets Authority (ESMA) have developed a draft multilateral Administrative Arrangement between the EEA-securities and market surveillance authorities and their international counterparts in order to exchange personal data across borders. This Administrative Arrangement includes, amongst others, definitions, data protection safeguards, review- and control mechanisms.

On 12 February 2019, the European Data Protection Board issued a positive opinion on the Administrative Arrangement according to Article 64(2) of the GDPR.

The Administrative Arrangement may be used as a basis for data transfers to third countries, after approval by the national supervisory authority.

By letter of 20 February 2019, pursuant to Article 46(3)(b) of the GDPR, the applicant requested the authorisation of the Administrative Arrangement attached in **Annex 1**.

## II.

Article 46(1) of the GDPR provides that, in the absence of a decision pursuant to Article 45(3), a controller or processor may transfer personal data to a third country only if the controller or processor has provided appropriate safeguards and on condition that enforceable data subjects rights and effective legal remedies for data subjects are available.

In accordance with Article 46(3)(b) GDPR, subject to the authorisation from the competent supervisory authority, the appropriate safeguards referred to in paragraph 1 may also be provided for, in particular, by provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights.

Pursuant to Section 1 of the Federal Data Protection Act (BDSG) in conjunction with Article 51(1) of the GDPR, I am the competent data protection supervisory authority for the applicant.

The conditions for approval of the Administrative Arrangement as appropriate safeguards under Article 46(3)(b) of the GDPR are in principle met here. The Administrative Arrangement accords enforceable and effective rights to the data subject. Effective legal protection and control by independent bodies are ensured. The Administrative Arrangement is necessary to ensure effective international cooperation between financial market supervisory authorities. Without authorisation, the applicant would not be allowed to transfer personal data to financial market supervisory authorities in third countries.



The approval of point 1 also required the regulation of incidental provisions referred to in point 2.

An administrative arrangement as such is not legally binding according to recital 108 of the GDPR. However, safeguards concluded with third countries which are not binding under international law are not in themselves sufficient to compensate for a lacking data protection standard (Federal Constitutional Court's decision (BVerfGE) 141, 220 para. 337 et seq.; Schantz, in Simitis/Hornung/Spiecker, Datenschutzrecht, 1st edition 2019, Article 46, margin number 81).

Therefore, an administrative arrangement can only be qualified as an appropriate safeguard for guaranteeing the data subjects' right to informational self-determination if the rights and obligations included in this arrangement are actually effectively applied between the applicant and the data importers and if this can be effectively verified by the data protection supervisory authority.

This means that the applicant and data importers must express the seriousness by putting their signatures to the Arrangement, as provided for in point 2.1.

In order to ensure and verify whether the Administrative Arrangement is effectively applied by the applicant and his/her data importers, a regular review of documents and notifications is required. It is only through regular reviews of these documents and notifications by the data protection supervisory authority that it can effectively be established whether the Administrative Arrangement is actually applied. To this end, the applicant must be obliged to provide evidence, as stipulated in the requirements set out in points 2.2 to 2.5.

#### **Details of remedies available:**

An appeal against that decision may be brought before the Administrative Court, Cologne (Verwaltungsgericht Köln) within one month following the announcement of the decision.

With kind regards,

Ulrich Kelber