



Allied for Startups Comments on Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data

Allied for Startups welcomes the opportunity to share its feedback and analysis in the EPDB's public consultation on supplementary measures to the safeguards in Article 46 GDPR.

Startups have the potential to be the rocket fuel for Europe's ambitious green and digital recovery. As hotbeds of innovation and without established ways of doing things, they constantly provide new benefits for Europe's businesses and consumers. These startups operate in global markets and therefore data flows across borders comes naturally to them.

Consequently, global markets for data flows are of paramount importance for our network. In an open letter ("[Commit to Data Flows & Back it up with Action](#)") to Commission President von der Leyen and Council President Michel on 8 October, we underlined the need to enable data flows across markets. After Privacy Shield was invalidated by the European Court of Justice and SCCs now require extra protections, our members are keen to know what options they have available to them.

For new data transfer tools to be fit for purpose not only for big players but also for startups, they should be affordable, straightforward and technology-neutral. The overwhelming majority of thousands of businesses that were Privacy Shield certified are SMEs/startups. SCCs are already only a second-best option for them. Lifting uncertainty for the startups should be the goal of the EDPB and other EU players.

Regarding the proposed recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data, we would like to suggest the Board to consider the following:

1. Supplementary measures require a robust foundation. If the underlying framework is not legally reliable, there is an additional compliance and financial risk for any startup that is implementing them. Supplementary measures could not and should not stand alone.
2. Any legislative measure, including supplementary measures to data transfer tools, pose additional costs and potential hurdles for startups. They should therefore be carefully and proportionally weighed against the potential benefit they envisage to



achieve. Specifically, startups have less resources, less time and : with new technologies that do not conform with established ways of doing things. Ergo, supplementary measures should be designed so they are affordable, straightforward and technology-neutral. In our view, the six-step process set out by the EDPB currently does not meet these criteria.

- a. For instance, how can a startup ascertain whether “anything in the law or practice of the third country may impinge on the effectiveness of the appropriate safeguards of the transfer tools you are relying on.”
 - b. Providing for ‘specific technical measures’ is not technology-neutral.
3. The current recommendations would require in-depth expertise in multiple jurisdictions. Beyond the prior point regarding cost, time and technological neutrality, implementation of these measures would also lead to an immediate spike in demand for experts familiar with the subject matter. Bigger players would have an easier time affording these experts. Startup founders would be left facing tough decisions about their headquarters or whether they still want to scale to a given region.

Fundamentally, startups want to scale and provide their products and services to global markets. Complying with data protection rules is crucial for them, as young companies stand to lose everything if they are not trusted. If there are mechanisms on top of existing robust adequacy agreements which enable them to show more responsibility, this would be welcomed by many founders.

However, in the current form the measures would be unrealistic especially for startups. Some startups would find themselves making hard decisions regarding whether they want to scale into certain other regions.

Even if they are somehow able to meet the requirements, they require a far larger investment. These investments will make it harder to challenge bigger incumbents. It is therefore crucial that the cost of not having data transfers is weighed into the equation, for businesses and consumers.

We are looking forward to a constructive dialogue around building data transfer mechanisms for startups. We are available for any questions you may have.