Credit Services Association

Response to EDPB recommendations on supplementary measures

voice of the collections industry

1. Background

1.1 The Credit Services Association (CSA) is the only national trade association in the UK for organisations active in the debt collection and purchase industry. The CSA, which has a history dating back to 1906, has around 300 member companies which represent 90% of the industry, and employ 11,000 people. The membership also comprises specialist tracing agencies, in-house collection departments of large banks and utility companies and law firms.

1.2 The clients of CSA members include major financial institutions (such as banks and building societies), credit grantors, government departments and local authorities, utility companies and mail order businesses.

1.3 At any one time, the CSA's members hold up to £60 billion for collection, returning nearly £4 billion in collections to the UK per annum. As the voice of the collections industry, our vision is to build confidence in debt collection by making the entire process clear, easy to understand and less stressful for all those involved. Further information on the CSA can be found at: http://www.csa-uk.com.

1.4 The functions performed by CSA members are vital to the operation of the various sectors in which they operate. Unpaid debts cause damage to lenders / suppliers and to borrowers by adding costs to the system which result in higher prices for credit or goods/services. Serious problems with unpaid debt may also lead to restrictions in the availability of credit, particularly to consumers who may otherwise find it difficult to obtain cost-effective credit and therefore have a detrimental impact on the overall growth of the economy.

2. General feedback

2.1 We welcome further guidance that helps organisations to ensure they are compliant with the GDPR and clarifies its interpretation. We appreciate that the EDPB's recommendations have been published within the constraints of the CJEU's decision in Schrems II.

2.2 However, we are concerned that they impose significant and unrealistic burdens on data exporters, especially microbusinesses and SMEs.

2.3 Of particular concern is the requirement that exporters (regardless of size) undertake the same assessment of overseas jurisdictions as the European Commission does when deciding whether to adopt an adequacy decision. Whilst we appreciate that the assessment is intended to be limited to the law relating to the transferred data, it is apparent from paragraph 30 and Annex that the assessment is expected to be broad in its scope, encompassing *"anything in the law or practice of the third country that may impinge on the effectiveness of the appropriate safeguards…"*.

2.4 Under the recommendations, exporters are expected to complete this assessment for each transfer - an assessment which has previously taken the European Commission (with significantly more resources and expertise) up to 2 years to complete and, as demonstrated by the CJEU's decisions in Schrems I and Schrems II, is not always correct. However, the consequences for incorrect assessment by an exporter are severe, with exporters facing potentially significant fines or other enforcement action.

2.5 The example given on p.15 regarding the CJEU findings in relation to FISA and the need for supplementary measures illustrates precisely how complicated this assessment is for an organisation of any size and the level of expertise required to competently assess the laws and practices of a third country. It is unreasonable to place this burden on individual organisations.

2.6 Further, the suggestion that organisations should rely on information from the data importer in relation to relevant laws and practices is unlikely to be sufficient, given that it is the data exporter that bears all accountability for the processing. They are unlikely to be satisfied relying solely on the data importer's information, considering the implications for non-compliance. Additionally, we believe this is an overestimation of the knowledge that many importers will have about their own jurisdiction and whether the legal and regulatory framework meets the standards required by GDPR.

2.7 The recommendations take no account of the size of the exporters (or importers) and their available resources to carry out (or support) the required assessments.

2.8 In reality, exporters will not have the time, resource or expertise to carry out the assessments. That means that exporters will need to obtain legal opinions which are likely to be expensive, as there are only a limited number of large law firms that have the expertise to comment on the local jurisdiction and assess it against the standards required by GDPR.

2.9 Realistically, many SME organisations will simply not be able to proceed on this basis. Any cost-benefit or income generation of an international data transfer will likely be outweighed by the financial and resourcing costs of the assessment.

2.10 It will therefore be the largest organisations that are able to benefit from any potential cost-saving / income-generation in using international suppliers, because they will have the necessary scale, resource and expertise to conduct the assessment to the standards required. This could have unfair implications for competition if the largest organisations are the only ones equipped to benefit from the potential cost-effectiveness / business of an international third party solution / provider.

2.11 The recommendations also take a zero-tolerance approach to transfers to third country jurisdictions which do not provide adequate protection. There is no scope for a risk-based approach to allow transfers where there is a low risk of harm to data subjects.

2.12 We believe that the current recommendations place an unreasonable burden on organisations, fail to provide proportionate solutions and may lead to competition issues.

2.13 We would encourage the EDPB to develop more proportionate options and solutions for SMEs. We would also welcome clarity on expectations for how assessments are conducted and how the assessments can be confined to only issues affecting the transferred data – a template assessment may help SMEs in this regard.

3. Specific comments

3.1 The following are some specific comments regarding content of the recommendations document.

Paragraph	Comments
Page 3	
1st paragraph	• We would suggest including a link to the EDPB European Essential Guarantees recommendations for ease of reference.
Page 6	
Recital (5)	• Line 1 - typo "*The Court stated that it is above all, for data exporter to verify*" – this should either be "*The Court stated that it is above all, for data exporters to verify*" or "*The Court stated that it is above all, for the data exporter to verify*"
Recital (6)	• This states that if the controller or processor is not able to take appropriate measures to guarantee an essentially equivalent level of protection, the transfer must be suspended or ended. However, Article 49(1) of GDPR anticipates that the transfer can take effect if the controller notifies the supervisory authority of the transfer and informs the data subject. This is reaffirmed in FAQ 5 of the FAQs adopted by the EDPB on 23 July 2020
Page 9	
Paragraph 10	• Bearing in mind the principle of proportionality, we would welcome clarity on the expectations for an exporter and the extent of transfer mapping i.e. whether they must map **all** onward transfers, e.g. to "fourth", "fifth", "sixth" party recipients.
Page 12	
Paragraph 30	• As noted in our general feedback, we believe this overestimates what information data importers, particularly smaller organisations, will be able to provide data exporters; even extensive (and therefore expensive) legal opinions are unlikely to cover all applicable laws.
Paragraph 32	• "*you will need to look into the characteristics of each of your transfers and determine how the domestic legal order of the country to which data is transferred (or onward transferred) applies to these transfers*" • Even data exporters which have their own in-house legal counsel will be highly unlikely to be appropriately qualified to make this assessment. This will require the data exporter to obtain a (likely expensive) legal opinion from lawyers in the relevant jurisdiction(s).
Page 13	
Paragraph 34	• "*Among the applicable laws, you will have to assess if any impinge on the commitments contained in the Article 46 GDPR transfer tool you have chosen*" • Data exporters will be highly unlikely to be appropriately qualified to make this assessment. This will require the data exporter to obtain a (likely expensive) legal opinion from lawyers in the relevant jurisdiction(s).

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