

Annex: Bases for International Transfers of Personal Data under the GDPR

Preliminary comments: (i) in principle, international transfers of personal data, including onward transfers, must comply with GDPR provisions (“protection follows data”); and (ii) any judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a controller or processor to transfer or disclose personal data may only be recognized or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the EU or a Member State, without prejudice to other grounds for transfer pursuant to the GDPR.

Legal Basis	GDPR Source
1. Adequacy decision adopted by the Commission regarding third country or international organization	Article 45
2. Adequate safeguards, i.e. <ol style="list-style-type: none"> a. a legally binding and enforceable instrument between public authorities or bodies; b. binding corporate rules; c. standard data protection clauses adopted by the Commission or by a supervisory authority and approved by the Commission; d. an approved code of conduct; e. an approved certification mechanism; f. subject to specific authorization, contractual clauses between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organization; or provisions in administrative arrangements between public authorities or bodies which include enforceable and effective rights for the individual. 	Article 46 See also Article 47 Article 49
3. Specific situations, i.e. <ol style="list-style-type: none"> a. explicit consent of the individual to the proposed transfer following a prescribed disclosure (this basis is not available to public authorities); b. the transfer is necessary for the performance of a contract between the individual and the controller or the implementation of pre-contractual measures taken on the individual’s request (this basis is not available to public authorities); c. the transfer is necessary for the conclusion or performance of a contract concluded in the individual’s interest between the controller and another person (this basis is not available to public authorities); d. the transfer is necessary for important reasons of public interest (as defined in EU or national law); 	

- e. the transfer is necessary for the **establishment, exercise or defense of legal claims**;
- f. the transfer is necessary to **protect the vital interests** of the individual or of other persons, where the individual is physically or legally incapable of giving consent;
- g. the transfer is made from a **publicly available register** and is limited in scope;
- h. as a “last resort”, *i.e.* failing any other basis, the transfer is necessary for the purposes of **compelling legitimate interests** pursued by the controller which are not overridden by the interests or rights and freedoms of the individual, and subject to strict requirements (non-repetitive, limited, notification to the supervisory authority and the individual of the transfer, etc.) (this basis is not available to public authorities)

NB: In the absence of an adequacy decision, EU or Member State law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of personal data to a third country or an international organization. Member States must notify such provisions to the Commission.

The controller or processor must document the assessment as well as the suitable safeguards in relation to the compelling legitimate interests for a “last resort” transfer in its register of processing activities.