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By e-mail:

Brussels, 30 December 2020

Ref: UTN20120210/01.D.004; 04.D.010; 04.D.012
KAS/vps

Texti:

Your Excellency,

I have the honour to refer to the letter from the European Commission dated 29 December 2020 (UKTF.DDG/CMA) which reads as follows:

“Please allow me to draw your attention to Article FINPROV.10A (Interim provision for transmission of personal data to the United Kingdom) of the draft Trade and Cooperation Agreement between the European Union and the United Kingdom. This clause will ensure the continuity of data flows from the EU to the United Kingdom between both commercial operators and public authorities, subject to a number of conditions and pending the adoption of the two adequacy decisions under Regulation (EU) 2016/679 (the “GDPR”) and Directive (EU) 2016/680 (the “LED”).

Article FINPROV.10A reads as follows:

- 1. For the duration of the specified period, transmission of personal data from the Union to the United Kingdom shall not be considered as transfer to a third country under Union law, provided that the data protection legislation of the United Kingdom on 31 December 2020, as it is saved and incorporated into United Kingdom law by the European Union (Withdrawal) Act 2018 and as modified by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (“the applicable data protection regime”), applies and provided that the United Kingdom does not exercise the designated powers without the agreement of the Union within the Partnership Council.*

2. *Subject to paragraphs 3 to 11, paragraph 1 shall also apply in respect of transfers of personal data from Iceland, the Principality of Liechtenstein and the Kingdom of Norway to the United Kingdom during the specified period made under Union law as applied in those states by the Agreement on the European Economic Area done at Porto on 2 May 1992, for so long as paragraph 1 applies to transfers of personal data from the Union to the United Kingdom, provided that those states notify both Parties in writing of their express acceptance to apply this provision.*
3. *In this Article, the “designated powers” means the powers:*
 - (a) *to make regulations pursuant to sections 17A, 17C and 74A of the UK Data Protection Act 2018;*
 - (b) *to issue a new document specifying standard data protection clauses pursuant to section 119A of the UK Data Protection Act 2018;*
 - (c) *to approve a new draft code of conduct pursuant to Article 40(5) of the UK GDPR, other than a code of conduct which cannot be relied on to provide appropriate safeguards for transfers of personal data to a third country under Article 46(2)(e) of the UK GDPR;*
 - (d) *to approve new certification mechanisms pursuant to Article 42(5) of the UK GDPR, other than certification mechanisms which cannot be relied on to provide appropriate safeguards for transfers of personal data to a third country under Article 46(2)(f) of the UK GDPR;*
 - (e) *to approve new binding corporate rules pursuant to Article 47 of the UK GDPR;*
 - (f) *to authorise new contractual clauses referred to in Article 46(3)(a) of the UK GDPR;*
or
 - (g) *to authorise new administrative arrangements referred to in Article 46(3)(b) of the UK GDPR.*
4. *The “specified period” begins on the date of entry into force of this Agreement and, subject to paragraph 5, ends:*
 - (a) *on the date on which adequacy decisions in relation to the UK are adopted by the European Commission under Article 36(3) of Directive (EU) 2016/680 and under Article 45(3) of Regulation (EU) 2016/679, or*
 - (b) *on the date four months after the specified period begins, which period shall be extended by two further months unless one of the Parties objects; whichever is earlier.*
5. *Subject to paragraphs 6 and 7, if, during the specified period, the United Kingdom amends the applicable data protection regime or exercises the designated powers without the agreement*

of the Union within the Partnership Council, the specified period shall end on the date on which the powers are exercised or the amendment comes into force.

6. *The references to exercising the designated powers in paragraphs 1 and 5 do not include the exercise of such powers the effect of which is limited to alignment with the relevant Union data protection law.*
7. *Anything that would otherwise be an amendment to the applicable data protection regime which is:*
 - (a) made with the agreement of the Union within the Partnership Council; or*
 - (b) limited to alignment with the relevant Union data protection law;*

shall not be treated as an amendment to the applicable data protection regime for the purposes of paragraph 5 and instead should be treated as being part of the applicable data protection regime for the purposes of paragraph 1.
8. *For the purposes of paragraphs 1, 5 and 7, “the agreement of the Union within the Partnership Council” means:*
 - (a) a decision of the Partnership Council as described in paragraph 11; or*
 - (b) deemed agreement as described in paragraph 10.*
9. *Where the United Kingdom notifies the Union that it proposes to exercise the designated powers or proposes to amend the applicable data protection regime, either party may request, within five working days, a meeting of the Partnership Council which must take place within two weeks of such request.*
10. *If no such meeting is requested, the Union is deemed to have given agreement to such exercise or amendment during the specified period.*
11. *If such a meeting is requested, at that meeting the Partnership Council shall consider the proposed exercise or amendment and may adopt a decision stating that it agrees to the exercise or amendment during the specified period.*
12. *The United Kingdom shall, as far as is reasonably possible, notify the Union when, during the specified period, it enters into a new instrument which can be relied on to transfer personal data to a third country under Article 46(2)(a) of the UK GDPR or section 75(1)(a) of the UK Data Protection Act 2018 during the specified period. Following a notification by the United Kingdom under this paragraph, the Union may request a meeting of the Partnership Council to discuss the relevant instrument.*
13. *Title I [Dispute Settlement] of Part Six does not apply in respect of disputes regarding the interpretation and application of this Article.*

Subject to the completion of the respective internal requirements and procedures necessary for provisional application on both sides, the Agreement will be applied provisionally from 1 January 2021. As from the date from which the Agreement is provisionally applied, the reference to “the date of entry into force of this Agreement” in Article FINPROV.10A(4) is to be understood referring to the date from which the Agreement is provisionally applied, in accordance with in Article FINPROV.11(2).

On the basis of Articles 35 and 36 of the Vienna Convention on the Law of the Treaties, the second paragraph of Article FINPROV.10A provides for the possibility of extending such “bridging solution” to data flows between Iceland and the United Kingdom upon the condition, of course, that your authorities agree to such an extension.

I would therefore kindly invite your government to indicate whether they accept to apply FINPROV.10A(1) and (3) – (11) in respect of transfers of personal data from Iceland to the United Kingdom, during the “specified period” within the meaning of Article FINPROV.10A(4). In case your government accepts to apply FINPROV.10A(1) and (3) – (11) in respect of such transfers of personal data, I would be grateful if notification thereof could be made as swiftly as possible to the European Union and the United Kingdom.”

With reference to the above mentioned letter, I have the honour to notify that my Government has taken due note of Article FINPROV.10A (Interim provision for transmission of personal data to the United Kingdom) of the Trade and Cooperation Agreement between the European Union and the United Kingdom and accepts to apply FINPROV.10A(1) and (3) – (11) in respect of transfers of personal data from Iceland to the United Kingdom, during the “specified period” within the meaning of Article FINPROV.10A(4). Iceland’s application will be provisional until this Exchange of Letters has been approved by Iceland in accordance with its internal requirements and procedures.

For the Government of Iceland

Kristján Andri Stefánsson
Head of Mission

Cc: Ms. Clara Martínez Alberola, Deputy Head of the Task Force for Relations with the United Kingdom