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Guidance Note to the Addendum to the EU Commission Standard Contractual Clauses:

- Introduction
- Grounds for making restricted transfers
- Purpose of the Addendum
- Form of the Addendum
- FAQs

Office of Data Protection



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1. INTRODUCTION

- 1.1 This Guidance is prepared to support Controllers and Processors in complying with the applicable provisions in the ADGM Data Protection Regulations 2021 (the "**DPR 2021**") with regard to Personal Data transfers.
- 1.2 This Guidance is issued by the ADGM Commissioner of Data Protection (the "Commissioner") under the terms of Art. 50(6)(b) of the DPR 2021 and is in relation to the use of Standard Contractual Clauses ("SCCs") for Personal Data transfers outside the ADGM under Art. 42(3)(c) of the DPR 2021 to countries that are not covered by an adequacy decision from the Commissioner. Defined terms in this Guidance have the same meaning given to them in the DPR 2021.
- 1.3 The DPR 2021 restricts the transfer of Personal Data to a jurisdiction or an International Organisation¹ outside of the ADGM ("**Restricted Transfers**") unless a mechanism provided for in Part V of the DPR 2021 can be relied upon. This helps to ensure that Personal Data is given an equivalent level of protection irrespective of the location.

2. GROUNDS FOR MAKING RESTRICTED TRANSFERS

- 2.1 Part V of the DPR 2021 outlines a number of grounds for making Restricted Transfers, these are:
- (a) transfers on the basis of an adequacy decision (Art. 41);
 - (b) transfers subject to appropriate safeguards (Art. 42); and
 - (c) derogations for specific situations (Art. 44).
- 2.2 The use of SCCs is one of the appropriate safeguards listed in Art. 42. SCCs are model data protection clauses that can be incorporated into contractual arrangements and impose obligations on both the data exporter and the data importer. Further, SCCs grant rights to individuals whose Personal Data is being transferred, and they must be able to directly enforce those rights against the data exporter, the data importer, or both.
- 2.3 The Commissioner notes that there may be entities incorporated in the ADGM who form part of a larger corporate group based in the EU and with whom data transfers occur regularly. There may also be entities (who may be outside EU) but are transferring Personal Data which originates from the EU (or is captured by GDPR) to group members in the ADGM. In each case, such entities may be applying the Approved EU SCCs (as defined below) for such transfers, which are nearly identical to the SCCs published by the Commissioner for cross border data transfers (the "**ADGM SCCs**"), but differ from the ADGM SCCs in some detailed respects, as described in Section 3.5.

¹ Under the DPR 2021, 'International Organisation' means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.

3. PURPOSE OF THE ADDENDUM

- 3.1 Where data flows involve transfers of Personal Data originating from the EU (or to which the GDPR otherwise applies) and then being transferred from the ADGM, or otherwise involve transfers of Personal Data from both the EU and the ADGM, the parties can now use the Approved EU SCCs (defined below), adjusted to be effective under the DPR 2021 by the addendum prepared by the Commissioner attached at Appendix 1 (the "**Addendum**"), rather than having to put in place both the Approved EU SCCs (to address GDPR restrictions) and the ADGM SCCs (to address DPR 2021 restrictions). This is intended to reduce the number and/or complexity of contracts entered into by these parties for data transfers and increase the ease of doing business in the ADGM.
- 3.2 The Addendum is an addendum to the new SCCs issued by the European Commission under the EU GDPR on 4 June 2021 (the "**Approved EU SCCs**").² The Addendum is based on the equivalent UK addendum to Approved EU SCCs.
- 3.3 The relevant ADGM and EU Personal Data flows would include instances where:
- (i) making onward or simultaneous Personal Data transfers to third countries, when the Approved EU SCCs will also apply;
 - (ii) an EU exporter transfers Personal Data to its ADGM group member or counterparty when binding corporate rules are not in place and the ADGM entity will transfer that data outside ADGM to a non-adequate jurisdiction; or
 - (iii) a non-EU importer collects Personal Data from the EU and GDPR applies; such data is then transferred to the ADGM entity who will transfer it outside ADGM to a non-adequate jurisdiction.

Example:

The Addendum can be used as a transfer tool to comply with Art. 40 of the DPR 2021 when making onward Personal Data transfers to third countries (i.e., countries not designated as adequate by the Commissioner, such as Oman), when the Approved EU SCCs will also apply. It allows the parties to simply adopt this Addendum without needing to also apply the ADGM SCCs³ since they are substantially similar to the Approved EU SCCs.

- 3.4 The Commissioner recognises that an adequacy decision exists for where an ADGM entity is transferring Personal Data into the EU. However, an ADGM entity must use the Addendum in addition to the Approved EU SCCs for Personal Data transfers outside of the ADGM if transfers are made to a non-adequate jurisdiction and if the Personal Data concerned came from the EU. The use of the Addendum to supplement the Approved EU SCCs ensures that DPR 2021 required safeguards are in place in such transfer scenarios.

² The template SCCs set out in the Annex of Commission Implementing Decision (EU) 2021/914 of 4 June 2021.

³ Please find the latest ADGM SCCs published on the ADGM website: <https://adgm.com/operating-in-adgm/office-of-data-protection/guidance>

3.5 The Addendum facilitates compliance with the ADGM regime whilst providing sufficient safeguards for ADGM entities and individuals.

Example:

The finance team at a law firm based in the ADGM, Company A, shares a document which lists outstanding client balances with the finance team at the company's subsidiary in Oman, Company B. Oman is not designated as an adequate jurisdiction by the Commissioner. Company A has received some of the client details from its subsidiary in Ireland, and both companies have used the Approved EU SCCs for the transfer from Ireland to the ADGM because the subsidiary in Ireland could not rely on an EU adequacy decision with respect to transfers to the ADGM. To transfer both sets of data from ADGM to Oman, Company A and Company B use the Approved EU SCCs as well as the Addendum.

3.6 The Addendum incorporates the relevant version(s)⁴ of the Approved EU SCCs adopted by the parties – with relevant modifications:

- (a) to provide appropriate safeguards for making Restricted Transfers under the DPR 2021; and
- (b) to ensure the Addendum (including the Approved EU SCCs incorporated into it) is governed by the laws of the ADGM and any disputes arising from it are resolved by the ADGM Courts.

4. FORM OF THE ADDENDUM

4.1 The Addendum is divided into two parts:

(A) Part 1: Tables

This part contains four (4) different tables for the parties to populate and provide information regarding the data transfers.

(B) Part 2: Mandatory Clauses

This part contains the mandatory clauses which amend the Approved EU SCCs, which, when incorporated into the relevant data sharing agreement, ultimately ensures compliance with the DPR 2021 to enable the parties to fulfil their obligations to provide appropriate safeguards.

The template Addendum also includes an alternative version of Part 2. This version, rather than setting out in full the provisions necessary to give the Approved EU SCCs effect under the DPR 2021 in the agreement, incorporates them into the Addendum by cross-reference to the template version published by the ADGM.

⁴ The Approved EU SCCs (and the ADGM SCCs) adopt a modular approach whereby each set of clauses covers different modules which correspond to different transfer scenarios. There are four modules (a) Module 1: Controller-to-Controller transfers; (b) Module 2: Controller-to-Processor transfers; (c) Module 3: Processor-to-Processor transfers; and (d) Module 4: Processor-to-Controller transfers. The parties should choose the module that best applies to their situation.

The parties can choose which version of Part 2 to include in their Addendum (and delete the other version). The substantive effect of each version is the same – the first version has the advantage of allowing a reader to see more directly the modifications and additions that the Addendum is making to the Approved EU SCCs, while use of the alternative version might be preferred in the interests of brevity (and where the parties are happy to cross refer to the ADGM published version).

How to complete the Addendum?

4.2 The parties to the Addendum must complete and populate each of the four (4) tables included in Part 1.

(A) Table 1: Parties

Information regarding the parties to the Addendum must be populated here.

(B) Table 2: Selected SCCs, Modules and Selected Clauses

This table identifies the specific version of the Approved EU SCCs which the Addendum modifies and supplements. It allows the parties to either: (i) identify a version of the Approved EU SCCs to which the Addendum is being appended (that is, typically, a version of the Approved EU SCCs, already set out or referred to in the agreement governing the transfer, within which the parties have already selected the relevant modules and other options for the purposes of the GDPR), or (ii) cross-refer to the Approved EU SCCs as published by the European Commission and specify, in Table 2 itself, the modules, clauses or optional provisions of the Approved EU SCCs which are to be brought into effect by the Addendum. Parties who select the second option should first choose the modules in operation and then tick the clauses or optional provisions of the Approved EU SCCs which are to be brought into effect by the Addendum.

The parties may prefer to select option (i) to apply the Addendum to the transfers where a relevant version of the Approved EU SCCs is already adopted, which identifies the module in operation and the clauses and optional provisions brought into effect.

Where parties do not already have an agreement in place or where a different version of the Approved EU SCCs needs to be referred to for certain data transfers from the ADGM (i.e., different modules apply), they may prefer to select option (ii) and cross-refer to the Approved EU SCCs, with the relevant modules, clauses and optional provisions selected in the table as relevant for such data transfers.

(C) Table 3: Appendix Information

Parties should provide information for the selected modules as set out in the appendix to the Approved EU SCCs. Parties can cross-refer to the location of the relevant information in the Approved EU SCCs (where already set out), rather than having to repeat it in full.

(D) Table 4: Ending this Addendum when the ADGM Approved Addendum Changes

Parties should confirm who may end the Addendum if the Commissioner issues a revised Addendum by crossing the relevant response⁵. If the party selected in Table 4 will as a direct result of the changes in the revised Addendum have a substantial, disproportionate and demonstrable increase in its direct costs of performing its obligations under the Addendum and/or its risk under the Addendum, then that party may end the Addendum by providing written notice to the other party before the start date of the revised Addendum.

5. FAQs

Who is this Guidance aimed at?

- 5.1 This Guidance is aimed principally at ADGM importers and/or exporters who have to make Restricted Transfers in the absence of an adequacy decision, an alternative appropriate safeguard, or a derogation, and where the relevant parties have already entered into, or propose to enter into, the Approved EU SCCs to cover transfers from the EU to non-adequate jurisdictions.

Example:

The marketing team at a consultancy based in the ADGM, Company A, shares a document which lists client contact details with the marketing team at the company's subsidiary in Singapore, Company B. Singapore is not designated as an adequate jurisdiction by the ADGM Commissioner. Company A has received some of the client contact details from its subsidiary in Spain, and both companies had to use the EU SCCs for the transfer because the subsidiary in Spain could not rely on an EU adequacy decision with respect to ADGM. To transfer both sets of data from ADGM to Singapore, Company A and Company B use the Approved EU SCCs as well as the Addendum.

Example:

The marketing team at a consultancy based in the ADGM, Company A, shares a document which lists all of their client contact details in the UAE with the marketing team at the company's subsidiary in France, Company B, so that they can identify any overlaps in personnel and opportunities.

Company A does not need to rely on the EU SCCs for such transfers (because they are to rather than from the EU), nor does it need to sign the Addendum because the transfer is from ADGM to France, and therefore it can rely on an adequacy decision.

⁵ From time to time, the Commissioner may issue a revised Addendum which makes either minor amendments to the Addendum or reflects changes to the DPR 2021.

Can we amend the Addendum?

5.2 Parties do not need the consent of any third party to make changes to the Addendum, however, any changes must be made in accordance with its terms and must not reduce the standard of protection over the Personal Data and of data subjects' rights required by the DPR 2021.

Example:

The parties to the Addendum wish to delete certain fields included in Part 1 as they are not applicable (e.g., removing the trading name entry in Table 1 or removing modules not in operation in Table 2). The parties may do so by agreeing to the change in writing.

Example:

The parties to the Addendum will change following an intragroup re-organisation. In this scenario, the parties may amend the Addendum to reflect the new party's details, provided the amendment is effective as a matter of contract law.

What are the alternatives to using the Addendum?

5.3 There are various grounds listed in Part V of the DPR 2021 for Restricted Transfers of Personal Data outside of the ADGM. When making Restricted Transfers, parties should consider if one or more of the following grounds permit such a transfer:

- (a) An adequacy decision issued by the Commissioner⁶;

Example:

Company A located in the ADGM needs to transfer client information to its subsidiary office in Germany, Company B. Transferring Personal Data from Company A to Company B can be done without putting any additional safeguards in place, because Germany is listed as an adequate jurisdiction by the Commissioner.

⁶ Please refer to the current list of designated adequate jurisdictions on the ADGM website: <https://www.adgm.com/operating-in-adgm/office-of-data-protection/jurisdictions>.

- (b) Appropriate safeguards available under the DPR 2021 including, amongst others, entering into the ADGM SCCs, or implementing binding corporate rules approved by the Commissioner⁷; or

Example:

A financial institution in the ADGM, Company A, relies on third party software hosted in Australia to make certain transactions. The party that provides the software from Australia, Company B, requires limited access to certain Personal Data held within the platform, primarily to provide support services to the financial institution. Such data has been provided to Company A from its subsidiary in Italy through the use of the Approved EU SCCs.

Since Company B has access to the Personal Data, there will be an export of Personal Data from the ADGM to Australia. As Australia is not an adequate jurisdiction, the parties agree to use the Addendum to ensure that the transfer is made in compliance with the DPR 2021. Depending on all the facts and circumstances, the transfer in question would likely be made on a controller-to-processor module basis, provided that Company B does not determine the means and purposes of processing.

- (c) In the absence of an adequacy decision issued by the Commissioner (as described above in Section 5.4(a)) or any appropriate safeguards (as described above in Section 5.4(b)), a company may rely on specific derogations as set out in Art. 44 of the DPR 2021. One example of a derogation is where the transfer of Personal Data is necessary for the performance of a contract between the Controller and a third party which is in the interests of the data subject, so long as the transfer is an infrequent, limited, or one-off circumstance (please see the example set out below).

Example:

An individual is applying for a role at a company based in the ADGM. For regulatory reasons, before offering the individual the role, the ADGM company requires a criminal record check issued in the country in which the individual has lived for the past 5 years, Oman. The ADGM company engages a criminal background check provider in Oman to conduct this background check. It provides the provider with the name, date of birth and passport number of the individual. The transfer is necessary for the third party to provide the ADGM company with its services, as per the contract in place between the ADGM based company and the service provider in Oman. This transfer is clearly in the interests of the data subject, as it is necessary for him or her to secure the role that he or she is applying for.

⁷ Entities can make a restricted transfer within their international organisation if both transferor and the transferee (all the relevant group entities, if more than two) have signed up to binding corporate rules which have been approved by the Commissioner.

Can this Addendum be used for transfers from a processor to a sub-processor?

5.4 Yes, the Addendum can be used for transfers between an ADGM processor and a non ADGM/EU sub-processor.

Can this Addendum be used for transfers between joint controllers?

5.5 Yes, the Addendum can be used for transfers between joint controllers.

Where can I seek further information?

5.6 For more information, you may contact the Commissioner on:

- (a) **Telephone:** 00 971 2 3338888
- (b) **Email:** Data.Protection@adgm.com
- (c) **Address:** ADGM Building, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates.

**6. APPENDIX A:
ADDENDUM TO THE EU COMMISSION SCC**

You can find the final Addendum both in PDF and Word format on the Office of Data Protection website here: <https://edit.adgm.com/operating-in-adgm/office-of-data-protection/guidance>