

Memorandum of Understanding for Cooperation in the Application of Laws Protecting Personal Data

1. INTRODUCTION

- 1.1 This Memorandum of Understanding (“**MoU**”) establishes a framework for cooperation between
- (I) The Information Commissioner (the “**Commissioner**”) and
 - (II) The European Data Protection Supervisor (the “**EDPS**”),
- together referred to as the “**Participants**”. Any reference to the Commissioner shall include his statutory successors.
- 1.2 The Participants recognise the nature of the modern society, the increase in circulation and exchange of personal data across borders, the increasing complexity of information technologies, and the resulting need for increased cross-border enforcement cooperation with the aim of providing consistency and certainty.
- 1.3 The Participants acknowledge that they have similar functions and duties concerning the protection of personal data in their respective jurisdictions.
- 1.4 The Participants highlight the unique geographical, cultural, and historical links between their jurisdictions, and the importance of consulting on, and taking account of, their respective regulatory activity in order to better protect individuals in the United Kingdom and in the European Union with respect to data processing falling under their jurisdictions and enhance compliance with laws protecting personal data.
- 1.5 This MoU reaffirms the intent of the Participants to deepen their existing relations and to promote exchanges to assist each other in the application of laws protecting personal data.
- 1.6 This MoU sets out the broad principles of collaboration between the Participants and the legal framework governing the sharing of relevant information and intelligence between them.

- 1.7 Reducing divergences in the regulatory approach taken by the Participants, when addressing similar issues, benefits public and private entities, consumers and other stakeholders in their respective jurisdictions. Whilst having regard to the different laws and regulations of their respective jurisdictions as well as their statutory independence, this MOU is intended to avoid divergences and promote consistency in the administration of similar data protection laws.
- 1.8 The Participants confirm that nothing in this MoU should be interpreted as imposing a requirement on the participants to co-operate with each other. In particular, there is no requirement to co-operate in circumstances which would place either Participant in breach of their legal responsibilities, including but not limited to:
- (a) in the case of the Commissioner: the retained EU law version of the General Data Protection Regulation ((EU) 2016/679 (“UK GDPR”)); and
 - (b) in the case of the EDPS:
 - (i) the Regulation (EU) 2018/1725 with regard to the processing of personal data by the Union institutions, bodies, offices and agencies (“EUDPR”)
 - (ii) the EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (“GDPR”)
- 1.9 This MoU should not be interpreted as imposing a requirement on either party to disclose information in circumstances where doing so would breach their statutory responsibilities. In particular, each party must ensure that any disclosure of personal data pursuant to these arrangements fully complies with both the applicable law. The MoU sets out the legal basis for information sharing, but it is for each Participant to determine for themselves that any proposed disclosure is compliant with the law applicable to them.

2. THE ROLE AND FUNCTION OF THE INFORMATION COMMISSIONER

- 2.1 The Commissioner is a corporation sole appointed under the Data Protection Act 2018 (the “**DPA 2018**”) to act as the UK’s independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals.

2.2 The Commissioner is empowered to take a range of regulatory action for breaches of the following legislation (as amended from time to time):

- (a) Data Protection Act 2018 (“DPA 2018”);
- (b) EU law version of the General Data Protection Regulation ((EU) 2016/679 (“UK GDPR”);
- (c) Privacy and Electronic Communications (EC Directive) Regulations 2003 (“PECR”);
- (d) Freedom of Information Act 2000 (“FOIA”);
- (e) Environmental Information Regulations 2004 (“EIR”);
- (f) Environmental Protection Public Sector Information Regulations 2009 (“INSPIRE Regulations”);
- (g) Investigatory Powers Act 2016;
- (h) Re-use of Public Sector Information Regulations 2015;
- (i) Enterprise Act 2002;
- (j) Security of Network and Information Systems Directive (“NIS Directive”); and
- (k) Electronic Identification, Authentication and Trust Services Regulation (“eIDAS”).

2.3 The Commissioner has a broad range of statutory duties, including monitoring and enforcement of data protection laws, and promotion of good practice and adherence to the data protection obligations by those who process personal data. These duties sit alongside those relating to the other enforcement regimes.

2.4 The Commissioner’s regulatory and enforcement powers include:

- (a) conducting assessments of compliance with the DPA 2018, UK GDPR, PECR, eIDAS, the NIS Directive, FOIA and EIR;
- (b) issuing information notices requiring individuals, controllers or processors to provide information in relation to an investigation;
- (c) issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of data protection legislation and other information rights obligations;

- (d) administering fines by way of penalty notices in the circumstances set out in section 152 of the DPA 2018;
- (e) administering fixed penalties for failing to meet specific obligations (such as failing to pay the relevant fee to the Commissioner);
- (f) issuing decision notices detailing the outcome of an investigation under FOIA or EIR;
- (g) certifying contempt of court should an authority fail to comply with an information notice, decision notice or enforcement notice under FOIA or EIR; and
- (h) prosecuting criminal offences before Courts.

2.5 Regulation 31 of PECR, as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, also provides the Commissioner with the power to serve enforcement notices and issue monetary penalty notices as above to organisations who breach PECR. This includes, but is not limited to, breaches in the form of unsolicited marketing which fall within the ambit of PECR, including automated telephone calls made without consent, live telephone calls which have not been screened against the Telephone Preference Service, and unsolicited electronic messages (Regulations 19, 21 and 22 of PECR respectively).

3. ROLE AND FUNCTIONS OF EDPS

3.1 The EDPS is the European Union (EU) independent data protection authority established under Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (“EUDPR”).

3.2 The EDPS powers, duties and tasks are set out in the following legislation (as amended from time to time):

- (a) The GDPR
- (b) The EUDPR
- (c) Regulation (EU) 2016/794 (the Europol Regulation)
- (d) Regulation (EU) 2018/1727 (the Eurojust Regulation)
- (e) Council Regulation (EU) 2017/1939 (the EPPO Regulation)

- (f) The rules regulating large-scale IT systems at EU level, and
 - (g) any other Union and Member State act granting the EDPS tasks or powers in relation to the protection of the individual's rights and freedoms with regard to privacy and the processing of personal data.
- 3.3 The EDPS has a broad range of tasks which include: monitoring and enforcing the application of the EUDPR by Union institutions, bodies, offices and agencies; promoting public awareness and the awareness of controllers and processors of their obligations; handling of complaints; conducting investigations; advising, on his or her own initiative or on request, all Union institutions and bodies on legislative and administrative measures relating to the protection of personal data; and monitoring the development of information and communication technologies.
- 3.4 The EDPS has investigative, corrective, authorisation and advisory powers that include:
- (a) to refer matters to the controller or processor concerned and, if necessary, to the European Parliament, the Council and the Commission;
 - (b) to order the controller or processor to bring processing operations into compliance with the provisions of the EUDPR;
 - (c) to impose a temporary or definitive limitation including a ban on processing;
 - (d) to impose an administrative fine; and
 - (e) to refer the matter to the Court of Justice under the conditions provided for in the Treaties and to intervene in actions brought before the Court of Justice.

4. SCOPE OF CO-OPERATION

- 4.1 The Participants acknowledge that it is in their common interest to collaborate in accordance with this MoU, in order to:
- (a) Ensure that the Participants are able to deliver the regulatory cooperation necessary to underpin the data-based society and protect the fundamental rights of citizens of the United Kingdom and individuals in the European Union respectively, in accordance with the applicable laws of the Participants' respective jurisdictions;
 - (b) Cooperate with respect to the enforcement of their respective applicable data protection and privacy laws;

- (c) Keep each other informed of developments in their respective jurisdictions having a bearing on this MoU; and
- (d) Recognise parallel or joint investigations or enforcement actions by the Participants as priority issues for co-operation.

4.2 For this purpose, the Participants may jointly identify one or more areas or initiatives for cooperation. Such cooperation may include:

- (a) sharing of experiences and exchange of best practices on data protection policies, education and training programmes;
- (b) sharing of information about respective priorities for regulatory actions, including policy and enforcement priorities;
- (c) implementation of joint research projects and joint publications;
- (d) sharing of experiences and lessons learned from regulatory cooperation and coordination activities at national, regional or international level.
- (e) co-operation in promoting dialogue among data protection authorities and other digital regulators (including competition and consumer protection authorities) to explore synergies and ensure a consistent application of digital regulations;
- (f) exchange of information (excluding personal data) involving potential or on-going investigations of organisations in the respective jurisdictions in relation to a contravention of personal data protection legislation;
- (g) secondment of staff;
- (h) mutual assistance, consultations, operational visits, data protection audits or inspections, investigations or joint investigations into cross border personal data incidents involving organisations in both jurisdictions (excluding sharing of personal data);
- (i) convening bilateral meetings at least every six months or as mutually decided between the Participants; and
- (j) any other areas of cooperation as mutually decided by the Participants.

4.3 For clarity, it is acknowledged that this MoU does not impose any obligation on the Participants to share information with each other or to engage in any other form of cooperation. It is further acknowledged that a Participant may require that any cooperation is subject to certain limitations or conditions being agreed between the Participants. For example, in order to avoid breaching applicable legal requirements.

Any such limitations or conditions will be agreed between the Participants on a case-by-case basis.

5. NO SHARING OF PERSONAL DATA

- 5.1 The Participants do not intend that this MoU will cover any sharing of personal data by the Participants.
- 5.2 If the Participants wish to share personal data, for example in relation to any cross border personal data incidents involving organisations in both jurisdictions, each Participant will consider compliance with its own applicable data protection laws, which may require the Participants to enter into a written agreement or further arrangements governing the sharing of such personal data.

6. INFORMATION SHARED BY THE UK INFORMATION COMMISSIONER

- 6.1 Section 132(1) of the DPA 2018 states that the Commissioner can only share certain information if he has lawful authority to do so, where that information has been obtained, or provided to, the Commissioner in the course of, or for the purposes of, discharging the Commissioner's functions, relates to an identifiable individual or business, and is not otherwise available to the public from other sources.
- 6.2 Section 132(2) of the DPA 2018 sets out the circumstances in which the Commissioner will have the lawful authority to share that information. Of particular relevance when the Commissioner is sharing information with the EDPS are the following circumstances, where:
 - (a) The sharing is necessary for the purpose of discharging the Commissioner's functions (section 132(2)(c));and
 - (b) The sharing is necessary in the public interest, taking into account the rights, freedoms and legitimate interests of any person (section 132(2)(f)).
- 6.3 The Commissioner will therefore be permitted to share information with the EDPS in circumstances where it has determined that it is reasonably necessary to do so in furtherance of one of those grounds outlined at paragraph 6.2 of this MoU. Before the Commissioner shares any such information with the EDPS, it may be necessary for the Commissioner to identify the function of the EDPS with which that information is intended to assist, and assess whether that function of the EDPS could reasonably be achieved without access to the particular information in question. Where the

Commissioner considers that any such function could reasonably be achieved without access to the information, it will not share the information unless it determines that there are overriding factors which render such sharing to be lawful and appropriate in all the circumstances.

7. INFORMATION SHARED BY THE EDPS

- 7.1 The European Data Protection Supervisor may exchange with the ICO all relevant information to the extent necessary for the exercise of its tasks and powers.
- 7.2 The Commissioner's statutory function relates to the legislation set out at paragraph 2, and this MoU governs information shared by the EDPS to assist the Commissioner to meet those responsibilities. To the extent that any such shared information comprises personal data, as defined under the UK GDPR and DPA 2018, the EDPS is a Data Controller in respect of such data and must ensure that it has legal basis to share it and that doing so would be compliant with the data protection principles.
- 7.3 Section 131 of the Data Protection Act 2018 may provide a legal basis for the EDPS to share information with the Commissioner. Under this provision, the EDPS is not prohibited or restricted from disclosing information to the Commissioner by any other enactment or rule of law provided it is "*information necessary for the discharge of the Commissioner's functions*".

8. CONFIDENTIALITY, SECURITY AND DATA BREACH REPORTING

- 8.1 Appropriate confidentiality and security measures will be agreed to protect information that is shared between the Participants. Such measures will, amongst other things, require the Participant receiving information (the "**Recipient**") to take into account the sensitivity of the information; to not use any such information for any purpose other than referenced in this MoU; any classification that is applied by the Participant who is sending the information to the other Participant (the "**Sender**"); and any other factors relevant to protecting the confidentiality and security of the information, such as any restriction on access thereto or the use to be made thereof, in general or specific terms, including as regards its transfer, erasure or destruction.
- 8.2 Where confidential material is shared between the Participants it will be marked with the appropriate security classification by the Sender.
- 8.3 Where a Recipient receives information from a Sender, the Recipient will consult with the Sender and obtain their consent before passing that information to a third party or using the information in an enforcement proceeding or court case, save where the

Recipient is prevented from consulting with the Sender or seeking its consent, by applicable laws or regulations.

- 8.4 Where confidential material obtained from, or shared by, a Sender is wrongfully disclosed or used by a Recipient, the Recipient will bring this to the attention of the Sender without delay.

9. REVIEW OF THE MOU

- 9.1 The UK Information Commissioner and the EDPS will monitor the operation of this MoU and review it if either Participant so requests.
- 9.2 Any issues arising in relation to this MoU will be notified to the designated point of contact for each Participant.
- 9.3 Any amendments to this MoU must be made in writing and signed by each Participant.

10. NON-BINDING EFFECT OF THIS MOU AND DISPUTE SETTLEMENT

- 10.1 This MoU is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or the EDPS. The parties have determined that they do not exchange sufficient quantities of personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.
- 10.2 The Participants will settle any disputes or disagreement relating to or arising from this MoU amicably through consultations and negotiations in good faith without reference to any international court, tribunal or other forum.

11. DESIGNATED CONTACT POINTS

- 11.1 The following persons will be the designated contact points for the Participants for matters under this MoU:

Information Commissioner's Office	European Data Protection Supervisor
Name: Rory Munro Designation: Head of International Regulatory Cooperation	Name: Anna Buchta Designation: Head of Unit, Policy & Consultation

- 11.2 The above individuals will maintain an open dialogue between each other in order to ensure that the MoU remains effective and fit for purpose. They will also seek to identify any difficulties in the working relationship, and proactively seek to minimise the same.
- 11.3 Each Participant may change its designated contact point for the purposes of this MoU upon notice in writing to the other Participant.

12. ENTRY INTO EFFECT AND TERMINATION

This MoU will come into effect upon its signature by the Participants and remain in effect unless terminated by either Participant upon three months' written notice to the other Participant.

SIGNATORIES:

**For the Information Commissioner for the
United Kingdom of Great Britain and
Northern Ireland**

**For the European Data Protection
Supervisor**

(signed)

(signed)

Name: Mr John Edwards

Name: Mr Wojciech Wiewiórowski

Title: United Kingdom Information
Commissioner

Title: European Data Protection Supervisor

Place: Brussels, Belgium

Place: Brussels, Belgium

Date: 8 November 2023

Date: 8 November 2023