EDPS Formal comments on the draft Commission Implementing Decision on the adequacy of the competent authority of the United Kingdom pursuant to Directive 2006/43/EC of the European Parliament and of the Council

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals 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')[1], and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 26 March 2025, the European Commission consulted the EDPS on the draft Commission Implementing Decision on the adequacy of the competent authority of the United Kingdom pursuant to Directive 2006/43/EC of the European Parliament and of the Council ('the draft implementing decision').
2. The draft implementing decision would recognise the competent authority of the United Kingdom (the Financial Reporting Council) as adequate to cooperate with the competent authorities of EU Member States on the exchange of audit working papers or other documents held by statutory auditors and audit firms pursuant to Article 47 of Directive 2006/43/EC (hereinafter, 'the Audit Directive')[2].
3. The adoption of the draft implementing decision is, as laid down in Article 47(1) of the Audit Directive, a condition for the transfer of audit papers to the Third Country in question[3].

[1] OJ L 295, 21.11.2018, p. 39.
[2] Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (Text with EEA relevance), OJ L 157, 9.6.2006.
[3] The EDPS has already issued formal comments related to draft implementing decisions recognising the competent authority of a third country as adequate to cooperate with the competent authorities of EU Member States on the exchange of audit working papers or other documents held by statutory auditors and audit firms pursuant to Article 47 of Directive 2006/43/EC. See for instance EDPS formal comments on the draft Commission Implementing Decision on the adequacy of

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4. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 15 of the draft implementing decision.

5. These formal comments do not preclude any additional comments by the EDPS in the future, in particular if further issues are identified or new information becomes available, for example as a result of the adoption of other related implementing or delegated acts[4].

6. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR and are limited to the provisions of the draft delegated regulation that are relevant from a data protection perspective.

2. Comments

7. Any transfer of audit working papers or other documents containing personal data held by statutory auditors or audit firms between the competent authorities of an EU Member State and the competent authorities of a third country encompasses an international transfer of personal data in the meaning of Chapter V of Regulation (EU) 2016/679 (hereinafter 'the GDPR')[5]. Therefore, such transfer needs to rely on one of the grounds for transfers provided by Chapter V of the GDPR[6].

8. The EDPS recalls that the implementing decision (referring to the adequacy of the Financial Reporting Council for the purpose of the administrative cooperation on audits' control) would not provide in itself a ground for the transfer of personal data pursuant to Chapter V of the GDPR for the transfer of personal data by competent authorities of EU Member States to the Financial Reporting Council.

9. The EDPS recalls that United Kingdom has been recognised as ensuring an adequate level of protection by a decision of the Commission under Article 45 of the GDPR ('UK

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the competent authorities of the United States of America in the field of statutory audit pursuant to Directive 2006/43/EC of the European Parliament and of the Council, issued on 13 May 2022.

[4] In case of other implementing or delegated acts with an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS would like to remind that he needs to be consulted on those acts as well. The same applies in case of future amendments that would introduce new or modify existing provisions that directly or indirectly concern the processing of personal data.

[5] Regulation (EU) 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, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016.

[6] Chapter V of the GDPR provides for the following grounds for transfer: transfers on the basis of an adequacy decision (Article 45), transfers subject to appropriate safeguards (Article 46), binding corporate rules (Article 47) and derogations for specific situations (Article 49).

data protection adequacy decision')[7]. As the transfer of personal data by competent authorities of EU Member States to the Financial Reporting Council would be covered by the UK data protection adequacy decision, the EDPS recommends replacing the reference to Article 46 of the GDPR in recital 6 with a reference to the possibility to transfer personal data on the basis of the UK data protection adequacy decision.

10. The EDPS welcomes the specification in recital 3 of the draft implementing decision, confirming that the Financial Reporting Council will use any documents transferred to them in accordance with Article 47(1) of the Audit Directive only to exercise their functions of public oversight, external quality assurance and investigations of auditors and audit firms.

Brussels, 28 April 2025

(e-signed)
Wojciech Rafał WIEWIÓROWSKI

[7] Commission Implementing Decision (EU) 2021/1772 of 28 June 2021 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom (notified under document C(2021)4800) (Text with EEA relevance), C/2021/4800, OJ L 360, 11.10.2021, p. 1–68. As laid down in Article 4 of the Commission Implementing Decision, the Decision "shall expire on 27 June 2025, unless extended in accordance with the procedure referred to in Article 93(2) of Regulation (EU) 2016/679." On 18 March 2025, the European Commission issued draft implementing decisions amending Commission Implementing Decision (EU) 2021/1772 of 28 June 2021 pursuant to the GDPR to extend its validity until 27 December 2025. The Commission has requested an opinion to the European Data Protection Board according to Article 70(1)(s) of the GDPR.