



Introduction

The DPR 2021 restricts the transfer of personal data to a jurisdiction outside of the ADGM, or to an international organisation. Transfers may occur if a provision or a mechanism in Part V of the Regulations can be relied upon. The intention is to ensure personal data is given the same level of protection irrespective of the location.



What is a data transfer in the context of the Regulations?

Transfer is interpreted broadly and covers not only an act of sending, but also making available personal data to an individual or organisation in another jurisdiction. This could be, for example, by uploading personal data to a portal or system and granting access to an individual in another jurisdiction access to that portal or system. A transfer may be made where sending, or granting access to, personal data either to a third party, or to another organisation within your group, where the other organization is based outside of the ADGM.

Examples



The marketing team at a consultancy based in the ADGM shares a document which lists all of their contacts for clients in the UAE with the marketing team at the company's office in France, so that they can identify any overlaps in personnel and opportunities.

This would constitute an international transfer.



The local HR team at a FinTech company uses an online, cloud based platform to store personal data relating to employees. HR operations are managed centrally from the UK, meaning that the HR team in London requires access to the platform to view the information stored in relation to ADGM based employees. Granting access to the HR team in the UK would constitute a transfer.



What are the mechanisms for the transfer of personal data?



Adequacy: The recipient is located in a jurisdiction that provides an adequate level of protection. The list of adequate jurisdictions is on the [ADGM ODP website](#).



Appropriate Safeguards: The exporter can rely upon suitable safeguards to transfer personal data. In particular, ADGM-approved Standard Contractual Clauses (SCCs) or Binding Corporate Rules (BCRs).



Derogation: The exporter could transfer personal data if certain conditions exist, such as consent of the individual.



Adequacy decisions

The Commissioner has the power to designate certain jurisdictions, sectors within jurisdictions and / or international organisations as ensuring an adequate level of protection. This means that the Commissioner has taken the view that transferring personal data from the ADGM to those jurisdictions can be done without putting in place any additional safeguards.

The rationale is that the laws or rules which apply to such transfers are sufficient to protect the rights of the Data Subjects whose personal data is being transferred.



It will however still be necessary for the transferor to satisfy itself that it has a legal basis to make the transfer (transfer being a processing activity)



In addition, if a Controller is transferring personal data to a Processor in an adequate jurisdiction, it would still be necessary for the Controller to enter into a contractual arrangement which meets the requirements of section 26 of the DPR 2021



The list of adequate jurisdictions can be found at: <https://www.adgm.com/operating-in-adgm/office-of-data-protection/jurisdictions>. Note that these may be updated from time to time as the Commissioner will monitor for any changes in law which could impact an adequacy decision.



Binding corporate rules

Businesses can make a restricted transfer within their international organisation if both transferor and the transferee (i.e. All the relevant group entities, if more than two) have signed up to BCRs which have been approved by the Commissioner. The BCR's must:



be legally binding and apply to and are enforced by every member of the group, including employees



explicitly give enforceable rights to individuals regarding the processing of their personal data



capture all relevant details mentioned in section 43(2) of the Regulations



Standard data protection clauses

The Commissioner has adopted and published a set of Standard Contractual Clauses (SCCs) on its website. The SCCs are based on the current standard contractual clauses issued by the European Commission and will cover each of the following scenarios through various "modules":

1

Controller-to-Controller transfers

A Controller based in the ADGM is transferring personal data to a Controller outside of the ADGM

2

Controller-to-Processor transfers

A Controller in the ADGM is transferring personal data to a Processor outside of the ADGM

3

Processor-to-Controller transfers

A Processor in the ADGM is transferring personal data to a Controller outside ADGM

4

Processor-to-Processor transfers

A Processor is transferring personal data to another Processor outside ADGM

The SCCs place obligations on both data exporters and data importers and give Data Subjects the right to enforce those against either party.



Approved code of conduct

International transfers can be made under a Commissioner approved code of conduct. At present the Commissioner has not approved any codes of conduct.

Adhering to a code of conduct shows that you:

- follow the requirements for data protection that have been agreed by the Commissioner as representing good practice within your sector or category
- are appropriately addressing the type of processing activities you are undertaking and the related level of risk

Adhering to a code of conduct could help you to:

- demonstrate, as Controller, that you have implemented appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with Regulations
- demonstrate, as a Processor or a sub-Processor, that you provide sufficient guarantees where processing personal data on behalf of a Controller (or another Processor)
- demonstrate that you have considered the measures which you have taken to protect the rights of individuals in the context of the processing activities you perform (which may be similar to those of others in your industry) and that those measures are aligned with best practice in your sector
- assess the impact of your processing activities on Data Subjects, in particular for the purposes of performing Data Protection Impact Assessments
- promote confidence in a sector as a whole by creating effective safeguards to mitigate the risk around processing activities
- earn the trust and confidence of Data Subjects and promote their rights, encouraging them to exercise those rights and making such exercise as straightforward as possible
- improve the understanding within your organisation around what compliance with the DPR 2021 means in the context of your sector.



Once approved by the Commissioner of Data Protection, ADGM establishments can use such Codes of Conduct as a basis for data transfers. Approval of Codes of Conduct will be communicated via the ADGM ODP Website.



Certification

International transfers can be made under a Commissioner-approved certification scheme. Certifications provide a means for organisations to show compliance with data protection requirements by meeting the certification scheme's standards. Controllers and Processors must make binding and enforceable pledges to certification organisations in order to acquire certification.

- The ADGM Office of Data Protection will take into account the specific needs of micro, small, and medium-sized organisations when approving certification schemes
- Certification must be voluntary and available via a process that is transparent



Once approved by the Commissioner of Data Protection, ADGM establishments can use such Certifications as a basis for data transfers. A register of Approved of Certifications will be communicated via the ADGM ODP Website.



Are there any derogations or other conditions under which personal data be legitimately transferred outside of the ADGM?

Transfer of personal data outside of ADGM may occur on the basis of derogations provided in the Regulations. One or more of the following conditions must be met:

- The individual has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the individual due to the absence of an adequacy decision and appropriate safeguards
- The transfer is necessary for the performance of a contract between the individual and the Controller or the implementation of pre-contractual measures taken at the individual's request
- The transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the Controller and another natural or legal person
- The transfer is necessary for important reasons of public interest
- The transfer is required by law enforcement agencies of the UAE in accordance with Applicable Law
- The transfer is necessary for the establishment, exercise, or defense of legal claims (including judicial, administrative, regulatory and out-of-court procedures)
- The transfer is necessary in order to protect the vital interests of the individual or of another person, where the individual is physically or legally incapable of giving consent