

The EU Court of Justice 'Schrems' judgment (the judgment) invalidated the Safe Harbor adequacy decision and concluded that the EU Commission did not have the competency to "*restrict the national supervisory authorities' powers*". Further, the Commission "*in adopting Article 3 of Decision 2000/520, the Commission exceeded the power which is conferred upon it in Article 25(6) of Directive 95/46*".

The European Commission issued a communication¹ (the communication) regarding the judgment on 6 November 2015 which includes guidance on "Alternative Bases For Transfers Of Personal Data to the U.S."²

As Article 3 of the Safe Harbor Decision (Article 3) is replicated across all EU Commission adequacy decisions, the communication considers the "Consequences of the Schrems Ruling on Adequacy Decisions"³ and states that a decision "*replacing that provision in all existing adequacy decisions*" is to be prepared for adoption.

Article 3 of the Isle of Man adequacy decision⁴ will be affected and modifications to that Article are anticipated in the near future. This will mean that, for example, the UK Information Commissioner will be able to consider whether a particular data controller in the Island provides an adequate level of protection for personal data transferred to it.

The communication also states that "*the Commission will engage in a regular assessment of existing and future adequacy decisions, including through the periodic review of their functioning together with the competent authorities of the third country in question*".

The above statement reaffirms Article 5 of the existing Isle of Man adequacy decision which states: "*The Commission shall monitor the functioning of this Decision and report any pertinent findings to the Committee established under Article 31 of Directive 95/46/EC, including any evidence that could affect the finding ... that protection in the Isle of Man is adequate ... and any evidence that this Decision is being implemented in a discriminatory way.*"

In light of the communication, and the proposed new General Data Protection Regulation, it is likely that the Island's adequacy decision, in its entirety, will be subject to review by the EU Commission.

Iain McDonald
Information Commissioner
10 November 2015

¹ (COM (2015) 566 final http://ec.europa.eu/justice/data-protection/international-transfers/adequacy/files/eu-us_data_flows_communication_final.pdf)

² Ibid. page 5

³ Ibid. page 14

⁴ http://ec.europa.eu/justice/data-protection/international-transfers/adequacy/index_en.htm