



Thematic workshop on international transfers and international cooperation

By Drudeisha Madhub
Data Protection Commissioner
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International Transfers



- ▶ We live in the digital era where data flows across borders daily.
- ▶ International transfers are necessary for international trade and co-operation. In addition, many institutions outsource their services to external providers located in other countries.
- ▶ However, the transfer of personal data to other countries should not undermine the level of protection of the individuals concerned.
- ▶ Therefore, transfers to other countries or international organisations should be done in full compliance with data protection laws and regulations.

Mauritius Data Protection Act (DPA)



- ▶ Amended in 2017 to become a new and improved legislation namely, the Data Protection Act 2017 which came into force on 15 January 2018.

- ▶ First Enacted in 2004.



- ▶ Regulates the processing of personal data.
- ▶ Makes provisions about the functions, powers of the office, enforcement and application of the legislation.

BEGIN.

Aims of the new DPA

Strengthen the control and personal autonomy of data subjects over their personal data and for matters related thereto.



Seek to bring Mauritius data protection framework in line with international standards, namely the EU General Data Protection Regulation (GDPR) and convention 108+.

The importance of harmonising domestic laws with international privacy laws or instruments facilitates data flows and trade between countries whilst ensuring an adequate level of protection to individuals.

Convention 108

- ▶ Mauritius has been party to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108) since 1 October 2016.



Ratifying Convention 108 in June
2016

Convention 108 +

- ▶ In 2018, Convention 108 was modernised through the adoption of the Protocol amending the Convention.
- ▶ The Government of Mauritius has leapt forward by the ratification of Convention 108+ in September 2020 which is a universal instrument that can be adopted by countries outside the EU and also offers opportunities to the country to be recognised on the global market by the implementation of appropriate safeguards to protect privacy rights.
- ▶ Convention 108+ is a tool that provides a strong and flexible multilateral legal framework to facilitate the flow of data across borders while providing effective safeguards when personal data is used thus instilling trust and security of the data subjects.





Malabo Convention

Mauritius is also the second country to have ratified the Malabo in March 2018. However, we are of the view that the Malabo convention needs to be updated to comply with the GDPR and convention 108+.

- ▶ Our rules for transborder data flow is based on section 36 of the DPA – Transfer of personal outside Mauritius which are summarised below.

A controller or a processor may transfer personal data to another country where the below conditions have been met –

- Proof of appropriate safeguards provided to the Commissioner or
- Data subject has provided explicit consent or
- for the performance of a contract between the individual and the organisation or for pre-contractual steps taken at the individual's request or
- for the performance of a contract made in the interests of the individual between the controller and another person or
- For reasons of public interest as provided by law or
- for the establishment, exercise or defence of a legal claim; or
- necessary to protect the vital interests of the data subject or other persons, where the data subject is physically or legally incapable of giving consent; or
- necessary for the purposes of the compelling legitimate interests of the controllers(provided such interests are not overridden by the interests of the individual).

EU Adequacy

- ▶ Since the sector of Business Process Outsourcing (BPO) plays an important part in the economy of Mauritius, obtaining EU adequacy will instil confidence in the data protection framework in Mauritius for European Companies to outsource work involving personal data to Mauritius.
- ▶ We have already initiated the EU adequacy procedure with the EU. Upon recommendation from the representative of the Delegation of the European Union to the Republic of Mauritius and the Republic of Seychelles, we drafted and submitted the Terms of Reference (ToR) in 2020 to our parent Ministry for inviting proposals through restricted international bidding for the services of an expert consultant to carry out a complete assessment and evaluation of the existing data protection law in Mauritius, its application and provide an opinion on the adequacy of Mauritius with the European Union. We are currently awaiting the finalisation of the consultancy nominations.

Standard Contractual Clauses (SCC)

- Businesses may use standard contractual clauses for international transfers. These clauses are the most relevant alternative legal basis to an adequacy decision. They are model data protection clauses that have been approved by the European Commission and enable the free flow of personal data when embedded in a contract. The clauses contain contractual obligations on the Data Exporter and the Data Importer, and rights for the individuals whose personal data is transferred. Individuals can directly enforce those rights against the Data Importer and the Data Exporter.
- Use of SCC's must also take into account the recent Judgment of the Court of Justice of the European Union in the case of Data Protection Commissioner v Facebook Ireland Ltd and Maximilian Schrems where the validity of the SCC's was examined. While the Court found the SCC's to be a valid mechanism, data exporters do need to do an assessment of the third country to which it is transferring the data to determine if it provides a level of protection essentially equivalent to that guaranteed in the EU. If there are issues with the level of protection then the data exporter will need to establish if there are supplementary measures that can be applied along with the SCC's to maintain the level of protection. If this is not possible then the data exporter will need to suspend or end the transfer.
- The EDPB has produced FAQ's on the judgment and Draft recommendation on Supplementary measures which may assist Data Controllers.

Binding Corporate Rules (BCRs)

- Beside some multinational companies use BCRs. BCRs form a legally binding internal code of conduct operating within a multinational group, which applies to transfers of personal data from the group's EEA entities to the group's non-EEA entities. This group may be a corporate group or a group of undertakings engaged in a joint economic activity, such as franchises or joint ventures. BCRs are legally binding data protection rules with enforceable data subject rights contained in them.

Data protection best practices and principles to be followed for Transfer

Lawfulness

- The processing of personal data by any organisation must be compliant with data protection legislation. Furthermore, any transfer of such data must also have a proper legal basis and be consistent with the original purpose of the processing.

Data Quality

- Organisations wishing to transfer data outside the country origin must respect the principles of purpose limitation (i.e. data should be transferred for a specific purpose and subsequently used only insofar as this is not incompatible with the purpose of the transfer), data minimisation and ensure the accuracy of the data transferred and time limits for retaining the data.

Right of information

- Individuals (data subjects) must be informed about their rights and for what purposes their information is processed both before the transfer (i.e., when data is first collected) and when the transfer takes place.

Rights of access and rectification

- Individuals have a right to access the personal information being processed about them and to rectify any inaccurate or incomplete information. Exceptions may apply, for example, investigations into criminal offences. Deferral of information should be decided on a case by case basis and the reasons for any restriction should be documented. Individuals must also be informed on how they may exercise their rights.

Processing of special categories of personal

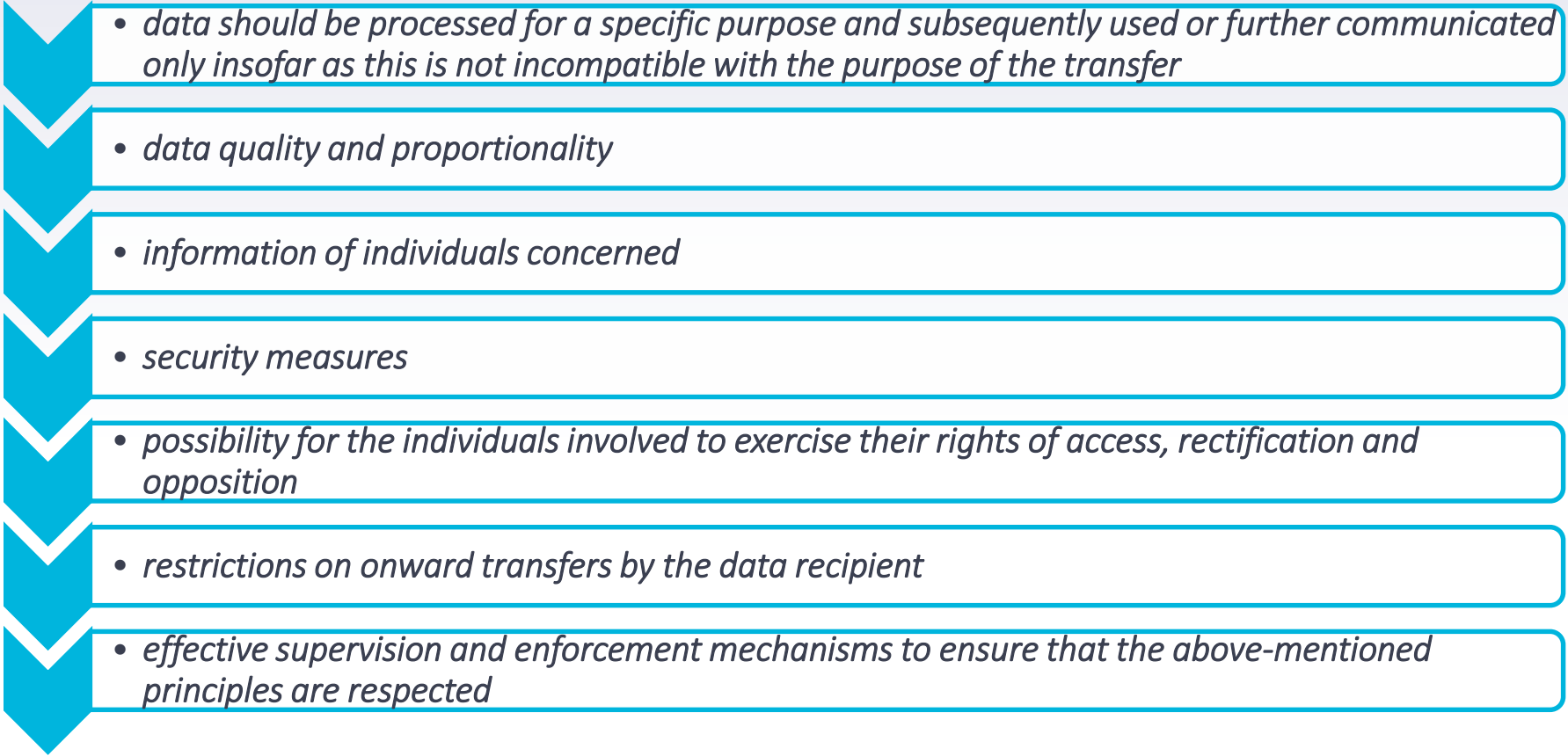
- Processing of special categories of data, such as data relating to health or revealing racial or ethnic origin, is in principle prohibited under data protection laws, except in specific circumstances. For example, it is possible to process sensitive data if the processing is necessary for the purpose of a medical diagnosis, or with specific safeguards for employment purposes.

Security measures

- Technical and organisational security measures should be taken by the controller that are appropriate to the risks presented by the transfer. Any person acting under the authority of the controller, including a processor, must not process/transfer data except on instructions from the controller.

European Data Protection Supervisor (EDPS)

- ▶ The EDPS provided information on safeguards for transferring personal data to non-adequate countries which are as follows:
- ▶ *“Adequate safeguards are data protection guarantees specifically for transfers of personal data to a recipient in a non-EEA country that is not deemed adequate. The safeguards must be outlined in a legally binding instrument, such as a contract or a Memorandum of Understanding, between the transferring and recipient parties. They should clearly describe the data protection principles that have to be respected, in particular:*

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- *data should be processed for a specific purpose and subsequently used or further communicated only insofar as this is not incompatible with the purpose of the transfer*
 - *data quality and proportionality*
 - *information of individuals concerned*
 - *security measures*
 - *possibility for the individuals involved to exercise their rights of access, rectification and opposition*
 - *restrictions on onward transfers by the data recipient*
 - *effective supervision and enforcement mechanisms to ensure that the above-mentioned principles are respected*

Furthermore, a description of the details of the transfer, such as the categories of data, purposes, retention periods, detailed security measures, information to be provided to the individuals (data subjects) concerned and how they can exercise their rights must also be provided.”

International Cooperation

- ▶ International cooperation is catered under the Mauritian DPA under section 5 (j) as follows : *the Data Protection Commissioner shall cooperate with supervisory authorities of other countries, to the extent necessary for the performance of his duties under this Act, in particular by exchanging relevant information in accordance with any other enactment.*
- ▶ Cooperation among different data protection Authorities has become essential due to the globalisation of business operations which cut across several jurisdictions.

International Cooperation

- ▶ My office forms part of different international privacy networks such as GPA, CTN, GPEN, AFAPDP, RAPDP, UN amongst others which englobe different countries. Such participation enables the office to establish a dialogue with enforcement authorities, exchange information, undertake or support specific activities and sharing of enforcement knowledge as well as expertise along with best practices.

References

- ▶ <https://www.dataprotection.ie/en/organisations/international-transfers/transfers-personal-data-third-countries-or-international-organisations>
- ▶ https://edpb.europa.eu/sites/edpb/files/files/file1/20200724_edpb_faqoncjeuc31118_en.pdf
- ▶ https://edps.europa.eu/data-protection/data-protection/reference-library/international-transfers_en

THANKS!