

EDPB Opinion on Draft Adequacy Decision for South Korea

On 27 September 2021, the European Data Protection Board (**EDPB**) issued a favourable opinion on the European Commission's draft adequacy decision for the Republic of Korea. The opinion is an important step towards a formal adequacy decision. Once the formal decision has been adopted, personal data can flow freely from the European Economic Area (**EEA**) to South Korea. This means that further safeguards or authorisations such as binding corporate rules or contractual clauses would no longer be required (see our note on [European Union and South Korea Conclude Adequacy Talks](#)).

The EDPB's opinion concludes that the key aspects of South Korea's data protection framework are essentially equivalent to the European data protection framework. The EDPB's opinion focused on the general features of the EU General Data Protection Regulation (**GDPR**) and the local South Korean laws providing access by public authorities to personal data transferred from the EEA for law enforcement and national security purposes. As part of the adequacy negotiations, South Korea has committed to: (a) implementing additional safeguards to protect European citizens' personal data (e.g., introducing the concept of "pseudonymised information", as well as the "purpose limitation" principle); and (b) centralised supervisory tasks with one authority, while previously data protection breaches and issues were handled by multiple agencies.

At the same time, the EDPB identified specific areas that require further assessment and clarification. For instance, the South Korean data protection framework only provides a right to withdraw consent in particular circumstances. The EDPB invites the European Commission to further analyse the impact of this limited withdrawal right on South Korean data protection. Differently from EU law, South Korea also allows onward transfers from a South Korea-based controller to a third country-based recipient, provided that the data subject consents. The EDPB invites the European Commission to ensure that data subjects are appropriately informed about the third country to which their data will be transferred before consent is collected.

The EDPB also noted that the disclosure of personal data by telecommunications providers to national security authorities could impact data subjects' rights. The EDPB recommends that the European Commission clarifies that the interception of telecommunications data in bulk is not permitted in the light of the recent case law of the European Court of Human Rights. The EDPB also requests the European Commission to explain the requirements to file a complaint with the South Korean data protection authority to ensure that data subjects are provided with effective remedies and a right of redress.

Once the EDPB's concerns have been addressed, the next step in the adoption of the adequacy decision for South Korea is obtaining approval from a committee formed of representatives of the EU Member States.