

Deliberation 2019-034 of March 21, 2019 National Commission for Computing and Liberties Nature of the deliberation:

Authorization Legal status: In force Date of publication on Légifrance: Tuesday May 07, 2019 Deliberation n° 2019-034 of March 21, 2019 authorizing the implementation of an administrative arrangement aimed at regulating the transfer of personal data between the Financial Markets Authority (AMF) and its counterparts outside the European Economic Area (EEA) The National Commission for Computing and Liberties, Saisie by the Financial Markets Authority of a request for authorization concerning the implementation of an administrative arrangement aimed at supervising the transfer of personal data with its counterparts outside the European Economic Area; ° 108 of the Council of Europe for the protection of individuals with regard to the automatic processing of personal data; Having regard to Regulation (EU) 2016/679 of Parliament European and Council ment of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, in particular Article 46.3 thereof .b; Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Considering the modified decree n° 2005-1309 of October 20, 2005 adopted for the application ° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to the multilateral agreement relating to the consultation, cooperation and exchange of information of the International Organization of Securities Commissions of May 2002; Having regard to Opinion 4/2019 on the draft administrative arrangement for the transfer of personal data between EEA financial market authorities and non-EEA financial market authorities of the European Committee of data protection; After having ent endu Mr. Philippe Pierre CABOURDIN, statutory auditor, in his report, and Ms. Nacima Belkacem, government commissioner, in her observations, Makes the following observations: The Commission has received a request for authorization from the AMF for the implementation of an administrative arrangement aimed at regulating the transfer of personal data with its counterparts outside the European Economic Area (EEA). Indeed, pursuant to Article 46 of the General Data Protection Regulation (hereinafter, GDPR), in the absence of an adequacy decision by the European Commission (Article 45 of the GDPR), a transfer of data personal data to a third country can only take place if appropriate safeguards have been provided by the data exporter and on the condition that the data subjects have enforceable rights and effective legal remedies. Subject to authorization of the Commission Nationale de l'Informatique et des Libertés, the appropriate safeguards referred to above may be provided by provisions to be incorporated into administrative arrangements between public authorities which provide for enforceable and effective rights for the persons concerned (Article 46.3.b GDPR). The AMF, as a member of the International Organization of Securities

Commissions (IOSCO), is a party to the multilateral agreement on consultation, cooperation and exchange of information (hereinafter Multilateral Memorandum of Understanding , or MMOU) signed in 2002. IOSCO is an international organization that brings together financial market regulators around the world. The MMOU does not specifically address the issue of the protection of personal data and does not contain guarantees for the framework for transfers of personal data outside the European Union. In order to comply with the GDPR requirements mentioned above, EEA financial market regulators, including the AMF, have entered into negotiations with their non-EEA counterparts for elaboration of a transfer tool – an administrative arrangement – according to article 46.3.b of the GDPR, in order to regulate their transfers of personal data outside the EEA. Financial Markets (ESMA), acting as a facilitator on behalf of EEA financial market regulators, first submitted this framework agreement for formal opinion to the EDPS on 7 January 2019. This administrative arrangement will be used by all EEA financial market authorities for the framework of their transfers of personal data outside the EEA. The EDPS issued a favorable opinion on this administrative arrangement on 12 February 2019 and considered that the requirements provided for in Article 46.3.b of the GDPR were satisfied.

Context of the processing carried out under the administrative arrangement

Cooperation between the AMF and its counterparts in a non-EEA member state is organized on the basis of Article L. 632 -7 of the Monetary and Financial Code (CMF), which allows the AMF to enter into cooperation agreements providing in particular for the exchange of information with counterpart authorities in third countries (non-EU and non-EU s to the EEA). The exchange of information with third countries takes place within the framework of multilateral or bilateral agreements relating to consultation, cooperation and the exchange of information. This cooperation is framed, the information being communicated and requested according to the principle of proportionality ; the use of the information exchanged, and therefore of the personal data, is limited to the strict framework of the request for the performance of the respective missions of the market regulators. The international cooperation established by the AMF with its counterparts benefits it as much than to its foreign counterparts. In accordance with the AMF's register of data processing and freedoms, processing aimed at responding to requests for information from counterparts outside the EEA allows the transfer of personal data abroad within the framework of the AMF's international cooperation with its counterparts, in order to inform a requesting authority as to the good reputation of a natural person in the context of a procedure for approval, authorization or the issuance of a professional card and to deal with requests for information that require in-depth investigations (investigations into market abuse, in particular). The data that can be transferred include data identifying economic beneficiaries (surname, first name, address, telephone number) suspected of

market abuse, economic and financial information (banking data) or, more rarely, data relating to any offenses or convictions.

The persons concerned by the transfer within the framework of the administrative arrangement are natural persons suspected of market abuse or other breaches of stock market regulations and/or persons exercising or having to exercise functions within approved entities.

**On the guarantees included in the administrative arrangement**

**Limitation of purpose** The AMF will only be able to agree to transfer the personal data requested within the framework of the mandates and responsibilities of the financial market authorities defined in accordance with the legal bases and purposes set out in the request received. Non-EEA financial market authorities will not be permitted to further process the transferred personal data in a manner inconsistent with these mandates and responsibilities. The oversight mechanism set up at IOSCO level will monitor this guarantee during the periodic reviews provided for in the administrative arrangement. The arrangement thus incorporates the principle set out in Article 5 (b) of the GDPR.

**Accuracy and minimization of data** The AMF will only transfer personal data that is accurate, up to date, adequate, relevant and limited to what is necessary with regard to the purposes for which they are transferred. The financial market authorities will ensure that any inaccurate data will be erased or rectified as the case may be. The arrangement thus incorporates the principles set out in Article 5 (c) and (d) of the GDPR.

**Transparency** A general information notice for data subjects with information on the processing of their personal data will be published on the website of each financial market authority before any transfer. The administrative arrangement in question will also be published. In addition, an individual notification will be provided to data subjects by the AMF, in accordance with the provisions of the GDPR. The data subject may object to this processing by virtue of the rights provided for by the administrative arrangement. The arrangement thus incorporates the principles set out in Articles 13 and 14 of the GDPR.

**Limitation of data retention** The personal data transferred will be kept for a period not exceeding that necessary for the purposes for which they are processed. The arrangement thus incorporates the principle set out in Article 5 (e) of the GDPR.

**of a personal nature** in order to guarantee appropriate security.

Any breach of personal data will be notified to the AMF as soon as possible and appropriate means will be put in place to remedy the breach in question. The oversight mechanism set up at IOSCO level will monitor this guarantee during the periodic reviews provided for in the administrative arrangement. The arrangement thus incorporates the principles set out in Articles 5 (f) and 32 of the GDPR.

**Rights of individuals** Under the Administrative Arrangement, data subjects have the right to obtain confirmation of the processing of their personal data as well as access to such data. Data subjects also have the right to request the erasure, rectification and restriction of their personal data and to object to the processing of their personal data.

Any limitations to these rights must be provided for by law and are applicable insofar as necessary in order to comply with the legal obligations in question (for example: professional secrecy). The supervision mechanism set up at IOSCO level will ensure the control of this guarantee during the periodic reviews provided for by the administrative arrangement. The arrangement thus incorporates the principles set out in Articles 15, 16, 17, 18, 19 and 21 of the GDPR. Furthermore, one of the conditions for the implementation of the administrative arrangement under Article 46.3.b of the GDPR is the existence of enforceable and effective rights for data subjects. In order to fulfill this condition and allow the persons concerned to exercise their rights effectively, the administrative arrangement will be made public on the website of each of the financial market authorities, signatories of the administrative arrangement. Subsequent transfers to a third party, in a third country, not covered by an adequacy decision of the European Commission, can only take place with the prior written consent of the AMF and if the third party provides assurances compatible with the administrative arrangement. The same guarantees are envisaged for the sharing of personal data with a third party, established in the country of the receiving financial market authority, unless, in exceptional cases, this third party cannot provide the aforementioned assurances. In this case, the transfer can only take place: (i) if the communication is necessary for important reasons of public interest and which must be recognized as such by the European Union or by France; (ii) if the purpose for which the personal data is shared and subsequently processed is consistent with that for which the data was originally transferred and if the sharing is necessary to fulfill the mandate and responsibilities of the receiving financial market authority and/or the third party (iii) where the sharing of personal data is in response to a legally enforceable request or is required by law. In this case, the recipient financial market authority must notify the sharing of personal data to the AMF before sharing this data. The arrangement thus follows the principle set out in Article 44 of the GDPR.

**Redress mechanism and supervision** An appeal mechanism is provided for in order to guarantee the persons concerned the right to obtain redress and, where appropriate, compensation. The remedy may be brought before the competent body (for example: a court) in the country in which the violation is committed. A four-step appeal mechanism, set out in Section III (8) of the administrative arrangement, may also be used. A supervisory mechanism is provided to ensure the proper execution of the safeguards of the administrative arrangement. IOSCO's internal supervisory body (Evaluation Group) will carry out periodic reviews of the commitments of the administrative arrangement and, if necessary, will issue recommendations to the authority concerned, which will be notified to all financial market authorities. The signatories of this administrative arrangement will also carry out periodic reviews of their own procedures, the results of which

must be notified to the Evaluation Group. In conclusion, in the light of these elements and the favorable opinion of the EDPS, the Commission notes that provisions of the administrative arrangement, in this case, provide appropriate guarantees in accordance with the GDPR. Under these conditions, the Commission authorizes the administrative arrangement aimed at regulating the transfers of personal data between the AMF and its counterparts outside the EEA. This decision and the AMF's administrative arrangement will be published on the CNIL website. This authorization is issued subject to the signature of the administrative arrangement by the financial market authorities concerned. The AMF must notify the CNIL of any suspension of transfers of personal data according to sections III (8 ) and IV of the administrative arrangement as well as any modification or interruption of participation in the administrative arrangement. The Commission acknowledges that the AMF will keep a register with the following elements concerning the administrative arrangement: information concerning the personal data transferred under the administrative arrangement; information on the notifications received by the AMF concerning the violations of personal data in view of section III (4) of the administrative arrangement; information on the results of the periodic reviews of the Evaluation Group, in particular with regard to section III (6.2.3) of the administrative arrangement; information on the notifications received by the AMF in accordance with section III (6.2.4) of the administrative arrangement; number of dispute resolution requests received by the AMF or concerning the personal data transferred by the 'AMF; detailed information on the cases submitted to the dispute resolution mechanisms envisaged by the administrative arrangement; detailed information on the cases not resolved by the dispute resolution mechanisms envisaged and action taken by the AMF; information on the recommendations of the Assessment Group to financial market authorities following periodic reviews. The CNIL reserves the right to request this information from the AMF in order to ensure the control of the practical implementation of this administrative arrangement. The CNIL reserves the right to withdraw this authorization if the administrative arrangement is modified and no longer provides the appropriate guarantees within the meaning of Article 46.3.b of the GDPR. President Marie –Laure DENIS