



EU News on Prospectus Requirements and Data Privacy

Prospectus Requirements: a further submission by ProShare to request acceleration of the new employee share scheme exemption

Background

The EU Prospectus Regulation (“The Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading”) was finalised on 14 June 2017 and published on 16th December. The **Regulation** is due to come into force in full on 21st July 2019 to be applied in a “uniform manner throughout the [European] Union”.

The employee share scheme exemption

The Regulation includes a revised employee share scheme exemption intended to ensure **equal access** to employee share schemes to directors and employees of all companies, **whether or not [the offering] company is established or listed inside of the EU**.

The revised exemption will mean that there will be no requirement to publish an approved prospectus for offers made in the context of an employee share scheme. A document simply needs to be provided containing information on the number and nature of the securities and the reasons for and details of the offer. The documents usually provided to participants could be updated to comply or a separate document provided.

ProShare formal submission to EU Commission

The Regulation is due to come into force in full on 21st July 2019. Some of the provisions have already come into force, in particular where nothing further is required from the EU Commission or ESMA. To date, the employee share schemes exemption is not subject to any further requirements.

ProShare made a further submission, on 12th November 2018, prepared by me as Chair of its Global Focus Group, requesting that the employee share schemes exemption be put in place as soon as possible. This timing is doubly important due to Brexit currently scheduled for 29th March 2019. UK companies need certainty that they will not be subject to full prospectus requirements following Brexit. The submission referenced that the original relaxation, for the exemption to apply to all employee offers, was made back in 2010 as a revision to the EUPD. ProShare will follow-up and provide an update for members once a response is received.

Data Protection Requirements: EU-US Data Privacy Shield – second review of the process and framework

Background

The EU-U.S. Privacy Shield was adopted on 12 July 2016 and the Privacy Shield framework became operational on 1 August 2016. It replaced the previous Safe Harbor provisions. The Privacy Shield provides for the protections of the rights of anyone in the EU whose personal data is transferred to companies in the United States as well as legal clarity for businesses relying on transatlantic data transfers.

The EU Commission committed to reviewing the framework on an annual basis, to assess that it continues to ensure an adequate level of protection. After the first annual review in 2017, the EU Commission made a number of recommendations to improve the practical functioning of the Privacy Shield.

Progress of the 2018 Review

On 18 October 2018, the second review of the EU-U.S. Privacy Shield was launched. A report was published on 19th December, based on the discussions between representatives of the EU (including from the EU's independent data protection authorities) and the US government departments in charge of the Privacy Shield.

The report states that the additional steps taken by the U.S. authorities, to implement the recommendations made by the EU Commission in 2017, have improved the functioning of the framework.

Next steps

To date, the news and public statements released show that the EU does not wish to end the Privacy Shield even though it faces some difficulties and obstacles (in particular, the lack of a permanent Ombudsperson).

The EU Commission has requested the US authorities to nominate a permanent Ombudsperson by 28th February 2019. The Ombudsperson is an important mechanism that ensures complaints concerning improper access to personal data are addressed. If this does not take place by that date, the EU Commission may consider taking appropriate measures, in accordance with the General Data Protection Regulation.



Alexy Armitage, Director, Reward Consulting, heads KPMG's global incentives plan practice. Alexy has significant and extensive experience in the design and implementation of executive and employee incentive plans, and the requirements for international offers. She has been an advocate for and supporter of the relaxation of the employee share exemption since the initial implementation of the EUPD and has assisted ProShare with its submissions and with the industry formal representations to the EU Commission.

Alexy chairs ProShare's Global Issues Focus Group.