

Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

## *CHAPTER V*

### *Transfers of personal data to third countries or international organisations*

#### *Article 38*

#### **Derogations for specific situations**

1 In the absence of an adequacy decision pursuant to Article 36, or of appropriate safeguards pursuant to Article 37, Member States shall provide that a transfer or a category of transfers of personal data to a third country or an international organisation may take place only on the condition that the transfer is necessary:

- a in order to protect the vital interests of the data subject or another person;
- b to safeguard legitimate interests of the data subject, where the law of the Member State transferring the personal data so provides;
- c for the prevention of an immediate and serious threat to public security of a Member State or a third country;
- d in individual cases for the purposes set out in Article 1(1); or
- e in an individual case for the establishment, exercise or defence of legal claims relating to the purposes set out in Article 1(1).

2 Personal data shall not be transferred if the transferring competent authority determines that fundamental rights and freedoms of the data subject concerned override the public interest in the transfer set out in points (d) and (e) of paragraph 1.

3 Where a transfer is based on paragraph 1, such a transfer shall be documented and the documentation shall be made available to the supervisory authority on request, including the date and time of the transfer, information about the receiving competent authority, the justification for the transfer and the personal data transferred.