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Answer given by Ms Gabriel  
on behalf of the European Commission  
(20.11.2019)

Encryption is one of the means of protecting confidentiality as well as privacy and is widely recognised as an essential tool for security and trust in open networks. No ban on encryption is being considered. Union legislation requires providers to take appropriate technical and organisational measures to safeguard the security of their services. Such measures are for instance prescribed by the General Data Protection Regulation, which expressly refers to encryption, or by the Framework Directive<sup>1</sup> that will be replaced by the European Electronic Communications Code in December 2020, the latter also referring to encryption as a possible measure. At the same time, the use of encryption should be without prejudice to the powers of competent authorities to protect important public interests in accordance with the procedures, conditions and safeguards set forth by law. In particular, access to communications data by national authorities may be justified in individual cases by the objective of preventing or investigating criminal offences, as long as such measures are necessary, proportionate and respect due process rights.

As regards data transfers to the United States (U.S.), while there is an ongoing discussion in the U.S. as to how to balance law enforcement interests of access to electronic evidence with privacy, no decision has been taken yet. Should the U.S. enact new legislation in this area, the Commission will carefully assess its impact on the adequacy finding for the EU-U.S. Privacy Shield, a framework which the Commission has found to provide a level of data protection that is essentially equivalent to the level of the protection in EU, thus allowing for the transfer of personal data from the EU to participating companies in the U.S. without any further restrictions.

No such adequacy decision that would allow for transfers of personal data without any further requirements exists for the other two countries mentioned. It is for the Member States Data Protection Authorities to consider whether any measures taken on encryption in those countries affect transfers of data that take place under the alternative transfer tools provided by the GDPR.

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<sup>1</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)