

Info note



EDPB Plenary meeting, 18-19 February 2020

ITEM 3.1 - 18/02 - INFO NOTE - Guidelines on Articles 46 (2) (a) and 46 (3) (b) GDPR for transfers of personal data between EEA and non-EEA public authorities and bodies – Discussion and adoption

International Transfers Expert Subgroup

I. Background

In 2018, the EDPB granted the International Transfers Expert Subgroup (ITS) the mandate to draft Guidelines on Articles 46 (2) (a) and 46 (3) (b) GDPR to give guidance to EEA public authorities and bodies on these new specific safeguards for international data transfers to public authorities and bodies in third countries as well as to international organisations.

II. Current State of Play

The Guidelines recommend minimum safeguards to be met when drafting legally binding instruments according to Article 46 (2) (a) GDPR or administrative arrangements pursuant to Article 46 (3) (b) GDPR. These safeguards aim to ensure that the level of protection of natural persons under the GDPR is not undermined when their personal data is transferred outside of the EEA.

The EDPB recommends in the guidelines to include the following safeguards in such agreements:

-) Purpose and scope of the agreement
-) Definitions of personal data concepts and rights
-) Data protection principles (purpose limitation, data accuracy and minimisation, storage limitation, security and confidentiality)
-) Data subjects rights including the right to transparency
-) Automated individual decision-making (where applicable)

-) Restrictions to the processing of sensitive data (where applicable)
-) Restrictions of onward transfers and sharing of EEA personal data and
-) Redress and Supervision mechanisms.

Moreover, the Guidelines set out specific requirements to be met when drafting legally binding instruments on the one hand and administrative agreements on the other hand, while recommending concluding legally binding instruments when possible.

Specifically on administrative arrangements, the guidelines highlight that each administrative arrangement developed in accordance with article 46 (3) (b) GDPR will be examined by the competent Supervisory Authority on a case by case basis, which gives, in particular, the possibility to discuss tailored redress mechanisms to suit the specific needs of the public bodies involved. Moreover, as agreed at the ITS and as per Article 46 (4) of the GDPR, the Guidelines state that administrative arrangements will be submitted to the consistency mechanism referred to in Article 63 GDPR.

With regards to legally binding and enforceable instruments, which do not require prior authorisation by the competent Supervisory Authority, the guidelines recommend that, if there is no possibility to ensure effective judicial redress, EEA public bodies should consult the competent Supervisory Authority even if this is not foreseen in Article 46 (2) (a) GDPR.

Setting off the experience made with the EDPB opinion on the ESMA Administrative Arrangement, the Guidelines strive to find a balance between preserving GDPR's high protection standard for international data transfers between public bodies and to international organisations and giving practical guidance that helps EEA public bodies in safeguarding their international data transfers.

Request to the Plenary:

The Plenary is requested to adopt the Guidelines.