

Info note



EDPB Plenary meeting, 15 December 2020

ITEM 2.3.1 - INFO NOTE -

Guidelines 2/2020 on articles 46 (2) (a) and 46 (3) (b) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies (after public consultation) – discussion and adoption

International Transfers Expert Subgroup

I. Background

On 18 February 2020, the EDPB adopted the Guidelines 2/2020 on Articles 46 (2) (a) and 46 (3) (b) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies. They 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.

A public consultation has been open from 24 February to 18 May 2020. 14 contributions have been received, which dealt mainly with questions on the application of the Guidelines on international organisations, on the transparency duties foreseen, the possible restrictions on data subjects' rights and the relationship between the safeguards under Articles 46 (2) (a) and 46 (3) (b) GDPR and the public interest derogation pursuant to Article 49 (1) (d) GDPR.

As the judgement of the Court of Justice of the European Union, Case C-311/18, Data Protection Commissioner v. Facebook Ireland and Maximillian Schrems ("Schrems II") also had an impact on the Guidelines 2/2020 the ITES decided to wait for the judgement and to discuss necessary changes to the guidelines before presenting them for final adoption.

II. Current State of Play

The updated Guidelines 2/2020, presented for discussion and adoption, integrate clarifications on the questions raised in the public consultation as well as necessary changes following the Schrems II judgement.

Following the public consultation it is clarified that the guidelines also apply to the amendment of international agreements which were concluded prior to 24 May 2016 (v. Art. 96 GDPR). The guidelines hint to the specificities of international organisations wherever necessary to clarify how the guidelines should be followed when the contracting party of the EEA public body is an international organisation. They describe the possibility of further use of the transferred data for archiving purposes, for scientific or historical research purposes as well as for statistical purposes. Concerning transparency, ways to protect sensitive or other confidential information, where necessary, were included. The possible restrictions to the data subjects' rights in line with the ones listed in the GDPR were clarified. Finally, the decision of the plenary to base the consistency procedure on administrative arrangements on Art. 64 (2) GDPR was taken on board.

Regarding the necessary changes after the Schrems II judgement the ITES decided to strengthen the minimum safeguards for transfers from EEA public bodies to non-EEA public bodies and international organisations in a way that they provide for a level of protection essentially equivalent to that which is guaranteed within the EEA. Therefore, the guidelines ask for an assessment of the level of protection in the country of the receiving public body or at the international organisation including a check if the agreed safeguards can be complied with in practice before finally concluding administrative arrangements or legally binding instruments. Moreover, the restrictions on onward transfers and sharing of data were strengthened so that disclosures of personal data to other public authorities in the third country of the receiving public body that go beyond what is necessary and proportionate in a democratic society are excluded. Finally, the sections on redress and supervision mechanisms were formulated in a way that these mechanisms offer the data subject guarantees essentially equivalent to those required by Article 47 of the EU-Charter.

Request to the Plenary:

The Plenary is requested to consider and adopt the updated Guidelines 2/2020.

Attachments:

- Updated Guidelines 2/2020 for adoption (track changes version)
- Updated Guidelines 2/2020 for adoption (clean version)