

SINGLE QUESTION
ON GUIDELINES 05/2021

We fully agree with the Board proposal for public consultation but would like to raise a question that in our opinion should be specifically addressed in the draft.

A clarification is needed whereas the SCCs are an appropriate legal instrument or not for the transfer of personal data to a third country **when the data importer does not fall within the scope of the GDPR:**

- In these guidelines art. 7.3 and article 19, it is clear that **a transfer exists irrespective of whether or not the importer is subject to the GDPR in respect of the given processing.**
- In these guidelines art. 20 et and 21, it is clear as well that **such transfer needs to comply with GDPR Chapter V.**
- Art. 21 of the guidelines refers for this to GDPR art. 46 and art. 22 of the guidelines lists the transfer tools under such GDPR article, **including the SCCs.**

Though, the Commission Implementing Decision (EU) 2021/914 set out in article 1 (see same idea exposed in recital 7):

*“The standard contractual clauses set out in the Annex are considered to provide appropriate safeguards within the meaning of Article 46(1) and (2)(c) of Regulation (EU) 2016/679 for the transfer by a controller or processor of personal data processed subject to that Regulation (data exporter) **to a controller or (sub-)processor whose processing of the data is not subject to that Regulation (data importer).**”*

The Board guidelines tend to suggest that the SCCs are an appropriate transfer tool when the importer is not subject to the GDPR, while the Commission implementing decision suggests that they are not.

We would like to thank the Board and hope that our question will be addressed.

Best regards,

Fabrice Roustan

Contracts & Data Protection Specialist