

Guidelines 07/2022 on certification as a tool for transfers

We transmit the comments of the Industry Division of the Austrian Federal Economic Chamber:

We understand that the main purpose of these guidelines on certification as a tool of transfers is to provide further clarification on the practical use of this tool.

After analysis of the proposal it comes up that data exporters wishing to rely on a certification to secure the transfer of data outside the EU must verify whether the certification it intends to rely on is effective in light of the characteristics of the intended processing. In particular they have to verify that:

- *the certification is valid and has not expired,*
- *it covers the specific transfer to be carried out (e.g. storage, retrieval, matching etc.),*
- *the transit of personal data is in the scope of the Certification (i.e., the transit of data from an EU country to a third country), and*
- *whether an onward transfer is also planned (and documented)*

The data exporter shall also verify that there is a contract or another legally binding instrument between the certified data importer and the certification body and assess whether the certification on which it intends to rely on is effective in the light of the law and practices in force in the third country, as well as, eventually, the additional measures taken by the data importer holding a certification. All this puts an additional burden on the data exporters.

Conclusion: In our opinion the described requirements are similar to those that have to be met in case of the conclusion of EU SCCs (Art 46 / 1 / c, d GDPR) in combination with the performance of a transfer impact assessment.

Proposal: From our point of view, it has to be clarified whether the data exporter has to assess the level of protection of personal data on the basis of the third country's legislation and practice even if a certification exists, which meets the requirements.

In particular, it would be helpful if the EDPB would clarify:

- *how exactly the exporter shall assess whether the certification it intends to rely on is effective in the light of the law and practices in force in the third country?,*
- *if the local authorities shall provide assistance on this,*
- *if and if yes how data importers can provide support?*

Kind regards,

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