

Quote from Guidelines 2.1 para. 22:

„Pseudonymised data, which could be attributed to a natural person by the use of additional information, is to be considered information on an identifiable natural person, and is therefore personal. This statement also holds true if pseudonymised data and additional information are not in the hands of the same person. If pseudonymised data and additional information could be combined having regard to the means reasonably likely to be used by the controller or by another person, then the pseudonymised data is personal. Even if all additional information retained by the pseudonymising controller has been erased, the pseudonymised data becomes anonymous only if the conditions for anonymity are met.“

The guidelines do not explain what kind of conditions have to be met to consider data as anonymous. The average reader therefore is not able to understand which additional efforts one has to make. The EDPB could for example refer to the guideline 04/2020 on the use of location data and contacting tools in the context of the COVID-19 break (unter 2.2).

On April 26 2023 the General Court of Justice of the European Union held that pseudonymized data transmitted to a data recipient will not be considered personal data if the data recipient does not have the means to re-identify the data subjects (T-557/20). The General Court highlighted that, in line with the Court of Justice's decision in Breyer, in order to determine whether pseudonymized information transmitted to a data recipient constitutes personal data, it is necessary to consider the data recipient's perspective. If the data recipient does not have any additional information enabling it to re-identify the data subjects and has no legal means available to access such information, the transmitted data can be considered anonymized and therefore not personal data. The fact that the data transmitter has the means to re-identify data subjects is irrelevant and does not mean that the transmitted data is automatically also personal data for the recipient.

Therefore the draft of the guidelines is not in line with the jurisdiction of the General Court. The case is pending before the European Court of Justice. It could be wise to wait for its (final) decision.