

Since the Asociación Profesional Española de Privacidad (APEP), we have decided to participate in the public consultation of EDPB Guidelines 2/2020, adopted on 18 January 2020, on Articles 46.2(a) and 46.3(b) of the GDPR for transfers of personal data between EEA and non-EEA public authorities bodies.

To this end, we have made a critical reading by the members of our Public Authorities Working Group from which the comments we attached in an annex document have emerged and which we hope will be considered.

We hope that our collaboration will serve to improve the content of these Guidelines and thereby ensure a better alignment to the GDPR of International Data Transfers between public authorities and bodies as well as to help professionals who participate in them to better define their obligations.

We are at your disposal for any comments or inquiries.

Kind regards

Madrid, 16 May 2020



Marcos Judel
President

Contributions to the text:

On the text of the document, the following observations are made with the aim of improving its contents:

- In paragraph 1.3 (“Definition of a public authority or body”), there is an quotation referring to the definition referred to in the Re-use Directive, it would be appropriate to add the phrase "and in any event, as determined by the national law of each Member State". This phrase would also be in line with the statement in the Article 29 Working Group document "Guidelines on Data Protection Officers", a document that was confirmed at the first meeting of that EDPB.¹
- In paragraph 2.2, which includes the inclusion of definitions, it would also be appropriate to include, depending on each individual case, who acts as the controller, who as the processor and who as the recipient. That is, determine "who is who." It would also provide a guarantee for data subjects.
- Paragraph 2.4.1 on the right to transparency states that the "general information notice on the website of the public body concerned will not be sufficient". We understand that this phrase is quite restrictive, since it could be assumed that due to impossibility, the right of information could be complied with by publication on the website duly identified, or even by publishing a press release by the public body concerned. We therefore consider that it could be replaced "by compliance with the right to information shall comply with Articles 13 and 14 of the GDPR, in line also with the document on this right adopted by the WP29 and endorsed at the first meeting of the EDPB".
- Following the principle of transparency, the publication on the relevant website of the legal instrument in question could be included in the document submitted to public information. It shall also be published in the relevant bulletin (“official gazette”) or provision in accordance with the rules of the Member States.

¹Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on reutilización of the información industry público. Published in DOUE L345/90 of 31 December 2003.

- The document makes no mention of co-responsibility assumptions. Since these assumptions are possible even in the field of international transfers from the public sector, it would be interesting if there were either mentioned or even determined some assumptions in which co-responsibility could occur.
- It is suggested to incorporate an international data transfer definition as it is not included in the GDPR.
- In documents containing the standard contractual clauses for international transfers of the European Commission, terminology as an importer and exporter is still maintained in the context of an international transfer, so it is suggested to include a definition of these figures in the event that the public authorities and bodies in preparing the legal instruments use the European Commission's model clauses on the basis.
- It is suggested that legal instruments where transfers are formalized include:
 - An explanation of the reasons for international transfer.
 - It is suggested that the parties' obligations regarding the inclusion of international transfer agreements be incorporated from the conditions set out in Article 26 GDPR (where transfers occur in a co-responsibility environment) and Article 28 GDPR (where transfers occur in a processing purpose).
 - A contact address for each contractual party or both as a whole is also mandatory, where interested persons can address them for transfer-related issues as well as their rights, freedoms.
 - In the case of legal instruments formalizing international transfers under Article 46.2a, it is suggested that a clause indicating that the Convention is approved by the data protection delegates of the parties.

- It is suggested that the publication of the legal instrument (Convention or whatever) as well as the security risk analysis that the parties should carry out to assess the measures to be incorporated into the data transmission as well as that all such documents should be made available to interested persons.

- It is also suggested that the authorization issued by the supervisory authority be made public in the case of the legal instruments referred to in Article 46(3b) GDPR.