

The Consumer Voice in Europe

BEUC'S RESPONSE TO THE EDPB RECOMMENDATIONS ON MEASURES THAT SUPPLEMENT TRANSFER TOOLS TO ENSURE COMPLIANCE WITH THE EU LEVEL OF PROTECTION OF PERSONAL DATA



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EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2020-127 - 17/12/2020

General comments

BEUC welcomes the opportunity to comment on the draft recommendations.

We are confident that the recommendations will help data controllers and processors to comply with the provisions of the GDPR as interpreted by the CJEU in the 'Schrems II' judgement. The full respect of such interpretation is key to ensure that consumers' personal data is fully protected when they travel outside the European Economic Area.

In this context, BEUC broadly welcomes and supports the draft EDPB recommendations, which follow the reasoning of the Court. In particular, we welcome that the Board clarifies that the equivalence of protection provided by third countries' rules should be assessed on the basis of objective criteria and in light of the principle of accountability. In this sense, we highly appreciate that the Board underlines that – in the absence of legislation governing the circumstances in which public authorities may access personal data – in the context of this assessment one has to look into relevant and objective factors, and not rely on subjective factors such as the likelihood of public authorities' access to data in a manner not in line with EU standards. We also appreciate that the Board recalls that such assessment should be done with due diligence and be thoroughly documented. In other words, the Board recalls that organisations will be held accountable to the decision they may take.

Equally, we welcome that the Board recalls that – as stated by the CJEU – supervisory authorities will suspend or prohibit data transfers in those cases where, following an investigation or complaint, they find that an essentially equivalent level of protection cannot be ensured. In this sense, we take this chance to highlight once again that it is crucial that data controllers and processors respect the CJEU judgement and implement the Board's recommendations in a timely manner. Strong and coherent enforcement actions by Supervisory Authorities (SAs) must follow suit if this is not the case. SAs should make full use of their powers and put an end to any illegal international transfers currently taking place.

We take this chance to underline the need for SAs to monitor that transparency obligations for data controllers are fully respected when it comes to data transfers. In this sense, we would ask the Board to add a paragraph in its recommendations to provide guidance on how to correctly inform data subjects about how, when and why their data is transferred to third countries.

Suggestions for improvement

BEUC is of the opinion that the guidelines could be improved when it comes to overall coherence and clarity by integrating the examples mentioned in the annex into the text of the recommendations.

On a more substantial basis, we think the Board should revise the interpretation offered in example n.2 (par. 80) regarding the use of pseudonymisation for data transfers. Pseudonymisation shouldn't be considered per se as an effective supplementary measure for protecting data subjects' personal data as it can lead to the re-identification of individuals. Therefore, the Board should make clear that the use of pseudonymised datasets doesn't offer sufficient protection.

We thank once again the Board and remain available for answering any questions on our feedback.



This publication is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).

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