

Feedback to the European Data Protection Board in relation to Recommendations 01/2020

Date: 21 December 2020

I have one feedback in relation to Use Case 1 at paragraph 79, point 6.

I copied the original text herebelow:

“Use Case 1: Data storage for backup and other purposes that do not require access to data in the clear

79. A data exporter uses a hosting service provider in a third country to store personal data, e.g., for backup purposes.

If

1. [...]

[...]

6. the keys are retained solely under the control of the data exporter, or other entities entrusted with this task which reside in the EEA or a third country, territory or one or more specified sectors within a third country, or at an international organisation for which the Commission has established in accordance with Article 45 GDPR that an adequate level of protection is ensured,

then the EDPB considers that the encryption performed provides an effective supplementary measure.”

I would suggest adding to the end of point 6 the following (or something along these lines):

“... and these entities and international organisations are not part of a group of companies or international organisations or have a parent company, over which a third country’s public authorities have enforceable rights to access personal data held by them even in data centres/ servers located outside the jurisdiction of that third country.”

The reason is that even if the encryption keys are held under the control of an entity within the EEA, if that entity is subject to the U.S. CLOUD Act (CLarifying Overseas Use of Data Act) or any similar Acts from other jurisdictions, the Government of that third country could potentially force those entities to give them [the Government] access to the encryption keys, therefore in this case the encryption might not provide an effective supplementary measure.

Thank you for your consideration.

Best regards,
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