

Questions to be raised about the Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data.

1. **Could you clarify which entities, beyond the imprecise denomination "exporter" and "importer", should adopt the proposed measures?** The document seems to be aimed primarily at data exporters, understood as those controllers or processors actually transferring the data. This would exclude many data controllers who do not directly export the data, but whose service providers export the data. For example, in the case of a small company located in the EU that uses Google or Microsoft services and contracts with Google Ireland Limited or Microsoft Ireland Operations Limited, both located in the EU and exporting data to their subsidiaries or headquarters in the U.S., **should we understand that the adoption of measures is the sole responsibility of these processing companies located in Ireland? What is the responsibility of the small company that uses the services mentioned above and is the controller of the data being transferred?**

2. In the above case, if the small business has to take the measures proposed in the document, it should be taken into account that **compliance can be extremely costly for a small organization.** Continuously analyzing the legal regime of third countries, more so when we talk about specialized regulations on surveillance and national security, **may require the hiring of highly qualified personnel.** As for the collaboration of importers, **it is unrealistic to think that data importing entities will cooperate in a transparent manner when reporting possible incompatibilities in the legislations of the countries where they are located, as this may mean the loss of clients for them.**

3. If the small controller has to take these measures, it should be noted that its contractual relationship is with the company located in the EU (exporter of the data), not with the company located in the USA (importer of the data). In this sense, **one must appreciate the real difficulty of entering into negotiations between the data controller and the data importer, since there is not even a contractual relationship between the two.**

4. **Are there plans for the European Commission, the European Data Protection Board, the national authorities and the other public authorities of the European Union to carry out the regulatory investigation work they propose themselves, and for the benefit of EU organizations?** It should be noted that **the control of legality of the operations of a company in the EU must be developed by the public authorities of the EU.** Transferring this control obligation to the companies' clients

(whether these consumers or other companies) implies a disproportionate burden and legal uncertainty that is not appreciated in other areas.

5. Many essential technological services are offered by US companies and could be stopped in the absence of adequate additional measures to prevent access to data by US authorities. This may pose a problem for EU companies using these services, which may not be able to find alternative providers offering a similar level of protection as in Europe. **Are measures planned at EU level to facilitate the proliferation of alternative technology services companies and to support procurement from them?**