

With this statement, I would like to provide the EDPB with the comments our DPO-team has on the recommendation 2020/01.

We are very pleased that the EDPB has given this recommendation, following the Schrems II ruling. We were looking forward to more practical guidelines on how to handle the transfer of data to non EER-countries.

However, we have some remarks and some suggestions on the recommendation.

First of all, we wonder how the sentence “.. unless the cloud provider clearly states in its contract that the data will not be processed at all in third countries..” in number 13 should be interpreted. For us, it is not clear if that means that even when there could be a possible transfer because of legislation that forces companies to transfer data to public authorities or even when there is an access possible by these authorities without the company who is processing the data, knowing, a contractual statement can make the recommendation inapplicable. We would like the EDPB to elaborate on this statement and which conditions should be met, for companies to be able to invoke this possibility for their data transfers.

Also, we would like more information on how the statement in use case 6 was established. Which measures were taken into account and how should a DPO react to new measures proposed by the organisation? Is the EDPB responsible for judging these measures?

Our team also questions how the risk assessment/acceptance foreseen in the GDPR relates to the statement that the mere possibility of access from third party countries should lead to the suspension of the processing of data by a provider who is at risk of being subject to a question by foreign authorities. We think it is important that the EDPB clearly states if companies still have the possibility of taking certain risks or if, in the case of use case 6, there is a clear violation of the GDPR when there would be a transfer to cloud services providers or other processors which require access to data in the clear.

As a the final remark on this recommendation we would like to add that it is not clear whether the EDPB has a different opinion if the processing of data takes place by a company that is only located in a third country or by a company that has a registered office in the EU, and only processes personal data in the EU, and is only captured by third country legislation which makes access by third countries possible, by its parent company or an other linked company. We think this is a crucial part to give the EDPB's view on, because this is a measure that is often used as a justification.

With kind regards,

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