

## Remarks to the draft guidance on transfer of data to third country public bodies and international organisations

I welcome the formulation of article 8 which enables international organisations to be considered to be public bodies. Further precision would, however be welcome on the criteria. I assume international organisations whose members are states or national (or international) public bodies, could be considered public bodies also. In the case of mixed membership, majority of the members should be public bodies. Another possible criterion could be the mandate of a body – having public powers (a term also used but not defined in the GDPR) or exercising functions usually a public body in a country does.

The public powers could be:

- Legislative
- Sanctioning (including international sanctions, customs duties)
- Imposing fines
- Ordering certain behaviour or activities or restraining from them (like authorising or forbidding mergers)
- Enforcing law
- Deciding on or giving obligatory guidance on state budgets
- Fostering fight against crime.

Other public functions could be:

- Grants or other support directly from the state budget
- Disseminating information on behalf of a public body which is binding on the public body or establishes its responsibility (like guidance statements of tax offices).

Another question is whether courts should be considered public bodies.

In particular international organisations pose specific problems as a number of them have diplomatic or similar immunity and thus cannot be sued in courts.

Article 48 of the guidance gives some hints for cases if no settlement of disputes by court is possible, but it is not clear whether the implementation of arbitration or alternative dispute resolution mechanisms, but does not give guidance how compliance with the decisions of these for a should be ensured. If these requirements are set too strict, given the immunity of some international organisations, transfer of personal data may become impossible. Therefore, the clauses in the administrative arrangements should contain an undertaking that the decisions of these bodies is accepted and implemented unconditionally by the parties and this clause should be sufficient.

Article 58: It should be clarified whether and under what conditions the management board or another governing body of an international organisation could be accepted as an independent oversight body – I propose to prescribe that at least half of the members should be outside the organisation's staff and should also not be officers of the organisation in any other function than their membership of the board.

I propose to replace the term “in view of” (typical EUspeak originating from the French term “en vue de”) by “taking into account”.