

Written observations by the Dutch government on the draft-Guidelines 2/2020 on articles 46 (2) (a) and 46 (3) (b) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies.

In the above mentioned matter, the Dutch government has the honor to bring the following comments to the attention of the European Data Protection Board. The Dutch government welcomes the emphasis on data protection and privacy concerns related to transfers between EEA and non-EEA public authorities and bodies

1. In regard to section 2.4.1. and specifically to point 30, the Dutch government would like to state that there's no question that the transparency requirements of the GDPR must be met. However, in our view this can take place in various ways, other than making the agreement public, such as providing comprehensive information on the website, directly informing the data subject, or by clarifying purpose and means of the data transfer with explaining visuals. There are also situations imaginable in which the agreement as a whole, or even specific provisions, cannot be made public.

Furthermore, there may also be national regulations that regulate the public nature of documents of information (as is the case in The Netherlands with the Public Access Act).

2. The Dutch government would like to draw attention for the relation between our bilateral social security treaties with third countries and the provisions of the GDPR, and the guidelines on article 46. Following the guidelines on article 46 (2) (a) a social security agreement would be deemed a legally binding instrument between public authorities or bodies, in our view. Social security agreements contain rights and obligations on the export of benefits. These agreements are of great importance for individuals and states at the same time. Data exchange between agencies can be necessary in order to implement such a treaty.

Given that there are not yet many adequacy decisions, the aim would be to bring future treaties in line with the guarantees for data exchange of the GDPR as much as possible.

However, the conclusion of treaties is a negotiating process in which you have to take into account the situation of the negotiating partner. In case that a third country is not yet able to comply with all the safeguards of the GDPR, what are the consequences, apart from performing a DPIA? The EDPB does not discuss this situation. The Dutch government suggests that some further guidance would be useful.

3. Numbers 56/57: What would be the relationship between the impartial supervisory oversight mechanism and the EU-Court?

4. The Dutch government suggests that some further guidance would be useful towards the consideration when to call on the instruments articles 46 (2) (a) and 46 (3) (b). The Dutch government wonders whether the EDPB would be willing to include some examples/scenario's, specifically related to the information on article 46 GDPR given in section 3.

5. What would be the relationship between the content of these guidelines and already existing agreements/instruments, will they impose additional obligations?