

Sophie in't Veld MEP

European Parliament
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by e-mail only

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Dear Ms in 't Veld,

I would like to thank you for your letter of 28 May 2021 regarding the EDPB's statement 04/2021 on international agreements including transfers and for the questions raised.

As highlighted in the abovementioned statement, the EDPB deems that, in order to ensure that the level of protection of natural persons guaranteed by the General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED) is not undermined when personal data is transferred outside the Union, consideration should be given to the aim of bringing international agreements involving the transfer of personal data to third countries or international organisations (also those related to FATCA) in line with the GDPR and LED requirements for data transfers where this is not yet the case.

Indeed, based on Article 96 of the GDPR and Article 61 of the Law Enforcement Directive, such agreements concluded prior to 24 May 2016 or 6 May 2016 and which comply with Union law as applicable prior to that date, shall remain in force until amended, replaced or revoked. Therefore, the EDPB considered such a statement as a useful reminder and invitation for Member States to review such agreements, where needed, and align them with the current European data protection legal framework.

Beforehand, the EDPB has adopted 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 December 2020. These Guidelines set forth the standard regarding safeguards to be included in legally binding instruments or administrative arrangements between public bodies and are aimed at ensuring a consistent application of the GDPR in all Member States in line with the competences of the EDPB.

Against this background, I would like to stress again that the EDPB does not have the same competences, tasks and powers as national supervisory authorities (SAs) and, therefore, it is up to the latter to monitor and enforce, where necessary, the protection of personal data of data subjects within their jurisdiction. Also to this aim, the above mentioned statement clarifies that national SAs, are available to assist Member States in this exercise, keeping in mind however that Article 46(2).(a) GDPR does not refer to the need for the competent SA to authorise such kind of agreements.

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Chair of the European Data Protection Board

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In fact, one SA has received a complaint regarding the law applicable to the national intergovernmental agreement transposing FATCA and some SAs have already started discussions with their relevant Ministries regarding the review of such international agreements and the safeguards to be included in the new ones they are planning to conclude which is a long process. These bilateral discussions will take into consideration the abovementioned EDPB Guidelines 2/2020 on articles 46 (2) (a) and 46 (3) (b) of Regulation 2016/679 so as to ensure that consistent safeguards will be inserted in the reviewed agreements and the new ones that will be adopted.

Yours sincerely,



Andrea Jelinek