



*European Data Protection Board
(upload on website EDPB)*

Your letter from
February 24 2020

Your reference:
Guidelines 02/2020

Our reference:
C.P.801.3/161-6

Attachments:
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Brussels, 07 May 2020

EDPB Guidelines 02/2020 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

Public Consultation 2/2020

Dear Madam, Dear Sir,

As Data Protection Officer of the Belgian General Administration of Customs and Excise (GACE), I would like to submit the following, on behalf of GACE as well as of the Belgian Federal Public Service of Finance, of which GACE is a part.

1. Article 46.2 (a) GDPR, one of two stipulations about which the guidelines 02/2020 stipulate, is very similar in phrasing, and probably identical in meaning, to article 37.1.(a) of the Directive 2016/680. Could EDPB stipulate that the guidelines (or elsewhere in a document that is accessible to the public):
 - a. Either, also apply to article 37.1 (a) of the Directive 2016/680, where they are guidelines to the use and meaning of article 46.2.(a) GDPR,
 - b. Or, if they don't apply to article 37.1.(a) of Directive 2016/680, why the Guidelines don't apply to them, in other words, what is the difference between the two stipulations that makes the Guidelines not applicable to article 37.1.(a) of Directive 2016/680.



Mark Ooms
Koning Albert II-laan 33, 1030 Brussel
•Tel.: +32 (0)471 052612
•E-mail: da.dpo@minfin.fed.be



Check your online file on
www.myminf.be

2. It would be very much appreciated if the EDPB could integrate into the Guidelines 02/2020 its view on the status of existing international agreements and article 96 GDPR (*“International agreements involving the transfer of personal data to third countries or international organisations which were concluded by Member States prior to 24 May 2016, and which comply with Union law as applicable prior to that date, shall remain in force until amended, replaced or revoked”*), There are many agreements (Mutual Administrative Agreements, Memorandums of Understanding, etc.) that existed and were in force on May 24 2016, for which it is unclear if they were compliant “with Union law as applicable prior to that date”, notably with Directive 95/46/EC. In some cases, it is very improbable that they were compliant. In the customs field, there are MAAs and MOUs for administrative cooperation of the EU with more than 80 third countries, for which it was stated, during relevant Commission Committees, that the Member States should continue to apply them, but under their own responsibility. We think this might lead on the one hand to judicial control (and possibly annulment) of some agreements, and on the other hand to the agreements never coming to be compliant, if there is never a judicial control.

Sincerely,

Mark Ooms

Data Protection Officer