

Statement on the European Data Protection Board guidelines 05/2021

on the Interplay between the application of Article 3 and the provisions on international transfers as per Chapter V of the GDPR

ESOMAR is the global voice of the research, analytics and insights community, speaking on behalf of over 5000 individual professionals and 600 companies who provide or commission research, analytics and insights in more than 130 countries. All community members agree to uphold the ICC/ESOMAR International Code. Together with national and international research associations, we set and promote professional standards and self-regulation for our sector and elevate the value of research, analytics and insights in illuminating real issues and bringing about effective decision-making.

With this letter, we wish to express our gratitude to the European Data Protection Board for the initiatives allowing comments on the Guidelines 05/2021. We continue to strongly support a policy oriented toward the protection of personal data processed outside the EU territory, that must be in line with the principles enunciated in the GDPR, and applaud this EDPB initiative aimed at clarifying the interplay between Article 3 and the provisions of the GDPR on international transfers in Chapter V. We believe that these Guidelines will be of great assistance for controllers and processors in the EU in identifying whether a given processing activity constitutes a transfer to a third country or to an international organisation and, as a result, whether they have to comply with the provisions of Chapter V of the GDPR.

We wish therefore to draw the attention to a number of points included in the consultation text that constitute an essential and vital component of the research, analytics and insights sector.

These points include:

2. Criteria to qualify a processing as a transfer of personal data to a third country or to an international organization

ESOMAR supports the need for a legal definition of “transfer of personal data to a third country or to an international organisation” as per article 44 of the GDPR.

On this regard, we believe that the three cumulative criteria identified by the EDPB provide a clear definition of what constitutes an international transfer.

We champion the insights sector.

2.2 This controller or processor (“exporter”) discloses by transmission or otherwise makes personal data, subject to this processing, available to another controller, joint controller or processor (“importer”)

It clearly emerges from the consultation text that personal data submitted by an individual (data subject) on their own initiative shall not constitute an international data transfer when personal data are provided directly and on their own initiative by the data subjects in the EU to an organization outside the EU territory. We believe this text clearly expresses the will of the EDPB and it does not leave any space to alternative interpretations in good faith.

3. Consequences

As above, we believe that the consequences of a defined international personal data transfer have been clearly defined by the EDPB and do not leave any reasonable space to alternative interpretations in good faith of the text.

In particular, with reference to the main types of transfers tools (as per article 46 GDPR) mentioned in paragraph 22 of the consultation text, we welcome and strongly support the continued inclusion of codes of conduct (e.g. GDPR-approved and internationally recognized codes) as a transfer mechanism. On that regard, in the event that a new transfer tool should be developed such as a set of new contractual clauses, ESOMAR would wish to assist the EDPB in their development.

Once again, ESOMAR welcomes this initiative and is grateful to the EDPB for the opportunity to provide its views and opinions. We wish to remain at your disposal to provide any complementary international perspective(s) that might be deemed helpful to the process.