Commentary

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Subject: Public consultation on the Guidelines 02/2026 on Anonymisation
Author: Anna Cardillo, Attorney-at-Law, Germany
Addressee: European Data Protection Board

1. Introduction and scope of these comments

This submission deliberately focuses on a single issue which, in the author's view, is of particular importance for the internal consistency of the draft Guidelines: an internal inconsistency between paragraph 20 and paragraph 21 (and footnote 18) of section 2.4, concerning the assessment of indirect identifiability where information is transferred between entities. This issue also has knock-on consequences for the technical criteria set out in section 3.4, in particular the No Record Isolation criterion in paragraph 54 et seq., insofar as it concerns identifiers that persist across a chain of entities (such as a vehicle identification number, a serial number or a device identifier).
The author considers that paragraph 20 of the draft Guidelines already articulates the correct legal test - fully in line with Breyer (C-582/14) and the Board's own general approach - and that only paragraph 21 and footnote 18 require clarification.
The author notes that the interpretation of the *SRB* judgment on this point has already given rise to discussion in the data protection community. A clarification in the final Guidelines would therefore not only enhance their internal consistency but would also provide welcome legal certainty for practice.

2. Summary

Paragraph 20 of the draft Guidelines correctly explains that indirect identifiability depends on whether the entity whose perspective is being assessed can, through means reasonably likely to be used by that entity, identify the individual. This is a faithful restatement of Recital 26 GDPR and of the actor-specific approach confirmed in Breyer.
Paragraph 21, however, contains a second sentence which, read in isolation, would make data personal for the *transferring* entity merely because a recipient might have the relevant means – regardless of whether the transferring entity has, or could reasonably obtain, any means of its own. This is difficult to square with paragraph 20 itself, and with paragraph 22, which recognises that identifiability "may vary dramatically from one perspective to another." Section 3 below sets out why.
Footnote 18, which supports that second sentence, traces back – through *EDPS v SRB* and the *FIN* judgment – to case law that is, in fact, expressly conditional and actor-specific. The apparent breadth of paragraph 21 therefore appears to be an unintended by-product of summarising that case law, not a deliberate departure from paragraph 20. Section 4 below reconstructs that citation chain in full.

3. The inconsistency between paragraph 20 and paragraph 21

For ease of reference, paragraph 21 of the draft Guidelines is reproduced here in full, with the Board's own footnote markers shown in square brackets:

"In this regard, the EDPB emphasises that if (a) it is reasonably likely that an entity can transfer the data to a third party, and (b) it cannot be ruled out that this receiving entity has the means to identify the individual through means reasonably likely to be used, the data should be considered personal for both that transfer and for any subsequent processing of the data by that recipient [fn. 17]. Further, this transfer means that the transferred information would also indirectly become personal for the transferring entity, even if that entity would not otherwise have means reasonably likely to be used to identify the individuals in question [fn. 18]."

The second sentence contains no qualifying language of the kind found elsewhere in the draft Guidelines ("to the extent that", "insofar as", "provided that").

3.1 Paragraph 20 as the correct baseline

Paragraph 20 explains that an individual is indirectly identifiable from a particular entity's perspective if, through means reasonably likely to be used by that entity, it could identify the individual – whether by obtaining additional information, by applying methods controlled by other parties, or by having the data put at its disposal by other entities who themselves have the relevant means. The paragraph is careful to tie every one of these routes back to the entity whose perspective is being assessed, consistent with paragraphs 26–30 of the draft Guidelines and with the Board's general framework of relevant entities and applicable perspectives set out in section 2.2.

3.2 Why the second sentence (footnote 18) breaks with that baseline

The first sentence of paragraph 21 – footnote 17 – follows directly from paragraph 20. The second sentence – footnote 18 – does not: it suspends the actor-specific test for the transferring entity, which is treated as having a personal-data relationship with the information solely because another entity might have the relevant means, regardless of whether the transferring entity itself has, or could obtain, any means of its own. This cannot easily be reconciled with paragraph 22 ("identifiability may vary dramatically from one perspective to another") and with Example 4 elsewhere in the draft Guidelines, where a transferring entity lacking its own means is not, for that reason alone, treated as processing personal data.

4. The citation chain behind footnote 18, traced to its source

Footnote 18 supports the second sentence of paragraph 21 by reference to EDPS v SRB, paragraph 84, which in turn refers to the FIN judgment, paragraphs 45 and 49. The Federal

Commissioner for Data Protection and Freedom of Information (BfDI, Germany) and her Personal Advisor have observed, discussing this very passage in a recent editorial[1], that, read in isolation, it may suggest that once data become personal anywhere in a chain, they remain personal regardless of the perspective from which they are assessed ("einmal personenbezogen, immer personenbezogen?"). They note that this reading has given rise to uncertainty in practice and that resolving the question requires tracing the underlying line of authority back to its source. The following sections do so.

Source	Pinpoint	Content (paraphrased)
Draft Guidelines 02/2026	Para. 21 (2nd sentence) & fn. 18	The Data become indirectly personal for the transferring entity upon transfer.
CJEU, C-413/23 P, EDPS v SRB (4 Sept. 2025)	Paras. 84 (fn. 18) & 85 (fn. 17)	Para. 84: data become indirectly personal for the controller too. Para. 85: only insofar as it cannot be excluded that the recipient can link the data to the individual.
CJEU, C-319/22, Gesamtverband Autoteile-Handel v Scania ("FIN", 9 Nov. 2023)	Paras. 45 & 49	Paragraph 49 of FIN expressly refers back to paragraphs 34 and 41 of Advocate General Sánchez-Bordona's Opinion, combining the actor-specific identification test (para. 41) with the referring court's own observation that VINs are, as a rule, not personal data for manufacturers (para. 34).
Opinion of AG Sánchez-Bordona in C-319/22 (4 May 2023)	Para. 41 (test) Para. 34 (LG Köln quote)	Personal data only on condition the holder can reasonably use means to identify the vehicle owner (grounded in Breyer); left for the referring court to verify. Para. 34: adopts LG Köln's own wording (p. 80) that VINs "as a rule" are not personal data for manufacturers.
LG Köln, order for reference of 4 May 2022, 84 O 223/20	p. 80	The referring court considered that the fact that VINs, as a rule, do not constitute personal data for manufacturers supported the claimant's interpretation.

4.1 What EDPS v SRB actually says

Paragraph 84 of the SRB judgment - the paragraph on which footnote 18 relies - explains that data which are not, in themselves, personal data can become personal data where the controller discloses them to other persons who have means reasonably likely to be used to identify the data subject; the data are then personal, in connection with that disclosure, both

[1] Specht-Riemenschneider/Plum-Schneider, 10 Jahre Breyer – zum Personenbezug von Daten (ZD 2026, 181)

for the recipients and, indirectly, for the controller. This is the source of the second sentence of paragraph 21.

The very next paragraph of the judgment (paragraph 85) immediately qualifies that conclusion: it holds that this is so only insofar as it cannot be excluded that the recipient is, according to general expectation, able to link the pseudonymised data to other information available to it about the data subject. The Court thereby expressly rejects the reading that pseudonymised data must, in every case and for every person, be regarded as personal data merely because a recipient somewhere in the chain could identify the individual ‑ precisely the reading that a literal application of the second sentence of paragraph 21 would produce.

Footnote 17 – attached to the first sentence, concerning the recipient – itself cites paragraph 85, the very paragraph containing this qualifier. Footnote 18 – attached to the second sentence, concerning the transferring entity – cites only paragraph 84, without carrying over paragraph 85's qualifier. The draft Guidelines cite both relevant paragraphs of the SRB judgment side by side, in the same footnote apparatus to the same paragraph 21 – yet only footnote 17 carries over the condition expressed in paragraph 85.

Neither this qualifier nor its underlying condition is reflected in the second sentence of paragraph 21.

4.2 FIN, the Advocate General and the Landgericht Köln

Paragraph 49 of the FIN judgment expressly refers to paragraphs 34 and 41 of the Advocate General's Opinion. Paragraph 41 sets out the operative test: if independent operators have means reasonably enabling them to link a VIN to an identified or identifiable natural person – a question left to the referring court – the VIN is personal data for them and, indirectly ("mittelbar"), for the manufacturer providing it. That test is grounded in the general *Breyer*-derived standard applied earlier in the Opinion, not in the order for reference.

Paragraph 34, by contrast, is where the Advocate General draws on the Landgericht Köln's own wording (order, p. 80): that VINs, as a rule, are not personal data for manufacturers, particularly where the vehicle does not belong to a natural person – a qualification the judgment's own paragraph 49 echoes almost verbatim. Throughout the entire citation chain, the test therefore remains expressly conditional and actor-specific; nothing in these sources supports an unconditional rule that data become personal for the transferring entity merely because another entity, now or later, may be able to identify the individual.

5. Personal data is not personal data “for everyone”: the Court’s own limits

The point made in Sections 3 and 4 above is also confirmed by the same editorial. Having likewise traced the citation chain back to its source, the authors conclude that the relevant perspective is never that of the world at large, but always - and exclusively - that of the

controller. This reflects precisely the actor-specific approach already expressed in paragraph 20. The SRB judgment itself makes this explicit as a matter of principle: responding to the EDPS's call for a broad interpretation of "personal data", the Court held that the concept is not unlimited and that obligations presupposing identifiability - such as the duty to inform data subjects about recipients under Article 15 of Regulation (EU) 2018/1725 - cannot be imposed on an entity unable to carry out that identification itself.

6. Consequences for the technical framework (No Record Isolation)

If paragraph 21 were read literally, persistent identifiers shared across different entities – such as a vehicle identification number, a serial number or a device identifier – would become personal data for every entity in the chain, irrespective of that entity's own means of identification. That would sit uneasily with the No Record Isolation criterion itself, which the draft Guidelines expressly do not treat as an absolute test: the mere uniqueness of a record does not, by itself, render data personal; what matters is whether that uniqueness enables the specific entity in question, using means reasonably likely to be used by it, to distinguish and treat the individual differently. Reading paragraph 21 as detaching the transferring entity's status from its own means would repeat the same kind of mechanical, context-free reasoning that the draft Guidelines themselves reject when applying the No Record Isolation criterion. Clarifying paragraph 21 accordingly would remove this inconsistency without requiring any change to the technical criteria themselves.

Such an interpretation would also be difficult to reconcile with the balance reflected in the GDPR itself. Recital 4 recognises that the right to the protection of personal data is not absolute but must be balanced against other fundamental rights in accordance with the principle of proportionality. Likewise, Article 1(3) GDPR reflects the Regulation's objective of ensuring the free movement of personal data within the Union. By extending personal-data status throughout an entire processing chain irrespective of the means available to the respective entity, the contextual assessment required by Recital 26 would be replaced by a purely chain-based approach, considerably expanding the scope of the Regulation without a corresponding assessment of the actual identifiability from the perspective of the controller concerned.

For the reasons set out above, the EDPB is respectfully invited to clarify paragraph 21 and footnote 18 accordingly.

Anna Cardillo

Attorney-at-Law