The European Data Protection Board (EDPB)

Public consultations on Guidelines 02/2026 on Anonymisation

Comment on paragraph 15 (and Examples 3 and 4)

Summary

Paragraph 15 establishes a categorical rule: where an entity processes on behalf of a controller for whom the given data is personal, the data is personal for that entity as well, and it is a processor. We submit that this rule (i) does not follow from the test set out in Article 4(1) GDPR and applied throughout the remainder of the Guidelines, (ii) is not supported by C‑413/23 P, and (iii) is not necessary to achieve the protective purpose stated in the three indents beneath it. We propose that it be reformulated as a rebuttable presumption.

Grounds

1. **The rule determines status by role rather than by identifiability.**

   Every other part of the Guidelines assesses whether data is personal by asking whether an entity can distinguish an individual using means reasonably likely to be used (paras 18–22, 26–33, and the three criteria in section 3.4). Paragraph 15 replaces that assessment with a question about who determines purposes and means. Two entities with identical technical capabilities — the agency in Example 3 and the institute in Example 4, neither of which can re‑identify anyone — receive opposite treatment. The Guidelines do not explain why the identifiability test yields to the role test, or how the two are to be reconciled.

2. **The rule is circular against Article 4(8).**

   A processor is defined as an entity processing *personal data* on behalf of a controller. Paragraph 15 uses processor status to establish that the data is personal, having established processor status from the fact that the entity

processes on behalf of another. The premise the definition requires is supplied by the conclusion.

3. **C-413/23 P does not support the rule and arguably contradicts it.**

   Deloitte received the comments under contract with the SRB and analysed them for a purpose the SRB had defined; the EDPS expressly relied on that contractual link (para 93 of the judgment). Had the approach in paragraph 15 been correct, the Court could have disposed of the question in one sentence. Instead it set out, in paras 74–77, a substantive two-limb test addressed to the receiving entity's actual capabilities. Paragraph 15 renders that test inapplicable to the very configuration in which the Court formulated it.

4. **The protective concern is already met by paragraph 37.**

   The three indents beneath paragraph 15 are directed at preventing controllers from escaping the GDPR by outsourcing. But paragraph 37 already provides that a controller for whom the data remains personal retains all of its obligations in respect of it, irrespective of the recipient's position. The controller's legal basis, transparency, security and accountability duties are unaffected, and the results returned to the controller are personal data in its hands. No protective gap arises that paragraph 15 is needed to close.

5. **The rule is categorical where the rest of the Guidelines are risk-based.**

   Paragraphs 21, 30 and 33 require assessment of onward transfer, rogue actors and unlawful access — a graduated analysis. Paragraph 15 dispenses with all of it, in both directions: it applies equally to a high-dimensionality record-level dataset and to a low-dimensionality aggregate, and equally to a recipient with vast auxiliary data holdings and to one with none. The factors listed in paragraph 29 are never reached.

Proposed amendment

We propose that paragraph 15 be redrafted along the following lines:

> Where an entity processes information on behalf of another, the given data should be **presumed** to be personal for that entity by reference to the

controlling entity's perspective, and that entity should be presumed to be a processor subject to the obligations applicable to processors.

That presumption may be rebutted only where the controller demonstrates and documents, in accordance with section 3 of these Guidelines, that: (a) the recipient cannot defeat the technical and organisational measures applied; (b) the recipient cannot attribute the data to an individual by any other means of identification, including comparison with other data it holds or may obtain; and (c) the likelihood of onward transfer or unauthorised access resulting in identification, assessed under paragraphs 21 and 30, is insignificant in reality.

Where the presumption is rebutted, the entity nevertheless remains bound by Article 28 GDPR in respect of the processing carried out on the controller's behalf. Obligations whose performance presupposes identification of the data subject are to be applied in accordance with Article 11 GDPR.

Rationale for the proposed form

6. The presumption preserves the anti-circumvention purpose: the burden falls on the controller under Articles 5(2) and 24, and it is a demanding burden that record-level datasets of any dimensionality will rarely discharge.
7. Retaining Article 28 irrespective of rebuttal severs the false dilemma the current text creates. Under paragraph 15 as drafted, a controller arguing that its recipient cannot identify anyone is implicitly arguing that no processing agreement is required — and thereby discarding the contractual measures on which the argument itself depends (see para 34). Anchoring Article 28 to the *relationship* rather than to the recipient's perspective removes that perverse incentive.
8. Article 11 GDPR already supplies the mechanism the Guidelines appear to be reaching for: it addresses processing that does not require identification and disapplies Articles 15 to 20 accordingly. Reliance on Article 11 achieves the outcome sought without departing from the Article 4(1) test.

Minimal alternative

9. If the Board prefers to retain the categorical rule, we ask that it be expressly stated to be a policy choice grounded in the effectiveness of Article 28 rather than an application of the Article 4(1) test, and that Example 4 be redrafted to identify the operative distinction — that the results of the processing are not returned to and not used by the transferring entity to differentiate the individuals concerned — since "independent" is presently doing work that the reader cannot reconstruct.

Jacek Sabo, President

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Dokument podpisany przez Jacek Sabo
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