Swedish Association of Local Authorities and Regions

OBSERVATIONS

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Observations on EDPB's draft Guidelines 02/2026 on Anonymisation

Executive summary

SALAR welcomes the EDPB's efforts to clarify the concept of anonymisation but considers that the draft Guidelines set an excessively restrictive standard. The assessment should remain closely aligned with Recital 26 GDPR and the Court of Justice's judgment in EDPS v SRB (case C-413/23-P). The decisive question is not whether identification is theoretically conceivable, but whether it is realistically foreseeable through means reasonably likely to be used by the entity concerned. The final Guidelines should therefore simplify the proposed three-step test, recognise contractual prohibitions on re-identification as a relevant factor, and avoid requiring organisations to account for purely hypothetical actions by malicious third parties. A more practical and risk-based approach is necessary to preserve legal certainty and the effective use, sharing and re-use of data for important public interests.

Introduction

The Swedish Association of Local Authorities and Regions, SALAR, welcomes the opportunity to comment on the European Data Protection Board's draft Guidelines 02/2026 on Anonymisation (hereinafter referred to as 'the Guidelines'). SALAR represents all Swedish municipalities and regions. Its members hold and process substantial amounts of data in healthcare, social services, public transport, education, spatial planning, environmental protection and public administration. Clear and workable criteria for anonymisation are therefore of considerable importance.

However, the Guidelines appear to produce a standard for what can be considered anonymous information which is substantially more restrictive than that established by the Court of Justice of the European Union. If interpreted broadly, the Guidelines risk approaching an absolute test under which data remains personal whenever any actor could conceivably

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identify an individual, even though the intended recipient has neither the capacity nor lawful means to do so.

The EDPB's proposed three-step test should be reconsidered to align more closely with the Court's approach in the EDPS vs SRB case

The method envisaged by the EDPB for assessing the nature of a dataset is unnecessarily complex. The EDPB proposes a three-step approach that appears highly theoretical and is likely to be difficult for many organisations to apply in practice. In SALAR's view, the criteria for assessing the nature of datasets should be formulated in a more general and practical manner.

From both a practical and a legal perspective, the preferable approach would be to formulate a test that is more closely aligned with the case law of the Court of Justice of the European Union, in particular the case of EDPS v SRB (Case C-413/23 P, below EDPS vs SRB case). Where an organisation holds a dataset in which no individual can be singled out, the dataset should be considered anonymous provided that the organisation does not have the practical ability to identify any individual by means reasonably likely to be used. Further elaborating this test in the manner proposed in the Guidelines risks making an already complex assessment even more burdensome, rather than achieving the objective of simplifying it. Moreover, as the proposed three-step approach does not appear to follow explicitly from the case law of the Court of Justice, there is a risk that it may ultimately prove incompatible with that case law.

The Guidelines go beyond the Court's approach in the EDPS vs SRB case

The Guidelines state that, for a dataset to be considered anonymous in relation to a particular organisation, re-identification of individuals must be impossible for that organisation. However, the relevant case law of the Court of Justice suggests a different standard. In EDPS v SRB (Case C-413/23 P), the Court reaffirmed that identifiability must be assessed by reference to the means reasonably likely to be used by the entity in question. The relevant issue is therefore not whether re-identification is absolutely impossible, but whether it is realistically achievable in practice.

In SALAR's view, there is an important distinction between something being impossible and something being practically impossible. It is the latter criterion that follows from Recital 26 GDPR and the case law of the Court of Justice. An assessment of identifiability should therefore be conducted from the perspective of the entity holding the data and should take into

account its actual circumstances, including access to the relevant information, possession of additional data, realistic legal or practical means of obtaining such data, the capacity to use it and whether such use is reasonably foreseeable. In SALAR's view, contractual obligations should also be considered, as discussed below.

The phrase "means reasonably likely to be used" necessarily incorporates an element of realistic foreseeability. Accordingly, the relevant question is not whether identification is theoretically conceivable, but whether it is realistically foreseeable.

Against this background, SALAR considers that the Guidelines, for instance in Example 22, adopt an overly restrictive understanding of the concept of anonymous data. The example appears to require organisations to take into account the potential actions of malicious third parties, such as cybercriminals, as well as hypothetical future leaks or security breaches when determining whether a dataset is anonymous. Such an approach risks expanding the concept of identifiability beyond the limits established by Recital 26 GDPR and the Court's reasoning in the EDPS vs SRB case.

The assessment of whether a dataset is anonymous should instead be based on the actual and known circumstances that exist at the time of the assessment. An event that is genuinely unforeseeable at that point in time should not, merely because it can later be conceived of in hindsight, establish that identification was reasonably likely in advance. To hold otherwise would risk transforming the concept of identifiability into a purely theoretical exercise detached from the practical realities faced by the organisation holding the data.

Contractual prohibitions on re-identification are relevant to the assessment of means reasonably likely to be used

The Guidelines state (paragraph 34) that a contractual prohibition on re-identification, even where legally binding on the parties, should not be treated in the same manner as a prohibition imposed by law. While SALAR agrees that contractual obligations and statutory prohibitions are not necessarily equivalent, it does not follow that contractual restrictions are irrelevant when assessing whether information can be linked to identifiable individuals through means reasonably likely to be used.

In SALAR's view, a contractual obligation not to intentionally re-identify individuals should constitute a significant factor when assessing identifiability. Where an organisation has entered into a legally binding agreement prohibiting intentional re-identification, it is generally reasonable to assume that the organisation will comply with that obligation, given, inter alia, the fundamental principle of *pacta sunt servanda* that

reflects the expectation that contractual obligations will be respected and performed in good faith. Violating contractual terms is moreover often subject to liability for damages.

To disregard such contractual restrictions entirely risks producing an assessment that does not reflect the actual legal and practical circumstances of the entity holding the data. Consistent with the approach adopted by the Court in the EDPS vs SRB case, the assessment should reflect the real-world position of that entity, including the legal constraints under which it operates, including contractual constraints.

Concluding remarks – the final Guidelines should preserve the practical possibility of anonymisation

While the protection of personal data constitutes a fundamental objective of the GDPR, the Regulation itself recognises that this right is not absolute and must be considered in relation to its function in society and reconciled with other fundamental rights and interests, in accordance with the principle of proportionality reflected in Recital 4 GDPR. Accordingly, the interpretation of the concept of personal data should take into account not only the objective of protecting individuals, but also the broader societal interests that depend upon the effective use and sharing of information.

An interpretation of identifiability that is excessively broad risks extending the scope of personal data far beyond what is necessary to achieve the objectives of the GDPR. In particular, if the threshold for anonymisation is set so high that anonymisation becomes practically unattainable for significant categories of datasets, the amount of information that can be lawfully reused, shared and made publicly available will be substantially reduced. This may have adverse consequences for a range of objectives pursued by EU law, including transparency, innovation, scientific research, public-sector information re-use and access to open data.

The Union legislator has expressly recognised the importance of such interests, including through the Open Data Directive and other measures designed to facilitate the re-use of non-personal data. The interpretation of anonymisation under the GDPR should therefore avoid unnecessarily restricting the availability of datasets that cannot realistically be linked to identifiable individuals.

SALAR therefore encourages the EDPB, when finalising the Guidelines, to adopt an approach that remains closely aligned with Recital 26 GDPR and the Court's reasoning in the EDPS vs. SRB case In SALAR's view, the relevant question is not whether identification is theoretically conceivable, but whether it is realistically foreseeable. Maintaining this distinction is

essential both for legal certainty and for preserving the practical possibility of anonymisation within the EU legal framework.

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