

Good day!

Background:

We know that transfers to third countries can take place between two separate controllers/ processors (the exporter and the importer).

We also know that there is NO restricted transfer to third countries in cases when employees of the EU company accessing data remotely on their computer from third countries (during business trips).

The last case is not a transfer exactly because the employee is not a "separate controller/processor".

Scenario1:

The EU company established:

- a nonpermanent representative office (NRO) in Moldova;
- a branch in the Philippines (Branch).

The NRO and the Branch are not separate entities and act fully under the instructions of the EU company.

The employees of the NRO and the Branch have access to the clients (natural persons) and employees of the EU company (CONCERNED PROCESSING).

Scenario2:

The Russian company has established a branch in the EU.

The Branch is not a separate entity and must act under the instructions of the Russian company.

The employees of the Branch have access to the Russian clients (natural persons) and employees of the Russian company (CONCERNED PROCESSING).

Questions:

Does the CONCERNED PROCESSING fall under Chapter V of the GDPR and we must treat it as a "restricted transfer"?

We would appreciate it if the EDPB includes into the new guidelines the analysis of cases described in Scenarios 1 and 2.

Sincerely,  
Aleksandrs