

Warsaw, January 31, 2022

**Proposals of the Polish Chamber of Information Technology and Telecommunications regarding 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**

Polish Chamber of Information Technology and Telecommunication is the leading Polish representation of industry applying GDPR regulation in ICT sector.

We closely monitor development of regulations as well as the best business practice.

Basing on opinions presented by our members during dedicated consultation process we would like to raise our concern with regard to Guidelines 05/2021 on the Interplay between the application of Article 3.

Following an example no. 5 established in the Guidelines, we propose adding an additional example concerning the remote access of the processor when the servers are located in the EEA, but some limited actions are performed from outside of the EEA. When the data processor does not record the processed data (neither make any copy of it), but only limits processing to real time use (by accessing or modifying the data) outside the EEA. To make it clear that, unlike the situation of an employee performing his tasks outside the EEA, the performance of activities by another entity outside the EEA is always a data transfer.

It is not clear to us why, according to the European Data Protection Board, the relevant transfer tools currently are only available in theory (see point 23). Why is it not possible to use Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data? We propose use Recommendations 01/2020 as the relevant transfer tools.