

## Feedback and comments to the Guidelines 04/2021 on codes of conduct as tools for transfers (European Data Protection Board) by BBMRI-ERIC

BBMRI-ERIC<sup>1</sup> is one of the largest Research Infrastructures for health research in Europe providing a gateway for access to biobanks and biomolecular resources coordinated by the National Nodes across 22 States (18 Members and 4 Observers, including IARC/WHO as International Organisation). BBMRI-ERIC is active in more than twenty international projects, and it brings together all main players from the biobanking field – researchers, biobankers, industry, and patients – to boost biomedical research.

BBMRI-ERIC welcomes the Guidelines 04/2021 on codes of conduct as tools for transfers, drafted by the European Data Protection Board (EDPB). They represent a meaningful and practical guidance for the comprehension of the working and content of codes of conduct, namely for a better understanding of Article 40-3 and 46 of the GDPR. They are also helpful for creating a consistent and harmonized ‘language’ within Europe.

### FROM THE METHODOLOGICAL VIEWPOINT:

BBMRI-ERIC particularly appreciates the structure of the Guidelines: the choice of formulating questions, providing answers and concrete examples is very much appreciated for the sake of clarity and immediate comprehension of the matter. The fact of avoiding legalistic language and inserting schemes and flow charts in the Annexes is also very valuable, and this allows to reach the recipients in an effective way. So, BBMRI-ERIC would like to encourage the EDPB to follow the same framework and ‘*modus operandi*’ in future occasions, if any.

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<sup>1</sup> <https://www.bbmri-eric-eric.eu/>, accessed 1<sup>st</sup> October 2021.

## FROM THE CONTENT VIEWPOINT:

### 1. Relevance of Codes of Conduct

BBMRI-ERIC shares with the EDPB the importance given, in general, to codes of conduct as a tool for 'translating' the general rules of the GDPR into practice. Indeed, BBMRI-ERIC strongly believes that codes of conduct allow simplifying the complexity of the GDPR and the open questions and shortcomings that it shows: the codes can contribute to the proper application of the GDPR in a practical, bottom-up, sector-driven, transparent, and potentially cost-effective manner. Moreover, the codes of conduct can suggest harmonized understandings of how to read norms and can boost a more aligned interpretation of rules and public trust.

Some organisations, among which there is BBMRI-ERIC, have worked and are still working on codes of conduct (in particular, BBMRI-ERIC is drafting a Code of Conduct for Health Research, addressing the health research community). So, these Guidelines n. 4/2021 by the EDPB represent an important contribution with regard to the drafting of rules, examples and issues related to data transfers to third countries / international organizations. BBMRI-ERIC will surely take into account such provisions when dealing with this topic, and the same should do the infrastructures/organizations/entities that are drafting codes of conduct: in such a manner, a coherent and harmonised set of rules can be concretely achieved in Europe through bottom-up, sector specific, and ideally complementary codes of conduct.

### 2. Application of codes

BBMRI-ERIC agrees on the relevance of ensuring that a code for transfers adhered by a data importer in a third country can be relied on by data exporters subject to the GDPR, even if such data exporters have not adhered to such code themselves, provided that the importer's commitment to comply with the obligations set forth by this code of conduct is included in a binding instrument (contract or other agreements or instruments). This is a very important point in terms of simplification, of avoiding a proliferation of rules and of aiming at coherent and harmonized procedures.

### 3. Checklist and adoption procedure

BBMRI-ERIC particularly welcomes the checklist of the elements to be included in a code intended for transfers, and the detailed explanations of such elements, in particular the reference to essential principles, rights and obligations arising under the GDPR for controllers/processors; and of guarantees that are specific to the context of transfers (such as with respect to the issue of onward transfers, conflict of laws in the third country).

BBMRI-ERIC appreciates the reference of including in the code ‘the existence of a suitable training program on the obligations arising from the code’. These are key elements of any code of conduct: indeed, a code has to provide not only rules, rights and obligations, but also manners as to how to enforce those measures and create awareness of them, and this can occur through education and training programs only.

Regarding the procedure for the adoption and approval of such code on transfers, BBMRI-ERIC is aware of the fact that the GDPR (art. 40-5) states that entities drafting a code of conduct (aiming to have a general validity in Europe) shall submit it to a Supervisory National Authority, and the latter has to approve the code, then notify the EDPB and address the European Commission; however, as stated in several previous occasions, BBMRI-ERIC would like to demand the EDPB to explore the possibility for key stakeholders to have granted a direct access to the EDPB in case of a code aiming to have a general European validity (transnational). The double step of addressing National authorities and secondly the European institutions may lead to slowing down the procedure and to the risk that some national authorities are not competent in the matter, or they ultimately end up into divergent views one to each other. In this case, the aim of coherent harmonization would be lost. Therefore, in order to avoid the going back and forth, due to diverging opinions among national DPAs, a form of granting access to the EDPB or the creation of a specific panel within the EDPB addressing requests of evaluation of potentially transnational codes should be thought further.



## More about BBMRI-ERIC

As a European research infrastructure for biobanking and biomolecular resources, BBMRI-ERIC offers quality management services, supports with ethical, legal and societal issues, and a number of online tools and software solutions for BBMRI-ERIC’s ultimate goal: Making new treatments possible.

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