

EDBP Public consultation: Guidelines on the interplay between Art. 3 and Chapter V GDPR

Thank you for Guidelines 05/2021 on the definition of transfer. One of the questions remaining is whether storage of data on a server based in the EU, maintained/owned by an EU subsidiary of a US parent company constitutes a transfer as well. Theoretically the US parent company may be able to access the data on the EU server but in my opinion, this should not automatically constitute as a transfer. Following the Guidelines, arguably there is no transfer as the recipient is the EU subsidiary with its server in the EU. Naturally, depending on the specific circumstances, safeguards may need to be put in place to mitigate the risk of the parent company accessing the data (guidance on when this is the case would be helpful too). Reference is made to the following article concerning a case wherein a German court has made this matter less clear: [VG Wiesbaden prohibits use of Content Delivery Networks \(taylorwessing.com\)](https://www.taylorwessing.com/en/insights/german-court-prohibits-use-of-content-delivery-networks)