

To the European Dataprotection Board

Insurance and Pension Denmark's response to EDPB recommendations on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data

Insurance and Pension Denmark welcomes the initiative of the European Dataprotection Board (EDPB) to issue recommendations on supplementary measures for the existing tools for international transfers of data for 3rd countries.

We would also like to thank the EDPB for this opportunity to give comments on the draft recommendations. This is an important matter for most data controllers, not least considering the ongoing digitalisation of sectors and society in general, introducing global providers of digital services.

The ruling of the European Court of Justice in Schrems II, C-311/18, or the clarification within, of the obligations of Data controllers when transferring data outside the EU, has left data controllers with a heavy burden in regards to the evaluation of Dataprotection in 3rd countries due to a substantial uncertainty on how to approach the evaluation and on how to ensure an adequate level of protection, when this is found insufficient.

A practical guide, as the six steps introduced within the draft recommendations could be a suitable tool for clarification and a help to ensure the fulfilment of the obligations. However, Insurance and Pension Denmark find that the draft recommendations as it is presented, does not really help datacontrollers or significantly ease the burdens regarding the evaluation of the level of Dataprotection in a 3rd country.

Especially step 3 on the assessment of the effectiveness of a chosen GDPR transfer tool is problematic and raise concerns. This step just emphasizes the statements from the Schrems II ruling on the assessment of the level of protection in a 3rd country, without any real guidance for the datacontroller to fulfil the obligation.

Insurance and Pension Denmark encourage the EDPB to elaborate and further strengthen the support for the data processors in the evaluation of the level of Dataprotection in a 3rd country. This could be done by i.e. allowing the dataprocessor to rely, to a larger extend, on information from the data importer and to point

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out essential conditions to be considered. We suggest including a questionnaire in step 3, containing questions to reveal the actual level of protection and based on well-known challenges as national surveillance laws and cloud-services. For continuous data transfers, ie. in relation to cloud-services, the evaluations of the level of protection in a 3rd country or 3rd countries should be accepted to be carried out initially and not expected to be repeated for each specific transfer.

Following the risk-based approach of the General Data Protection Regulation, it is our understanding that it is the probability of access to data which should be emphasized, not the theoretical possibility thereof. This should be clarified in the recommendations.

Insurance and Pension Denmark calls for the EDPB to further support the data controllers evaluation by initiating general evaluations of the Data Protection level in 3rd countries and suggestions for supplementary measures, where needed.

We also suggest easing the burden of the data controller by allowing certification of providers of digital- and data services, such as cloud-providers, accepting the transfer of data to such providers, without further notice.

Finally, for step 3, we would like to stress some specific challenges of the recommendations. In Article 39 on the linkage to the EDPB recommendations on the European Essential Guarantees, it is stressed that elements herein should be assessed to determine whether the legal framework governing access to personal data by public authorities in a third country [...] can be regarded as a justifiable interference or not – and in particular “*when legislation governing the access to data by public authorities is ambiguous or not publicly available*”. How is it possible for the data controller to assess national legislation not publicly available?

As for the annex 2 and the examples of supplementary measures we find this initiative very positive and useful. We would like to encourage the EDPB to include more examples addressing specific activities and “grey-zones” i.e. the different scales of encryption. We also suggest to further develop guidelines on supplementary measures with practical guidelines on implementation, reflecting the risk-based approach on security measures.

Insurance and Pension Denmark also supports the response to the EDPB hearing from Insurance Europe, as members of the organization.

Yours sincerely,

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