

**Public Consultation on:**

**Guidelines 04/2021 on codes of conduct as tools for transfers adopted on 07 July 2021**

**\*This paper exclusively reflects the view of its author.**

As specified by the draft, the aim of these guidelines is to specify the application of Article 40-3 GDPR relating to codes of conduct as appropriate safeguards for transfers of personal data to third countries in accordance with Article 46-2-e GDPR and also to provide practical guidance including the content of such codes of conduct, their adoption process and the actors involved as well as the requirements. The *“guidelines should further act as a clear reference for all SAs, the Board ... and they should also provide greater transparency, ensuring that code owners who intend seek approval for a code of conduct intended to be used as a tool for transfers are fully aware of the process and understand the formal requirements and appropriate thresholds required for setting up such a code of conduct”*.

Therefore, in order to support the several parts involved in the process, it would be beneficial, for instance, an official web platform where all the process of submission in relation to a code of conduct for transfers might be officially filled by the code owners.

For instance, the official website of each EU Supervisory Authority might have a specific and addressed section in relation to the submission of the codes in question. This would be a benefit for the practical fulfilment of the main aim of the guidelines. It can help the code owners intended to draft and submit a code also in terms of content and requirements. At the same time, it could benefit the SAs in order to have a harmonized and homogeneous approach in this matter.

In addition, it would be advantageous to have more specific deadlines in each phase and step of the process upon each party in order to enhance the full procedure and to try discipline also eventual silence after a certain period.

As provided by the Guidelines (at par. 9) *“to the extent that is most likely that codes intended for transfers would be used by the relevant entities for framing transfer from more than one Member State and considering that those CoC should have general validity according to*

*Article 40-9 GDPR, they would as such qualify as “transnational codes” as defined in the Guidelines 1/2019.”*

Indeed, the transnational codes logically imply an international scenario where the transfer of personal data involves more than one Member State.

For example, the scenario of multinational group represents one of the most suitable case.

The multinational groups have often subsidiaries in more than one EU Member State and, consequently, it is highly possible to establish a common strategy in the group in relation to the main activity of the companies impacting also the process of personal data; as, for example, the common acquisition of a tool provided in outsourcing by a third company from a third country for the processing of the personal data of the employees of the whole group. Therefore, in such scenario, when applying, eventually, to a SA (the competent one) in one EU Member State actually the reality affects - at the same time and importance - also the other subsidiaries in the other EU Member State. Thus, it would have been also beneficial, hypothetically, to have the possibility to apply directly to an EU level Authority - (however, the GDPR provides only to choose the competent SA in one EU Member State) - in order to avoid a kind of “forum shopping” and establish more certainty in the process submission as well as.

Moreover, it would be also convenient to try to involve third Public Authorities from third countries in relation to the issues related to the transfer of personal data. This, indeed, could improve the effectiveness and harmonization of the codes in a matter objectively international and, at the same time, enhance the international cooperation.

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