

Position Paper on EDPB recommendations on supplementary measures





ABOUT POSTEUROP

POSTEUROP is the association which represents European public postal operators. It is committed to supporting and developing a sustainable and competitive European postal communication market accessible to all customers and ensuring a modern and affordable universal service. Our Members represent **2 million employees** across Europe and deliver to **800 million customers daily** through over 175,000 counters.

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POSTEUROP'S RESPONSE TO EDPB RECOMMENDATIONS

Background and context

PostEurop is the trade association that represents postal operators from all EEA member states and other European postal operators, entrusted with the provision of the universal postal service. This provision of the universal postal service includes the exchange of mail between all 192 countries that are party to the Universal Postal Union (UPU) and have signed its Acts.

It is also emphasized that the postal service is a tool available to citizens to exercise the freedom of expression and information as provided for by Article 11 of the EU Charter of Fundamental Rights (see also Article 10 of the ECHR).

Mail exchanges between such designated postal operators have always involved the transmission of data, including personal data such as the names and addresses of senders and receivers. This information is a necessary component for the delivery of mail items to international addressees or to send the item back, in the case of an unsuccessful delivery. Detailed procedures and regulations pertaining to the provision of postal services are contained in the UPU Acts that govern these exchanges.

From January 2021, UPU regulations enforce the electronic advanced data exchange on any shipment being sent between UPU member countries.



PostEurop contribution

The EDPB “*Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data*” together with the “*Recommendations 02/2020 on the European Essential Guarantees for surveillance measures*”, hereafter referred to as “the Recommendations” have been read with interest by PostEurop.

In that regard, PostEurop would like to contribute to the EDPB public consultation by providing its views and opinion on these Recommendations.

Firstly, PostEurop would like to thank EDPB for issuing these Recommendations in support of data exporters following the European Court of Justice Judgement C 311/18 (“Schrems II”), and in such a short period of time. Besides, the structure and layout of the Recommendation following a 6 steps approach are easily understandable and very clear.

The first two steps defined in the Recommendations are common practice among PostEurop data exporters since it is a clear fact that international data transfers under GDPR must be well documented and relying on the right legal basis.

It is, however, difficult (or almost impossible) for a single company to manage the process proposed under step 3. Especially for the postal operators within the EEA as each of these operators would now have to assess the legal framework of all third countries, i.e. over 150 UPU member countries (so almost the whole wide world’s judicial systems), specifically during the granted one year long “grace period”, taking into account the fact, that during the 25 years long practice only a dozen countries have been declared as adequate 3rd countries by the Commission.

Therefore, PostEurop believes that Step 3 of the Recommendations 01/2020, as well as Recommendations 02/2020, is not feasible for the data exporters for the following reasons:

1. The assessment of a foreign legal framework, in a country where the data exporter is not established, needs significant resources to carry out extensive and costly legal audits.
2. Legal expertise with sufficient knowledge about the legal framework of the destination country will only be possible to obtain by commissioning globally established law firms. Such a requirement would be an unsurmountable obstacle to many SME in the EU.
3. Having different actors carrying out similar assessments would lead to great legal uncertainty. Indeed, the conclusions reached by two different actors (data exporters) could not be the same for the same country under analysis. Especially, if there is no specific measure on how to carry out such assessment



PostEurop considers that appropriate assessments of the law or practice of the third country should only be conducted by qualified institutions (like the European Commission or the EDPB or other appropriate authorities), as in the case of adequacy decisions, to avoid these issues and allow all economic operators in the EU to compete with foreign providers on a level-playing-field. These institutions should carry out these assessments to determine whether or not article 46 GDPR transfer tools are effective to transfer data in a given third country and if supplementary measures are necessary.

The assessments conducted by the qualified European institutions would also allow citizens to know the risks to which the exercise of the freedoms guaranteed by the European Charter is exposed, and consequently make informed decisions.

Reliance on the standard contractual clauses should not require a review process of the relevant local laws that meets the same broad standards as an adequacy decision approved by EU institutions. This would also appear to conflict with the suggested case by case analysis.

Hence, PostEurop suggests that the EDPB consider amending its recommendations on the possible application of exemptions, especially the circumstances when it is acceptable or legally possible to refrain from conducting such adequacy assessment of the data importer country's legal framework.

Finally, PostEurop is at EDPB's disposal for any further discussions.

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