

## **Comment**

**of the German Insurance Association (GDV)**

**ID-number 6437280268-55**

**on the**

**EDPB draft guidelines 07/2022 on certification as a tool for transfers**

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## **Introduction**

The German Insurance industry welcomes the EDPB's efforts to clarify and support the use of certifications as a tool for international data transfers. Since the importance of data transfers to third countries without adequacy decisions will continue to remain high for companies of all sizes and sectors, practical and trustworthy solutions are necessary. Against this background, the German Insurance Association would like to give feedback on the draft guidelines 07/2022 as follows:

### **1. Purpose and advantages of certifications**

Certifications serve the purpose of fostering trust and facilitating the verification of standards for and by controllers and processors. By undergoing a lengthy and comprehensive certification process, companies invest into the future prospect of being able to more easily fulfill their obligations. The obligations for using a certification as envisioned by the EDPB, however, do not sufficiently account for that. The requirements of draft guidelines noticeably mirror the content of the European Commission's standard contractual clauses / standard data protection clauses (SCCs) for the transfer of personal data to third countries. In fact, the duties for data exporters can be considered nearly identical. Meanwhile, taking into consideration the effort involved in the certification process, data importers who wish to rely on certifications would in effect be saddled with additional obligations on top of the ones determined in the SCCs. With no sizeable advantage being recognizable, it can be expected that certifications will mostly be put aside in favour of SCCs.

### **2. Assessment of the level of data protection in the third country**

As universally agreed upon, the requirement for a transfer impact assessment poses a major challenge to companies, one which is barely possible for even big undertakings to reliably accomplish. We thus welcome that pursuant to page 14 para. 43 the assessment of third country legislation shall be a central criterion of the certification mechanism. A certification that contains not only a mandatory assessment of the third country's data protection level but also determines the specific supplementary measures the certified data importer has to implement, would not only ensure trust and legal certainty for the parties involved in the data transfer. It would also account for the specific needs of micro, small and medium-sized enterprises as demanded in Art. 42 (1) GDPR, for whom the correct performance of such an assessment has proven close to impossible in practice. However, according to page 10 para. 21 of the draft guidelines, it would remain the responsibility of the data exporter to assess

whether the certification he intends to rely on is effective in the light of the law and practices of the third country. This requirement would in effect render the advantages associated with a certification moot. It is also difficult to comprehend as to why the data exporter would have to repeat an assessment that was already conducted by the Certification body. Therefore, we recommend the following amendments to the guidelines in order to create much needed synergies:

1. Notwithstanding the obligation for binding and enforceable commitments pursuant to Art. 46 (2) (f) GDPR, the data exporter should only be required to verify that the data transfer in question falls within the scope of the certification he intends to rely on and that the safeguards foreseen by the certification are in place.
2. It should remain the sole responsibility of the Certification body to assess whether the certification is and remains effective with regard to the level of data protection in the third country, the supplementary measures foreseen in it and future changes of the third country legislation. If the certification ceases to be effective in the future (e.g. due to changes in the legislation), the Certification body could just withdraw the certification or demand adjustments.

### **3. Additional pointers**

It would further be helpful for controllers and data processors if the EDPB could provide further guidance on certain subjects of high practical importance and include practical examples, e.g.:

- Processing of personal data between companies that belong to a multinational enterprise. These groups of undertakings regularly require the processing of personal data in third countries. There is currently not enough guidance on how to accomplish intragroup data processing in third countries.
- Another subject of exceptional importance is the temporary access from third country service providers for service and maintenance purposes.

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