



EUDPR: Conditions and Safeguards in International Transfers to Public Bodies

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Transfer of personal data

What
is a
transfer

- communication,
- transmission,
- disclosure
- or otherwise making available of personal data,
- with the knowledge or intention of a sender subject to the EUDPR
- the recipient(s) will have access to it



deliberate transfer or permitted access



access is sufficient – no storage required



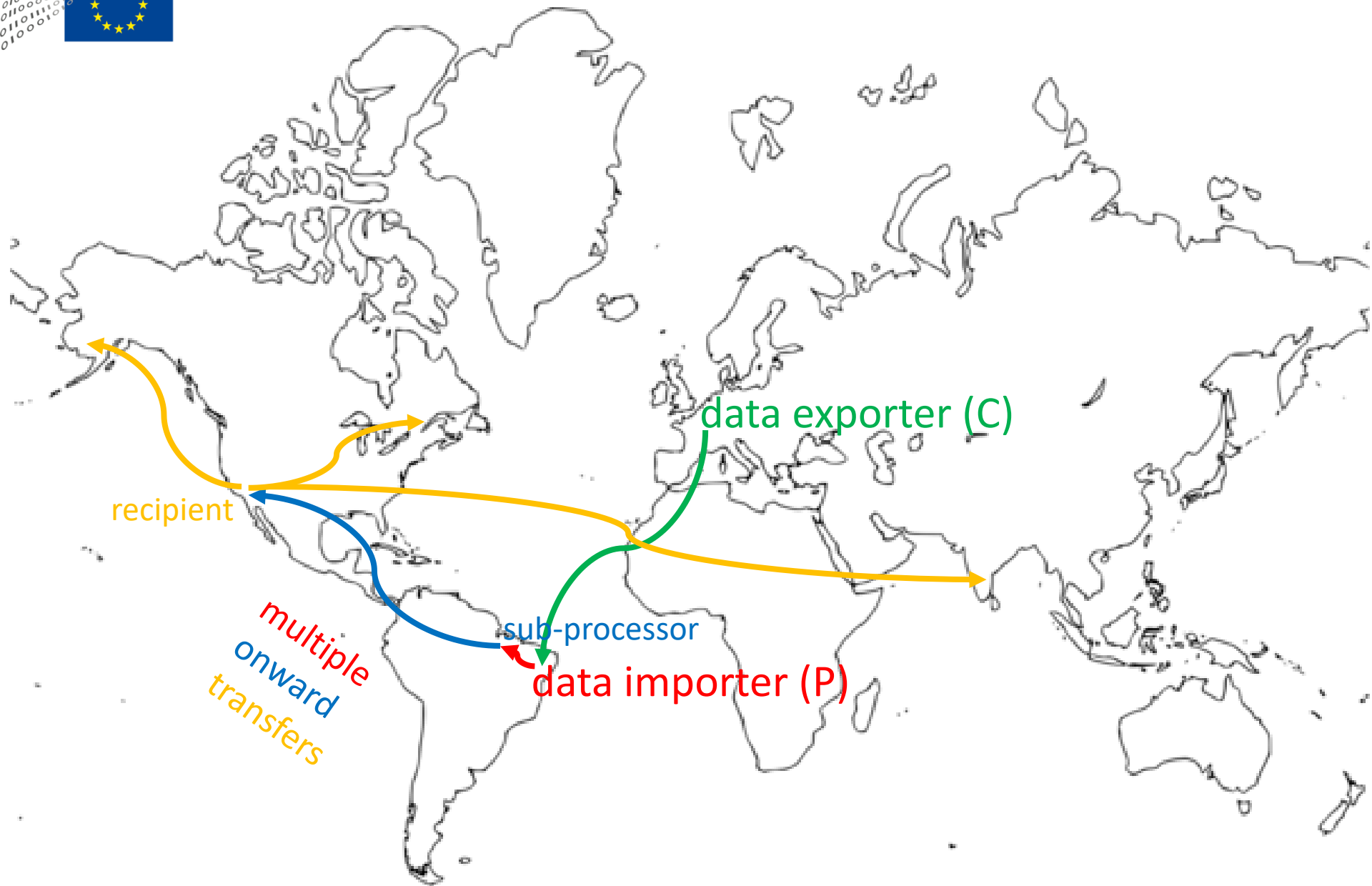
onward transfers



Onward transfers

Transfer from recipient in the third country of destination or recipient in international organisation to:

- another third country or to another international organisation (**onward transfer**)
- controllers, processors or other recipients in the same third country or in the same international organisation (**sharing of personal data**)





Article 46 – General principles

- ✓ Transfers to third countries and IOs
- ✓ Essentially equivalent level of protection
- ✓ Protection of individuals not undermined
- ✓ Two step approach: comply EUDPR → Chapter V
- ✓ Lawful, necessary, proportionate
- ✓ No risks for data subjects
- ✓ Documented (assessment and transfer)
- ✓ Three types:
 - adequacy decisions
 - appropriate safeguards
 - derogations



Case C-311/18 („Schrems II“)

- US not ensuring adequate (essentially equivalent) protection
- ✘ lack of proportionality of mass surveillance programmes (Section 702 of the FISA and E.O. 12333) and
- ✘ the lack of effective remedies in the US essentially equivalent to those required by Article 47 of the Charter
- ➔ ~~Privacy Shield~~

required level is adequate protection = essentially equivalent protection

- ✓ SCCs for transfers 2010/87/EC valid
 - ➔ if effective mechanisms to ensure compliance with required level of protection
 - ➔ if not possible, suspend or prohibit the transfer of personal data to the third country concerned
- ✓ tools in Art. 46 GDPR / Art. 48 EUDPR can be used if essentially equivalent level of protection can be ensured



Mapping data flows

Know your transfers! Control your transfers!

The mapping exercise to list in particular:

- each processing activity for which data is transferred to / accessed from a third country (including purposes and means of processing);
- destinations of data transfers (including those of all processors and sub-processors);
- type of recipient (data importer);
- transfer tool used (of the ones provided in Chapter V);
- types of personal data transferred;
- categories of data subjects affected;
- any onward transfers (including to which countries and which recipients, transfer tool used, types of personal data and categories of data subjects affected).
Records, contracts, MoUs, JC arrangements, privacy statements, info from importer



Transfer of personal data to 3rd countries / int. org. (Art. 46-50 EUDPR)

Adequacy decision

- Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Switzerland, Uruguay and the ~~USA~~ (limited to the Privacy Shield framework)

Appropriate safeguards no EDPS authorisation

- Legally binding instrument
- SCCs for transfers (EC)
- SCCs for transfers (EDPS)
- Binding corporate rules, Codes of conduct, Certification (under GDPR)

+ supplementary measures

Appropriate safeguards with EDPS authorisation

- Contractual clauses
- Administrative arrangements
- Transfer under Art. 9(7) Reg 45/2001

Derogations

- Explicit consent to transfer
- Contract with data subject
- Contract in interest of data subject
- Important reasons of public interest
- Legal claims
- Vital interests of data subject / others
- Public register

Adequacy referential

A. Content Principles:

- Concepts
- Grounds for lawful and fair processing for legitimate purposes
- The purpose limitation principle
- Data Retention principle
- The security and confidentiality principle
- The transparency principle
- The right of access, rectification, erasure and objection
- Restrictions on onward transfers

B. Examples of additional content principles to be applied to specific types of processing

- Special categories of data
- Direct marketing
- Automated decision making and profiling



Adequacy referential

C. Procedural and Enforcement Mechanisms

- Competent Independent Supervisory Authority
- The data protection system must ensure a good level of compliance
- Accountability
- The data protection system must provide support and help to individual data subjects in the exercise of their rights and appropriate redress mechanisms

European Essential Guarantees

As regards access by public authorities

- A. Processing should be based on clear, precise and accessible rules (legal basis)
- B. Necessity and proportionality with regard to legitimate objectives pursued need to be demonstrated
- C. An independent oversight mechanism should exist
- D. Effective remedies need to be available to the individuals



Article 48 – Appropriate safeguards

- no adequacy decision
- enforceable data subject rights and effective legal remedies for data subjects are available
- consultation or authorization of the EDPS

Appropriate
safeguards
no EDPS
authorisation

- Legally binding instrument
- SCCs for transfers (EC)
- SCCs for transfers (EDPS)
- Binding corporate rules (BCR-C, BCR-P), Codes of conduct, Certification (under GDPR)

+ supplementary
measures

Appropriate
safeguards
with EDPS
authorisation

- Contractual clauses
- Administrative arrangements
- Transfer under Art. 9(7) Reg 45/2001

Article 48 (2) – Appropriate safeguards (no EDPS authorisation)

Legally binding and enforceable instrument

- international treaty, public law treaties, self-executing administrative agreements etc.
- establish transfer and appropriate safeguards
- legally binding safeguards - form not decisive
- preference for legally binding instrument if DS rights and redress not available in 3rd country / IO
- Article 42 consultation



Article 48 (3) – Appropriate safeguards (EDPS authorisation required)

Administrative arrangements

- between public authorities
- EDPS authorization required for the transfer
- non-binding
- enforceable and effective rights for data subjects
- EDPB guidelines 2/2020



Transfers to public authorities and international organisations

Practical requirements
- provide basic, but comprehensive information on the transfer

- Purpose and scope
Definitions of the basic personal data concepts
- Data protection principles
- Rights of data subjects
- Onward transfers and data sharing
- Sensitive data
- Redress mechanisms
- Supervision mechanisms
- Termination clause

POLL 1

1) The Parties agree that the exchange of personal data is essentially necessary for the purpose of carrying out of their respective mandates and regulatory responsibilities.

2) The Parties agree that categories of personal data, categories of data subjects and types of processing of personal data will be described in the data protection notices.

Would you need to amend these provisions?

Yes, only point 1

Yes, only point 2

Yes, both points

No

1. Purpose and scope

Scope

- defined in an explicit and specific way
- state the categories of PD affected
- type of processing of the PD
- categories of data subjects

Purpose

- purpose explicit, specific and legitimate
- specific purposes for which PD is transferred

POLL 2

'personal data' means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.

In Summerland, this term has the meaning of personal information as defined under the *Data Protection Act*.

Would you need to amend the definition?

Yes

No

2. Definitions

- definitions of the basic personal data concepts and rights
(personal data, processing operation, processor, controller, recipient, sensitive data, onward transfer, sharing of personal data etc.)
- in line with the EUDPR
- relevant to the arrangement in question

POLL 3

The EUI will transfer personal data only for the legitimate and specific purpose of assisting Recipient in accordance with this Arrangement. The Recipient will not further process the personal data in a manner that does not correspond to these purposes, or with the purpose that may be set out in a request for information from any local authority of Summerland. The Recipient may process personal data for the purpose set out by the local authority to meet its legal obligations.

Would you need to amend this provision?

Yes

No



3. Data Protection Principles

Purpose limitation

- further processing incompatible with the initial purpose of the exchange of data should be **prohibited**
- AA may **allow** another compatible use
 - ✓ compatible with the original purpose
 - ✓ notification
 - ✓ possibility to oppose

N.B. purpose to be set in the AA

POLL 4

The EUI will take all reasonable steps to ensure that personal data transferred is accurate and, where necessary, kept up to date. The personal data will be adequate, relevant, and not excessive in relation to the purposes for which they were transferred and further processed.

Would you need to amend this provision?



Yes

No

3. Data Protection Principles

Data accuracy and minimization

- transfer only accurate and up to date personal data
- receiving party processes only accurate and up to date personal data
- inaccurate data – notification, rectification

Responsibility of transferring party

- lawfulness
- principles of data accuracy
- principle of data minimization

POLL 5

The Parties agree that the personal data transferred shall be processed in line with the purposes set out in the arrangement and may be kept according to the needs of the Parties.

Would you need to amend this provision?

Yes

No



3. Data Protection Principles

Storage Limitation

- retained for no longer than is necessary for the purpose for which the data are processed in compliance with the applicable laws /IO regulations
- maximum retention period to be set in legislation or in the AA
- after termination of the AA process PD in line with the AA
- delete data no longer necessary or processed unlawfully

POLL 6

Security and confidentiality: each Participant will take technical and organisational security measures that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing.

Would you need to amend this provision?

Yes

No



3. Data Protection Principles

Security and Confidentiality of data

- commitment to have appropriate technical and organisational measures - ensure security and confidentiality
- concrete measures in the AA based on the circumstances of the transfer (minimum safeguards, annexes)
- e.g. encryption, pseudonymization, marking, restricting access

Data Breaches

- inform as soon as possible –set timeline, communication channels
- appropriate means to remedy and minimize adverse effects on data subjects
- if high risk for data subjects –inform them

POLL 7

The transferring EUI will inform the data subjects through a privacy statement on its website that their data may be transmitted to international regulators and other stakeholders located both in and outside the European Economic Area;

Would you need to amend this provision?

Yes

No

4. Rights of Data Subjects

Right to Transparency

- general and individual information
- mandatory elements (Article 15-16 EUDPR)
- exceptions (Article 16(5) EUDPR)
- make the AA available to DS (summary or relevant provisions providing for appropriate safeguards)

POLL 8

Data subjects' rights: the Recipient will cooperate with the EUI in the event that the data subjects request that their personal data be rectified, completed or erased in accordance with Regulation (EU) 2018/1725. The Recipient will take the required correction to the personal data.

Would you need to amend this provision?

Yes

No

4. Rights of Data Subjects

Right of access, to rectification, erasure, restriction of processing and to object

- to be listed and defined in the AA
- modalities included –how to exercise, how to respond (timelines)
- restrictions possible (provided by law /internal rules)
- exceptions possible (Article 17(4) and 19(3) EUDPR)



4. Rights of Data Subjects

Automated individual decision making

- prohibited or
- subject to conditions:
 - explicit consent of DS
 - additional safeguards: right to be informed, rectification, redress
 - right not to be subject to it if conditions are not fulfilled

Right to redress

- enforceable DS rights and effective legal remedies

Restrictions

- necessary and proportionate (Article 25 EUDPR)
- provided by law or internal regulation of IOs

POLL 9

The Receiving Party will have procedures in place to authorize third parties to access the transferred personal data.

Would you need to amend this provision?

Yes

No



5. Onward transfers and sharing of data

- as a rule excluded
- may be **allowed subject to conditions:**
 - purpose limitation principle is respected and
 - the Transferring body has given its prior and express authorisation and
 - the receiving third parties commit to respect the same data protection principles and safeguards as included in the AA
 - provide the same DS rights
- Receiving party to provide information before requesting authorization
- Transferring party shall assess and document



5. Onward transfers and sharing of data

- Same rules for sharing of transferred data
- May be allowed in specific circumstances if:
 - ❑ the Transferring body has given its prior and express authorisation or
 - ❑ binding commitment of the receiving (third) party to respect the principles and guarantees of the AA
- **Exceptional circumstances** –derogations (without authorization or other commitments):
 - ❑ the specific and exceptional circumstances to be included in the AA
 - ❑ Receiving party shall **notify** the Transferring party:
 - ❖ a priori or (if not possible)
 - ❖ immediately after the transfer or (if not possible)
 - ❖ general, periodic information

POLL 10

The Parties agree that the provisions of the administrative arrangement will also apply to the transfer of sensitive data, if necessary.

Would you need to amend this provision?

Yes

No



6. Sensitive data

- specific risks for individuals
- 1 step: Article 10 EUDRP
- 2 step: Chapter V + additional safeguards
- consider circumstances of the transfer
- level of protection EUI IT security policy maintained
- safeguards in the text or in annex

e.g.: encryption in transit, pseudonymisation, restricting access, secure storage, implementing policies designed to ensure personal data are kept secure and confidential, marking information as personal data transferred from the EUI, or requiring specialized training

POLL 11

Redress

If there are any claims arising from the exchange of personal data under this Arrangement, the Participants will resolve them through discussions.

Would you need to amend this provision?

Yes

No



7. Redress mechanisms

- recourse for individuals for non compliance with the AA
- after data has been transferred outside the EEA
- effective route to complain
- effective administrative redress before independent oversight body
- **judicial remedy** – compensation for damages
- **alternative dispute settlement mechanism –binding**
- **other independent, effective redress mechanism**

7. Redress mechanisms

- assurance from the Receiving body for exercising individual rights and access to administrative or judicial redress as is the case for citizens of the third country
- assurance from IOs –rights and redress
- specific commitments + procedural mechanisms
(inform about requests, outcome, settle in a timely manner)
- no solution
 - suspend or terminate transfer
 - return or delete data

POLL 12

Supervision mechanism: The Parties agree to conduct periodic internal checks of the procedures put in place and of the effective application of the safeguards provided in the arrangement.

Would you need to amend this provision?

Yes

No



8. Supervision mechanism

Internal Oversight

- Periodic internal checks:
 - procedures put in place
 - effective application of the safeguards
 - verify changes in legislation
- Can ask each other to conduct review
- Obligation to respond, provide results
- Inform supervisory bodies
- Inform each other if unable to effectively implement AA



8. Supervision mechanism

Independent supervision

- to ensure compliance with the AA
 - binding for the Receiving body
1. **competent supervisory authority** –voluntary commitment to cooperate with the EDPS
if no SA
 2. other existing **oversight bodies** in the 3rd country
if no external independent oversight
 3. **other functionally autonomous mechanisms**
(internal, but independent, no instructions, sufficient resources)

POLL 13

Either Participant may terminate this Arrangement by giving a written notice to the other Participant.

Would you need to amend this provision?

Yes

No

10. Termination clause

- after termination of the AA process PD in line with the safeguards
- delete data no longer necessary or processed unlawfully
- possibility to terminate or suspend in case of non-compliance



What now?

Take aways

In a nutshell!



You have rights and obligations! Know your transfers!



Control sub-processing and data flows!



Essentially equivalent level of protection as in EU must be ensured for all international transfers!



Assess if the 3rd country / internat. organisation ensures the required level and if any supplementary measures are needed!



Consult your DPO!



Re-evaluate periodically if the required level of protection is still ensured and take action if necessary!