

Anu Talus

Chair of the European Data Protection Board

Mr. Miguel de Serpa Soares
Under-Secretary-General for Legal Affairs and United Nations Legal Counsel United Nations N.Y. 10017
United States

Brussels, 23 May 2024

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Dear Mr. Serpa Soares,

Thank you for your kind words on my election as new Chair of the European Data Protection Board (“the Board” or the “EDPB”) and for your letter of 6 February 2024, by which you refer to the ongoing dialogue between the EDPB and the United Nations System Organisations on data protection related matters. This letter is a follow-up to your previous letters of 26 February 2020, 14 May 2020, and of 15 July 2021, on a similar subject-matter to which the former EDPB Chair replied on 7 October 2020¹ and on 18 November 2021².

As part of the international community, both the United Nations and the European Union (‘EU’) are grounded in the principle of the rule of law and a commitment to uphold human rights and values which are enshrined in their foundational treaties and which determine their operational frameworks.

Within the EU framework, the Board and its members need to ensure that entities that are subject to EU law respect and adhere to the fundamental right of protection of personal data, including as reflected in secondary legislation. Entities that transfer personal data to entities in third countries or international organisations (‘IOs’) need to comply with EU data protection law, including their rules on international transfers under Chapter V of Regulation 2016/679 and Chapter V of Regulation (EU) 2018/1725.

In that respect, the Board expresses its gratitude for the valuable comments you have submitted concerning the Guidelines 2/2020 on Articles 46 (2) (a) and 46 (3) (b) of Regulation 2016/679 for transfers of personal data between EEA and non-EEA public authorities and bodies³. The Board is of the opinion that this document as well as additional guidance⁴ already provide clarifications having regard to transfers to IOs, which are also relevant for United Nations System Organisations. This for

¹ https://www.edpb.europa.eu/sites/default/files/files/file1/edpb_letter_out2020-0109_un.pdf

² https://www.edpb.europa.eu/system/files/2021-11/edpb_letter_out2021-00156_un_en.pdf

³ https://www.edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-22020-articles-46-2-and-46-3-b-regulation_en

⁴ See in particular Guidelines 2/2018 on derogations of Article 49 under Regulation 2016/679, as adopted by the European Data Protection Board on 25 May 2018 ; or the Guidelines 3/2018 on the territorial scope of the GDPR (Article 3)



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instance includes clarifications on privileges and immunities under international law as well as developing safeguards that take into account the status and features of IOs (e.g. recognising that independent oversight and redress can be ensured by other bodies than national data protection authorities and courts).

With regard to the references made in your letter on initiatives undertaken by the European Data Protection Supervisor (EDPS) under Regulation (EU) 2018/1725 and by the European Commission (EC), the Board notes that it is not the role of the EDPB to reply on behalf of these two institutions. Having mentioned this, the Board welcomes the active participation of representatives of many IOs, including the UN System Organisations, in the Task Force on transfers to international organisations established by the EDPS (the 'Task Force'), which involves also national data protection authorities and the EC.

The Board observes that the work of the Task Force is useful to allow its participants to share views on different aspects relating to data transfers to international organisations and explore practical solutions to enable controllers and processors that are based in the EEA to transfer personal data to IOs that are compliant with the EU data protection laws. The Board takes note that the Task Force's focus on practical transfer tools and solutions is the result of the preferences expressed by a large majority of participants in the Task Force.

It is worth mentioning that the participation in these discussions is not considered an acceptance or endorsement of specific documents or instruments by the Task Force, as the Task Force is meant to be an informal forum for discussions among stakeholders and to collect input from international organisations. This input has for instance contributed to the development by the EDPS of a model administrative arrangement for transfers of personal data under Regulation (EU) 2018/1725 from EU Institutions, bodies, offices and agencies to international organisations. The Board encourages the representatives of the United Nations Organisations to keep constructively participating in this Task Force.

In your letter you refer to a specific document which is a first working draft of possible model contractual clauses that has been shared by the EC on a purely informal basis with representatives of IOs in the framework of the Taskforce. I understand that this work has been initiated – and the informal consultation has been conducted – at the request of IOs with a view to address, through a practical instrument, a concrete scenario which many IOs are confronted with, namely transfers of personal data from Processors in the EU to IOs. The aim of the consultations is to explore the possibility of developing standard contractual clauses specifically covering the aforementioned scenario and to facilitate compliance by EU processors with their obligations under EU data protection law, while duly taking into account the status, nature and legal framework applicable to IOs. To the knowledge of the Board, the document which you refer to is still under development and could offer an additional available compliance tool if the work is successfully concluded. The Board recalls that there would be no obligation for IOs to use such clauses. I understand that several organisations have expressed an interest in continuing this work.

European Data Protection Board
Rue Wiertz, 60
1047 Brussels



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As recalled prior, the EDPB members have published useful guidance that covers, among others, aspects of transfers to IOs, which is also relevant to the United Nations System Organisations. The Task Force established by the EDPS is developing practical tools that support this guidance. The Board and its members support these endeavours and welcome the participation of the United Nations System Organisations in this forum. As indicated by my predecessor in her previous letters, the work carried out in this Task Force cannot, in any way, replace formal procedures set out in the GDPR.

Lastly, I would like to renew the Board's commitment to engage further with the United Nations System Organisations on the shared mission to protect human rights including the right to privacy.

Yours sincerely

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