




EUROPEAN DATA
PROTECTION SUPERVISOR

ANNUAL REPORT 2021



- 
- asking the ECDC to regularly check the level of security of this processing operation.

2. Transfers of personal data to non-EU/EEA countries


2A. Subscribers' consent to transfers of personal data

We were consulted in November 2020 by an EUI on transfers of personal data to a non-EU/EEA country resulting from the use of a newsletter service of this EUI. Interested parties could subscribe to the newsletter via this EUI's website "*based on consent*" and "*after being provided with very clear information (also on the risks related to the transfers)*". The service provider was based in the EU but had sub-processors in the US.

In our Opinion, issued in July 2021, we highlighted that the EUI needed to ensure the lawfulness of the processing operation according to [Article 5\(1\)](#) of Regulation (EU) 2018/1725. More specifically, for standard outreach activities, such as the publication of newsletters, the EUI needed to ensure that individuals give their valid consent. Such consent must be freely given by a clear affirmative act and it must be specific, informed and unambiguous, according to [Article 3\(15\)](#) of Regulation (EU) 2018/1725.

Thus, it is important that the EUI primarily assesses, together with the data processor, the availability of any newsletter-publishing solutions not involving the transfer of personal data to the US. The EUI must only use a processor that will guarantee the use of appropriate technical and organisational measures, so as to comply with Regulation (EU) 2018/1725.

If the data processing involves the transfer of personal data, we underlined that the EUI needs to comply with the additional requirements laid down in [Chapter V](#) of Regulation (EU) 2018/1725 (including Article 50(1)(a) where relevant). From a practical standpoint this means that, prior to the transfer - before newsletter subscribers provide their personal data, the EUI needs to ensure that subscribers receive specific information about the transfer of their personal data, including its risks, to a US-based sub-processor with a view to subscribing to the newsletter. In addition, the EUI needs to ensure that participants explicitly consent to the transfer of their data to the US-based sub-processor with a view to



subscribing to the EUI's newsletter, in addition to their consent on the processing operation in general.

3. Ethical matters

3A. Internal rules restricting individuals' data rights

Data protection law grants certain rights to individuals, including rights to erasure, information rectification and right to access. Whilst these rights should be strictly respected, EU law also provides that they can be restricted in certain specific circumstances, with the safeguards laid down in Regulation (EU) 2018/1725.

EUIs may restrict individuals' right to data protection on the basis of their internal rules. Such restrictions are only possible in matters relating to the operation of the EUI in question, and where each restriction is linked to an applicable legal ground. EUIs are required to consult the EDPS when drawing up such internal rules through a process, which acts as an additional control to ensure compliance with the Regulation.

In 2021, the EDPS issued 10 Opinions on draft Internal Rules, and on restrictions to individuals' right to data protection. Most of these Opinions can be found on the EDPS website [here](#).

3B. Status of confidential counsellors

An EUI raised a question on whether confidential counsellors and other staff members may be considered as 'processors' when they process personal data in the context of informal anti-harassment procedures, or whether they should be, in all circumstances, considered as 'individuals acting under the authority of the controller', under Regulation (EU) 2018/1725.

In our [Opinion](#), published in July 2021, we recommended that confidential counsellors, in so far as they are staff members of an EUI, are considered as individuals acting under the authority of the controller in line with [Article 30](#) of Regulation (EU) 2018/1725.

We stressed that while the function of a confidential counsellor has particular characteristics, including a strict duty of confidentiality regarding the controller, it is nonetheless essentially comparable to certain other functions that staff members may exercise. On the one