

Legal Opinion – Article 3 Privacy Protection Regulations (Transfer of Data to Databases Abroad), 5761-2001

1. The Privacy Protection Authority (PPA) hereby clarifies its interpretation regarding the provisions of Article 3 of the Privacy Protection Regulations (Transfer of Data to Database Abroad), 5761-2001 (hereinafter: the Regulations), for the purpose of exercising its powers according to the Israeli Privacy Protection Law, 5741-1981 (PPL).
2. Article 3 of the Regulations states as follows:

“When transferring data according to Regulation 1 or Regulation 2, the owner of the database shall ensure, in a written guarantee by the recipient of the data, **that the recipient of the data is taking adequate measures to ensure the privacy** of the data subjects, and that he guarantees **that the data shall be transferred to no other person**, whether in that country or in another.”
3. It seems that the utter and total prohibition that Article 3 casts on a party abroad who received data from Israel, and complies with the conditions specified in Article 1 or Article 2, for transferring the data to another database owner, or of disclosing it while being assisted by outsourcing services, is not compatible with modern technological developments and changes in the structure of the international economy and commerce, since the Regulations were enacted.
4. In addition, there is no equivalent prohibition in the EU General Data Protection Regulation (GDPR) or in other modern Privacy Legislation worldwide.
5. Therefore, the PPA hereby clarifies that according to its interpretation, **the prohibition on the data recipient in a foreign country to transfer the data to a third party shall not apply if written consent for such transfer has been given by the owner of the database from which the data were originally transferred from Israel**—This, provided that the further transfer was lawful if the data were transferred inside Israel, and that if the data were transferred directly from Israel to the third party, the transfer would comply with the conditions set forth in Article 1

or Article 2 of the Regulations.

6. In practice, when the data exporter from Israel had given his consent to transfer the data to a third party abroad, this can be seen as a new transfer of data from Israel to that third party, rather than an additional transfer abroad.
7. In addition, following questions that were referred over the past years, the PPA clarifies that the scope and content of the guarantee in Article 3 does not necessarily require an agreement “to comply with the conditions for the ownership and use of data applying to a database in Israel,” as stipulated under Article 2(4) to the Regulations.¹
8. The guarantee referred to in Article 3 may include different sufficient assurances to ensure the privacy of the data subjects, given the scope of the data, its sensitivity and other relevant circumstances, even if they are not completely identical to the Israeli Privacy Protection Law. For example, compliance with the EU General Data Protection Regulation (GDPR) or with legislation of countries recognized by the European Union as providing an adequate level of data protection (Adequacy Decision).²
9. For the avoidance of doubt, the PPA wishes to clarify that if the transfer of data abroad involves outsourcing or granting access to an external party to a database in Israel, Article 15 of the Privacy Protection Regulations (Data Security), 5777-2017 will apply.³

¹ See also the draft Legal Opinion of the Privacy Protection Authority regarding the interpretation of Article 2(4) of the Regulations (July 2024), [available here](#) (Hebrew).

² A list of countries recognized by the European Union as having an adequate level of protection for personal data, for which an Adequacy Decision has been issued, is available on the [European Commission's website](#). See also Article 2(8)(2) of the Regulations, that allows for the transfer of personal data from Israel to a country “which receives data from Member States of the European Community, under the same terms of acceptance.”

³ Regarding the transfer of data to a third party in a foreign country as part of an agreement with an external entity for outsourcing purposes, see Article 15(a)(2)(g) of the Privacy Protection Regulations (Data Security), 5777-2017, which stipulates that when the database controller has authorized the external entity to provide the service through another entity, it is obliged to include in the agreement with the additional entity all the matters listed in Article 15 of the Regulations. See also Action Guide for Implementing Article 15 of the Privacy Protection Regulations (Data Security) when Contracting with an External Entity (2023), [available here](#) in Hebrew. Also, see the Privacy Protection Authority's Guideline No. 2/2011 on the Use of Outsourcing Services for Processing Personal Data. The Guideline is [available here](#) in Hebrew.