



Schrems II Regulatory Authorities Guidance Tracker

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Authority	Source	Key statements
European Data Protection Board	https://edpb.europa.eu/news/news/2020/state-ment-court-justice-european-union-judgment-case-c-31118-data-protection_en	<ul style="list-style-type: none">• The EU and the U.S. should achieve a complete and effective framework guaranteeing that the level of protection granted to personal data in the U.S. is essentially equivalent to that guaranteed within the EU, in line with the judgment• While the SCCs remain valid, the CJEU underlines the need to ensure that these maintain, in practice, a level of protection that is essentially equivalent to the one guaranteed by the GDPR in light of the EU Charter. The assessment of whether the countries to which data are sent offer adequate protection is primarily the responsibility of the exporter and the importer, when considering whether to enter into SCCs. When performing such prior assessment, the exporter (if necessary, with the assistance of the importer) shall take into consideration the content of the SCCs, the specific circumstances of the transfer, as well as the legal regime applicable in the importer's country. The examination of the latter shall be done in light of the non-exhaustive factors set out under Art 45(2) GDPR• If the result of this assessment is that the country of the importer does not provide an essentially equivalent level of protection, the exporter may have to consider putting in place additional measures to those included in the SCCs. The EDPB is looking further into what these additional measures could consist of

Schrems II Regulatory Authorities Guidance Tracker

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European Data Protection Board	https://edpb.europa.eu/news/news/2020/state-ment-court-justice-european-union-judgment-case-c-31118-data-protection_en	<ul style="list-style-type: none">• The CJEU's judgment also recalls the importance for the exporter and importer to comply with their obligations included in the SCCs, in particular the information obligations in relation to change of legislation in the importer's country. When those contractual obligations are not or cannot be complied with, the exporter is bound by the SCCs to suspend the transfer or terminate the SCCs or to notify its competent supervisory authority if it intends to continue transferring data• The EDPB takes note of the duties for the competent supervisory authorities (SAs) to suspend or prohibit a transfer of data to a third country pursuant to SCCs, if, in the view of the competent SA and in the light of all the circumstances of that transfer, those clauses are not or cannot be complied with in that third country, and the protection of the data transferred cannot be ensured by other means, in particular where the controller or a processor has not already itself suspended or put an end to the transfer• The EDPB recalls that it issued guidelines on Art 49 GDPR derogations (2); and that such derogations must be applied on a case-by-case basis• Whether or not you can transfer personal data on the basis of SCCs will depend on the result of your assessment, taking into account the circumstances of the transfers, and supplementary measures you could put in place. The supplementary measures along with SCCs, following a case by-case analysis of the circumstances surrounding the transfer, would have to ensure that U.S. law does not impinge on the adequate level of protection they guarantee

Schrems II Regulatory Authorities Guidance Tracker

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European Data Protection Board	https://edpb.europa.eu/news/news/2020/state-ment-court-justice-european-union-judgment-case-c-31118-data-protection_en	<ul style="list-style-type: none">• If you come to the conclusion that, taking into account the circumstances of the transfer and possible supplementary measures, appropriate safeguards would not be ensured, you are required to suspend or end the transfer of personal data. However, if you are intending to keep transferring data despite this conclusion, you must notify your competent SA• EDPB seems to recommend “ data localization” in point 12 of its FAQ, as an immediate solution to continue using the services of the service providers transferring data to a third country
Information Commissioner's Office (ICO)	https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2020/07/ico-statement-on-the-judgement-of-the-european-court-of-justice-in-the-schrems-ii-case/	<ul style="list-style-type: none">• The ICO is considering the judgment from the European Court of Justice in the Schrems II case and its impact on international data transfers, which are vital for the global economy• It stands reads to support UK organisations and will be working with UK Government and international agencies to ensure that global data flows may continue and that people’s personal data is protected

Schrems II Regulatory Authorities Guidance Tracker

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Data Protection Commission (DPC)	https://www.dataprotection.ie/en/news-media/press-releases/dpc-statement-cjeu-decision	<ul style="list-style-type: none"> • EU citizens do not enjoy the level of protection demanded by EU law when their data is transferred to the United States. In that regard, while the judgment most obviously captures Facebook’s transfers of data relating to Mr Schrems, it is of course the case that its scope extends far beyond that, addressing the position of EU citizens generally • Whatever mechanism is used to transfer data to a third country, the protection afforded to EU citizens in respect of that data must be essentially equivalent to that which it enjoys within the EU • SCCs transfer mechanism is valid though the application when transferring personal data to the US is questionable. • Contains important statements of position relating to matters of process, to include the allocation of responsibility between data controllers and national supervisory authorities when it comes to ensuring that the rights of EU citizens are protected in the context of EU/US data transfers • Look forward to developing a common position with our European colleagues to give meaningful and practical effect to the judgement
Dutch Data Protection Authority	https://autoriteitpersoonsgegevens.nl/nl/nieuws/privacy-shield-voor-doorgifte-naar-vs-ongeldig-verklaard	<ul style="list-style-type: none"> • Following this ruling, the European Commission is urged to set up a new regime for the transfer of data from the EU to the US • In the meantime, we are examining the practical consequences of the ruling within the European Data Protection Board (EDPB) as well as possible follow-up steps that could be taken

Schrems II Regulatory Authorities Guidance Tracker

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Federal Commissioner for Data Protection and Freedom of Information (<i>Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit</i>)	https://www.bfdi.bund.de/SiteGlobals/Modules/Buehne/DE/Startseite/Pressemitteilung_Link/HP_Text_Pressemitteilung.html	<ul style="list-style-type: none"> • International data traffic is still possible, special safeguards have to be taken for the data exchange with the USA • It needs to be checked in the individual case whether the high requirements of the ECJ are met • Authorities will prohibit data exchanges if the conditions are not complied with
The Hamburg Commissioner for Data Protection and Freedom of Information (<i>Der Hamburgische Beauftragte für Datenschutz und Informationsfreiheit</i>)	https://datenschutz-hamburg.de/pressemitteilungen/2020/07/2020-07-16-eugh-schrems	<ul style="list-style-type: none"> • Data transfers using the standard contractual clauses must be critically reviewed • In addition to transfers to the USA, transfers to countries such as China, which are far from an adequate level of data protection, will also be difficult • The question of permissible data transfers to UK will also arise with regard to Brexit • Data transmission to countries without an adequate level of data protection will therefore no longer be allowed in the future

Schrems II Regulatory Authorities Guidance Tracker

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The Berlin Commissioner for Data Protection and Freedom of Information (<i>Berliner Beauftragte für Datenschutz und Informationsfreiheit</i>)	https://www.datenschutzb-berlin.de/fileadmin/user_upload/pdf/pressemitteilungen/2020/20200717-PM-Nach_SchremsII_Digitale_Eigenstaendigkeit.pdf	<ul style="list-style-type: none"> • Personal data stored in the USA shall be transferred to Europe • Personal data may no longer be transferred to the USA until the legal situation changes or unless there is a legal exception • Controllers which transfer personal data to the USA - especially when using cloud services - shall switch to service providers in the EU or another country with an adequate level of data protection • For the transfer of personal data to other countries, such as China, Russia or India, it will also have to be examined whether similar or even greater problems exist there
Thuringia State Commissioner for Data Protection and Freedom of Information (<i>Thüringer Landesbeauftragter für den Datenschutz und die Informationsfreiheit</i>)	https://www.tlfdi.de/maam/tlfdi/presse/200716/pressemitteilung.pdf	It is doubtful how an adequate level of data protection can be achieved by the data exporter and the data recipient when transferring personal data to the USA after examination of the safeguards and standard contractual clauses

Schrems II Regulatory Authorities Guidance Tracker

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<p>The State Commissioner for Data Protection and the Freedom of Information Rhineland-Palatinate (<i>Der Landesbeauftragte für den Datenschutz und die Informationsfreiheit Rheinland-Pfalz</i>)</p>	<p>https://www.datenschutzz.rlp.de/de/aktuelles/detail/news/paukensschlag-eugh-schreddert-den-privacy-shield-datuebermittlung-in-staaten-jenseits-der-eu-aber/</p> <p>https://www.datenschutzz.rlp.de/de/themenfelder-themen/datuebermittlung-in-drittlaender/</p>	<ul style="list-style-type: none"> • The protection of fundamental rights does not end at the border of the EU and also requires an examination of whether and how US security authorities, for example, have access to the personal data • Controllers cannot avoid dealing intensively with the national laws of the third country to which they wish to transfer data. If the data recipients are subject to legal regulations of their home country that violate European data protection law, they may not be able to comply with the provisions of the standard contractual clauses • A transitional period for the new regulation of data transfers should not be granted • The standard contractual clauses may not be used for the transfer of personal data to the USA if the guarantees included in the standard contractual clauses cannot be complied with, e.g. if US security authorities can access personal data on the basis of US security laws • Controllers must check which laws apply to the data importer in the third country to which they intend to transfer the data and, if applicable, to its other contractual partners in this business relationship and whether these laws affect the guarantees provided by the standard contractual clauses

Schrems II Regulatory Authorities Guidance Tracker

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The State Commissioner for Data Protection and the Freedom of Information Baden-Württemberg (<i>Der Landesbeauftragte für den Datenschutz und die Informationsfreiheit Baden-Württemberg</i>)	https://zeitung.faz.net/az/politik/2020-07-20/22ea53d809ccc61cfe25da3e213e61e6/?GEPC=s3	<ul style="list-style-type: none">• It must be assessed in the individual case if the standard contractual clauses are sufficient - for the USA they are clearly not as no American company can credibly guarantee that it will be spared access by the local secret services• It is not clear whether a transitional period can be granted
Spain		Notes the continuing validity of SCCs and its desire to work with other European DPAs towards a harmonised response

Schrems II Regulatory Authorities Guidance Tracker

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The National Supervisory Authority For Personal Data Processing (Romania)	https://www.dataprotection.ro/index.jsp?page=Comunicat_20_07_20&lang=ro	<ul style="list-style-type: none"> • The National Supervisory Authority For Personal Data Processing has not, up to this moment, officially react or comment on the Schrems II judgement of the ECJ. • The only mention with respect to the Schrems II judgement of the ECJ is a press release available on the Authority's website (only in Romanian language) stating that: <ul style="list-style-type: none"> • the ECJ invalidated the Decision 2016/1250 (the press release provides also a brief summary of the judgement); and • the EDPB issued the Statement on the Court of Justice of the European Union Judgment in Case C-311/18 - Data Protection Commissioner v Facebook Ireland and Maximillian Schrems (the press release provides also a brief summary of the statement)
FRANCE - the Commission Nationale de l'Informatique et des Libertés (CNIL).	https://www.cnil.fr/en/invalidation-privacy-shield-cnil-and-its-counterparts-are-currently-analysing-its-consequences	<ul style="list-style-type: none"> • The CNIL calls the ECJ judgement a "major ruling" on the regime applicable to transfers of personal data between the European Union and the United States of America, invalidating the "Privacy Shield" adequacy decision adopted in 2016 by the European Commission in the aftermath of the invalidation of the "Safe Harbor" by the ECJ, which allowed the transfer of data between the EU and USA companies adhering to its data protection principles • The CNIL notes that the ECJ has validated the European Commission' standard contractual clauses allowing the transfer of data from the European Union to importers established outside the European Union • The CNIL specifies that it is currently conducting, with its EU counterparts within the European Data Protection Board, a precise analysis of the ECJ judgment in order to draw consequences thereof. This joint work aims at drawing conclusions as soon as possible regarding the consequences of the ECJ judgement for transfers of personal data between the European Union to the United States

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Polish Data Protection Authority	https://uodo.gov.pl/pl/138/1603	<ul style="list-style-type: none">• Data can no longer be transferred to the USA on the basis of Privacy Shield• SCCs are still valid, but controllers need to make an assessment of the level of protection afforded for such cross-border transfers, which must take into account not only the contractual provisions agreed between data exporters and importers, but also the laws in a third country, in particular those relating to possible access by the public authorities of that third country to the personal data transferred• If the level of protection of personal data is not essentially equivalent to the level guaranteed in the EU, the transfer of data may be conditional on ensuring an equivalent level of protection by other means• Underlines the necessity of a coherent approach to the assessment of the consequences of the CJEU judgment throughout the EU and the necessity of joint actions in this respect by national supervisory authorities cooperating within the EDPB