

International transfers of personal data post Schrems

International personal data transfers <u>before</u> Schrems II

Adequacy decision











Standard Contract Clauses

Binding Corporate Rules (within the same group)

Art. 49 derogations (consent, contract, public interest, ...)

Essential Guarantees

European

International personal data transfers after Schrems

Adequacy decision











Assessment of local laws and their impact

SCCs BCRs

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract:

> US: e.g. FISA, E.O. 12333, Cloud Act & other non-EEA countries

where "in practice" impingement of effectiveness of SCCs (BCRs?): supplementary measures

> Art. 49 derogations (consent, contract, public interest, ...)



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E.g., in the case of

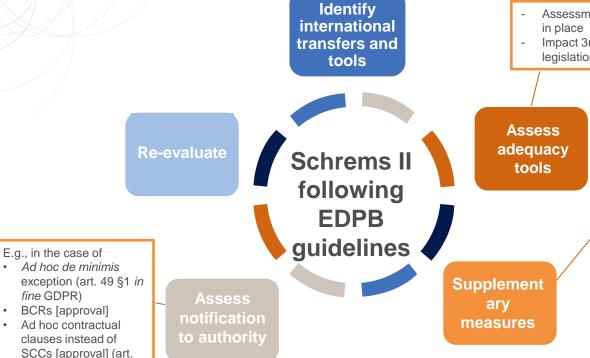
fine GDPR)

BCRs [approval]

49 §3(a) GDPR)

clauses instead of

S EDPB Guidelines re supplementary measures



- Assessment of guarantees
- Impact 3rd country legislation

Technical measures (e.g., for transfers to cloud servers):

- encryption at rest and in transit
- pseudonymisation

provided that they meet certain requirements: state-of-the-art, location of the organisation that holds the key (cannot be the data importer/cloud service provider), etc

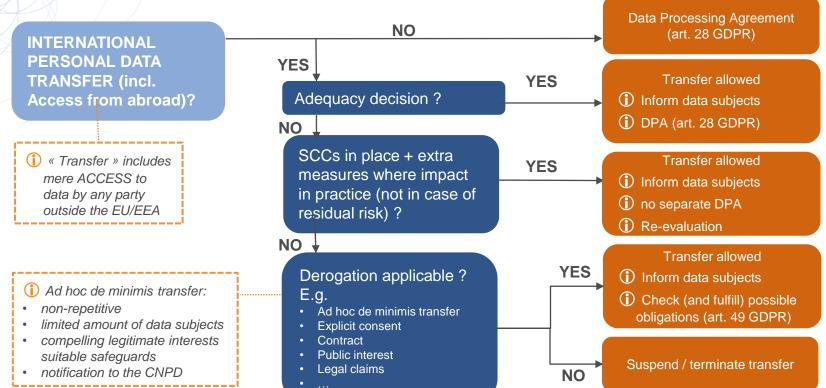
Contractual measures: information obligations of the data importer towards the data exporter re. developments in the third country, etc.

Organisational measures: internal policies, standard procedures in the event of covert or official requests from public authorities to access data

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Practical step plan







Recommendations





Identify and map international transfers ("Know your transfers")



Propose SCCs to non-EEA partners having access to the data or otherwise processing them



SCCs can be proposed as (in principle) non-negotiable EU Model Clauses + supplementary measures (encryption!) if risk not just residual



Monitor and regularly re-evaluate measures



Remind to inform data subjects of international transfers (art. 13-14 GDPR)





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 - 10 of our lawyers are also university professors.
- Spread across 6 offices and 5 country desks:
 Offices in Amsterdam, Brussels, London, Luxembourg, New York and
 Rotterdam.
- Our country desks focus on: Germany, France, India, China and Japan.
 We also monitor growth markets such as Brazil, Mexico, Indonesia, South Korea and Turkey.
- An independent firm with non-exclusive relations with the top law firms in more than 80 countries.

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