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Adequacy decisions - list of third countries that provide an adequate level of personal data protection

EDPB's recommendations on additional measures complementing the transfer tools to ensure the EU level of personal data protection

The Schrems II Judgment - Frequently Asked Questions

Standard contractual clauses – link to the website of the European Commission

Standard contractual clauses-document in Word in Croatian

COMMISSION IMPLEMENTING DECISION (EU) 2021/914 on standard contractual clauses for the transfer of personal data to third countries

Frequently Asked Questions - Standard Contractual Clauses

Guidelines 04/2021 on codes of conduct as tools for transfers

Summary of case law on data transfers to third countries

Pursuant to Article 44 of the General Data Protection Regulation, any transfer of personal data that is processed or intended for processing after transfer to a third country or an international organization can only take place if the controller and processor act in accordance with the conditions of Chapter V. which also apply to further transfers of personal data from a third country or international organization to another third country or international organization. All provisions from this chapter are applied to ensure that the level of protection of individuals guaranteed by this Regulation is not jeopardized. Personal data may be transferred to third countries for which an adequacy decision has been issued (transfers based on an adequacy decision).

The transfer of personal data to a third country or an international organization may take place when the European Commission decides that the third country, area, or one or more specific sectors within that third country, or the international organization in question ensures an adequate level of protection. Such transfer does not require special approval. The European Commission compiles and publicly publishes a list of third countries that provide an adequate level of personal data protection and to which personal data can be transferred without further restrictions.:

https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_hr

If a decision has not been made on the basis of Article 45, paragraph 3, the controller or processor may transfer personal data to a third country or international organization only if the controller or processor has foreseen appropriate protective measures

and under the condition that the data subject has enforceable rights and effective judicial protection.

The legal instruments on the basis of which it is possible to export personal data to third countries are exhaustively listed in the General Data Protection Regulation, and these instruments are legally binding instruments between public bodies, binding corporate rules, standard contractual clauses, codes of conduct, approved certification mechanism, contractual clauses and provisions from administrative agreements. Exceptionally, in special situations and if data transfers are not of a regular type, it is possible to transfer personal data to third countries with the consent of the respondent if he was previously informed about the risks of transfer, if the transfer is necessary for concluding or executing a contract concluded with the respondent or in his interest, if the transfer is necessary for important reasons of public interest or for legal requirements, if it is necessary to protect the key interests of the respondent and he cannot give his consent, and if the transfer is carried out from the register of public bodies in accordance with special regulations.

About data transfers to the USA

As of July 16, 2020, transfers of data from the EU to the US under the Privacy Shield are illegal. Personal data can still be transferred to the US based on standard contractual clauses, while additional measures must be taken to ensure an adequate level of protection of the personal data of European citizens. The European Court of Justice pointed out that the primary responsibility rests with the data exporter and importer to assess whether an adequate level of protection is provided and to provide the necessary additional measures. These additional measures together with standard treaty clauses, after analyzing the circumstances in which the transfer takes place and on a case-by-case basis, should ensure that US law does not undermine the appropriate level of protection that they guarantee. At the 34th plenary session of the European Data Protection Board held on July 17, 2020. The main topic of discussion was the judgment of the European Court of Justice in case C-311/18 Data Protection Commissioner/ Maximillian Schrems and Facebook Ireland, which annulled Decision 2016/1250 on the adequacy of protection under the European-American privacy protection system. In contrast, the Court ruled that Commission Decision 2010/87 on standard contractual clauses for the transfer of personal data to processors in third countries is valid.

In short, transfers of personal data from the EU to the US can take place on the basis of standard contractual clauses with additional protective measures when necessary, and it is up to the data exporter (controller) to determine whether or not these measures are necessary. The EDPB issued Recommendations 01/2020 on measures to supplement data transfer tools to

ensure compliance with the level of personal data protection in the EU.

"The consequences of the Schrems II ruling extend to all transfers (of data) to third countries. Therefore, there is no one-size-fits-all solution for all transfers, as this would mean ignoring the diversity of situations faced by data exporters," said the president of the EDPB and head of the Austrian Data Protection Supervisory Authority, Ms. Jelinek.

The European Board determines that controllers relying on the mechanism of standard contractual clauses are, on a case-by-case basis, obliged to check whether the legislation of the third country provides a level of protection equal to that guaranteed in the European Economic Area. Data exporters (processors) should provide additional guarantees in addition to standard contractual clauses in order to achieve effective compliance with this level of data protection when the guarantees contained in the clauses are not sufficient.

Article 46 of the GDPR lists a number of transfer tools containing "adequate safeguards" that exporters can use to transfer personal data to third countries in the absence of relevant adequacy decisions. Main types of transfer tools from Article 46 of the General Regulation: standard data protection clauses, binding corporate rules, codes of conduct, certification mechanisms, ad hoc contractual clauses.

Regardless of which transfer tool you choose under Article 46 of the General Data Protection Regulation, you must ensure that the transferred data as a whole will enjoy in principle the same level of protection. The transfer tools from Article 46 of the General Data Protection Regulation mainly contain appropriate safeguards of a contractual nature that can be applied to transfers to all third countries. The situation in the third country to which you transfer data may still require you to supplement those transfer tools and the safeguards contained therein with additional measures to ensure in principle the same level of protection.

Announcement of the Court of Justice of the European Union

<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-07/cp200091hr.pdf>

Full text of the verdict

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=228677&pageIndex=0&doclang=HR&mode=req&dir=&occ=first&part=1&cid=10300380>

The European Data Protection Board welcomes the judgment of the Court of Justice of the European Union, which emphasizes the fundamental right to privacy in the context of the transfer of personal data to third countries. The decision of

the Court of the European Union is of great importance. The European Data Protection Board has taken note of the fact that the Court of Justice of the European Union annulled Decision 2016/1250 on the adequacy of protection provided by the EU-US privacy protection system Privacy Shield, and the fact that Commission Decision 2010/87 on standard contractual clauses considered valid for the transfer of personal data to processors with business establishments in third countries. Regarding the Privacy Shield, the European Data Protection Board points out that, in accordance with the ruling, the EU and the US should adopt a complete and effective framework to guarantee that the level of personal data protection in the US is equal to that guaranteed in the European Union.

The European Data Protection Board has previously identified some of the main shortcomings of the Privacy Shield on which the Court of Justice of the European Union based its ruling to annul Decision 2016/1250, and in its reports on the annual joint reviews of the Privacy Shield, it questioned the compliance of US law with the principles necessity and proportionality. The European Data Protection Board intends to contribute constructively to the security of transatlantic data transfers that will benefit citizens of the European Economic Area as well as organizations, and is ready to provide assistance to the European Commission and the USA in building a new framework that will be fully compliant with the provisions of the General Regulation. In the judgment of the Court of the European Union, it was emphasized that standard contractual clauses serve to ensure a level of protection that is essentially equal to that guaranteed by the General Data Protection Regulation, and in the light of the European Union Charter of Fundamental Rights.

Assessing whether the country to which the data is transferred provides an adequate level of protection is primarily the responsibility of the data exporter and importer. When carrying out such a preliminary assessment, the exporter (if necessary with the help of the importer), takes into account the content of the standard contractual clauses, the special circumstances of the transfer, as well as the legal regime applicable in the importer's country. The examination of the latter is carried out with regard to the non-exhaustive factors established in Article 45, paragraph 2 of the General Data Protection Regulation. If the result of that assessment is that the importing country does not provide an equivalent level of protection, the exporter may need to consider introducing additional measures to those included in standard contract clauses.

In the judgment of the Court of the European Union, the importance of the exporter and importer respecting their obligations included in the standard contractual clauses, especially the obligation to provide information regarding changes in the legislation in the country of the importer, was highlighted. If these contractual obligations are not fulfilled or cannot be fulfilled,

the standard contractual clauses oblige the exporter to suspend the transfer or terminate the standard contractual clauses or to inform the competent supervisory authority in his country if he intends to continue the data transfer. The European Data Protection Board takes note of the obligation of the competent supervisory authorities to suspend or prohibit the transfer of data to a third country in accordance with standard contractual clauses, in the event that the competent supervisory authority, taking into account all the circumstances of the transfer, determines that the standard contractual clauses are not are respected or cannot be respected in that third country, and the protection of transferred data cannot be ensured by other means, especially if the data controller or processor has not already suspended or terminated the transfer.

We remind you that the European Data Protection Board has issued guidelines on derogations from Article 49 of the General Data Protection Regulation https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_2_2018_derogations_hr.pdf and that these derogations can apply depending on the individual case. Following the judgment of the Court of Justice of the European Union in Case C-311/18 – Data Protection Commissioner v Facebook Ireland and Maximilian Schrems, the EDPB has adopted a “Frequently Asked Questions” document to provide introductory clarifications and preliminary guidance to stakeholders on the use of legal instruments for the transfer of personal data. data to third countries, including the United States of America.

Unofficial translation of the document Frequently asked questions about the judgment of the Court of the European Union in case C-311/18 is available at the link <https://azop.hr/cesto-postavljana-pitanja-o-presudi-suda-europske-unije-u-predmetu-c-311-18-data-protection-commissioner-against-facebook-ireland-and-maximilian-schrems/>

The original text is available at: https://edpb.europa.eu/sites/edpb/files/files/file1/20200724_edpb_faqoncjeuc31118.pdf

Statement of the Council of Europe "Better protection of individuals in the context of international data flows: the need for democratic and effective oversight of intelligence services"