

## Module 6

### International transfers



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The logo features the letters 'SME' in a blue, blocky font, with a small yellow star above each letter. To the right of 'SME' is the word 'Data' in a larger, bold, blue font. Above 'Data' are five yellow stars of varying sizes, arranged in a slight arc.

# What should the businesses keep in mind when transferring personal data

## Adequacy decision in place? No problem!

CJEU, C-362/14, Schrems, level of protection essentially equivalent to that guaranteed in the EU

- Andorra
- Argentina
- Canada
- Faroe Islands
- Guernsey
- Israel
- South Korea in progress
- Isle of Man
- Japan
- Jersey
- New Zealand
- Switzerland
- Uruguay



## Transfers to the UK

- Until 30 June 2021 the UK is not considered a third country re: GDPR
- European Commission launched process of adoption of two adequacy decision re: the UK
- If not adopted by 30 June => transfers to third country

# What should the businesses keep in mind when transferring personal data

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## No adequacy decision? Appropriate safeguard required

Condition: enforceable rights and effective legal remedies for individuals

- Contractual arrangements like the Standard Contractual Clauses (“SCC”) of the European Commission
- Binding Corporate Rules (“BCR”) in the case of a group of undertakings/groups of companies engaged in a joint economic activity
- Adherence to a Code of conduct / certification mechanism + binding and enforceable commitments from the recipient to apply the appropriate safeguards
- Provide information on what appropriate safeguards you apply, obtain a copy of them / provide link to them



# Opportunities and challenges to businesses when transferring personal data outside EU / EEA. CJEU, C-311/18, Schrems II (1)

## Decision on SCC declared valid

- The decision included effective mechanisms making it possible to ensure equivalent level of protection
- Transfers pursuant to SCCs can be suspended / prohibited in case of breach/inability to comply with

## Privacy Shield Decision declared invalid, so what do we do?

- US law does not provide equivalent level of protection
  - US law does not grant data subjects actionable rights before the courts
- ⇒ Transfers to the US on the basis of:
- the Privacy Shield are illegal
  - SCC use shall be assessed case-by-case, same standard as for any other third country
  - BCRs shall be assessed case-by-case, same standard as for any other third country
  - Other tools under Article 46 GDPR
  - Derogations: consent is possible if explicit, specific and informed



**Level of protection essentially equivalent to that guaranteed in the EU must be ensured**

Supplementing the guarantees contained in the respective transfer tool may be required

**New opportunities for European digital services**

**Selling points:**

- Improve your risk-based approach
- Improve privacy by design and by default



# Opportunities for and challenges to businesses when transferring personal data outside EU / EEA. CJEU, C-311/18, Schrems II (2)

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## What supplementary measures may we adopt?

- Choice on a case-by-case basis so as the transfer tool is effective in practice, incl. by taking into account the third country's legislation

Is Privacy Sandbox the future?

- Technical measures like:

- Transfer of pseudonymized data
- Encrypted data merely transiting third countries
- Data storage where the purposes that do not require access to data
- Protected recipient
- Split or multi-pay processing



- Contractual measures like:

- Contractual obligation to use specific technical measures
- Transparency obligations
- Obligations to take specific actions
- Empowering data subjects to exercise their rights

- Organizational measures like:

- Internal policies for governance of transfers
- Transparency and accountability measures



# Opportunities for and challenges to businesses when transferring personal data outside EU / EEA. The new model CC

## For data exporters that are controllers

- Data exporter has to document the transfer impact assessment it carries out
- Set out factors that the data exporter must consider
- Stronger commitments of the data importer towards attempts by public authorities in the third country to access the personal data
- Transparency report



Providing more safety and legal certainty to businesses

## Challenges

- Transition period of 18 months
- Moving to the new SCCs
- Renegotiation of the terms with third parties/sub-processors
- Burdensome documenting transfer impact assessments
- Enhanced information to individuals

