

PAUL  
HASTINGS

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**RESPONSES TO THE  
ADOPTION OF THE NEW  
SCCS AND THE EDPB  
RECOMMENDATIONS**

**Updated: 14<sup>th</sup> July 2021**

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Regulator	Response	Link
Bulgaria	The regulator acknowledges the new SCCs highlighting several points it notes to be of importance including the modular approach and the possibility to accede to the SCCs.	Click <a href="#">here</a>
Croatia	The regulator acknowledges the new SCCs noting that they will provide 'greater legal predictability to European businesses', particularly SMEs.	Click <a href="#">here</a>
Denmark	<p>The regulator acknowledges the new SCCs and provides an overview of their operation.</p> <p>The regulator has also produced a summary of the EDPB Recommendations focusing on the need for data exporters to make an assessment of the legislation of the third country to which they intend to transfer personal data.</p>	<p>Click here: <a href="#">SCCs</a></p> <p>Click here: <a href="#">EDPB</a></p>

Regulator	Response	Link
France	<p>The regulator has published a proposed methodology for assessing third-country data transfers which it says aims to complement and clarify, from an operational point of view, the latest EDPB Recommendations on measures to supplement transfer tools. The two key steps are:</p> <ul style="list-style-type: none"> <li>Identify transfers: this includes making an inventory of transfers linked to digital tools which should make it possible to highlight any transfers of data as part of business activities and support functions. In addition, the regulator recommends identifying all digital tools used by the organisation, as well as all vendor contracts, and using the inventory of both these technical and legal elements to complete a summary document of data flows; and</li> <li>Defining an action plan: this includes carrying out a risk assessment with respect to each transfer, and identifying the transfer tools in place and assessing their effectiveness in light of the local laws of the importing country. The result of the assessment could be continue with the transfer, continue with the transfer subject to implementing additional safeguards, or ending the transfer. The regulator recommends submitting the assessment and action plan to the relevant organisation executive for review.</li> </ul> <p>The regulator has updated its guidance and FAQs on the Schrems II decision. The principles of the guidance and FAQs largely remain the same as last year but a few points to note are:</p> <ul style="list-style-type: none"> <li>The regulator notes that controllers are first advised to identify all the transfers of personal data outside the EU, in particular to the U.S. Whilst the U.S. is particularly called out, the regulator also states that Schrems II does not prohibit transfers to the U.S.</li> <li>The guidance references the new methodology (discussed above).</li> <li>The regulator notes that when assessing transfers, the assessment of the applicable legislation must be made on a case-by-case basis and depend on the nature of the transfers concerned.</li> </ul> <p>The regulator acknowledges new SCCs and provides an overview of how they are intended to operate. The regulator reminds readers that the existing SCCs can be entered into for a 3 month grace period (until September 2021) but after this time, the new SCCs must be used and that there is a 15 month period during which time all instances where the existing SCCs are used must be replaced with the new SCCs.</p>	<p>Click here: <a href="#">Methodology</a></p> <p>Click here: <a href="#">Guidance</a> Click here: <a href="#">FAQs</a></p> <p>Click here: <a href="#">SCCs</a></p>

DPA	Response	Source
Germany - DSK	The DSK acknowledges the adoption of the recent EDPB Recommendations and the new SCCs in a statement dated 21 June 2021. DSK notes that even when the new SCCs are used, additional measures likely will be required to ensure the personal data being transferred is protected. Furthermore, DSK comments that the new SCCs have clearly taken into account the Schrems II decision. This means that even when the new SCCs are used, the data exporter must examine the legal situation and practice of the third country and, if necessary, take additional protective measures or, if this does not succeed, refrain from the transfer.	Click <a href="#">here</a> Click <a href="#">here</a>
Germany - Bavaria (private area)	Certain data protection authorities are participating in a coordinated audit of examining international transfers. The authorities participating in the audit are writing to the selected companies on the basis of a common questionnaire. Among other things, this will include the use of service providers for sending e-mails, hosting websites, web tracking, managing applicant data and the intra-group exchange of customer data and employee data. Each authority decides individually in which of these topics it will act (the “ <b>Coordinated Audit</b> ”). The Bavarian data protection authority is among this group participating in the Coordinated Audit.	Click <a href="#">here</a>
Germany - Berlin	Announced participation in the Coordinated Audit.	Click <a href="#">here</a>
Germany - Brandenburg	Announced participation in the Coordinated Audit.	Click <a href="#">here</a>
Germany - Bremen	Announced participation in the Coordinated Audit. Reference is made to the press release of the DSK of 21 June 2021.	Click here: <a href="#">Audit</a> Click here: <a href="#">DSK</a>
Germany - Hamburg	Reference is made to the press release of the DSK of 21 June 2021.	Click <a href="#">here</a>
Germany - HBDI	The regulator addresses data transfer obligations following Schrems II. It notes that “companies and public authorities in Hesse are therefore informed that without additional protective measures, the transfer of personal data to third countries such as the USA is not permitted.”  The regulator highlights that the use of IT systems often leads to transfers going unnoticed meaning IT systems should be a focus of companies.	Click <a href="#">here</a>

Regulator	Response	Link
Germany - Lower Saxony	Reference is made to the press release of the DSK of 21 June 2021.	Click here: <a href="#">DSK</a>
Germany - Saarland	Announced participation in the Coordinated Audit. Reference is made to the press release of the DSK of 21 June 2021.	Click here: <a href="#">Audit</a> Click here: <a href="#">DSK</a>
Germany - Sachsen	Reference is made to the press release of the DSK of 21 June 2021.	Click here: <a href="#">DSK</a>
Germany - Sachsen-Anhalt	Regulator acknowledges the EDPB Recommendations, particularly noting that the importer's experience can now be taken into account. Reference is made to the press release of the DSK of 21 June 2021.	Click <a href="#">here</a>
Germany - Thüringen	Reference is made to the press release of the DSK of 21 June 2021.	Click <a href="#">here</a>
Liechtenstein	The regulator acknowledges the new SCCs noting that they have been adapted to reflect the GDPR. The regulator also notes other changes in the SCCs including that they can be extended to any number of parties during their term and the modular approach.  The regulator has also noted the EDPB Recommendations in its guidance on international data transfers.	Click here: <a href="#">SCCs</a>  Click here: <a href="#">EDPB</a>
Luxembourg	The regulator acknowledges the EDPB Recommendations and highlights the key changes made to the updated version. For example: <ul style="list-style-type: none"> <li>• the possibility that the exporter may take into account the importer's practical experience in its assessment; and</li> <li>• clarification that the legislation of the third country of destination allowing its authorities to access the transferred data, even without the intervention of the importer, may also undermine the effectiveness of the transfer tool.</li> </ul>	Click <a href="#">here</a>

Regulator	Response	Link
Netherlands	<p>The regulator acknowledges the EDPB Recommendations and provides its thoughts on the updated version. It notes:</p> <ul style="list-style-type: none"> <li>• The Recommendations have become more practical in nature. For example, the EDPB advises companies to ask about the experiences of the parties with whom they do business in the third country; and</li> <li>• The Recommendations include examples of measures (and conditions for effectiveness of those measures) that a company can take to prevent U.S. security services from accessing the transferred personal data.</li> </ul> <p>The regulator also acknowledges the new SCCs. In doing so, it states explicitly that when using the new SCCs, implementation of additional measures is the responsibility of the relevant companies and if the data cannot be protected, the data should remain in the EU.</p> <p>The regulator also states that for the U.S. to better protect personal data, new agreements may be reached between the EU and the U.S., similar to the Privacy Shield. This would make the transfer of personal data to the U.S. easier and safer. The European Commission is negotiating new agreements with the U.S.</p>	Click <a href="#">here</a>
Norway	The Regulator acknowledges the EDPB Recommendations and notes that it is working on updating its guidance in line with the new Recommendations.	Click <a href="#">here</a>
Poland	<p>The regulator acknowledges the EDPB Recommendations. It notes that the newly adopted version contains several important changes taking into account the comments received as a result of the public consultation, including the importance of investigating the practices of third country public authorities in the legal assessment in order to determine whether the legislation or practices of a third country affect, in practice, the effectiveness of the data transfer tool used. The regulator states it is equally important to clarify that the legislation of the third country of destination allowing its authorities access to the transmitted data, even without the intervention of the data provider, may also affect the effectiveness of the transmission tool.</p> <p>The regulator acknowledges new SCCs and provides a brief overview of the new SCCs. It notes they have been adapted to the GDPR and a more complex flow of personal data.</p>	<p>Click here: <a href="#">Recommendations</a></p> <p>Click here: <a href="#">SCCs</a></p>



Regulator	Response	Link
Slovakia	<p>The regulator acknowledges the EDPB Recommendations.</p> <p>The regulator acknowledges new SCCs and states the SCCs “themselves do not ensure compliance with the obligations relating to international transfers in accordance with Chapter V of the GDPR”, i.e. supplementary measures may be required to ensure the personal data is protected.</p>	<p>Click here: <a href="#">Recommendations</a></p> <p>Click here: <a href="#">SCCs</a></p>
Slovenia	<p>The regulator acknowledges the new SCCs and the EDPB Recommendations. With regards the SCCs, the regulator notes that they have been updated in accordance with the GDPR and the decision in Schrems II, and provides an overview on how they are intended to operate. The regulator also specifically notes that the new SCCs contain the provisions required by Article 28 of the GDPR so, to the extent the importer is a processor or sub-processor, an additional data processing agreement would not be required.</p>	<p>Click <a href="#">here</a></p>
Spain	<p>The regulator acknowledges the new SCCs noting that they have been adapted to the GDPR and principles of accountability and seek to incorporate the principles laid down in the Schrems II decision.</p>	<p>Click <a href="#">here</a></p>
Sweden	<p>The regulator acknowledges the new SCCs highlighting the modular approach and that the SCCs integrate the requirements of Article 28(3) of the GDPR.</p>	<p>Click <a href="#">here</a></p>
Switzerland	<p>The regulator has published a guide checking the admissibility of direct or indirect data transfers to foreign countries. The guide contains a flowchart which provides an overview of the steps required. The guide suggests a similar approach to that which is now being advised across the EEA i.e. assess the transfer, identify whether the personal data is provided with adequate protection and, if it is determined there would not be adequate protection, implement additional measures or cease transferring the personal data.</p>	<p>Click <a href="#">here</a></p>



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