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GDPR – Transfers of personal data in the UCI* world after Schrems II

Personal data transfers from Luxembourg to countries outside of the EEA are governed by the GDPR: Key takeaways about the impact of the Schrems II case.

* undertakings for collective investment

What happened?

On 16 July 2020, while invalidating the EU-US Privacy Shield – relating to transfers of personal data from the EEA tothe US, the Court of Justice of the European Union (**CJEU**) in the "**Schrems II**" case (C-311/18) firmly reiterated certain principles applicable to the validity of the standard contractual clauses (**SCCs**) as a means of legally transferring personal data to countries outside of the EEA. This strongly affected transfers of personal data outside of the EEA.

What you need to know

The ruling insists on the fact that EEA data exporters and non-EEA data importers **must ensure effectiveness of the SCCs.** Should they assess that the laws and regulations of the country of the data importer prevent the latter to comply with the obligations in the SCCs, **supplementary measures** must be implemented to ensure protection of the personal data.

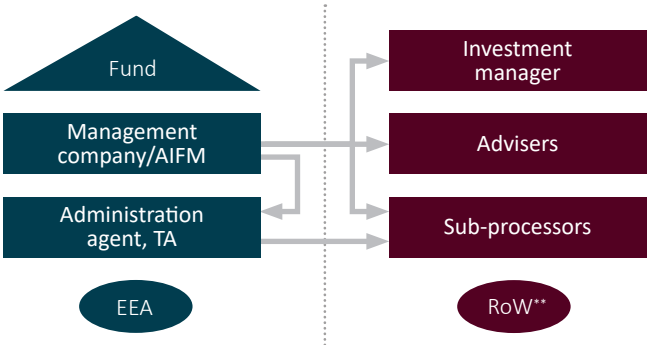
On 10 November 2020, the European Data Protection Board **(EDPB)** adopted its Recommendations 01/2020 on **measures that supplement transfers tools to ensure compliance with the EU level of protection of personal data.**

The European Commission released on 12 November 2020 a **new set of standard contractual clauses** for transferring personal data to non-EU countries. The latter was open for public consultation until 10 December 2020. Once approved, the new SCCs will have to be adopted by businesses before the end of the **12-month grandfathering period.**

Is this affecting your business?

UCI set-ups comprising Luxembourg entities most of the time involve **personal data transfers to, or access by, (intragroup) business partners and services providers** located outside of the EEA.

This includes transfers of personal data such as but not only KYC/AML related information about investors (natural persons or, in case of legal persons, their representatives) to investment managers, advisers or directors. Transfers by service providers to sub-processors or the use of (affiliated) operational platforms or technical infrastructure located outside of the EEA would be caught as well. The purposes of the transfers vary from marketing to investors relationship management through processing subscriptions, holding the register and managing investments.



**except countries with adequacy decision

What should you do now and how can we help?

We can guide you through the **EDPB's recommendations** comprising a series of steps as described below, including with the **help of local counsels** in the destination countries if required, and help you to **identify contractual, organisational and technical supplementary measures** as appropriate.

STEP 1 MAPPING

Identify personal data transfers to countries outside of the EEA.

STEP 2 LEGAL PROTECTION

Check how these transfers are legally protected.

E.g. adequacy decision, binding corporate rules, SCCs, etc.

STEP 3 EFFECTIVENESS

Check if protection is effective in the destination country.

Can importers comply with the protection according to the laws in their country?

STEP 4 SUPPLEMENTARY MEASURES

If not, check if supplementary measures can guarantee an essentially equivalent level of protection.

STEP 5 IMPLEMENTATION

If yes, implement as appropriate Otherwise, new transfers cannot start and ongoing transfers must stop.

STEP 6 ITERATION

Reiterate the evaluation regularly.

For more information, contact our ICT, IP, media and data protection team.

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