



Schrems II - International data flows increasingly difficult for companies

The economies that we represent are open, digitalized and innovative. The continued transfer of data between our countries and the rest of the world has become heavily burdensome and uncertain, and we urge our governments to fight for free data flows at the upcoming Council meeting.

Following the European Court of Justice's recent annulment of the Privacy Shield, there is great uncertainty for companies about how international data transfers will be affected in practice. To an extent, the Court's verdict was not unexpected, and for this reason companies have, for some time now, used other transfers methods as a legal basis for sending data to the USA; however, these are also now affected.

The approach that companies mainly use for international data transfers is the standard contractual clauses (SCC). The SCC has thus become a prerequisite in a globally interconnected European economy, where European companies - large and small - can benefit from global trade. The SCC is also extremely important for an open European economy, where citizens and organisations are free to choose between different service providers.

The situation that now prevails following the Schrems II judgement creates great uncertainty and overload of work for companies. Companies of all sizes are now trying to identify how and if they can transfer data to the United States. All sectors are affected not least because of the very important and widespread use of American suppliers of IT services.

The Schrems II judgment expresses the expectation that companies should make their own risk assessment on the recipient country's level of data protection. For a smaller company, it is almost certainly impossible to meet this requirement. This is an additional level of burden on companies that are already under pressure due to Covid-19.

A draft of the updated SCC is expected to be presented shortly. The business community urgently needs this to contain both simplification and clarification of how to undertake the correct transfer of personal data to third countries. This also needs to be monitored by our governments, not least because the transfer of personal data to the UK will also require an easily accessible system in the near future.

Data is helping to boost competitiveness and deliver services across a range of industries from manufacturing to healthcare. Data flows are as vital to our digital-driven economy. The economic impact that a suspension of data flows will have on EU businesses would be immense.

On behalf of our members we are calling for the EU to champion the free flow of data, underpinned by trust and high levels of privacy, in practice and in words.

Our Governments need to take a public and joint position on this issue at European Council level and work with the EU Commission on putting EU data flows on a strong stable legal footing. The EU is at its best when it is pioneering new globally compatible frameworks that work to preserve the free, open, global internet and protect European values. Ideas like localisation is not a silver bullet solution but is instead highly problematic. It will reduce the ability of companies to use new cutting-edge technology, impede growth and prevent new businesses from scaling. Now is the time for European to build bridges with trading partners, not more walls.

Therefore, we are calling on ministers to;

- defend our open and transatlantic economies by speaking up at this week's council meeting.
- acknowledge the importance for Standard Contractual Clauses to remain valid and to engage with all efforts to secure harmonized guidelines on supplementary measures from the European Data Protection Board.
- take the initiative for putting a long-term political and legally secure solution in place to address the issue of data flows

Confederation of Industry of the Czech Republic

Confederation of Danish Industry

The Confederation of Finnish Industries

Ibec, Ireland

The Lithuanian Confederation of Industrialists

Polish Confederation Lewiatan

The Confederation of Netherlands Industry and Employers

The Confederation of Swedish Enterprise