

## **LETTER TEMPLATE: SCHREMS-II**

### **Conc.: data export after the Schrems-II judgment**

Dear [Name third country partner, processor, ...],

We hope that this letter finds you well.

We are writing to you in regards to a judgment passed down by the European Court of Justice (ECJ), better known as the Schrems-II judgment, and the implications on data export outside the European Economic Area (EEA, or rather the EU expanded with Norway, Iceland and Liechtenstein).

As you no doubt know, we have a commercial relationship with your company that includes the exchange of Personally Identifiable Information (PII) under GDPR.

Transferring PII to persons or companies outside the EEA is heavily regulated under GDPR. The European legislator assumes that countries outside the EEA cannot necessarily offer the same level of data protection as the level that exists in Europe under GDPR. Therefore, personal data may only be transferred outside the EEA under very specific conditions, the most common of which are adequacy decisions by the EU for a restricted number of countries, the Privacy Shield for US companies, Binding Corporate Rules for groups of companies or Standard Contract Clauses for most other commercial partnerships.

In a recent judgment by the European Court of Justice (C-311/18, Data Protection Commissioner v Facebook Ireland and Maximilian Schrems) the EU-US Privacy Shield was declared invalid.

Moreover, the current version of the EU Standard Contractual Clauses were up for review by the end of 2020, as are all Binding Corporate Rules agreements with UK companies. These standard contractual clauses have since been revised in September 2021 and are immediately applicable to all data exports from 27 September 2021. For existing agreements, there is still a grace period until 27 December 2022.

For more information on the Schrems II case and on the review of the SCC and BCR, please read the article [here available](#) by the Brussels based Business Law Firm Sirius Legal.

In light of all this, **we are** currently reviewing our data exchanges with all of our partners in order to ensure continued GDPR compliance.

As part of this compliance program, **we are** inviting all of our partners to complete the data exchange vendor assessment form below. Kindly complete this form and return it to us before **[date]**. It will allow us to assess the need to amend or replace any existing contract (Data Exchange Agreements, Data Processing Agreements) between our companies.

Data Exchange Vendor Assessment	Reply here
Does your company have access to PII pertaining to <b>[Name of your company]</b> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is your company based or does your company have branch offices outside the EEA?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If so, which countries are concerned?	.....
Does the government of any of these countries have access directly or indirectly to the PII <b>[Name of your company]</b> shared with you?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If so, please explain which PII is concerned and under which conditions such access may occur.	.....
Have you implemented any appropriate organizational and/or technical measures which ensure that direct or indirect access to the PII by the government is prohibited?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If so, please indicate which measures have been taken.	.....
Are you willing to provide additional organizational and/or technical guarantees if necessary?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Do the data subjects have enforceable rights against the authorities of <b>[Name third country partner, processor, ...]</b> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is your company a US company under the application of the US Foreign Intelligence Surveillance Act, The US Executive Order 12333 or the US Presidential Policy Directive?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Which is the current legal basis under article 44 - 48 GDPR for your company to receive PII from [Name of your company]	<input type="checkbox"/> EU/US Privacy Shield <input type="checkbox"/> Standard Contractual Clauses <input type="checkbox"/> Binding Corporate Rules <input type="checkbox"/> Other: ..... <input type="checkbox"/> None of the above
Does your company have a valid and active Data Exchange Agreement / Data Processing Agreement under GDPR in place with [Name of your company]?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does your company share any PII pertaining to [Name of your company] with subcontractors outside the EEA?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please list all subcontractors (including apps, SaaS platforms, online accounts software plug-ins, cookie based exchanges and other)	.....
Do you have Data (sub-)Processing Agreements in place with all of these subcontractors, that also ensure the GDPR compliant exchange of PII (including data transfers outside the EEA if applicable)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is your company GDPR compliant?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If you are a non EU company, did you appoint a representative within the EU?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Did your company appoint a Data Protection Officer under GDPR	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not required for the following reason: .....

[Name of your company] is looking forward to your answers and hopes we can find a mutual solution that benefits us both.

Sincerely yours,

[Name of your representative]

Representative of

[Name of your company]

[Signature and data]