



GGI SIG Corporate Governance & Compliance Webinar

Schrems II: What Now?



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GDPR Dispute Context: Transfer of Personal Data

“**Personal Data**” means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person

GDPR Application to US Companies

GDPR applies to US companies that:

- Analyze cookie or geolocation data from EU devices
- Sell (or try to sell) to EU customers
- Have EU offices or EU commercial relationships that gather Personal Data
- Process (e.g. store) EU Personal Data

--GDPR Article 3

Privacy: An EU / US Culture Clash

Issue	EU	US
Right of Privacy	Universal; Fundamental	Limited; Conditional
Privacy Regulation	Comprehensive	“Sectoral”
Harm of Data Disclosure	Significant; Inherent	Minimal; Only Financial
Legal Enforcement	Robust; Private Rights of Action	Spotty; Usually No Private Right of Action

Schrems II Holding

US **Gone!** EU

US Company ← “Privacy Shield” Program → EU Person

US Company ← “Standard Contractual Clauses” (SCC) → EU Company *Case by Case*

US Affiliate ← “Binding Corporate Rules” (BCR) → EU Company *Supplemental Protections?*

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5

Post-Schrems II Developments

- No grace period
- No resolution in sight
- EU Guidance
 - European Data Protection Board FAQ
 - Berlin Data Protection Authority states that *before* SCCs used, must consider whether foreign government has access to data that exceeds what is permitted under EU law & requests data storage be moved to EU

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6

Potential US Company Responses

- Purposeful discussion with EU counterparts
- Immediately implement “explicit consent”
- Reduce amount and sensitivity of data collected. Evaluate cookies and geolocation first.
- Explore hosting in EU
- Strengthen GDPR compliance generally

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7
