

# Invalidation of EU-U.S. Privacy Shield: What Next?

The recent decision in *Facebook Ireland v. Schrems* (“*Schrems II*”) by the Court of Justice of the European Union (“CJEU”) which invalidates the EU-U.S. Privacy Shield framework (“Privacy Shield”) complicates if and how personal data may be transferred from the EU to the U.S. There is **no grace period for companies that currently rely on Privacy Shield**. U.S. companies now must **identify an alternative mechanism** to transfer data across borders. Here are the alternative mechanisms still available.

## ALTERNATIVE MECHANISMS

<b>Standard Contractual Clauses (“SCCs”)</b>	Model clauses approved by the EU as providing reasonable safeguards to data transferred from the European Economic Area (“EEA”). The SCCs were not invalidated by the CJEU’s decision in <i>Schrems II</i> , but were placed under increased scrutiny.	Affiliated EU and U.S. businesses that transfer data from the EEA to the U.S. often enter into an intra-company agreement that incorporates SCCs.
<b>Binding Corporate Rules (“BCR”)</b>	Allow groups of companies to make intra-organizational transfers of personal data across borders. BCRs must be approved by the data protection authority in each applicable EU Member State.	BCRs are stringent, intra-corporate global privacy policies and standards, which generally are only used by large multinational organizations.
<b>Derogations</b>	Allow the transfer of data in certain circumstances (such as when the individual explicitly consents to the transfer, when the transfer is necessary to fulfil the purpose of a contract, when the transfer is necessary for an important public interest, etc.).	Generally, derogations only apply when the data transfer is necessary, occasional, and affects a limited number of data subjects – and should not be the only method used to transfer data from the EU to the U.S.

## Scope

Post-Privacy Shield transition: We can assist in several ways:

- (i) Assess current operations, relevant data transfers, and applicable jurisdictional issues (i.e., assessment of relevant DPA guidance, positions, and interpretation of *Schrems II*;
- (ii) Draft, review, or otherwise create documentation such as data transfer agreements and policies/notices, as well as assist in updated data mapping;
- (iii) Determine or consider measures to supplement use of the SCCs and assess whether derogations can be relied upon; and
- (iv) Advise on emerging best practices or guidance from EU institutions or Member State regulators

## Contacts

For additional guidance, please contact a member of the [Privacy and Data Security Team](#) below.

### **Matthew Baker**

Partner  
T: +1.415.291.6213  
[matthew.baker@bakerbotts.com](mailto:matthew.baker@bakerbotts.com)

### **Neil Coulson**

Partner  
T: +44.20.7726.3478  
[neil.coulson@bakerbotts.com](mailto:neil.coulson@bakerbotts.com)

### **Maureen Ohlhausen**

Partner  
T: +1.202.639.7726  
[maureen.ohlhausen@bakerbotts.com](mailto:maureen.ohlhausen@bakerbotts.com)

### **Cynthia Cole**

Special Counsel  
T: +1.650.739.7575  
[cynthia.cole@bakerbotts.com](mailto:cynthia.cole@bakerbotts.com)