

# prosus

## Managing personal data transfers inside a company

WTO Trade Dialogues:  
Different models to facilitate the cross-border exchange of personal data  
10 November 2020

# Corporate approaches to International Data Transfers

Factors in selection of transfer mechanisms

GDPR options

Adequacy determinations

Binding Corporate Rules

Standard Contractual Clauses

Consent

APEC's Cross-Border Privacy Rules system

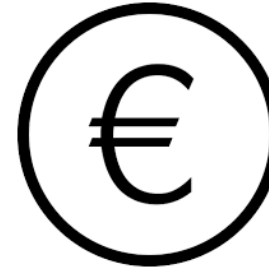
IAPP Survey Results

# Factors in selection of transfer mechanisms



## Jurisdictions

- Country pairings
- Multi-party



## Cost

- Advisory fees
- Documentation fees
- Auditors



## Human resources

- In house vs outside assistance
- Relationship with vendors



## Time

- How quickly will a mechanism bring compliance?



## Operational Efficiency

- Ease
- Repeatability
- Continuity



## Legal Certainty

- Vulnerability to court challenge/litigation



## Brand

- Government
- Consumers
- B2B

# GDPR's most common options

## **Chapter V:** Transfers of personal data to third countries or international organisations

### **Article 45** – Transfers on the basis of an adequacy decision

- Commission decides that a third country ensures an adequate level of protection

### **Article 46** – Transfers subject to appropriate safeguards

- Binding Corporate Rules ("BCRs")
- Standard Contractual Clauses ("SCCs")

### **Article 49** – Derogations for specific situations

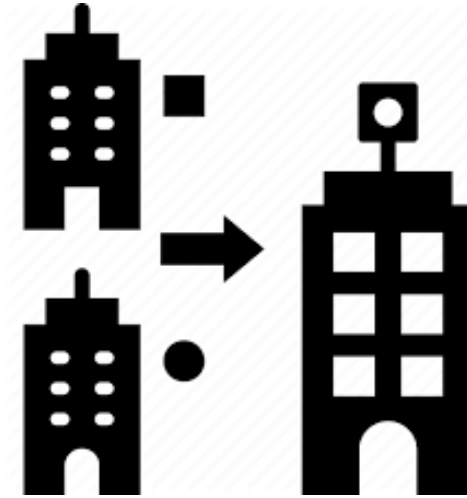
- Explicit consent
- Necessary for a contract
- Public interest
- Legal claims
- Vital interests

- The European Commission has so far recognised [Andorra](#), [Argentina](#), [Canada](#) (commercial organisations), [Faroe Islands](#), [Guernsey](#), [Israel](#), [Isle of Man](#), [Japan](#), [Jersey](#), [New Zealand](#), [Switzerland](#) and [Uruguay](#) as providing adequate protection.
- Adequacy talks are ongoing with South Korea.
- These adequacy decisions do not cover data exchanges in the law enforcement sector which are governed by the "Police Directive" (article 36 of [Directive \(EU\) 2016/680](#)). See *Commission website* [here](#).
- *Impact of Schrems II on US Privacy Shield*



# Binding Corporate Rules (“BCRs”)

- Must be binding and enforceable inside a group
- Must be approved by a supervisory authority
- Each jurisdiction takes a different amount of time to process applications
- Requires another compliance mechanism while waiting
- No guarantee of approval/template – each determination is bespoke
- Soft audit
- Cost
- Favored by regulators
- Good B2B brand value

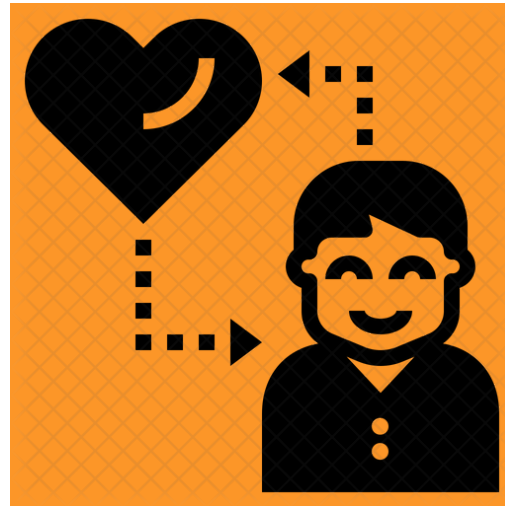


- Off the shelf
- Minor negotiation – customized appendices
- Cannot be substantively altered
- No approved clauses for processor-subprocessor transfers (yet)
- Impact of Schrems II: *additional safeguards, country-specific assessment*
- New (updated) clauses expected to be issued by the Commission soon



The screenshot shows the European Commission website page for Standard Contractual Clauses (SCC). The page header includes the European Commission logo, a language selector set to 'English', and a search bar. The breadcrumb trail reads: Home > Law > Law by topic > Data protection > International dimension of data protection > Standard Contractual Clauses (SCC). The main heading is 'Standard Contractual Clauses (SCC)' with a sub-heading: 'Standard contractual clauses for data transfers between EU and non-EU countries.' The text explains that the European Commission can decide that standard contractual clauses offer sufficient safeguards on data protection for the data to be transferred internationally. It notes that the Commission has issued two sets of standard contractual clauses for data transfers from data controllers in the EU to data controllers established outside the EU or European Economic Area (EEA), and one set of contractual clauses for data transfers from controllers in the EU to processors established outside the EU or EEA. The page lists two categories of decisions: 'EU controller to non-EU or EEA controller' with links to 'decision 2001/497/EC' and 'decision 2004/915/EC', and 'EU controller to non-EU or EEA processor' with a link to 'decision 2010/87/EU'.

- Data subject must be informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards
- In order for a consent to be valid, it must remain revocable by the data subject at any time





# APEC CBPRs (and PRPs)

- Member economy adherence
- Trust agents/auditors
- CBPR Company participation:  
<http://cbprs.org/compliance-directory/cbpr-system/>
  - 39 participants, of which
    - USA (34)
    - Singapore (2)
    - Japan (3)
  - 4 agents, of which
    - Truste (31)
    - Schellman & Co (2)
    - Infocom Media Dev't Authority (2)
    - JIPDEC (3)
    - Other (1)

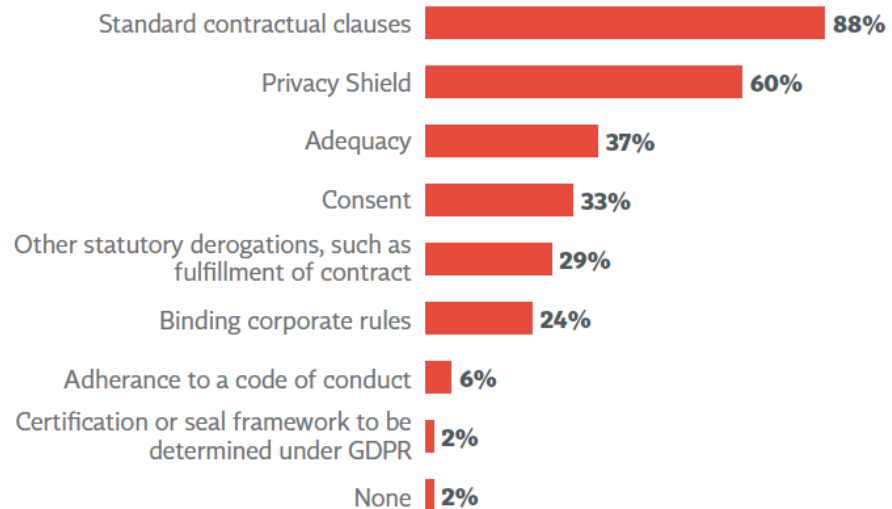


- PRP Company participation:  
<http://cbprs.org/compliance-directory/cbpr-system/>
  - 17 participants, of which
    - USA (17)
  - 2 agents, of which
    - Truste (15)
    - Schellman & Co (2)
- Member economy adherence:
  - USA
  - Mexico
  - Japan
  - Canada
  - Singapore
  - Republic of Korea
  - Australia
  - Chinese Taipei
  - Phillipines

## SCCs are by far the most common method to transfer data outside the EU; 6 in 10 use Privacy Shield

### Methods Used for Data Transfer Outside of EU

(Base: transfer data outside EU)



Z4: What mechanisms does your company currently use to transmit data outside the EU?

## Small businesses, B2C firms, and government agencies are the least likely to transfer data from EU

### BY COMPANY REVENUE

	Under \$100M	\$100M-\$999M	\$1B-\$24.9B	\$25B+*
Transfer data from EU outside	61%	66%	80%	84%

### BY INDUSTRY SEGMENT

	Regulated	Unregulated	Government*
Transfer data from EU outside	62%	78%	27%

### BY TARGET

	B2B	B2C	Both
Transfer data from EU outside	78%	50%	72%

### BY EMPLOYEE SIZE

	<5K	5K-24.9K	25K-74.9K*	75K+*
Transfer data from EU outside	64%	68%	88%	86%

■ Significantly different than other segments \* Small sample size

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## **Thank you**

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