

Schrems III clarification

Can “The Buyer” confirm that “The Buyer” is solely responsible for commissioning “Trust Your Supplier” portal including GDPR compliant data processing agreements and Schrems II data transfers?

“The Buyer” has adopted Trust Your Supplier for supplier management. Trust Your Supplier is a network platform owned and operated by an independent firm, Chainyard Supplier Management. This firm owns the responsibility for data processing compliance, data rights, and other policies regarding data residing on this platform. As a supplier, you will therefore be asked to agree to a network agreement with Chainyard that will align your organization with all other participants on the network in compliance with these policies.

Processing of personal data is governed by the network agreement and the data privacy notices it refers to. Exports of personal data from the European Union and the European Economic Area are subject to the standard data protection clauses adopted by the European Commission, effective 04 June 2021, in accordance with art. 46 para. 1, para. 2 letter c of the GDPR and published as “Standard Contractual Clauses” in the Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council.

The question on “Schrems II data transfers” is unclear and needs some additional explanation. The Standard Contractual Clauses are not affected by the Schrems II ruling, as this ruling related only to the adequacy decision implementing the Privacy Shield. The types of personal data processed in the Trust Your Supplier platform are such that supplementary and additional measures beyond the Standard Contractual Clauses are not required. For instance, they do not include special categories of personal data and are limited to contact data.

Chainyard Supplier Management processes personal data used for access control purposes and to secure the platform as an independent controller, as further defined in the privacy notices referred to above. The responsibility for this processing of personal data rests with Chainyard Supplier Management, and it is conducted to satisfy the requirements of art. 32 para. 1 letter b of the GDPR.

Can “The Buyer” provide us their conduct Transfer Impact Assessments concerning involved data transfers in accordance with the EDPB guidance on data transfers?

Supplementary measures beyond the measures adopted in accordance with the Standard Contractual Clauses are not warranted for the categories of personal data processed by the Trust Your Supplier platform. Personal data categories are limited to business contact details processed for the purpose of accessing the platform and facilitating communication between the users of the platform. Special categories of personal data, and personal data that may be used for the purpose of identity, theft or that would present another increased risk to the rights and freedoms of the data subjects are not processed.

In particular, the following criteria are considered in assessing the need for supplementary measures:

- The nature of the categories of personal data and the dangers to the rights and freedoms of the data subjects, as explained above.

- The legal framework in the third country where personal data is processed, namely the USA, in particular:
 - Protection against unlawful search and seizure of data in case of preventive and repressive law enforcement actions, which is more advanced than in most EU and EEA member states. Protective measures not available in the EU and the EEA include proceedings to suppress unlawfully collected evidence and effective protective measures to ensure that suppressed evidence is not presented to decision-making juries in lawsuits and criminal proceedings.
 - A judicial redress process available to data subjects and controllers. The judicial system does not preclude access to judicial redress by data subjects and controllers in case they wish to assert rights and remedies against improper processing by controllers and processors after an export.
 - A judicial redress process available in case of strategic collection of personal data. This judicial process is not conducted through public hearings, but its procedural and material requirements match those established in most EU and EEA Member States.
 - The availability of cross-border mutual legal assistance treaties which are not countermanded by legislation in the USA.
 - The compliance with existing cross-border mutual legal assistance treaties and conventions, like the Cybercrime Convention, including quick-freeze evidence preservation which does not preempt conducting a formal legal assistance procedure before data is made available.
- No conflicting caselaw which would indicate that controllers and processors in the USA are fundamentally unable to comply with the requirements of the Standard Contractual Clauses.

If objectively necessary, and requested, CSM is committed to providing reasonable assistance with a TIA which addresses additional and applicable specific questions.