

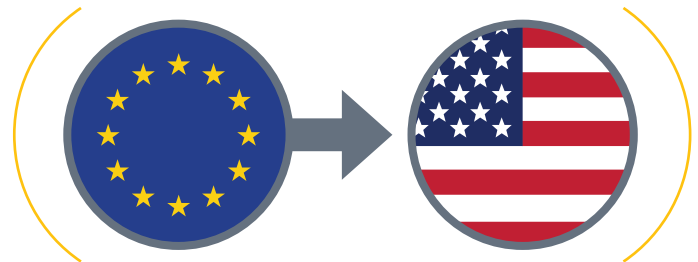


# GDPR and Cross-Border Data Transfers

If your company is a controller or processor under the GDPR (for US companies, [review this flowchart](#)), then your company must comply with the GDPR’s requirements regarding the transfer of personal data of EU individuals to any country outside of the EU/EEA.

In the absence of an adequacy decision (explained below) and subject to very limited exceptions, controllers and processors are required to ensure that an “appropriate safeguard” or another GDPR-approved mechanism is in place before sending personal data of EU individuals outside of the EU/EEA.

The table below describes the mechanisms commonly used to lawfully transfer personal data of EU individuals outside of the EU/EEA. A full list of the transfer mechanisms can be found in [Article 46](#).



*These requirements also apply to the transfer of personal data outside of the 3 EEA countries that are not in the EU (Iceland, Liechtenstein and Norway)*

Transfer Mechanism	Requirements	Advantages	Disadvantages
<b>Adequacy Decision</b>	<ul style="list-style-type: none"> <li>Transfer to a country (or sector within a country) on the European Commission’s (EC) approved list</li> </ul>	<ul style="list-style-type: none"> <li>No additional steps required (i.e., no requirement to put a contract in place)</li> </ul>	<ul style="list-style-type: none"> <li>EC periodically reviews these adequacy decisions and may not renew the decision</li> </ul>
<b>Binding Corporate Rules (BCRs)</b>	<ul style="list-style-type: none"> <li>Prepare BCRs, which are an intracompany code of conduct, and submit to DPA for approval</li> </ul>	<ul style="list-style-type: none"> <li>No additional steps required</li> <li>Can potentially transfer to many different countries not otherwise approved (particularly helpful for multinational companies)</li> </ul>	<ul style="list-style-type: none"> <li>Only covers intra-group transfers</li> <li>DPA approval is required</li> <li>Length of time for approval varies and is uncertain</li> </ul>
<b>Model Contractual Clauses (Model Clauses)</b>	<ul style="list-style-type: none"> <li>Include EC-approved Model Clauses in contracts for the transfer of data</li> </ul>	<ul style="list-style-type: none"> <li>Standard language</li> <li>Approved by the EC</li> </ul>	<ul style="list-style-type: none"> <li>EC may update or replace Model Clauses</li> <li>Current versions of Model Clauses are subject to court review (may be invalidated)</li> </ul>

Transfer Mechanism	Requirements	Advantages	Disadvantages
<b>EU-US and Swiss-US Privacy Shield</b>	<ul style="list-style-type: none"> <li>• Must comply with the Privacy Shield principles, such as transparency in data practices, accountability for transfer of data to third parties and maintenance of data security practices</li> <li>• Must also post a Privacy Shield-compliant privacy policy, implement an appropriate recourse mechanism, pay applicable fees, have compliance verification procedures in place, and have a designated contact person for Privacy Shield questions</li> </ul>	<ul style="list-style-type: none"> <li>• Relatively quick approval process</li> <li>• Fees to the Privacy Shield and the required payment to the arbitral fund are available on the Privacy Shield website and are based on annual revenue</li> </ul>	<ul style="list-style-type: none"> <li>• Only covers transfer from the EU to the US or Switzerland to the US</li> <li>• Must become Privacy Shield certified as a US business</li> <li>• Only allowed for businesses regulated by the US Department of Transportation or the US Federal Trade Commission</li> </ul>
<b>Derogations (see row below on consent – one type of derogation)</b>	<ul style="list-style-type: none"> <li>• Article 49 outlines a few instances where cross-border transfers are permitted in the absence of an adequacy decision or appropriate safeguards (like Model Clauses and BCRs)</li> </ul>	<ul style="list-style-type: none"> <li>• Allows for transfer in absence of adequacy decision or appropriate safeguard</li> </ul>	<ul style="list-style-type: none"> <li>• Reliance on a derogation is not without risk (and can be challenging to rely on in practice)</li> <li>• A company should conduct a careful analysis before opting to rely on a derogation</li> </ul>
<b>Consent from Individual</b>	<ul style="list-style-type: none"> <li>• Requires explicit consent from the individual authorizing cross-border transfer; must inform the individuals of possible risks of transfer due to absence of adequacy decision and appropriate safeguards</li> </ul>	<ul style="list-style-type: none"> <li>• Allows for transfer in absence of adequacy decision or appropriate safeguard</li> </ul>	<ul style="list-style-type: none"> <li>• Consent under the GDPR must meet very specific requirements</li> <li>• Requires detailed record keeping of obtained consent and specific disclosures needed</li> <li>• Requires internal processes and procedures in place</li> <li>• Individual can withdraw consent</li> </ul>

## Contact Us

If you have questions about the guidance or for additional information on the GDPR, contact [Orla O'Hannaidh](mailto:orla.ohannaidh@wbd-us.com) at [orla.ohannaidh@wbd-us.com](mailto:orla.ohannaidh@wbd-us.com) or +1 919.484.2339, [Taylor Ey](mailto:taylor.ey@wbd-us.com) at [taylor.ey@wbd-us.com](mailto:taylor.ey@wbd-us.com) or +1 919.484.2306, or [Becca Stringer](mailto:rebecca.stringer@wbd-uk.com) at [rebecca.stringer@wbd-uk.com](mailto:rebecca.stringer@wbd-uk.com) or +44 (0)113 290 4420, or [Matt Harris](mailto:matt.harris@wbd-uk.com) at [matt.harris@wbd-uk.com](mailto:matt.harris@wbd-uk.com) or +44 2380 20 8146, or any member of our [GDPR Compliance Task Force](#).

"Womble Bond Dickinson," the "law firm" or the "firm" refers to the network of member firms of Womble Bond Dickinson (International) Limited, consisting of Womble Bond Dickinson (UK) LLP and Womble Bond Dickinson (US) LLP. Each of Womble Bond Dickinson (UK) LLP and Womble Bond Dickinson (US) LLP is a separate legal entity operating as an independent law firm. Womble Bond Dickinson (International) Limited does not practice law. Please see [www.womblebonddickinson.com/us/legal-notice](http://www.womblebonddickinson.com/us/legal-notice) for further details.