

TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

Schrems II Decision: What You Need to Know

Wednesday, 22 July 2020 | 8.30 am to 9.30 am



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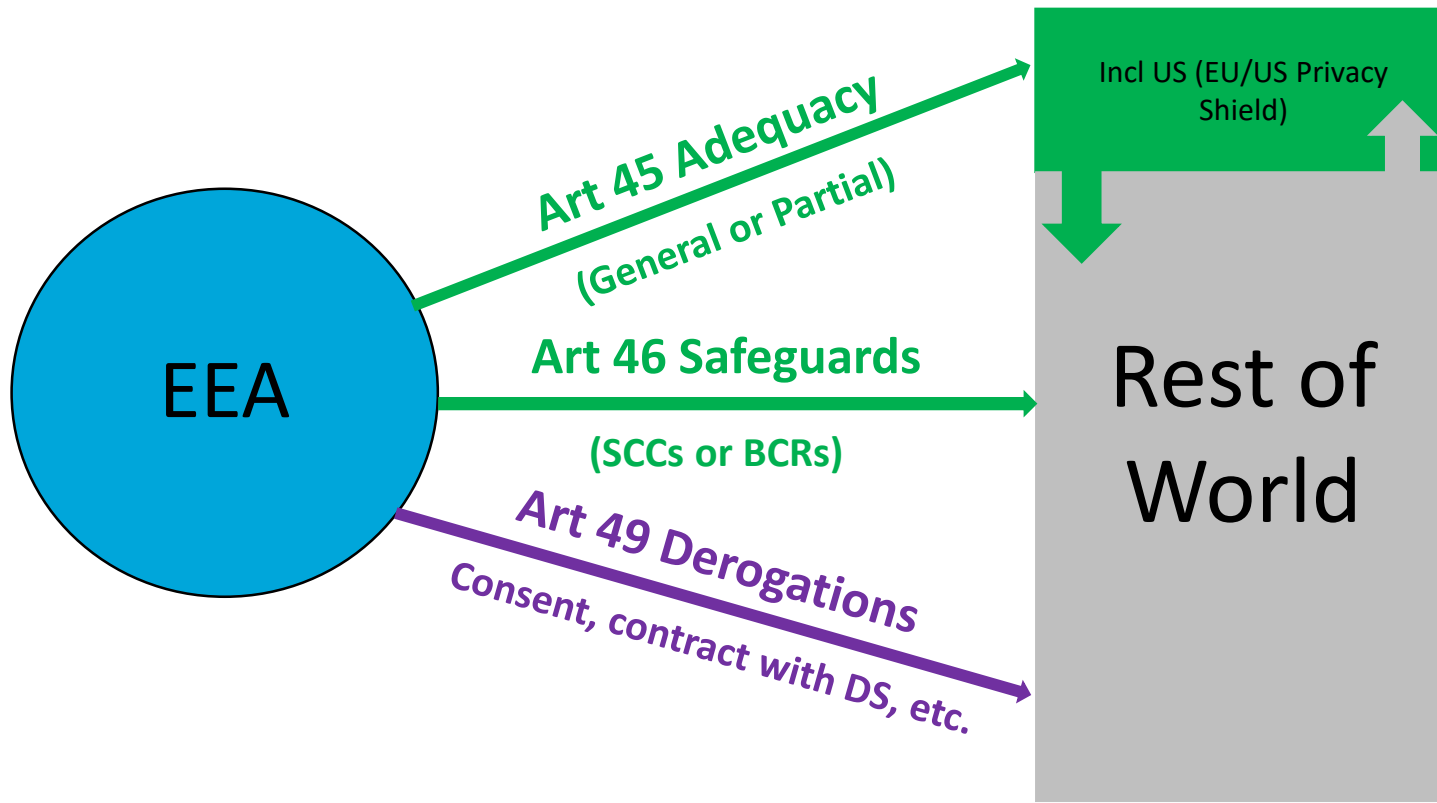
Schrems II Decision: What You Need to Know

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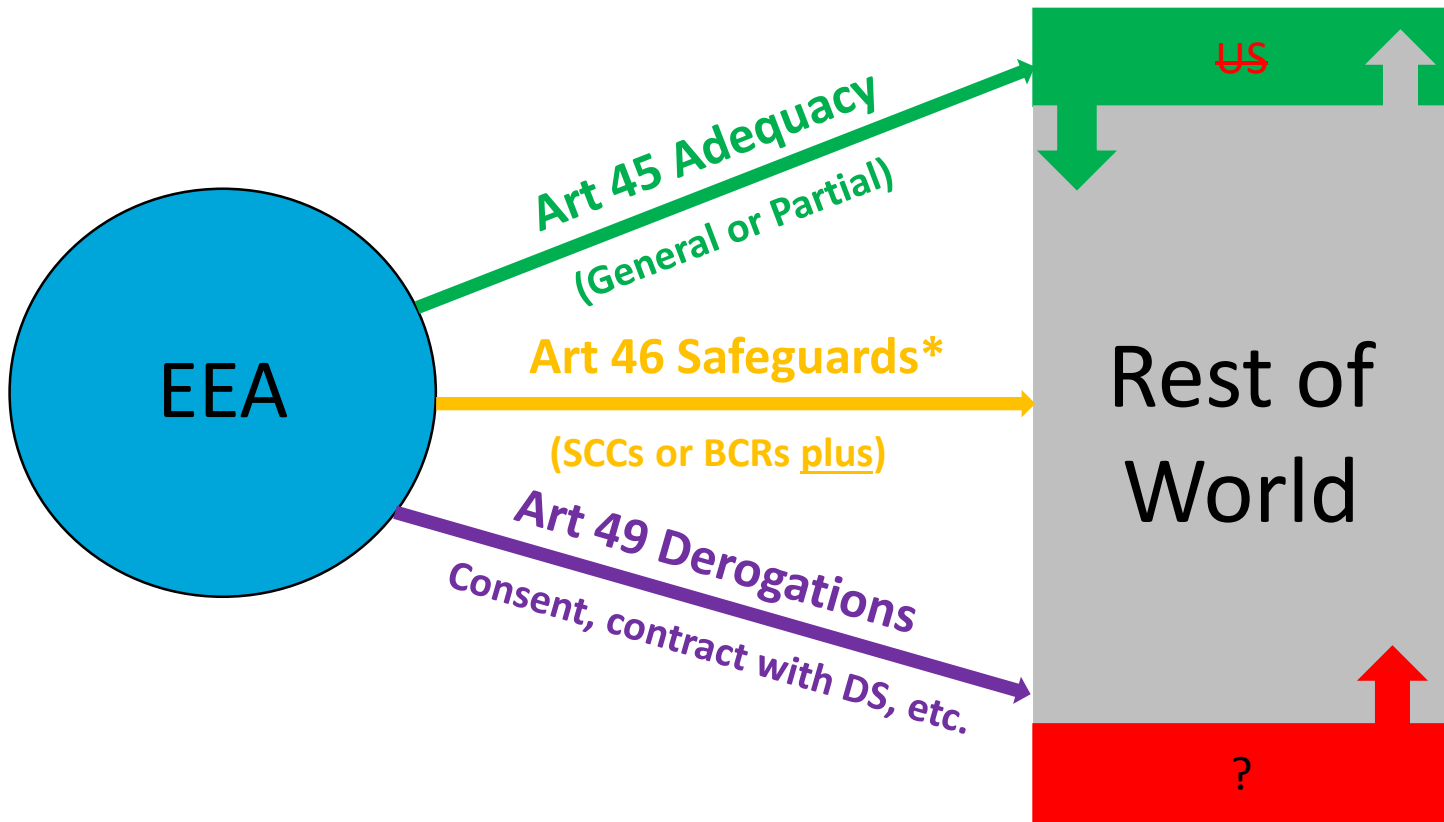
Adam Finlay, Partner



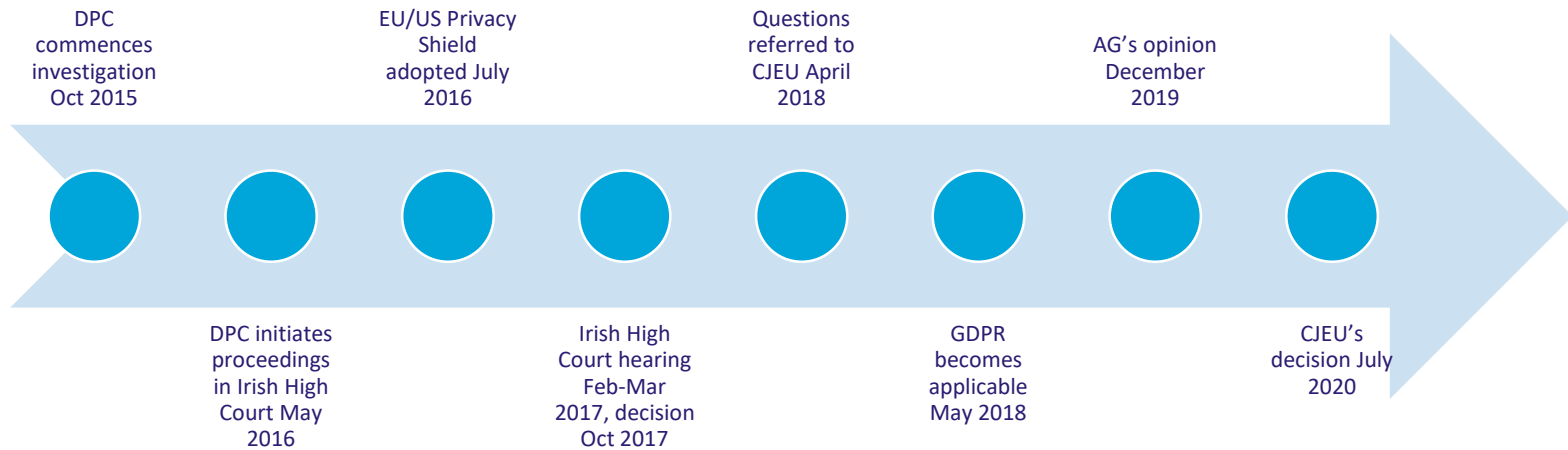
International Transfers – Main Methods pre-Schrems II



International Transfers – Main Methods post-Schrems II



Summary timeline



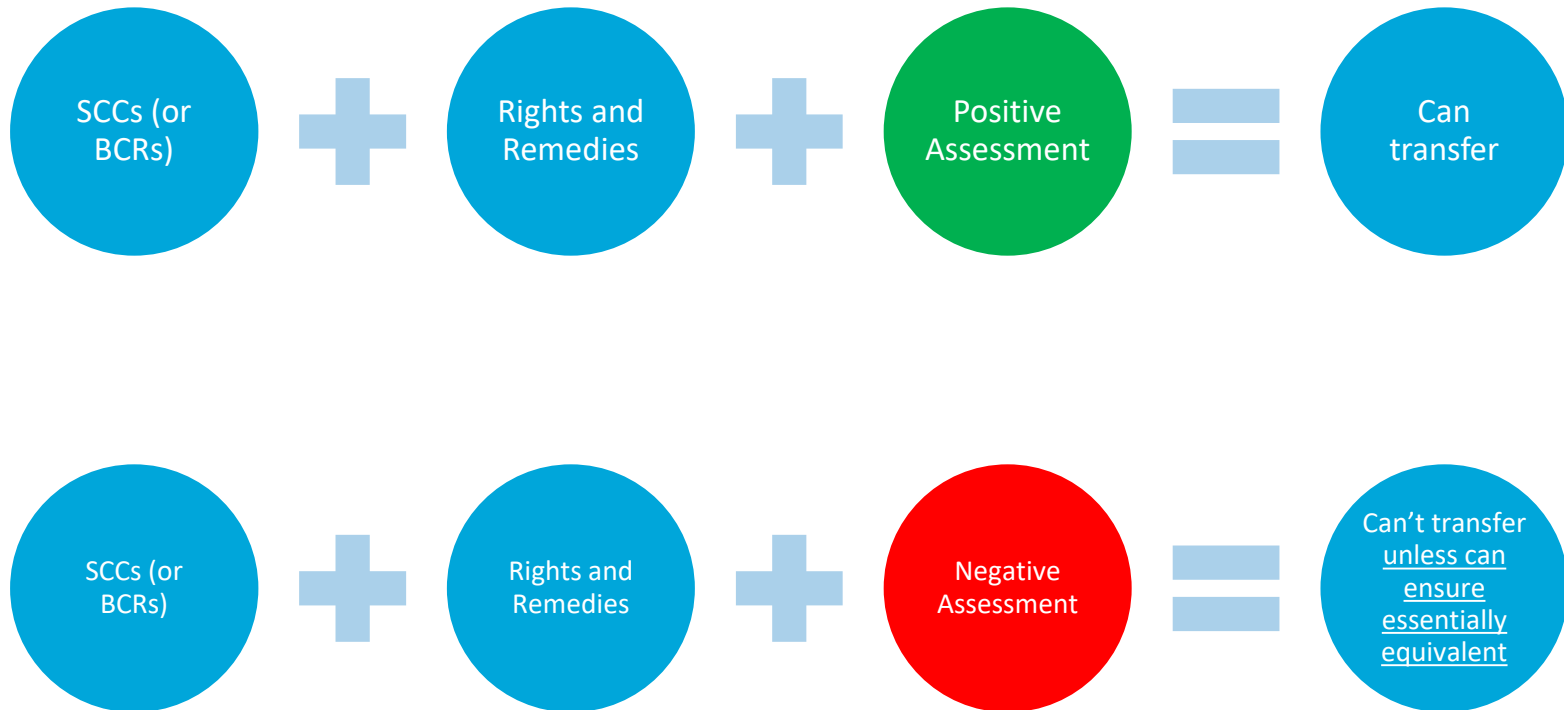
Main findings of Court

- EU/US Privacy Shield decision is invalid (based on specific U.S. surveillance laws and practices)
- SCCs are valid (in principle)
- When relying on ‘appropriate safeguards’:
 - must ensure essentially equivalent level of protection to the GDPR
 - SCCs (or BCRs), plus enforceable data subject rights and effective remedies, plus consideration of local laws governing access by public authorities in third country
 - If local laws are problematic, cannot transfer unless can ensure protection by other measures
- DPAs must suspend/prohibit transfers if SCCs are not/cannot be complied with and required level of protection cannot be ensured by other means

Article 46 pre-Schrems II



Article 46 post Schrems II



What's certain?

- Privacy Shield decision is invalid, no longer 'works' for EU to US transfers
- SCCs are valid and, in principle, can cover transfers of personal data anywhere
- When using SCCs, must be part of a package that amounts to essential equivalence
- DPAs will be obliged to suspend or prohibit transfers if they determine they are non-compliant

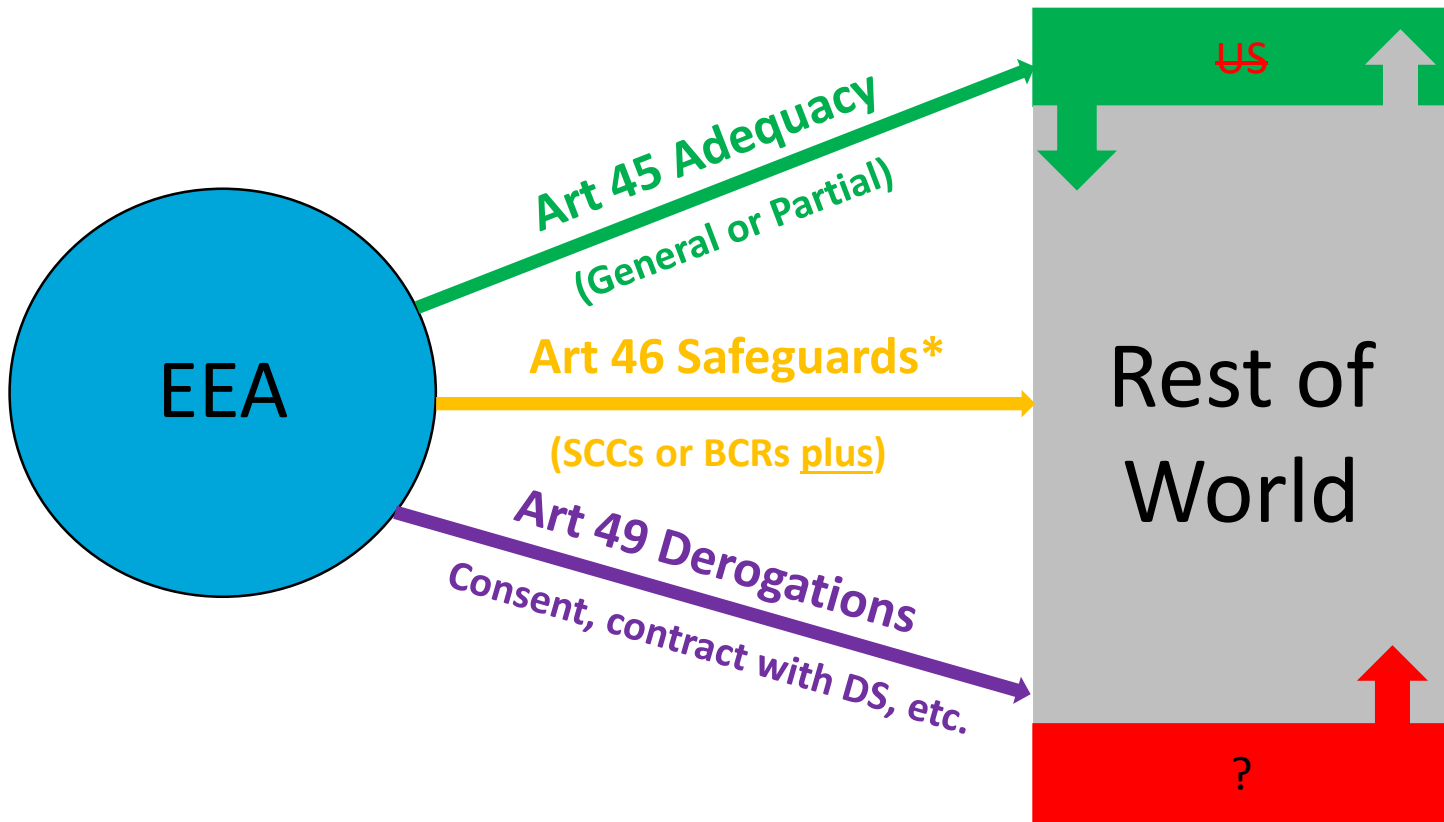
What's not certain?

- Transfers to the US:
 - Can EU-US transfers be based on SCCs?
 - Can EU-US transfers be based on BCRs?
 - Implications for UK-US and Switzerland-US transfers based on Privacy Shield
- Transfers to any third country without an adequacy decision:
 - What level of due diligence is required when relying on SCCs/BCRs?
 - What additional measures could be adopted to remedy deficiencies?
- Will there be a grace period?
- When will Commission release new SCCs? Will they make any difference?
- Would existing adequacy decisions (e.g. Israel, Canada (PIPEDA), etc.) withstand challenge?
- Implications for UK after Brexit transition period

Next steps

- Need detailed understanding of transfers out of EEA
 - Could they be reduced with minimal operational impact?
- Plug gaps left by EU/US Privacy Shield invalidation
- Consider assessment of destination countries and additional measures (if necessary) when relying on SCCs or BCRs
- Monitor guidance, enforcement and data subject activism
- Watch out for allocation of risk in contract negotiations
- Consider cost and timing of compliance in light of internal policies, risks, other demands on resources, etc.

International Transfers – Main Methods post-Schrems II



Questions?



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