



Work Better: How DLA Piper created a Schrems II tech solution in under a fortnight

By Hannah Gannage-Stewart 30 August 2022

The Schrems II decision was a key ruling by the Court of Justice of the European Union (CJEU), which declared that Privacy Shield, the EU-US personal data transfer mechanism, was no longer lawful.

The decision had significant impacts on EU-US data transfers and many organisations had to act speedily to update their programs to rely on alternative transfer mechanisms.

The DLA Piper privacy team realised quickly that the ruling had significant implications for clients and the team became aware that a solution was needed – fast.

The impact of Schrems II was particularly significant for organisations relying on globally hosted cloud-based services, those routinely processing sensitive transactional data and all multinational companies who share data across borders. The ruling made the process for companies and organisations to identify and address possible infringements extremely complex.

The decision reinforced the importance of data protection to global trade and the critical role played by data privacy experts. So, DLA's global privacy team immediately started to develop a solution, Transfer.

When personal data is sent from an EU country to a country that does not have a confirmed adequacy status for their level of personal data protection (known as a

third country), organisations must employ a transfer mechanism that demonstrates protection to the equivalent. This is what makes the data transfer legal.

Transfer, which had buy-in and budget from the firm's senior management team, was developed internally by data privacy lawyers from across the UK and Europe, including Italy, Ireland, France, Germany and Poland, and has been rolled out throughout the firm's European offices.

The project was led by intellectual property and technology partners Andrew Dyson (Leeds), Giulio Coraggio (Milan) and John Magee (Dublin), with lawyer and legal tech ambassador Tommaso Ricci coding the tool and user interface.

“In 2020, a major change to data protection rules prevented anyone sharing personal data outside the EU / UK, unless they could show to regulators evidence that data protection rights would be fully protected in the other country. Overnight, organisations had to start tracking their data flows and complete ‘transfer impact assessments’ for their transfers. An exercise that proved to be legally complex, time consuming and costly to get right; with high risk if not done properly, or at all”, Dyson explains.

“The ruling was particularly significant for global organisations who routinely share HR and customer data across their business worldwide, or those relying on



Andrew Dyson

cloud, SAAS, or outsourced service arrangements. The ruling established a new, cumbersome process that had to be followed before transferring data.”

It took just 12 days of intense collaboration after the Schrems II judgment to bring the tool to market. It was an incredibly short space of time to deliver such a product, but the benefits the team anticipated it would bring to clients drove them to succeed.

The lawyers involved were responsible for all steps of the process, from the identification of market need, the consideration of possible solutions, through to analysis of the opinion, the wording, and finally the coding of the tool.

“We are a team of lawyers who have turned our hand to designing, building, coding and then commercialising a product somewhat by accident. We certainly didn't have a grand plan at the beginning about where we would get to, or any professional project management support to get us here”, Dyson says. “It would certainly have been a lot easier

if we had that experience to draw on and there were definitely times I would have welcomed that support. That said, finding our way as we went was itself part of the experience which made it great fun, and gave us a level of freedom to evolve the product to where our clients wanted to take it.”

The team adopted a lean approach and dedicated approximately 100 hours to creating and refining the tool, including regularly reviewing and enhancing the assessment model to ensure it reflected the latest regulatory guidance. Furthermore, the team sought feedback from clients to further refine the tool and, where necessary, designed bespoke versions for clients' specific needs.

DLA created Transfer after market feedback indicated a significant amount of uncertainty around how to address the new obligations brought about by the Schrems II decision and how to efficiently access multijurisdictional legal advice.

The team designed a standardised data transfer methodology to help data exporters and importers logically assess the safeguards available when transferring personal data to particular third countries and whether they are adequate.

Transfer is an algorithmic tool with a methodology and scoring created after discussions with regulators. The methodology draws from the firm's global network with 65 prepopulated country modules.

The model considers key relevant factors including the regulatory regime in the countries where the data exporter and importer are based; the nature of the data that are being transferred; and the extent to which the laws in the destination country provide appropriate protection to data subjects.

This means taking account of the safeguards offered by local data privacy laws; the risks posed by wider laws authorising public authorities to access

or conduct surveillance on private information for national security and the ease of access to judicial process to protect personal rights; among other factors.

Transfer was also designed to produce an assessment report at the end of its analysis which complies with the key principles of GDPR accountability, again saving clients time and money relating to the issue of data transfer and security.

The hardest part of the project was developing a new product whilst simultaneously handling client demand and evolving regulatory standards”, Dyson recalls.

“There was great demand for a product and we launched a beta version very quickly, within weeks of the ruling, but then we had to evolve the logic as regulators matured their own approach. We were also keen to evolve the solution to respond to client feedback; we got a lot of requests to add functionality and content. It felt daunting to accommodate this all at once and it was tempting to draw a line once we had a basic working platform. But I am delighted we challenged ourselves to be bold, take a risk and develop those extra features. Including content for over 65 countries was a huge practical undertaking; whilst committing to an ongoing update service, when we were not sure about market demand felt like a big risk. I'm pleased with the results, as there are other similar products on the market, but it is the investment we made in these features which has given us a leading market position.”

The firm says the tool exceeded all expectations and has proven invaluable to a range of clients who have benefited from using it. It continues to be of huge interest to clients.

They have been able to benefit from dramatic time savings for example. What could take up several days of

conversations and assessments has now been reduced to under an hour. The benefit of having a single point of access to multijurisdictional advice is critical.

It has also removed decision-making based on gut feeling. Transfer provides an objective, quantitative approach which quickly informs the team on whether sufficient safeguards are in place to be able to proceed with a transfer of data.

There is now consistency in outcomes, not just between different internal stakeholders within a client organisation, but between different clients as well. Again, this can be attributed to the robust methodology and the list of questions that those using the tool are required to go through.

Transfer can be used for documentation generation purposes which is central for addressing one of the key principles of GDPR accountability. Following the Schrems II judgment, data exporters must not only properly assess risks connected with data transfers outside the EEA but also properly document a justification for the decision to proceed. The firm specifically designed the report to contain all the elements that are required in order to be robust in fulfilling this.

Dyson says the process of developing Transfer was invaluable in pushing the boundaries of innovation within the firm's internal processes. “We have developed new models for developing, building and maintaining a service that works for multiple clients, at scale; a break from the traditional ways of supporting individual clients on discrete with advisory matters. This has led us to create new ways of approaching sales, client onboarding, R&D and payments across our finance system. Learning which we are already looking to pass on to colleagues looking at other legal-tech enabled solutions to help our global clients.” Transfer has been used by more than 150 of the firm's clients to date.

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