

ForgeRock and the Schrems II Ruling

Introduction

At ForgeRock, our relationships with our customers (**you/your**) are built on transparency and mutual trust, and we prioritise your data privacy and security compliance obligations.

We recognise that the Court of Justice of the European Union (**CJEU**) ruling in the Schrems II case is causing confusion and concern for our customers with an EU data use case.

This document explains the steps ForgeRock has taken to enable the seamless, safe, and legal cross-border transfer of your personal data in accordance with EU and Swiss privacy requirements.

What is Schrems II?

Schrems II is the colloquial name for the CJEU ruling in the long-running 'data sovereignty' litigation in the Irish High Court between NOYB, Facebook, and the Irish Data Protection regulator. The Irish High Court referred the case to the CJEU, which expressed concern about the intelligence data programs run by the U.S. government under both Section 702 of the Foreign Intelligence Surveillance (Amendments) Act and Executive Order 12333. Accordingly, the court decided on 16 July 2020 that:

- **EU-U.S. Privacy Shield** was struck down as an Adequacy Mechanism (see below) because of the potential for U.S. surveillance laws that provide intelligence agencies with unfettered access to EU-originating personal data (**'EU Data'**).
- **EU Standard Contractual Clauses ('EU SCCs')** remain a valid Adequacy Mechanism for the 'exportation' of EU data to service providers based in a third country.
- **Additional compliance 'layers':** *Data Exporters* (i.e., you and other ForgeRock customers) will be required to undertake a formal assessment of the risk of the third country's data protection regime *failing* to protect EU Data to EU standards. The refreshed EU SCCs introduced since the Schrems ruling now obligate a Data Exporter to collaborate with a Data Importer (i.e., ForgeRock) with respect to preparing appropriate **Transfer Impact Assessments**.

Adequacy Mechanism: a reminder

The GDPR obligates a Data Exporter to employ an EU approved mechanism to protect EU Data when it is in the hands of a Data Importer (**'Adequacy Mechanism'**).

For example, in the context of a French bank looking to acquire ForgeRock Identity Cloud:

- ForgeRock will be deemed to be the Data Importer
- The Bank
 - will be deemed to be the Data Exporter; and
 - will be obligated to impose an Adequacy Mechanism on to ForgeRock to ensure that ForgeRock protects the Bank's EU Data to EU standards

The EU SCCs and Binding Corporate Rules are the predominant Adequacy Mechanisms available to Data Importers and Data Exporters.

The EU has also 'whitelisted' a number of countries (including Japan, New Zealand, UK, and Canada). Broadly speaking, this means that the EU deems the applicable data protection regimes equivalent to GDPR.

The UK has adopted the GDPR post Brexit. Broadly speaking, this means the same rules described above apply to the Data Exporters of UK-originating personal data.

What is Data Sovereignty?

The Schrems II case concerned, amongst other things, data sovereignty principles, which ensure that EU Data is always subject to EU law. Data Sovereignty is achieved via the Adequacy Mechanisms described above.

Data sovereignty does not mean that your EU Data cannot be accessed by U.S. technology service providers, such as ForgeRock. However, it does mean that you must comply with the cross-border data flow regulations contained in GDPR prior to giving EU Data access to the U.S. technology service providers.

How does the Schrems II ruling impact how we provide our services to you?

The brief answer to this question is the ruling does not impact how we provide our services to your organisation. This is because we did not previously register to the EU-U.S. Privacy Shield, relying instead on the EU SCCs.

We can confirm that we have never been issued a FISA directive for customer data by the U.S. government under section 702. Similarly, we are not aware of any intelligence gathering related to our services under EO 12333.

Further information about how we help you comply with your obligations arising from the Schrems II ruling is available [here](#).

How does ForgeRock help my organization comply with its data privacy obligations?

ForgeRock is acutely aware of commitments you have made to your customers and/or your consumers **and** your privacy law compliance obligations when you are either planning to buy and/or continuing to use ForgeRock products and services.

Accordingly, we have prepared a white paper explaining how we provide what you need to comply with your privacy law obligations in the context of buying and/or continuing to use ForgeRock services. It includes:

- Our data processing terms – including both EU and UK Standard Contractual Clauses;
- An explanation of our processing activities – including product data sheets;
- Transfer Impact Assessments for the data processing that we and our sub-processors undertake with respect to supporting our 'follow-the-sun' service delivery model.

Please click [here](#) for further details.

About ForgeRock

ForgeRock®, (NYSE: FORG) is a global leader in digital identity that delivers modern and comprehensive identity and access management solutions for consumers, employees and things to simply and safely access the connected world. Using ForgeRock, more than 1300 global customer organizations orchestrate, manage, and secure the complete lifecycle of identities from dynamic access controls, governance, APIs, and storing authoritative data – consumable in any cloud or hybrid environment. The company is headquartered in San Francisco, California, with offices around the world. For more information and free downloads, visit www.forgerock.com.

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