Cross-border transfers of personal data from Europe

A quick guide
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Legal background

The Data Protection Directive (95/46/EC) ("Directive") was developed in Europe to harmonise an array of national provisions and implement data protection regimes where they did not exist before.

Arguably, the Directive has resulted in the strongest data protection regime in the world. Indeed, the eighth data protection principle (on which this guide focuses) prevents data controllers from transferring personal data to countries that do not have “adequate protection”, with an assumption that any country located outside the EEA is not deemed “adequate”.

The Directive prohibits the transfer personal data outside of the EEA unless:

- one of the very limited exceptions apply. Exceptions include gaining the consent of the data subject (which is difficult to obtain in practice as it must be informed, voluntary and capable of revocation); or
- the data exporter has taken steps to ensure (to the satisfaction of the local data protection authority) that the recipient will provide adequate data protection.

It is the latter on which this guide will focus. We have considered the four most practical (and therefore commonly used) methods by which personal data can be transferred outside the EEA in compliance with the Directive:

1. **Standard Contractual Clauses ("SCCs")**

   These are sets of model contract clauses approved by the European Commission as providing an adequate level of protection. There are three forms of the SCCs which can be used depending on whether the recipient is a data controller or a data processor.

2. **Binding Corporate Rules ("BCRs")**

   These are binding codes of corporate conduct entered into by an organisation and approved by a data protection authority. BCRs can only be relied on in relation to transfers of personal data within one group of companies.
3. Safe Harbor Certification

Safe Harbor is a scheme set up by the EU and the United States as a method of making transfers to a company located in the US adequate. Individual companies who certify that they are compliant with the scheme (and are entered on the Safe Harbor register) are deemed to provide adequate data protection.

4. Adequate Countries

The European Commission has ruled that certain countries have an adequate level of data protection. These countries currently are: Andorra, Argentina, Australia, Canada, Faroe Islands, Guernsey, Isle of Man, Israel, Jersey, New Zealand, Switzerland and Uruguay.

Many member states have imposed further limitations on the transfer of personal data and require a notification or the prior approval of the data protection authority to any international transfer of personal data. There are countries which also have additional requirements for transferring personal data out of the home state but within the EEA. Multinational companies therefore need to negotiate a plethora of regimes in order to make one single transfer.

How to use this guide

Drawing on our experience of managing worldwide data transfer projects, we have picked a number of key questions that any organisation should consider when dealing with data transfers from 25 jurisdictions in Europe.

Please note that this guide is up to date as of February 2014, and laws are subject to change.

As terms vary in interpretation by country, where words appear in bold italics, please see our glossary for how we have used them in this guide.

We hope that this guide is helpful to you and that you enjoy reading it. Please contact us if you require any further information.
Your data protection team

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### Our international network

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### Best friend law firms

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### We have also partnered with data protection lawyers in the following countries:

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Austria

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Austria but within the EEA?

Sometimes. Registrations in Austria need to specify the recipients of personal data outside of Austria who are data controllers but not data processors. Note that a registration which includes sensitive personal data must be authorised by the DPA.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No.

What are the sanctions for non-compliance?

Criminal: Imprisonment of up to 1 year for intentional misuse of personal data to generate profit or cause harm. Any person who makes or facilitates decisions leading to a breach of data protection law may be charged.

Civil: The DPA can issue fines of up to €25,000 and has the power to request that personal data be returned to Austria.

And, did you know?

The body responsible for enforcing data protection laws is also responsible for enforcing car park fines.
Belgium

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Belgium but within the EEA?

Sometimes. Registrations in Belgium need to specify the categories of personal data that are transferred to other countries (with those countries specifically identified).

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- SCCs – No, as long as the registration covers the transfer.
- BCRs – Yes, BCRs must be ratified by an individual Royal Decree issued by the Ministry of Justice, following the opinion of the DPA.
- Safe Harbor certified recipient – No, as long as the registration covers the transfer.
- Adequate country – No, as long as the registration covers the transfer.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No, but an update to the registration may be required if it does not cover onward transfers in general.

What are the sanctions for non-compliance?

Criminal: (i) fines of up to €600,000; (ii) prohibition of processing; (iii) publication of judgment; (iv) order for erasure of the data.

Civil: (i) Compensation; (ii) prohibition of processing; (iii) publication of judgment; (iv) order for erasure of data.

And, did you know?

Companies who process health data are typically requested by the DPA to obtain the approval of the Health section of the Sector Committee of Social Security and Health to the processing of data.
Bulgaria

Key Facts

DPA:
Commission for Personal Data Protection (Комисия за защита на личните данни)

Relevant Law:
Personal Data Protection Act 2002

Local Registration Required?
✓

DPO Required?
✗

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Bulgaria but within the EEA?

Sometimes. Registrations in Bulgaria need to specify the recipients of personal data and the countries in which they are located. In practice, registrations can be made in broad terms.

What are the sanctions for non-compliance?

Civil sanctions only: fines of up to BGN100,000 can be imposed, and the DPA has the power to order the prohibition of the processing.

And, did you know?

Although Bulgaria is listed as recognising BCRs, the DPA has not issued any statement of approval or recognition of their status.

- **SCCs** – No, as long as the registration covers the transfer.
- **BCRs** – Yes, as the DPA does not currently recognise BCRs as a permissible basis of transfer.
- **Safe Harbor certified recipient** – No, as long as the registration covers the transfer.
- **Adequate country** – No, as long as the registration covers the transfer.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No.
Do you need to submit a filing to the DPA for an **initial transfer** of **personal data** outside of Cyprus but within the **EEA**?

Sometimes. **Registrations** in Cyprus need to specify the recipients (or categories of recipients) of **personal data** and state where **personal data** is transferred to other countries. In practice, **registrations** can be framed in broad terms.

Do you need to submit a filing to the DPA for an **initial transfer** of **personal data** outside of the **EEA**?

- **SCCs** – Yes, a request for **approval** from the **DPA** should be submitted.
- **BCRs** – Yes, a request for **approval** from the **DPA** should be submitted.
- **Safe Harbor certified recipient** – No, as long as the **registration** covers the transfer.
- **Adequate country** – No, as long as the **registration** covers the transfer.

Do you need to submit a filing to the DPA for an **onward transfer** of **personal data**?

Yes, a request for **approval** from the **DPA** should be submitted if the recipient is not located in an **adequate country** or **Safe Harbor certified**.

What are the sanctions for non-compliance?

**Criminal**: up to 1 year imprisonment and/or fine of up to €3,417.

**Civil**: (i) Enforcement notices; (ii) fines up to €30,000; (iii) revocation of licence; (iv) order for prohibition of **processing** and/or destruction of data.

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**And, did you know?**

An **approval** is only granted for a specific period of time, and needs to be renewed on expiration.
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the Czech Republic but within the EEA?

Yes, any transfer outside of the Czech Republic must be notified to the DPA.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- **SCCs** – Yes, a notification must be submitted to the DPA.
- **BCRs** – Yes, a notification must be submitted to the DPA. So far, the Czech DPA has not been asked to act as the main approving authority, but it is part of the mutual recognition club and is generally open to the use of BCRs.
- **Safe Harbor certified recipient** – Yes, a notification must be submitted to the DPA.
- **Adequate country** – Yes, a notification must be submitted to the DPA.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

Yes, a notification must be submitted to the DPA.

What are the sanctions for non-compliance?

- **Criminal**: natural persons (not data controllers) can be liable for a fine or imprisonment.
- **Civil**: the DPA can impose a fine up to 10 million Czech Koruna (approximately equivalent to €365,000.)

And, did you know?

A local registration is not strictly required by law for insurance companies because they are required to process personal data by the Insurance Act. However, in practice, a registration is usually made and in any event, would be required for processing which is not relevant to core insurance business (e.g. marketing).

The DPA maintains a public register on which it details the exact location of all data recipients notified by a data controller.
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Denmark but within the EEA?

Sometimes. Registrations in Denmark need to specify transfers of sensitive personal data or “semi-sensitive personal data” (see “And, did you know?” below) and be authorised by the DPA.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- **SCCs** – No, as long as the transfer is only of personal data. If the transfer is of sensitive personal data or semi-sensitive personal data, an update to the registration must be submitted, which requires authorisation by the DPA.

- **BCRs** – Yes, a request for authorisation from the DPA should be submitted.

- **Safe Harbor certified recipient** – No, as long as the transfer is only of personal data. If the transfer is of sensitive personal data or semi-sensitive personal data, an update to the registration must be submitted, which requires authorisation by the DPA.

- **Adequate country** – No, as long as the transfer is only of personal data. If the transfer is of sensitive personal data or semi-sensitive personal data, an update to the registration must be submitted, which requires authorisation by the DPA.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No.

What are the sanctions for non-compliance?

**Criminal:** Fines (up to DKK 25,000) and imprisonment for up to 4 months

**Civil:** The DPA can order return of the data, or give a time for rectification of the breach. Private rights of action exist in the courts: compensation can be claimed for any damage (economic and non-economic) unless it is established that such damage could not have been averted even if the sufficient diligence and care had been carried out.

And, did you know?

There is a special category of data in Denmark called “semi-sensitive personal data”. It includes information on serious social problems and other “purely private matters”. A local registration is only required for the processing of sensitive personal data or “semi-sensitive personal data”. However, the processing of sensitive personal data or “semi-sensitive personal data” in relation to financial institutions’ customers and claimants has been exempt from registration by Executive Order dated 9 May 2012.
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Finland but within the EEA?

No, as long as a registration is in place covering the categories of personal data and the processing purpose.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- SCCs – No, as long as the registration covers the transfer.
- BCRs – Yes. Finland is not part of the mutual recognition club, but the DPA has approved the use of BCRs in the past.
- Safe Harbor certified recipient – No, as long as the registration covers the transfer.
- Adequate country – No, as long as the registration covers the transfer.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No.

What are the sanctions for non-compliance?

Criminal: Fines or imprisonment of up to one year.

Civil: Compensation is available to a data subject for economic and other loss suffered by them due to processing in breach of the law. Also, at the request of the DPA, the Data Protection Board may prohibit processing of personal data which is contrary to the law, and compel a party to remedy the breach and impose provisional fines if the party fails to do so.

And, did you know?

Outsourcing arrangements need to be filed with the DPA. Blanket notifications stating that processing has been outsourced have previously been acceptable to the DPA.
France

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of France but within the EEA?

Yes. An update to the registration is required for all processing of personal data. This may require the authorisation of the DPA. Each processing purpose generally needs to be stated in specific terms.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

Yes, an update to the registration is required if the onward transfer is made by a data processor, and the recipient is outside the EEA.

What are the sanctions for non-compliance?

Criminal: Imprisonment of up to 5 years and a fine of up to €300,000 for natural persons and up to €1.5 million for corporate entities.

Civil: The DPA can impose fines of up to €150,000 for the first violation. In case of a second violation within 5 years, the fine may be up to the greater of €300,000 and (for corporate entities) 5% of turnover. The DPA also has the power to temporarily suspend the processing operation for a maximum of 3 months.

And, did you know?

The DPA recently fined Google the maximum civil penalty for first time offenders (€150,000) for failure to remedy its privacy policy.

Key Facts

DPA:

French Data Protection Commission (Commission Nationale de l'Informatique et des Libertés - “CNIL”)

Relevant Law:

French Data Protection Act 1978, as amended by law 2004-801 of 6/4/04 (last amended by Ordinance No 2011-1012 (Cookies))

Local Registration Required?

✓

DPO Required?

✗
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Germany but within the EEA?

No, but the approval of the DPO must be obtained.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- SCCs – No, but the approval of the DPO must be obtained.
- BCRs – Yes, the approval of the DPA is required. Germany is part of the mutual recognition club and has acted as lead DPA on a number of occasions.
- Safe Harbor certified recipient – No, but the approval of the DPO must be obtained.
- Adequate country – No, but the approval of the DPO must be obtained.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No, but the approval of the DPO must be obtained.

What are the sanctions for non-compliance?

**Criminal:** (i) Fines of up to €300,000; (ii) imprisonment for up to 2 years.

**Civil:** Damages are available.

And, did you know?

Every private entity that employs more than nine people **processing personal data** electronically or 20 people **processing personal data** in manual records is obliged to appoint a DPO. Having a DPO waives the requirement to register with the DPA.

The DPO acts as an extension of the DPA and it is the DPA (rather than his employer) to whom he owes a duty.
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Greece but within the EEA?

Sometimes, Registrations in Greece need to specify the recipients of personal data, the countries to which personal data is transferred and the purpose of the transfer. In practice, this can be framed in broad terms.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No.

What are the sanctions for non-compliance?

Criminal: Fines of up to €15,000. Imprisonment for up to 3 years (reduced to 1 year if no sensitive personal data is involved).

Civil: Fines between €880 and €147,000. The DPA may also order the destruction or return of a data file or ban the processing. There is also a private right of action in the civil courts, but damage awards to date have been low.

And, did you know?

Local registration is more onerous where a data controller is processing sensitive personal data. In this case, the data controller must apply for a “licence” from the DPA. The “licence” will be granted for a specified period of time, depending on the processing purpose, and must be renewed as required.
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Hungary but within the EEA?

Yes, registrations in Hungary need to specify the countries to which personal data is transferred, the recipients of the personal data, and the processing purpose. Any update to a registration will require authorisation.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

Yes, SCCs – Yes, an update to the registration must be submitted, which will require authorisation.

BCRs – This option is not available in Hungary, as the DPA does not currently recognise the use of BCRs.

Safe Harbor certified recipient – Yes, an update to the registration must be submitted which will require authorisation.

Adequate country – Yes, an update to the registration must be submitted which will require authorisation.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

Yes, an update to the registration must be made, which will require authorisation.

What are the sanctions for non-compliance?

Criminal: Imprisonment for up to one year, or two years for the misuse of sensitive personal data. Legal entities can be prosecuted under the Act on Measures Applicable to Legal Entities and the court can order winding up of the entity, limiting the activities of the entity, or impose a fine (the maximum fine is equal to three times the amount of the financial advantage gained or intended to be gained through the criminal act, and at least 500,000 Forints (approx. USD 2,500). Civil: The DPA can issue cease and desist orders requiring the deletion of data or the return of data from outside the EEA. Failure to comply could result in a fine by the DPA of up to €35,000.

And, did you know?

Only data controllers in certain industries (such as financial institutions; telecommunications service providers and public utility companies) must have a DPO.
Ireland

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Ireland but within the EEA?
No.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- **SCCs** – No, as long as the registration lists the country to which personal data is being transferred.
- **BCRs** – No, unless the Irish DPA is the lead authority.
- **Safe Harbor certified recipient** – No, as long as the registration lists the country to which personal data is being transferred.
- **Adequate country** – No, as long as the registration lists the country to which personal data is being transferred.

What are the sanctions for non-compliance?

**Criminal**: For transfers of personal data without an appropriate legal ground – maximum fine of €3,000 on summary conviction. On indictment, the maximum penalty is €100,000. Failure to register as a data controller or processor is also an offence, which carries the same penalties. On conviction of an offence, the court may also order the destruction, deletion or forfeiture of any personal data that is connected with the commission of the offence.

**Civil**: The DPA can issue enforcement notices, requiring steps for compliance. The DPA can also issue prohibition notices which prohibits the transfer of personal data outside of Ireland. It is an offence to fail to comply with either notice without reasonable excuse.

And, did you know?

Data processors (as well as data controllers) are obliged to maintain a registration with the DPA in Ireland.
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Italy but within the EEA?

No.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- SCCs – No.
- BCRs – Yes, a request for approval from the DPA must be submitted.
- Safe Harbor certified recipient – No.
- Adequate country – No.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No.

What are the sanctions for non-compliance?

**Criminal:** No criminal sanctions apply if a transfer is made without an appropriate ground. Criminal sanctions do apply where incorrect information is deliberately given to the DPA. This is punishable by imprisonment for 6 months to 3 years, unless the offence is more serious.

**Civil:** The civil sanction for proceeding without an appropriate ground is a fine of between €20,000 and €120,000.
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Luxembourg but within the EEA?

Sometimes. Registrations in Luxembourg need to specify the recipients of personal data (or categories of recipients) and the country in which they are located. In practice, these can be framed in broad terms.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- SCCs – Yes, a request for approval from the DPA should be submitted.
- BCRs – Yes, a request for approval from the DPA should be submitted (if the BCRs have been approved by another member of the mutual recognition club, this approval will be automatic).
- Safe Harbor certified recipient – No, as long as the registration covers the transfer.
- Adequate country – No, as long as the registration covers the transfer.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No, but onward transfers to recipients as a group (e.g. medical professionals, accountants) should be specified in the relevant registration/request for approval.

What are the sanctions for non-compliance?

Criminal: Failure to register and/or obtain approval where required can result in imprisonment for 8 days to 1 year, and/or a fine of €251 to €125,000.

Civil: The DPA may take out an injunction, but cannot impose financial penalties. Data subjects may also bring an action for damages before the courts.

And, did you know?

There is an exemption to the registration duty for data controllers who have appointed a DPO. Only DPOs accredited by the DPA qualify for this exemption.
Malta

Key Facts

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Malta but within the EEA?

Yes, a notification must be submitted.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- **SCCs** – Yes, a request for approval from the DPA should be submitted.
- **BCRs** – Yes, a request for approval from the DPA should be submitted (even though Malta is part of the mutual recognition club).
- **Safe Harbor certified recipient** – Yes, a notification must be submitted.
- **Adequate country** – Yes, a notification must be submitted.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No, if the initial transfer was made on the basis of the SCC.

However, where any other ground was used for the initial transfer:

- If the onward transfer recipient is located in an adequate country – a notification of transfer must be submitted;
- If the onward transfer recipient is not located in an adequate country – a request for approval from the DPA should be submitted.

What are the sanctions for non-compliance?

**Criminal:** None. Criminal sanctions for breach of data protection legislation were removed in 2012.

**Civil:** The DPA may impose a fine of up to €23,000 for each violation, and €2,500 for each day that the violation exists. A data subject also has the right to bring an action against a data controller for damages suffered as a result of a breach of data protection legislation.

And, did you know?

Whilst there is no obligation to appoint a DPO, if you do so, you must notify the DPA.
Netherlands

Key Facts

DPA:
Dutch Data Protection Authority (College Bescherming Persoonsgegevens)

Relevant Law:
Dutch Personal Data Protection Act 2001

Local Registration Required?
✔

DPO Required?
✖

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the Netherlands but within the EEA?
No, as long as the registration specifies the recipients in general terms (there is no need to identify the individual recipients or the countries to which transfers are made by name).

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- SCCs – No.
- BCRs – No, unless the Netherlands DPA is the lead authority. The Netherlands is part of the mutual recognition club.
- Safe Harbor certified recipient – No.
- Adequate country – No.

Do you need to submit a filing to the DPA for an onward transfer of personal data?
No.

What are the sanctions for non-compliance?

Criminal: Failure to notify the DPA where required or the submission of an incomplete registration can be subject to a maximum fine of €7,800. If the breaches were intentional, the fine can be up to €19,500, plus imprisonment of 6 months.

Civil: Failure to notify the DPA where required or the submission of an incomplete registration can be subject to a fine of €4,500.

And, did you know?

It is the courts, not the DPA, that can impose criminal sanctions. However, to date, they have never done so.
Norway

Key Facts

DPA:
Data Inspectorate (Datatilsynet)

Relevant Law:
Personal Data Act 2000; Personal Data Regulation 2000

Local Registration Required?
✓

DPO Required?
✗

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Norway but within the EEA?

No.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- **SCCs** – Yes, a request for approval from the DPA should be submitted.
- **BCRs** – Yes, a request for approval from the DPA should be submitted (even though Norway is part of the mutual recognition club).
- **Safe Harbor certified recipient** – No.
- **Adequate country** – No.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No.

What are the sanctions for non-compliance?

**Criminal**: Unspecified fine and/or imprisonment not exceeding 1 year (max 3 years in particularly aggravating circumstances).

**Civil**: Fines of up to €100,000 can be imposed. The most common sanction by the DPA is an order to rectify the breach in the future. **Data subjects** also have a private right of action.

And, did you know?

There is no legal obligation to appoint a DPO. However the appointment of a DPO can provide an exception to certain registration requirements.
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Poland but within the EEA?

Sometimes. Registrations in Poland need to specify the recipients of personal data and the countries to which transfers are made. If the registration includes sensitive personal data it must be authorised by the DPA.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

Yes. All recipients of personal data originating from Poland need to be approved. However the DPA has indicated in recent decisions that it does not need to grant approval for onward transfers where the initial transfer is to a data controller.

What are the sanctions for non-compliance?

Criminal: Fines from €30 to €190,000, or imprisonment of up to 3 years. Criminal liability can be borne by the management of the organisation, the data security officer (see “And, did you know?” below) and any person who processes personal data for the organisation.

Civil: The DPA can order the suspension of data processing, but it cannot impose fines or penalties. The DPA has a large range of control mechanisms to check compliance. The DPA can also order the data controller to cease transfer of personal data to any third countries and require its return to Poland. If this is not complied with, the DPA can fine (usually €11,600 per breach, up to €52,000). Data subjects also have a private right of action in the courts.

And, did you know?

Although we have stated that a DPO must be appointed, in fact, the requirement in Poland is actually for a “data security officer” who must supervise compliance with security measures.
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Portugal but within the EEA?

Sometimes. Registrations in Portugal need to specify the recipients of personal data and the countries to which transfers are made. In practice, these can be framed in broad terms. If the registration includes sensitive personal data it must be authorised by the DPA.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- **SCCs** – Yes, an update to the registration is required, which must be authorised if it contains sensitive personal data.
- **BCRs** – Yes, an update to the registration is required, which must be authorised if it contains sensitive personal data. (Use of BCRs have not been approved by the Portuguese DPA, and therefore a separate authorisation is required).
- **Safe Harbor certified recipient** – Yes, an update to the registration is required, which must be authorised if it contains sensitive personal data.
- **Adequate country** – Yes, an update to the registration is required, which must be authorised if it contains sensitive personal data.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No, if the initial transfer is to a data controller.

Yes, if the initial transfer is to a data processor. An update to the registration should be submitted, which must be authorised if it includes sensitive personal data.

What are the sanctions for non-compliance?

**Criminal:** The DPA can impose fines and up to 2 years’ imprisonment. Criminal liability can attach to any individual that legally represents the company and is involved in the decision to carry out the illegal transfer of personal data.

**Civil:** The DPA can issue fines of up to €30,000, as well as issuing orders to block or delete the data, ban processing or issuing public announcements of their decisions.

And, did you know?

The DPA usually takes around 6-8 months to respond to an authorisation request and processing should not begin until authorisation is received.
Romania

Key Facts

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Romania but within the EEA?

No, as long as the registration covers the transfer in broad terms.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- **SCCs** – Yes, an update to the registration is required, which must be authorised by the DPA.
- **BCRs** – This option is not available in Romania, as the DPA does not currently recognise the use of BCRs.
- **Safe Harbor certified recipient** – No, as long as the registration covers the transfer in broad terms.
- **Adequate country** – No, as long as the registration covers the transfer.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

Yes. The local registration must be updated in broad terms. It is sufficient to state in the registration that personal data is to be subject to an onward transfer and list the countries in which the recipients are located (without listing individual recipients).

What are the sanctions for non-compliance?

**Criminal**: Imprisonment or fines. Other sanctions include the winding up of the organisation, the closure of the organisation or certain aspects of the organisation, and the suspension of one or more activities performed by the organisation.

**Civil**: Fines of up to RON 10,000 (approximately €2,300) for failure to update the registration before transferring personal data to another country, filing an incomplete registration or filing a registration containing false information. The DPA can also order the temporary suspension of processing data subjects also have a private right of action to claim for material and moral damages.

And, did you know?

Any changes which affect the accuracy of the registration filed with the DPA should be notified within 5 days of the change. However, the DPA accepts registrations that are broader than the scope of the actual data processing, to avoid the need for regular changes. There are 2 steps in the filing procedure. First, an electronic submission is made. This is then followed by a signed paper copy which must be filed within 30 days.
Slovakia

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Slovakia but within the EEA?

Sometimes. Registrations in Slovakia need to specify the recipients of personal data within the EEA in broad terms.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- SCCs – No, as long as the registration covers the transfer in broad terms.
- BCRs – Yes. The law is not clear therefore it is advisable that authorisation is sought.
- Safe Harbor certified recipient – No, as long as the registration covers the transfer in broad terms.
- Adequate country – No, as long as the registration covers the transfer in broad terms.

In addition, if the transfer is to a data controller and includes sensitive personal data, the data subject’s prior written consent to the transfer is required.

Transfers to data processors do not need consent, subject to securing adequacy using one of the methods above.

Note that, in all circumstances, an international transfer can only take place if a “Slovak data processing agreement” is in place. The Slovak Act requires this to include specific information – see below for details.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No, as long as it is covered by the registration in broad terms.

What are the sanctions for non-compliance?

Criminal: Imprisonment for up to eight years may be imposed on a natural person. Fines of between €800 - €1,660,000 may be imposed on a legal entity. Other penalties such as order for suspension of processing may also be imposed.

Civil: The DPA may impose a fine of up to €300,000 and may also publicise the breach. Data subjects also have private rights of action in the courts. Since 1 July 2013, the imposition of a fine by the DPA for breach of the Slovak Act has been mandatory.

And, did you know?

Slovak Data Processing Agreements must contain: identification data of the parties, the date on which the data processor is entitled to commence processing of personal data in the name of the data controller, the purpose of the processing, name of the filing system, list of personal data/extent of personal data to be processed, group of data subjects, a declaration by the data controller regarding their selection of data processor, the data controller’s consent to using each sub-processor, the terms of the agreement and date of execution and signatures of the parties.
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Spain but within the EEA?

No, as long as the registration covers the types of recipient and purposes of the transfer in broad terms.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- **SCCs** – Yes, a request for approval from the DPA should be submitted.
- **BCRs** – Yes, a request for approval from the DPA should be submitted (even though Spain is part of the mutual recognition club).
- **Safe Harbor certified recipient** – No, as long as the registration covers the transfer.
- **Adequate country** – No, as long as the registration covers the transfer.

In any case, when an approval from the DPA is necessary, it is possible to avoid it by obtaining the consent of the data subject to the particular international transfer of data.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

If the onward transfer is inside the EEA – no, as long as the registration covers the transfer.

If the onward transfer is outside of the EEA – no, as long as the registration and the approval previously obtained covers the transfer.

What are the sanctions for non-compliance?

**Criminal**: Failure to register and/or obtain DPA approval does not result in criminal sanctions.

**Civil**: The DPA can issue fines up to €600,000. Data subjects also have the right to pursue a civil action in the court. The DPA is willing to impose fines on organisations in breach of data protection laws. In December 2013, the Spanish DPA fined Google €900,000 (€300,000 for 3 separate offences).

And, did you know?

There is no blanket requirement in Spain for organisations to appoint a DPO, but organisations handling personal data which is “medium” or “high” security should appoint a Head of Data Security.
Key Facts

DPA:
Data Inspection Board (Datainspektionen)

Relevant Law:
Personal Data Act 1998; Personal Data Ordinance

Local Registration Required?

x

DPO Required?

x

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Sweden but within the EEA?

Yes, a notification must be submitted to the DPO or the DPA as applicable.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- SCCs – Yes, a notification must be submitted to the DPO or DPA as applicable.
- BCRs – Yes, the DPA has not signed up to the mutual recognition club and therefore approval is required.
- Safe Harbor certified recipient – Yes, a notification must be submitted to the DPO or DPA as applicable.
- Adequate country – Yes, a notification must be submitted to the DPO or DPA as applicable.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

Yes, onward transfers should be included in the notification to the DPA or DPO as applicable.

What are the sanctions for non-compliance?

Criminal: Fines up to SEK 200,000 (approx €23,000), and imprisonment for up to 6 months, and 2 years in case of a serious violation.

Civil: The DPA can order return of the data. Data subjects can bring an action for compensation through the courts for damage caused by a breach of the Personal Data Act.

And, did you know?

Whilst having a DPO is not a legal requirement, the appointment of a DPO (and notification of the appointment to the DPA) relieves the organisation of the obligation to register with the DPA. Instead, the DPO has to maintain an internal register of the processing that the data controller carries out.
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of Switzerland but within the EEA?

No, as long as the registration specifies the categories of recipient.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- **SCCs** – Yes, a notification must be submitted, but once a basis of transfer has been notified once, it does not need to be notified again.
- **BCRs** – Yes, a notification must be submitted.
- **Safe Harbor certified recipient** – Yes, a notification must be submitted, but once a basis of transfer has been notified once, it does not need to be notified again.
- **Adequate country** – No, as long as the registration covers the transfer.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

Yes, onward transfers by category should be included in the notification to the DPA. In practice these can be framed in broad terms.

What are the sanctions for non-compliance?

**Criminal**: Individuals can be subject to a fine of CHF 10,000 if they wilfully fail to provide information regarding international transfers or to register data files or provide false information.

**Civil**: Data subjects have a right of action against the data controller. The data subject may request that the processing is stopped, and the data corrected or destroyed. The data subject can also seek damages and reparation for moral damages, or for surrender of profits based on the violation of his privacy.

**And, did you know?**

Whilst having a DPO is not a legal requirement, the appointment of a DPO (and notification of the appointment with the DPA) relieves the organisation of the obligation to register its data files.

Switzerland operates its own Safe Harbor Framework with the USA, which mirrors the US-EU Safe Harbor Framework.
Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the UK but within the EEA?

No.

Do you need to submit a filing to the DPA for an initial transfer of personal data outside of the EEA?

- SCCs – No.
- BCRs – No.
- Safe Harbor certified recipient – No.
- Adequate country – No.

Do you need to submit a filing to the DPA for an onward transfer of personal data?

No.

What are the sanctions for non-compliance?

Criminal: There is no criminal sanction in the UK for proceeding with a transfer without an appropriate ground/registration.

Civil: The DPA has the power to force organisations to provide information, issue undertakings to ensure compliance, carry out audits and assessment, and can issue monetary penalty notices for up to £500,000 for serious breaches of the DPA. Data subjects also have a right of action in the courts for losses caused by breach of the Data Protection Act, however currently the data subject much prove a tangible loss, rather than distress alone.

And, did you know?

The rules regarding whether a data subject is entitled to compensation for moral damages (distress) arising out of a breach of the Data Protection Act may be subject to change in the future, as a case regarding the issue is due to be brought in the High Court this year.
# Glossary

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<th><strong>adequate country</strong></th>
<th>A country that:</th>
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<td>• is within the <strong>EEA</strong>;</td>
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<td>• has ratified the Convention for the protection of individuals with regarding to automatic <em>processing</em> of <strong>personal data</strong> and whose legislation thus guarantee sufficient protection of <strong>personal data</strong>. These countries are currently: Albania; Bosnia; Herzegovina; Montenegro; Georgia; Croatia; Iceland; Liechtenstein; Macedonia; Norway; Serbia; and Switzerland.</td>
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<td>• has been deemed to provide adequate protection of <strong>personal data</strong> by the European Commission. As at February 2014, these countries are: Andorra; Argentina; Australia; Canada; Faeroe Islands; Guernsey; Isle of Man; Israel; Jersey; New Zealand; Switzerland; and Uruguay.</td>
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| **approval** | A submission of information to the **DPA** (or where applicable, the **DPO**) detailing the proposed transfer of **personal data**. A response from the **DPA** (or where applicable, the **DPO**) is required before the transfer can commence. **Approved** is used accordingly. |

| **authorisation** | Please see **registration** below. **Authorised** and **authorise** are used accordingly. |

| **BCRs** | Binding Corporate Rules - internal rules adopted by multinational group of companies which define its global policy with regard to the international transfers of **personal data** within the same corporate group. |

| **data controller** | A company, organisation or person who decides what **personal data** is collected, the purposes for which it is used and how that **personal data** is handled. |

| **data processor** | Any party who **processes personal data** on the instruction of the **data controller** |

| **data subject** | The person about whom **personal data** relates. |

| **DPA** | The data protection authority in the relevant jurisdiction. |
| **DPO** | Data Protection Officer. |
| **EEA** | The European Economic Area. |
| **filing** | A generic term meaning submitting a **Registration, Notification** or request for **Approval** of transfer, as applicable, to the **DPA**. |
| **initial transfer** | A transfer of **personal data** from the initial **data controller** exporter to a third party importer (either a **data controller** or a **data processor**). |
| **mutual recognition club** | A ‘club’ whose members have agreed to accept approval of the lead **DPA** to a company’s **BCRs** as a sufficient basis for providing their own national permit or authorisation for the **BCRs**.  
As at February 2014, 21 countries are part of the **mutual recognition club**: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Iceland, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Slovakia, Slovenia, Spain, and the United Kingdom. |
| **notification** | A submission of information to the **DPA** detailing the proposed transfer of **personal data**. **Approval** is not required but it may or may not be the case that a specified period of time must pass before the transfer can commence. **Notified** and **notify** are used accordingly. |
| **onward transfer** | A further transfer of **personal data** from the initial importer to another third party importer (either a **data controller** or a **data processor**). |
| **personal data** | Data from which you can identify a living individual. |
| **process** | Anything and everything which can be done with **personal data**, including collection, using, disclosing, updating, storing, transferring or accessing. **Processing** is used accordingly. |
| **registration** | An entry on the register of the DPA detailing the *data controller’s processing of personal data*. In certain countries, the DPA’s “authorisation” of the registration may be required. |
| **Safe Harbor certified recipient** | A company which has been certified as complying with the US-EU Safe Harbor requirements (which have been deemed by the European Commission to provide an adequate level of data protection). Note that for Switzerland, this term shall be construed to mean the Swiss-EU Safe Harbor requirements. |
| **Sensitive personal data** | This is a sub-set of *personal data*, and consists of information relating to –  
  - racial or ethnic origin,  
  - political opinions,  
  - religious beliefs or other beliefs of a similar nature,  
  - trade union membership,  
  - physical or mental health or condition,  
  - sexual life,  
  - the commission or alleged commission any offence, or  
  - any proceedings for any offence committed or alleged to have been committed, and any verdict and sentence. |
| **SCC** | The Standard Contractual Clauses approved by the European Commission as a contractual mechanism for providing adequate data protection. |
This alert is intended to provide general guidance only and is not a substitute for legal advice.

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