

Tuesday 28th July 13:00 - 14:00

# IMPLICATIONS FOR UK BUSINESSES OF THE SCHREMS II CASE (PRIVACY SHIELD AND SCC)



<https://markgraceygdpr.co.uk>



## MARK GRACEY GDPR

- Began working in the internet industry in the mid-90s when I joined Demon Internet to help set up their commercial web sales and support team
- Set up one of the UK's first network abuse teams (for Demon Internet) dealing with complaints and misuse of the internet
- 15+ year career in internet regulation dealing with everything from internet content liability to data protection and police liaison
- I've worked with the government on behalf of the internet industry and advised the House of Lords on internet policy matters as well as influencing the outcomes of a number of pieces of legislation
- In June 2017 set up the Digital Compliance Hub, now Mark Gracey GDPR, a subscription-based support service, offering a data protection and privacy compliance helpline (email and phone) backed up by a library of resources including guides, checklists, tools and templates as well as access to webinars and other compliance tools. We also offer outsourced DPO services and pay-as-you-go support.

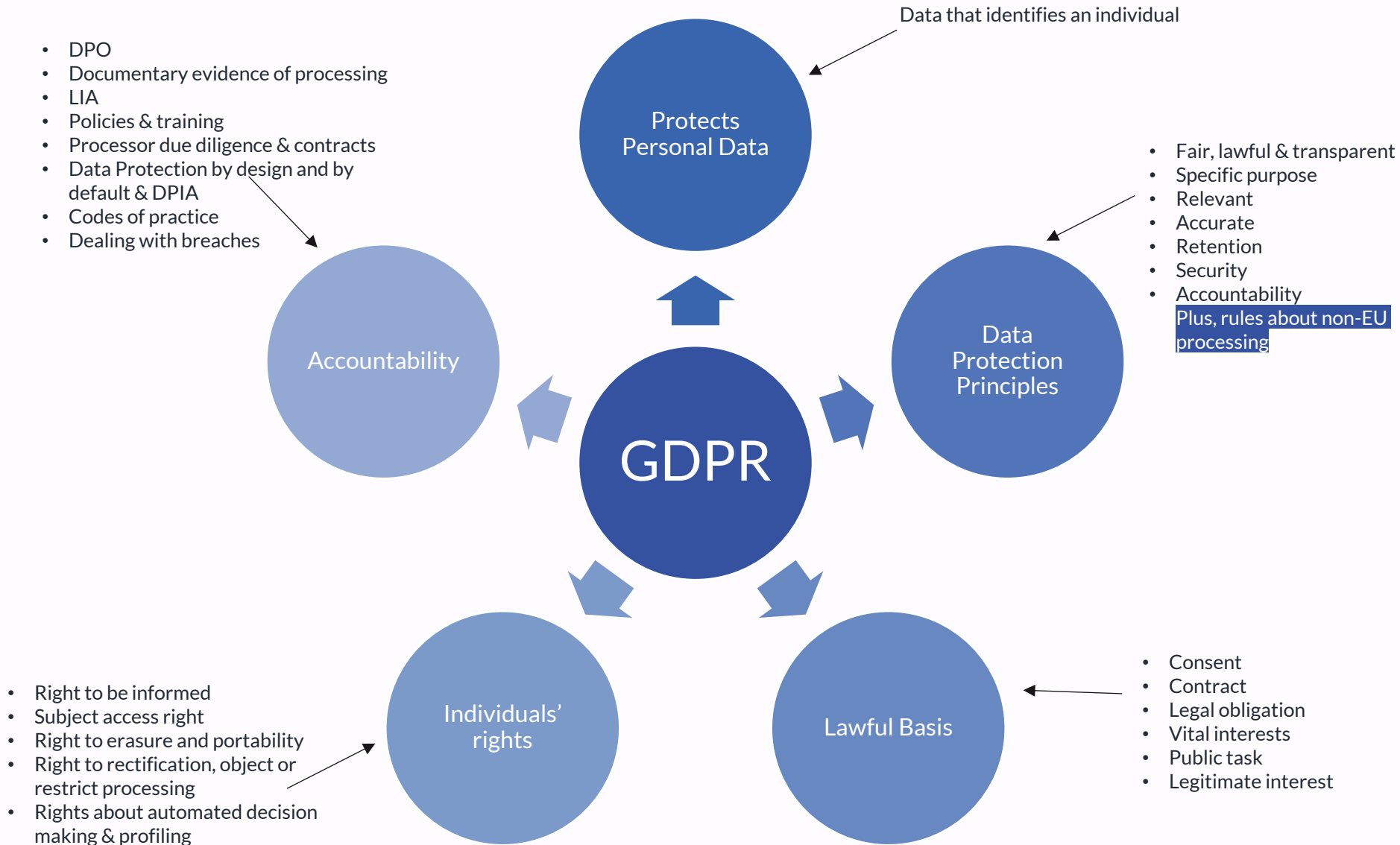
## RELEVANT EXPERIENCE

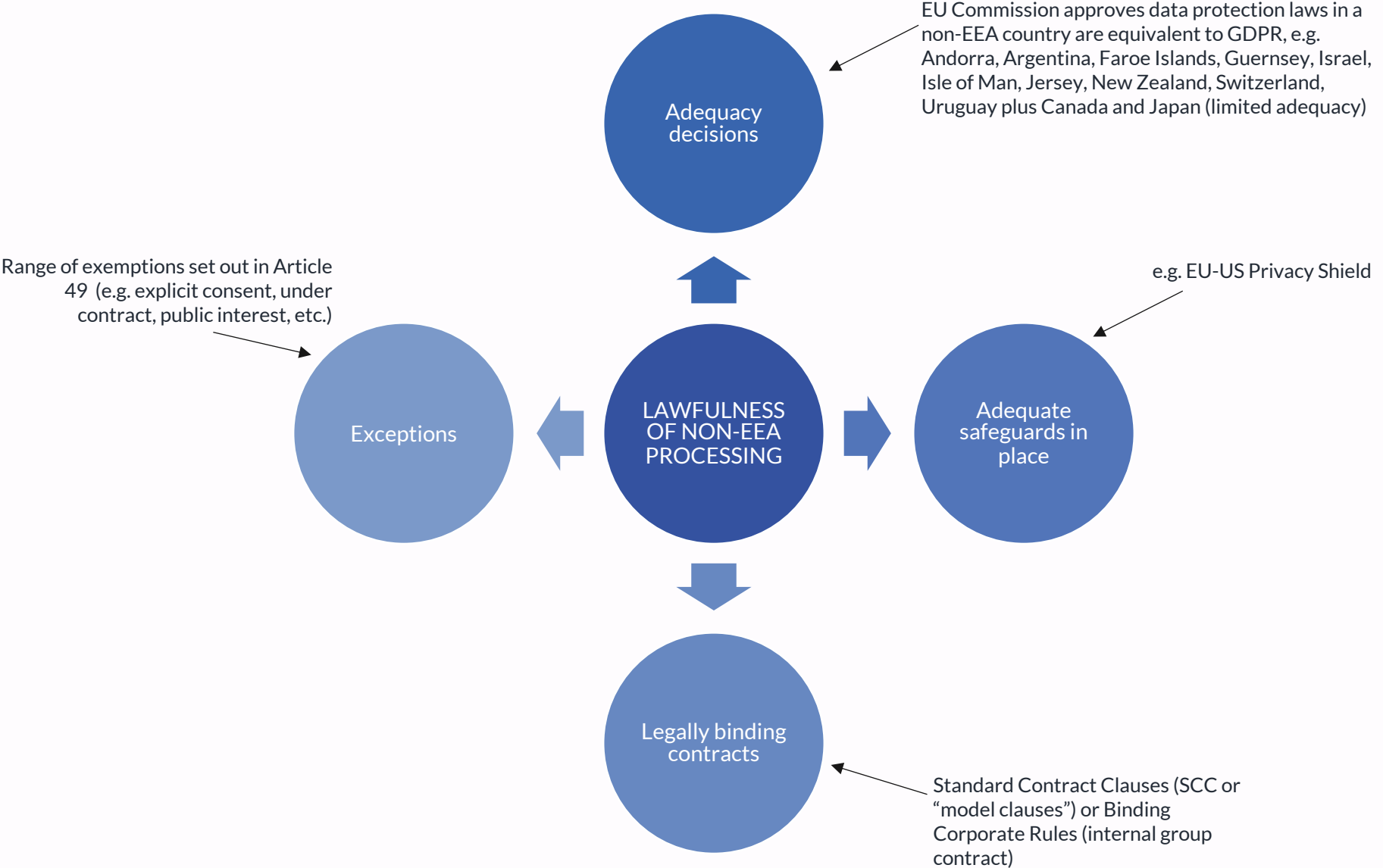
- Became a Data Protection Manager when the 1998 Act came into force, ensuring ongoing compliance as well as working with government and law enforcement with access to communications data and issues with data retention
- Computer Science Degree & Masters Degree in Computer and Communication Law

## WHAT WE'LL BE COVERING

- GDPR & restricted transfers background
- The Schrems II case and the CJEU court case
- What this means in practice
- The future of non-EEA data transfers
- Q&A

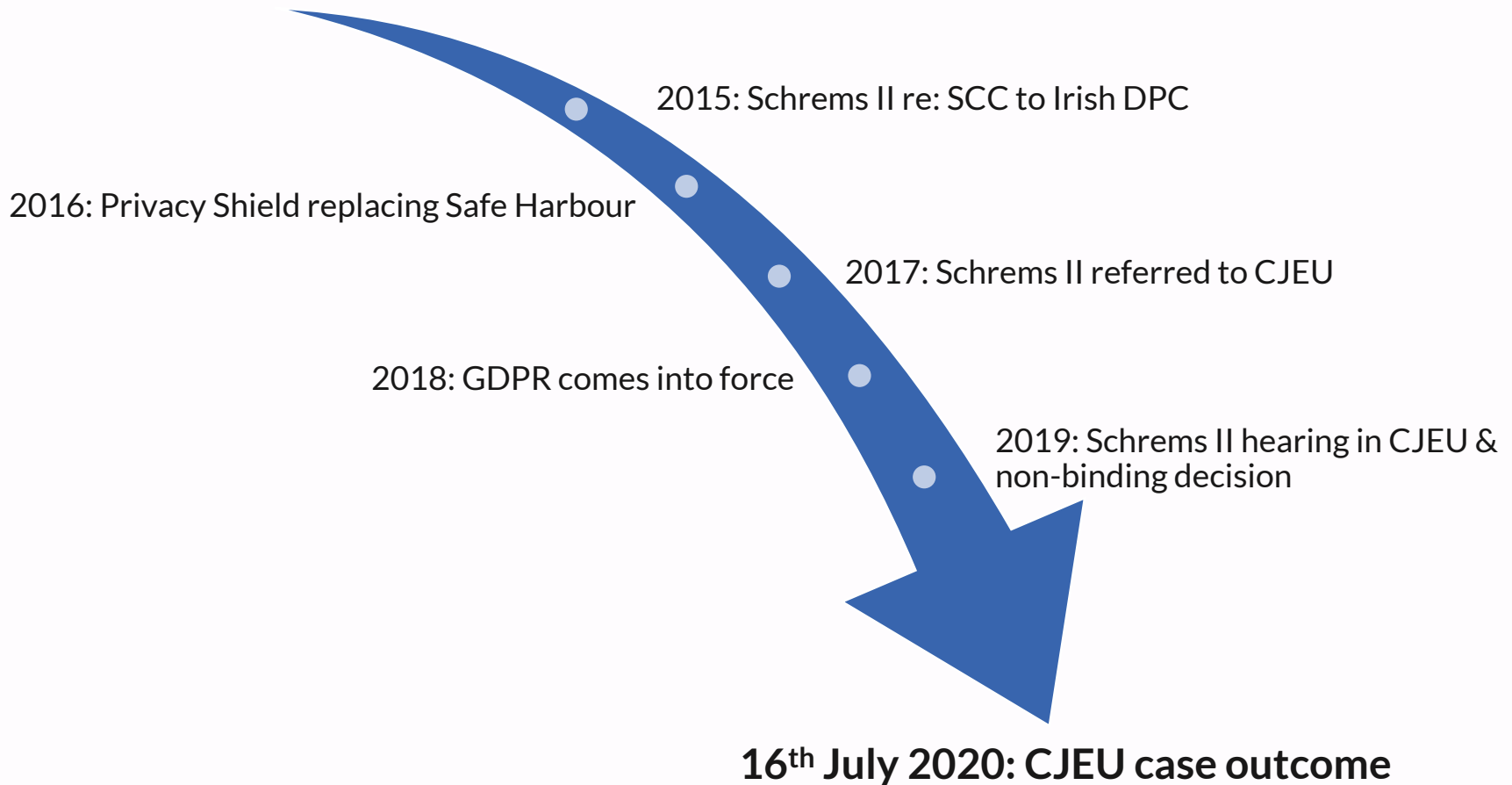
# GDPR AND RESTRICTED TRANSFERS OVERVIEW





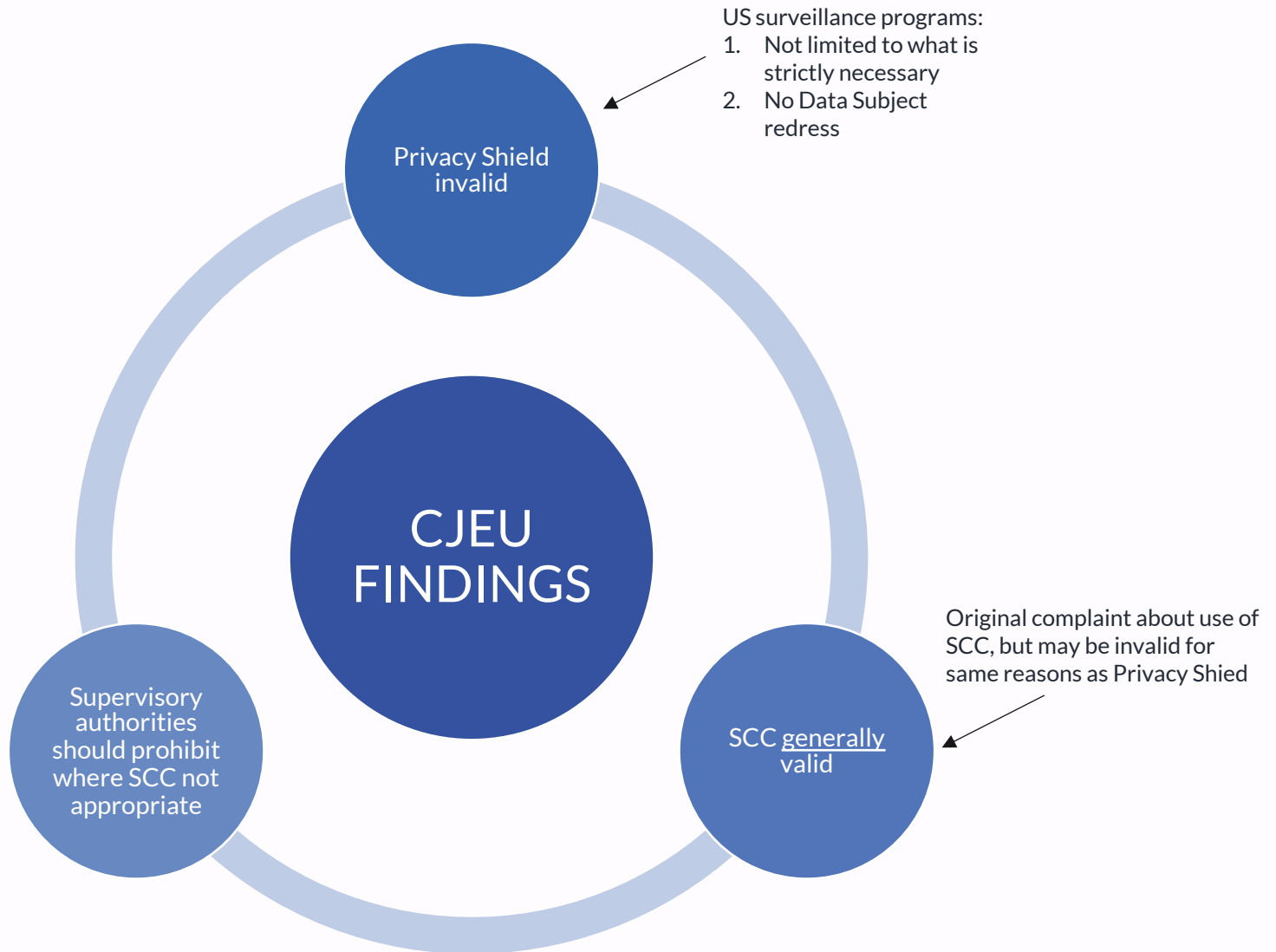
# SCHREMS II

2013-2015: Schrems I (Safe Harbour invalidated)



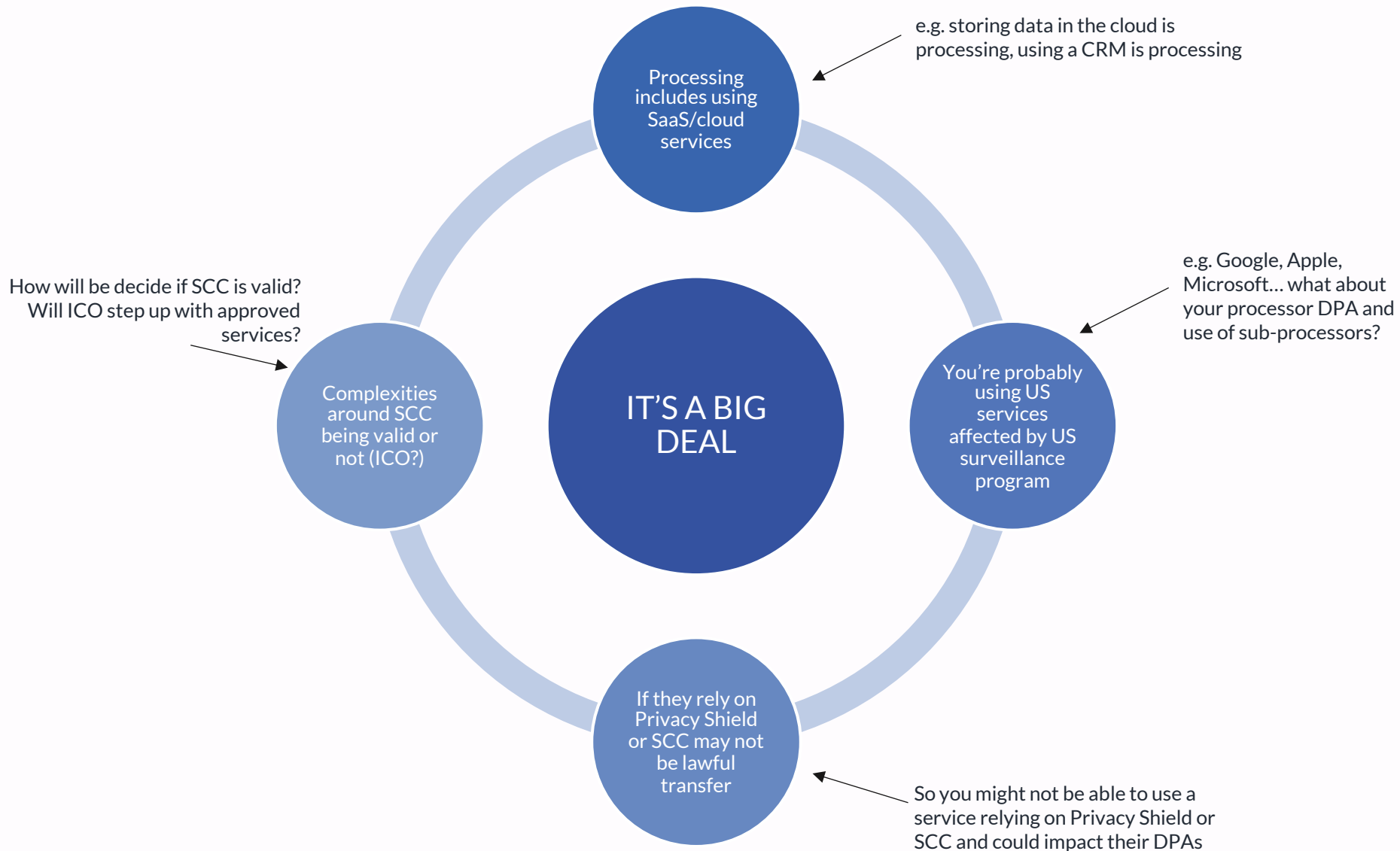


# OUTCOME FROM SCHREMS II



# WHY THIS IS A BIG DEAL

# WHAT THIS MEANS IN PRACTICE



# WHAT WE KNOW SO FAR



*The CJEU has confirmed how EU standards of data protection must travel with the data when it goes overseas, which means this judgment has wider implications than just the invalidation of the EU-US Privacy Shield. It is a judgment that confirms the importance of safeguards for personal data transferred out of the UK.*

*The European Data Protection Board (EDPB) has now issued its FAQs on the invalidation of the Privacy Shield and the implications for the Standard Contractual Clauses (SCCs), and this guidance still applies to UK controllers and processors.*

*Further work is underway by the European Commission and EDPB to provide more comprehensive guidance on extra measures you may need to take. In the meantime you should take stock of the international transfers you make and react promptly as guidance and advice becomes available.*

*The EDPB has recommended that you must conduct a risk assessment as to whether SCCs provide enough protection within the local legal framework, whether the transfer is to the US or elsewhere. The receiver of the data may be able to assist you with this.*

*The judgment says that supervisory authorities have an important role to play in the oversight of international transfers. We are therefore taking the time to consider carefully what this means in practice. We will continue to apply a risk-based and proportionate approach in accordance with our Regulatory Action Policy.*



1

Keep a watch for any new guidance from the ICO and EDPB

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2

Identify the locations of where you are processing your data (including any SaaS providers) and identify if you're relying on Privacy Shield and/or SCC

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3

Make contact with your suppliers to see what they're currently saying

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If you can choose where in the world your data is hosted, choose the EU or UK (if UK based)

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5

See if your Processors will be offering a solution (they may be rolling out locally hosted data)

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Where possible stop using any processors who solely rely on Privacy Shield

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7

Where SCC are being relied on (anywhere in the world), carry out risk assessment on likelihood of national law "trumping" the SCC

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8

Where no apparent solution decide whether you will find an alternative (probably EU) processor and move your data, or take the risk, pending ICO advice

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9

If you're UK based, be mindful of Brexit implications (possible difference between ICO and EDPB approach?)

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10

Document your findings, outcomes and decisions – evidence of your risk assessment and compliance approach

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- *“First, we want to reassure our customers that they can continue using Mailchimp lawfully and don’t need to take any action. We have long provided our customers with two layers of protection for data transfers from the EU to the US in our Data Processing Addendum: compliance with the EU-US Privacy Shield Framework and Standard Contractual Clauses (SCCs). While the ruling from the CJEU invalidated the Privacy Shield Framework, it doesn’t affect the SCCs, which remain a valid data export mechanism. Our agreements are structured in a way that the SCCs automatically take effect, so nothing will change for our customers.” (MailChimp, 16<sup>th</sup> July)*
- *“On July 16, 2020, the Court of Justice of the European Union (CJEU) issued a ruling invalidating the EU US Privacy Shield Framework, but upholding the validity of EU Model Contract Clauses (MCCs), also known as Standard Contractual Clauses. Both of these mechanisms were created for the lawful transfer of personal data from the European Union (EU) to countries outside of the EU under the EU Directive, and then the EU’s General Data Protection Regulation (GDPR). Given the CJEU has upheld the MCCs, it is important to know that your use of G Suite and Google Cloud Platform meets GDPR’s standards for transfer of personal data outside of the EU.” (Google, 17<sup>th</sup> July)*
- *“We want to be clear: if you are a commercial or public sector customer, you can continue to use Microsoft services in compliance with European law. The Court’s ruling does not change your ability to transfer data today between the EU and U.S. using the Microsoft cloud. For years we have provided customers with overlapping protections under both the Standard Contractual Clauses (SCCs) and Privacy Shield frameworks for data transfers. Although today’s ruling invalidated the use of Privacy Shield moving forward, the SCCs remain valid. Our customers are already protected under SCCs.” (Microsoft, 16<sup>th</sup> July)*
- *“The good news is that we were prepared for this – transfers of HubSpot customer data from the EU are already covered by the SCCs. Since the GDPR went into effect in 2018, our Data Processing Agreement (DPA), which is incorporated into our Customer Terms of Service, has included both the Privacy Shield and SCCs as the legal mechanisms to transfer customer data from the EU. This ensured that our customers had multiple options for secure data transfers. Although the Privacy Shield will no longer be relied on going forward, the SCCs automatically apply and ensure that data is safely transferred from the EU, so our customers and partners can continue to use HubSpot without disruption.” (Hubspot, 16<sup>th</sup> July)*

# HERE TO HELP





## GDPR DIY

- Online resources
- Fixed fee for support
- Step-by-step guides
- Policy templates
- Alerts & updates



## GDPR HELPLINE

- Unlimited support
- Online resources
- Alerts & updates



## GDPR DPO

- Unlimited support
- Online resources
- Hands-on help
- Reviews
- Training
- Reports



## GDPR PAYG

- Pay-as-you-go
- By the hour support
- Compliance reviews
- Privacy policies
- For start-ups
- Website compliance
- Training

Practical GDPR & ePrivacy support and advice whenever you need it

TO FIND OUT MORE: <https://markgraceygdpr.co.uk/services/>

## Sign up to our forthcoming webinars and training:

- 30<sup>th</sup> July: How to prepare for a no deal GDPR Brexit (FREE)  
<https://markgraceygdpr.co.uk/training/how-to-prepare-for-a-no-deal-gdpr-brexit/>
- 4<sup>th</sup> August: Article 13 Club Online Meet-up – more on Schrems II (FREE)  
<https://markgraceygdpr.co.uk/training/article-13-club-online-meet-up-august-2020/>
- 6<sup>th</sup> August: GDPR implications for the “new normal” for your business (FREE)  
<https://markgraceygdpr.co.uk/training/gdpr-implications-for-the-new-normal-for-your-business/>
- From 7<sup>th</sup> August: Restart of the GDPR Weekly Workout 10 week programme (£££)  
<https://markgraceygdpr.co.uk/gdpr-workout/>

# TIME FOR YOUR QUESTIONS & DISCUSSION



Mark Gracey GDPR

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