

Contents

<i>Foreword by Rosemary Jay</i>	viii
<i>Foreword by Christopher Kuner</i>	x
<i>About the author</i>	xi
<i>Preface</i>	xii
<i>Acknowledgements</i>	xiv
<i>List of abbreviations/glossary</i>	xv
<i>Table of cases</i>	xxi
<i>Table of legislation</i>	xxiv
1 Background	1
1.1 Introduction	1
1.2 Cloud computing	2
1.3 Outline, scope and reasons	6
1.4 Terminology and references	10
1.5 DPD and GDPR: summary	12
1.6 The Restriction – overview	19
1.7 Summary	23
2 Legislative history and objectives	24
2.1 Introduction	24
2.2 Historical overview: export controls	24
2.3 Objective: compliance with substantive Principles	43
2.4 Protection – countries vs controllers/recipients?	56
2.5 Summary	67
3 The ‘transfer’ concept	69
3.1 Introduction	69
3.2 The meaning of ‘transfer’	71
3.3 Transit	74
3.4 Websites: mechanics	76
3.5 Websites: <i>Lindqvist</i>	78
3.6 <i>Lindqvist</i> – unanswered questions	82
3.7 ‘Transfers’ in cloud computing	91

3.8	The way forward?	117
3.9	Summary	122
4	Assumptions	125
4.1	Introduction	125
4.2	Assumptions regarding processor use	126
4.3	Assumptions behind the Restriction	130
4.4	Data location	131
4.5	Access to data	134
4.6	Countries' effective jurisdiction	143
4.7	Power/responsibility of countries to ensure adequacy	147
4.8	Export restrictions	149
4.9	Summary	150
5	Mechanisms and derogations	152
5.1	Introduction	152
5.2	Assessing 'adequate protection'	153
5.3	Safe Harbour and Privacy Shield	162
5.4	Adequate safeguards and authorizations	187
5.5	Derogations	213
5.6	Onward transfers: issues	216
5.7	GDPR, Mechanisms and cloud	220
5.8	Summary	222
6	Compliance and enforcement	226
6.1	Introduction	226
6.2	Ubiquity of transfers	227
6.3	Non-compliant transfers?	229
6.4	Enforcement of the Restriction	236
6.5	Summary	259
7	Access and security	261
7.1	Introduction	261
7.2	Security for compliance	274
7.3	Unauthorized intelligible access	289
7.4	Unauthorized use/disclosure by Authorized Persons	292
7.5	Access by authorities	303
7.6	Summary	315
8	Summary and recommendations	318
8.1	Introduction	318
8.2	Legislative aims	318

8.3	'Transfer' and jurisdiction	320
8.4	Mismatch between the Restriction's assumptions and reality	323
8.5	Allowing transfers	325
8.6	Problems of enforcement	328
8.7	Achieving the legislative aims – access and security	329
8.8	Recommendations	331

<i>Appendix: comparative table of key DPD and GDPR international transfers provisions</i>	335
<i>References</i>	364
<i>Index</i>	429