

Approaching deadline to bring contracts into line with the new GDPR Standard Contractual Clauses

Background

In June 2021, the European Commission issued new modernized standard contractual clauses ("SCCs") for data transfers in accordance with the General Data Protection Regulation ("GDPR"). The new SCCs replace older ones based on the Data Protection Directive (Directive 95/46/EC). The transitional period for contracts concluded before 27 September 2021 to be brought into line with the modernized SCCs expires on 27 December 2022.

Structure of the new SCCs

The SCCs are standardized and pre-approved model data protection clauses that enable controllers and processors to meet their obligations under the GDPR. There are two sets of SCCs: one for data transfers within the EU/EEA and another for transfers to third countries. In addition to certain general clauses, the SCCs contain four types of modules intended for different transfer scenarios, depending on the parties involved. The SCCs cannot be modified by the parties, except where a module or an option can be selected. The SCCs can be included in a broader commercial contract, as long as the terms of the contract do not conflict with them.

Main differences between the old and new SCCs

Some of the new aspects compared to the old SCCs include an optional "docking clause" allowing more parties to accede to the SCCs in the future, more detailed clauses on data subject rights and enhanced transparency obligations. Moreover, the new SCCs now cover two further transfer scenarios compared to the old version. In addition, in light of the Schrems II decision of the European Court of Justice, when transferring data to third countries parties need to assess the level of protection offered in the third country and whether additional measures need to be taken to ensure compliance with the GDPR. One of the new SCCs provides the elements that need to be assessed in such cases.

Steps to replace the old SCCs

Contracts using the old version of the SCCs must be updated by 27 December 2022. For data transfers to third countries, the parties must conduct an impact assessment before entering into the new SCCs. The assessment must consider whether the laws and practices of the third country could prevent the data importer from complying with the SCCs obligations. In case there are obstacles, the parties may only transfer data based on the SCCs if they implement additional safeguards.

For more information

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