



Transferring personal data outside the EEA – New SCCs

What happened?

On the 4th of June, 2021 the European Commission adopted new “Standard Contractual Clauses” (SCCs) as an appropriate safeguard for the transfer of personal data outside the European Economic Area (EEA). These new SCCs are replacing older versions that were adopted in 2001 and 2010 respectively. The new SCCs are modular allowing for more complex chains of processing, vital where any onward transfer of data is concerned, they are also more flexible, and will easily cover a wide range of processing activities and varying roles in data protection. Also, the new SCCs take into account the CJEU judgement on Schrems II, and the requirement to ensure the SCCs will be effective in the third country.

The Commission also released new SCCs for transfers between controllers and processors under Article 28, which are not mandatory but are expected to become the standard going forward.

Main points

Timeline

- The new SCCs come into force 20 days after the publication of the decision in the Official Journal of the European Union, which was the 7th of June. The new SCCs will be entered into force on the 27th of June.
- The old SCCs will be repealed in three months, on the 27th September 2021.

- Any contracts that are concluded after that date should use the new SCCs.
- Any contract concluded before that date will remain valid for a period of 15 months from the date of repeal, or until the 27th December 2022.
- For legacy SCCs that are high risk, (e.g. complex processing chains with multiple entities) organisations should move quickly to replace old SCC, i.e. not wait until December 2022
- By the 27th of December 2022 the importer and exporter should have implemented the new SCCs to replace remaining legacy SCCs. If there is a change of contractor processing activity within that 15-month period (between September 2021 and December 2022), then the new SCCs should be used.

Transfer Impact Assessments

- Data exporters are required to undertake an evaluation of the laws and practices of the importing country to ensure that the protections afforded there are essentially equivalent to the protections afforded in the EEA. Meaning a transfer impact assessment is required for each SCC (note that different laws apply to organisations in the same country so while there is overlap essential guarantees need to be confirmed pre relationship).

- Data exporters are encouraged to include additional measures in the SCCs to provide further safeguards to the data subject to the transfer.

Roles of the parties

- The new SCCs take into account the varying roles of the parties and acknowledge that a data processor can also be a data exporter.
- Sub-processors are regulated as part of the clauses.

Additional Requirements

- Data importers should ensure they have a record of their processing activities / operations where the data received from the transfer is being processed. It is not clear if this is an article 30 RoPA, but that would be the most practical.
- Data importers should also keep a log of requests from authorities for access to data / information. This log should be made available to the exporter or supervisory authorities on request.

What should you do?

1. Start using the new SCCs from the 27th of June for any new processing or transfers of data that are yet to occur or where contracts or processing are changing.
2. Identify current transfers taking place.
3. Categorize them based on priority for new SCCs. Some items to consider may be:
 - Risks to the data subject
 - Priority to the business
 - Renewal date of the contract
 - Sensitivity of the data being transferred
 - Suitability of the old SCCs for the relationship

4. Engage with the suppliers and other parties in the transfer chain. Consider:
 - Who will be responsible for putting in place the SCCs (note sometimes it may be more practical for the importer to manage these)?
 - Identify and agree on additional measures
 - Agree on the contents of the optional clauses
 - Agree on the contents of the annexes
5. Before any new transfer is undertaken or new SCCs are put in place, **a transfer impact assessment should be undertaken** to ensure that the SCCs are effective. Where deficiencies are found additional measures should be put in place. See our webinar [here](#) for more information on transfer impact assessments.

To consider

Data exporters need to make sure that they have identified their data flow and implemented the appropriate SCCs where required. It is important to also note that the anticipated adequacy decision between the EU and the UK has yet to be agreed, and from the 1st of July, once the implementing period has concluded, SCCs may be required for all transfers to the UK.

If you would like to discuss how Mazars can help you migrate to the new SCCs, please contact Liam McKenna or David O’Sullivan.



Liam McKenna
Partner, Consulting
LMcKenna@mazars.ie



David O’Sullivan
Assistant Manager, Consulting
DOSullivan@mazars.ie

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