

Legal Highlights

14 June 2021

Organizations have less than 18 months to make sure they comply with EC's new standard contractual clauses

On 4 June 2021, the European Commission adopted two new sets of standard contractual clauses (SCCs), which provide greater legal predictability and an easy-to-implement tool for complying with data protection requirements. In line with the General Data Protection Regulation (GDPR)¹ and the Schrems II judgement of the Court of Justice,² the two sets cover the transfer of personal data to third countries and the use of SCCs between controllers and processors.

While the Commission has regularly adopted updates on the SCCs over the years,³ these new sets offer a wide range of improvements over their predecessors. Firstly, they have a modular approach, which allows data exporting parties to choose the module and the specific clauses most applicable to their exports. Furthermore, whereas previous SCCs

¹ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087>

² <https://curia.europa.eu/juris/document/document.jsf?text=&docid=228677&pageIn dex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9745404>

³ Focusing on controller-to-controller transfers in 2001, followed by updates on controller-to-processor transfers in 2002, and then C2C transfers and C2P transfers in 2004 and 2010.

were drafted as bipartite agreements, the new sets offer the possibility of multiple data exporting parties to contract and adding new parties to them over time. This resolves any issues with implementing the clauses within large-scale, intra-group, or extra-group data transfers.

Another significant improvement of the new SCCs is the provision of practical guidance on complying with the Schrems II judgement. Particularly, an entire section of the standard contractual clauses addresses the requirements of the judgement by specifying the various steps companies can take to follow Schrems II, including examples of possible supplementary measures, which companies may adopt. Lastly, the new SCCs provide a comprehensive basis covering a broad range of transfer scenarios. Based on previous clauses, data exporters could only be a party established in the EU, which greatly challenged data export compliance for parties external to the EU but subject to the GDPR. Therefore, the new SCCs resolved this issue by expressly recognizing that the data exporter can be a non-EU entity.

As seen above, the new standard contractual clauses are a significant step towards better data protection for citizens, and they certainly simplify compliance for businesses pursuant to the GDPR. Thus, it is important for organizations to start planning their move towards the new SCCs, which should be implemented for no more than 18 months for existing data transfers. For new transfers, the term is much shorter – only 3 months. Despite this being a seemingly long transition period, it requires significant measures to be taken, including important negotiations within the organization itself. In this respect, our legal professionals at Deloitte Legal Law Firm are prepared to offer any kind of legal support and guidance during the transition period.

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