

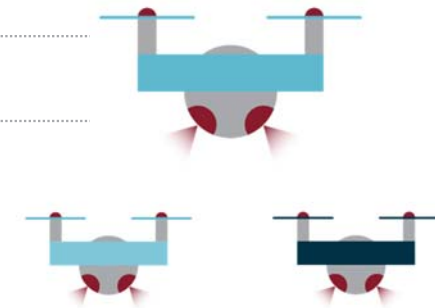
International Data Transfers, TIAs and Enforcement Activities

January 26, 2022



Agenda

- 01 Recap: The Schrems II Decision
- 02 The new Standard Contractual Clauses (New SCC)
- 03 Transfer Impact Assessment
- 04 Enforcement Actions regarding US data transfers
- 05 What the Future holds
- 06 Action Items
- 07 Q&A



Recap: The Schrems II Decision

AT A GLANCE



The CJEU judgment in the *Schrems II* case

In its July 2020 *Schrems II* judgment, the Court of Justice of the European Union (CJEU) declared the European Commission's Privacy Shield Decision invalid on account of invasive US surveillance programmes, thereby making transfers of personal data on the basis of the Privacy Shield Decision illegal. Furthermore, the Court stipulated stricter requirements for the transfer of personal data based on standard contract clauses (SCCs). Data controllers or processors that intend to transfer data based on SCCs must ensure that the data subject is granted a level of protection essentially equivalent to that guaranteed by the General Data Protection Regulation (GDPR) and the EU Charter of Fundamental Rights (CFR) – if necessary with additional measures to compensate for lacunae in protection of third-country legal systems. Failing that, operators must suspend the transfer of personal data outside the EU.



The new Standard Contractual Clauses (New SCC)

7.6.2021

EN

Official Journal of the European Union

COMMISSION IMPLEMENTING DECISION (EU) 2021/914

of 4 June 2021

on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ⁽¹⁾, and in particular Article 28(7) and Article 46(2)(c) thereof,

Whereas:



FINALLY!

New SCC at a Glance: Introduction

Commission Decision	Purpose	Temporal validity	Scope
<ul style="list-style-type: none">On June 4, 2021, the EU Commission adopted <u>new standard data protection clauses</u>	<ul style="list-style-type: none">Appropriate safeguards pursuant to Art. 46 (1) and 46 (2) (c) GDPRNo solution for Schrems IIRequirements of Art. 28 (3) and (4) GDPR (Module II und III)	<ul style="list-style-type: none">Applicable as of June 27, 2021Old SCCs only until September 27, 2021For on-going contracts: Swap old SCCs with New SCCs by December 27, 2022 at the latest	<ul style="list-style-type: none">Data Exporter subject to GDPRData Importer located in Third Country and not subject to GDPR

New SCC at a Glance: Modular Structure

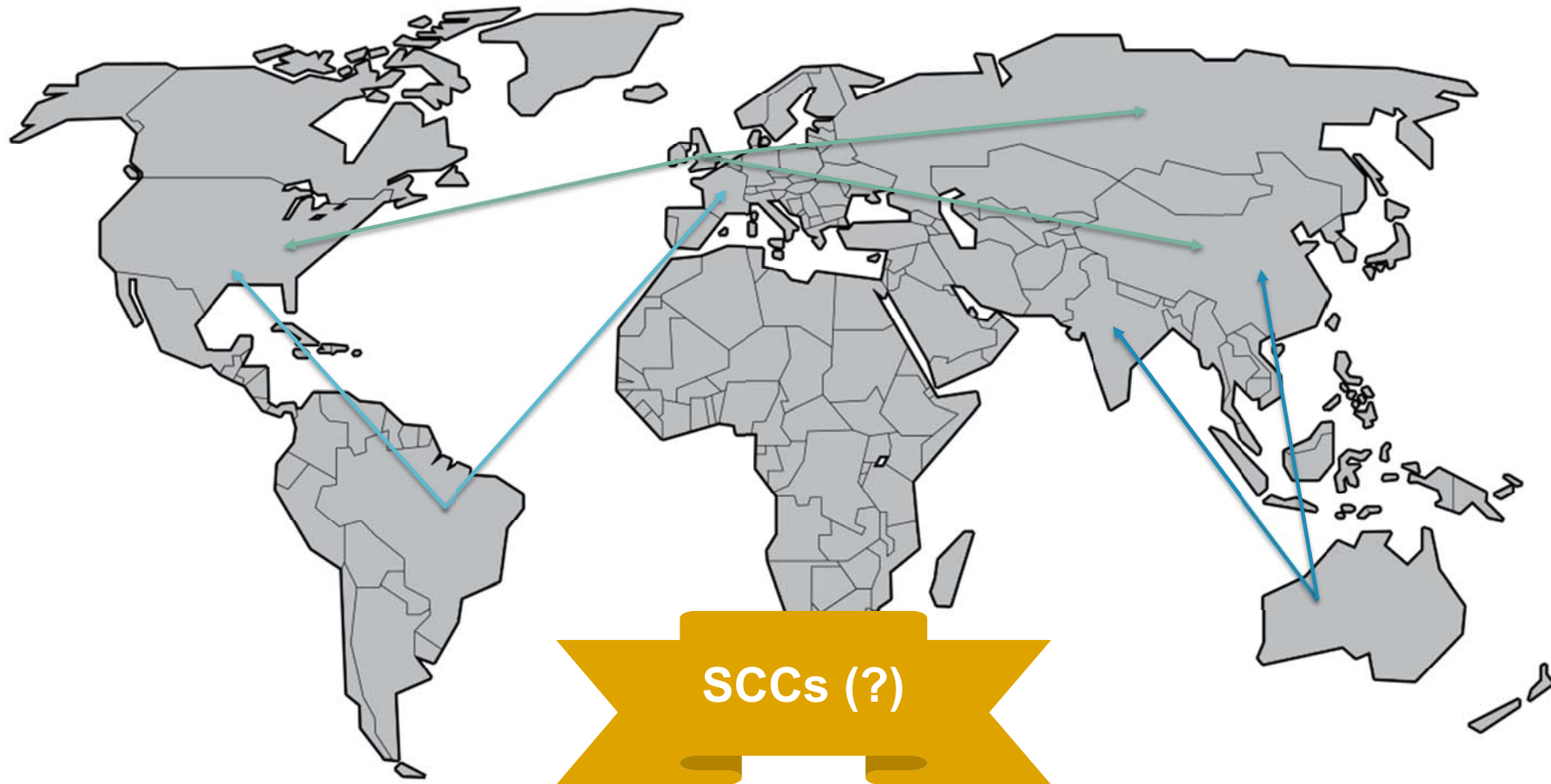
Fixed components

- **Clause 1:** Purpose and scope
- **Clause 2:** Effect and irrevocability of the Clauses
- **Clause 3:** Third-party beneficiaries
- **Clause 4:** Interpretation
- **Clause 5:** Hierarchy
- **Clause 6:** Description of the transfer(s)
- **Clause 7:** Docking clause [optional].
- **Clause 16:** Non-compliance with the Clauses and termination

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Modules	Module 1 (C2C)	Module 2 (C2P)	Module 3 (P2P)	Module 4 (P2C)
Clause 8: Data protection safeguards	✓	✓	✓	✓
Clause 9: Use of sub-processors		✓	✓	
Clause 10: Data subjects rights	✓	✓	✓	✓
Clause 11: Redress	✓	✓	✓	
Clause 12: Liability	✓	✓	✓	✓
Clause 13: Supervision	✓	✓	✓	
Clause 14: Local laws and practices affecting compliance with the Clauses	✓	✓	✓	✓
Clause 15: Obligations of the data importer in case of access by public authorities	✓	✓	✓	✓
Clause 17: Governing law	✓	✓	✓	✓
Clause 18: Choice of forum and jurisdiction	✓	✓	✓	✓
Annex I: Information on data transfer	✓	✓	✓	✓
Annex II: TOM	✓	✓	✓	
Annex III: List of sub-processors		✓	✓	

New SCCs: International Transfers from the UK and other Countries



Transfer Impact Assessment

What information needs to be provided in the Transfer Impact Assessment ("TIA")?

Clause 14 of the SCCs:



***Risk-Based
Approach?***

1. Specific **circumstances** of the transfer, such as the length of the processing chain, the number of actors involved, the transmission channels used, intended onward transfers, etc.
2. The **laws and practices** of the third country of destination – including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards
3. Any relevant **contractual, technical or organisational safeguards** put in place to supplement the safeguards under the SCCs, including measures applied during transmission and to the processing of the personal data in the country of destination

Enforcement Actions regarding US data transfers

[Austrian DSB: EU-US data transfers to Google Analytics illegal \(noyb.eu\)](#)



Austrian DSB: Use of Google Analytics violates "Schrems II" decision by CJEU.



Handleiding privacyvriendelijk instellen van Google Analytics

Let op: gebruik Google Analytics mogelijk binnenkort niet toegestaan
13 januari 2022

Dutch DPA: Google Analytics "may soon be banned"



Administrative Court of Wiesbaden (Germany):
Injunction against use of cookie consent tool

[EDPS sanctions Parliament over EU-US Data Transfers to Google and Stripe \(noyb.eu\)](#)



EDPS sanctions the European Parliament for illegal EU-US data transfers - among other violations



DATENSCHUTZ

"Coordinated Review" and
order to stop using Zoom

Bayerisches Landesamt für
Datenschutzaufsicht



Order to stop using MailChimp



What the Future holds

Further Enforcement
Actions?

Privacy Shield 2.0?

Image: [Empty crystal ball on white background](#) by [Marco Verch](#) under [Creative Commons 2.0](#)

Action Items

Summary: What should US companies do to be prepared for international data transfers

Action Items

- 1. Get Familiar with the New SCCs – Which Modules are Relevant?**
- 2. Transfer Risk Assessment – Support your EU-based Customers / Affiliates**
 - **Countries of Subprocessors**
 - **Application of FISA?**
 - **Procedure to Respond to Governmental Access Demands**
 - **Technical Aspects: Full Encryption or Full Pseudonymization?**
 - **Supplementary Clauses**
- 3. Privacy Shield – Renewal or Withdrawal?**
- 4. Intra-Group Data Transfer Agreement – Use of New SCCs globally?**

Q&A



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