

## EUROPEAN DATA PROTECTION NEWS

### NEW STANDARD CONTRACTUAL CLAUSES AND DATA TRANSFERS AFTER BREXIT

#### STANDARD CONTRACTUAL CLAUSES

On 4 June 2021, the European Commission adopted a new set of standard contractual clauses (the "SCCs") for the transfer of personal data to countries outside the EU as well as for use between controllers and processors, this being in our view a welcome news for processors and sub-processors. The new set of the SCCs reflects the GDPR requirements and in case of the SCCs for transfers of personal data to third countries also addresses the requirements of the Schrems II judgement.

The controllers and processors: (i) may use the "old" SCCs for "new" data transfers to third countries (in new contracts) over a transition period of three months (i.e., until **27 September 2021**), and (ii) must replace the "old" SCCs for transfers of personal data to third countries with the new ones in the already existing contracts within a transition period of 18 months (i.e., until **27 December 2022**).

It needs to be emphasized that the use of the new SCCs does not permit the transferor to disregard the assessment of data protection rules of the transferee's country and that the transferor must ensure any necessary supplemental safeguards are implemented. Otherwise put, prior to entering into the new SCCs, the transferor should conduct its own due diligence to further assess (i) the relevant laws and practices of the third country, (ii) specific circumstances of the transfer, and (iii) the necessity to implement any additional safeguards. Such assessment must be properly documented and made available to competent data protection authorities on request.

#### UK ADEQUACY DECISION

On 28 June 2021, the European Commission adopted an adequacy decision for the United Kingdom which means that the personal data can flow freely from the EU to the United Kingdom in the same manner as before Brexit. This essentially means that no additional arrangements (e.g., standard contractual clauses) need to be put in place for personal data transfers between the EU and the UK. The adequacy decision includes a so-called 'sunset clause', which limits the duration of the decision to four years.

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