



0. How we got here

Schrems II


July 16th, 2020 - CJEU

1. Invalidated the „Privacy Shield“
2. While affirming the validity of the SCCs, stipulated stricter requirements

2015 - Safe Harbour **invalidated**

2016 - Privacy Shield – comes into force

The Transfer Impact Assessment (TIA) was born




What does this mean to your company?



Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Republic of Korea, Switzerland, the United Kingdom, the United States (commercial organisations participating in the EU-US Data Privacy Framework) and Uruguay.




Any country that's not on the list + USA companies which don't appear on the DPF list require SCCs + TIA

SCCs + TIA




Our Clients' Top Five extra-European destinations

-  **USA**
-  **India**
-  **UK**
-  **China**
-  **Brazil**





1.

A note about the EU US Data Privacy Framework



The EU US Data Privacy Framework



July 10, 2023

Excellent news!

Excellent news?



Microsoft Google



salesforce

amazon




2.

The Transfer Impact Assessment in Theory



Standard Contractual Clauses + TIA



-  **USA** (companies not included in "the list")
-  **India**
-  **China**
-  **Brazil**

Etc...

Remember! The Standard Contractual Clauses can't be deemed sufficient until the TIA – in the terms of Clause 14 has been carried out.

Do keep in mind intragroup transfers!



2.5 The Transfer Impact Assessment: How to



What is a Transfer Impact Assessment?



It's a document in the form of a questionnaire
Covers the requirements of the SCCs according to Recommendation 01/2020

1. A description of the specific circumstances of the transfer;
2. An assessment of the laws and practices of the country of destination;
3. A review of the applicable technical and organizational measures;
4. Other considerations.



Clause 14 'new' SCCs

14.a) Specific circumstances of the transfer:



- Length of the processing chain;
- Number of actors involved;
- Transmission channels used;
- Intended onward transfers;
- Type of recipients;
- Purpose of processing;
- Categories and format of the transferred personal data;
- Economic sector in which the transfer occurs;
- Storage location of the data transferred.

Exporters and importers shall analyze the data transfer from beginning to end, **as a whole**.



Clause 14 'new' SCCs

14.b) The laws and practices of the country of destination



This is key!

"Including those requiring the disclosure of data to public authorities or authorizing access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards"



Clause 14 'new' SCCs

14.c) The applicable technical and organisational measures supplementing the safeguards under the SCCs.



E.g. is the data encrypted with the key remaining in Europe?
Will a very short retention period apply?

"Including measures applied during transmission and to the processing of the personal data in the country of destination"



Clause 14 'new' SCCs

14.c) d) e) and f) Other important considerations



- The data importer shall cooperate with the exporter in carrying out the assessment (!);
- The assessment shall be documented;
- The data importer shall notify the data exporter, for the duration of the contract, if at any point it's prevented from complying with the requirements under the SCCs;
- Should the importer notify the exporter of its inability to comply with the clauses, the latter shall identify appropriate measures or suspend the transfer.


The cooperation of the data importer is key!





3.

The Transfer Impact Assessment in Practice



Clause 14 'new' SCCs

14.a) Specific circumstances of the transfer:

- Incomplete information regarding the data transfer;
- Uncertainty regarding the actors involved and potential onward transfers;
- Transmission channels need to be assessed and potentially revisited;
- For complex transfers, it's virtually impossible to be accurate and thorough regarding data categories;
- In general, encrypted personal data is useless
- Uncertainty regarding access from different geographical points regardless of the fact that the data may be stored in a single point.

Analysing a data transfer as a whole is not easy!



Clause 14 'new' SCCs

14.b) The laws and practices of the country of destination

Good news: We got your back! We've assessed the laws and practices of the main destinations of our clients' data



Bad news: the legal situation could change and we would need to reassess very quickly.



Clause 14 'new' SCCs

14.c) The applicable technical and organisational measures supplementing the safeguards under the SCCs.

Very few options to be compliant:

1. *If the data is encrypted and the key remains in Europe, the data is practically useless abroad (why transfer the data if it'll have no use once transferred?)*
2. *A very short retention period is an option but...*



Clause 14 'new' SCCs

14.c) d) e) and f) Other important considerations

OK, here we go:

- The data importer shall cooperate with the exporter in carrying out the assessment (!);

But Google doesn't complete questionnaires

The cooperation of the data importer is key!



Clause 14 'new' SCCs

14.c) d) e) and f) Other important considerations

- The assessment shall be documented;



Clause 14 'new' SCCs

14.c) d) e) and f) Other important considerations

- The data importer shall notify the data exporter, for the duration of the contract, if at any point it's prevented from complying with the requirements under the SCCs;
- Should the importer notify the exporter of its inability to comply with the clauses, the latter shall identify appropriate measures or suspend the transfer.





4.

Business Friendly Strategy - The Risk-Based Approach




If we were not protecting a fundamental right, I wouldn't be working here

This is the question that I ask myself:

What exactly shall you assess to understand the actual risk to the rights and freedoms of the data subjects?

Remember! This is a risk-based approach!
Your goal is to protect the rights and freedoms of the data subjects!



Clause 14 'new' SCCs

14.a) Specific circumstances of the transfer:

- How many and which actors are involved?
- Where are they located?
- How's the data transferred among them?
- **Purpose of processing;**
- Categories and format of the personal data;
- Economic sector in which the transfer occurs;
- Storage location of the data transferred.

Exporters and importers shall analyze the data transfer from beginning to end, **as a whole**.



Clause 14 'new' SCCs

14.b) The laws and practices of the country of destination

How "interesting" could the data that you're transferring be for foreign authorities?

Have foreign authorities ever requested the importer to produce data held by it?

This is key!



Clause 14 'new' SCCs

14.c) The applicable technical and organisational measures supplementing the safeguards under the SCCs.

- *Is there any way you could encrypt the data?*
- *Could you perhaps pseudonymize the data?*
- *Perhaps keep some data categories in Europe and only transfer those that are essential?*
- *Could the retention period be shortened?*



Clause 14 'new' SCCs

14.c) d) e) and f) Other important considerations

- The data importer shall cooperate with the exporter in carrying out the assessment (!)
- Research on importer's status and TOMs;
- Assess the risk of your transfer (data categories; data subjects; forms of transmission...)
- Divide the assessment into country assessment and assessment of the vendor;
- Now take care of the first;
- Reduce the second to the essential questions and ask again for cooperation.




1. *Have you ever been requested to produce client's data?*
2. *If yes, how have you responded?*



Clause 14 'new' SCCs

14.c) d) e) and f) Other important considerations

- The assessment shall be documented; 
- The data importer shall notify the data exporter, for the duration of the contract, if at any point it's prevented from complying with the requirements under the SCCs;
- Should the importer notify the exporter of its inability to comply with the clauses, the latter shall identify appropriate measures or suspend the transfer.

These are legal obligations of the vendor.



Questions?





Seminare
Webinare
eLearning

Datenschutz und
Informationssicherheit

?! ▶ ▶



 dsn
Aka
demie

Thank you for your attention!

Konsul-Smidt-Straße 88 • 28217 Bremen
T +49 (0) 421 69 66 32-298
Mail: akademie@dsn-group.de

www.dsn-group.de