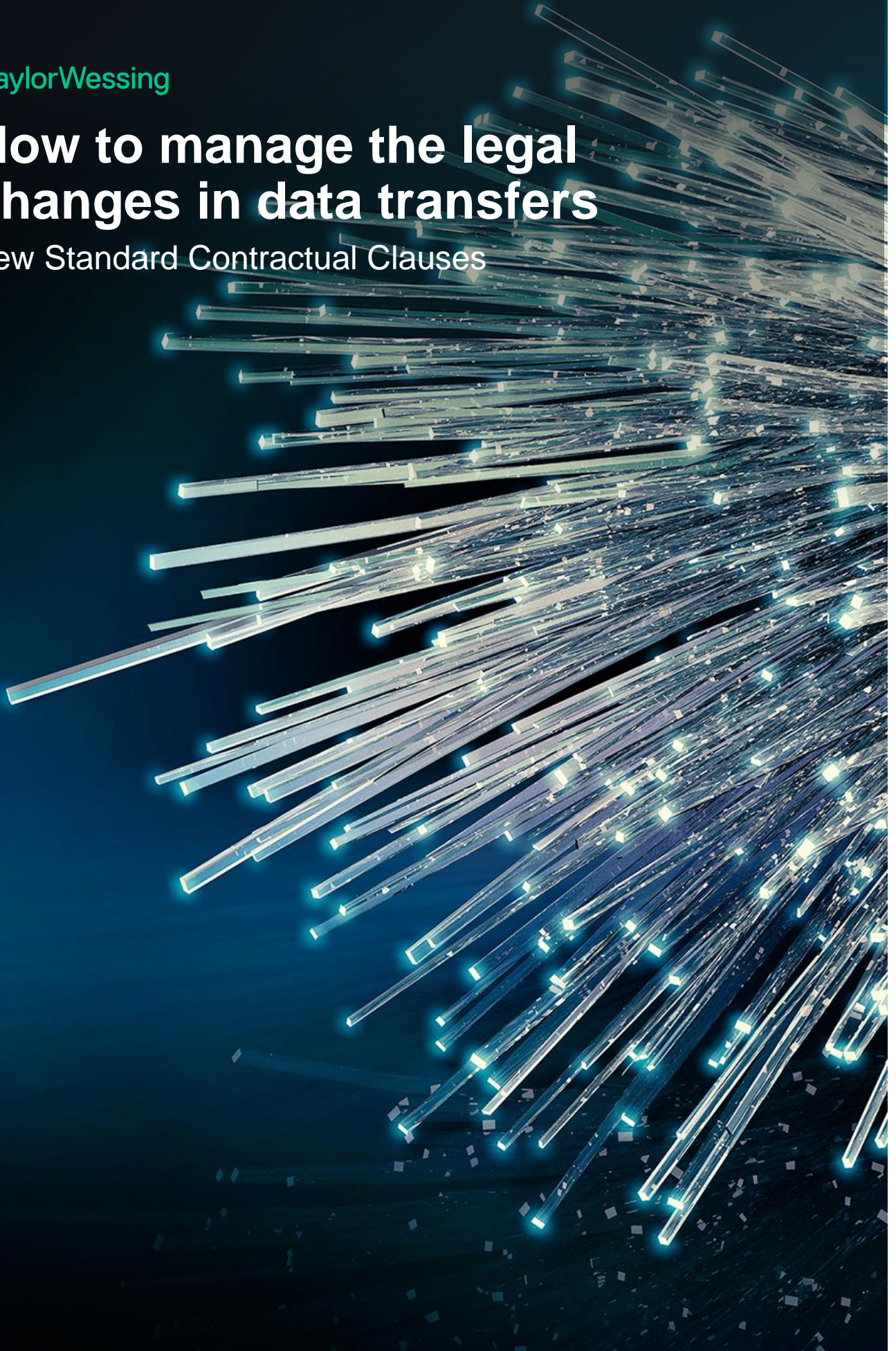


TaylorWessing

How to manage the legal changes in data transfers

New Standard Contractual Clauses



How to manage the legal changes in data transfers – New Standard Contractual Clauses

The European Commission released a draft set of new standard contractual clauses (SCCs) for cross-border transfers of personal data. What happens next?



What are the SCCs?

Under the GDPR, a common way of legally transferring personal data out of the EU/EEA is to sign SCCs between data exporters in the EU/EEA and data importers in so-called 'third countries' outside the EU/EEA. SCCs have existed for 20 years and have been very widely adopted.



Key takeaways

The much-anticipated new SCCs published by the Commission in June 2021 take a different approach from the current clauses and include a range of new features that organisations must manage:

- The new SCCs must be **used from June 24 2021** for any new transfers. Any contracts still being negotiated with old SCC's must be finalised within 3 months of June 24.
- Businesses have an **18-month period** to update all existing SCCs to the new SCCs.
- A mandatory **“Transfer Impact Assessment (TIA)”** needs to be done by the Parties to each data transfer, in which the level of data protection in the country of the data importer is assessed. TIAs must be documented and provided to supervisory authorities at their request.
- **New modules** “processor-to-processor” and “processor-to-controller” are introduced. While these make the SCCs more flexible, they also raise complexity and will require to execute agreements where before no agreement was necessary.
- Stricter hierarchy and **liability** requirements for data importers are stipulated. This means it will be difficult for data importers to limit their liability.
- The new SCC include a lot of **Schrems II** obligations. However, additional safeguards – in particular those of a technical and organizational nature such as encryption - will need to be implemented.



What about the UK post-Brexit?

- The UK data protection regulator, the Information Commissioners Office (ICO) has stated that once the EU SCCs are finalised, UK authorities will look to publish a UK version of the SCC's for consultation. There is currently no clear guidance on when that will happen or to what extent they will differ from the EU SCCs.



How we can help

- Assessing the most appropriate legal setup for your business.
- Aligning Master Service Agreements and other contractual vehicles with the new SCCs.
- Assisting in preparing Transfer Impact Assessments.
- Assisting in negotiating the new SCCs with your contract partners and transitioning existing contracts to the new SCCs.
- Management of the end-to-end contract update process.

Responding to immediate needs – Our approach to dealing with the new SCCs

We help our clients to respond to the near-term problem of assessing international data transfers & transfer mechanisms, identifying & reviewing existing vendor contracts, and project managing the complex process of updating vendor contracts. Clients will see the immediate impact of our support and the provide project accelerators, freeing up their team to deliver core privacy outcomes.



Operational guidance

We help our clients to

- understand where personal data is transferred and assess appropriate levels of protection and necessary remedies wherever it is processed.
- design a process to properly document and re-evaluate the level of protection afforded to data transferred to third countries at appropriate intervals, monitoring developments, and reinforcing accountability.
- Help to define and implement supplementary measures to ensure data transfers are permissible in the absence of an EEA/EU adequacy decision.



Project accelerators

We boost the project for our clients with our “project accelerators”:

- Providing reliable knowledge of the contractual requirements and authority practices in Europe
- Using effective contract templates and communication
- Speaking the language of service providers and customers the like and helping to design an efficient vendor outreach and contract adaption process
- Supporting our clients with our comprehensive expertise in large scale data protection projects and international roll-out exercises



Phased approach

Our phased approach in supporting organisations with the new SCCs includes the following steps:

- **Step 1:** Identify international data transfers – vendor contract identification and categorisation.
- **Step 2:** Identify data transfer mechanisms for regular and repetitive transfers.
- **Step 3:** Asses the data transfer and law in 3rd countries and perform data protection impact assessments based on effective documentation tailored to client needs.
- **Step 4:** Adopt supplementary measures including new SCCs, updated data protection addendums and appropriate information security controls to meet Schrems II requirements
- **Step 5:** Adapting vendor / customer agreements with new SCCs and create documentation for this exercise
- **Step 6:** Define ongoing remediation processes including vendor contracting documentation, vendor management assessment, and routine process for data transfer re-evaluation procedures

“New” EU Standard Contractual Clauses – Background

The EU Standard Contractual Clauses (SCC) represent the instrument (arguably) most frequently used in practice to safeguard third country transfers under data protection law.

Almost every company operating on a global basis is using (or would need to use) SCCs as a mechanism to transfer personal data from the EU to third countries.

On 04 June 2021, the EU Commission therefore published the new European Standard Contractual Clauses. You can access the press release and the Standard Contractual Clauses [here](#).

Third-country transfers remain a major focus of investigative measures by data protection supervisory authorities in Europe. Just last week, the German authorities announced that they will conduct nationwide audits of international data transfers by German companies and sent out questionnaires, in particular on the use of service providers for

- sending e-mails,
- hosting websites,
- web tracking,
- managing applicant data and
- the exchange of customer data and employee data within a company group.

Find the statement and sample requests of for example the Rheinland Pfalz authority (Germany) [here](#).

Overall, the grace period for international data transfers post Schrems II therefore seems to be over. All companies are required to tackle the issue promptly.

We are already assisting various clients with the implementation of the new requirements and will be happy to answer any questions.



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