



EXTERNAL- FOR CONTRACTORS ONLY

SAP Contractor- FAQs

SAP's approach on the implementation of the new set of standard contractual clauses for cross-border data transfers

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This document aims at presenting answers to some frequently asked questions received by SAP's Contractors with respect to the communication "Contractor Information- SAP's approach on the implementation of the new set of standard contractual clauses for cross-border data transfers" that has been rolled out on the SAP Supplier Portal.

FAQs

GENERAL QUESTIONS

1. *What are the new Standard Contractual Clauses ("SCCs")?*

Data transfers to countries outside the EU/ EEA (so-called third countries) are permissible under the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR") only if certain safeguards are implemented to ensure an adequate level of data protection in the country of the data importer. The 'standard contractual clauses' represent the most common safeguard for securing third country transfers. However, since the existing standard contractual clauses were not sufficient and fully in line with the data protection requirements, they have been revised by the European Commission.

Following the European Commission's first published draft of the new SCCs in November 2020 and a joint opinion by the European Data Protection Board and European Data Protection Supervisor in January 2021, the new SCCs have been published on June 7th, 2021 and entered into force on June 27, 2021.

These modernized pre-approved SCCs will replace the old set of SCCs that were adopted under the previous Data Protection Directive 95/46.

2. *Why have the Standard Contractual Clauses been changed?*

There have been two main reasons why an update to the existing Standard Contractual Clauses was needed: (i) the adoption of the GDPR in May 2018 and (ii) the Court of Justice of the European Union's ("CJEU") judgment in Data Protection Commissioner v. Facebook Ireland Limited, Maximilian Schrems (C-311/18) ("Schrems II")

In particular:

With the arrival of the GDPR, there was a clear need to update the prior SCCs, which were designed for a pre-GDPR era and hence lacked some of the protections that GDPR requires. Moreover, the CJEU's ruling in "Schrems II" introduced additional requirements to the existing SCCs as a data transfer mechanism, which made the adoption of updated SCCs mandatory.

3. *Where can I find the new Standard Contractual Clauses?*

The new SCCs can be found [here](#).

4. What is the structure of the new Standard Contractual Clauses?

The new SCCs contains a modular set of clauses for four scenarios:

Controller-to-controller transfers (Module 1)
Controller-to-processor transfers (Module 2)
Processor-to-processor transfers (Module 3)
Processor-to-controller transfers (Module 4).

5. What are the Annexes of the new Standard Contractual Clauses about?

The new SCCs append three annexes in total:

Annex I – Description of the transfers:

Including the description of the parties, a description of the transfers, and a description of the competent supervisory authority.

Annex II – Security measures:

Including the technical and organizational security measures implemented to protect the transferred data. These are required to be provided in specific and not generic detail.

Annex III – Sub-processors:

Annex III sets out a sub-processor list and is intended for use where the data importer must receive specific authorization from the data exporter to appoint sub-processors. Where the data importer is instead given a general authorization to engage sub-processors (subject to prior notice and objection requirements), this Annex does not apply. SAP is implementing the general authorization concept and using the Annex III as the “agreed list” required for the general authorization, based on which Contractor can engage new sub-processors.

6. Can I use the new Standard Contractual Clauses if I am a non-EU data exporter?

According to the previous SCCs, the data exporter could only be a party established in the EU. This created challenges for data export compliance where a data exporter was established outside of the EU but still subject to the GDPR. This deficiency has been resolved in the new SCCs by expressly recognizing that the data exporter can be a non-EU entity.

7. How do the new Standard Contractual Clauses address Schrems II ruling?

Section III of the new SCCs is designed to address Schrems II requirements, containing clause 14 and 15 on “Local laws and practices affecting compliance with the Clauses” and “Obligations of the data importer in case of access by public authorities.” These clauses are relevant to all types of transfers conducted under the new SCCs.

8. Why are the new Standard Contractual Clauses relevant for me as an SAP Contractor?

All companies with cross-border data transfers outside the EU have to incorporate the new SCCs for new and existing contracts within the timeline given by the EU Commission in the new SCCs [here](#). In order to be compliant with data protection laws, the respective terms in the existing Master Data Processing Agreement (MDPA) with SAP will be updated.

9. Are there any deadlines for the implementation of the new Standard Contractual Clauses?

The new SCCs were published on June 7th, 2021 and entered into force 20 days after official publication in the Official Journal of the European Union (June 27th, 2021). For any new data transfer agreement, the existing SCCs will cease to be valid for future use on September 27th, 2021. For the existing data transfer agreements, the old SCCs can continue to be used, but they need to be replaced by the new ones at the latest by December 27th, 2022.

QUESTIONS RELATED TO SCC IMPLEMENTATION BY SAP IN ITS MASTER DATA PROCESSING AGREEMENTS WITH CONTRACTORS

10. How is SAP going to ensure compliance with the new Standard Contractual Clauses for its Contractors?

To adhere to the above deadlines imposed by the EU Commission and at the same time facilitate compliance for its Customers and Contractors, SAP is going to pursue both factual and contractual compliance with its Customers and Contractors.

For new Contractors or Contractor with an existing MDPA version 1.0 to 4.0 SAP is rolling out a new CDPA (“Contractor Data Processing Agreement”) template, replacing the old MDPA template, which incorporates the new SCCs for personal data transfers from EEA to non-adequate third countries (Art. 45 GDPR), while it also maintains the old SCCs for transfers from an adequate country under the old SCCs (e.g. UK) to another non-adequate third country.

On the other hand, for existing Contractors with MDPA version 5.0 or later version SAP will make use of the Automatic Update Clause included in the signed MDPA, according to which any subsequent version of the applicable SCCs will automatically apply, once it comes into effect, asking its Contractors to effectively comply with the new set of SCCs as of September 27th, 2021. Moreover, existing Contractors shall in parallel also continue to comply with the existing SCCs until the end of the transition period (December 27th, 2022) for exports from EEA to non-adequate third countries and for exports from -adequate countries currently using the old SSCs to third countries by the time these countries adopt the new SCCs. At the same time SAP will take all the necessary steps to also pursue the necessary contractual compliance with its existing Contractors with MDPA version 5.0 or later by executing respective Amendments to the existing MDPAs during the grace period at the latest by December 27th, 2022.

11. Is it necessary to update my signed MDPA with SAP to comply with the new Standard Contractual Clauses?

Although SAP is going to make use of the Automatic Update Clause in order to achieve the factual compliance first, EU Commission as well as the Data Protection Authorities require from the contracting chain (Customer- SAP- Contractor- Subcontractor) to also ensure the contractual compliance with the new SCCs by updating their contracts. Mere contractual replacement of the existing SCCs by the new ones is also not sufficient, as the new SCCs include inter alia obligations for SAP and its Contractors that require further updates in the main body of the already signed MDPAs. Therefore, a general update of the existing MDPA is essential.

12. Which Standard Contractual Clauses do I have to implement in the meantime until I update my existing MDPA with SAP?

Both new and existing Contractors have to effectively comply with both existing and new SCCs as of September 27th, 2021. After the end of the transition period for the implementation of the new SCCs (December 27th, 2022) Contractors will have to adhere only to the new SCCs for exports from EU/ EEA-countries to non-adequate third countries, but they shall continue complying with existing SCCs for exports from those non- EEA adequate or non-adequate countries that continue to rely on the existing SCCs (e.g. UK) until they decide to adopt the new SCCs.

13. Which module of the new Standard Contractual Clauses do I have to implement and comply with?

SAP Contractors may process personal data transferred by SAP, for which SAP may be either the Controller (SAP Employees' personal data) or the Processor (SAP Customers' personal data). Thus, a Contractor must comply with both Module 2 (Controller-to-processor transfers) and Module 3 (Processor-to-processor transfers).

14. Is there an obligation for me as an SAP Contractor to flow down the new Standard Contractual Clauses to my own Contractors?

If you further transfer personal data received from SAP to third parties outside the EEA, you shall incorporate the new SCCs to your data processing agreements. Furthermore, you need to ensure that additional obligations imposed by the new SCCs are also contractually agreed in line with the new CDPA or updated MDPA agreed with SAP.

15. What is the difference between the MDPA and CDPA?

MDPA stands for the Master Data Processing agreement signed between SAP and existing Contractors. The new MDPA template in line with the new SCCs for the new Contractors and existing ones with an MDPA version prior to version 5.0 has been renamed to CDPA, which stands for Contractor Data Processing Agreement. Update versions of the signed

MDPAs (version 5.0 or later) in line with the new SCCs with existing Contractors will be titled MDPA Amendments.

16. What are the main contractual changes in the CDPA/ MDPA Amendment of SAP that are imposed by the new Standard Contractual Clauses?

Main contractual changes incorporated in the CDPA/ MDPA Amendment in line with the new SCCs can be summarized as follows:

1. Updated “Definitions” section (Clause 7 CDPA, Clause 3 MDPA Amendment)
2. Exhibit with the new SCCs (Exhibit 1 CDPA, Annex 4 MDPA Amendment)
3. Updated Annex for listing engaged Sub-processors (Exhibit 3 CDPA, Annex 2 MDPA Amendment)
4. Updated Clause for International Data Transfers (Clause 5 CDPA, Clause 2 MDPA Amendment)
5. Third Party Beneficiary Clause (Clause 5.3.3 CDPA, Clause 2.3.3 MDPA Amendment)
6. Additional terms for existing DP Annexes (Exhibit 5 CDPA, Annex 5 MDPA Amendment)

17. What is the Governing Law of the existing Standard Contractual Clauses and the new Standard Contractual Clauses?

Where Contractor relies on the existing SCCs for the transfer of Personal Data, the governing law of the SCCs shall be the law of the country in which the relevant Controller is established.

Where Contractor relies on the new SCCs for the transfer of Personal Data, the governing law of the new SCCs shall be Germany. SAP has chosen this law as it is the law of the country where SAP SE is established. If necessary, SAP could consider another governing law for the new SCCs provided that the governing law of another EU country provides for third party beneficiary rights.

18. How and when am I going to get contacted by SAP?

Every new Contractor will receive from SAP the CDPA including the new SCCs prior to its engagement.

Existing Contractors evaluated as high-risk by SAP (customer facing Contractor involved in the provision of cloud services with MDPA older than version 5.0) will be contacted first by SAP in August. These Contractors will receive via email a DocuSign envelope with a kind request for signature prior to September 27th, 2021. The rest of the existing Contractors will be contacted by SAP at a later stage. In the meantime, they could regularly check the SAP Supplier Portal for any updates/ guidance related to the contract process. However, please note that all Contractors have to comply with both old and new SCCs as of September 27th, 2021, irrespective of the signature date of the MDPA Amendment or CDPA (see also question 10).

19. What is going to happen if I do not update my existing MDPA with SAP and/ or cannot comply with the new Standard Contractual Clauses?

Not updating your existing MDPA or complying with the new SCCs would jeopardize your own compliance with data protection law as well as the compliance of SAP and its Customers. This could result to penalties by the data protection authorities for both SAP and its Contractors and claims for damages against SAP by its Customers. As SAP cannot tolerate any form of incompliance with laws and mandatory regulations, we would be obliged to trigger a **Contacto** *disqualification process*, in case you, as an SAP Contractor, do not update your existing MDPA in line with the new SCCs by executing the Amendment at the latest by December 27th, 2022.

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