

SUPPLIER FAQ

Question/Concern

What are the key points from the Schrems II decision which resulted in the New SCCs?

Answer: In its July 2020 “Schrems II” decision (C-311/18), the European Court of Justice introduced two major requirements for cross-border transfers of European personal data:

- For each and every personal data transfer to a Non-Adequate Country¹, a transfer impact assessment (“**TIA**”) must be performed by the Data Exporter; and
- Based on the outcome of the TIA, supplementary measures may be required to protect personal data from government access laws (e.g., U.S., India, Malaysia, China) (“**Supplementary Measures**”).
- Any agreements relating to cross-border transfers of personal data to a Non-Adequate Country must be updated with stronger language than the existing version of the EU Standard Contractual Clauses (“**Old EU SCCs**”) to address any associated risks by implementing **Supplementary Measures**.

What is new EU Standard Contractual Clauses?

Answer: In June 2021, following the Schrems II ruling, the EU Commission issued a new version of its Standard Contractual Clauses for cross-border transfers (“**New EU SCCs**”) to comply with the decision.

- The New EU SCCs set requirements for transferring personal data to third Countries, aligning with GDPR and clarifying what data exporters and data importers need to assess.
- The New SCCs also give the set of actions to be taken to ensure the same level of protection is achieved to personal data in the importing country as is provided in the EU.

What is the deadline for implementing the New SCCs?

Answer: Use of the New EU SCCs has been mandatory since **27 September 2021**. All agreements predating **27 September 2021**, which do not include the New EU SCCs, need to be amended to include the standard form New EU SCCs by **27 December 2022**.

What are the requirements related to UK and Swiss personal data and whether new EU SCCs apply to such data as well?

¹ Countries which have received an “adequacy decision” by the EU Commission are exempt from this requirement. The list of Adequate Countries is available [here](#).

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Answer:

- The UK's new International Data Transfer Agreement ("IDTA"), and new International Data Transfer Addendum ("the UK Addendum") to the New SCCs are essentially the UK version of the new SCCs. The UK Addendum to EU SCCs permits reliance on EU SCCs for UK transfers.
- International transfers from the UK to Non-Adequate Third Countries require similar requirements set in the UK's new International Data Transfer Agreement ("IDTA") or new International Data Transfer Addendum ("the UK Addendum") to the New EU SCCs.
- Swiss data exporters can use the new EU SCCs by attaching the Swiss Addendum based on Swiss Federal Act on Data Protection ("**FADP**").

What is the process to sign New SCCs?

Answer: Kyndryl is remediating existing contracts by sending an Amendment Letter to update supplier contracts under which EEA, UK, Swiss personal data is transferred to non-adequate countries. The Amendment Letter contains a link to the Attachments related to EEA, UK, and Swiss personal data transfers. The amendments include mandatory clauses and are ready to be executed by suppliers. The New SCCs are mandatory to execute and should be accepted by the Parties "as is" to be valid.

I am having trouble accessing One Trust. What should I do?

Answer: Contact kyndrylregulatoryoffice@kyndryl.com

Can the assessment link be forwarded to others within my organization?

Answer: Yes. Anyone with the link can access and input to the assessment. Each link is unique to a supplier entity.

Why did my organization receive multiple assessment requests?

Answer: Each supplier's entity needs to be evaluated for the data which is processed and country of processing. Within One Trust that requires a separate assessment.

Why is Kyndryl using One Trust?

Answer: Kyndryl has deployed the online privacy portal for suppliers called One Trust to provide the contractual changes and gather the additional information and processing details required. The One Trust tool facilitates request management and allows to gather processing details digitally.

My sub-processor list is available on a web link. Do I need to complete the assessment?

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Answer: Yes, the assessment needs to be completed in One Trust. One Trust is our strategic solution, and a supplier link will not suffice to input the required data into One Trust. The tool provides a central location for processing details and facilitates replication of those details on customer DPAs.

What if I am not the correct person to answer the questions outlined in the assessment?

Answer: You are the contact that Kyndryl has on file, and no one knows your organisation like you, therefore we ask that you send this to the appropriate contact in your organisation for completion. As stated, anyone with the link contained in the assessment will be able to complete it. Most organisations have dedicated Data Privacy Officers and/or other subject matter experts in this field.

Note that you (as the initial contact registered in our systems) will continue to receive reminder notifications until the assessment is complete, thus we would ask for your prompt assistance in ensuring that this is directed towards the correct individual within your organisation for completion in an expedient manner. Upon completion of the assessment, our system will be updated with the individual who completed the questionnaire, thus ensuring that any future queries will be directed towards that individual.

Our company does not process PI, do I still need to respond to the assessment?

Answer: Yes, respond to the One Trust assessment and the questions will allow you to respond accordingly. If more information needed, first contact your Procurement Buyer or email KynSCC@kyndryl.com.

Does my company need to respond to the assessment if the following from the letter does not apply to my company? This letter requires your action only if: 1) GDPR, UK General Data Protection Regulation or Swiss Data Protection Law is applicable to your transaction with Kyndryl either directly or indirectly via local privacy law and 2) (i) you (or your further sub-processor(s)) have been authorized by Kyndryl and are transferring or intend to transfer personal data to a third country with non-adequate level of data protection or (ii) you are already located in such a non-adequate country.

Answer: Yes, respond to the One Trust assessment and the questions will allow you to respond accordingly on sub-processor(s).

Can I get the assessment in a different format than the One Trust email?

Answer: The questionnaire is not designed to be consumed via another format other than the One Trust tool. The assessment email link can be forwarded to any relevant individual within your organization, and that individual can go through the questions via the online tooling and submit responses

I am a data controller, do I need to complete the One Trust assessment?

Answer: The EU SCCs requirements (under Decision 2021/914 EU) apply to Controllers as well. Your answers are needed to complete the requirements under EU SCCs for assessment of EU personal data

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export(s) outside of EU to non-adequate countries, execution of transfer impact assessment, update data processing details as applicable.