



The Citco group of companies (Citco) and applicability of EU Standard Contractual Clauses

December 2022

CITCO

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1. Introduction

Chapter V of the European Union's General Data Protection Regulation (EU GDPR) contains a restriction on transfers of personal data from the European Economic Area (EEA) to third countries. While there are number of exceptions, for many transfers the only practical solution is the use of standard contractual clauses (EU SCCs), a template contract pre-approved by the European Commission.

On 4 June 2021, the Commission issued modernised standard contractual clauses under the GDPR for data transfers from data controllers or data processors in the EEA (or otherwise subject to the GDPR) to data controllers or data processors established outside the EEA (and not subject to the EU GDPR).

These modernised EU SCCs replaced the previous sets of EU SCCs that were adopted under the previous EU Data Protection Directive 95/46/EC. Since September 2021, it is no longer possible to conclude contracts incorporating these earlier sets of EU SCCs.

Until 27 December 2022 (end of the transition period), data controllers and data processors can continue to rely on those earlier EU SCCs for contracts that were concluded before 27 September 2021 (provided that the processing operations that are the subject matter of the contract remain unchanged).

2. Relevance of new EU SCCs to Citco

Citco has incorporated the EU SCCs (as required) into relevant contracts for the following personal data processing relationships:

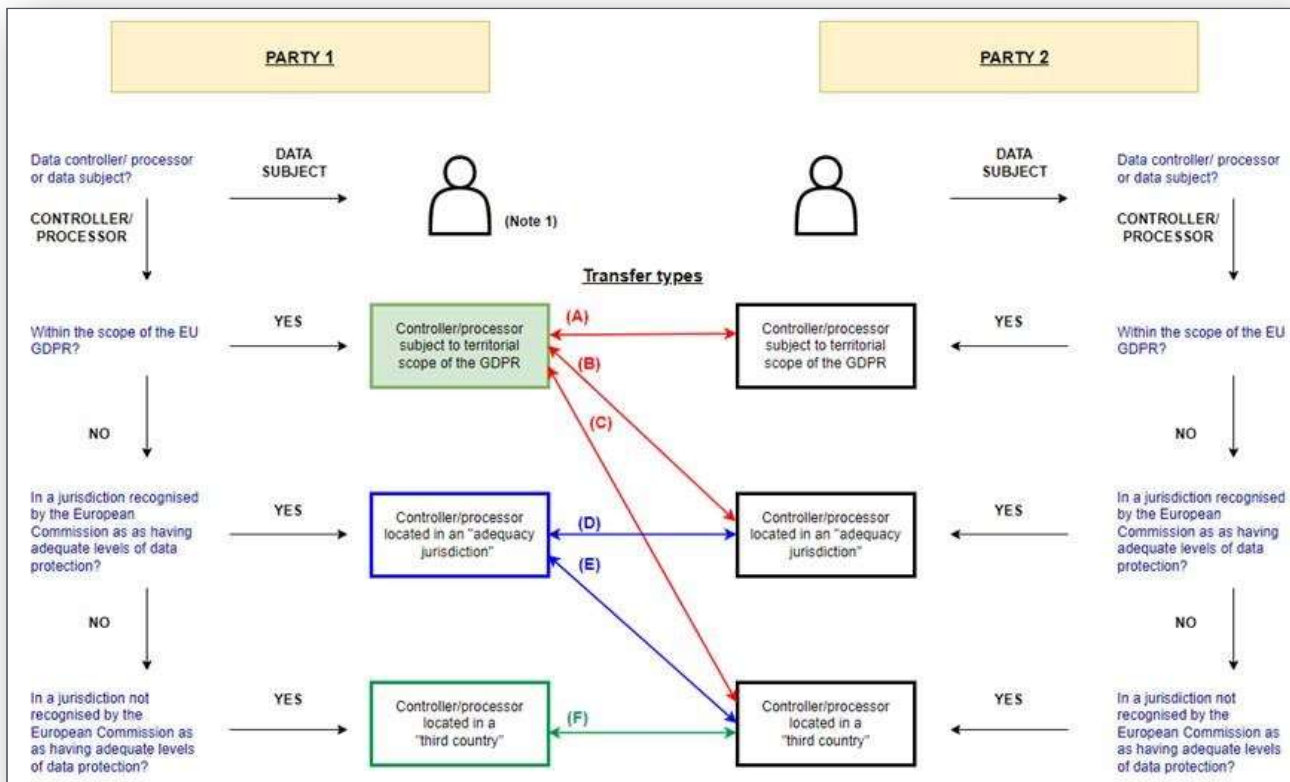
Relationship Description	Measure(s) applied by Citco
Transfers between Citco entities	Effective since 27 September 2021, the new EU SCCs form part of Citco's Intra-Group Data Transfers Agreement with respect to cross border data transfers from Citco affiliates that are subject to the GDPR to Citco affiliates that are not subject to the GDPR (and not in a jurisdiction recognised as "adequate" by the European Commission).
Transfers between Citco and client entities	Citco has been liaising with its clients to (where it has been found relevant and necessary in accordance with the scenario analysis contained in the Appendix) update client service agreements so that relevant new EU SCC set(s) are included.
Transfers between Citco and vendors	Citco has been liaising with its vendors to (where it has been found relevant and necessary in accordance with the scenario analysis contained in the Appendix) update client service agreements so that relevant new EU SCC set(s) are included.

3. Implications for Citco

After 27 December 2022, Citco can continue to transfer personal data (i) between Citco entities (to the extent permissible to do so under the data processing terms of the relevant agreement); (ii) with its clients; and, to the extent necessary, (iii) its vendors by relying on the new EU SCCs in accordance with Chapter V of the EU GDPR and/or European Commission Implementing Decision (EU) 2021/914 of 4 June.

Appendix

Citco has identified six different cross-border personal data transfer relationship categories that may exist between parties to an agreement. The existence of these relationship categories depends on the jurisdictions where the parties to an agreement (i.e. transferor and transferee of personal data) are located:



The relevance and applicability of EU SCCs has been considered for each of these six cross-border data transfer scenarios.

Transfer type/category		Relevance of EU SCCs	Rationale/Note
(A)	<u>Party 1 to Party 2</u> <u>Party 2 to Party 1</u> Transfer of personal data between parties where both parties are subject to the GDPR in the same (or different) jurisdiction	Not applicable	Article 1 of Commission Implementing Decision (EU) 2021/915 of 4 June 2021: <i>“The standard contractual clauses set out in the Annex are considered to provide appropriate safeguards within the meaning of Article 46(1) and (2)(c) of Regulation (EU) 2016/679 [GDPR] for the transfer by a controller or processor of personal data processed subject to that Regulation (data exporter) to a controller or (sub-) processor whose processing of the data is not subject to that Regulation (data importer).”</i>
	<u>Party 1 to Party 2</u> Transfer of personal data between parties where transferor is subject to the GDPR and the transferee is located in an “adequacy jurisdiction”	Not applicable	A European Commission decision identifying a jurisdiction as having an adequate level of data protection can be transferred to a party in that third country (“adequacy jurisdiction”) without the data exporter being required to provide further safeguards or being subject to additional conditions. Data can be transferred to transferee in an “adequacy jurisdiction” without the transferor being required to provide further safeguards or being subject to additional conditions.
	<u>Party 2 to Party 1</u> Transfer of personal data between parties where transferor is located in an “adequacy jurisdiction” and the transferee is subject to the GDPR.	Not applicable	Transfer permissible without the requirement for data transfer mechanisms.
(C)	<u>Party 1 to Party 2</u> Transfer of personal data between parties where transferor is subject to the GDPR and the transferee is located in a “third country”	Applicable	<u>In-scope controller/processor established in the EEA</u> Where transferee is subject to the GDPR by reason of Article 3(1) (i.e. established in the European Economic Area (EEA)): <ul style="list-style-type: none"> By an EEA controller, to transfer personal data to a controller or processor outside the EEA that is not subject to the GDPR By an EEA processor, to transfer personal data to a sub-processor or to a controller outside the EEA (on whose behalf it is processing the data) that is not subject to the GDPR

	Applicability not fully clear	<p><u>In-scope controller/processor not established in the EEA</u></p> <p>Where transferee is subject to the GDPR by reason of Article 3(2) (i.e. they specifically target the EEA market by offering goods or services to natural persons located in the EEA or monitor their behaviour), the EU SCCs can also be used by those non-EEA based controllers and processors for data transfers related to these processing operations to non-EEA entities, in particular:</p> <ul style="list-style-type: none"> • By a controller outside the EEA whose processing is subject to the GDPR to a controller or processor outside the EEA that is not subject to the GDPR • By a processor outside the EEA whose processing is subject to the GDPR to a sub-processor or to a controller outside the EEA (on whose behalf it is processing the data) that is not subject to the GDPR <p>NOTE: Confusion exists regarding the interplay between the extraterritorial scope of the GDPR in Article 3(2) and the transfer rules in Chapter V of the GDPR. In its Implementing Decision on the (new) EU SCCs issued during June 2021, the European Commission disallowed the use of EU SCCs for transfers to non-EU parties that are within the scope of the GDPR by reason of GDPR Article 3(2). However, European Data Protection Board 05/2021 Guidelines adopted on 18 November 2021 contains a differing position to the EU Commission, stating that the need to ensure that data transfer tools provide essentially equivalent protection under the GDPR “<i>applies also in situations where the processing falls under Article 3(2) of the GDPR</i>”. The European Commission has confirmed it will develop a supplemental set of standard contractual clauses to specifically cover transfers to non-EEA based parties subject to Article 3(2) of the GDPR.</p>
<p><u>Party 2 to Party 1</u></p> <p>Transfer of personal data between parties where transferor is in a “third country” and the transferee is subject to the GDPR.</p>	Not applicable	<p>Outside the scope of the GDPR and EU Member State data protection law.</p> <p>NOTE: Relevant personal data transferred to a jurisdiction with higher data protection standards resulting in data transfer mechanism not being required. However, some local law cross-border data transfer mechanisms may apply (particular SCCs (unrelated to the EU SCCs) or EU SCCs modified in accordance with the local privacy laws of the transferor (e.g. Hong Kong recommended model contractual clauses).</p>

(D)	<p><u>Party 1 to Party 2</u> <u>Party 2 to Party 1</u></p> <p>Transfer of personal data between parties where both parties are located in the same (or different) “adequacy jurisdiction”</p>	Not applicable	<p>Outside the scope of the GDPR and EU Member State data protection law.</p> <p>NOTE: Other local law cross-border data transfer mechanisms particular to the may apply (which may include particular SCCs (unrelated to the EU SCCs) or EU SCCs modified in accordance with the local privacy laws of the transferor.</p>
(E)	<p><u>Party 1 to Party 2</u></p> <p>Transfer of personal data between parties where transferor is located in an “adequacy jurisdiction” and the transferee is located in a “third country”</p>	Not applicable	<p>Outside the scope of the GDPR and EU Member State data protection law.</p> <p>NOTE: Other local law cross-border data transfer mechanisms particular to the may apply (which may include particular SCCs (unrelated to the EU SCCs) or EU SCCs modified in accordance with the local privacy laws of the transferor (e.g. UK, Guernsey).</p>
	<p><u>Party 2 to Party 1</u></p> <p>Transfer of personal data between parties where the transferor is located in a “third country” and the transferee is located in an “adequacy jurisdiction”</p>	Not applicable	<p>Outside the scope of the GDPR and EU Member State data protection law.</p> <p>Relevant personal data transferred to a jurisdiction with higher data protection standards resulting in data transfer mechanism not being required. However, some local law cross-border data transfer mechanisms may apply (particular SCCs (unrelated to the EU SCCs) or EU SCCs modified in accordance with the local privacy laws of the transferor (e.g. Hong Kong recommended model contractual clauses).</p>
(F)	<p><u>Party 1 to Party 2</u> <u>Party 2 to Party 1</u></p> <p>Transfer of personal data between parties where both parties are located in the same (or different) “third country”</p>	Not applicable	<p>Outside the scope of the GDPR and EU Member State data protection law.</p> <p>NOTE: Other local law cross-border data transfer mechanisms particular to the may apply (which may include particular SCCs (unrelated to the EU SCCs) or EU SCCs modified in accordance with the local privacy laws of the transferor (e.g. Cayman Islands, Dubai International Financial Centre, Abu Dhabi Global Market).</p>

Note 1

The European Data Protection Board (EDPB) has taken the position that a data subject *“cannot be considered a controller or processor”* and, therefore, the restrictions on cross-border data transfers that apply to controllers and processors do not apply to data subjects. However, in circumstances where data subject is not making the decision to directly transfer personal data outside of the EEA (i.e. it is done at the direction of a controller/processor established in the EEA), it can be interpreted that the controller/processor making the direction is the exporter of the personal data and so the transmission is within the scope of Chapter V of the EU GDPR.

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