GDPR & the New SCCs

August 5, 2021

* The information provided in these slides and the accompanying presentation do not constitute legal advice and should not be substituted for such advice.

Agenda

- Why We Have New SCCs
- What the SCCs Are & How to Use Them
- Main Changes & Key Issues
- EDPB Recommendations
- Practical Advice/Use Cases
- Takeaways

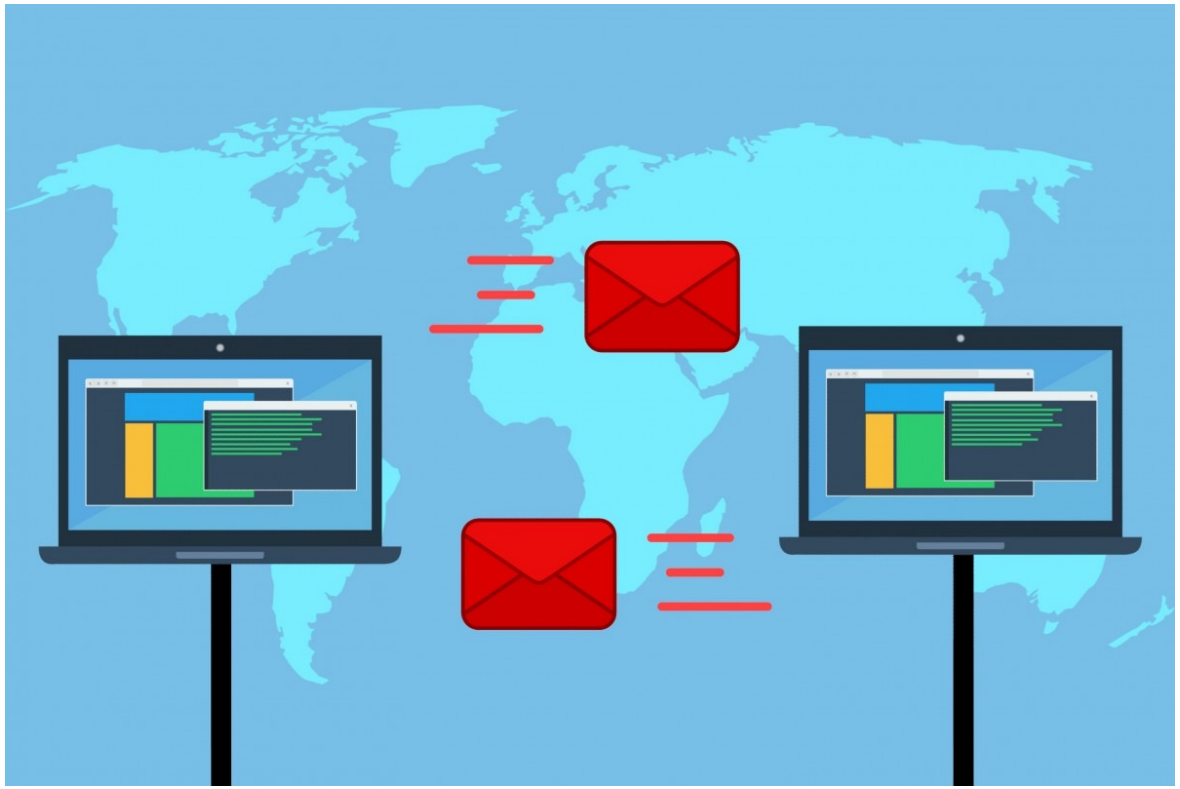
sixfifty

Why the SCCs Needed Changing

- Alignment with the GDPR
  - Transparency
  - Article 28 Requirements
  - Accountability
  - Security
  - Onward Transfers
- Adaptation to Needs of a Digital Economy
  - Single entry point to covers 4 transfer scenarios
  - Possibility for multiple parties (docking clause)
- Updated Safeguards for Gov’t Access (Shrems II)
  - Case-by-case Assessment
  - Contractual Safeguards

Data Transfers out of Europe

- Adequacy Decisions
- BCRs
- Derogations and Exemptions
- Standard Contractual Clauses
    - Only practical option for most U.S. companies



Standard Contractual Clauses: What Are They?

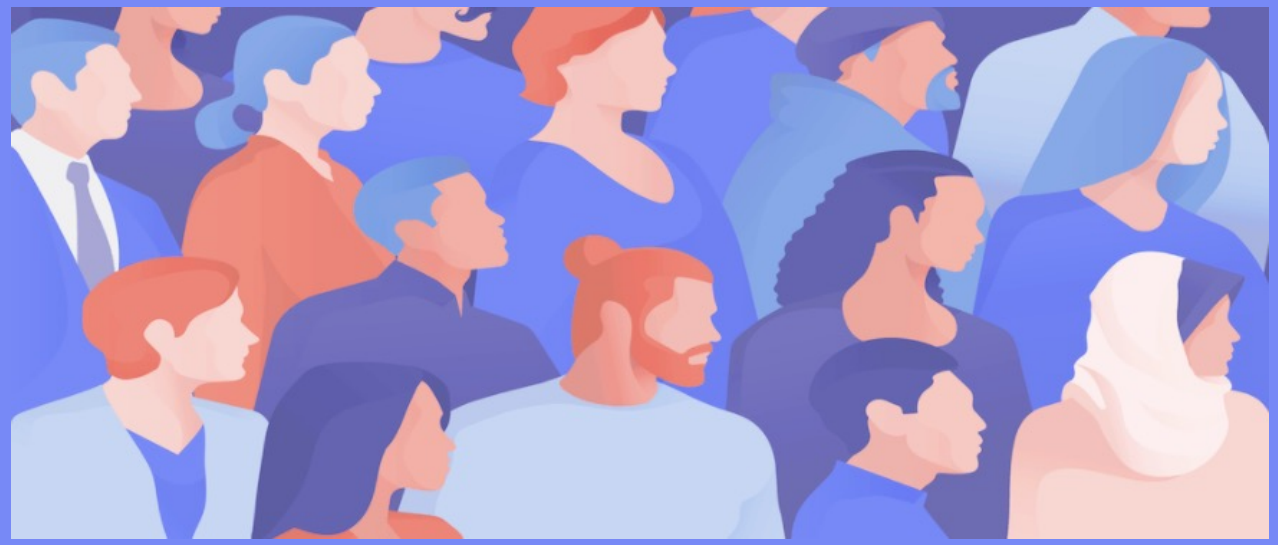
- Contract between the exporter and the importer
- Terms can’t be changed
  - A (complicated) fill-in-the-blanks exercise
  - Floor, not a ceiling
- Modular approach
  - Only include relevant portions
- 4 scenarios covered:
  - Controller-to-controller
  - Controller-to-processor
  - Processor-to-processor
  - Processor-to-controller

Standard Contractual Clauses: How to Use Them

- Two basic approaches
- Bare-bones
  - Just fill out the SCCs alone
  - Benefit: simple
- Classic
  - Execute a data processing agreement (DPA) which incorporates/attaches the SCCs
  - Benefits: more control and additional terms
- Fundamental issue is determining the correct module(s) to use
  - Processor/controller, importer/exporter

Overview/Structure

- General Provisions (Section I)
- Obligations of the Parties (Section II)
  - Data Protection Safeguards (purpose limitations, data minimization, transparency, security, & onward transfers)
  - Individual Rights & Exceptions
  - Redress, Liability. & Supervisions
- Local Laws & Obligations Section III)
- Final Provisions (Section IV)
- Annexes



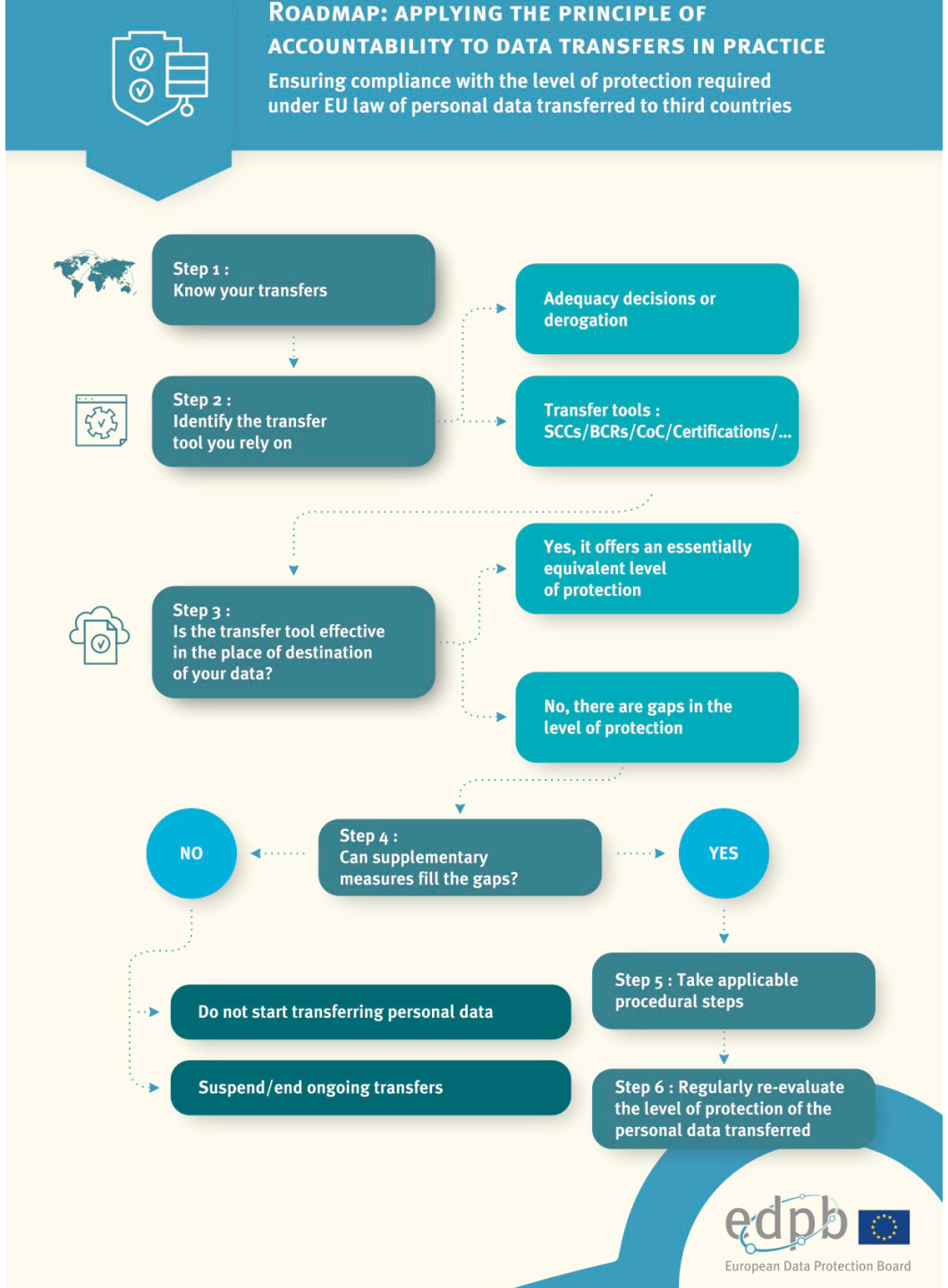
sixfifty

How to Apply the Accountability Principle to Data Transfers

EDPB Recommendations: How to Transfer Data

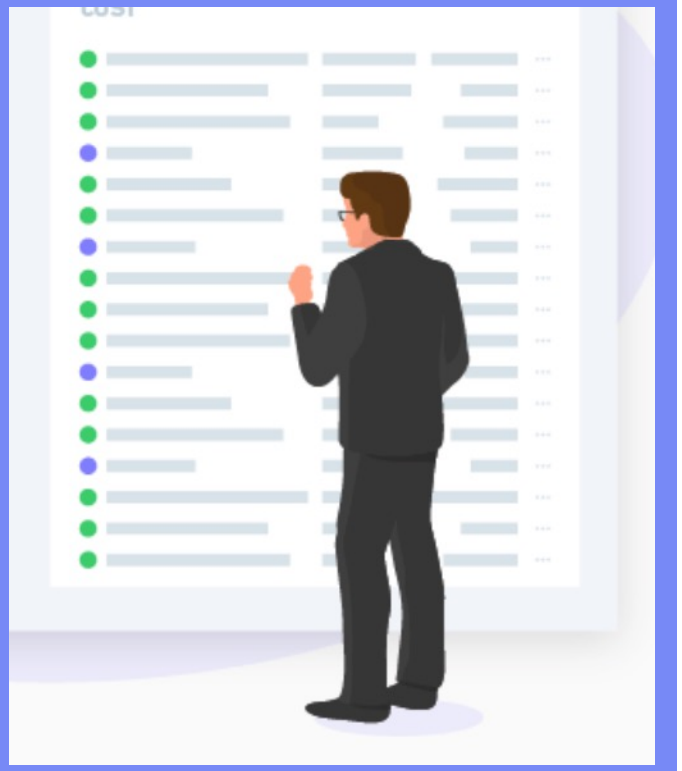
- Step 1: Know Your Transfers
- Step 2: Identify the Transfer Tool You Rely On
  - Adequacy Decision or Derogation
  - SCC/BCR/Certifications
- Step 3: Is the Transfer Tool Effective in the Destination Jurisdiction?
  - Yes = Essentially Equivalent Protection
  - No = Gaps in Protection, Go to Step 4
- Step 4: Can Supplementary Measures Fill the Gap?
  - Yes = Go to Step 5
  - No = Do not start transferring data; Suspend/end ongoing transfers
- Step 5: Take Applicable Procedural Steps
- Step 6: Periodic Reevaluation

sixfifty



Assess Protection

Step 3

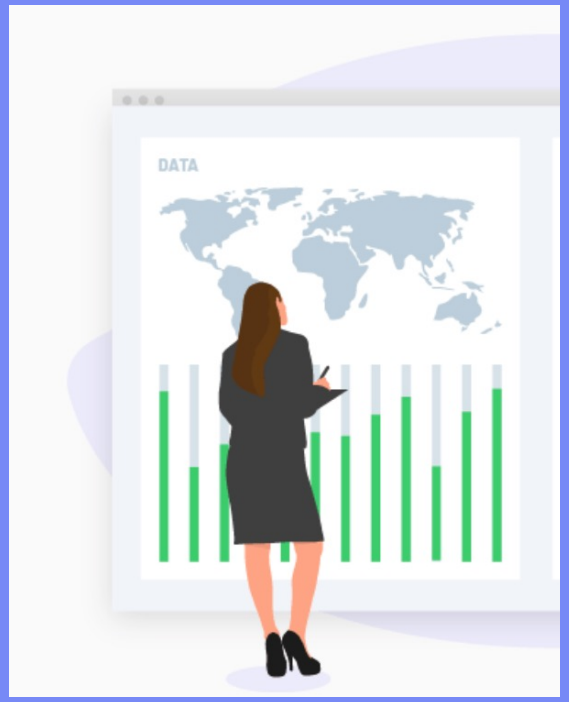


- Guidance on how to evaluate a country's surveillance measures
- To be used by DPAs when making adequacy decisions and by businesses when engaging in SCCs
- 4 Guarantees:
  - Law is clear, precise, uniformly applicable, & foreseeable
  - Interferences should be proportionate and necessary w/ regard to legitimate objectives pursued
  - Interferences subject to independent oversight
  - Effective remedies and legal challenges available

sixfifty

Supplementary Measures

Steps 4-5



- Technical
  - Pseudonymization
  - Encryption
  - Split/multi party processing
- Contractual
  - Commitment to technical measures
  - Publication of transparency reports
  - Conducting audits
  - Specific actions (like informing exporter if importer cannot meet requirements)
  - Prohibition against onward transfers
  - Assisting with DSARs
- Organizational
  - Adopting internal policies
  - Developing best practices
  - Adopting disciplinary measures for violations
  - Documenting data access requests

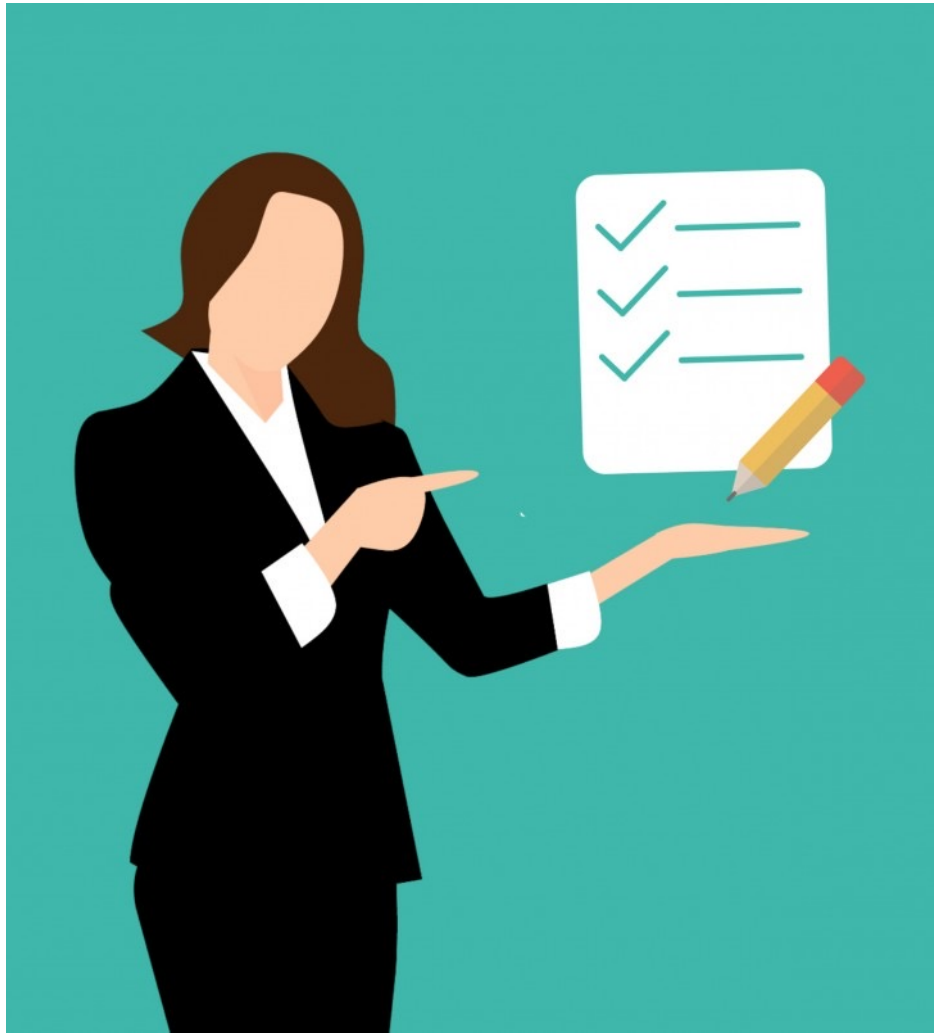
sixfifty

Practical Advice and Examples

- US company collecting EU data and storing it on a cloud storage provider in the US
- US company providing shipping information to an EU fulfillment provider
- EU company sharing customer list with US company
- Email marketing vendor in the US sending (and tracking responses to) emails to EU residents

What to Be Doing

- Identify all EU–U.S. personal data flows
- Ensure that there is a valid basis for those transfers under EU law
  - Usually this will require the SCCs
- Identify which module(s) to use in each of the transfers out of the EU
- Implement any necessary supplementary measures
  - Coordinate with other party
- Ongoing monitoring and re-evaluation



Key Takeaways

- Better, more applicable requirements in the new modules
- Discussing practical experiences with the other party
- Preparing to implement procedural safeguards
- Deadlines:
  - New contracts will need to use the new SCCs starting September 27, 2021
  - Contracts with the old SCCs will need to be updated by **December 27, 2022**

Questions and book a demo:

www.SixFifty.com/gdpr