



# Brexit, Data Protection and Research

What happens on January 1, 2021?

EFAMRO is providing this data protection guidance as general information for research practitioners. It is not legal advice and should not be relied upon as such. Specific legal advice should be taken in relation to any specific legal problems or matters.

December 2020

## Contents

Overview .....	3
International Data Transfers of Personal Data .....	3
From the EEA to the UK .....	3
EDPB recommended 6 steps approach to adopt SCCs .....	4
UK Representative.....	5
Additional considerations.....	6
Privacy notices .....	6
Documentation and record of processing .....	6
Data Protection Impact Assessments (DPIAs) .....	6

## Overview

On January 1<sup>st</sup>, 2021 the UK's EU transitional arrangements will end. In light of this there are some immediate steps that, if not already taken, practitioners need to adopt and implement in their processes.

## International Data Transfers of Personal Data

### From the EEA to the UK

Businesses transferring personal data from the EEA to a third country are bound by the terms of Art. 44-50 GDPR. [The UK is now classified as a "Third Country". Transfers of personal data to the UK now need an appropriate safeguard.](#)

Standard Contractual Clauses appear to be the most suitable transfer mechanism. [SCCs](#) are standard sets of contractual terms and conditions which a sender and a receiver of personal data both sign up to. They include contractual obligations which help to protect personal data.

The European Commission has adopted the following:

EEA controller to non-EU or EEA controller	EEA controller to non-EU or EEA processor
<ul style="list-style-type: none"><li>• <a href="#">decision 2001/497/EC</a></li><li>• <a href="#">decision 2004/915/EC</a></li></ul>	<ul style="list-style-type: none"><li>• <a href="#">decision 2010/87/EU</a></li></ul>

Following the EU Court of Justice "Schrems II" judgment<sup>1</sup>, the EDPB published Recommendations 01/2020<sup>2</sup> on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data, currently under consultation.

These recommendations are meant to help EEA exporters with the complex task of assessing third countries and identifying appropriate supplementary measures where needed and are essential to any EEA business wishing to transfer personal data to the UK.

In particular:

- Standard contractual clauses and other transfer tools mentioned under Article 46 GDPR do not operate in a vacuum.
- Controllers or processors, acting as exporters, are responsible for verifying, on a case-by-case basis and, where appropriate, in collaboration with the importer in the third country, if the law or practice of the third country impinges on the effectiveness of the appropriate safeguards contained in the Article 46 GDPR transfer tools.
- In those cases, it is still possible for exporters to implement supplementary measures that fill these gaps in the protection and bring it up to the level required by EU law.

---

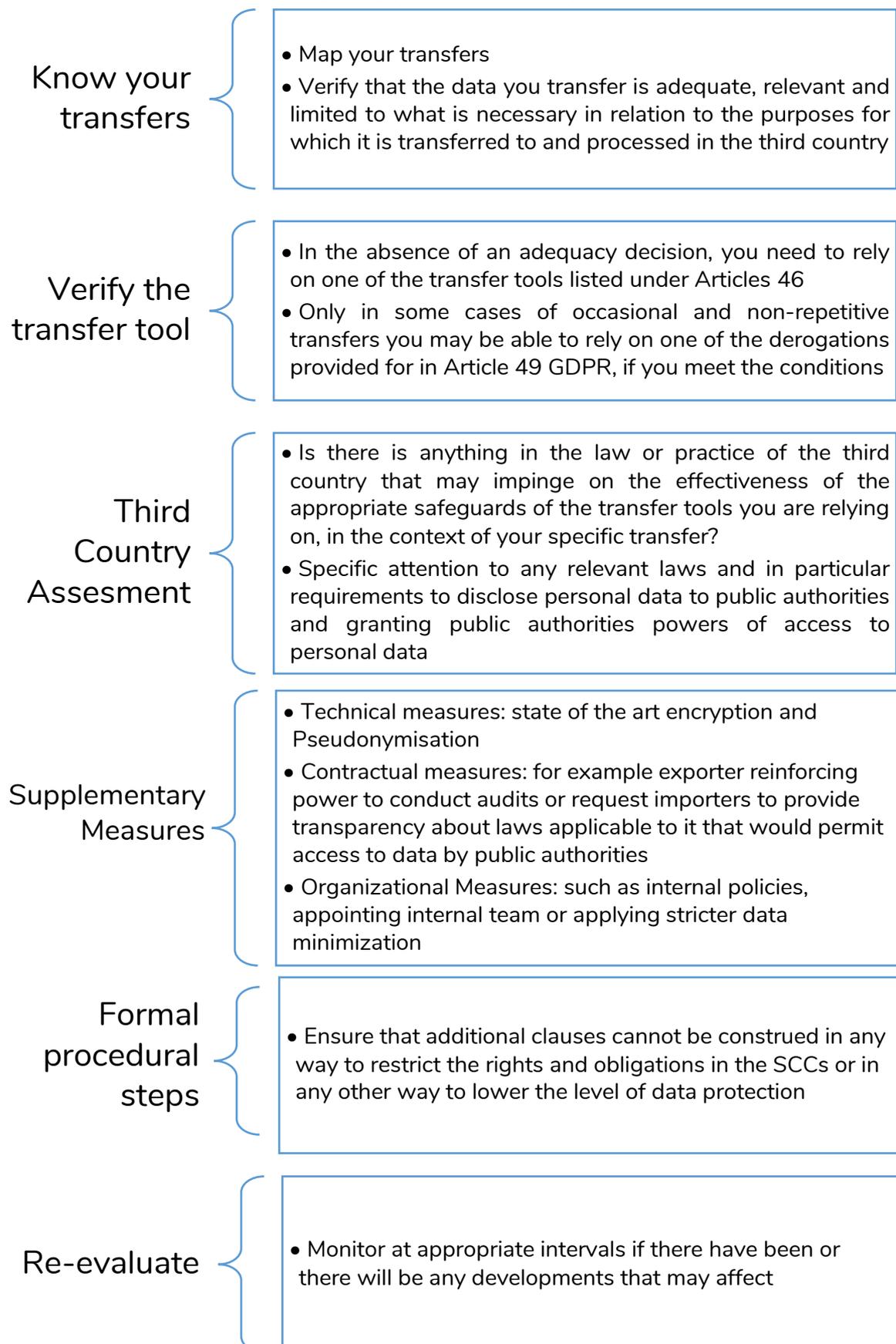
<sup>1</sup> Here <https://efamro.eu/cjeu-judgement-schrems-ii-fags/> and here <https://efamro.eu/privacy-shield/>

<sup>2</sup> Here

[https://edpb.europa.eu/sites/edpb/files/consultation/edpb\\_recommendations\\_202001\\_supplementary\\_measures-transfer-tools\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/consultation/edpb_recommendations_202001_supplementary_measures-transfer-tools_en.pdf)

These recommendations provide exporters with a series of steps to follow, potential sources of information, and some examples of supplementary measures that could be put in place.

## EDPB recommended 6 steps approach to adopt SCCs



## UK Representative

From January 1<sup>st</sup>, 2021 the UK will adopt a new piece of legislation, the UK GDPR. It will sit alongside an amended version of the Data Protection Act 2018 currently in force.

Under the upcoming UK GDPR, businesses that are located outside of the UK:

- with no offices, branches or other establishments in the UK; but
- offering goods or services to individuals in the UK or monitoring the behaviour of individuals in the UK,

will need to nominate an UK Representative.

### The Purpose

- It will act on behalf of the business with regard to UK GDPR compliance
- It will be the point of reference for data subjects and Supervisory Authorities (ICO)

### The Designation

- May be an individual, or a company or organisation established in the UK

### The Appointment

- Must be in writing and should set out the terms of the relationship
- In practice the easiest may be under a simple service contract
- Their details must be available to UK individuals and to the ICO. This may be done by including them in the privacy notice, or in the upfront information when collecting personal data, or publishing it on the website.

## Additional considerations

Practitioners need to consider a few additional details:

### Privacy notices

- a) Review the privacy notice to reflect changes to international transfers;
- b) List name and contact details for the UK representative.

### Documentation and record of processing

- a) Reflect changes regarding international transfers;

### Data Protection Impact Assessments (DPIAs)

- a) Existing assessments may need to be reviewed;
  - for example, international transfers of data to the UK as Third Country. The DPIA should reflect this change and address the risk assessment and the safeguards invoked and implemented.