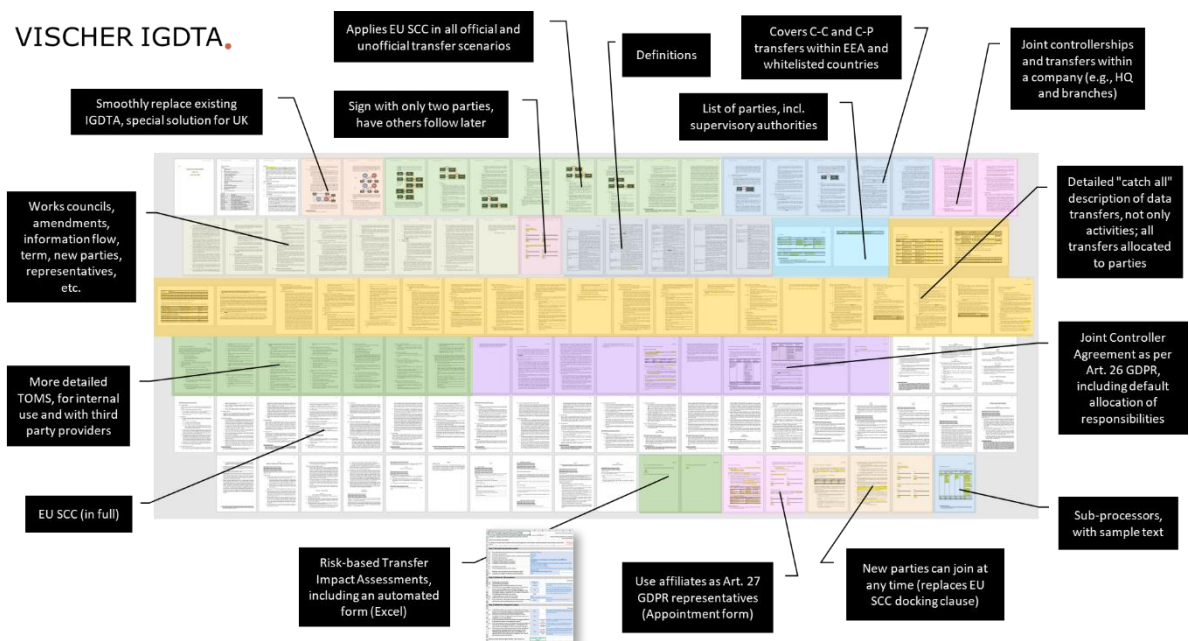


WHAT DO WE HAVE TO CONSIDER WHEN CREATING OR EXAMINING AN IGDTA?

An IGDTA is, in concept, a multi-party contract that some or all of the companies in a group of companies conclude with each other in order to regulate the data flows within this group in a data protection-compliant manner.

In practice, we see IGDTA of very different scope and quality. In the early days, IGDTA only regulated international data transfers to non-whitelisted third countries by agreeing on SCCs on all sides. Nowadays, IGDTA usually also regulate data processing arrangements within the group.

The IGDTA we have drawn up for our clients also cover the requirements of Art. 26 GDPR (joint controllerships), provide for intra-group representation (under Art. 27 GDPR and UK GDPR) and regulate the monitoring and administration of the IGDTA. Also, they cover for the fact that the UK has not yet accepted the new SCC and govern the transition from existing IGDTA. These contracts are at first sight often rather complex, but they have the advantage of covering many of the applicable requirements in one contract and uniform regulations.



Some points to check an IGDTA for:

- In addition to data transfers to non-whitelisted third countries, are intra-group order processing also regulated?
- Are the special cases of Switzerland and the UK covered?

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- Are onward transfers from non-whitelisted third countries regulated in addition to data transfers from the EEA and whitelisted third countries?
- Have the gaps in the SCC been filled adequately?
- Are data transfers from non-European countries with data protection laws also covered by the IGDTA?
- Are country-specific adaptations possible and have they been made where needed?
- Have provisions been made for those data transfers that were forgotten or not taken into account when the SCC were issued?
- Do the SCC also apply where an exporter is not in the EEA or a whitelisted third country, but data protection law (such as the GDPR) requires safeguards?
- Does the IGDTA allow for a transfer to an non-whitelisted third country also on the basis of the exceptions (e.g. Art. 49 GDPR)?
- Are controller-to-controller transfers within the EEA and whitelisted countries covered?
- Does the IGDTA work for transfers that are subject to a data protection law that is not the GDPR?
- Are the necessary internal group delegations (e.g. information of data subjects) regulated?
- Is the involvement of external service providers regulated? Do they have their own data security requirements? Are they listed?
- Are data transfers within the EEA and secure third countries regulated?
- Are cross-border data transfers within a legal entity (e.g. from the parent company to a branch and vice versa) to non-whitelisted third countries covered?
- Is the smooth replacement of an existing IGDTA envisaged and adequately regulated? Is the continuation of the existing SCCs in countries where the new SCCs are not yet recognised ensured?
- Are regulations on collective work agreements and works councils in place (important for Germany)?
- Are there sufficient regulations for joint controllerships (Art. 26 GDPR)?
- Are there intra-group arrangements for the purposes of complying with Art. 27 GDPR (and comparable provisions in other data protection laws)?
- Can the IGDTA be easily adapted without repapering?

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- Is the information of the parties about developments under the IGDTA regulated in a practical manner?
- Is the applicable law and jurisdiction regulated appropriately and in accordance with the GDPR - both in the IGDTA and in the SCC?
- Is it clear who is responsible for the administration of the IGDTA?
- Is it easy for parties to join and leave at any time?
- Does the IGDTA contain the necessary additional information about the parties as required under the new SCC?
- Is it clear which supervisory authority is responsible for which party – including in the case of non-GDPR jurisdictions?
- Are the data transfers sufficiently detailed? Are all data transfers covered?
- Is it clear which companies are involved in which data transfers and in which role?
- Are the technical and organisational data security measures described in more than just generic terms as seen very often in the past? Do they cover more than just data security, but also, for example, processing principles and data subjects' rights?
- Does it provide for a Transfer Impact Assessment mechanism (and corresponding forms)?

If an IGDTA already exists, we recommend a gradual replacement. Unfortunately, it is not possible to update an existing IGDTA by simply replacing the old SCC in the annex with the new SCC one. In order for the new SCCs to function properly, more adjustments are necessary. As our experience shows, the annexes often have to be expanded considerably.

Want more? This response no. 46 of our comprehensive FAQ on the new EU Standard Contractual Clauses (SCC), available for free.

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