

TaylorWessing

Standard Contractual Clauses

Practice Test, Regulators & Transfer Impact Assessment
(TIA) Tool

24 March 2022 | Mona Wrobel, Dr. Paul Voigt, Dr. Axel von dem Bussche

Introduction

- July 2020: **Schrems II decision**
- November 2020: **EPDB recommendation**
- June 2021: **New SCC**
- **Key component of new SCC:** Transfer Impact Assessment (TIA) (Paul)
- What happened since re **authorities** and **impact to day to day practice?** (Axel)

Authorities & Impact on data practice I

Activities of the Supervisor

- “hot potato” – phenomenon
- **Authorities:** “jump as a tiger and land as a bedside rug”?
- **Following Judgement July 2020:** data subjects, employees, activists whistleblowing activity (re-active)
- **September 2020** – informal investigations (pro-active)
- **June 2021** – formal investigations (pro-active) Lower Saxony, Baden-Württemberg, Bavaria, Berlin, Bremen, Brandenburg, Hamburg, Rhineland-Palatinate and Saarland
- **Bottom-Line:** “*we want to see what you have done for compliance (although we know it is a mission impossible)*”

Authorities & Impact on data practice II

Key Question: when GDPR travels and meet third country surveillance laws

- SCC clause 14, clause 15 = Schrems II
- **January 2022: DSK (German Supervisors)** Expert Opinion on the Current State of U.S. Surveillance Law and Authorities from Prof. Stephen I. Vladeck
- **January 2022: EDPB:** Government access to data in third countries: China, Russia, India
- **December 2021: VG Wiesbaden:** transfer to US Cloud provider collides with US surveillance laws

Outlook

- **2022:** more enforcement activities, no excuses for doing nothing. Create a defensible position
- **27 December 2022:** deadline for SCC replacement expires - potential escalation on another level

Authorities & Impact on data practice III

Taylor Wessing, Video	Schrems II / Third Country Data Transfer	Tech & Law TV #19 – Outlook 2022 from the perspective of the German data protection authorities	https://youtu.be/6uEyYtdSB8U
DSK (German Supervisors)	Schrems II / Third Country Data Transfer	Expert Opinion on the Current State of U.S. Surveillance Law and Authorities from Prof. Stephen I. Vladeck	https://www.datenschutzkonferenz-online.de/media/weitere_dokumente/Vladeck_Rechtsgutachten_DSK_en.pdf
EDPB (European Data Protection Board)	Schrems II / Third Country Data Transfer	Government access to data in third countries: China, Russia, India	https://edpb.europa.eu/system/files/2022-01/legalstudy_on_government_access_0.pdf

EDPB recommendations



Recommendations on additional measures

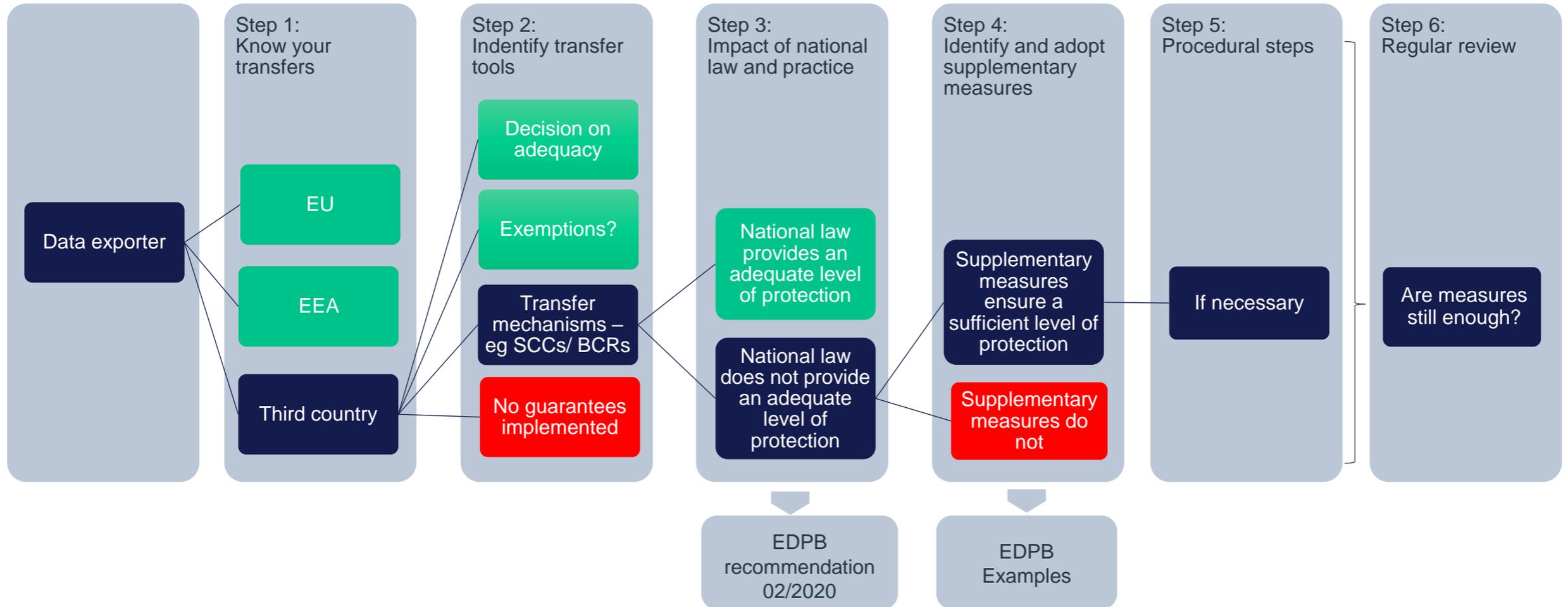
- Binding on DPAs
- 6-step plan for the identification and evaluation of data transfers
- Examples of supplementary measures



Recommendations on EU guarantees for surveillance measures

- Guidance on how to check national law against four key guarantees at EU level

Step plan according to EDPB



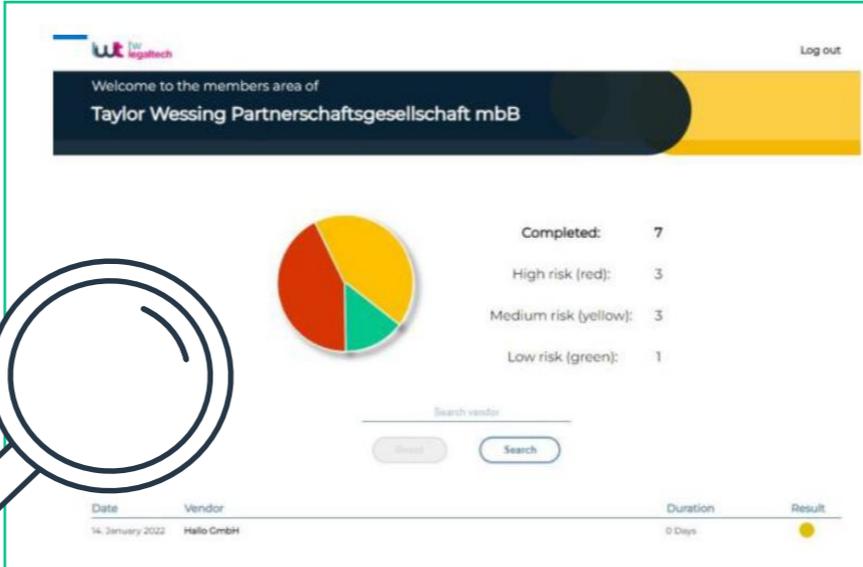
Simplify your Transfer Impact Assessments – the Taylor Wessing TIA Tool



Under the new **EU Standard Contractual Clauses** for third country data transfers, data importers are required to review their **data transfers to non-EU/EAA** countries and carry out so-called **transfer impact assessments (TIAs)** following the **Schrems II** ruling of the Court of Justice of the European Union.

The Taylor Wessing Legal Tech TIA Tool "TInA" will help you simplify all processes related to TIAs ([Link](#)).

- The TIA Tool automatically sends questionnaires (TIA Requests) to any number of Vendors. All you have to do is to enter the Vendors' contact details, and the tool will take care of (almost) everything else.
- If Vendors do not respond, they receive automatic reminders.
- You can also check Subvendors of your Vendors.



Completed: 7
High risk (red): 3
Medium risk (yellow): 3
Low risk (green): 1

Date	Vendor	Duration	Result
14 January 2022	Hallo GmbH	0 Days	●

- ✓ Fully automate your TIA-related procedures
- ✓ All in one place: Keep an overview
- ✓ Easily communicate with your vendors
- ✓ Automatic evaluation and clear results
- ✓ Full control

Question 1 (2 % Complete)

Do you process personal data (e.g. name, address, IP address, usage data, payment data, etc.) in connection with/based on a contract with us?

Yes

No

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Explanations

Personal data: Personal data means any information that can be linked to an individual (even if, e.g., not by you, but just by us). The link may be direct (e.g., name) or indirect (e.g., customer ID). Examples for personal data include:

- general personal data (name, date and age of birth, place of birth, address, e-mail address, telephone number),
- identification numbers (social security number, tax identification number, health insurance number, identity card number),
- banking data (account numbers, credit information, account balances),
- online data (IP address, location data, browser information, usage data, user ID),
- physical characteristics (gender, skin, hair and eye color, clothing size),
- customer data (orders, address data, account data, etc.),
- value judgments (evaluations, job references).

This also includes pseudonymized data.

Pseudonymization : Pseudonymization is the replacement of identification features for the purpose of making it significantly more difficult to identify the data subject. This includes for example replacing the name of a user with a UserID so that third parties without the respective key are unable to identify the respective individual. Pseudonymized data is still personal data.

Processing: Processing means any use of the personal data, including collecting, analyzing, sharing, storing, transferring, deleting, and accessing the data (including remote access).



Question 20 (38 % Complete)

Where do you store the personal data received from us, i.e., where are your servers located?

Exclusively in countries within the EEA

Outside the EEA but exclusively in countries for which the EU Commission issued an adequacy decision

In the US

In other third countries outside the EEA

In the US and in other countries outside the EEA

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Explanations

EEA: The EEA includes all member states of the EU as well as Iceland, Liechtenstein, and Norway.

Countries with adequate protection: The European Commission has so far recognized Andorra, Argentina, Canada (commercial organizations), Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Switzerland, Uruguay and South Korea as providing adequate protection.

Third countries: This includes all countries that are not part of the EEA and which the EU Commission has not recognized as providing adequate protection.



Question 27 (51 % Complete)

Legal transfer mechanism: what measures have been implemented to safeguard the data transfer from us to you?

If SCCs or consent have been implemented, please upload the respective document via the Messages Dialogue (envelope icon).

* Multiple answers allowed *

EU Standard Contractual Clauses (SCC) - version as issued by the European Commission (EC) in 2021

EU Standard Contractual Clauses (SCC) - earlier version

Consent of the affected individual(s)

Binding Corporate Rules

None

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Explanations

EU Standard Contractual Clauses: Standard agreements provided by the EU Commission that provide obligations to the data importer and data exporter for the transfer of personal data.

Please note that **Consent** must be freely, informed and specifically related to the third country transfers involved.

The possibility of appropriate guarantees by **Binding Corporate Rules** is only open to a group of companies. Binding Corporate Rules may cover data transfers by data controllers to group controllers or processors and must be approved by the competent EU data protection supervisory authorities.



Question 30 (57 % Complete)

Are you subject to the US Executive Order (EO) 12333, Section 702 of the Foreign Intelligence Surveillance Act (FISA), and/or any similar laws stipulating the disclosure of personal data to public authorities?

Yes

No

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Explanations

Unless you are certain that you are not subject to US EO 12333 or Sec. 702 FISA, please tick "Yes".

US EO 12333 and **Sec. 702 FISA** are US regulations permitting surveillance activities of US intelligence agencies for national security purposes. In particular, **Sec. 702 FISA** permits the Attorney General and the Director of National Intelligence to authorize jointly the surveillance of non-US persons located outside the US in order to obtain 'foreign intelligence information', whereas **US EO 12333** allows the NSA to access data 'in transit' to the US, by accessing underwater cables on the floor of the Atlantic, and to collect and retain such data before arriving in the United States and being subject there to the FISA.

The scope of application and the procedure is complex in detail. However, the regulations might apply to you, inter alia, if you provide any person with, contract with or make use of a service that allows for the transfer of electronic communications, information, data, writings, or images to the US or if you provide financial products or services, travel agency services or consumer credit reports or services to the US.



Question 48 (91 % Complete)

When you process personal data received from us, do you use encryption measures that

- (i) conform to the state-of-the-art,
- (ii) can be considered robust against cryptanalysis performed by the public authorities in your country; and
- (iii) are flawlessly implemented by properly maintained software?

Yes, data encryption at rest and in transit

Yes, but data encryption at rest, only

Yes, but data encryption in transit, only

No, economically not feasible

No, technically not feasible

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Explanations

No explanations available for this question



Check done by
p.voigt@taylorwessing.com

at

22.03.2022 - 11:03

for

Taylor Wessing Partnerschaftsgesellschaft mbB

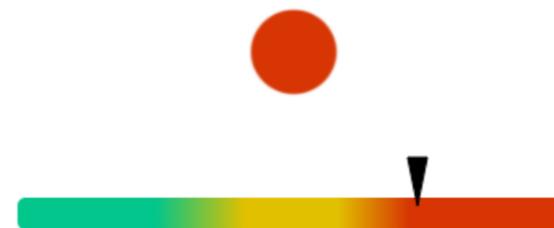
regarding the contractual relationship with

Hallo GmbH

in the case of

Webinar

Result of the automated assessment:



The automated result is based on the following answers:

Do you process personal data (e.g. name, address, IP address, usage data, payment data, etc.) in connection with/based on a contract with us?

Yes

Change answer

Send message to vendor regarding this answer

Do you process that data in your capacity as data controller (i.e., independently on your own behalf for your own purposes) or data processor (i.e., on our behalf, based on our instructions)?

Data processor

Change answer

Send message to vendor regarding this answer



Check done by

p.voigt@taylorwessing.com

at

22.03.2022 - 11:03

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Original automated Result:



The transfer shows medium risks. It is recommended to implement supplementary technical and/or organizational measures, e.g. further encryption, pseudonymization, data minimization, regular reports on data access requests etc. If this is not possible, alternative services from providers in the EU should be explored.

Positive aspects:

Do you share personal data received from us with other data recipients (e.g., service providers, other group companies, etc.)?

No

Legal transfer mechanism: what measures have been implemented to safeguard the data transfer from us to you?



Completed: 22

High risk (red): 4

Medium risk (yellow): 12

Low risk (green): 6

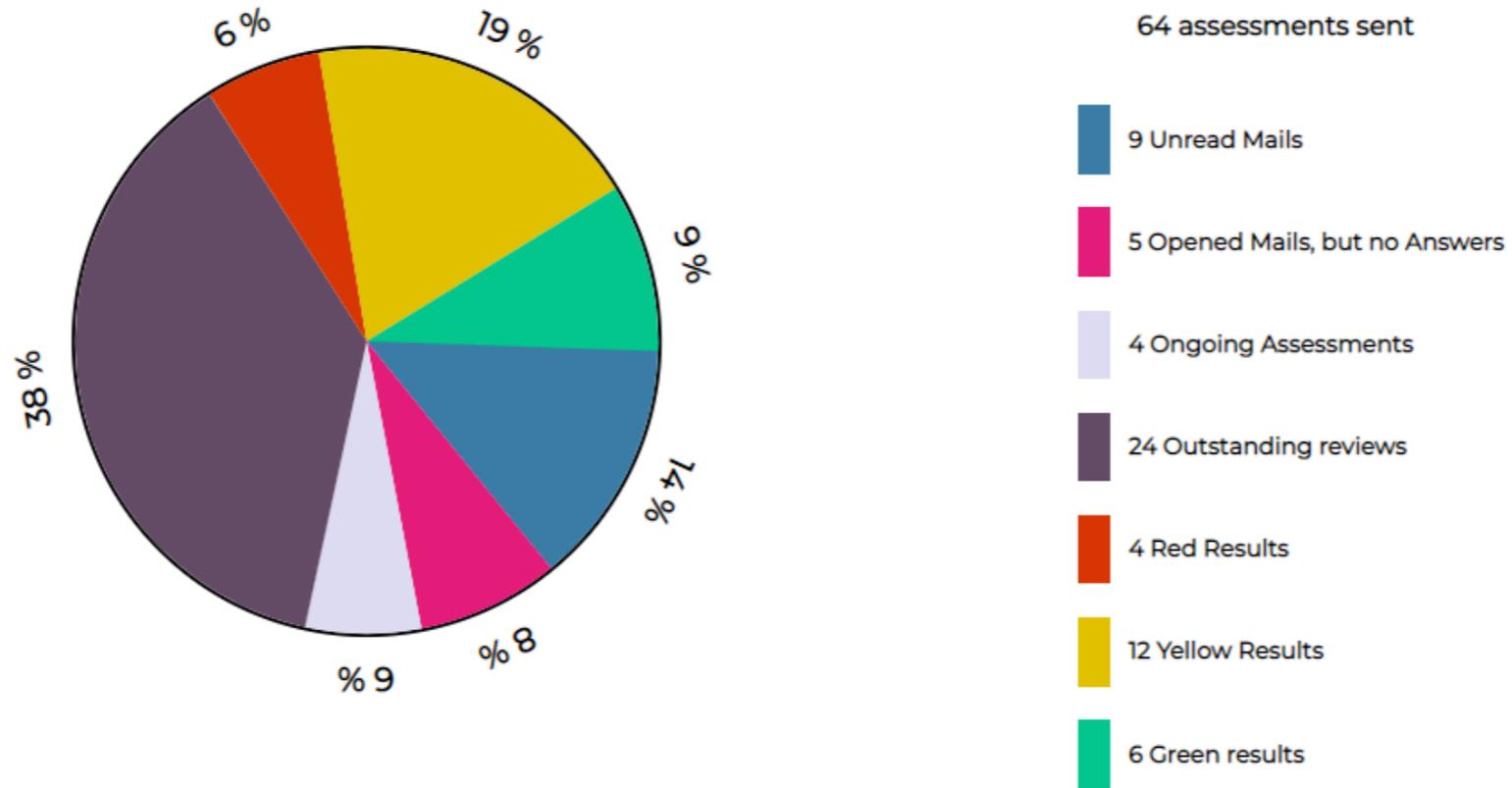
Search vendor

Reset

Search

Date	Vendor	Duration	Result
22. March 2022	Hallo GmbH - 21	0 Days	
9. March 2022	Hallo GmbH - BO	0 Days	
21. February 2022	Hallo GmbH - SPR	0 Days	
17. February 2022	Hallo GmbH - Abend	0 Days	
17. February 2022	Hallo GmbH - Thursday eve	0 Days	

Overview of the assessments:



Number of assessments sent out over time:

Number of Assessments

37.63

Messages from Vendors (5 New)

To access and respond to the messages received from your Vendors via the TIA Questionnaire, please click on "Show Vendor messages" below.

Show Vendor messages

Add Vendors and send link to TIA Questionnaire (TIA Request)

To add Vendors and manage the dispatch of TIA Requests, please click on "Add Vendor(s)" below.

Add Vendor(s)

Check status of pending TIA Requests

To check the current processing status of one or more TIA Requests you have sent, please click on "Check status of TIA Requests" below.

Check status of TIA Requests

Review the assessments received from vendors (20 New)

You can review all assessments received from vendors, finalize the assessments or follow up with questions to the vendor.

Review assessments

TIA Dashboard (Completed TIAs)

To get an overview of the completed TIA Questionnaires, please click on "TIA Dashboard" below.

TIA Dashboard

Manage Subvendors of your Vendors (1 New)

To approve Subvendors of your Vendors and manage the dispatch of TIA Requests to them, please click on "Manage Subvendors" below.

Manage Subvendors

Reporting Area

You get an overview of the amount of sent and received questionnaires.

Reporting Area

TIA Questionnaires recently completed

March 2022

- 22. March 2022
Halo GmbH - 21 ●
- 16. March 2022
Halo GmbH - Montag 2 ●
- 9. March 2022
Halo GmbH - BO ●

February 2022

- 21. February 2022
Halo GmbH - SPIR ●
- 17. February 2022
Halo GmbH - Abend ●
- 17. February 2022
Halo GmbH - Thursday eve ●
- 17. February 2022
Halo GmbH - Contract ●
- 14. February 2022
AB Corp - abc ●
- 8. February 2022
Halo GmbH - Hallo ●

January 2022

- 26. January 2022
Halo GmbH - Versuch 26.1. 16:38 ●

What to do?

- **Game-plan – complicated project:** contract amendment and operationalisation – internal & external resources, and comms internally – will be a long process
- **Data-Mapping** – including which module fits where
- **Process** of transfer impact assessment
- **Switch to the new SCC:** all existing SCC to be replaced with new SCC
 - since 27 September 2021: for new agreements only new SCC
 - by 27 December 2022: all existing SCC to be replaced with new SCC
- **Documentation** and constant **re-evaluation** of measures taken (clauses 8.9, 14 (d) SCC)

Your Taylor Wessing Team



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Transfer Impact Assessment Tool (TIA tool):



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