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## **noyb's Comments on the Draft Standard Contractual Clauses under Article 28 (7) GDPR and Article 29(7) of Regulation (EU) 2018/1725<sup>1</sup>**

noyb welcomes the initiative of the Commission to adopt standard data protection clauses on the basis of Article 28(7) GDPR. We also welcome the opportunity provided by the public consultation to send the following comments on the draft decision and its annexes.

Article/Clause number	Headline	Comment
General remark	-	In light of the definitions set out in Article 4(7) and 4(8) GDPR it would be sufficient to speak of <i>controller</i> and <i>processor</i> instead of <i>data controller</i> and <i>data processor</i> .
Article 2	-	It is unclear to us why the SCCs have been limited in scope to entities subject to the GDPR or Regulation 2018/1725, whereas they could be used between a controller based in the EU and subject to the GDPR and a processor established in a country providing an adequate level of protection on the basis of a decision of the Commission. We refer to our comments on the SCCs on transfers submitted the same day, in the general remarks, section C.
Clause 1	<i>Purpose and scope</i>	(b) should be completed as follows: “[...], which require the processing by a processor(s) to be governed by a contract <b>or other legal act under Union or Member State law.</b> ”
Clause 4	<i>Hierarchy</i>	Clause 4 should be moved up to be Clause 3 or integrated in Clause 2. One would expect a hierarchy rule immediately after Clause 2(b).
Clause 7.2	<i>Erasure or return of data</i>	In cases where Option 2 applies/is chosen, there should be a duty of the processor to inform the controller which data have not been deleted and based on which legal provision the data will be stored further.  The choice should be left to the controller to select another option before the termination of the contract to avoid any accidental loss or deletion of the data, but also to ensure that evidence of a possible violation of the SCCs is still available to the supervisory authority and/or the data subjects.
Clause 7.3(c)	<i>Security of processing</i>	The term “ <i>the contract</i> ” (meaning the (civil law) agreement between the parties) as used in these Clauses should be defined somewhere. In addition, note that Clause 2(b) speaks of a “ <i>wider contract</i> ”. A uniform use of the word “contract” is recommended to avoid ambiguity.
Clause 10(a)	<i>Termination</i>	

<sup>1</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12740-Commission-Implementing-Decision-on-standard-contractual-clauses-between-controllers-and-processors-located-in-the-EU>.

Clause 7.5	<i>Special categories of personal data</i>	<p>Data under Article 10 GDPR are not necessarily special categories of data under Article 9(1) GDPR. Hence the bracket should be repositioned as follows:</p> <p><i>“If the processing involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person’s sex life or sexual orientation <b>(special categories of data)</b>, or data relating to criminal convictions and offences <del>(special categories of data)</del> the data processor shall apply specific restrictions and/or the additional safeguards laid down in Annex V.”</i></p> <p>This seems also be an implementation of the data security obligation under clause 7(3) and depending on the nature of the data (see 7(3) (a)). We welcome the initiative to suggest a specific clause for this category of data, but we suggest to insert a reference to Article 7(3) (a) to make clear this is a further specification of the obligation under Article 7(3)(a).</p>										
Clause 8(b)	<i>Data subject rights</i>	The right to withdraw given consent at any time (Article 7(3) GDPR) should be added to this list.										
ANNEX I	LIST OF PARTIES	Instead of or in addition of a contact person, the DPO’s contact details should be required (should there be a DPO).										
ANNEX II	DESCRIPTION OF THE PROCESSING	<p>To link all elements in a comprehensive way, a table would be better; e.g.:</p> <table><tr><th>Category of data subjects</th><th>Category of personal data processed</th><th>Special category of data or data relating to criminal convictions and offences? (Y/N)</th><th>Purpose(s) of processing</th><th>Duration of processing</th></tr><tr><td>Lorem ipsum</td><td>Lorem ipsum</td><td>Lorem ipsum</td><td>Lorem ipsum</td><td>Lorem ipsum</td></tr></table>	Category of data subjects	Category of personal data processed	Special category of data or data relating to criminal convictions and offences? (Y/N)	Purpose(s) of processing	Duration of processing	Lorem ipsum	Lorem ipsum	Lorem ipsum	Lorem ipsum	Lorem ipsum
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