

The new SCCs and Schrems II compliance

The repapering exercise



The repapering exercise

On 4 June, the European Commission published the new Standard Contractual Clauses (the new SCCs), designed to comply with the EU General Data Protection Regulation (GDPR) and address the requirements of the Schrems II judgement. Organisations have 18 months to ensure that the new SCCs are in place. Reviewing, amending and negotiating contracts on such a large scale and in such a short space of time inevitably has considerable logistical challenges. It is therefore essential that organisations carefully consider their options when determining how to approach such projects to ensure that the projects are conducted in the most efficient, compliant and cost effective manner.

Why Norton Rose Fulbright

Bringing together the right mix of technologies and human expertise is essential, but the optimal combination varies depending on the scale and complexity of the project.

We have extensive experience reviewing and repapering contracts for a wide range of clients and have been engaged on some of the largest and most complex projects in recent years. Combined with our experience of running smaller projects, we have now developed a modular solution that can draw from a menu of approaches to provide the right blend of legal tech and legal expertise to suit the size and complexity of your project – whether working with 100 or 100,000 documents. This includes a full range of technical delivery skills in addition to our lawyers.

We offer the deep legal expertise of a global law firm, the flexible and scalable delivery capability of a process outsourcer (through our Hub in Newcastle), and the tooling options of a technology consultancy, all within a single institution. By working together on client projects, we have developed cross functional knowledge and experience that allows our teams to interact seamlessly in delivering legal services to our clients. With our large international network, we can do this in many languages. With our rigorous approach to data, we can provide you with valuable analytics and insights throughout.

Review and repapering considerations



Considerations	NRF
Identifying the volume, location and format of documents across multiple systems and jurisdictions.	Our solution is designed to achieve time and cost efficiency. We support project teams on approach and delivery of document identification, triage and sorting before any remediation begins.
Project teams with 'business as usual' roles to fulfil alongside their project responsibilities, creating time pressures.	Our delivery approach is designed to place minimal burden on internal project teams, while still ensuring complete oversight and control.
Contracts need to be legally robust and commercially operational following remediation.	Senior legal oversight is provided throughout the document, review and amendment phases to maintain the legal integrity of amended documents.
Amended contracts need to be compatible with internal systems, storage and filing protocols so they can be re-imported into existing systems. Ideally, this would retain newly created digitised information and structured data, which many institutions have historically lacked.	Remediated contracts are returned in an ordered and profiled state. The benefits of digitised contract portfolios are far reaching, equipping institutions to more easily gain other insights, or complete similar exercises in the future.

Norton Rose Fulbright's approach to review and repapering

Overcoming the logistical challenges of this type of project requires:

- A robust project plan
- A trusted partner, who understands the nuances of your business and industry, and who can work appropriately with your counterparties, handling the process in a way that will be frictionless and support ongoing relationships; and
- Clear visibility on the status of the project throughout its progress, in its entirety and down to each document, to provide effective management and project team information, and to manage risk.

To achieve this, our approach is supported by a range of the best available technologies which we select after rigorous testing. These tools are applied in a variety of combinations depending on the nature of the project.

Where appropriate, this may be by using machine learning models to significantly speed up the process.

Re-papering

We can use technology to automatically generate templates, conduct negotiations and execute agreements. For example, when requesting amendments to contracts, templates are drafted and tailored for each underlying contract type. Individual documents are then generated automatically from these templates together with the structured data already gathered during the document review phase. The amendment process can proceed in two ways: either an execution version is sent to the counterparty via DocuSign for electronic signature; or, where some negotiation is anticipated, an online negotiation platform is used to share the contract. By keeping the contract on a central platform, comments and mark-ups made to the documents by both parties are easy to track and manage for reporting. Once agreed, the contract is sent for signature through DocuSign.






In every case, a playbook guides paralegals and junior lawyers through the approaches and responses to clients. Escalation points are built into the process for final checks on documents, to raise queries, and to develop new responses as unanticipated scenarios come up or policies change.

Schrems II Review and repapering process

This section provides a high-level example of how the process for the repapering exercise may look. This process can be adapted as necessary to reflect clients' preferred approach and strategy. It can also cover situations where the client is acting as a data processor and / or a data controller.

Project preparation and support

Our project set-up support allows clients to leverage our extensive experience and best practice across the market. We adapt the set-up procedure to the project and can be up and running in very short order where required, and on smaller projects some steps may simply not be needed. Large projects often benefit from a short series of set up workshops to ensure an optimal approach and successful outcomes.

Overview / planning workshop	An overview workshop with the internal project team, going through all elements of the remediation. Can be adapted to fit current project progress and status, and include senior stakeholders.	
Process walk-through / advisory sessions	Workshop focusing on the end-to-end process, pitfalls and opportunities for risk avoidance and efficiency.	
Tech walkthrough / advisory workshop	A workshop focusing on the available technology tools, their pitfalls, and suitability for different use cases. Can include client document trials and dry runs.	
Ongoing project delivery support	Overseen by a project manager, secondees to project teams can be provided on areas from project design to internal document location and sorting.	
Strategic advisory support	Hotline for senior lawyers to support the project with ongoing advice through its preparation phase.	

Set up

Scope of remediation work agreed

At the outset of the project, we will agree the scope of the work required, the level of NRF involvement and the strategy for handling any negotiations.

Discovery and document collation

We will then collate all contracts that need to be amended and can support with locating documents internally if needed. Alternatively, we may work with your technology team to export the contracts from your contract management system.

Collaboration site

Once collated, all documents are uploaded to a central repository that the client's teams can access securely. This central repository, usually provided by HighQ or Microsoft, includes a designed "workflow", which will take every document through the whole lifecycle of its review. The project team and senior management can track the progress of each document through the workflow on the platform through dashboards generated in Power BI.

Document review and due diligence report

At the outset, we triage the documents, remove those which are not relevant or duplicative, and group them so that families of contracts and amendment agreements can be reviewed holistically. Based on the client's preferences, we agree a set of data points to be extracted from all agreements.

If there are a high volume of contracts and we have already developed a machine learning model for the contract type, a team member can use this across many documents to quickly locate the relevant provisions and log them in the system. If a machine learning model does not yet exist for the relevant documents then, where justified by volume, a new one is developed. If the volume of contracts does not justify the use of machine learning, or the clauses of interest are so different across documents that a model cannot be developed, our team of experienced paralegals will undertake the review manually, through a structured workflow designed to optimise efficiency and quality.

The data generated by the review builds the baseline for the digital due diligence report, behind which sits a database linking the agreements and their identified data points.

The progress of and structured data generated by each contract will be uploaded to the collaboration site.

Standard contractual clauses amendment

Customisation of SCC amendment

The NRF legal team will draft and customise the SCC amendment as required. You may also decide to use this as an opportunity to incorporate any other additions to the agreements, such as additional data processing terms or security enhancements. These changes are converted into a template to automatically generate the amended documents, pulling through data points from the legacy contracts such as parties, dates and key terms.

Vendor questionnaire and annex creation

Along with the SCC amendment, clients may wish to send their vendors a questionnaire regarding their compliance with the Schrems II judgement, the responses to which can help populate the annexes to the SCCs. The NRF legal team will draft the questionnaire as required and advise the client on how best to incorporate the responses into the annexes. The questionnaire can be created and completed online, and its responses will enable the annexes to be automatically generated.

SCC annexes quality checks

Automatically generated annexes will be periodically quality checked to ensure the content is correct.

Transfer impact assessments

The responses to the vendor questionnaires can be used to populate a standardised transfer impact assessment document and to escalate any transfers that may need to be halted for further consideration. Given the current state of EDPB Guidance calibrating the transfer impact assessment is a nuanced process and will be separately tailored to each client's risk appetite.

Document negotiation and execution

Negotiations

Negotiations can be managed online using Parley Pro, which reduces email correspondence and having to manage multiple versions of a document by keeping a single version online that is always up to date with a granular audit trail of changes and comments. Alternatively, negotiations may take place in the traditional way over email and by providing mark-ups. NRF can manage the negotiations directly or assist the client as needed. Either way, NRF will work with the client to agree a playbook and fall-back negotiating positions.

Document execution










Contracts can be executed electronically using DocuSign or another online platform to simplify the signing process for counterparties. These tools reduce administration effort and allow for detailed progress reporting in this phase of the project. This approach supports both wet ink or e-signature and it is possible to issue the documents from a client's email address if preferred.

Data export

Following execution, we can export the data from the updated contracts in a format that can be easily ingested into the client's contract management system.

Process Advantages

We offer a complete solution, designed to support project teams and stakeholders through a transition project. Our approach is always collaborative and open, and produces a tailored solution based on specific needs.

	Pre-developed solution, individually adapted	We can adapt a solution built over an 18 month product development cycle, road tested with early movers, designed to be adapted to each institution's individual needs.
	Multidisciplinary team	Lawyers from a leading global firm recognised for its industry focus work seamlessly with a market leading delivery team to create an innovative and flexible solution, designed around needs.
	Full tech stack / tool agnostic	AI and decision-based technology is utilised following extensive testing and assessment of all market-leading and established tools.
	Fully mapped process	Each stage in the end-to-end process has been fully mapped and is supported with appropriate workflow-creating efficiencies, by having the right people and technology doing the right tasks at the right time in the right location.
	Complete PMO support	A central PMO is set up to support every project, with a dedicated project manager assigned to manage the project alongside the client project team.
	Transparent & flexible pricing	A flexible pricing structure based on fixed prices for agreed outputs to aid budgeting and provide cost certainty.
	Modular structure	Modules include: Project set-up; Solution design (institution specific); Document review; Remediation, to allow project teams to access as much or as little external support as required.
	Fully scalable / flexible delivery timing	Flexible and scalable resourcing model, offering complete global coverage and delivery timing.
	Live online reporting	Real time reporting to provide project teams with high level or detailed data on project status and completion levels, reducing email traffic and reporting delays.

High level process map

Project Set-up



Project Set-up Support*
*see page 8

Solution Design*

*an institution adapted design, using our pre-built solution

Discovery & Document Collection Workshop



Contract Management Workshop



Document Review



HighQ / SQL
Upload Docs

Optional AI assisted workflow
eBrevia



Build AI model

Ongoing support



Tech deployment & support*

* tool agnostic: examples shown & can be provided, but can work on any industry standard platforms & internal systems



Project Management Office (PMO) support

Ongoing outputs

HighQ / Power BI



Task & Workflow Reporting



MI Reporting

HighQ / Power BI

Repapering



PARLEYPRO
Generate automated amendments with SCC changes

HighQ PARLEYPRO



Counterparty engagement / negotiation

HighQ

Remediated / re-profiled contract set



DocuSign

E-signature / conventional signing



Updated key contract terms



Client contract management system

Outputs

How we avoid common pitfalls

Project pitfalls



Over or under estimating the contribution tech (AI especially) can make.

In the last two years, new and improved technology tools have come to market which can provide cost and time efficiencies in delivering remediation and repapering projects. However, relying on these tools to do things they can't, or failing to use them where they could add real value, has the potential to make a material difference to project delivery.

We have a dedicated team that has extensively tested many technologies to determine the most appropriate tools, and the optimal blend of technology and human expertise.

Prioritising delivery expertise (project management, process design and technology related etc.) to the exclusion of legal expertise – or vice versa.

The use of new tools and approaches means that remediation and repapering is a multidisciplinary project, in which delivery expertise, technological understanding, and legal skills are equally important. It is vital that a project team is built that recognises the value of these different skillsets so as to allow them to work effectively together. The importance of this is hard to overstate.

Our global team consists of experts in all relevant legal and non-legal disciplines. Our working practices enable such multidisciplinary teams to work seamlessly.

Not stress testing suppliers' level of understanding (and investment) in the processes and tech underpinning the delivery plan.

A full due diligence on external support is strongly recommended. Has the internal team seen the tools that will be relied on? Have they been through the plan in sufficient detail that they would stake the success of the project on it? The internal team needs to be appropriately confident in the solution.

We engage openly with in-house project and technology teams at every step, and welcome an early and thorough review of our baseline approach. We regularly hold process walk-throughs, or technology walk-throughs, including running trials or demonstrations on client documents.

Not engaging in an iterative and discovery-led process, to co-design solutions with internal and external stakeholders.

An externally provided solution should be built around the priorities and particular needs and constraints of your business. Your supplier should also be able to offer insight based on their experience with other organisations, so that you benefit from the learnings from similar projects.

We place significant importance on the early set-up stages of any remediation and repapering project. Through a short series of workshops, our project design is based on specific client needs.

Underinvestment in internal engagement or full internal articulation of the risks and benefits of a solution.

The challenge of securing budgets and resources is made significantly greater if the risks and challenges of the project are not fully understood. There are also vital internal stakeholders – such as information security – who may not have been closely involved in projects like this in the past. Early and effective engagement is vital.

We support project teams with internal engagement, including with senior management and info sec. Especially where technical teams are involved, we bring in equivalent professionals who can work through issues to achieve balanced and pragmatic solutions.

Experience

With more than 3700 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia Pacific, Africa and the Middle East, we provide the world's preeminent corporations and financial institutions with a full business law service.

From our offices in the world's key business centres and the fastest growing markets, our lawyers are perfectly positioned to help clients realise their financial objectives and optimise opportunities presented by today's market. We are able to draw upon our depth of experience across sectors, providing tailored legal advice on high-level and complex assignments.

We are equally skilled at helping clients navigate the challenges resulting from disruptive technology and leveraging our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

Case Studies

We are market leaders in large scale review and amendment projects.

- As part of IBOR transition, we have reviewed, amended and negotiated complete loan and derivative portfolios for numerous global banks. The largest of these review projects included over 50,000 agreements. These projects are managed in an internally developed and configured, end-to-end technology "production line", including machine learning assisted document review and automated amendments. Staffed principally by the Newcastle legal process team, directed by NRF project managers liaising directly with in-house project managers and overseen by senior NRF lawyers in most global financial centres.
- A banking document review for a US headquartered global investment bank, completing a major asset sale including derivatives, asset finance and project finance loans. The review covered over 100,000 documents, and was staffed by c.30 paralegals, and c.20 associates (covering the range of contract types and jurisdictions – this does not reflect leverage). The project was completed on time and budget. This did not precede a repapering, but by using extensive automation, we were able to accelerate the portfolio sale closing mechanics across a wider range of instruments.
- In one project, a moving deadline meant we had to review over 100,000 documents in a week. We set up a team of 72 paralegals and over 30 associates, and completed the review in five days.
- Conducting a bulk review of over 2,000 lending and associated documents for a leading US investment bank. This project was supported by a team of around 20 associates in London, New York and other international offices, and around 40 reviewers in our Newcastle Hub.

Key sectors we cover include

Financial institution

Energy

Infrastructure

Mining and commodities

Transport

Technology and innovation

Life sciences and healthcare

2020 NRF Transform Accolades and Awards

Most Innovative Use of Technology

The Lawyer Awards - NT Analyzer

Innovation of the Year (International Law Firm)

Global Legal Awards, Legal Week - Claim Control, flight delay claims

Standout Response to Covid

FT Legal Awards - Covid Resolve

FT Innovative Lawyers Report

NRF Transform programme, IBOR Transition, Business & Legal Operations graduate scheme

Norton Rose Fulbright has extensive experience reviewing and repapering contracts for a wide range of clients and has been engaged on some of the largest and most complex projects in recent years.

For more information or support, please contact us.

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NRF Transform

NRF Transform is our global change and innovation programme. It aims to make how we deliver traditional services more effective and efficient, and to provide entirely new solutions to our client's most pressing business problems. It has over 150 staff in offices around the world, as well as 3 dedicated Hubs, and includes teams focusing on Applied Technology, Innovation, Legal Design, Legal Project Management, Legal Operations Consulting, Resource Management, and Commercial Management.

nrfttransform.law

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