
Data Protection

What does it cover?

- The transfers of personal data from the UK to the EU, and from the EU to the UK, in the event of no-deal.
- Rules for companies with entities in the UK and the EU.
- Rules for UK businesses selling directly to EU customers' post-Brexit.

What will happen?

- The EU (Withdrawal) Act 2018 will make the EU's General Data Protection Regulation (GDPR) part of UK domestic law.
- The UK will become a third country from 30th March 2019.
- The EU's GDPR only permits transfers of personal data outside the EU on a limited set of legal bases.
- Without a specific legal basis, transfers of personal data between the EU and UK would become unlawful.
- Whilst the European Commission can determine that the UK has adequate levels of protection of personal data, (a so-called adequacy decision) , and can make a decision which allows the easy transfer of personal data, they have indicated that they will not address this issue until after the UK has left the EU and such a decision is not guaranteed.
- The technical note considers the transfers of personal data between data controllers, not specifically the impact on manufacturers selling goods and services into the EU.

What will businesses have to do?

- It seems very likely that the European Commission will not make an adequacy decision for some after the UK leaves the EU, leaving businesses that process personal data needing to make alternative plans
- Transfers of personal data from the UK to the EU will according to the notice continue as now.
- Transfers from the EU to the UK will require UK businesses to put in place measures to comply with EU rules, as the UK will be a third country.
- UK businesses could consider adopting binding corporate rules with the EU business they deal with for personal data purposes, but these need regulatory approval from a supervisory body in the EU. It is unlikely that any such rules will be approved in time for March 2019.

- Data importers/exporters can enter into binding standard contractual clauses, (SCCs) approved by the European Commission, which would provide a basis for the transfer of personal data and should consider doing so. However, these SCCs have not yet been updated following the GDPR changes and are in any event currently the subject of legal challenge, but this seems for most to be the most likely option.
- The EU's GDPR has extra-territorial jurisdiction, meaning that it will apply to UK businesses selling into the single market whether there is a deal between the UK and EU, or not.
- **UK manufacturers will therefore need to comply with GDPR provisions as businesses operating from third countries, including for example appointing a representative in the UK.**

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