

Brexit and GDPR: Compliance checklist for Data Controllers and Data Processors.

2018 presented a lot of changes from a data protection perspective due to the [Regulation \(EU\) 2016/679](#) (the "GDPR") which entered into force on 25 May 2018. This year will see a whole new set of challenges with Brexit.

The uncertainty in relation to the imminent scheduled "exit day", i.e. the 29 March 2019, requires to be prepared for a "hard Brexit" or "no deal" scenario where the UK is to be considered as a non-EU Member State (i.e. a third country) to which, except under certain conditions, the transfer of personal data under the GDPR is prohibited.

In this context, we have compiled a checklist of key actions to undertake in order to ensure that Data Controllers and Processors are compliant with GDPR post-Brexit. As a reminder, entities which fail to comply may be exposed to onerous sanctions, as introduced by article 83 of the GDPR and the Luxembourg law of 1 August 2018.

As thus, the following may have to be considered:

- **Appointing a Representative**

As a result of Brexit, the UK will become a third country within the meaning of the GDPR. In this respect, Data Controller(s) or Processor(s) established in the UK may be required to designate a representative, pursuant to Article 27 of the GDPR. Such representative will act as the key contact, notably for any queries EU Data Subjects or supervisory authorities may have.

• Relying on appropriate safeguards for transfers outside the EU

Business continuity after Brexit will automatically imply a transfer of data outside the EU. Since it is unlikely that an adequacy decision within the meaning of Article 45 of the GDPR is in place before Brexit, the transfer of data outside the EU should be relying on other safeguards (if such safeguards are not already in place). Therefore, it is recommended to rely on standard clauses (approved by the EU Commission – so called *Model contracts* as available [here](#)) or binding corporates rules (“BCR”) to ensure the same level of protection.

• Updating the privacy notice and notifying Data Subjects

Finally, Brexit will incur modification of the privacy notices/statements in relation to Data Controller(s) and Processor(s) established in the UK. In this respect, please note that you must notify existing Data Subjects of any material changes within the privacy notice (e.g. triggered by a switch to a third country). Since there is no formal requirement provided for by the GDPR, flexibility around such communication is possible.

Please note that the rights of UK Data Subjects under GDPR remain unchanged regardless of the Data Subjects location, nationality, place of residence, etc. Data Controller(s) and Processor(s) will have to provide the same level of protection to UK Data Subjects post-Brexit.

Should you have any questions regarding the above, please contact your usual Linklaters LLP contact.

For more information, please read our updated [GDPR toolkit](#).

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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