



The Citco group of companies and Brexit

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CITCO

Data Protection after Brexit

1. Background

During 2019 and 2020 (in anticipation of the completion of Brexit), the U.K. made preparations to adapt the EU's GDPR to work as a piece of U.K. legislation in conjunction with its domestic Data Protection Act 2018. The Data Protection Privacy and Electronic Communication (Amendment etc.)(EU Exit) Regulations 2019 came into force on in the U.K. on 1 January 2021. These regulations consolidated and amended the EU GDPR and the U.K.'s domestic Data Protection Act to create a new "U.K. GDPR".

Under the U.K.-EU Withdrawal Agreement (which came into force on 1 February 2020), the U.K. became a "third country" for the purposes of cross-border data transfers from the European Economic Area (EEA) to the U.K., but continued to be treated as an EU Member State during the Brexit transition period (1 February 2020 to 31 December 2020). During the Brexit transition period, personal data could be transferred between the EEA and the U.K. without restriction.

In the Political Declaration on the Future U.K.-EU Relationship (which was finalised by the U.K. and EU during January 2020), it was intended that the EU would start a data adequacy assessment for the U.K. as soon as possible to conclude before the end of the Brexit transition period so that there would be no interruption to the data transfer practices of organisations.

The EU Commission has the power to determine whether a third country (i.e. a country that is not a member state of the EU or a part of the EEA) has an adequate level of data protection. The effect of an adequacy decision is that personal data can be sent from an EEA state to a third country without any further GDPR safeguard being necessary (i.e. without restriction). When assessing the level of adequacy provided by an applicant third country (as the U.K. has now become), the EU Commission must consider a range of factors, including rule of law, respect for human rights and freedoms, relevant legislation, such as regulations for the onward transfer of personal data to another third country, and judicial redress for data subjects whose personal data are being transferred. The EU Commission must also assess whether the assessed jurisdiction has an effective and functioning independent supervisory authority in place that is responsible for ensuring and enforcing compliance with data protection rules.

When an adequacy assessment for the U.K. was not completed during the Brexit transition period, the data protection terms set out in the EU-U.K. Trade & Co-Operation Agreement (agreed on 24 December 2020) provided that cross-border data transfer mechanisms (typically required for transfers from the EEA to third country) would not be required for personal data transfers between the EEA and the U.K. for a period of time (until the earlier of the date on which the EU Commission issued an adequacy decision regarding the U.K. or, after an automatic extension, 1 July 2021). This was significant because it meant that organisations could continue to transfer personal data from the EEA to the U.K. for an additional period without additional compliance measures.

2. Latest Update

As of June 29, 2021, the U.K. has been formally recognised by the EU Commission as having essentially equivalent data protection standards to the EU's own data protection standards - enabling personal data to continue to flow freely without restriction from the EEA to the U.K.

A sunset clause of four years has been incorporated: The U.K.'s data protection is scheduled to be reassessed by the EU Commission during 2025, with no automatic continuation of the adequacy finding taking place if at that time, the EU Commission determines that the U.K.'s data protection standards have deviated. There is also scope for the EU Commission to reassess the U.K.'s data protection regime on an unscheduled basis. As stated by the EU Commission, they will *"continue to monitor the legal situation in the U.K. and could intervene at any point if the U.K. deviates from the level of protection currently in place"*.

It is worth noting that the U.K, which now operates a data protection regime fully independent from the EU, has already recognised (during the Brexit transition process) the EU and EEA member states as "adequate" which ensures the free-flow of personal data from the U.K. to the EEA without cross-border data transfer mechanisms.

3. Implications for Citco

Citco and other organisations can continue to transfer personal data freely from the EEA to the U.K. and from the U.K. to the EEA without the need for additional safeguard mechanisms particular to such transfers.

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