



January 2019

No Deal Brexit – The implications for companies that transfer Personal Data to the UK

The Data Protection Commission (**DPC**) has recently published [preliminary guidance on transfers of personal data to the UK](#) in the event of a 'no deal' Brexit.

Under EU data protection law it is possible to transfer personal data to countries within the EEA with no additional restrictions. However, transfers to countries outside the EEA i.e. to 'third countries' require additional safeguards to be put in place.

In its preliminary guidance, the DPC confirmed that, in the event of a 'no-deal' Brexit on 30 March 2019, the UK will become a 'third country' for the purposes of EU personal data transfers. Accordingly, the rules applicable to transfers to third countries as set out in Chapter V of the General Data Protection Regulation (the "GDPR") will apply to transfers of personal data to the UK and one of the transfer mechanisms or one of the additional safeguards must be implemented.

The most straight forward way to transfer personal data to a 'third country' is where the third country has been recognised by the EU as having an "adequate" data protection regime. However, the DPC has also confirmed in its preliminary guidance that no such recognition of the UK data protection regime will occur before the end of March 2019.

For further information on any of the issues discussed in this article please contact:



Lorcan Tiernan

DD: + 353 (0)1 673 1736

Lorcan.Tiernan@dilloneustace.ie



Philip Lea

DD: + 353 (0)1 673 1706

Philip.Lea@dilloneustace.ie



Rose McKillen

DD: + 353 (0)1 673 1754

Rose.McKillen@dilloneustace.ie

This has significant implications for companies or organisations that transfer personal data out of Ireland to the UK (including Northern Ireland). In the event of a 'no deal' Brexit and before 29 March 2019, Irish entities that wish to continue to transfer personal data to the UK will need to put in place additional legal safeguards to lawfully transfer this personal data. For many companies, such additional legal safeguards will likely be the deployment of standard or model contractual clauses into contracts with their counterparties and/or suppliers.

While awaiting further clarity on whether a 'no deal' Brexit will occur (hopefully clearer after the UK Parliamentary vote on 15 January 2019), businesses should start preparing for this possibility. In its preliminary guidance, the DPC sets out steps for entities to consider which include reviewing personal data transfers to determine if any personal data is transferred to the UK and determining if these must continue beyond 30 March 2019. Where personal data transfers are to continue in the event of a 'no deal' Brexit, then businesses will need to consider the best transfer mechanism available and ensure, in accordance with the DPC's preliminary guidance, that it is in place by 30 March 2019.

It is to be expected that it may take some time to identify data flows and negotiate revised contractual arrangements with third parties, therefore companies should add this workstream to their growing Brexit contingency planning.

Dillon Eustace
January, 2019

DILLON EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2019 Dillon Eustace. All rights reserved.