



## Brexit Guidance

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# The consequences of Brexit for international data transfers

(Version updated on 31 December 2020)

*We will be updating this page whenever there are developments. Please keep referring back to this page for updates.*

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## Introduction

This guidance is provided in order to help companies, public bodies and Luxembourg associations that are transferring personal data to the United Kingdom, and which continue such transfers in 2021.

Following the United Kingdom's departure from the European Union, on 1 February 2020, a transition period started on 1 February 2020 and ended on 31 December 2020.

Following negotiations, the United Kingdom and the European Union have reached a trade and cooperation agreement, published on 25 December 2020. This agreement contains an interim provision for transmission of personal data to the United Kingdom, for no more than 6 months.

### 1. Rules on international data transfers for the specified period in the EU-UK trade and cooperation agreement

The Trade and cooperation agreement between the EU and the UK allows personal data to flow freely from the EU (including from Luxembourg) to the UK, until an adequacy decision has been adopted, for no more than six months.

The EU data protection rules continue to apply in and to the United Kingdom for a specified period as from 1 January 2021, pursuant to article FINPROV.10A of the interim provisions of the EU-UK agreement.

This article FINPROV.10A provides that the specified period shall begin upon entry into force of the agreement and shall end:

- if the UK is found to offer an adequate level of protection in the meantime (by way of an adequacy decision adopted by the European Commission);
- on the date four months after the specified period begins, which period shall be extended by two further months, unless one of the parties objects.

This means that companies, public bodies and Luxembourg associations that intend to continue to transfer personal data to the United Kingdom, will not need to take additional steps for the designated period<sup>1</sup>, which means at the latest until 1<sup>st</sup> July 2021.

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<sup>1</sup> Unless the UK proceeds with one of the specified acts without the agreement of the EU (such as: approve new legislation, approve UK BCRs, issue new standard contractual clauses, authorise administrative arrangements or codes of conduct).

However, they must continue to comply with the general principles of the General Data Protection Regulation and shall apply them when transferring personal data to the United Kingdom (e.g. the principle of lawfulness, the compatibility of the communication with the initial processing activity, information to the data subjects).

More information:

- [Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part](#)
- [ICO statement](#) in response to UK Government's announcement on the extended period for personal data flows, that will allow time to complete the adequacy process

## 2. Rules on international data transfers after the specified period in the EU-UK trade and cooperation agreement

The European Commission may decide that the personal data protection regime of the United Kingdom provides data protection safeguards which are "essentially equivalent" to those in the European Union, by way of a formal decision, a so-called "adequacy decision", before the end of the period described in the EU-UK trade and cooperation agreement.

The rules applicable on international data transfers from the EU to the UK after this specified period will depend on the adoption of such an adequacy decision.

### 2.1. In case of an adequacy decision adopted by the European Commission

Following the adoption of an adequacy decision by the European Commission, personal data will continue to flow freely from the EEA to the UK and no specific authorization shall be required.

In any case, companies, public bodies and Luxembourg associations concerned must continue to comply with the general principles of the General Data Protection Regulation and shall apply them when transferring personal data to the United Kingdom (e.g. the principle of lawfulness, the compatibility of the communication with the initial processing activity, information to the data subjects).

More information:

- [Guidance on international data transfers, "Transfers towards a country outside the European Economic Area with an adequate level of protection"](#)

## 2.2. In the absence of an adequacy decision adopted by the European Commission

Following the assessment by the European Commission, if the UK is not granted adequacy following the end of the specified period in the EU-UK agreement, the EU data protection law will continue to apply to certain 'legacy' personal data. Such 'legacy' personal data are data of individuals outside the UK that were transferred from the EU to the UK during EU membership or during the transition period.

Once the specified period ends without an adequacy decision adopted by the European Commission (at the latest on 1st July 2021), companies, public bodies and Luxembourg associations will have to take additional steps to transfer personal data from Luxembourg to the UK.

They may rely on 'appropriate guarantees' as referred to in Article 46 of the General Data Protection Regulation in order to ensure a sufficient and appropriate level of protection for personal data transferred from Luxembourg to the United Kingdom.

The 'appropriate guarantees' are

- Standard Contractual Clauses (SCCs) (standard data protection clauses adopted by the European Commission or 'ad hoc' contractual clauses), or
- Binding Corporate Rules (BCRs) applicable to the EEA, or
- codes of conduct or certification mechanisms, or
- legally binding and enforceable instruments between public authorities or bodies.

The use of such 'appropriate guarantees' shall be made in accordance with the 'Schrems II' judgement of the Court of Justice of the European Union. Following a case-by-case analysis of the circumstances surrounding the transfer, data exporters may rely on supplementary measures along with the aforementioned tools, if they can ensure that third country law (in this case UK law) does not impinge on the adequate level of protection that they guarantee. If, taking into account the circumstances of the transfer and possible supplementary measures, appropriate safeguards would not be ensured, data exporters are required to suspend or end the transfer of personal data.

To help data exporters in this analysis, the European Data Protection Board (EDPB) recently published its recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data and its recommendations 02/2020 on the European Essential Guarantees for surveillance measures.

The EDPB also published an information note on BCRs for the specific cases of groups of undertakings or enterprises, which have the Information Commissioner's Office (British Supervisory Authority) as BCR Lead Supervisory Authority.

The transfer may also be covered by one of the "exceptions" as set out in Article 49 of the General Data Protection Regulation. However, controllers should aim to implement appropriate

safeguards and should only rely on the exceptions in the absence of appropriate safeguards. Indeed, Article 49 of the General Data Protection Regulation is subject to a strict interpretation by the data protection authorities to prevent the exceptions from becoming the rule.

In the absence of appropriate guarantees or where one of the exceptions cannot be used, the transfer of personal data to the United Kingdom will therefore be prohibited.

More information:

- [Chapter V of the General Data Protection Regulation](#)
- [Standard data protection clauses, on the website of the European Commission](#)
- [Guidance on international data transfers, "Transfers outside the European Economic Area with no adequate protection"](#)
- EDPB, [Frequently Asked Questions on the judgment of the Court of Justice of the European Union in Case C-311/18 - Data Protection Commissioner v Facebook Ireland Ltd and Maximillian Schrems](#)
- EDPB, [Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data - version for public consultation](#)
- EDPB, [Recommendations 02/2020 on the European Essential Guarantees for surveillance measures](#)
- EDPB, [Information note on BCRs for Groups of undertakings / enterprises which have ICO as BCR Lead SA](#)