



## Brexit Guidance

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# The consequences of Brexit for international data transfers

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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 will continue such transfers. The CNPD recommends that the entities concerned should already now consider how to transfer personal data in compliance with the General Data Protection Regulation.

On 29 March 2017, the United Kingdom notified the European Council of its intention to leave the European Union. On 14 November 2018, the European Commission and United Kingdom negotiators reached an agreement on the entirety of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (hereafter the "[Withdrawal Agreement](#)"). This Withdrawal Agreement must be ratified by the United Kingdom, the European Parliament and the Council.

Initially, it was foreseen that in the absence of such a ratification, Union primary and secondary law should cease to apply on 30 March 2019, a deadline that was extended until 12 April 2019. On 10 April 2019, the European Council and the United Kingdom agreed to a further extension to allow for the ratification of the Withdrawal Agreement. Such an extension should last only as long as necessary and, in any event, no longer than 31 October 2019.

Thus, as the conditions under which the United Kingdom will leave the European Union have not been decided yet, several options remain possible. Among these, there are two possible main scenarios:

- If the Withdrawal Agreement is ratified before 31 October 2019 at the latest, European Union law will cease to apply to and in the United Kingdom on 31 December 2020, pursuant to Article 126 of this Agreement (except if the transition period is extended pursuant to Article 132 of the Withdrawal Agreement);
- If the Withdrawal Agreement or any other withdrawal agreement is not ratified before 31 October 2019, there will be no transition period and European Union law will cease to apply to and in the United Kingdom as of 1 November 2019 (or as of any later date in accordance with Article 50(3) of the Treaty on European Union). This is referred to as the "no deal" or "cliff-edge" scenario.

More information:

- [European Data Protection Board - Information note on data transfers under the GDPR in the event of a no-deal Brexit](#)
- [European Data Protection Board - Information note on BCRs for companies which have ICO as BCR Lead Supervisory Authority](#)

## 1. What will happen after 31 October 2019 if the Withdrawal Agreement is ratified

### 1.1. The consequences of the ratification of the Withdrawal Agreement with regard to international data transfers

If the Withdrawal Agreement is ratified, the EU data protection rules will continue to apply in and to the United Kingdom during the transition period, i.e. from the first day of the month following the ratification of the Agreement to 31 December 2020 (except if the transition period is extended pursuant to article 132 of the Withdrawal Agreement).

Furthermore, the Withdrawal Agreement provides that, after the end of the transition period, the United Kingdom must continue applying the EU data protection rules to the personal data exchanged between the United Kingdom and the Members States of the European Economic Area during EU membership of the United Kingdom, until the European Union has established, by way of a formal, so-called “adequacy decision” pursuant to [Article 45 of the General Data Protection Regulation](#), that the personal data protection regime of the United Kingdom provides data protection safeguards which are “essentially equivalent” to those in the European Union.

If the European Commission adopts an adequacy decision, it has to be preceded by an assessment of the data protection regime applicable in the United Kingdom. In the case where the adequacy decision is annulled or repealed, personal data received will remain subject to the same “essentially equivalent” standard of protection directly under the Withdrawal Agreement.

### 1.2. Next steps to take for the Luxembourg bodies that are transferring personal data to the United Kingdom if the Withdrawal Agreement is ratified

Companies, public bodies and Luxembourg associations that intend to continue to transfer personal data to the United Kingdom after 31 October 2019, will thus not need to take additional steps, at least until 31 December 2020.

Furthermore, if the European Commission adopts an adequacy decision for the United Kingdom, this decision will allow personal data to flow freely between the United Kingdom and the European Economic Area.

However, these entities must still 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 :

- [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#)
- [Guidance on international data transfers, "Transfers towards a country outside the European Economic Area with an adequate level of protection"](#)

## 2. What will happen after 31 October 2019 if there is no Withdrawal Agreement

### 2.1. The consequences for international data transfers in the event of a "no deal" Brexit

In the event of a "no deal" Brexit, the United Kingdom will leave the European Union as of 1 November 2019 and will become a third country within the meaning of the General Data Protection Regulation.

Therefore, as of 1 November 2019, the rules for transfers of personal data to third countries set out in [Chapter V of the General Data Protection Regulation](#) will apply to the transfers of personal data from a Member State of the European Union to the United Kingdom.

In order to continue to transfer personal data to the United Kingdom lawfully, the Luxembourg entities in question shall comply, as of 1 November 2019, with the provisions of Chapter V of the General Data Protection Regulation.

In the absence of or pending the adoption of a formal adequacy decision by the European Commission pursuant to [Article 45 of the General Data Protection Regulation](#), Luxembourg entities 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' may be:

- contractual clauses (standard data protection clauses adopted by the European Commission or 'ad hoc' contractual clauses), or
- binding corporate rules (BCRs), or
- codes of conduct or certification mechanisms, or
- legally binding and enforceable instruments between public authorities or bodies.

Lastly, the transfer may 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.

## 2.2. The next steps to take by Luxembourg entities transferring data to the United Kingdom in the case of a “no deal” Brexit

Companies, public bodies and Luxembourg associations, which will continue to transfer personal data to the United Kingdom after 31 October 2019, shall ensure that such transfers are covered by one of the legal mechanisms as provided for by [Chapter V of the General Data Protection Regulation](#).

Since it is uncertain that the European Commission will have adopted an adequacy decision by the end of October 2019, the CNPD recommends that the entities concerned should determine which of the ‘appropriate guarantees’ as referred to in Article 46 is best suited for their organisation and should ensure that the appropriate guarantees are in place by 31 October 2019.

Among these appropriate guarantees, the most commonly used and the one that could be put in place quickly, is the conclusion of standard data protection clauses between the Luxembourg entity in question and the UK data importer. The European Commission has adopted three models of standard data protection clauses that are available on its website.

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”](#)