

EFAMRO Guidance Note

*Data Protection & Brexit –
What do EU Researchers need
to do now?*

This Note, prepared for EFAMRO member associations, provides a summary of the data protection implications of the UK withdrawal from the EU, for researchers based in the EU.

EFAMRO is providing this data protection guidance as general information for research practitioners.

This guidance is not legal advice and should not be relied upon as such. Specific legal advice should be taken in relation to any specific legal problems or matters.

Data Protection & Brexit

The UK will formally leave the European Union on 29 March 2019.

The terms of the future relationship have been set out in the EU-UK Withdrawal Agreement and the EU-UK Political Declaration.¹ These envisage a transition period from 30 March 2019 until 31 December 2020.

At the time of writing of this guidance the political and legal status of the withdrawal arrangements was in flux. Given this ongoing uncertainty, this guidance is being provided to help EU researchers comply with the requirements of the General Data Protection Regulation (GDPR) even if there is a no-deal Brexit.

Overview

At the point that the UK leaves the EU and becomes a third country, transfers of personal data from research organisations within the European Economic Area (EEA) to organisations in the UK will need to follow the data transfer rules set out in the GDPR.

The date that the UK will effectively become a third country depends on the outcome of the discussions on the Withdrawal Agreement:-

- **If there is a deal** on the current agreed terms the future relationship will be governed by the terms of the EU-UK Withdrawal Agreement. Organisations will be allowed to continue to make transfers between the EU and the UK or the UK and the EU as they do currently until 31 December 2020. The position after this, when the UK becomes a third country would be subject to political negotiation and adequacy discussions. It is expected that the UK will seek to be recognised as an adequate country for data transfers. However the process of determining this will start after the UK has left the EU.
- **If, as appears more likely, there is no-deal** on the current agreed terms, then the UK will become a third country on 30 March 2019.

In light of the level of political uncertainty in this area organisations need to put suitable compliant arrangements in place to facilitate a smooth transition for personal data transfers to the UK from 30 March 2019.

¹ Withdrawal Agreement and Political Declaration: <https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration>

Personal data transfers EEA to UK

EEA based researchers need to ensure that personal data can be transferred to organisations (either processors or controllers) processing data in the UK when the UK becomes a third country.

The adoption of Standard Data Protection Clauses is the recommended course of action for EU researchers. These clauses place contractual obligations on the EEA data exporter and the UK data importer, and confer rights for the individuals whose personal data is transferred.²

There are three sets of standard contractual clauses that will remain valid until replaced or amended by the European Commission:

- 2001 EEA controller to third country controller – Available here: <https://bit.ly/2tYamfa>
- 2004 Alternative EEA controller to third country controller – Available here <https://bit.ly/2tTAUrA>
- EEA controller to third country processor – Available here <https://bit.ly/2PawDgU>

Please note however that the standard contractual clauses do not address all data flows and there are no standard clauses for processor to processor agreements.

Personal data transfers UK to EEA

EEA based researchers may also receive personal data from the UK. At this point no arrangements need to be put in place to facilitate this as the UK government has made a unilateral commitment to allow these transfers to continue as they currently do.

² Options available include consent; use of derogations for one-off transfers but none of these are appropriate for ongoing data transfers in the research supply chain.
December 2018

Applicability of UK data protection law

After the UK leaves the EU, research organisations based in the EEA that process the personal data of UK data subjects will also need to follow the provisions of the UK DPA 2018 (which implements GDPR in national UK law).

The UK regulator, the Information Commissioner's Office (ICO) and the Department for Digital, Culture, Media and Sports ³has recently issued guidance on this and you will need to take into account that

- the UK data protection framework will have extra territorial effect and apply where UK data subjects are affected
- non-UK controllers who are subject to the UK data protection framework will have to appoint representatives in the UK if they are processing UK data on a large scale

It is expected that more information on the legal and practical application will be published.

So what do organisations need to do now?

Immediately address some of the possible risks to data processing operations by undertaking contingency planning.

- ☐ Assess current and future data transfers and identify if you use research suppliers based in the UK.
- ☐ Identify suitable mechanisms for legally compliant data transfers to the UK such as suitable contractual clauses and put them in place.
- ☐ Update any of your existing agreements to ensure that the data protection provisions allow for the transfer and processing of personal data to the UK once it is no longer a member of the EU. (Note that standard data protection clauses will impose restrictions on the transfer of data outside the EEA).
- ☐ If necessary, amend your privacy policies to reflect any processing of data in the UK when it's outside of the EEA.
- ☐ Stay up to date and monitor the position on the status of EU-UK data transfers post Brexit.

³ ICO Guidance here: <https://ico.org.uk/for-organisations/data-protection-and-brexit/data-protection-if-there-s-no-brexit-deal/>
DCMS guidance here: <https://www.gov.uk/government/publications/data-protection-law-eu-exit/amendments-to-uk-data-protection-law-in-the-event-the-uk-leaves-the-eu-without-a-deal-on-29-march-2019>

Several commentators have suggested that there may be a period of regulatory forbearance, or informal agreement by EU regulators not to take immediate enforcement action on data transfers to the UK. However organisations would be well-advised to put contingency plans in place so that they are in an appropriate compliance position rather than relying on this.

Further information

National UK research associations, the MRS and the BHBIA have also published detailed guidelines which is available here:

- MRS (Market Research Society)
<https://www.mrs.org.uk/pdf/International%20data%20transfer%20on%20deal%20Brexit.pdf>
- BHBIA (British Healthcare Business Intelligence Association)
<https://www.bhbia.org.uk/home.aspx>



Founded in 1992, EFAMRO represents the interests of market, social and opinion research in Europe. Its members are national trade associations for research businesses.

For further information on EFAMRO and its activities, contact Dr Michelle Goddard, Director of Policy and Communication.

EFAMRO
Bastion Tower, level 20 Place du
Champ de Mars 5, B-1050 Brussels

T : +32 (0)2 550 3548

www.efamro.eu

F : +32 (0)2 550 3584

E : michelle.goddard@efamro.eu