

Brexit and international transfers of personal data

5 action points in 15 days

BIPAR webinar

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Introduction: Brexit from the UK perspective

- The current position:
 - UK has withdrawn from the EU (EU28 became EU27 and EEA31 became EEA30), but, under EU-UK Withdrawal Agreement (31/1/20-31/12/20), EU law, including GDPR, continues to apply to UK
- On expiry of the transition period at 11pm GMT on 31/12/20:
 - UK GDPR replaces EU GDPR, but main principles, rights and duties remain in place
 - EU GDPR continues to apply in EEA30
 - Commission 'adequacy decision' – notwithstanding concerns re UK security legislation - or other, interim, data flows solution?
 - Implications for insurance intermediaries: '*...put in place alternative legal mechanisms to continue to transfer personal data...*' (UK data minister, John Whittingdale)

With the Minister's warning in mind ...

... what are the 5 action points insurance intermediaries can take in the next 15 days to ensure compliant international transfers of personal data?



#5 privacy actions: intermediaries should map their transfers



- Personal data transfers to (and from) the UK:
 - Legacy data: have you mapped transfers (prior 31/12/20) - both intragroup and with 'third parties', *e.g.* policyholders, prospects, re/insurers, TPAs, suppliers, etc.?
 - New data: have you identified new transfers (post 31/12/20) - both intragroup and with third parties?
 - Have you assessed the effect of the European Court's 'Schrems II' ruling and European Data Protection Board recommendations?

#1. If 'no' to any of the above, time is short, but you are not alone and compliant transfers may still be possible

#5 privacy actions: standard contractual clauses ('SCCs')



- Among the various bases for transfer, SCCs are a favoured basis for transfer within international groups of re/insurance intermediaries:
 - Existing SCCs:
 - Commission has stated SCCs can continue to apply for a grace period of one year to transfer to new SCCs, but concerns re UK legislation and appropriate guarantees
 - if SCCs are 'representative-type' arrangements with a UK entity fronting for EU entities, check position further
 - Post-Schrems II, Commission is proposing new SCCs: definitive version awaited – possibly, February 2021. Commission criticized for creating additional cost for intermediaries to check third-country legislation
- #2. SCCs need to be governed by the law of a member state (UK position to be confirmed) – if no SCCs in place, adopt new SCCs. Check risk of invalidity

#5 privacy actions: binding corporate rules ('BCRs')



- BCRs are a bespoke option for certain (large) intermediary groups, which are subject to approvals by supervisory authorities:
 - BCRs with the UK ICO as BCR Lead Supervisory Authority ('LSA') under the Data Protection Directive: new BCR Lead to be identified (if not yet done)
 - BCRs with the UK ICO as BCR LSA under the GDPR: new BCR LSA to be identified and decision taken (if not yet done)
 - By 31/12/20, update BCRs to reflect move from EEA31 to EEA30
 - If application for approval of BCRs pending before the ICO, press for approval

#3. intermediaries with BCRs should have covered above points, but BCR users may have other concerns to be addressed. #3 does not exclude work on #1 and #2

#5 privacy actions: data processing agreements ('DPAs')



- When processing personal data, as 'controller' or 'processor', insurance intermediaries are subject to various GDPR obligations vis-à-vis insurers, other business partners and policyholders. These obligations are set out in DPAs:
 - Impact of Brexit on existing DPAs:
 - governing law provisions (should be fine)
 - do DPAs cover international transfers?
 - do they refer to GDPR only (and related rules)?
 - if DPAs and SCCs apply, check the SCCs' action point (see previous)

#4. Impacts on DPAs might look clerical but, combined with basis for international transfers, they can be a high burden for intermediaries

#5 privacy actions: register of processing activities, etc.



Re/insurance intermediaries – like insurers and other business partners – are bound to maintain a register of processing activities:

- Update register in writing ('full wind back and forward')
- Schedule more comprehensive GDPR and cybersecurity review in 2021, *e.g.* once definitive SCCs adopted by Commission

The GDPR provides for Codes of Conduct and Certifications for as protection of personal data: since the Schrems II ruling affects these, if an insurance intermediary is contemplating transfer of personal data on these bases, check position

#5. Update after completing all other points

Thank you!

Questions?

With our colleagues at Steptoe, we wish you a restful holiday season



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