

Brexit and Data Protection: business as usual

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There has been sharp focus in the UK and throughout Europe on the forthcoming introduction (May 2018) of the new EU General Data Protection Regulation (the 'GDPR'), which will replace in totality current EU data privacy laws, and will have direct effect in all EU Member States.

What should UK-based corporates do about the GDPR, following the Brexit result?

In short - we advise our clients to continue with their current plans and strategies to implement the GDPR. For now, the message should be - business as usual in the world of data privacy: carry on as before.

There are a number of reasons for this view, which have set out below.

The likely date for formal UK exit from the EU will come after the GDPR becomes applicable law in Member States (25 May 2018). Even if only for a short period, UK based data controllers will need to comply with the GDPR.

Following Brexit, if the UK negotiates to join the EEA, the GDPR will continue to apply.

If the UK does not join the EEA, the GDPR will in any event continue to apply to all UK entities that do business in the EU, namely entities that process personal data relating to the offering of goods or services to individuals in the EU or the monitoring of the behaviour of individuals in the EU.

There will, in any event, be significant pressure from the UK business community for the UK Government to reform the current UK data protection regime in line with the GDPR:

- **to encourage global businesses to continue to operate in the UK.** Many multinationals have used, and will continue to use, the EU standards of compliance as their 'highest common denominator' across their global operations;
- to ensure the UK obtains an 'adequacy decision' **from the EU Commission** (assuming it does not join the EEA) for the free flow of personal data from the EEA to the UK, without the additional regulatory and administrative burden of EU standard model clauses or binding corporate rules. To achieve this adequacy decision, the EU Commission will want the UK to implement similar standards of compliance as required under the GDPR; and

- to update UK data privacy laws to take account of the significant importance in the UK of the growing digital economy.** The current data protection regime dates from a different, non-digital era, when current and proposed schemes for the collection and processing of data were merely a thing of science fiction. Although some aspects of the GDPR may be less popular with businesses (e.g. mandatory data breach notification requirements), UK citizens are likely to want the benefit of the enhanced protections of the GDPR to counter the data exploitation opportunities offered by the digital revolution; and the UK Government is likely to meet this populist mood.

We are already seeing a general direction of travel to protect individuals' rights in the UK courts, which will most likely continue in the next few years.

Although the GDPR is an important part of the EU and UK data protection regimes, we will also be closely monitoring how the UK negotiates its Brexit deal in relation to other related laws, such as the e-Privacy Directive (currently under review by the EU), the Directive on processing for law enforcement purposes and various rules around data retention, investigatory powers and surveillance. All of these will have operational and compliance impacts for UK-based businesses.



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