



BREXIT

Privacy Law aspects

Privacy Law aspects

Although the COVID-19 crisis will still have an impact in the coming period, we recommend that companies should prepare for Brexit. This is especially the case for companies in the European Union (EU) that transfer personal data to the United Kingdom (UK), as the transfer of personal data to countries outside the EU is subject to additional obligations and measures as a result of the General Data Protection Regulation (GDPR).

The GDPR is a European regulation on the protection of personal data and is applicable within the entire EU. The GDPR regulates (amongst others) the strengthening and expansion of privacy rights for individuals whose personal data is processed, imposes more responsibilities on organisations regarding the protection of personal data and gives more power to European data protection authorities to impose fines.

The GDPR also provides an equal level of protection of personal data within the EU member states. Therefore exchanging personal data between EU member states is allowed without further measures being required.

For the exchange of personal data to countries outside the EU (so called 'third countries') separate regulations apply. An organisation within the EU may only transfer personal data to third countries if:

- ▶ an adequacy decision with regard to the third country was taken by the European Commission (which means that the privacy level in those countries is considered sufficient);
- ▶ the transfer takes place on the basis of appropriate guarantees as mentioned in the GDPR (amongst which are EU model clauses, codes of conduct, and certification of binding corporate rules); or
- ▶ specific exceptions are applicable under article 49 GDPR (including when there is explicit consent by the person involved or when the transfer is necessary for the execution of an agreement).

Practical consequences

If Brexit takes place without a deal or a transition regulation (*no deal*), then the UK will become a third country and the GDPR will no longer apply to it. As described above, this will have major consequences for organisations that transfer personal data to organisations in the UK.

Actions to be taken by organisations

First of all, organisations will need to prepare an overview of those of their processing activities in which the UK is involved. The outcome of this overview will influence the steps to be taken by the organisation. Some of these possible steps are listed below.

- ▶ Organisations will have to adopt a strategy and take further measures related to the transfer of personal data from the EU to the UK. A number of measures have already been mentioned. The measures to be chosen depend on the organisational structure and the relevant processing activities within an organisation. If an organisation is small and transfers little personal data to the UK, it is likely to opt for concluding EU model clauses. If an organisation is large and personal data is transferred intra-group to group entities in the UK, binding corporate rules are often applied.
- ▶ When organisations transfer personal data to organisations in the UK, these organisations must amend their privacy documentation (such as their privacy statement and the register of processing activities) in such a way that it becomes clear that personal data is transferred to the UK.
- ▶ If an EU organisation transfers personal data or has a branch in the UK, it may be subject to the UK supervisory authority (the Information Commissioner's Office). In those cases, an organisation must determine which supervisory authority is the competent supervisory authority.

The steps listed above are only a brief summary of the possibilities. The specific steps to be taken can differ per organisation.

Our added value

HVG Law has a team of experienced lawyers that can advise on any of the above in the run-up and aftermath of Brexit. Law Alerts on the effects of Brexit in fields other than privacy law, such as healthcare law (manufacturers of medical devices), corporate and commercial law, financing and financial regulatory law and employment law can all be obtained from our lawyers.

What HVG Law can do for you

We deal with all matters that keep an organisation in good shape. From reorganisations to acquisitions, from compliance to litigation. You will be doing business with lawyers and civil-law notaries who work together.

With you and with each other, at the highest level. We advise and litigate.



Saskia Vermeer- De Jongh

Partner | Lawyer

Digital, Cyber & Privacy

E: saskia.de.jongh@hvglaw.nl

T: +31 6 29 08 38 50

About HVG Law

HVG Law LLP (HVG Law) ranks amongst the top Dutch law firms and is characterized by an entrepreneurial, innovative and solution-driven approach. With more than 150 dedicated and pragmatic lawyers, including (candidate) Civil Law Notaries, HVG Law offers high-quality, legal services in a broad and multidisciplinary context. Our lawyers are active in all legal areas and sectors relevant to business, directors, shareholders and government authorities and have knowledge of your business and your market. At our offices in Amsterdam, Rotterdam, Utrecht, The Hague, Eindhoven, New York, Chicago and San Jose (i.e., Donahue & Partners LLP in the USA), we are able to offer our legal services to national and international clients. HVG Law is part of the global EY Law network and we have a strategic alliance in the Netherlands with Ernst & Young Belastingadviseurs LLP.