

# ARTICLE 27 GDPR REPRESENTATION IMPLICATIONS OF BREXIT



## ARTICLE 27 OF THE GDPR

Article 27 of the GDPR requires organisations outside the European Economic Area (EEA), that process EEA residents' data to appoint a Representative providing that processing:

- Is on a large scale or includes special categories of data
- Is not occasional and is likely to result in a risk to the rights and freedoms of the data subject

The Representative must act as the first point of contact for both EEA residents and GDPR supervisory authorities throughout the EU.

## THE IMPACT OF BREXIT

When the UK was a member of the EU, non-EEA organisations could appoint a single representative to cover both the UK and the rest of the EU member states. This arrangement will continue throughout the transition period as the UK and the EU negotiate the UK's withdrawal.

### After the Transition Period

After 31st December 2020, at the end of the transition period, the UK Government's current position is that data controllers or processors located outside the UK that process the personal data of UK citizens will need to appoint a UK Representative.

EU law will continue to require organisations based outside the EEA (including the UK) that process data on EU residents, to have an EU Representative. If an organisation processes personal data of data subjects residing in a limited number of EU states, then its Representative should have a presence in one of those states.

This position may change during the transition period negotiations but probably represents the most likely outcome.

## BREXIT BREAKDOWN - WHAT DOES THIS MEAN?

	DURING THE TRANSITION PERIOD	AFTER THE TRANSITION PERIOD
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	Business as usual	Expected outcome currently
<b>Non EEA organisations require</b>		
EU Representative including UK (as current)	✓	
EU Representative based in the EU		✓
UK Representative based in UK		✓
<b>UK organisations require</b>		
No representation (as current)	✓	
EU Representative based in the EU		✓
<b>Remaining continental EU organisations require</b>		
No representation (as current)	✓	
UK Representative based in UK		✓



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## COUNTRIES ADOPTING THE GDPR

The GDPR is an EU regulation that is enforced throughout the European member states. The ultimate arbiter of the legislation is the Court of Justice of the European Union (CJEU) based in Luxembourg.

The GDPR has also been adopted by members of the European Economic Area and Switzerland although the CJEU is not the ultimate arbiter in these cases. After the Brexit transition period the UK Supreme Court will be ultimately responsible for interpreting the UK GDPR.

### 27 EU member states

- ✓ Austria
- ✓ Belgium
- ✓ Bulgaria
- ✓ Croatia
- ✓ Republic of Cyprus
- ✓ Czech Republic
- ✓ Denmark
- ✓ Estonia
- ✓ Finland
- ✓ France
- ✓ Germany
- ✓ Greece

- ✓ Hungary
- ✓ Ireland
- ✓ Italy
- ✓ Latvia
- ✓ Lithuania
- ✓ Luxembourg
- ✓ Malta
- ✓ Netherlands
- ✓ Poland
- ✓ Portugal
- ✓ Romania
- ✓ Slovakia
- ✓ Slovenia
- ✓ Spain
- ✓ Sweden

### Other Countries

- ✓ United Kingdom

### Other EEA members

- ✓ Iceland
- ✓ Liechtenstein
- ✓ Norway

### Other single market members

- ✓ Switzerland

## ADEQUACY

Under Article 45 of the GDPR, a third country can be deemed “adequate” by the European Commission if its levels of data protection are essentially equivalent to those provided in the EU through the GDPR.

If a country is deemed adequate, then cross-border data transfers to organisations within that country can be conducted without further safeguards or controls.

There is a defined process for making adequacy decisions so adequacy cannot be granted immediately.

### Adequate countries

- ✓ Andorra
- ✓ Argentina
- ✓ Canada
- ✓ Faroe Islands
- ✓ Guernsey
- ✓ Israel

- ✓ Isle of Man
- ✓ Japan
- ✓ Jersey
- ✓ New Zealand
- ✓ Switzerland
- ✓ Uruguay
- ✓ USA (Privacy Shield)

Whether or not the EU considers the United Kingdom to be adequate at the end of the transition period will be determined during the withdrawal negotiations.

### Representation requirements are independent of adequacy.

Representation is required to ensure a local point of contact both for data subjects and the supervisory authority. If an organisation processes the personal data of data subjects residing in a limited number of EU states then its representative must have a presence in one of those states.

