



Data and GDPR: Compliance and Implications after Brexit

15 April 2021



Introductions

Presenters



Victoria Templeton
HR Knowledge Manager



Sue Watson
Head of Client Services



Technical support



Atim Arden

Digital Marketing Executive



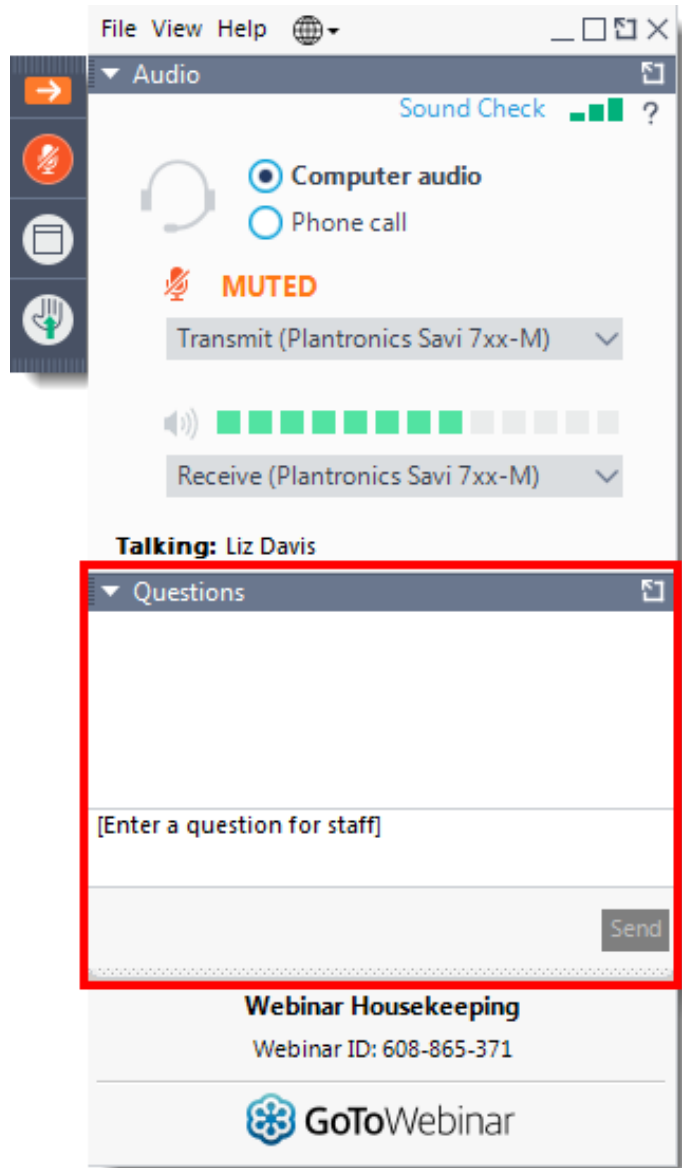
A group of diverse professionals are seated in a modern office environment, likely attending a meeting or training session. In the center, a man with a beard and glasses, wearing a grey cardigan, has his right hand raised high, indicating he wants to ask a question or make a point. To his left, a woman with long dark hair is looking towards him. Behind them, other participants are visible, some looking forward and others slightly to the side. The background features large windows with green plants and a bookshelf. The overall atmosphere is professional and collaborative.

How to ask questions





GoToWebinar Housekeeping: Time for Questions



Your Participation

- Please continue to submit your text questions and comments using the Questions panel





Data and GDPR: Compliance and Implications after Brexit

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Agenda

- **Data Protection Before Brexit**
- Data Protection Post Brexit
- Adequacy Decision
 - What is it ?
 - What is next?
 - What are the potential implications?
- International Data Transfer Rules
- Practical Considerations
- Further Information

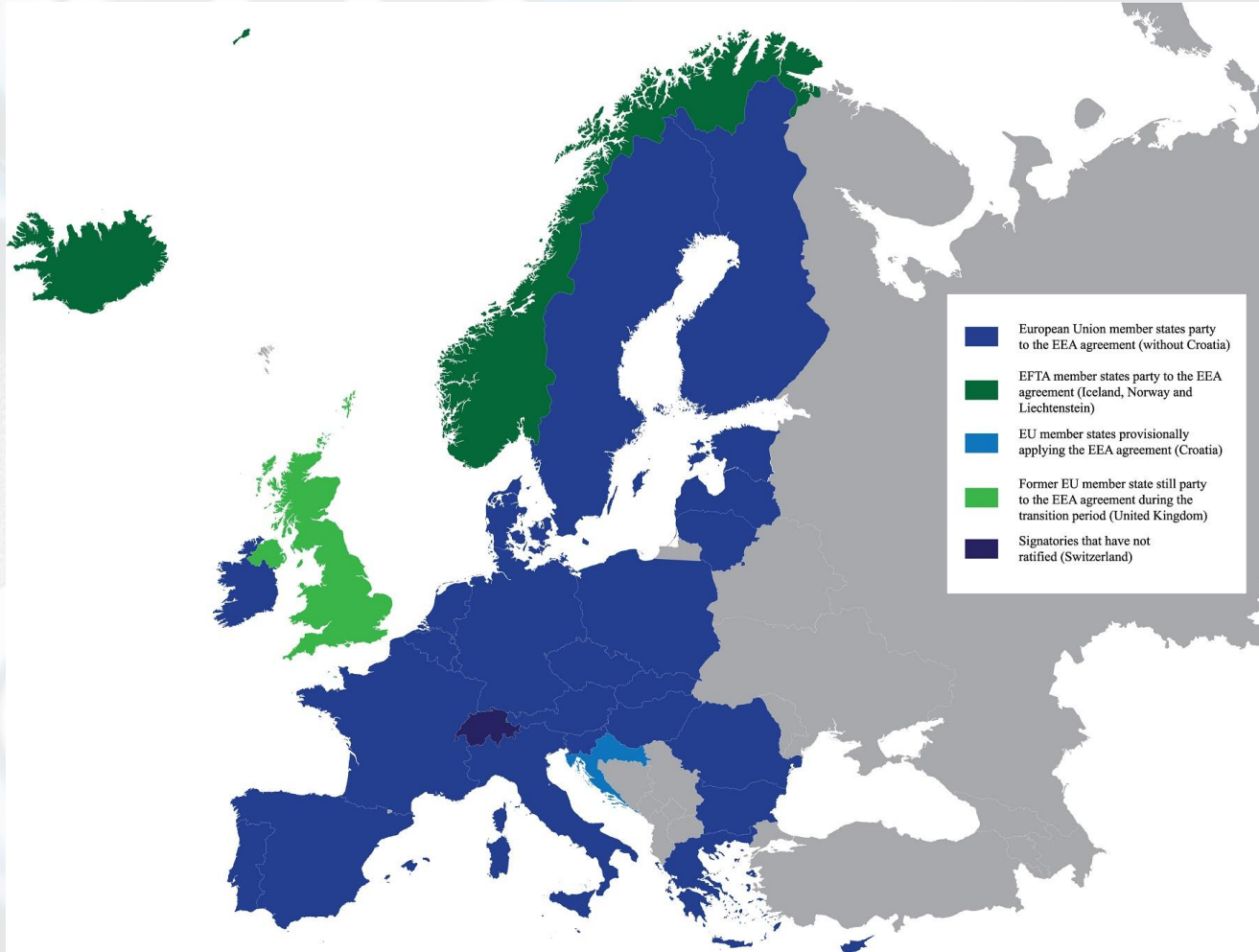


Data Protection Before Brexit

- GDPR
- Data transferred freely between all EU/EEA member states
- Obligations in the international transfer of personal data
- Data Protection Act 2018

Data Protection Before Brexit

The European Economic Area



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Data Protection Post Brexit

- UK GDPR new
- DPA 2018 remains
- 1 January 2021 - Free transfer of data ended
- UK regarded as a third country
- = Additional safeguards required
 - A legally binding instrument
 - Standard contractual clauses (SCCs)
 - Binding corporate rules (BCRs)
- Trade Deal temporary provisions for the continuation of data flow between UK and EU

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- Data Protection Post Brexit
- **Adequacy Decision**
 - **What is it ?**
 - **What is next?**
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Adequacy Decision: What is it?

- Legally binding and enforceable instrument
- Adequacy decision pending
- Approval from the European Commission that the UK is country which protects personal data to the same standards as those under the EU's GDPR
- 21 February 2021 European Commission granted its draft decision finding the UK to be adequate
- The decision must be approved by the European Data Protection Board and a committee of the 27 EU Member Governments



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International Data Transfer Rules

- Part 3, Chapter 5 GDPR
- The Data Protection Act 2018 limits the circumstances for when data can be shared
- The transfer is necessary for any of the law enforcement purposes
- The transfer is based on an adequacy decision, appropriate safeguards or when the transfer is based on special circumstances
- The intended recipient is a relevant authority in a third country or is a relevant international organisation

International Data Transfer Rules

- Chapter 5, articles 44 to 50 of the GDPR applies to international data transfers
- Is the transfer caught by the data protection requirements on international transfers?
 - There is a transfer of personal data
 - Recipient not subjected to GDPR
 - Recipient separate organisation or individual
- Is there an alternative to transferring personal data outside the UK?
 - Are you able to make the data anonymous?

International Data Transfer Rules

- Is there a lawful ground for processing personal data and special category personal data?
 - Consent, contractual performance, compliance with legislation
 - Establish whether you can transfer with an adequacy decision, SCCs or BCRs
- Is there a lawful mechanism for the international transfer, if not, what should be done?
 - Where no lawful mechanism, suspend data transfer
 - Seek alternative mechanisms which could still allow transfer, such as derogation

International Data Transfer Rules

Are you planning to make a restricted transfer outside of the UK?



No = you can make the transfer

Do you need to make a restricted transfer of personal data in order to meet your purposes?



No = you can make the transfer without personal data

Are there UK Adequacy Regulations



Yes = you can make the transfer

Are we putting in place one of the appropriate safeguards



Yes = undertake risk assessment
No = does an exception in UK GDPR apply

EITHER On completing a risk assessment, are you satisfied data subjects continue to have protection equivalent to that of the UK DP regime?



Yes = you can make the transfer

OR Does an exception provided for in the UKGDPR apply?

Yes = you can make the transfer

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Practical Considerations

- Look out for the draft **adequacy decision**
- Use the ICO's interactive tool to help you understand whether the end of the transition period affects you.
- If you are a UK business with no contacts, employees, or customers in the EEA then nothing much more needs to be done (you may still wish to review your existing work practices to ensure DPA compliance)

Practical Considerations

- If you process the personal data of any individual who resides in the EEA, you will need to comply with both UK and EU data protection regulations. It would be advisable to designate a representative within the EEA if your organisation has a presence within the EU and EEA.
- Review data flows to identify where you receive data from and/or send data to, within the EU and EEA
- If you receive personal data from the EU and EEA, we advise ensuring you have put appropriate safeguards in place ASAP and before the end of April

Practical Considerations

- Liaise with any European representatives or organisations you may work with about additional safeguards needed to ensure the legal flow of data between your UK operations and those based within the EU.
- If the UK does not receive an adequacy decision, it is very likely you will need to put in place 'standard contractual clauses' as a safeguarding measure in respect of data coming from the EEA.
- Another safeguarding measure for data coming from the EEA would be to undertake a risk assessment relevant to the data transfer. The Information Commissioner's Office has the 'keep data flowing' tool that you can use to do this

Practical Considerations

- Where you do have data flow from the UK to within the EU, document the new basis for the data transfer.
- Where you transfer data to the EEA, then there is no action required. You can still send the data, however, be sure that all your privacy information and other records are up to date.
- Employee data collected before 31 December 2020 for those based in an office, branch, or other established presence within the EEA is known as 'legacy data' because it is subject to GDPR regulations as of 31 December (also known as 'frozen GDPR').

Practical Considerations

- It is advisable to undertake a one-off exercise to identify the data you collected before the end of 2020 about employees living outside of the UK at the time.
- Review your company's privacy information, internal records and logs to identify what may need updating should the draft adequacy decision not be adopted
- All those responsible for and involved in data protection within your organisation should be kept informed, kept up to date on the transition period and provided with appropriate training on managing data safely and in line with data protection requirements.

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Further Information

- [Free – HR Solutions Data and Compliance Risk Audit](#)
- [Watch on demand our previous GDPR Webinars:](#)
 - [GDPR Focussing on the implications for HR](#)
 - [GDPR Compliance \(stage 1 audit webinar\)](#)
 - [GDPR Compliance \(stage 2 roles webinar\)](#)
 - [GDPR Compliance \(stage 3 DPIA and Privacy by design\)](#)
 - [GDPR \(stage 4 Record keeping\)](#)
 - [GDPR \(stage 5 Breach Notification Webinar\)](#)
- [Knowledge Base Members: access our GDPR toolkit](#)
 - Buy in from staff
 - Where your data might be
 - Get rid of what you don't need
 - Organise your data
 - Identify key roles
 - Impact assessment and privacy by design
 - Records of processing
 - Serious breach notification

Further Information

- [International Transfers](#)
- [Data protection after the end of the Brexit transition period for small businesses and organisations](#)
- [Keep data flowing from the EEA to the UK – interactive tool](#)
- [End of transition – interactive tool for small businesses](#)





UPCOMING WEBINARS

Employing People: 10 things you need to get right

22 April, Thursday | 10am – 11am

How to deal with bullying and harassment

13 May, Thursday | 10am – 11am

Coronavirus: Returning to work after lockdown

20 May, Thursday | 10am – 11am

Save your spot!

HR Knowledge Base | Events

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UPCOMING WEBINARS

How serious allegations can be handled safely

17 June, Thursday | 10am – 11am

What are protected or “without prejudice” conversations

15 July, Thursday | 10am – 11am

Remote working: how can you manage performance?

12 August, Thursday | 10am – 11am

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UPCOMING WEBINARS

Business Support: 7 Key Successes – Interactive Accelerator Program

Vision & Goals | 21 April, Wednesday | 11am – 12pm
Sales & Marketing | 28 April, Wednesday | 11am – 12pm
Mindset | 5 May, Wednesday | 11am – 12pm
Cashflow | 12 May, Wednesday | 11am – 12pm
Systems & Processes | 19 May, Wednesday | 11am – 12pm
Profitability | 26 May, Wednesday | 11am – 12pm
Team & Culture | 2 June, Wednesday | 11am – 12pm

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TRAINING COURSES

Equality & Inclusion	12 May, Wednesday 1.00pm – 4.30am
Disciplinary & Grievance	19 May, Wednesday 1.00pm – 4.30am
First Aid for Mental Health	24 May, Monday 9.30am – 4.30am
Emergency First Aid at Work	1 June, Tuesday 9.30am – 4.30am
Health & Safety	7 June, Monday 9.30am – 4.30am
Fire Safety/Fire Marshall	14 June, Monday 9.30am – 4.30am

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Further questions?

0844 324 5840

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FEEDBACK

MATTERS

TO US

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