

November 2019 Brexit Checklist

Force24™
Marketing Automation

Contents

1 Introduction

2 Overview

3 How Does This Affect You?

4 Your Brexit Checklist

Force24™
Marketing Automation

1 Introduction

Thanks for taking the time to read our Brexit Checklist guide. Let us first start by saying there is still a great deal of mystery around the exact plan for Brexit. But even in this political time of change and uncertainty there are things we can be considering now.

Force24 is a UK owned and operated marketing automation platform. We pay particular attention to matters facing UK businesses - because we are one! We present a significant strategic advantage for any enterprises using marketing technology as we are bound by the same laws you are.

This gives us a laser beam focus on your issues and your compliance.

In 2016, Force24 appointed an EU-certified GDPR practitioner to act on our behalf as our DPO (Data Protection Officer). This ensures every move we make is closely scrutineered by a professional that understands the law.

This guide has been written with the approval of our DPO - and is accurate to the best of our ability at the time of writing - and should only be used in the spirit in which it is intended as a guide.

It is important to note that each individual case should be reviewed on its own merit and independent legal advice sought to review the specifics of your business.



Adam Oldfield
Managing Director

2 Overview

Whether the UK leaves the European Union (EU) in an orderly manner or alternatively just crashes out, the government has made it clear that the one thing it is going to retain is the General Data Protection Regulation (GDPR – and with good cause.

The Information Commissioner's Office (ICO states that the government intends to incorporate GDPR into UK data protection law when we exit the EU – so in practice there will be little change to the core data protection principles, rights and obligations found in the legislation.

While the government is willing to give up membership of EU organisations - such as the European Atomic Energy Community (Euratom) and the European Arrest Warrant - it is sticking with the GDPR and the main reason for this is quite simple. Restricting the free movement of data around the EU would cause huge potential damage in the short term to not just the UK economy but to the EU as well.

Additionally, it is also quite hard to get recognition that a country meets adequacy in terms of data protection rules and regulations. The European Commission (EC) has advised stakeholders that cross-border data flows between the EU and the UK will not automatically have adequate safeguards anymore.

The Government plan - whether for an orderly Brexit, or leaving without a deal, is to incorporate GDPR into the 2018 Data Protection Act (DPA). However, what the Government will do is incorporate all the remaining clauses from the GDPR into the new DPA 2018.

So, the nub of all this is what has already been highlighted - the free movement of personal data around the EU. The EC has taken a view that countries meet adequacy tests if a country's courts, legal system and data protection laws meet a minimum standard in protecting and respecting the rights of data subjects.

> "Restricting the free movement of data around the EU would cause huge potential damage in the short term to not just the UK economy but to the EU as well"

This has been a controversial area as only countries recognised by the European Courts of Justice and the European Commission for meeting adequacy are listed as a safe place for processing personal data. This has created a number of data processing anomalies. For example, data processing is considered safe in Uruguay and Argentina but not Australia.

Overview (Continued)

Conversely, countries in the customs union with the EU such as Norway which are part of the European Economic Area (EEA) which is bigger than the EU and all countries listed within that area, such as Lichtenstein, are deemed as automatically meeting adequacy.

As a result, one of the data challenges for the UK is whether the EU will recognise that the country meets adequacy - if it exits without a deal creating a lot of data processing uncertainty as a result of the Brexit vote.

It's clear from the UK government perspective that it wants to continue with data processing of EU and UK data, but the issue would be how the EU will react to that because even countries that seek adequacy, or meet the standards of adequacy in terms of data protection, can wait a very long time to be accepted as a safe place for processing the data belonging to EU subjects.

For example, Israel's application has only recently been rubber-stamped and added to the list of countries meeting adequacy. Even some countries, such as Canada and Switzerland, had to wait a period of time after putting in place data protection that met the EU's stringent standards. In the case of America, it had to agree to set up the US Privacy Shield.

Therefore, data processing can be complicated, and the question that UK businesses should be asking is how much time and disruption is this going to cause trading with EU members?



3 How Does This Affect You?

People marketing to consumers in the EU

Clearly, for UK companies looking to market goods in the EU one of the challenges is whether the EC will allow that to happen or will it make it more difficult? Nobody really knows the answer to that until the UK actually leaves. However, it would be prudent to say that there may be challenges and ultimately there is not a lot that can be done because the EU will seek to manage and regulate its members.

Companies from Australia, the United States and other countries looking to market into the EU, in some cases, have had to appoint a local DPO or a legal representative within the EU. It is likely that some UK companies will need to do the same - and appoint someone who resides where there's a common language, in order to represent them. This is likely to be an issue for companies to address if they wish to continue selling into the EU.

People marketing to consumers in the UK

Companies shouldn't notice any difference as they will most likely reference the terms of the GDPR into the DPA 2018.

However, that means documentation must be changed - such as privacy notices or statements - and cookies may well need to be updated too.

People marketing to consumers globally

These firms won't see much difference because GDPR is only recognised throughout the EU. Although, if you're looking to sell beyond the EU to a specific market, you do need to be mindful of other legislation. For example, the California Consumer Privacy Act (CCPA) gives consumers far more data protection rights than anywhere else in America.



"GDPR will still apply if you operate within the EU, or offer goods or services to individuals.

Conversely, the GDPR will still apply to any businesses within the EU who want to send data to UK companies."

How Does This Affect You? (Continued)

People marketing in B2B in the EU



B2B is far less contentious because it's only individuals who have rights, not corporations. As a consequence, it shouldn't make too much difference as long as businesses are not handling personal data, and respect individual permission requests.

People marketing in B2B in the UK



Will not be affected – see section concerning consumers in the UK.

People marketing in B2B globally



There could be some major challenges ahead. Just supposing, for example, in the short term the EU decides not to recognise the UK as meeting its data protection adequacy standards, this could cause some quite difficult problems for British companies.

Conversely UK companies not using UK marketing platforms need to exercise caution, as in the event of a hard Brexit the UK may not recognise external frameworks such as the US Privacy Shield right away.

If a EU-based business is owned by a UK parent company this would make data sharing between the two organisations quite problematic. Equally, this would make sharing information such as HR records, medical information and other special categories of personal data impossible without further data protection safeguards being put in place.

There is currently free movement of personal data between different EU members which includes UK. When the UK leaves the EU, data sovereignty will potentially change depending on how the EU chooses to recognise the adequacy of the UK's data protection laws.

How Does This Affect You? (Continued)

If the EU doesn't recognise that the UK meets adequacy - nobody knows yet how these scenarios are going to play out – then the consequences consequences concerning, for example, an Irish company wanting to send its HR records to its UK-based head office means they will have to put Binding Corporate Rules (BCRs) in place.

BCRs are designed to allow multinational companies to transfer personal data. They can provide a framework for a variety of intra-group transfers to meet your organisation's requirements. You will have to monitor your compliance, which will include a training programme for staff handling personal data.

Also, where that doesn't work, for example when companies are not related and there's no corporate relationship between them and an EU country, then we get into Standard Contract Clauses (SCCs) territory.

SCCs are standard sets of contractual terms and conditions which the sender and receiver of the personal data both sign up to. They include contractual obligations which help to preserve personal data when it leaves the protection of GDPR.

UK businesses may need to advise senders on compliance to make sure data continues to flow - if we leave the EU without a deal.

How Does This Affect You? (Continued)

Data protection changes (likely impact on marketing budgets)

Handling the data process post-Brexit could be a minefield in addition to businesses facing increasing costs from using marketing companies based outside the UK because of the decline of sterling, which is likely to continue in the short-term post-Brexit.

Using a UK automation data specialist, like Force24's marketing automation platform is the smartest and safest answer. If the pound continues to slip against the Euro and particularly the dollar, that is going to have a profound effect on marketing budgets which is why UK companies are better off using a UK provider with extensive experience in data protection and marketing to multiple sectors.

This also avoids the need to transfer any data outside the UK to either unsafe places or into a potential data processing dangerzone involving companies or suppliers based in the EU.



"GDPR is only recognised throughout the EU, although if you're looking to sell beyond the EU to a specific market you do need to be mindful of other legislation such as the type that California has recently introduced."

4 Summary

Your Brexit Checklist from Force24

Will GDPR apply to UK post-Brexit?

B2B is far less contentious because it's only individuals who have rights, not corporations, so as a consequence of that it should not make much difference as long as businesses are not handling personal data and respect the individual permission requests.

How will the free movement of personal data between the UK and EU be affected by Brexit?

Nobody really knows yet. This will depend on the EU and if it will recognise that the UK meets its data protection adequacy test.

What might change for UK companies marketing to consumers in the EU?

UK companies might need to appoint a local DPO or legal representative who resides somewhere where there is a common language, to represent them.

How will marketing in B2B in the EU be affected by Brexit?

It should not make much difference as long as businesses are not handling personal data.

How will consumer marketing to UK consumers be affected?



The UK government intends to incorporate GDPR into UK law, in theory nothing should change in your day-to-day. However, if you are using a data processing platform based outside of the UK, you should exercise caution as frameworks - such as the US privacy shield - may no longer apply unless the GDPR is fully implemented.

How will B2B marketing to UK companies be affected?



In theory, there will be no changes, unless you are processing the data of individuals as you attempt to market to the commercial entity. In which case you will be required to exercise the same cautions as with UK consumer marketing.

Could Brexit affect the flow of personal data between multinational companies based in the UK with EU businesses and UK companies owned in the EU?



In theory there will be no changes - unless you are processing data of individuals in your attempt to market to the commercial entity. In which case you will be required to exercise the same cautions as with UK consumer marketing.

What if there is no corporate relationship between UK and EU companies wishing to share personal data?



Then we get into Standard Contract Clauses (SCCs) - sets of contractual terms and conditions which the sender and receiver of the personal data both sign up to.

What impact will data protection changes have on a company's marketing budget?



If using marketing companies based outside the UK, costs will increase due to the decline in sterling. Using a UK automation data specialist, like Force24 is the smartest and safest answer.



Get in touch

If you want to talk about your marketing call us **0845 272 5990** or email **info@force24.co.uk**

Force24™
Marketing Automation

Force24 Ltd, Office 2, Indigo Blu, 14 Crown Point Road, Leeds, LS10 1EL
0845 272 5990 - info@force24.co.uk