

# **‘No Deal’ Brexit and GDPR – CoSector FAQs for our UK customers**

## **Where is the UK with ‘No Deal’ Brexit?**

If the UK does not secure a deal or withdrawal agreement to leave the EU by 31 October, it will leave with ‘No Deal’. This has significant implications for laws and regulations affecting all businesses. Whilst we cannot be certain at the time of writing whether this will actually happen, we need to prepare for this outcome.

## **How does a ‘No Deal’ Brexit impact GDPR and data protection?**

Data protection law has long been harmonised across Europe meaning that there is a free flow of data between the UK and other countries in the EEA (European Economic Area). Data transfers to countries outside the EEA (“third countries”) have always required additional safeguards. A ‘No Deal’ Brexit means that the UK is re-classified as a ‘third country’ and this affects the existing data flows between the UK and Europe.

## **Does a ‘No Deal’ Brexit include CoSector ‘leaving’ the GDPR too?**

No. The UK government has determined that the GDPR will be implemented in UK law (a “UK GDPR”) so all data controllers and processors still have to comply. CoSector will still maintain its high standards of secure and lawful data storage for its customers.

## **So the UK becomes a ‘third country’. How does that affect data flows?**

Data transfers to countries outside the EEA (“third countries”) have always been enabled by a range of safeguards and this continues under the General Data Protection Regulation (GDPR).

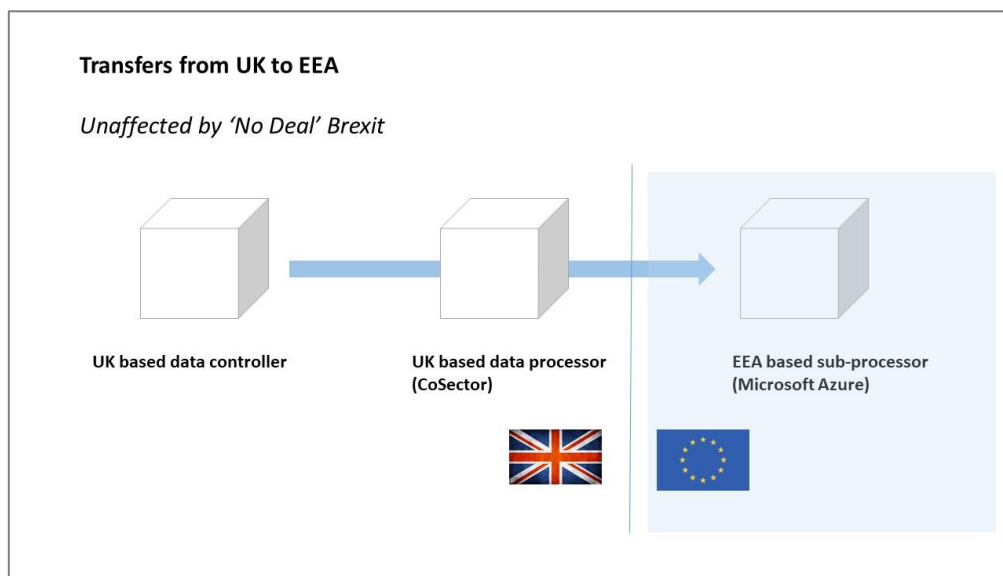
- some countries are deemed to have equivalent or ‘adequate’ data protection laws
- US companies have an accreditation they can obtain (‘Privacy Shield’)
- there are a number of contractual templates that can be relied upon (‘standard contractual clauses’ or ‘SCCs’)
- Transfers under a Code of Conduct or Certification are referenced in the GDPR but no codes or certification schemes have been currently developed or agreed
- there is a ‘Binding Corporate Rules’ statement which will be approved by the relevant EU regulator
- there are a number of exceptions or ‘derogations’ around specific reasons for transferring data

## **Why is CoSector using Azure?**

CoSector and its parent organisation, the University of London are on a journey to move its IT away from on premise data centres and into the public cloud. By utilising the public cloud CoSector aims to leverage the most up-to-date infrastructure platforms and services. This will enable CoSector to offer new options for resilience and performance and provide the ability to rapidly respond to changing Customer requirements. All these elements assist CoSector in providing an environment that better supports its customers to comply with GDPR requirements.

## CoSector is using Azure's Dublin data centre (based in the EEA) - how does this affect my business or organisation in the event of a 'No Deal' Brexit?

### UK to EEA data flows



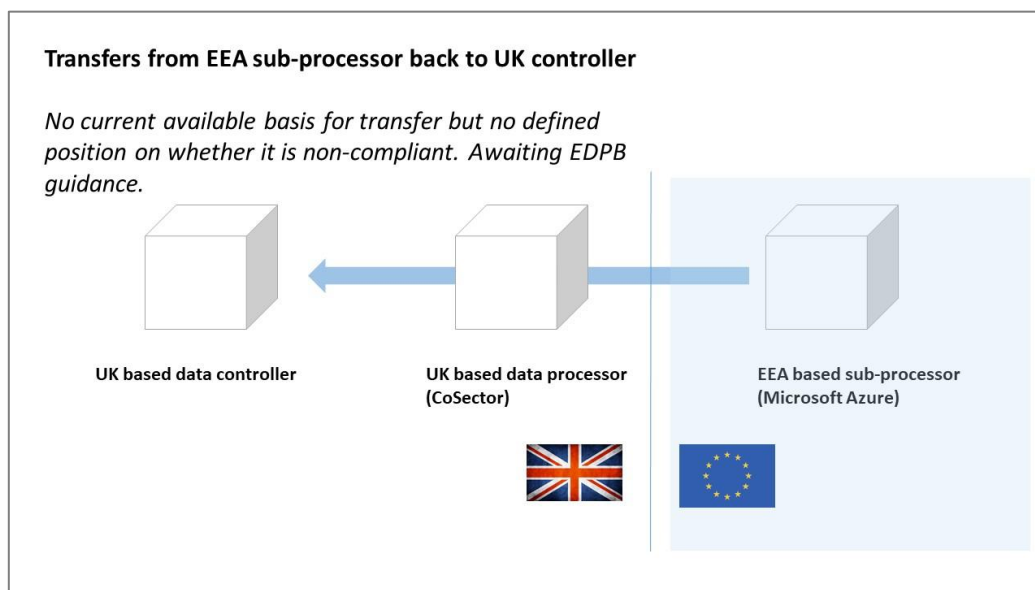
In the event of a 'No-Deal' there is no change to UK data flows to the EEA, as set out in the UK's position on data protection in the event of a 'No-Deal'.<sup>1</sup> This approach is referenced by the European Data Protection Board (EDPB) guidance, which states:

*According to the UK Government, the current practice, which permits personal data to flow freely from the UK to the EEA, will continue in the event of a no-deal Brexit.<sup>2</sup>*

Therefore a UK data controller transferring data to the EEA is not affected.

### EEA processor / sub-processor to UK controller

This situation reflects the CoSector / Azure storage and the transfer from an EEA data centre to the EEA.



<sup>1</sup> <https://www.gov.uk/government/publications/data-protection-law-eu-exit/amendments-to-uk-data-protection-law-in-the-event-the-uk-leaves-the-eu-without-a-deal-on-29-march-2019> Updated on 23 April 2019.

<sup>2</sup> [https://edpb.europa.eu/sites/edpb/files/files/file1/edpb-2019-02-12-infonote-nodeal-brexite\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/files/file1/edpb-2019-02-12-infonote-nodeal-brexite_en.pdf)

The available basis for transfers are as follows:

Basis for transfer from EEA to UK as third country	Relevance to EEA processor/sub-processor to UK controller
Adequacy decision	Not immediately applicable: Adequacy assessment of the UK will only commence when Brexit happens and could take 12-18 months or more
Binding corporate rules	Not relevant: designed for companies with multiple offices across EEA and non-EEA
Standard Contractual Clauses (no SCCs)	Not relevant: No SCCs to reflect processor to controller relationship, pending European Data Protection Board guidance
Code of Conduct	Not relevant: No Codes of Conduct as yet agreed
Certification	Not relevant: No Certifications as yet agreed
Derogations	Not relevant: Designed for one-off sharing rather than 'business-as-usual' arrangements

There is no definitive guidance from the Information Commissioner's Office (ICO), the UK supervisory authority for data protection, on this issue and the EDPB is reported to be considering this scenario.

### What are the possible outcomes and current opinions?

There are theoretically three outcomes:

- EU processors will be placed in a position where they can neither return their data to the UK or continue to process it
- the EDPB will address this issue in favour of either advising a free flow of data from EEA processors to UK controllers
- the EDPB approves a mechanism (perhaps new processor to controller SCCs) that allows an appropriate level of data protection, whilst also protecting the business interests of EEA based processors

We believe the latter is by far the most likely outcome. Azure is an EU based datacentre and processes data as part of a formal contract with CoSector and following the instructions of you, the data controller.

We are guided by guidance published by the NHS in February 2019:

*The European Data Protection Board (EDPB) is currently deliberating whether flows from an adequate EEA processor to a non-adequate controller should constitute a restricted international transfer. It is not likely to reach a determination before 29th March. Until such time as the EDPB rule upon the issue, it is viewed that these flows remain unrestricted and can continue to flow uninterrupted as they have for around 20 years.<sup>3</sup>*

And DLA Piper's Privacy Matters blog:

*In our view, this risk seems low given the high adverse impact such a ruling would have on trust in the EU digital marketplace and on EU – UK trade relations, but cannot be ruled out in the current political climate [...] At the present time the only 100 percent safe workaround is to retain / repatriate data to the UK (or another non-EEA jurisdiction) which will be costly and potentially technically difficult and therefore unlikely to be a viable option in most cases. We would expect the*

<sup>3</sup> <https://www.england.nhs.uk/wp-content/uploads/2019/02/eu-personal-data-letter.pdf>

majority of UK controllers in this position will choose to leave data flows as they are currently, and “watch this space”, ensuring that leadership and Brexit planning committees are aware, and continue to monitor on-going developments.<sup>4</sup>

## What steps CoSector will take?

CoSector will:

- continue to monitor the EDPB position on EU processor to UK controller transfers
- For contingency purposes assess the feasibility of a ‘repatriation’ of data to UK based Microsoft datacentre and define these costs and impacts

## If ‘No Deal’ happens, will this situation last forever?

Not necessarily. The UK will apply to be given ‘adequacy’ status as a third country with an equivalent data protection law. If this application is successful transfers from the EEA to the UK will, in theory, no longer need the additional safeguards (e.g. standard clauses, binding corporate rules or a derogation).

## Where can I find out more?

Please contact your contract manager at CoSector at [info@cosector.com](mailto:info@cosector.com)

The European Data Protection Board (EDPB) advice is available at the following link:

[https://edpb.europa.eu/sites/edpb/files/files/file1/edpb-2019-02-12-infonote-nodeal-brexit\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/files/file1/edpb-2019-02-12-infonote-nodeal-brexit_en.pdf)

The Information Commissioner’s Office (ICO), the UK supervisory authority for data protection, has produced the following guidance:

<https://ico.org.uk/for-organisations/data-protection-and-brexit/>

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<sup>4</sup> <https://blogs.dlapiper.com/privacymatters/uk-edpb-adopts-information-note-on-gdpr-data-transfers/>