

## Brexit FAQs

Last updated March 2020

The UK has finally left the EU on 31 January 2020, but the really hard negotiations about what the future relationship with the EU have only begun. Working with members, industry experts and government, IAB UK is cutting through the noise to set out what being outside the EU means for the digital advertising industry specifically, and what you should be doing to prepare for it.

### What is a 'no-deal' scenario?

After the UK left the EU on 31 January, it entered into a transition period. This means, for the moment, the rules around trade, travel and business remain the same until the end of the transition period which is set to expire on 31 December 2020. The UK and EU will be busy negotiating on a new deal during this period. If the UK and EU fail to reach an agreement by then, and if the transition period is not extended, we could enter into a no-deal scenario, where by the UK and EU resort to trading on WTO terms. Potentially this scenario could include the EU not granting the UK data adequacy status. This would likely to be very disruptive to the UK economy.

### What is the Withdrawal Agreement?

**Withdrawal Agreement** is a 585-page draft treaty (referred to as the 'deal') that was negotiated between the UK and the EU to set the terms of the 'divorce'. It includes agreed legal text for the implementation period, citizens' rights, and the financial settlement, as well as a number of other articles. Under the Withdrawal Agreement, a transition period lasting until 31 December 2020 was agreed, which meant that things would remain largely the same for the UK until that period ended.

### What will the future UK trading arrangement with the EU look like?

Alongside the Withdrawal Agreement, the UK and the EU have negotiated a 26-page **Political Declaration** which touches upon the themes that both sides want to include in a future trade agreement, such as data flows and digital trade. The EU has recently published its **negotiating directive**, setting out what it expects to be in the future UK-EU relationship. We expect to see the UK's negotiation objectives shortly.



## What are WTO terms?

It has been often said that if the UK exited the EU without a deal it could continue trading globally on World Trade Organisation (WTO) terms. The UK is currently a member of the WTO but its membership is bundled with the EU's. The UK would therefore need to extract itself from the EU's WTO commitments to come to an independent agreement, with the rest of the WTO members, on its own schedule of sectoral commitments, tariffs and quotas. It is also dependent on no WTO member objecting to these terms, as the body operates on a consensus mechanism. WTO terms are usually less advantageous compared to a preferential free trade agreement.

## How will Brexit affect personal data transfers between the UK and the EU/EEA?

The UK Government has said that there would be no change to the UK's own data protection standards as the Data Protection Act 2018 would remain in place and the EU Withdrawal Act (n.b. this is not the same as the Withdrawal Agreement, described above), passed by Parliament, incorporates GDPR into UK law. There would be no disruption for personal data being sent from the UK to the EU/EEA even up to the point of exit and beyond.

However, future arrangements in place for personal data from the EU/EEA to flow to the UK are not certain. The European Commission can grant data adequacy status to allow data to flow from the EU/EEA to third countries (see below). Now that the UK is a third country, it too will require an adequacy decision. Without a data adequacy decision, the legal basis for data to flow from EU/EEA countries to the UK would end. To mitigate against this risk, companies need to consider putting in place standard contractual clauses (SCC), or other approved safeguards, to allow data controllers in the EU/EEA to transfer data to data controllers in the UK. Another requirement under GDPR is the need to appoint a data protection representative in an EU/EEA country if the company is not based in the EU/EEA.

Please be aware that setting up SCCs and appointing a data protection representative may have additional costs associated with it. However, the Information Commissioner's Office (ICO) has developed an [online tool](#) for SMEs which will automatically generate approved model SCCs. These can then be adapted to your own individual business requirements.

The UK Government has published a technical note on data protection which is available [here](#).

## What is data adequacy?

Data adequacy status is granted by the European Commission to third countries it deems to have an 'essentially equivalent' level of data protection to that afforded in European law. Given that the GDPR has been incorporated into UK law, it should, in principle, make it easier for the UK to achieve data adequacy. But this is by no means guaranteed. If at the end of the transition period the EU has not granted data adequacy, then there could be a gap for data to flow legally to the UK.

## Will the EU's proposed new ePrivacy Regulation apply to the UK post Brexit?

The European Commission has been working on a proposal called the Regulation on Privacy and Electronic Communications, known as the ePrivacy Regulation, which updates the existing ePrivacy Directive and is intended to create greater alignment with the GDPR. For more information please see our [Factsheet](#).





The proposed ePrivacy Regulation applies to all electronic communications data – whether personal or not – and introduces a more stringent consent standard for digital advertising. It would introduce a ‘prior consent’ or ‘opt in’ approach. There are some exemptions to the need for consent where it is “necessary” to process and store information for the transmission of a communication over a network or for services that, in the European Commission’s view, pose little or no privacy intrusion to users. Examples providing a service that has been requested by the user and ‘first party’ web audience measuring.

There is still work being done on the Regulation at a technical working level and it has gone through a number of revisions. The legislative process takes some time to complete and means that it is currently unclear when exactly the Regulation will be adopted. It is also not certain whether the UK will adopt the final Regulation - it won’t be obliged to - or to align with it in the future. However, the Regulation has the same territorial scope as the GDPR (in other words, it applies to the provision of electronic communication services in the EU, regardless of the organisation’s location), so it has the potential to affect the UK, regardless of the future UK-EU relationship.

### Will I need a visa to travel to the EU for business?

The European Commission has proposed to grant UK citizens visa-free travel to the EU after the UK has left the EU. It would mean that UK citizens would not need a visa when travelling to the Schengen area for short stays of up to 90 days in any 180-day period. With the UK outside of the EU, it will be treated like a third country and it seems likely that UK citizens will be required to apply for an EU Travel Information & Authorisation System (ETIAS). This currently costs €7 for a three-year pre-travel authorisation.

This would apply at the end of the transition period (currently 31 December 2020). This proposal, however, is entirely conditional upon the UK also granting reciprocal and non-discriminatory visa-free travel for all EU Member States.

The UK government has declared its intention not to require a visa from citizens of EU Member States for short stays for tourism and business.

In the absence of some sort of trade agreement with the EU, UK companies or independent professionals providing advertising services into an EU Member State, through the temporary movement of people i.e. consultants, secondments, intra-group transferees etc, maybe subject to a local economic needs test.

### What should I do if I have EU citizens employed at my company?

EU and EEA citizens and their families who are resident in the UK before the end of the implementation period on 31 December 2020 will be able to apply for the EU Settlement Scheme to continue living in the UK after 30 June 2021. (n.b. these dates are subject to change in the event of a ‘no deal’ Brexit).

Successful applicants will receive settled or pre-settled status depending on the length of time spent in the UK prior to application. Applicants will need a valid passport and provide evidence of living in the UK. The Home Office has introduced technology to help speed up the process with





the ability to use a smart phone (Android only) to read a biometric passport, and it will be possible to apply online. The scheme opened on 30 March 2019, with deadline for applications on 30 June 2021.

Detailed guidance can be found on the UK Government [website](#).

### What if I want to recruit talent from other countries, including the EU, post-Brexit?

The UK has announced plans for a new points-based migration system whereby foreign workers on the basis of qualifications, English language skills and whether they have a job offer among other factors. A minimum salary threshold of £25,600 will apply. The Home Office expects to implement this new system from January 2021.

### Could a I buy an 'off-the-shelf' or establish a company based in the EU to remain within the Single Market?

In principle, this could work but you should seek legal advice. Some companies have been exploring options around restructuring their businesses to have their EU headquarters in places such as Ireland, Luxembourg, Netherlands etc. It would be important to examine individual EU Member States' investment laws to see if there were any restrictions on ownership or nationality. However, the rules on data transfers would still apply and unless there was a data adequacy decision in place, transferring data from your EU-based entity to your UK-based one, after Brexit, would require Binding Corporate Rules (BCRs), or other appropriate safeguards, under the terms of GDPR.

### What if I have .eu domain?

If you have a .eu top level domain, you should read the following EU regulation to determine whether you are eligible to continue holding it. The EU has already issued a notice confirming that the .eu domain will no longer apply to the UK from exit date and non- eligible holders will have that right revoked. In any, case it is recommended that you contact your domain name registrar and or seek legal advice on the terms of your agreement.

### Where can I find additional guidance on how to prepare for trading outside the EU?

Aside from seeking legal advice, the following guidance may be helpful:

- the [UK Government's website](#) to help businesses to prepare
  - the UK Government's detailed 'technical notices', which have been published on a rolling basis since last year, and can be found [here](#). These technical notices should also be read in conjunction with the [EU's preparedness notices](#).
  - the ICO's guidance for organisations on [data protection and Brexit](#), which includes guidance on international data transfers in a no-deal scenario.
  - The US government's Privacy Shield [website](#) which has information for US Privacy Shield participants on what they should do to continue receiving personal data from the UK.
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## What is the IAB doing to help members?

As everyone will be aware, there still a considerable amount of uncertainty whilst an agreement is being negotiated. However, as well as continuing to engage with the Government on its Brexit planning, IAB UK will organise briefing events to help member businesses prepare. We have created a simple 10-step checklist of things members can be doing now. We will also publish more guidance and briefings on the impact on digital advertising once more details emerge. If you have any questions please get in touch with us on [policy@iabuk.com](mailto:policy@iabuk.com).

