

The impact of Brexit on the application of GDPR for Croatian entrepreneurs

November 2018

Further to the results of the referendum on which the UK citizens decided in favor of the United Kingdom (UK) leaving the EU, the UK has on 29 March 2017 notified the European Council of its intention to leave the EU. This notification formally triggered the withdrawal process and started the two-year period in which the withdrawal agreement between the UK and the EU should be entered into with a view of regulating the future relationship between the UK and the EU.

Upon the expiry of the two-year period, as of 30 March 2019, the UK will cease to be a member of the EU and shall become a "third country". Provided that an appropriate agreement is not reached between the EU and the UK, this circumstance shall also affect transfers of personal data from Croatia to the UK.

The General Data Protection Regulation (GDPR) contains broad provisions setting out the requirements pursuant to which transfers of personal data to "third countries" are permissible. Namely, personal data can be transferred to a third country in relation to which the European Commission has rendered an adequacy decision after examining whether the third country's laws, practices and international commitments provide a level of protection that is essentially equivalent to that of the EU. The effect of such adequacy decision is that personal data can flow from the EU to that third country freely, in the same manner as if its transfer is made to another EU country. Even though the application of the described adequacy mechanism seems to be the most viable choice, as it reflects the position taken by the EU in the Brexit negotiations, we note that the final agreement on this issue between the EU and the UK has not yet been reached.

In the event that the adequacy decision of the European Commission is not rendered in a timely manner, and if the matter of data transfers is not regulated by an international treaty between the EU and the UK before 29 March 2019, the transfers of personal data made from Croatia to the UK will have to be subject to one of the safeguards set out in Chapter V of the GDPR – as for any other third country. Specifically, this includes execution of standard contractual clauses, adoption of binding corporate rules for intra-group transfers, codes of conduct, and certification mechanisms. The Croatian entrepreneurs will also have an option to rely on one of applicable derogations which permit data transfer if the prescribed criteria are met.

Therefore, Croatian entrepreneurs transferring personal data to the UK – regardless of whether the transfer is made to a business partner, another company that belongs to the same group, or entities that process data in the name and on behalf of the Croatian entrepreneur (e.g. storage of data on servers in the UK) – will need to be ready to choose appropriate safeguards that enable their compliance with the GDPR.

Furthermore, transfer of data to the UK will have to be recorded in the entrepreneurs' records of data processing activities. The entrepreneurs will also be obliged to include this information in the notices on data processing that they are required to give to individuals.

KPMG's team of professional advisors that specializes on GDPR issues would be glad to answer any questions that you may have regarding the above. For further information and assistance, as well as for any GDPR related questions, please contact Suzana Delija, Attorney at Law, via e-mail sdelija@kpmg.com

KPMG Croatia d.o.o

EUROTOWER, Ivana Lucica 2A/17

T: +385 1 5390 000

office@kpmg.hr

kpmg.com/hr

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2018 KPMG Croatia d.o.o., a Croatian limited liability company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.