

# In-house with you monthly Q&A

## Data protection issues today (post-Brexit and five years since GDPR)

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# Welcome



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# Five topics for consideration

1. International transfers updated
2. Update on US transfers specifically
3. Intra group DPAs
4. Developments worldwide on DP regimes
5. Preparation for sale, investment or restructuring

# International transfers updated

- Article 46 UK GDPR
- The IDTA and SCCs and the need for TIA/TRA
- IDTA and TRA –new guidance has been issued by the ICO diverging from EU
- EU SCCs and TIA – requiring assessments of the local laws since Schrems II
- Format of TIA/TRA

# Update on US transfers specifically

- Update – fundamentally difficult to make ‘compliant’ especially for ECSPs.
- An ECSP is defined as any service which provides to users the ability to send or receive wire or electronic communications - giving any users (including the company’s own employees) the ability to send or receive communications is sufficient.
- Section 702 Foreign Intelligence Surveillance Act permits the US government to conduct targeted surveillance of foreign (i.e. non-US) persons located outside the US in order to acquire ‘foreign intelligence information’. Under Section 702, the US Attorney General and Director of National Intelligence may issue directives compelling US electronic communication service providers (ECSPs) to provide such information.
- The agreement in principle between EU and US.

# Intra group DPAs

- Becoming increasingly useful for transfers of personal data within a group of companies
- Have to treat each subsid as separate legal entity for DP purposes
- For both national and international transfers



# Developments worldwide on DP regimes

- Growing number of countries implementing data protection regimes of their own across the world: 71% of countries have DP leg, 9% have draft legislation (UNCTAD figures).
- Many DP regimes following the principles of the GDPR/ UK GDPR in order to apply for adequacy or at least make transfers possible.
- What that means?



# Preparation for sale, investment or restructuring

- Or data audit for more general compliance reviews
- Increasingly a focus for corporate matters: most businesses have an e-commerce element.
- Key issues are to have a real data management process in place not just a whitewash.
- Consider correct emphasis on DPAs and international transfer agreements: a good ROPA, tailored policies, evidence of staff training and also honesty around breaches or DSARs
- Particularly data-driven businesses, or businesses handling sensitive personal data, should be prepared to consider their practice.



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# What's on the horizon?

- 8 March 2023 – UK government announced the Data Protection and Digital Information (No.2) Bill.
- Evolution rather than 'revolution'? Potential impact on the UK's adequacy status?
- Main aim = to reduce the administrative burden on businesses

# What changes are coming?

- **Records of processing** – only needed where processing is likely to result in a ‘high risk’ to the rights and freedom of individuals.
- **No more DPOs!** But, need for a ‘senior responsible individual’.
- **No more DPIAs!** But, need for ‘assessment of high risk processing’.
- **Changes to SARs!** ‘vexatious and excessive test’
- **Clarification on ‘legitimate interests’:**
  - Bill includes examples of what is considered ‘necessary’ processing
  - Expansion of ‘recognised legitimate interests’

# What changes are coming? Continued...

- **Scientific research** – covers ‘any’ research that can be described as ‘scientific’.
- **A new ICO?** The ICO’s name will change to the ‘Information Commission’ – new reporting obligations to the government; increased oversight from the Sec. of State.
- **Changes to PECR:**
  - The Bill increases the maximum amount of fines under The Privacy and Electronic Communications Regulations 2003 – brought in line with the GDPR.
  - ‘ICO’ will be able to issue fines up to £17.5m or 4% of a global turnover for certain breaches of PECR & up to £8.7m or 2% of global turnover for other breaches.

**Any questions?**

