

Chartergates Fact Sheet

SUBJECT: TRANSFERS OF DATA OUTSIDE OF THE EU

Where you intend to transfer data outside of the EU, special provisions of the GDPR apply.

The first point to note is that even where the information remains in the UK, if it is accessible outside of the EU then that counts as a transfer of data for the purposes of the GDPR. So, for example; information held in the UK but accessed outside of the EU for back-office functions (payroll etc) will be subject to the special provisions of the GDPR.

To summarise, the GDPR prohibits the transfer of data to territories outside the EU unless you can fit into one of the following categories:

1. **That the transfer is made to a territory that the Commission has already designated as providing an adequate level of protection.** There is a list of countries designated as 'adequate'. If the country is not on the list, then this will not be the appropriate option.
2. **That the organisation receiving the data has provided adequate safeguards (and that an individual's rights remain enforceable with effective legal remedies).** Generally speaking, in order to fall within this category, you need to satisfy the Member State (UK Government) or the supervisory authority (likely to be the ICO) that you have adequate safeguards in place. They can then authorise the transfer of the data. You do not have to adopt already approved documentation (approved by the supervisory body) or seek specific authorisation, if you fall into category 3.
3. **That you can satisfy one of the derogations.** You can satisfy the adequate safeguards provision (point 2 above) without seeking authorisation from the appropriate body where you fall within one of the derogations below:
 - ✓ the transfer is made with the individual's informed consent;
 - ✓ the transfer is necessary for the performance of a contract between the individual and the organisation or for pre-contractual steps taken at the individual's request;
 - ✓ the transfer is necessary for the performance of a contract made in the interests of the individual between the data controller and another person;
 - ✓ the transfer is necessary for the establishment, exercise or defence of legal claims;
 - ✓ the transfer is necessary to protect the vital interests of the data subject or other persons where the data subject is physically or legally incapable of giving consent; or
 - ✓ the transfer is made from a register which under UK or EU law is intended to provide information to the public (and which is open to consultation by either the public in general or those able to show a legitimate interest in inspecting the register).

In order to transfer data outside of the EU under the GDPR you will need to satisfy one of the above criteria. As with all matters relating to data protection the facts of each case are vital. It should also be borne in mind that you are still required to comply with the remainder of the GDPR even if you can fit within one of the circumstances above...

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