Brexit Considerations around Salesforce’s Data Flows
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At Salesforce, we are committed to the success of our customers. As part of this commitment, we have undertaken preparations to ensure that our customers can continue to transfer data internationally, including following the UK’s departure from the European Union (“EU”), otherwise known as “Brexit”. This document provides responses to questions frequently raised by customers with respect to the actions Salesforce has taken as a result of Brexit.

In summary, Salesforce’s services continue to operate as normal and you do not need to take any action with us. Your service will still continue uninterrupted with all the required legal mechanisms in place to enable the transfer of personal data to and from the UK. Our data processing addendum (“DPA”) incorporates two different mechanisms to transfer personal data from the EU and the UK post-Brexit to countries that do not ensure an adequate level of data protection for the purposes of the General Data Protection Regulation (“GDPR”) and UK data protection laws and regulations: Salesforce’s EU Binding Corporate Rules for Processors (“BCRs”) and the European Commission Standard Contractual Clauses (“SCCs”).

For more information on these transfer mechanisms, our DPA and general privacy information, please see our Privacy Website.
Overview

On 31 January 2020, the UK left the EU and entered a transition period until 31 December 2020 (the "Transition Period") as part of the Withdrawal Agreement (available here) ("Withdrawal Agreement"). On 24 December 2020, the UK and EU concluded a "Trade and Cooperation Agreement" which sets out the framework for the UK-EU relationship effective from 1 January 2021.

EU-UK Data Transfers

Under the Trade and Cooperation Agreement, transmission of personal data from the EU to the UK shall not be considered as a transfer to a “third country” under EU law for an interim period of up to six months from the end of the Transition Period.

This means that for EU-UK data transfers:

- The restrictions on transfers under Chapter V of the EU GDPR will not apply to transfers from the EU to the UK from the end of the Transition Period until adequacy decisions come into effect, for up to six months expiring on 30 June 2021 (the “Bridging Period”). Data can therefore continue to be transferred between the EU and the UK without a specific data transfer mechanism during the Bridging Period.
- If during the Bridging Period the EU adopts an adequacy decision recognizing the UK as offering an adequate level of protection for transferred personal data, then personal data can be transferred from the EU to the UK on the basis of adequacy thereafter (see FAQ 2 for further details).
- On 19 February 2020, the European Commission published a draft adequacy decision concluding that the UK provides an essentially equivalent level of protection as guaranteed under the GDPR. The next step is for the European Data Protection Board to issue a nonbinding opinion on the draft adequacy decision. To become final, the draft decision will then need to be approved by a committee of representatives of the EU member states.
- In the event the adequacy decision is not approved by the end of the Bridging Period, then data transfers between the EU and the UK can continue as they would for a transfer from the EU to any third country using the data transfer mechanisms within Salesforce’s DPA, i.e. the BCRs and SCCs.

Data transfers from the UK

The situation regarding transfers of data from the UK remains broadly consistent with the transfer rules under the EU GDPR prior to the end of the Transition Period. The UK Government introduced legislation, the Data Protection, Privacy and Electronic Communications (EU Exit) Regulations SI 419/ 2019 and SI 2020/1586 (the "Brexit Regulations") which means that the GDPR will be retained in UK domestic law as the UK GDPR with some minor technical amendments to ensure it is operable in the UK. UK and EU data protection law is therefore
These changes, along with the Withdrawal Agreement and the Trade and Cooperation Agreement, means that:

- **For UK-EU data transfers**: Data from the UK to the EU can flow freely without the need for further legal transfer mechanisms.
- **For UK-Rest of the World data transfers**: Countries which are deemed to provide an adequate level of protection for personal data by the European Commission (see FAQ 2 for further details) are considered to be adequate by the UK government, meaning personal data can be transferred from the UK to these countries. The UK government also has the power to make its own adequacy decisions in relation to third countries and international organizations. For all other countries, the Brexit Regulations allow the continued use of the EU SCCs for transfers outside of the UK. In addition, there are provisions which allow EU BCRs to transition into the UK regime (see FAQ 4 for further details).

For more detailed information, please review the frequently asked questions below. For customers requiring further clarification, including questions specific to your Salesforce service, please reach out to your dedicated account executive.

This document is provided on an information-only basis. It contains a broad overview of the laws and guidance issued that may or may not apply to customer use cases related to transfers of personal data in connection with Salesforce’s services. This document is not legal advice and no attorney-client relationship is created by its use. Those reading this document should consult with their own counsel to familiarize themselves with the data protection requirements that govern their specific situations. Please note that the political approach and guidance related to Brexit changes frequently so this document is only accurate as of the date of publication noted above.
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1. Are there changes to my service post-Brexit?

No. Salesforce services continue to operate as normal and you do not need to take any action with us due to Brexit.

2. What happens if the UK is deemed adequate by the European Commission?

By way of background, personal data may not be transferred outside the EU unless there are protections in place to guarantee individuals’ rights and freedoms for their personal data equivalent to those they enjoy in the EU. Those countries which are considered to have a data protection regime which provides an adequate level of protection may benefit from a decision from the European Commission of being deemed adequate which allows the free flow of data from the EU without any further steps being needed. If the UK is deemed adequate by the end of the Bridging Period then data transfers from the EU to the UK can take place on the basis of adequacy without a specific data transfer mechanism from that point on.

On 19 February 2020, the European Commission published a draft adequacy decision concluding that the UK provides an essentially equivalent level of protection as guaranteed under the GDPR. The next step is for the European Data Protection Board to issue a nonbinding opinion on the draft adequacy decision. To become final, the draft decision will then need to be approved by a committee of representatives of the EU member states.

In any event, even if the UK is not deemed adequate prior to the end of the Bridging Period, then data transfers from the EU to the UK will still be possible using the transfer mechanisms already contained in Salesforce's DPA (i.e. the BCRs and SCCs), without the need for further action to be taken.

3. How does Salesforce’s contract address data flows?

As noted above, Salesforce incorporates its BCRs and SCCs into its DPA. Our BCRs cover intra-company transfers for nearly all of our services and our SCCs have been contractually incorporated into our DPA to cover all of our services. The “Order of Precedence” clause in our DPA ensures that BCRs are relied upon for transfers in the first instance, followed by SCCs in the event that BCRs are not applicable.

4. How does Brexit affect Salesforce’s BCRs?

EU-UK Data Transfers

In November 2015 the CNIL concluded the approval process for Salesforce’s Processor BCR in respect of personal data submitted by Salesforce’s customers to its services. Salesforce therefore holds an approved EU BCR and Brexit does not affect the status of Salesforce’s EU BCRs for data transfers from the EU to the UK.
As explained above:

- The restrictions on transfers under Chapter V of the EU GDPR will not apply to transfers from the EU to the UK during the Bridging Period. Data can therefore continue to be transferred between the EU and the UK without a specific data transfer mechanism during the Bridging Period.
- If during the Bridging Period the EU adopts an adequacy decision recognizing the UK as offering an adequate level of protection for transferred personal data, then personal data can be transferred from the EU to the UK on the basis of adequacy thereafter (see FAQ 2 for further details).
- Even if an adequacy decision is not concluded by the end of the Bridging Period, then data transfers between the EU and the UK can continue as they would for a transfer from the EU to any third country using the data transfer mechanisms within Salesforce’s DPA, i.e. the BCRs and SCCs.

Data transfers from the UK

Now that the UK has left the EU and the Transition Period has ended, the (EU) GDPR has been retained in domestic law as the UK GDPR. The UK Information Commissioner’s Office (“ICO”) has recently introduced and will approve UK GDPR Binding Corporate Rules (UK BCRs) to enable data transfers from the UK.

Organizations with existing authorised EU BCRs, like Salesforce, are required to apply to the ICO for confirmation of automatic eligibility of the EU BCR for UK BCRs. For this purpose, Salesforce’s EU BCR has been converted into UK BCR with some minor technical amendments to ensure it is operable in the UK under UK law. Under the UK BCRs, Salesforce will apply the same level of protection that it has applied through its EU BCR since 2015. Salesforce’s EU BCR and UK BCRs are therefore aligned.

Salesforce’s UK BCR is currently pending approval by the ICO and we will update these FAQs as soon as such approval is granted. However, as explained in FAQ 3, our DPA incorporates both the BCRs and SCCs, so in the meantime the SCCs will apply where required for data transfers from the UK.

5. I am a Salesforce customer, post-Brexit, does my organization need to migrate its data out of the UK in order to avoid breaching data protection rules?

In respect of Salesforce’s services, it is not necessary to migrate data out of the UK post-Brexit. The standards contained in the GDPR, which have been incorporated into law in the UK and supplemented through the Data Protection Act 2018, continue to apply in and to the UK. Ultimately, there are mechanisms in place in both the law and our DPA to ensure that data flows can continue from the UK to the EU, the EU to the UK and the UK to non-EU countries, regardless of Brexit and any ongoing negotiations between the EU and the UK.
6. What about my Master Subscription Agreement (MSA) terms with Salesforce - does that need to change?

No change is needed to your MSA as a result of Brexit.

Whilst the governing law and Salesforce contracting entity may vary, Brexit does not require any changes to your agreement with Salesforce. For example, if you are based in a country within the EU, and entered into the MSA with our UK entity, Salesforce UK Limited (previously named Salesforce.com EMEA Ltd), this is still entirely valid and is not affected by Brexit.

For more information on Brexit, the full range of UK government advice on Brexit can be found here.

7. Does the Schrems II case impact data transfers post Brexit?

For Salesforce, Schrems II has no negative impact in relation to data transfers before or after Brexit.

On July 16, 2020, in its ruling on Schrems II, the Court of Justice of the European Union ("CJEU") confirmed the validity of the SCCs as a legal mechanism for the transfer of personal data out of the EU, but invalidated the EU-US Privacy Shield framework.

In the event that the UK does not receive an adequacy determination prior to the end of the Bridging Period, and is therefore considered a “third country” for the purposes of European data protection law (see FAQ 2 above for latest status on this), Salesforce’s customers may continue to use Salesforce’s services, relying on BCRs and the SCCs, both of which are already included in our Data Processing Addendum, for data transfers from the EU.