

Brexit & International Data Transfers

Data Transfers

This frequently asked questions (FAQ) document is designed to address concerns from customers regarding the VMware data transfer strategy in light of Brexit, and specifically the use of binding corporate rules (BCRs) and standard contractual clauses (SCCs).

Further information about VMware BCRs for Processors may be found in our [External FAQs on BCRs](#).

Q. How does Brexit affect data protection law?

A. Data protection law in the United Kingdom (UK) remains substantially the same following Brexit. The GDPR has been retained in domestic law as the UK GDPR and sits alongside an amended version of the DPA 2018. The main differences concern international transfers from the EEA to the UK and BCRs, which is the focus of these FAQs.

Q. How does Brexit affect international data transfers from the European Economic Area (EEA) to the UK?

A. On June 28, 2021, the European Commission granted the UK "adequacy status"; thereby recognizing that the UK provides an equivalent level of protection for personal data as the EU does. This means that no specific data transfer mechanism needs to be in place for the transfer of personal data from the EEA to the UK. The adequacy decision is expected to last until June 27, 2025. It is anticipated that the European Commission will start work later in 2024 to decide whether to extend the adequacy decision (for a further period up to a maximum of four years) or if not, then the adequacy decision will end on June 27, 2025. The VMware Privacy Team is closely monitoring the developments in this area.

Q. How does Brexit affect the existing VMware BCRs?

A. VMware currently has BCRs in place to legitimise transfers of personal data of its customers from the EEA when it acts as their data processor (EU BCRs). These remain valid for all transfers from the EEA; further information can be found in our [External FAQs on BCRs](#).

Q. Does VMware have UK BCRs in place?

A. VMware submitted its UK BCR application to the UK data protection regulator, the Information Commissioner's Office (ICO) prior to the 30 June 2021 deadline. However, the ICO's BCR application documentation was updated (July 2022) and VMware is currently compiling the required application documentation (having regard to the ICO's feedback) and will resubmit its updated application. When approved, the VMware UK BCR will be published on the [VMware Binding Corporate Rules](#) webpage.

Q. What will be the difference between the EU BCRs and UK BCRs?

A. The UK BCRs will be largely identical to the EU BCRs. The substantive obligations and level of protection that VMware provides to the personal data of its customers will not change.

The UK BCRs will be necessarily different to recognize the fact that the UK is no longer in the EU, including complying with certain UK specific requirements. In practice, the principal changes involve updating references to "the EEA" to refer to "the UK" and references to "a supervisory authority" to refer to "the ICO".

Q. Are Standard Contractual Clauses (SCCs) for UK customers needed whilst VMware awaits approval for its UK BCRs?

A. On February 2, 2022, the ICO issued the UK International Data Transfer Addendum (UK IDTA) and the UK Addendum to the European Commission Standard Contractual Clauses (UK Addendum) as two transfer tools (in compliance with article 46 of the UK GDPR) when transferring UK personal data outside of the UK to a third country i.e., a country which has not been adequacy status by the ICO.

Where VMware processes UK personal data in its role as data controller, any UK personal data transferred outside of the UK will rely on the ICO's UK Addendum.

Where VMware processes UK personal data in its role as data processor, VMware provides a contractual commitment to transfer UK Personal Data which it processes in terms of its General Terms with customers using its EU BCRs (see section 6.2 of the [VMware Data Processing Addendum](#)). VMware will utilise the contractual commitment until such time as its UK BCRs has been granted. VMware UK Limited is part of the VMware Group which is bound to its EU BCRs. [VMware affiliates that have signed the IGA](#).

Q. What if approval for the UK BCRs is not given?

A. VMware is currently working to adhere to all ICO's requirements. Furthermore, the VMware EU BCRs were recently updated and reviewed by the Irish Data Protection Commission in November 2022; thereby being aligned to the Schrems II decision.

VMware is currently engaged with the ICO regarding its UK BCRs application and is well placed to deal with any issues that may arise. When approved, the VMware UK BCR will be published on the [VMware Binding Corporate Rules](#) webpage. If the UK BCRs are not approved, VMware intends to use the UK Addendum as a transfer mechanism for the UK Personal Data.

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