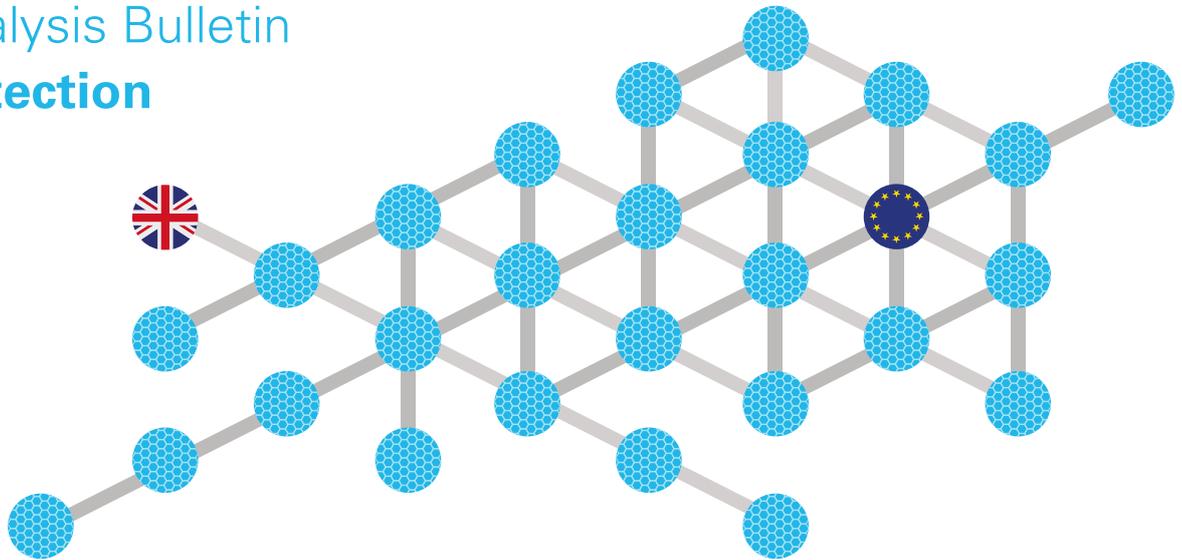


Brexit Analysis Bulletin

Data Protection



With the possibility of the UK voting to leave the EU, the UK would be required to consider what type of data protection governance it may adopt post-Brexit. What approach is taken will, in large, depend on the nature of the UK's post-Brexit relationship with Europe.

The Current Position: UK as an EU Member State

Data Protection Directive

Currently, the Data Protection Directive applies to countries of the European Economic Area (EEA) which includes all the EU Member States and the non-EU countries of Iceland, Lichtenstein and Norway.

General Data Protection Regulation (GDPR)

Countries within the EEA will be bound by the terms of the new GDPR which will be formally adopted by the European Parliament and Council in early in 2016, following which there will be a two-year implementation period. The GDPR will harmonise data protection law throughout the EU.

Brexit avenues: potential alternatives for the UK

Norwegian option

The UK may leave the EU but join the European Free Trade Association and remain part of the European Economic Area (EEA). The EEA agreement incorporates the four freedoms laid down in the Treaty of the Functioning of the European Union (the free movement of goods, services, persons and capital, as well as competition and state aid rules). If the UK joined the EEA (often known as the Norwegian Option) it would mean that the Data Protection Directive would be applicable to the UK and

nothing would change – the UK would still be required to comply with this directive and the new GDPR.

World Trade Organisation option

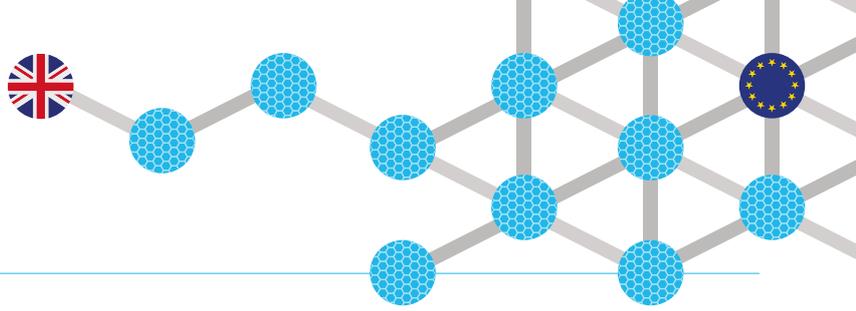
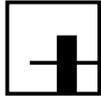
If the UK leaves the EU without any form of trade agreement, it would still need to be able to conduct trade with EU Member States and crucially, import personal data from and export personal data to the rest of Europe.

The UK would be able to revise its data protection framework, deviating from the EU standards implemented through the GDPR. Given that the UK has been a dissenting voice for some of the GDPR's more onerous aspects, e.g. Justice and Home Affairs provisions, not being bound by the terms of the GDPR through membership of the EEA might offer an opportunity for the UK to redesign its data protection framework.

Depending on the scope and detail of any such revisions to the UK's data protection law, the European Commission would have to determine whether the UK could be designated as a safe third country. If the UK did not achieve this, it may be subject to stricter requirements, much like the USA, as demonstrated by the EU-US Privacy Shield which is currently in the latter stages of negotiation.

Concluding remarks

In the event of the UK's exit from the EU, swift negotiations would be required to put a viable alternative



trading model in place with the EU, and both the UK and EU would have a vested interest in ensuring a workable data protection agreement was reached. While the Norwegian and WTO options are at opposite ends of the

scale in terms of what any agreement may look like, they are useful models upon which to begin analysing the potential post-Brexit position.

SHEPHERD AND WEDDERBURN'S BREXIT ADVISERS JOINING THE DOTS OF THE EU REFERENDUM

What If?

Shepherd and Wedderburn has been for many years offering balanced and impartial advice on how the different scenarios might play out in the event of constitutional change.

With the EU referendum now only months away, members of our dedicated Brexit Advisers will continue to interrogate the 'what if' questions, relating to specific sectors, that will emerge when the UK decides whether to remain in or leave the EU.

For further information in the first instance, please contact:

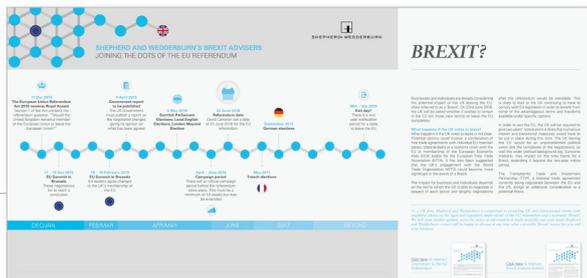


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