



STARLEAF PREPAREDNESS IN A POST-BREXIT ERA

StarLeaf Security & Compliance Group | February 2021

IN A LONG ANTICIPATED ANNOUNCEMENT AND A SIGH OF RELIEF, a Brexit crisis was averted on the afternoon of 24 December 2020 as the governments of the United Kingdom and the European Union arrived at a new social partnership and economic agreement. Ending prolonged negotiations between two territories, the ratified “EU-UK Trade and Cooperation Agreement” concluded an era of uncertainty in UK/EU governance and trade.

UK Prime Minister Boris Johnson hailed the agreement as symbiotic: “The UK is, of course, spiritually and emotionally part of Europe. This agreement provides for close and friendly cooperation with our neighbours in all the many areas where our values and interests coincide” (Johnson, 2020).

Speaking on behalf of the European Union, the president of the European Commission praised the arrangement: “It was worth fighting for this deal because we now have a fair and balanced agreement with the UK... Finally, we can leave Brexit behind us and look to the future” (Europa, 2020).

Ratified by the “EU-UK Trade and Cooperation Agreement,”¹ the curtain of uncertain was drawn to a close concerning EU/UK trade and governance. At the core of this agreement are three main pillars of international commerce:

- a Free Trade Agreement,
- a new Partnership for Security, and
- an agreement on Governance.

¹ From “EU-UK Trade and Cooperation Agreement: protecting European interests, ensuring fair competition, and continued cooperation in areas of mutual interest,” by Europa.com, 24 December 2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2531

Yet despite these accomplishments, a lasting agreement was not reached regarding data protection policy and praxis between the two territories, especially related to transborder flows between the EU/EEA and UK.

TRANSBORDER FLOWS BETWEEN THE EU/EEA AND UK

As a mitigation, the UK and the EU invoked a grace period of six months² to permit the continued flow of personal information from the EEA/EU into the UK. This grace period is a short-term solution while a long-term arrangement is negotiated, including the hope that the UK receives a decision of adequacy by the European Commission.³ The United Kingdom has granted 42 adequacy decisions comprised of 30 EU/EEA countries and 12 that mirror the EU's adequacy decisions; this means the flow of information from the UK to these countries will not be interrupted (O'Donogue, 2020).⁴

There is no guarantee that an adequacy decision will be granted to the UK by the EU at the end of the grace period. If this happens, the UK will be subject to increased regulatory restrictions.

As a contingency, StarLeaf implemented standard contractual clauses with its European customers, a requirement for third countries without a decision of adequacy so that information transfers can continue uninterrupted at the end of the grace period.

Within this context, this Brexit statement is written for the StarLeaf community, clarifying StarLeaf's preparation and readiness in a post-Brexit era without adequacy. It enumerates and clarifies the lawful instruments employed for cross-border flows, consistent with agency and governmental guidance. It should be noted that this topic is fluid, meaning it may be necessary to update this information based on near-term developments.

Q&A REGARDING BREXIT AND STARLEAF

The following information is provided in the form of a Q&A, spanning the most relevant questions being asked about Brexit from the StarLeaf community. For additional questions not

² The grace period is comprised of a four-month window which shall be extended an additional two months automatically unless either the EU or the UK objects.

³ An adequacy decision establishes that a non-EU country ensures an adequate level of protection of personal data by reason of its domestic law or the international commitments it has entered into. This decision was originally made by the European Commission on the basis of Directive 95/46/EC, now made on the basis of Article 45 of Regulation (EU) 2016/679. The adoption involves an adequacy decision of (1) a proposal from the European Commission; (2) an opinion of the European Data Protection Board; (3) an approval from representatives of EU countries; (4) the adoption of the decision by the European Commission. (European Commission, 2021)

⁴ In addition to the 30 EEA/EU countries, the other 12 countries including the following: Andorra, Argentina, Canada (commercial organisations), the Faroe Islands, Guernsey, Israel, Isle of Man, Japan, New Zealand, Switzerland and Uruguay.

seen here, feel free to send an email to infosec@starleaf.com and someone from the governance group will respond to your inquiry.

1. Is StarLeaf an EU or UK company?

StarLeaf is a group of companies with more than 30 data centres around the world. The parent company is StarLeaf Limited, headquartered in the United Kingdom. StarLeaf Limited holds registration number 066215999 with a registered address at 6th Floor, One London Wall, London, EC2Y 5EB, United Kingdom.

While StarLeaf's headquarters is flagged in Watford, Hertfordshire, it maintains many European offices and corporate entities.

2. Is StarLeaf affected by the regulatory changes brought about by Brexit?

Yes, transfers of data from the EEA/EU to UK are subject to regulatory conditions of Brexit; see Q7 for more information about transborder flows.

3. Will the regulatory changes of Brexit impact production or the movement of goods that StarLeaf relies upon?

Because the EU-UK Trade and Cooperation Agreement sets out preferential arrangements in areas such as trade in goods, there will be no impact.

4. Will the regulatory changes of Brexit impact the delivery of StarLeaf's service?

StarLeaf's platform is not impacted by regulatory changes; the EU-UK Trade and Cooperation Agreements also sets out preferential arrangements in service and digital trade.

The StarLeaf platform is a software service, enabling organisations to exert jurisdictional control and governance of unified communication data and flows.

5. Is StarLeaf reliant upon individuals impacted by Brexit?

StarLeaf's software engineering group employs individuals within the EEA/EU and the UK. The terms of the EU-UK Trade and Cooperation Agreement enable all individuals involved in the architecture and development of the platform to continue working without any impact by Brexit.

6. Does StarLeaf envision changes to licensure, tariffs, intellectual property, or taxation triggered by Brexit regarding products and services?

The terms of the EU-UK Trade and Cooperation Agreement enable continued trade and services to flow between the EEA/UK without an impact to taxation or tariffs; the same is true for licenses and intellectual property.

7. Will transborder flows of data between the EEA/EU and the UK be impacted by the Brexit agreement?

Yes, transborder flows may be affected. There are two scenarios that should be understood.

- First, the flow of regulated data from the United Kingdom to the EU/EEA may continue without impact. The government of the United Kingdom has granted 42 adequacy decisions comprised of 30 EU/EEA countries and 12 that mirror the EU's adequacy decisions. Because of this, the flow of information from the UK to these countries will not be interrupted (O'Donogue, 2020).⁵
- Second, the flow of regulated data from the EU/EEA to the UK will be impacted, because the United Kingdom has become a third country since it is no longer part of the European Union or the European Economic Area.⁶ According to the UK's Information Commissioner's Office (ICO), "Third countries are states that fall outside of the GDPR zone (EU member states plus Norway, Liechtenstein and Iceland). The GDPR restricts transfers of personal data to third countries, unless personal data is protected in another way or an exception applies" (ICO, 2020).

The Brexit trade deal provides a temporary solution for transborder flows of data to traverse the EU/EEA and UK without additional compliance instruments. This temporary timeframe will expire 30 April 2021, during which time the European Commission will consider an adequacy decision regarding the UK; an additional two-months grace period will apply if necessary unless either the EU or UK objects to the extension; otherwise, it will automatically apply.

Should the European Commission grant a decision of adequacy to the United Kingdom, the grace period will no longer be necessary. However, if the grace period expires and a decision of adequacy has not been granted, then entities within the United Kingdom will need to apply additional measures of protection for EU data such as employing EU Model Clauses or Binding Corporate Rules.

8. Will the subprocessors StarLeaf employs be impacted by Brexit, and what readiness has been undertaken to ensure readiness?

StarLeaf employs numerous subprocessors to provide the best experience and service to partners, customers and end users when using StarLeaf products and services. A

⁵ In addition to the 30 EEA/EU countries, the other 12 countries including the following: Andorra, Argentina, Canada (commercial organisations), the Faroe Islands, Guernsey, Israel, Isle of Man, Japan, New Zealand, Switzerland and Uruguay.

⁶ The European Commission has the power to determine, on the basis of article 45 of Regulation (EU) 2016/679 whether a country outside the EU offers an adequate level of data protection.

subprocessor is a third-party processor engaged by StarLeaf who has access to limited personal data for a specific purpose. For instance, when StarLeaf works a ticket on behalf of a partner or customer, the information may be stored using Salesforce, a third-party processor. Mailchimp is another example of a third-party processor, used to email service bulletins to customers. Both of these are examples of subprocessors.

Below is the list of subprocessors StarLeaf may use in its back-office operations or in the delivery of its services.

Subprocessors	Purpose of Processing Activity	Registered Business Address	Location of Processing	Link to Privacy / Security Policy
G-Suite	Corporate platform for file storage and communication.	Googleplex Mountain View, California	United States	https://policies.google.com/privacy
Google Analytics	Only used for StarLeaf’s public websites according to the privacy notice purposes at this link .	Googleplex Mountain View, California	United States	https://policies.google.com/privacy
MailChimp	Used for service announcements.	Ponce City Market Atlanta, Georgia	United States	https://mailchimp.com/legal/privacy/
Salesforce	Used by the marketing and sales entity within StarLeaf for sales management.	Heron Tower 110 Bishopsgate London EC2N 4AY	United Kingdom, Germany	https://www.salesforce.com/uk/company/privacy/
Pardot	Used by the marketing and sales entity within StarLeaf for sales management.	The Landmark at One Market Suite 300 San Francisco, CA	United States	https://www.salesforce.com/company/privacy/
Plivo	Used for PSTN connectivity when audio participants join meetings.	201 Mission Street Suite 230 San Francisco, CA	United States	https://www.plivo.com/privacy/
Twilio	Used for PSTN connectivity when audio participants join meetings.	375 Beale Street San Francisco, CA	United States	https://www.twilio.com/legal/privacy

Sendgrid	This service is used to facilitate automated meeting invites and other email notifications.	889 Winslow St. Redwood City, CA	United States	https://sendgrid.com/policies/privacy/
Microsoft	Corporate platform for file storage and communication.	Registration number 01624297, Microsoft Campus, Thames Valley Park, Reading, Berkshire, RG6 1WG	London, Cardiff, Durham within the UK; also data may reside in EU compliant data centres of Western Europe.	https://privacy.microsoft.com/en-us/privacystatement
Allendeaux & Company	Data protection implementation, audit, risk governance, and cybersecurity services	35 Rockridge Road, Englewood, Ohio 45322, United States	United States	https://www.allendeaux.com/privacy-notice
Media Network Services	Recording services for audio, video and content sharing.	Karenslyst Allé 8a, 0278 Oslo, Norway	(1) Frankfurt, DE Equinix FR4, Kleyerstrasse (2) Frankfurt, DE, Equinix FR5, Larchenstrasse	https://www.mns.vc/privacy/
Amazon S3	Amazon Simple Storage Services for storing encrypted attachments associated with chat messages.	AMAZON WEB SERVICES UK LIMITED 1 Principal Place, Worship Street, London, EC2A 2FA Registration 08650665	Of the 16 AWS regions worldwide (42 zones), data follows the organisation's PBX node. For instance, if in London, it would be 1 of 3 AWS zones in London.	https://aws.amazon.com/privacy/
BlueJeans Gateway by Verizon	Registered gateway for Microsoft Teams traffic.	BlueJeans Network 3098 Olsen Dr., 2nd floor San Jose, CA 95128	United States	https://www.bluejeans.com/trust-center https://www.bluejeans.com/privacy-policy
VOXBONE, S.A.	Metadata of PSTN call (origin, destination) via SS7 or IP networking, which can	Avenue Louise 489, 1050 Brussels, Belgium, and holder of the VAT number	Belgium (primary). Others: Los Angeles, New York, Frankfurt,	https://www.voxbone.com/privacy-policy/

	include SIP calling data.	VAT BE 0478.928.788.	Hong Kong, Sydney.	
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Every subprocessor has been vetted in regard to Brexit, and measures have been taken to ensure the uninterrupted flow of information between these subprocessors and the StarLeaf service. These organisations are also disclosed within the StarLeaf data processing addendum (DPA).

9. Will matters of governing law affect StarLeaf, its customers and services?

Regarding matters of governing law, the United Kingdom already incorporated relevant EU regulations into domestic law for both contractual and non-contractual matters (Rome I⁷ and Rome II⁸). Because of this, positions regarding governing law remain unchanged; English courts will continue to apply the Rome I and Rome II regime when questions arise regarding governing law. As stated by White & Case, “Rome I and Rome II apply irrespective of whether the applicable law is that of an EU member state, so the courts in EU member states will, like the UK courts, continue to give effect to the parties' choice of English law as the governing law of their contract” (Attenborough, Balmain, & Tripathi, 2021).

With the United Kingdom’s departure from the European Union, the main EU instruments of jurisdiction and enforcement of judgments (the Recast Brussels Regulation and the Lugano Convention) no longer apply to civil and commercial cases in the United Kingdom after 1 January 2021; for civil proceedings commenced on or before 31 December 2020, the Recast Brussels Regulation will continue to apply. A Bird & Bird *Lexology* articles states:

The Convention should apply to the enforcement of any judgment after the end of the transition period if that judgment is obtained in respect of an exclusive jurisdiction clause that falls within the ambit of it. In matters where the Convention does not apply, parties to these disputes will rely on existing UK common law rules and statutes, and/or the national law of the relevant EU member state. Local legal advice will need to be sought in the relevant jurisdiction regarding the rules that will be applied, costs and time limits.

(Hobbs & Lanzkron, 2021)

⁷ Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

⁸ Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

10. Does StarLeaf need an EU or UK representative after Brexit?

According to Article 27 of the EU GDPR, an EU representative shall be appointed by a data controller or processor without an EU establishment; but because StarLeaf has an EU establishment, it does not need to appoint an EU representative.

Similarly, under the UK GDPR, an obligation exists to appoint a UK representative if the organisation does not have a UK establishment; but because StarLeaf also has a UK establishment, it does not need to appoint a UK representative.

Taken together, StarLeaf does not need to appoint an EU or UK representative after Brexit.

11. Does the GDPR still apply to the StarLeaf UK office?

According to the UK's Information Commissioner's Office (ICO), the "GDPR has been incorporated into UK data protection law as the U.K. GDPR – so in practice there is little change to the core data protection principles, rights and obligations found in the U.K. GDPR" (ICO, 2021).

Likewise, the ICO also denotes that the EU GDPR may also still apply directly when an organisation offers "goods or services to individuals in Europe or monitors the behaviour of individuals in Europe" (ICO, 2021).

StarLeaf has also studied the Keeling Schedule for the Data Protection Act (Department for Digital, Culture, Media and Sport, 2020) and the Keeling Schedule for the General Data Protection Regulation (Department for Digital, Culture, Media and Sport, 2020). Together, these form the basis for compliance obligations regarding the UK GDPR in contrast to maintaining compliance with the EU GDPR due to Brexit.

References

- Attenborough, E., Balmain, C., & Tripathi, S. (2021, January 6). *Dispute Resolution Post-Brexit Transition Period*. (White & Case) Retrieved from Publications and Events: <https://www.whitecase.com/publications/alert/dispute-resolution-post-brexit-transition-period>
- Department for Digital, Culture, Media and Sport. (2020, October 14). *General Data Protection Regulation Keeling Schedule*. Retrieved from gov.uk: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/946117/20201102_-_GDPR_-_MASTER_Keeling_Schedule_with_changes_highlighted_V3.pdf
- Department for Digital, Culture, Media and Sport. (2020, October 14). *The Data Protection Act 2018 Keeling Schedule*. Retrieved February 1, 2021, from gov.uk: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/946100/20201102_-_DPA_-_MASTER_Keeling_Schedule_with_changes_highlighted_V3.pdf
- Europa. (2020, December 24). *EU-UK Trade and Cooperation Agreement: protecting European interests, ensuring fair competition, and continued cooperation in areas of mutual interest*. Retrieved from European Commission: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2531
- European Commission. (2021). Adequacy decision. *International dimension of data protection*. Retrieved from https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en
- Hobbs, V., & Lanzkron, L. (2021, January 5). *Brexit: What is the position in relation to Cross Border Disputes now that the transition period has ended?* (Lexology) Retrieved from Bird & Bird: <https://www.lexology.com/library/detail.aspx?g=f4e0f219-5438-4f2b-af3d-09af962a3b90>
- ICO. (2020, July 20). *What does Adequacy mean?* Retrieved from Information Commissioner's Office: <https://ico.org.uk/for-organisations/dp-at-the-end-of-the-transition-period/what-does-adequacy-mean/>

ICO. (2021). *Does the GDPR still apply*. Retrieved from Information rights at the end of the transition period - Frequently Asked Questions: <https://ico.org.uk/for-organisations/dp-at-the-end-of-the-transition-period/information-rights-at-the-end-of-the-transition-period-frequently-asked-questions>

Johnson, B. (2020, December). UK-EU Trade and Cooperation Agreement Summary. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957694/TCA_SUMMARY_PDF_V1.pdf

O'Donogue, C. (2020, December 15). The UK is preparing its adequacy decisions post Brexit. *Technology Law Dispatch*. Retrieved from <https://www.technologylawdispatch.com/2020/12/privacy-data-protection/the-uk-is-preparing-its-adequacy-decisions-post-brexit/>