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Brexit with data protection - Preliminary legal certainty for data transfers to the United Kingdom

The draft Brexit agreement offers a four-month transition period for data transfers from January 1, 2021. This sets a further transition period that can be extended to six months. The draft Brexit agreement offers a four-month transition period for data transfers from January 1, 2021. This establishes a further transition period that can be extended to six months. The United Kingdom of Great Britain and Northern Ireland (the United Kingdom) left the EU on January 31, 2020, becoming a third country under the European General Data Protection Regulation (GDPR). In the exit agreement between the United Kingdom and the EU at the time, it was stipulated that Union law on the protection of personal data in the United Kingdom (Art. 126, Art. 127 Agreement) would continue to apply during a transitional period until December 31, 2020. Without further regulations, a transfer of personal data to the United Kingdom would only have been permissible after this point in time under the conditions of Art. 45 et seq. GDPR. In view of the existing diverse supply chains and intertwined business processes, this would have led to major legal uncertainties and possibly ongoing data protection violations. As part of a trade and cooperation agreement, the United Kingdom and the EU have provided for a further transitional regulation for data transfers in the final provisions before the end of this transitional period, which feared serious legal uncertainties (Article FINPROV.10A Interim provision for transmission of personal data to the United Kingdom, p. 414 ff.). According to this, transmissions of personal data from the EU to the United Kingdom should not be considered as transmissions to a third country for a further transitional period (Article 44 GDPR). This period begins when the Agreement comes into force and ends when the EU Commission has made adequacy decisions relating to the United Kingdom pursuant to Art. 45 (3) GDPR and Art. 36 (3) Directive (EU) 2016/680, after four months at the latest. This end date can be extended by two months if none of the parties involved objects. Dieter Kugelmann, transmissions to the United Kingdom are still possible for the time being under the previous conditions. "Shortly before the Brexit finish line, it worked to receive the data transmissions to the United Kingdom. In this way, serious difficulties for the companies concerned are avoided for the time being. But companies shouldn't run out of steam. It is important to prepare for the end of the transition period in order to adapt business processes if necessary. The EU Commission is now obliged to present viable adequacy decisions in a timely manner, which also take into account the current case law of the European Court of Justice. Even if one can hope for such an adequacy decision by the Commission, one should not rely on it in third countries

Notes from the

European Commission on changes following the Brexit checklist to prepare for Brexit for companies that have business relationships with the United Kingdom

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