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# Data Transfers: Where are we now?

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## James Castro-Edwards

### Counsel Arnold & Porter

James Castro-Edwards provides counsel on global data protection compliance projects for multinational companies, advises on data protection issues, and helps companies respond to data breach situations. He represents a broad range of clients including financial, media and technology organizations, and medical device and pharmaceutical companies. In addition to advising clients on data protection issues, Mr. Castro-Edwards has created innovative data protection support, audit and training programs for clients.

Earlier in his career, Mr. Castro-Edwards was in private practice and served as a Solicitor in the data protection group at PwC Legal. He is widely published in a variety of titles, a regular public speaker on data protection issues and wrote the text books on the EU General Data Protection Regulation (GDPR) and the UK GDPR for The Law Society.



## Lisa Lee

### Global Privacy Attorney Agilent Technologies, Inc.

Lisa Lee is the Global Privacy Attorney at Agilent Technologies, Inc., a life sciences company, where she is responsible for helping to maintain and further develop Agilent's international privacy program. Before joining Agilent, Lisa served as Senior Counsel at Raymond James Financial, Inc., a financial services company, where she provided practical privacy-related advice and guidance to her business stakeholders. Overall, Lisa has spent over seven years in privacy and compliance roles. Lisa is driven to help her stakeholders find solutions to enable business growth while satisfying privacy obligations.



# George Ralph

## Global Managing Director RFA

As Global Managing Director of RFA, George is a technology and business leader with a proven track record of strategic alignment, process improvement and guidance. Having been both a COO and a CTO of his own technology firms over a nineteen-year period, he looks to provide transparent guidance to every business he serves and the people he leads. George has extensive delivery and technical experience in network and server architecture, large-scale migrations utilising leading technology brands, and IaaS offerings.

A strategic thinker and leader, George is always looking forward to the next technology solution. His contribution to clients remains second to none as he continues to be instrumental in creating opportunities for RFA to maintain its high standards of client care. He is uncompromising in his approach to creating exceptional business IT solutions to support client's cybersecurity and digitisation strategies to provide a best in class service for RFA's international client community.

George is a certified cyber assessor, auditor and architect and widely experienced cybersecurity professional. He is also an Assessor for the British Computer Society (The Institute of IT) and a Certified IT professional.



## Amanda King

Head of Data Privacy UK and Ireland  
Novartis

Amanda joined Novartis in 2021 and has previous experience advising on data protection compliance within the healthcare industry, including complex data transfers and data sharing agreements involving both public and private sector organisations since 2018.



# Data transfers: where are we now?



## What this session will cover:

1. EDPB Guidelines 05/2021
2. ICO Consultation on data transfers
3. The ICO draft international transfer risk assessment and tool
4. The UK Adequacy Decision and the new Information Commissioner

# EDPB Guidelines

## 05/2021

# EDPB Guidelines 05/2021

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# ICO Consultation on data transfers

# ICO Consultation on data transfers



- ICO Consultation on data transfers
  - i. Proposal and plans for updates to guidance on international transfers
  - ii. Draft international transfer risk assessment and tool
  - iii. Draft international data transfer agreement
  - iv. International data transfer addendum

# ICO Consultation on data transfers



- The ICO has not adopted the 'new' SCCs approved by the European Commission in June 2021
- Instead, UK data exporters must use the 'old' SCCs (2001, 2004 or 2010 versions)
- The ICO launched a consultation on data transfers under the UK GDPR in August 2021, which closed on 7th October and covers the following:
  - 1) Proposal and plans for updates to guidance on international transfers.
  - 2) Draft international transfer risk assessment and tool.
  - 3) Draft international data transfer agreement.
  - 4) International Data Transfer Addendum to the EU Commission Standard Contractual Clauses

# ICO Consultation on data transfers



## Proposal and plans for updates to guidance on international transfers

*The ICO sought views on the following aspects of its guidance:*

1. *The extra-territorial effects of Article 3:*

- 1) *UK controller - overseas processors*
- 2) *Non-UK UK GDPR overseas processor*
- 3) *UK controller - overseas joint-controllers*

2. *Interpretation of Chapter V*

- 1) *Transfers must be between separate legal entities?*
- 2) *UK processor / non-UK GDPR controller; return to controller ≠ transfer*
- 3) *For a restricted transfer, the importer must not be subject to the UK GDPR.*

3. *Derogations (Art. 49).*

*Should exporters first try to find an appropriate safeguard, should 'necessary' be interpreted as 'strictly necessary' and to what extent may the derogations be relied on for repetitive transfers, regular and predictable transfers and systematic transfers?*

# ICO Consultation on data transfers



# The ICO draft international transfer risk assessment and tool

## Draft international transfer risk assessment and tool

- EDPB Recommendations 01/2020
- Following *Schrems II*, requires:
  - 1) *Know your transfers*
  - 2) *Verify the transfer tool being relied upon*
  - 3) *Assess whether there is anything in the law and/or practices of the third country that may impinge on the effectiveness of the appropriate safeguards of the transfer tools being relied upon*
  - 4) *Identify and adopt supplementary measures that are necessary to bring the level of protection to the EU standard of 'Essential Equivalence'*

## Draft international transfer risk assessment and tool

- 1) Assess the transfer
- 2) Is the IDTA likely to be enforceable in the destination country
- 3) Is there appropriate protection for the data from third-party access

# The ICO draft international transfer risk assessment and tool

# The UK Adequacy Decision and the new Information Commissioner

# The UK Adequacy Decision and the new Information Commissioner



- On leaving the EU at the end of the implementation period on 31<sup>st</sup> December 2020, the UK became a 'third country' for the purposes of the GDPR.
- The GDPR prohibits the transfer of personal data to third countries that do not ensure an adequate level of data protection.
- The European Commission's UK adequacy decision of June 2021 allows the free-flow of personal data to continue from the EU to the UK.
- However, the European Commission has made it clear that it could intervene at any point if the UK deviates from the EU level of data protection currently in place.
- The Commission could potentially revoke the UK's adequacy decision, which would be problematic and costly for UK businesses that receive personal data with Europe.

# The UK Adequacy Decision and the new Information Commissioner



- John Edwards became the UK's new Information Commissioner on 4th January 2022, succeeding Elizabeth Denham.
- The UK Government announced its preference for Mr Edwards at the same time as it unveiling its ambition to deliver a *'world-leading data policy that will deliver a Brexit dividend for individuals and businesses across the UK'*.
- Mr Edwards will protect individuals' data rights with *'a clear mandate to take a balanced approach that promotes further innovation and economic growth.'*
- The new Information Commissioner faces a challenge balancing the conflicting aims of protecting individuals' data rights with fostering a regime that promotes innovation and growth for digital business.

# The UK Adequacy Decision and the new Information Commissioner



## Points for discussion

- The loss of the UK's adequacy decision could potentially result in a significant volume of work for multinationals that transfer personal data between their EU and UK operations.
- Would this be a reasonable price to pay for 'lighter touch' regulation?



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