

FLINN

IMPLEMENTING BREXIT A RULE OF LAW PERSPECTIVE

IMPACT ON THE PROTECTION OF PERSONAL DATA

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IMPLEMENTING BREXIT

A rule of law perspective

WITHDRAWAL AGREEMENT

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graph TD; A[WITHDRAWAL AGREEMENT] --> B[POLITICAL DECLARATION]; B --> C[NO DEAL];
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POLITICAL DECLARATION

NO DEAL

WITHDRAWAL AGREEMENT

TITLE VII DATA & INFORMATION ...

Article 70

“Union Law on the protection of personal data” means:

- a) the GDPR
- b) ...
- c) ...
- (d) any other provision of Union law governing the protection of personal data

Article 71 - 1

Union PPD law will apply in UK to processing of data subjects PD outside UK

United Kingdom, provided that the personal data:

- (a) Were processed before end of transition period; or
- (b) are processed in the United Kingdom after the end of the transition period on the basis of this Agreement.

Article 71 2.

Paragraph 1 shall not apply to the extent the processing of the personal data referred to therein is subject to an adequate level of protection



POLITICAL DECLARATION

❑ I. Basis for Cooperation

❖ A. Respect for and safeguarding of human rights and fundamental freedoms are 'Core values and rights'

❖ B. Data protection

§10 (...) the Parties should also make arrangements for appropriate cooperation between regulators

❑ V. Digital

§40 (...) [facilitate] an open, secure and trustworthy online environment for businesses and consumers,"

❑ II. Law enforcement & judicial cooperation in criminal matters.

❖ "It should (...) be underpinned by long-standing commitments to the fundamental rights of individuals, including continued adherence and giving effect to the European Convention on Human Rights, and adequate protection of personal data, (...)



NO DEAL

- ❑ No 'glide-path' to an finding of 'adequacy'
- ❑ The No-Deal Guidance from HM Government emphasises use of standard contractual clauses (SCCs) for EU to UK transfers
 - ❖ But note that the SCCs are themselves under attack in Schrems II
- ❑ Some (larger) companies may already have Binding Corporate Rules (BCRs) in place
- ❑ Council of Europe 'Convention 108+' (Convention for the protection of individuals with regard to the processing of personal data) UK acceded in October this year
- ❑ But in Big Brother Watch and Others v. The United Kingdom (13 Sept 18) held the UK's bulk interception regime violated Article 8 of the ECHR (right to respect for private and family life/communications)
- ❑ Convention 108 + 48. The conditions for legitimate processing are set out in paragraphs 3 and 4. Personal data should be processed lawfully, fairly and in a transparent manner. Personal data must also have been collected for explicit, specified and legitimate purposes, ...
- ❑ GDPR: Article 45 2. When assessing adequacy the Commission shall take account of the following elements:
 - (a) the rule of law, respect for human rights and fundamental freedoms, relevant legislation, (...)
 - (b) The existence and effective functioning of one or more independent supervisory authorities (...)



WHY IT MATTERS

