



Preparing your data for EU Exit

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In partnership with **ARTHUR COX**

Introduction

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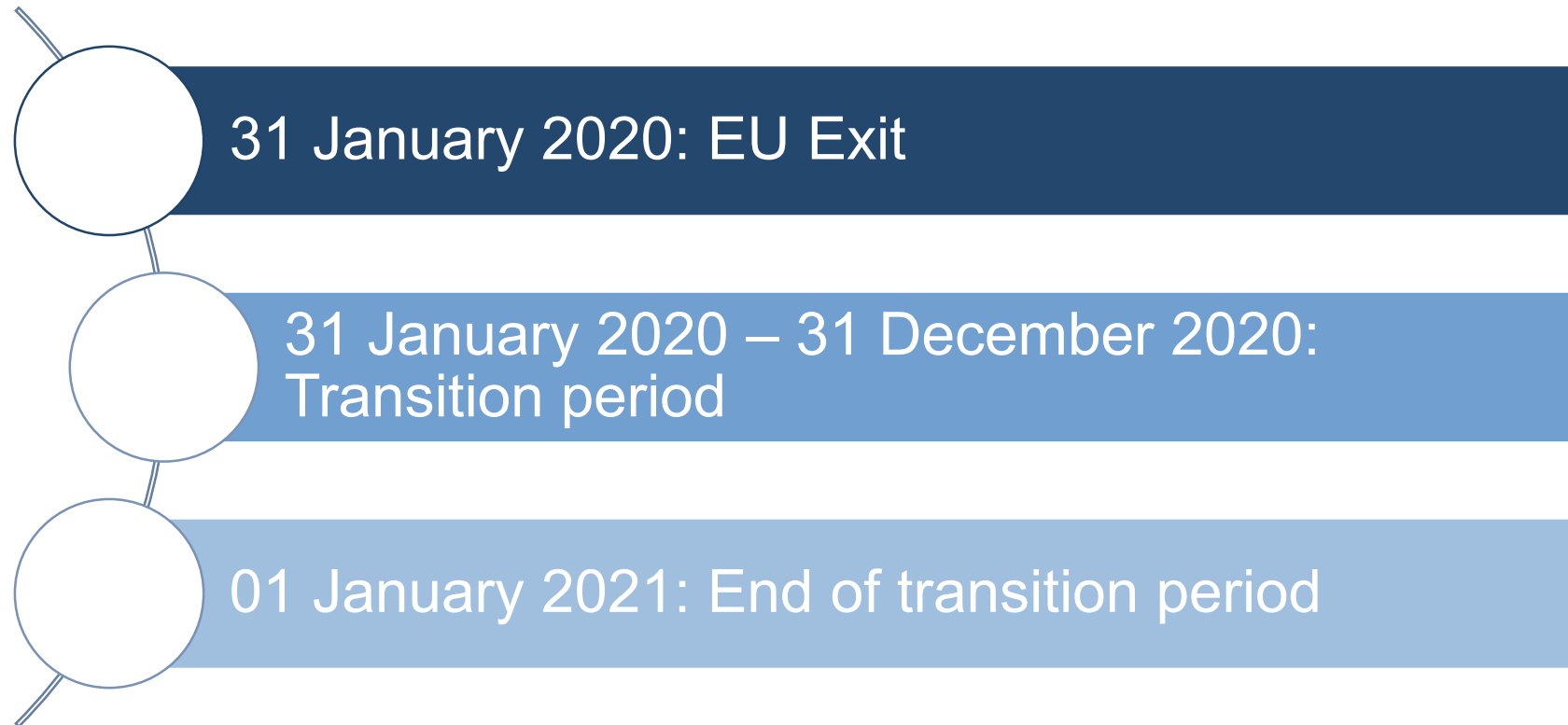
Webinar agenda

1. Data protection re-cap
2. Impact of EU exit on data transfers
3. Key steps to take to ensure data compliance
4. Questions

Data protection recap

GDPR	Data Protection Act 2018
Applies to all EU member states	Supplements GDPR
Personal data can flow freely	Covers additional processing e.g. law enforcement
Personal data widely defined	Aims to give UK equivalent level of data protection

Key dates to note



Transferring personal data during the transition period

- UK still recognised as an EU member state for the purposes of the GDPR.
- Business as usual for data transfers – no further action required.
- Start preparations for the end of the transition period.

What happens after the transition period?

New legislation:

- The UK is going to mirror the EU GDPR in UK law via the aptly named “**UK GDPR**”.
- Key data protection principles and obligations will remain the same.
- Hoped this will help the UK obtain an adequacy decision.

What happens after the transition period?

Adequacy decision?

An adequacy decision is official recognition of the UK's data protection regime as offering an equivalent level of data protection to the EU.

Data transfers would be able to continue as normal.

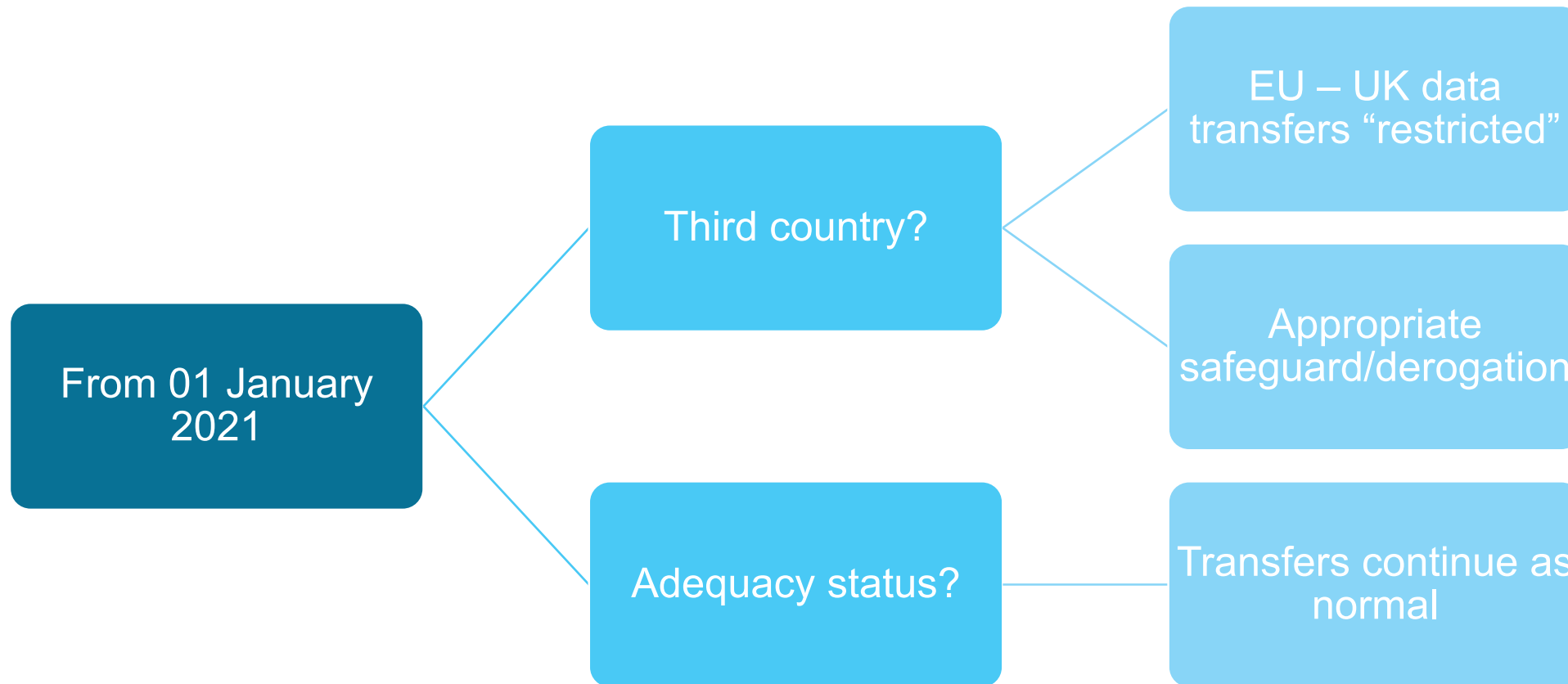
On 9 July 2020, the EU Commission said it hoped to have granted the UK an adequacy decision by the end of the transition period – this now seems unlikely.

What happens after the transition period?

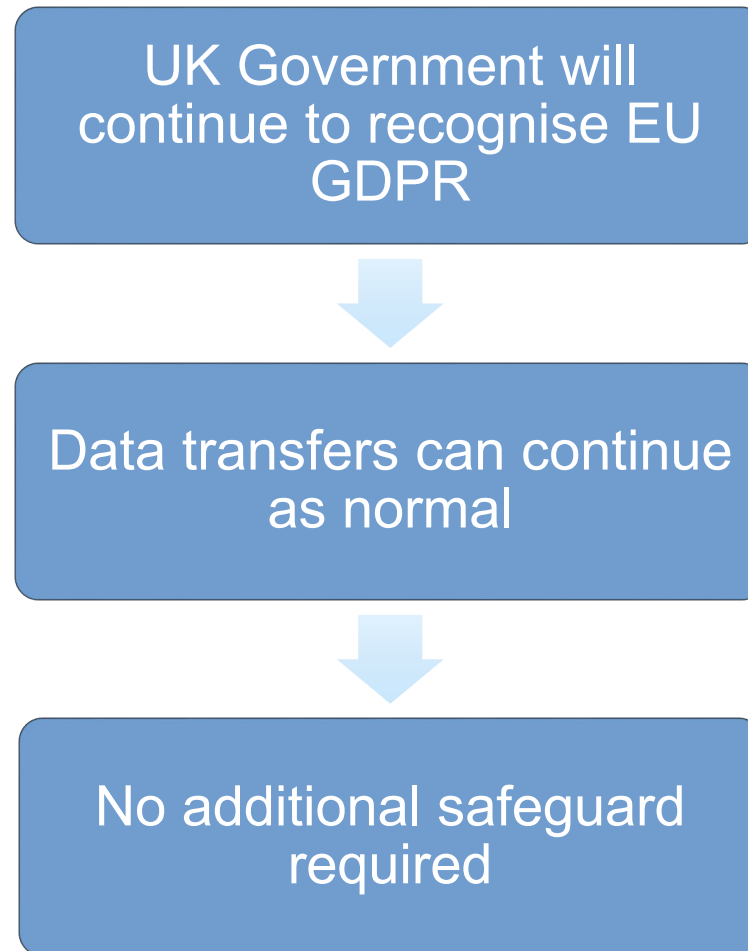
No adequacy decision?

- UK will become a “third country” for the purposes of the EU GDPR.
- Data transfers coming into the UK from EU will need additional protection:
 - **Appropriate safeguard** – Article 46, GDPR.
 - **Derogation** – Article 49, GDPR.

Summary: data transfers at the end of the transition period



Data transfers: UK to the EU



Data transfers: EU to UK

- UK will be treated as a “**third country**”.
- Transfers of personal data to the UK will be “**restricted**” and will require an additional transfer mechanism/safeguard.
- **Article 46, GDPR** - Appropriate safeguards are:
 - Binding corporate rules (BCRs); or
 - Standard contractual clauses (SCCs)

Data transfers: EU to UK

What are BCRs?

Set of internal rules that apply to all entities within a corporate group.

All transfers of personal data within the corporate group can take place lawfully between EU and non-EU entities.

Pros

Useful for multi-national companies

Cover all intra-group transfers

Cons

Lengthy approval process

Only cover data transfers within the group

Data transfers: EU to UK

What are SCCs?

- Model clauses developed by the EU Commission.
- Cover transfers between an EU controller to a controller or processor in a third country.
- Ensure that the data transfer has contractual protection.

Pros

Quick and easy to implement

Readily available

Schrems II - CJEU confirmed validity

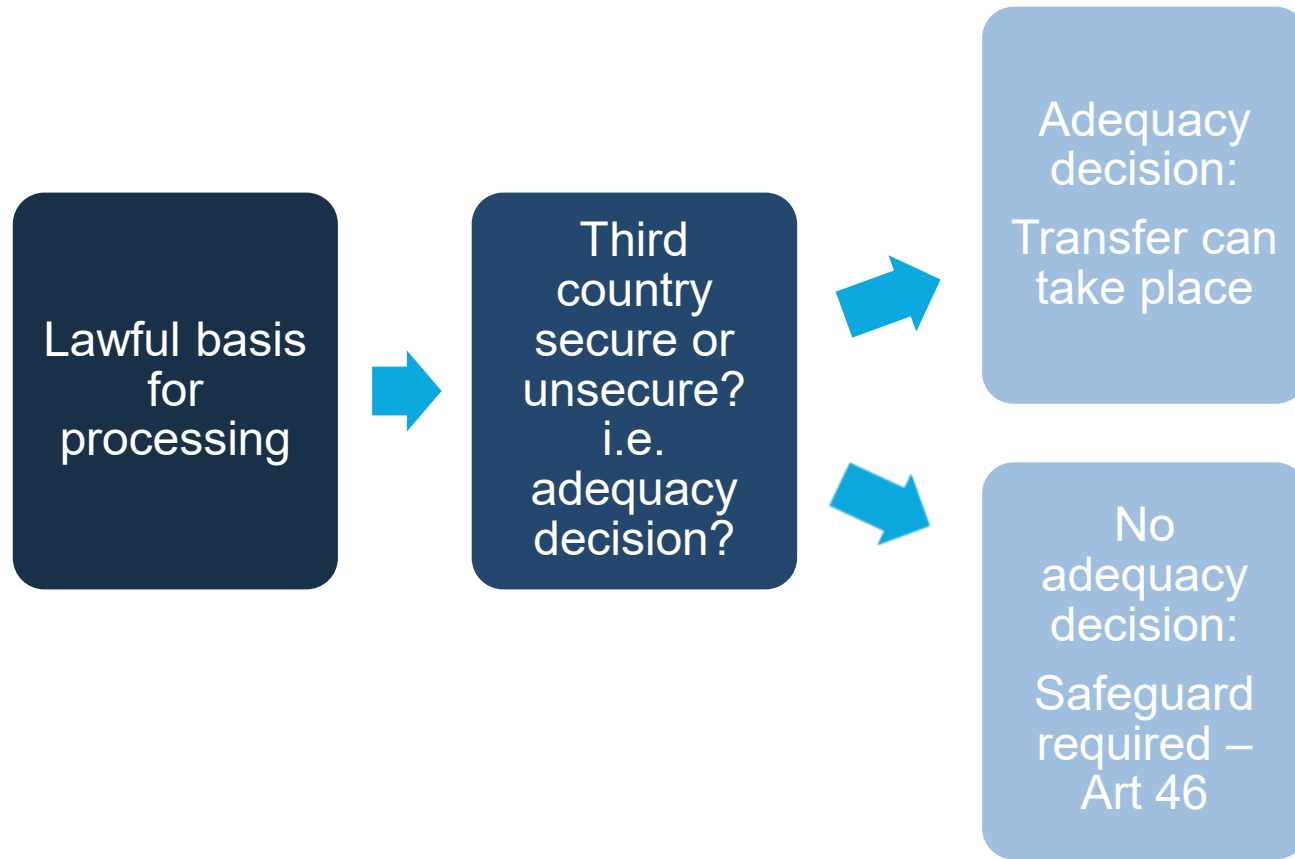
Cons

Outdated

Do not cover all scenarios

Schrems II – caveats

Data transfers: UK to “third countries”



Data transfers: UK to US

US is generally not recognised as providing an adequate level of protection under the EU GDPR, unless the organisation had signed up to the Privacy Shield.

Data transfers from the EU to Privacy Shield organisations could take place freely. This was set to be the position following EU Exit as the UK Government was going to continue to recognise the protection afforded by the Privacy Shield.

This all changed following the CJEU's decision in *Schrems II* which held that the Privacy Shield is an **invalid transfer mechanism**.

Data transfers: UK to US – what can we do now?

Review data flows

Check if all transfers are necessary

Consider alternative safeguards

Keep up-to-date with guidance

Data transfers: Derogations

The main derogations under **Article 49, GDPR** are narrowly defined and will only apply in the following **limited** circumstances:

- the individual has explicitly consented;
- an occasional transfer to perform a contract with an individual;
- an occasional transfer for important reasons of public interest;
- an occasional transfer to establish, make or defend legal claims;
- transfers from public registers; or
- a truly exceptional transfer for a compelling legitimate interest.

Data transfers: summary

UK to EU

- Remain valid.
- No additional safeguard needed.

EU to UK

- Transfers “restricted”.
- Additional safeguard under Article 46.
- Derogation under Article 49.

UK to US/ third country

- Transfers “restricted”.
- Additional safeguard/derogation required if no adequacy decision.
- Privacy Shield now invalid.

Appointing an EU Representative

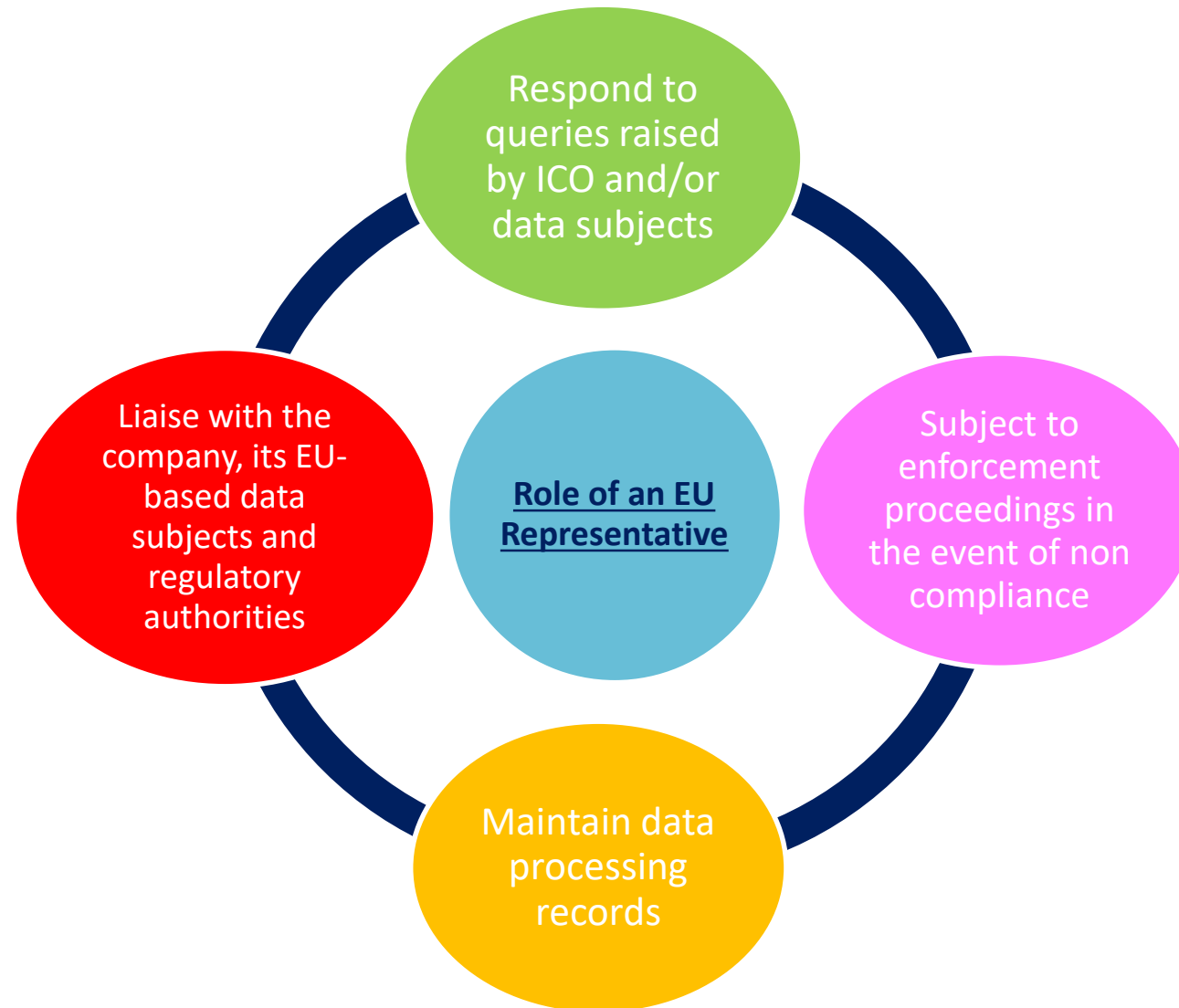
UK based controller or processor

No offices/branches in EEA

Offering goods/services to or monitoring the behaviour of individuals in EEA

You may need to appoint a representative for after EU Exit.

EU Representatives: what do they do?



Practical tips for organisations in NI

Re-visit data mapping

Get familiar with data flows

Review contracts with EEA suppliers/customers

Additional safeguard required?

Keep up-to-date with guidance

Review any data transfers to the US

Useful links

<https://ico.org.uk/for-organisations/data-protection-at-the-end-of-the-transition-period/>

<https://www.investni.com/prepare-for-eu-exit/eu-exit-frequently-asked-questions>

<https://www.investni.com/prepare-for-eu-exit/eu-exit-video-tutorials>

<https://www.gov.uk/guidance/using-personal-data-after-brexit>

https://edpb.europa.eu/our-work-tools/our-documents/andet/information-note-data-transfers-under-gdpr-event-no-deal-brexit_en

Questions?

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