



Department for
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The Lord Ricketts GCMG GCVO
Chair, European Affairs Committee
House of Lords
London
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20 November 2024

Dear Lord Ricketts,

UK-EU Data Adequacy

Thank you for your letter received on 22 October regarding the European Affairs Committee's conclusions and recommendations from your inquiry into UK-EU data adequacy. I am grateful for the ongoing work of the Committee on this matter.

This letter sets out my response on behalf of the Department for Science, Innovation and Technology, as the department responsible for the EU's adequacy decision on the general processing of personal data as well as for engaging with the European Commission on their adequacy review of the UK. The Home Office has also provided responses to the Law Enforcement recommendations, as the responsible department for the Law Enforcement adequacy decision.

The UK-EU data adequacy regime since 2021: Should the UK seek to retain EU adequacy status? (Recommendations A-D)

This Government is committed to strengthening the UK's relationship with the EU to put it on a more solid, stable footing. Following their meeting in Brussels on 2 October, the Prime Minister and President of the European Commission have agreed to strengthen cooperation between the EU and UK, working closely together to address wider global challenges. The Department for Science, Innovation and Technology's priorities are focused on accelerating innovation and productivity through science, safely developing technology and driving forward a modern digital government. It is clear that a stronger relationship with the EU and our European partners is key to delivering these objectives.

An important element of this strong relationship is the flow of personal data between the UK and EU. The two personal data adequacy decisions that the EU adopted in respect of the UK in 2021 - for the general processing of personal data under the General Data Protection Regulation (GDPR) and the processing of personal data for law enforcement purposes under the Law Enforcement Directive (LED) - are to be reviewed by the European Commission in advance of the 27 June 2025 deadline. The UK has its own unilateral adequacy decisions in respect of the EU, which enable the flow of personal data from the UK to the EU. Both ensure the safe flow of personal data between the EU and the UK.

I thank the Committee for its work in gathering evidence on the economic importance of these adequacy decisions, in particular the case studies and examples of its value across private and

public sectors as well as for British citizens. My department's own research has shown that the European Union (EU)/European Economic Area (EEA) is the biggest partner for UK data transfers. Over three quarters (77%) of UK businesses that transfer personal data internationally send or receive it from the EU/EEA.¹ With adequacy arrangements in place, EU and UK businesses, from SMEs to large multinationals, can exchange personal data in an easy and safe way, without putting in place costly alternative transfer mechanisms. In addition, the EU's law enforcement data adequacy decision provides certainty and trust for operational partners sending personal data from the EU to the UK. Those data flows support our cooperation on matters of law enforcement and security, helping us to tackle crime and bring perpetrators to justice.

The importance of data adequacy was also recently publicly highlighted by a joint statement from the EU and UK Trade & Cooperation Agreement (TCA) Domestic Advisory Groups. Whilst adequacy is not a legal prerequisite for cooperation under the TCA, our reciprocal adequacy decisions support data sharing under the TCA, enabling cross-border trade and law enforcement and criminal justice cooperation. Taken together, this emphasises why maintaining the EU's data adequacy decisions in respect of the UK is of such importance to this Government.

As set out in your letter, engaging closely with the European Commission to secure the successful renewal of the EU's data adequacy decisions of the UK is a priority for this Government. I have met the European Commissioner for Justice twice, on 16 September and again on 15 October, to discuss the importance of efficient and safe personal data sharing between our two jurisdictions. These meetings were constructive, and it is my intention to request an early meeting with the future new Commissioner for the Directorate-General for Justice and Consumers, with responsibility for data protection. More broadly, Ministers and officials in DSIT and the Home Office have engaged, and will continue to engage with EU officials, providing technical materials and information to support a swift renewal.

It is expected the review will commence with technical discussions between the European Commission and the UK Government, following which the Commission will publish draft decisions. The European Parliament and European Data Protection Board will provide non-legally binding opinions, and the Commission can amend its decisions based on these opinions. EU Member States will then vote on the Commission's decisions. We acknowledge and respect that the review is the European Commission's unilateral assessment process. The UK has no decision-making power in this process, and it is for the EU to decide how to manage their own adequacy decisions. However, we stand ready to engage with all EU stakeholders regardless of their role in the adequacy process, to explain our domestic framework and the Government's ambition in enabling growth and innovation with robust data protection standards at its heart.

I agree with your assessment on the importance of avoiding the unlikely, but significant, disruptive impact of a no-adequacy scenario for both of the UK's adequacy decisions. Furthermore, I believe that stable personal data flows are important for both the EU and UK public and have acknowledged organisations' views about the uncertainty posed by the current sunset clause, but appreciate it is for the EU to decide how to monitor their own adequacy decisions.

Risks to EU Adequacy (Recommendations E-J)

The Government stands ready to continue to engage on legislation that would be within scope of the EU's review, including the DUA Bill which was introduced on 23 October by Baroness Jones of Whitchurch into the House of Lords. The DUA Bill has three core objectives: growing the economy, improving UK public services, and making people's lives easier. To achieve these

¹ UK Business Data Survey 2024, DSIT (2024)

aims, large parts of the DUA Bill relate to non-data protection measures such as Digital Verification Services, the National Underground Asset Register and Smart Data schemes. The data protection measures within the Bill will be underpinned by a revamped Information Commissioner's Office (ICO), the UK's independent authority responsible for regulating data protection and privacy laws, with a new structure and powers of enforcement - ensuring people's personal data will be protected to a high standard.

In the development of the DUA Bill, the Government has considered the importance of retaining our EU adequacy decisions from the EU. The Bill will maintain the UK's high standards of data protection and we are confident the legislation will allow the UK to preserve its adequacy status. DSIT and Home Office officials will keep the European Commission updated as the Bill's progresses through parliament. In addition to the DUA Bill, both DSIT and the Home Office will continue to engage closely with the European Commission on other relevant legislation, including the Investigatory Powers (Amendment) Act 2024, on which Home Office officials have updated the European Commission throughout the Act's passage.

Beyond legislative reform, I acknowledge the Committee's reference to wider risks facing the EU's adequacy decisions in respect of the UK, including the potential of a legal challenge being brought at the Court of Justice of the EU (CJEU). Subject to the nature of such a challenge, the CJEU may need to determine whether the UK provides an "essentially equivalent" level of protection for personal data. In our view, the UK's data protection standards and regime are compatible with the 'essentially equivalent' standard. The UK will provide the EU with thorough information on its data protection framework to enable the EU to conduct a robust assessment that satisfies the adequacy criteria (including those set by CJEU case law) with the aim of minimising the risk of a legal challenge.

Wider international data protection policy (Recommendations K-M and I)

The legal and regulatory frameworks governing international data flows are becoming increasingly complex and fragmented. The UK is committed to working with international partners to shape practical, real-world solutions to facilitate personal data flows. The approach of this Government is focused on balancing ambition with international partners while maintaining our adequacy status with the EU.

On the Global Cross-Border Privacy Rules (CBPR), the UK's associate status in the Forum allows us to participate in discussions with a wide range of international partners, promote the UK's approach to data protection and data flows, and focus on the principles that we have in common to help raise global personal data protection standards. In particular, the UK is working closely with the Global CBPR Forum members to review and update the CBPR programme requirements (the Forum's data protection standards and principles) to modernise them and facilitate greater interoperability between different data protection and privacy frameworks.

Several members of the Global CBPR forum also have positive adequacy decisions from the EU, and the UK will continue to ensure that UK citizens personal data receives the high level of data protection they expect under UK data protection legislation when being transferred overseas.

The UK is also an active member of the EU Adequate Countries Network which provides a forum for countries and regulators with EU adequacy status to discuss topics and share best practices on data protection. The Network brings like-minded countries together with unique capacity to cooperate in an agile, flexible, and practical way, adapted to the different needs, size, and legal systems of our jurisdictions.

The Committee's letter also specifically addresses the Protocol (C108+) amending the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (C108). As you are aware, the UK has been a strong supporter of C108 and C108+, as one of the first signatories of both Conventions. It is our intention to ratify when and if we are able to do so, but we acknowledge the difficulties presented by Article 14(1) of C108+ which would require the UK to allow the free flow of personal data to all other C108+ signatories without additional data protection checks, which is not currently compatible with the UK's domestic data transfer regime based on high data protection standards.

Thank you again to the Committee for the evidence collected as part of this inquiry along with producing the conclusions and recommendations. My department will await an invitation to provide oral evidence to the committee on this matter.

I am copying this letter to Sir Chris Bryant, Minister of State for Data Protection and Telecoms; Baroness Jones of Whitchurch Parliamentary, Under-Secretary of State for the Future Digital Economy and Online Safety; Rt. Hon. Nick Thomas-Symonds MP, Paymaster General and Minister for the Cabinet Office (Minister for the Constitution and European Union Relations); Stephen Doughty MP, Minister of State (Europe, North America and Overseas Territories); Rt. Hon. Yvette Cooper MP, Home Secretary; the Rt Hon Lord Hanson of Flint, Minister of State for the Home Office.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Kyle', with a stylized flourish at the end.

The Rt Hon Peter Kyle MP
Secretary of State for Science, Innovation and Technology