International Regulatory Strategy Group – Written Evidence (DAT0004)

International Regulatory Strategy Group submission – House of Lords European Affairs Committee: Call for evidence on data adequacy

The International Regulatory Strategy Group (IRSG) is a joint venture between the City of London Corporation and TheCityUK. Its remit is to provide a cross-sectoral voice to shape the development of a globally coherent regulatory framework that will facilitate open and competitive cross-border financial services.

We welcome the opportunity to share our reflections on the importance of EU-UK data adequacy. In an increasingly digital economy, movement of personal data within and across borders is an everyday part of the financial services (FS) sector and beyond. The FS sector is key to helping facilitate the UK's economic development and global competitiveness and, in the global digital economy, this is reliant on timely access to data.

We appreciate the House of Lords' initiative in this field. The European Commission granted data adequacy to the UK in June 2021, as part of only two adequacy decisions touching the financial and professional services sector following Brexit. This allowed the continued free flow of personal data between both sides and provided much needed legal certainty for businesses. The adequacy decision will be up for review in 2025 and this enquiry is therefore a timely opportunity to discuss the importance of continued adequacy between the EU and the UK.

Summary

- **Data adequacy is crucial for the competitiveness and prosperity of the UK financial services sector in an increasingly digitised world.**

- **A disrupted or no adequacy scenario would have a considerable negative impact for the UK financial and professional services sector.**

- **While we see no immediate threat for data adequacy, there are some aspects in the new data protection framework in the UK which may increase scrutiny from the EU.**

- **We recommend that the UK government (HMG), the Department for Science, Innovation and Technology (DSIT), the Information Commissioner's Office (ICO) and the UK regulators continue a regular dialogue with their EU counterparts, explain the changes to the UK data protection framework and reassure them of the UK's continued commitment to robust data protection standards.**

- **The benefit of achieving scale in adequacy decisions with other jurisdictions should be carefully balanced against the risk that the proposal might endanger adequacy with the EU.**

- **We encourage the UK government to continue to work with its international partners, including the EU, on a multi-lateral approach based on mutually acceptable principles of Free Flow of Data with Trust.**

Assessment of existing adequacy arrangement between the EU and the UK

The free flow of data is crucial to the competitiveness and prosperity of the UK financial and professional services sector. Financial services is one of the most digitalised, globalised, and regulated sectors of the global economy. The FS sector is reliant on the transnational movement of data due to the reality that financial transactions are transfers of data; financial infrastructures, such as stock exchanges and payment systems, are data networks; and financial institutions, like banks and other intermediaries, are processors of data processors – gathering, analysing, and trading the data generated by their customers.

The current adequacy decision by the EU for the UK data protection framework, and the reciprocal UK adequacy for the EU's framework, provide a legally sound option to facilitate the free flow of personal data between the EU and the UK in the current environment and is designed to ensure that the personal data of consumers is treated safely and responsible in both jurisdictions. No alternative scenario is available currently to provide equivalent safeguards for consumers, legal certainty and timely access to data for businesses.

In the future we would encourage the UK government to work with its international partners, including the EU, on a multi-lateral approach based on mutually acceptable principles of Free Flow of Data with Trust based on independent standards that multiple jurisdictions are happy to implement and promote. The IRSG has outlined this recommendation in our report on the future of international data transfers.

Potential challenges for adequacy

The update of the UK's data protection regulation through the Data Protection and Digital Information Bill (DPDI), may result in increased EU scrutiny of the UK's data protection framework. We welcome the regular dialogue between UK government and UK officials with their EU counterparts, to explain the changes to the framework and reassure the EU of the UK's continued commitment to robust data protection standards.

To be granted adequacy with the EU's data protection framework, third country regulations do not need to be identical, but should follow the same underlying commitments. These commitments have not changed in the UK's DPDI Bill. The current adequacy decision is beneficial for business and consumers on both sides of the channel, which means the EU has a strong incentive to retain it. Despite that, we foresee some potential challenges to the current adequacy decision and are aware of EU stakeholder concerns about the new UK data protection framework, for example:

- The independence of the Information Commissioner.
- International transfers and UK data bridges with other third countries.
- Convergence vs divergence.

Independence of the Information Commissioner

When the new DPDI Bill was drafted, there were concerns raised concerning the independence of the ICO, through a new provision granting the Secretary of State the power to approve the ICO's code of practice. The UK government has removed this provision in the bill and the Secretary of State can now only provide non-binding recommendations on the ICO's codes. While the ICO will be required to consider these recommendations, the final decision on the codes remains with the Commissioner, ensuring the continued independence of the ICO.

We welcome the regular exchange of the Information Commissioner with his EU counterparts and recommend leveraging those regular meetings to explain the continued independence of the ICO in the new regulatory framework.

International transfers and UK agreements with other third countries

Further concerns relate to onward transfers and the impact that the UK's potential adequacy assessments of third countries. If the UK's list of adequate countries (and the onward transfer restrictions) were to diverge materially from that of the EU, then the UK's adequacy decision could be put at risk. The benefit of achieving scale in adequacy decisions should be balanced against the risk that the proposal might endanger the EU and potentially other adequacy decisions in respect of the UK. Where possible EU and UK should pursue a coordinated approach and regularly exchange information on their respective adequacy assessments with other jurisdictions.

Legal challenges following the recent announcements around the transatlantic data framework and the UK-US data bridge, may lead to similar court cases as those who led to the decisions of the European Court of Justice (ECJ) to overturn the International Safe Harbor Privacy Principles in 2015 and the EU-US Privacy Shield in 2020, better known as Schrems I and Schrems II. While the EU Commission and the UK government are confident that the new frameworks have a stronger legal foundation and will not be overturned by courts, these legal cases may add additional challenges over the next years.

<u>Convergence vs divergence</u>

Most jurisdictions receive adequacy by the EU if their data protection framework converges strongly with the EU's framework. The potential for UK increasing divergence from the EU's approach in the future is a concern within the EU.

While in theory adequacy is a technical assessment, in reality it is often a highly political process with many different interests implicated. The DPDI Bill and the upcoming review of the adequacy decision will raise scrutiny from other institutions beyond the European Commission.

Implications of disrupted or no adequacy scenario

A disrupted or no adequacy scenario would have a considerable negative impact for the UK financial and professional services sector. It would disrupt the free flow of data, add considerable compliance burdens and costs for businesses, create legal uncertainties and undermine consumer trust. This situation would create significant challenges for the growth and development of the UK's digital economy and the competitiveness UK's financial and professional services sector. Recent studies by the World Economic Forum have shown that restrictions in data flows and data localisation requirements can lower GDP by 0,4% to 1,7%.[1]

[1] World Economic Forum, Paths Towards Fee and Trusted Data Flows (2020),

It would furthermore create uncertainty for electronic personal data flows which are a necessity in the online world, and for businesses offering services beyond their immediate geographical boundaries. This is true in particular for smaller companies, who might not have the necessary means and expertise to comply with a disrupted or no adequacy scenario.

Cross-border data flows enable companies to track operations across multiple jurisdictions and manage risk consistently and comprehensively. For example, globally accessible know-your-customer (KYC) data helps financial institutions to prevent their business from being used to launder the proceeds of financial crime, and cross-border data flows allow firms to monitor and respond to cybersecurity and other operational risks in real time. Criminal networks operate without borders, and consequently, companies need to have access to data required to detect and prevent their activities.

Moreover, cross-border data flows enable consumers and businesses to access a broader range of services and leverage cutting-edge technologies, such as artificial intelligence and machine learning. Such innovation can help to advance progress across a range of fields to benefit society, from health to the green economy. TheCityUK has outlined the importance of international data flows in their report [Digital Trade: A commercially viable approach].

While data adequacy is not a perfect solution, we believe that, after having explored multiple other options during the TCA negotiations, it remains the most practical and reliable solution under the EU's current framework to ensure the free flow of data between both sides

Lessons learnt and future outlook

The recent EU decision to continue the adequacy decisions for 11 countries, suggests that the EU will likely continue to grant adequacy decisions in a transparent and proportionate manner. It further suggests that adequate jurisdictions do not need to have an identical rulebook but should uphold the same underlying commitments to high data protection standards.

Adequacy decisions by the EU are not necessarily linked to adequate jurisdictions granting themselves adequacy to other third countries. We therefore support the UK continuing to grant outcomes-based adequacy decisions to other third countries. However, we also encourage the UK government to continue to undertake robust due diligence before granting adequacy to other jurisdictions, including the Cross Border Privacy Rules (CBPR). Furthermore, we recommend carefully balancing the potential

https://www3.weforum.org/docs/WEF_Paths_Towards_Free_and_Trusted_Data%20_Flows_2020.pdf benefits of new adequacy decisions with the risk of endangering adequacy with the EU, and the need to maintain the trust of individuals in data transfers.

We encourage the government to explore with its international partners, including the EU, multilateral agreements, supported by the use of wider-ranging codes of conduct and certifications and, in the long term, an international agreement based on the free flow of data with trust. Our detailed recommendations can be found in the IRSG report on the future of international data transfers. The impact of increasing data localisation requirements on our sector can be found in the IRSG report How the trend towards data localisation is impacting the financial services sector.

Received 2 May 2024