

Written evidence submitted by Association of British Insurers (FRE0047)

We would like to take this opportunity to continue to emphasise that the most legally sound and stable way to transfer personal data between the UK and the EU27/EEA destinations, is for mutual data-adequacy decisions between the EU and UK. This would involve a European Commission decision in relation to the UK, coupled with an adequacy decision by the UK in respect of the EU, in order to ensure that transfers can also continue from the UK to the EU.

Data flows between EU and UK underpin the services economy and are vital for almost any business with customers, suppliers or operations in both the EU and UK. For data to continue to flow freely between the EU and the UK, the European Commission needs to decide whether the UK (as a third country) has a level of data protection that is sufficiently robust, or “adequate”. Whilst adequacy is the EU’s way of protecting the rights of EU citizens by insisting upon a high standard of data protection in foreign countries where their data will be processed, the UK has implemented the same high standard of data protection as the EU, as set by the GDPR.

Now over two years into its implementation, the UK has not only implemented the GDPR into legislation through the Data Protection Act 2018, but the UK’s Data Protection Authority, the ICO, has been a strong advocate for the development of the GDPR, holding the pen for a large number of guidelines and their consistent application by data protection authorities throughout the EU.

Digital and global economy

A strong, robust and trusted data protection regime is a key part of a strong digital economy and crucial for innovation. It is beneficial for all countries to have a common framework and standards to avoid fragmentation. The GDPR has raised the bar for data protection across UK and EU. Internationally, the GDPR is being closely replicated in laws across the world as a consistent, trusted standard for data protection, with California a recent example. As data protection laws become stronger and regulators get more enforcement powers globally, we believe it is important that the UK retains its high standards of data protection post-Brexit not only for the protection of its citizens but to retain the high standards expected by trading partners not only within European Union but across the world.

For the (re)insurance industry, data is a core part of business, used to price and underwrite all kinds of risks to reflect a customer’s particular circumstances as accurately and fairly as possible (driving a car, travelling abroad, starting and running a business, providing for life after work) to provide cover that best meets their needs, and to handle and validate claims. It also provides useful insights that can help to optimise processes, understand customers’ needs and provide new solutions. There are many instances in which insurers may need to transfer data across borders, including:

- within a Group that operates globally or across a number of jurisdictions
- as part of outsourcing arrangements
- as part of reinsurance arrangements
- as part of data storage arrangements, including servers and cloud services to an international organisation. An international organisation is defined as “an organisation and its subordinate bodies governed by public international law, or any other body which is set up by,

or on the basis of, an agreement between two or more countries” (GDPR Article 4).

The UK should pursue an adequacy decision

As mentioned above, the most legally sound and stable way to transfer personal data between the UK and the EU27/EEA is through mutual adequacy decisions by the European Commission and the UK. Without adequacy decisions between the UK and EU, alternative but less attractive and less practical options will be required to ensure continuing data flows. Potential options include localising data centres and obtaining relevant authorisations and putting in place available arrangements within GDPR Chapter V that enable third country data transfers. However, these are all less robust and cover fewer situations than a data adequacy decision. For example:

- **Consent** can be withdrawn or withheld at any time, making it unreliable for important activities like financial crime prevention
- **Binding Corporate Rules** are valid for intercompany personal data transfers only. They are only available to companies with a presence in an EU Member State and not a feasible solution for smaller firms who do not have a group-level presence.
- **Standard Contractual Clauses** are more flexible but may provide less legal certainty, as they are currently subject to a legal challenge (Schrems II). In addition, the identification and renegotiation of relevant contracts can be time-consuming and complex.
- **Legitimate interests derogation** has a limit on the size and frequency of transfers, coupled with a requirement to notify the Data Protection Authority and the data subject, which makes this unworkable for most arrangements or transfers.

If the UK is not granted an adequacy decision, this could result in a significant increase in compliance burdens for business in the UK and EEA. There will also be increased costs particularly in relation to putting new measures in place and maintaining them, and a period of legal risk and uncertainty until this is completed. There will also be a degree of uncertainty as to the legal efficacy of alternative options due to legal challenges currently in the courts (e.g. Standard Contractual Clauses and Schrems II).

Uncertainty surrounding the transfers of personal data will create significant challenges for the growth and development of the digital economy, uncertainty for electronic personal data flows which are so essential in the online world, and for businesses offering services beyond the UK.

Insurance industry’s preparations for a Brexit no-deal

The insurance industry is one of the most heavily regulated sectors in the UK, including oversight from the ICO and the FCA, who both have an explicit commitment to protect consumers. Insurers work hard to meet and exceed the standards set for it, to ensure that data is used as appropriately and beneficially as possible.

We have advised members to prepare for all possibilities, including a no deal scenario. Whilst insurers have taken steps to prepare for no-deal by putting alternative data transfer arrangements in place, the options under GDPR Chapter V are subject to some legal and operational risk, as outlined above.

The ABI hosted a roundtable for members with DCMS in January 2019, to discuss international data transfers in the event of the UK leaving the EU without a deal. We stressed that the Government should do everything in its power to avoid a no-deal outcome and noted that the only way there will be no disruption to international data flows, at least in the short to medium term, is an adequacy decision in place for day one of when the UK leaves the EU, and when the transitional period comes to an end. The ABI has also raised these issues with the ICO.

We have also highlighted a range of concerns to HMT on EEA-UK data transfer scenarios, in response to a question from HMT in May 2019 on issues that may arise in the event that the UK exits the EU without a data adequacy decision. These include:

Scenario 1 – UK traveller to the EEA admitted, unconscious, to an EEA healthcare provider reluctant to transfer the UK traveller’s personal data to a UK travel insurance provider.

- this same issue would seem to apply for travel insurance for a UK customer travelling outside of the UK. E.g India. An insurer would transfer data needed to deal with the claim (either to the data subject or the Indian healthcare provider). The legal basis would be necessity for contract (Ar49.1) and if health data the insurance derogation under DPA 2018 would apply.
- If the customer is unconscious, the EEA healthcare provider would not necessarily know which insurer to contact unless they found details of an insurance company in the personal possessions of the customer or if a relative of the customer provided information to the EEA healthcare provider. In this case, insurers anticipate that the healthcare provider might be able to rely on vital interests but the assessment of how this threshold is met could vary. There could be some tension between the vital interest that the patient is treated, and the healthcare provider wanting assurance that they will be paid for the treatment, and the EEA health provider ensuring that the individual’s data is protected in line with GDPR requirements.

Scenario 2 – EEA travel insurer having to transfer personal data to a UK healthcare provider where there is an unconscious customer of the EEA insurer admitted to the UK healthcare provider. Would the EEA travel insurance provider then have to transfer personal data back to the UK healthcare provider, thereby taking on the legal risk of GDPR non-compliance?

- The insurance provider will ordinarily obtain information from the healthcare provider, not provide it, unless the insurer happened to have health data that would be very relevant for the treatment (e.g. allergic to penicillin) in which case “vital interests” might be relied on.
- Where normal personal data (not special category data) needed to be transferred by the EEA insurer to the healthcare provider, insurers would anticipate that they could rely on necessity for contract.
- Insurers noted the following cases where insurers may need to provide information to the healthcare provider:
 - Guarantee of payment: the insurance provider may guarantee payment to the hospital on an insurance policy (there is not much sensitive or personal data in that – it is more of a financial reassurance for the hospital that they will be paid

for the care they give)

- The insurance provider may tell the hospital of logistical plans to move the patient (such as an assisted repatriation home by Air Ambulance).
- If free flow of data is no longer permitted, these services may no longer be available without additional safeguards. However, it is primarily a burden on the healthcare provider to ensure that they comply with Chapter V of GDPR, because they would hold most of the information necessary to settle the claim. Transfers from the insurer are secondary or consequential and are based on the dataset that would have been made available by the healthcare provider. Their transfer will usually rely on or match the lawful ground established by the healthcare provider.

Regulatory cooperation

Finally, we stress the need for regulatory cooperation between the ICO and Data Protection Authorities within the European Union and internationally. We believe regular meetings between the ICO and these authorities will be key to the development of a consistent and effective data protection regimes and enable any issues to be resolved effectively.

In summary, we support the UK's close engagement with the European Union on data protection and advocate for mutual adequacy decisions to be reached, would support the development of a strong, trusted and vibrant digital economy in the UK.

June 2020



Committee on the Future Relationship with the European Union

House of Commons, London, SW1A 0AA

Email: freucom@parliament.uk Website: www.parliament.uk/freucom

12 June 2020

Huw Evans
Director General
Association of British Insurers

Dear Mr Evans,

The House of Commons Committee on the Future Relationship with the European Union is inquiring into the progress of the negotiations between the UK and the EU. Under normal circumstances, the Committee would hold regular oral evidence sessions in Westminster. However, measures to prevent the spread of the coronavirus make this difficult.

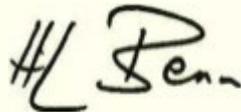
The Committee wishes to gather as much evidence as possible to inform its deliberations and I am writing to you to ask whether you would be willing to help us with our work by making a written submission. We welcome general responses to our [call for evidence](#), which was published on 4 March. We also hope that you would be willing to answer the more specific questions set out below on issues that fall within your area of expertise. Such submissions need not address every bullet point and can include other matters that you think are relevant to the negotiations and should be drawn to the attention of the Committee.

- To what extent do the Government's negotiating aims meet the needs of the digital sector? What would you have preferred to be different? In which areas do you believe it should prioritise reaching an agreement?
- Given the UK and the EU's starting positions, are there any areas of reported disagreement that are of concern? If so, what are they and why?
- How confident are you that the UK will receive a data adequacy decision from the EU by the end of the transition period? Do you see any obstacles to gaining one? To what extent is this unilateral EU process and the future relationship negotiations interdependent, if at all? What would be the utility of an adequacy decision in the absence of an overall trade agreement?
- The Data Protection section of the Political Declaration refers to "arrangements for appropriate cooperation between regulators". What would be your preferred arrangements for appropriate cooperation between regulators, and what factors might influence the nature of these arrangements?
- If an adequacy decision is not reached, what alternative arrangements could be put in place for enabling data flows between the UK and the EU for different sectors of the economy? What would be the benefits or drawbacks of such arrangements?
- At the end of the transition period how confident are you that the UK and the EU will reach an agreement on sharing EU policing and security databases (e.g. Schengen Information System)? What do you see as the obstacles to reaching such an agreement? What might alternative arrangements to sharing data for law enforcement look like?
- How confident are you that the UK will receive a separate data adequacy decision for law enforcement purposes by the end of transition period? Do you see any obstacles to gaining one? To what extent is this unilateral EU process and negotiations on internal security interdependent? What would be the utility of an adequacy decision in the absence of an agreement on internal security?
- What lessons should the UK take from the experience of the Schrems I case and the role of the CJEU in protecting EU citizens' data beyond the geographical boundaries of the Member States?
- The Government said it would "invite contributions about the economic implications of the future relationship from a wide range of stakeholders via a public consultation", and that this process would "begin later this spring". What are your views on this consultation? What was positive and negative about the Government's overall strategy to engage with business in advance of publishing its approach to the negotiations?

- Since the negotiations began, to what extent have you been kept abreast of developments? Have you found the updates from negotiation rounds helpful in assisting your sector to plan for the remainder of the Transition Period? If so, how?
- What steps are you taking to prepare for the end of the Transition Period? Do you have the necessary information and resources to prepare effectively? How long do you need once the final nature of any deal affecting your sector is known to prepare for new arrangements?
- Regarding research, why is an agreement enabling data sharing between the UK and the EU important for current levels of scientific and research collaboration?
- How confident are you that the UK and the EU will reach an agreement on sharing EU research and scientific databases by the end of the transition period? What do you see as the obstacles to reaching such an agreement? What might alternative arrangements to sharing information look like?
- How prepared is the digital sector for the possibility of leaving the Transition Period without a trade deal in place on 1 January 2021? What discussions are you having with EU business partners in order to make contingency plans?
- How much progress would you need to see at the high-level summit in June to give confidence that a deal will be done? If it appears in June that a trade deal looks unlikely, how do you expect this to affect business behaviour? How important is an FTA to your sector versus trading on WTO terms?
- How, if at all, are you seeking to influence the EU in these negotiations? What engagement have you had with the Commission, European Parliament or any other EU organisation?
- How has the COVID-19 crisis affected your ability to prepare for the end of the Transition Period? Have you learned any lessons for contingency planning and supply-chain preparedness from your experiences with COVID-19 that could be applied to preparations for the end of the Transition Period?
- Considering the Coronavirus pandemic, is your sector calling for an extension to the duration of the Transition Period? If so, why? If not, why not?

The Committee staff will be happy to discuss the inquiry, any issues raised, or the process for submitting written evidence. You can contact them at freucom@parliament.uk.

Yours sincerely,



Hilary Benn
Chair of the Committee