

# CYBERSECURITY, DATA PRIVACY & INFORMATION MANAGEMENT ALERT

## EUROPEAN COMMISSION ADOPTS UK ADEQUACY DECISIONS

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On 28 June 2021, the European Commission (the “**EC**”) adopted two adequacy decisions under the General Data Protection Regulation (“**GDPR**”) and the Law Enforcement Directive (“**LED**”), respectively, that ensure the continued free flow of personal data from the European Economic Area (“**EEA**”) to the UK without restrictions.

### Restrictions on transfers from the EU/EEA to third countries

Under the GDPR and the LED, entities are restricted from transferring personal data to a ‘third country’, unless: (i) that country has an adequacy decision from the EC; (ii) a derogation for occasional and non-repetitive transfers applies (e.g. consent); or (iii) additional safeguards are put in place (e.g. the EU standard contractual clauses (“**SCCs**”) or binding corporate rules (“**BCRs**”).

The UK became a ‘third country’ at the end of the Brexit transition period. However, as an exception to the general restriction, an interim data transfer mechanism was agreed under the EU-UK Trade and Cooperation Agreement, which permitted the continued free flow of personal data from the EEA to the UK until 30 June 2021.

### Impact of the UK adequacy decisions

The EC’s adoption of the UK adequacy decisions means that personal data can continue to flow freely from the EEA to the UK because the EC has determined that the UK’s data protection regime offers an ‘adequate’ level of protection to personal data. One exception, however, is that the scope of the UK adequacy decisions exclude transfers of personal data for UK immigration control purposes as a result of an ongoing legal challenge regarding the validity of the ‘immigration exemption’ under the UK Data Protection Act 2018. The EC will review the position once it is remediated under UK law.

It is important to note that the UK adequacy decisions include a ‘sunset clause’ which mean that they will expire 4 years after the date upon which they enter into force (i.e. 2025) unless they are renewed by the EC. During these 4 years, the EC will continue to monitor developments in the UK’s data protection regime and may “intervene”, by repealing the UK adequacy decisions, if the UK deviates from the current level of protection afforded to personal data.

This is the first time that a sunset clause has been incorporated into an adequacy decision adopted

by the EC – typically adequacy decisions renew by default without any requirement to be reviewed and adopted again – reflecting concerns that the UK will seek to revise its data protection regime in the future for a more liberal approach. Therefore, to ensure the EC renews the UK adequacy decisions in 2025, and that the EC does not repeal those decisions before then, the UK will need to exercise caution when proposing changes to its data protection regime.

### Transfers of personal data from UK to EU/EEA

The UK adequacy decisions do not affect transfers of personal data from the UK to the EEA which, for the time being, can continue to be made without any additional steps being taken or documents being put in place.

### Transfers of personal data between the UK and countries other than the EEA i.e. the rest of the world (“**ROW**”)

The UK Government has stated that personal data transfers from the UK to any of the 12 ROW countries that have received EU adequacy decisions (being Andorra, Argentina, Canada, Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Switzerland and Uruguay), can continue without restrictions. The UK Government has also stated that unrestricted transfers to Gibraltar are permitted.

Transfers of personal data from the UK to any other ROW country will require the transferring entity to rely on a derogation (e.g. consent) or have in place additional safeguards (e.g. the SCCs or BCRs). It is currently unclear whether entities will be able to rely on the EU SCCs for such transfers once the ICO has published the new UK SCCs, expected later this year (although there is likely to be a grace period to allow entities to transition to the UK SCCs, if required).

For transfers of personal data from any other ROW country to the UK, transferring entities will need to ensure they are complying with the data transfer rules that apply in the relevant jurisdiction and the receiving entities will need to comply with data protection rules in the UK once it receives any such personal data.

### Key takeaways

- The UK adequacy decisions mean entities can transfer personal data from the EEA to the UK without putting in place SCCs or BCRs (unless the transfer is for UK immigration control purposes).

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- The UK adequacy decisions may be: (i) repealed, if the EC considers the UK to have deviated from the current level of protection afforded to personal data; or (ii) be allowed to expire in 2025, unless they are renewed by the EC.
- The UK adequacy decisions do not affect personal data transfers from the UK to the EEA which, for the time being, can continue to be made without any additional steps being taken or documents put in place.
- The UK adequacy decisions do not affect personal data transfers between the UK and ROW countries, although it is unclear whether entities will continue to be able to rely on the EU SCCs once the ICO publishes the UK SCCs (expected later this year).

If you would like more information about the topics raised in this briefing, please speak to your regular contact at Weil or to any of the authors listed below.

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