



EU drafts UK's adequacy decision

The draft decision published by the EU should ensure the continuity of data flows between EU and UK businesses, subject to the adoption of a final decision within these terms.

January 2021 marked an important stage on the relationship between the EU and the UK regarding data privacy. As of 2021, the UK is considered a third country when it comes to international data transfers, meaning that there was data before and there is data after Brexit.

Since the requirements in GDPR concerning international transfers of (personal) data to third countries are strict, and since there was not an EU adequacy decision on UK's data protection legal framework, risks of non-compliance for businesses transferring data from an EEA country to the UK were significant.

But, on February 19 2021, fifty days after the EU and UK markets were set apart, the EU published a draft decision on adequate protection of personal data by the UK under GDPR.

The draft decision concludes that the UK's legal framework when it comes to data protection ensures a level of protection of personal data transferred from the European Union that is essentially equivalent to the one guaranteed by GDPR, and that both supervision and adjustment mechanisms facilitate the detection of violations and their punishment, as well as solutions for data subjects.

Considering this draft decision, and assuming a final decision will comprehend the same terms, the transition period initially set out will no longer apply and businesses in the EU will be able to continue to transfer personal data to the UK based on an adequacy decision, which means that data transfers to the UK have no restrictions whatsoever.

These are very relevant news for several key economy sectors, such as health, banking and technology, and the continuity of EU-UK data flows therein.

This draft decision includes, however, a duration period of four years at the end of which the EU must renew its adequacy decision. Because the UK will no longer be bound by the current data protection framework after the EU-UK Trade and Cooperation Agreement ceases to apply, the EU decided to subject the adequacy decision to an amendment and restatement by the end of 2024: six months before the adequacy decision ceases to apply, the EU must initiate a procedure to amend it by extending its temporal scope for an additional period.

Within the next few weeks, EDPB is expected to issue an opinion on the draft decision, which will be taken into consideration in the preparation of (but should not stop) the final decision.

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