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Personal Data Flows: Adequacy Decision

Of particular interest to: firms controlling or processing personal data of EU subjects

In brief

The EU Commission has adopted an **adequacy decision** for the UK that came into force on 28 June and will (continue to) allow the transfer of personal data from the EU to the UK.

Summary

In the period leading up to the end of the Brexit Transitional Period the UK was a Member State and subject to the full requirements of, and benefits under, the General Data Protection Regulation (GDPR). Following the end of the Transitional Period the UK became a third country which, theoretically, posed problems for UK firms providing services for EU clients (that are natural persons – ‘data subjects’) in that the EU to UK transfer of such personal data was **prohibited**, subject to a limited number of exemptions. These included the use of ‘binding corporate rules’ or ‘standard contractual clauses’ or, offering the most practical route, the granting of an adequacy decision GDPR Articles 44 – 50).

Although the UK had effectively granted an adequacy decision that allowed for the flow of personal data from the UK to the EU, at the time of full Brexit there was no reciprocal decision in place. However thanks to an EU-UK trade and cooperation agreement personal data was temporarily allowed to flow freely from the EU/EEA to the UK until an adequacy decision had been agreed – but for no more than six months (a period which expired the end of June). It therefore came as a great relief that, with only a couple of days to go before this temporary arrangement came to an end, the EU Commission formally adopted the adequacy decision.

Although the adequacy decision is to be welcomed it should be noted that it is limited to 4 years – Article 4 confirms:

“This Decision shall expire on 27 June 2025, unless extended in accordance with the procedure referred to in Article 93(2) of Regulation (EU) 2016/679.”

Nevertheless the decision means that for now at least it is ‘business as usual’.

It is worth being mindful that, although EU GDPR does not automatically apply to a UK firm (the UK has its own version of the GDPR), Article 3(2) (**Territorial Scope**) extends the GDPR to non-EU firms that process the personal data “of data subjects who are in the Union” which relates to the offering of good or services. In such a situation the non-EU controller/processor is required to designate in writing a

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