

# Continued data flows between the UK and the Netherlands: why is it an issue, why is it important and how can it be resolved?

## What is the problem?

With the UK's withdrawal from the European Union, it has left the EU's data protection framework. EU rules on data protection set out how personal data should be treated and the circumstances in which personal data can be transferred across borders. As EU and EEA countries are governed by the same data protection framework, personal data can flow freely between all EEA countries. As a member of the EU, the UK benefited from these provisions allowing data to flow from the UK to the EU without further restrictions.

Having left the EU and with no ambitions to seek membership of the EEA, the UK will no longer benefit from the automatic free flow of data between the UK and EEA after the end of the agreed transition on 31 December 2020. Instead, the UK will be treated as a 'third country' and have to abide by the provisions within EU data protection law for transferring personal data outside of the EEA.

A large number of businesses, from the UK, the EU27 or from outside the EU have relied on the ability to transfer data freely between the UK and the rest of the EU. Many have long standing business practices relying on such transfers. A change in the UK's legal relationship with EEA data protection rules is likely to cause significant uncertainty and additional costs for all businesses who hold personal data.

## Why is this important?

The European data economy is expected to be worth €739 billion in 2020 representing 4 per cent of overall EU GDP<sup>1</sup>. The transfer of personal data is part of the daily activity of businesses of every size and sector. In a modern digital economy data and trade go hand in hand. This is because data flows are not just important to the tech sector. Almost every sector of the economy relies on data flows including financial services, retail, agriculture and many others. There are also significant benefits outside commerce. Crucial medical research and important financial crime detection both rely on data crossing borders. There are also important security related benefits to the free flow of data. Continued data flows between the UK and EU would benefit each EU27 country for various reasons. The majority of trade in services between the Netherlands and the UK is in financial, ICT and travel services; UK consumed more than £7 billion of this kind of services in 2018. This trade relies heavily on the transfer of personal data between the UK and the Netherlands. Netherlands - UK services trade has shown steady growth over the past three years. It's estimated that about half of all trade in services is "digitally-enabled" delivered through digital channels and relying on supporting information, such as personal data.

Data flows are important to the entire global economy. In the last 10 years it is thought that global data flows have increased world GDP by more than 10 percent<sup>2</sup>. However, the UK and the EU have a particularly important relationship when it comes to data flows. The UK accounts for roughly three per cent of global GDP however it accounts for 11.5 per cent of global data flows<sup>3</sup>. Crucially, 75 per cent of those data flows are with the EU, demonstrating why it is so

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<sup>1</sup> <https://ec.europa.eu/digital-single-market/en/policies/building-european-data-economy>

<sup>2</sup> <https://www.mckinsey.com/~media/McKinsey/Business%20Functions/McKinsey%20Digital/Our%20Insights/Digital%20globalization%20The%20new%20era%20of%20global%20flows/MGI-Digital-globalization-Full-report.ashx>

<sup>3</sup> <https://www.techuk.org/insights/news/item/10086-the-uk-digital-sectors-after-brexit>

important to ensure the UK and EU ensure the continued free flow of data. This will impact any UK or EU business looking to trade after the end of the transition period.

### **What options exist to resolve ensure data flows continue freely?**

The GDPR sets out a series of mechanisms for transferring personal data from the EEA to a third country. Those options are: Adequacy decisions; Binding Corporate Rules; Standard Contractual Clauses; Codes of conduct and Consent. techUK comprehensively assessed these data transfer mechanisms in its joint report with UK Finance [‘No Interruptions: options for the future UK EU data sharing relationship’](#)<sup>4</sup>.

It is widely accepted that the most suitable, stable and appropriate option for maintaining data flows between the UK and the EU is through mutual adequacy agreements.

### **What is an adequacy decision?**

Adequacy decisions are granted by the European Commission following a review of a third countries’ data protection framework to check whether the third country has an *essentially equivalent* level of data protection as the EU. This is to ensure that when European data is processed or stored in a third country there is confidence that the data will be protected to a sufficient level, in line with the EU’s approach to data protection.

Once given, adequacy allows data to flow freely from the EU to the third country with no need for additional safeguards to be implemented by businesses. This is one of the biggest benefits of adequacy as it puts compliance at the national level rather than a company level. It also offers the most stable and cost-effective method for businesses to transfer data.

### **Why should the UK and the EU agree adequacy?**

It is clear that the best way to ensure continued data flows between the UK and EU is through adequacy decisions. We believe there are clear arguments in favour of the EU granting the UK an adequate country. These include:

- The UK and EU have worked closely together on data protection for many years and have a shared approach to data protection.
- The UK has fully implemented the EU General Data Protection Regulation and the new UK Data Protection Act 2018 is now on the statute book. The UK Government has made a clear commitment to maintaining GDPR post-Brexit.
- The UK has a world-leading data protection regulator, the Information Commissioner’s Office (ICO), which is well-respected internationally for its enforcement and approach to data protection laws.

The UK and EU’s discussions over adequacy will be different to previous adequacy negotiations. No country has ever had the exact same data protection framework as the EU when applying for adequacy. As part of the Withdrawal Agreement and Political Declaration agreed between the UK and the EU, the UK will now construct its own version of the adequacy process to assess third countries to enable personal data transfers. This system is likely to be heavily based on the current EU adequacy process. In its preparations for no deal the UK Government said it would automatically recognise the EEA as suitable for the free flow of personal data. We encourage both sides to allow for the free flow of personal data through the EU’s adequacy process and the future UK data transfers regime.

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<sup>4</sup> <https://www.techuk.org/insights/news/item/11824-rapid-action-needed-to-safeguard-uk-eu-businesses-consumers-following-brexit>

## **What has been agreed in negotiations between the UK and EU?**

The UK Government and European Commission have, after nearly two years of negotiation, agreed on two important documents: The Withdrawal Agreement and a Political Declaration on the UK and EU's Future Relationship.

The Withdrawal Agreement is a legal document setting out the terms of the UK leaving the EU. Crucially, it also provides a transition period. During this time, EU law will continue to apply in the UK and while the UK will officially no longer be a member of the EU, the status quo will largely be maintained. During the transition period personal data will still be able to flow freely between the UK and the EU with no additional restrictions.

The Political Declaration on the Future Relationship contains a welcome commitment to the UK and EU agreeing adequacy agreements by the end of the transition period, and to look for opportunities for regulatory cooperation between the UK's Information Commissioner and the European Data Protection Board.

techUK and NLDigital recognise the benefits of a continued close relationship between the UK and the EU on data protection and welcome the commitments in both the Withdrawal Agreement and Political Declaration. Continued stability of data flows is in the mutual interest of both the UK and the EU. This is true for all sectors of the economy that rely on data flows on a daily basis. A close relationship would also provide confidence to consumers across Europe that their personal information will continue to be subject to strong data protection rules, with access to redress if necessary.

We would encourage the UK Government and European Commission to continue to engage on the vital issue of continued UK-EU data flows and to begin adequacy negotiations as soon as possible with the aim of securing a positive decision for the UK as well as the EU by the target deadline of the end of December 2020 set out in the Political Declaration.