

EU Adequacy Decisions for EU-UK Personal Data Flows

On 28 June 2021, the European Commission adopted two adequacy decisions for the transfer of personal data from the EU and EEA to the United Kingdom following the agreed post-Brexit transition period. The two adequacy decisions allow personal data transfers under: (i) the General Data Protection Regulation (**GDPR**); and (ii) the Law Enforcement Directive respectively. The decisions came days before the transitional agreement under the EU-UK Cooperation Agreement was set to expire on 30 June 2021 and ensure that personal data can be transferred freely from the EU/EEA to the UK for the next four years.

Following its thorough assessment of the UK's practice on the protection of personal data including rules on the access to data by public authorities, the Commission came to the decision that the UK's data protection system continues to be based on the same rules that were applicable while the UK was still a Member State of the EU. The Commission's decision means that the UK's data protection standards are considered "adequate", pursuant to Article 45 of the GDPR. However, the Commission warns that it will monitor the UK's data protection standards and it may reconsider the adequacy finding if the UK were to deviate from the current data protection standards in place for EU citizens.

The UK incorporated the principles, rights and obligations of the GDPR and the Data Protection Law Enforcement Directive into the UK Data Protection Act 2018 (**DPA 2018**) which governs the protection of personal data in the UK post-Brexit. As a result, the UK's data protection regime largely resembles that of the EU. Nevertheless, there were some potential hurdles for the Commission in arriving at an adequacy finding.

One of these hurdles consists of a recent UK Court of Appeal judgment in *R (Open Rights Group and The3million) v Secretary of State for the Home Department and Others [2021] EWCA Civ 800*, which ruled that the immigration exemption in the DPA 2018 is unlawful. The Commission pragmatically excluded the UK Immigration Control from the scope of its adequacy finding and stated that it would reassess the need for this exclusion once the underlying position has been remedied under UK law.

Another potential hurdle relates to potential divergences of UK law. For this reason, both adequacy decisions contain a "sunset-clause" limiting the validity of the EU adequacy decision until 27 June 2025. After this date, the Commission can extend the adequacy finding if it ascertains that UK rules continue to ensure an adequate level of data protection.