

## Continued data flows between the UK and France

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**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 will be leaving 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 has benefited from these provisions allowing data to flow from the UK to the EU without further restrictions.

Once the UK leaves the EU and the EEA it will no longer benefit from the automatic free flow of data between the UK and EEA. 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 by 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. For example, French ports are the main entry and exit point for ferry-borne trade between the UK and mainland Europe, which involves large quantities of data transfer. Additionally, French company Veolia has won two contracts for recycling and waste management in London with are worth over £338 million and will require various HR and business data to flow between France and the UK.

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<sup>3</sup>. The UK accounts for roughly three per cent of global GDP however it accounts for 11.5 per cent of global data flows. Crucially, 75 per cent of those data flows are with the EU, demonstrating why it is so 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 post-Brexit.

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

2. <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>

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

## 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.
- While there are concerns about the UK's national security powers, set out in the Investigatory Powers Act, we welcome the transparency of these measures and believe they should not prevent an adequacy agreement.

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 before. The UK does have the same GDPR regime, and therefore will, after Brexit, have to make its own assessment of adequacy of third countries, including the EU. The UK and the EU should therefore seek to agree mutual adequacy decisions as soon as possible.

4. <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 Syntec Numerique 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.



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**syntec numérique**

Syntec Numérique, French professional association for the digital industry, welcomes digital technology professionals from IT services and consulting firms, software manufacturers, and technology consulting firms. The 2,000 members account for 80% of the industry's total revenue (56 billion) and employ 510 000 people. Syntec Numérique represents 30 corporations, 120 large companies, 1,000 SMEs, and 850 start-ups ; 11 regional delegations ; 20 industry associations and competitive clusters under group memberships.

Its mission is to shape the digital industry of the future, serving as an advocate for digital technology professionals, and contributing to the development of the digital economy, its uses, and new markets. Godefroy de Bentzmann, co-founder and co-CEO of Devoteam, is Syntec Numérique's Président since June 2016.

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