
Commission Implementing Regulation (EU) 2021/1772 of 28 of June of 2021

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On the 28 of June of 2021, Commission Implementing Regulation (EU) 2021/1772 of 28 of June of 2021 was issued pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council ("GDPR"), on the adequacy of the level of protection provided by the United Kingdom for personal data.

By means of a Decision, the Commission considered the level of protection provided by the United Kingdom in respect of personal data transferred by the European Union to be adequate. Accordingly, and for the purposes of Articles 45 and following of Regulation (EU) 2016/679 ('GDPR'), for the period of application of this Decision, transfers from a controller or a processor in the European Union to controllers and processors in the United Kingdom may be made without further authorisation being required.



Commission Implementing Regulation (EU) 2021/1772 of June 28, 2021, pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequacy of the level of protection of personal data provided by the United Kingdom

Introduction

On June 28, 2021, the European Commission issued Implementing Regulation (EU) 2021/1772 of June 28, 2021, pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council ("GDPR") on the adequacy of the level of protection of personal data provided by the United Kingdom.

Chapter V of the GDPR establishes the rules for the transfer of personal data to third countries and international organizations by controllers and processors in the European Union, when the transfer falls within the scope of that regulation.

Under article 45(3) of the GDPR, the Commission may decide, through an implementing act, that a third country, a territory or one or more specified sectors within a third country, or an international organization ensures an adequate level of protection. In this case, transfers of personal data may take place without needing further authorization.

Under article 45(2) of the GDPR, the adoption of an adequacy decision must be based on a thorough and detailed analysis of the third country's legal system. In its assessment, the Commission must establish whether the third country ensures a level of protection that is 'essentially equivalent' to the level provided in the European Union.

As the Court of Justice of the European Union has clarified, an identical level of protection is not required: the means the third country uses to protect personal data may be different from those applied in the European Union, provided they are effective in ensuring an adequate level of protection.

The Commission has carried out a careful analysis of United Kingdom law and practice, to decide, through an implementing act, whether the United Kingdom guarantees an adequate level of protection, to determine that data transfer to the United Kingdom would be allowed.

This analysis became necessary after the United Kingdom left the European Union on January 31, 2020, which caused a series of changes to the United Kingdom's applicable legal framework.



After the end of the transitional period, the definitive legal framework for personal data protection in the United Kingdom is now as follows:

- United Kingdom GDPR, as incorporated into United Kingdom law under the European Union (Withdrawal) Act 2018 and amended by the Data Protection, Privacy and Electronic Communications (Amendments) (EU Exit) Regulations 2019 (“DPPEC Regulations”).
- 2018 Data Protection Act (“DPA”), as amended by the DPPEC Regulations.

The Commission’s analysis is set out in recitals 8 to 273 of the Implementing Decision, as follows:

- Applicable standards for the processing of personal data: Recitals 8 to 111
- Access to and use of personal data transferred from the European Union by public authorities in the United Kingdom: Recitals 112 to 272
- Conclusion: Recitals 273 to 277
- Effects of this decision and action by data protection authorities’ actions: Recitals 278 to 280
- Monitoring, suspension, revocation or amendment of this decision: Recitals 281 to 287
- Duration and renewal of this decision: Recitals 288 to 290
- Final considerations: Recitals 291 and 292

The Implementing Regulation ends with the adoption of a decision (“the Decision”), which is divided into five articles giving a general summary of the Commission’s conclusions.

Commission’s conclusions

The Commission concluded that the United Kingdom GDPR and the 2018 DPA ensure a level of protection for personal data transferred from the European Union that is essentially equivalent to the level ensured under the GDPR:

- It was decided that the United Kingdom ensures an adequate level of protection for the purposes of article 45 and following of the GDPR.



- However, this Decision does not cover personal data transferred for the purposes of United Kingdom immigration control, or which otherwise falls within the scope of the exemption of certain data subjects' rights to maintain effective immigration control under schedule 2(4)(1) of the 2018 DPA.

The Commission considers that the control mechanisms and remedies under United Kingdom law enable breaches to be identified and sanctioned, by providing judicial remedies for data subjects to obtain access to their personal data and to request its rectification or erasure.

The Commission further considers that any interference by the United Kingdom's public authorities in the fundamental rights of natural persons whose personal data is transferred from the European Union to the United Kingdom for public interest purposes will be limited to what is strictly necessary to attain the legitimate purpose concerned, and that there is effective legal protection against such interference.

The Decision also considered the United Kingdom's international commitments, particularly its accession to the European Convention on Human Rights and its submission to the jurisdiction of the European Court of Human Rights.

Effects of the Decision and the data protection authorities' actions

The Commission's adequacy decision is binding on all Member States and Member State bodies.

Member States and their bodies are obliged to take the measures necessary to comply with this adequacy decision.

Accordingly, during the period of application of this Decision, transfers from a controller or a processor in the European Union to controllers and processors in the United Kingdom may be carried out without needing further authorization.

Monitoring, suspending, revoking or amending the Decision

Under article 45(4) of the GDPR and article 3(1) of this Decision, the Commission will monitor continuously the developments in the United Kingdom after this Decision is adopted, to assess whether it still ensures an essentially equivalent level of protection:

- Particular attention will be paid to the implementation of the United Kingdom rules on transfers of personal data to third countries and the impact they may have on the level of protection given to transferred and fundamental data, including exceptions to or



restrictions on these rights, as well as compliance with government access restrictions and safeguards.

To facilitate this monitoring, the United Kingdom's authorities must promptly inform the Commission of any substantial change in the United Kingdom's legal system that impacts the legal framework that is the subject of this Decision, as well as of any developments in practices relating to the processing of personal data assessed in this Decision.

According to article 3(2) of this Decision, Member States and the Commission must inform each other of cases where the Information Commissioner or any other competent authority in the United Kingdom fails to comply with the legal framework on which this Decision is based.

In addition, article 3(3) states that Member States and the Commission must also communicate to each other any information concerning indications that the United Kingdom's public authorities' interference with individuals' rights to personal data protection goes beyond what is strictly necessary, or if there is no effective legal protection against this interference.

Where the available information suggests that the level of protection given by the United Kingdom may no longer be adequate, the Commission will:

- promptly inform the competent authorities in the United Kingdom; and
- request that appropriate action be taken within a specified time limit, which must not exceed three months.

If, after the specified time limit has passed, the United Kingdom's competent authorities fail to take these measures or show to the Commission's satisfaction that the Decision continues to be based on an adequate level of protection, the Commission must initiate the procedure referred to in article 93(2) of the GDPR, with the aim of fully or partially suspending or withdrawing this Decision.

Also, article 3(5) of the Decision establishes that the Commission may suspend, revoke or amend this Decision if the United Kingdom government's failure to cooperate prevents it from determining whether the personal data protection adequacy finding has been affected.

Alternatively, the Commission can initiate the procedure to amend the Decision, by making data transfers subject to additional conditions or by limiting the scope of the adequacy finding to data transfers for which an adequate level of protection continues to be ensured.



Decision's entry into force, duration and renewal

This Decision will enter into force on June 28, 2021.

This Decision will apply for four years from its entry into force and expire on June 27, 2025, unless extended (article 4 of the Decision).

If information resulting from the monitoring of this Decision provides evidence that the adequacy findings on the level of protection provided in the United Kingdom remain justified from a factual and legal point of view, the Commission must, at the latest six months before this Decision ceases to apply, initiate the procedure to amend this Decision, extending its application in time, in principle, for four more years.



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