

Corporate

Concerns with UK plans to diverge from EU GDPR

The British government recently announced plans to revamp its GDPR rules, marking a significant point of divergence from the EU since Brexit

By **Natasha Teja**

September 21 2021



The UK's Data Privacy regime had stayed in line with the EUs in the months following Brexit, but that is due to change in what will be one of the most stark example of regulatory divergence to date.

In June 2021, the European Commission granted the UK data adequacy allowing for free flow of data between the two trading blocs. However, the UK's [Department for Digital, Culture, Media and Sport](#) recently announced a consultation to revamp the UK General Data Protection Regulation (GDPR), sparking concerns for future adequacy decisions.

“There are a whole host of areas where the UK appears to be setting out on a collision course with the EU,” said Laurence Winston, partner at Crowell & Moring.

The new data regime hopes to help UK businesses streamline data flows and reorient trade towards new territories the government has set out as a priority, including: the United States, Australia, the Republic of Korea, Singapore, the Dubai International Finance Centre, and Colombia.

See also: [New GDPR-like rules challenge Singaporean businesses](#)

“The reform in the data protection regime aims to simplify international data transfers and thus strengthen the UK as a digital business location,” said Clemens Dorner, senior consultant at 2B Advice (a data protection and privacy consulting firm).

“This goal is to be achieved through data protection law geared toward economic growth and innovation, various international partnerships and by removing ‘unnecessary barriers and burdens on international data transfers’”, Dorner added.

However, some are concerned the new rules will have the opposite effect of its intent. “By removing the obligations and requirements, these changes would actually take away the protections that individuals have when it comes to protecting the fundamental rights and freedoms,” said Jamal Ahmed, privacy and GDPR consultant at Kazient.

“By removing some of these requirements it’s actually going to make it harder for businesses to transfer data and harder for regulators to hold businesses into account when something goes wrong,” Ahmed continued.

EU divergence and adequacy

The UK data protection changes will depart from the EU model by shifting the regime away from individual freedoms and rights of data subjects, to one more focused on economic and business growth. The further the UK diverges from the EU GDPR, the more it becomes at risk of losing future data adequacy decisions with the EU.

“From the EU's perspective, the changes could alter the adequacy of data protection in the United Kingdom to such an extent that the current adequacy decision could not be upheld upon renewal,” said Dorner.

“This could bring demands for businesses that have just had a moment to breathe amidst the Brexit chaos and may now decide to stop bothering, pack their bags and leave,” Dorner continued. “After more than three years of GDPR, most companies have found ways to implement GDPR requirements in a practical way that meets business needs.”

Ahmed agreed with Dorner, stating the changes could create more of a burden on businesses. “The changes are supposed to make it easier for businesses, however, the existing rules actually help businesses understand, adapt to and identify risks to protect themselves from harm.”

“Unless they can map data, they won’t be able to fully understand value of the data they have and what they have to do to protect their most valuable asset,” Ahmed added.

Administrative burdens

The consultation suggests removing some of the administrative burdens businesses face. Amongst these proposals are provisions to revise the existing regime to remove some of the burdens and opacity around processing data for research purposes, as well as the legitimate interests test to enable greater processing of data without the consent of individuals.

“In practice, we see organisations spend disproportionate amounts (of both time and money) in responding to data subject access requests, and more and more we see these requests originating from bad actors taking advantage of the access right process,” said Gretchen Scott, partner at Goodwin. “Although nominal fees will not put a stop to this, businesses will be glad to see that this is on the agenda.”

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“Other important proposals include the removal of the need for record keeping under Article 30 of GDPR, revising breach reporting only to material breaches as opposed to all breaches and watering down the requirements of the Privacy and Electronic Communications Regulations 2003,” said Winston at Crowell & Moring.

“The government also proposes to add more countries to the UK’s adequacy list and to revise the overly prescriptive approach to the assessment of adequacy of third countries, particularly in light of Schrems II,” added Winston.

Clashing principles

The UK has chosen to revisit what it deems to be onerous data protection obligations on businesses. Two key areas in which the consultation may clash with the EU GDPR relates to accountability and Assessment of Adequate Countries by the UK.

“The proposal will amend the way the accountability principle under the GDPR operates in practice for more flexible and risk-based privacy management programs,” said Scott. “This would include potentially revoking existing EU obligations such as carrying out data protection impact assessments, appointing a data protection officer, and maintaining a record of processing activities. Doing this may raise issues, because the accountability principle has been a core part of EU data protection law from prior to the GDPR era of EU data protection.”

Additionally, the UK proposes to water down how it determines adequacy decisions for third countries to a risk-based approach.

See also: [*Covid-19 fragments EU approach to data protection and privacy*](#)

While many fear that these changes will mean the UK will lose its adequacy with the EU in four years when the decision is up for renewal, according to Scott this may not be the case.

“It is important to bear in mind that the European Commission will be looking for equivalence and not for the laws to remain exactly the same in the UK,” she said. “Therefore it is possible for the UK to achieve a number of the proposals suggested in the consultation document, provided it does not compromise on the protections currently afforded to data subjects under current UK law.”

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