

# Legal Alert

29 June 2021

## Weinhold Legal

### Brexit and GDPR: Commission adopts adequacy decisions

#### The European Union (EU) has formally recognised the UK's high data protection standards after more than a year of talks

On 28 June 2021, the European Commission adopted two adequacy decisions for the United Kingdom (UK) – one under the General Data Protection Regulation (GDPR) and the other for the Law Enforcement Directive, which governs specific rules on the protection of personal data and the free movement of personal data in this area, which is exempt from the GDPR. These decisions will now allow personal data to flow freely from the EU to the UK, where it benefits from an essentially **equivalent level of protection to that guaranteed under EU law**. Both adequacy decisions also contain strong safeguards in case of future divergence from EU standards, such as a 'sunset clause', which limits the duration of adequacy **to four years**.

#### Key elements of the adequacy decisions

The UK's data protection system remains based on the same rules that applied when the UK was an EU Member State. The principles, rights, and obligations under the GDPR and the Law Enforcement Directive have been fully incorporated into the UK's post-Brexit legal system. As regards access to personal data by public authorities in the UK, in particular for national security reasons, the UK system provides strong safeguards. This is particularly the case for data collection by intelligence authorities, which is in principle subject to prior authorisation by an independent judicial body. Any measure in these matters must be necessary and proportionate to what it intends to achieve. In addition, any person who believes they have been the subject of unlawful surveillance may bring an action before the Investigatory Powers Tribunal (IPT).

The UK is also subject to the jurisdiction of the European Court of Human Rights and is thus obliged to comply with both the European Convention on Human Rights and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which is also the only binding international treaty in the area of data protection. These international commitments are

essential elements of the legal framework assessed in both adequacy decisions.

For the first time, the adequacy decisions include a so-called "**sunset clause**" which strictly limits their duration. This means that the decisions **automatically expire four years after they enter into force**. After this period, the adequacy findings can be renewed, but only if the UK continues to ensure an adequate level of data protection. During these four years, the Commission will continue to monitor the legal situation in the UK and could intervene whenever the UK deviates from the current level of protection. If the Commission decides to renew the adequacy findings, the adoption process will have to be carried out from the outset.

The transfer of data for the purposes of immigration control in the UK is currently excluded from the scope of the adequacy decision adopted under the GDPR in order to reflect a recent judgment of the Court of Appeal of England and Wales on the validity of the interpretation of certain restrictions of data protection rights in this area. The Commission will reassess the need for this exclusion once the situation has been remedied under UK law.

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v. o. s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

For further information, please contact the partner / manager you are usually connected to.



Tereza Hošková

Managing Associate

[Tereza.Hoskova@weinholdlegal.com](mailto:Tereza.Hoskova@weinholdlegal.com)