



November 19, 2021

Response to the UK Consultation – Data: A New Direction

The U.S. Chamber of Commerce (“Chamber”) is the world’s largest business organization. Our members range from the small businesses and chambers of commerce across the United States that support their communities, to the leading industry associations and global corporations that innovate and solve for the world’s challenges, to the emerging and fast-growing industries that are shaping the future.

The Chamber is a longtime advocate for strong commercial ties between the United States and the United Kingdom. The Chamber established the U.S.-UK Business Council in 2016 to help U.S. firms navigate regulatory and other challenges and opportunities arising post-Brexit as well as to represent the views of business as the UK charts a new path on global trade and economic issues. Today, more than 50 leading U.S. and UK firms are active members of the Council.

According to a recent U.S. Chamber study, U.S. and UK companies have together invested \$1.35 trillion in each other’s economies, directly creating nearly 2.8 million British and American jobs.¹ We are each other’s single largest foreign investors and the U.S. is the UK’s largest trading partner.

The Chamber is also a leading business voice on digital economy policy, including on issues of data privacy, cross-border data flows, cybersecurity, digital trade, artificial intelligence, and e-commerce. In the U.S. and globally, we support sound policy frameworks that support economic growth, and foster innovation.

The Chamber’s U.S.-UK Business Council welcomes the opportunity to provide Her Majesty’s Government with comments in response to the consultation on a new direction for UK data policy. We welcome opportunities to discuss these and other matters with officials from DCMS, the British Embassy in Washington, and other UK Government agencies as these proposals are considered.

Following are a series of high-level principles that should guide policymakers as they consider reforms to the UK’s data protection regime.

¹ U.S. Chamber of Commerce, *The Transatlantic Economy 2021*,
<https://www.uschamber.com/report/the-transatlantic-economy-2021>.

Introduction

The efficient use and analysis of data underpins economic growth and competitiveness across all sectors of the modern economy. The UK has a unique opportunity to bolster its leading position as a hub for data-driven innovation through pro-growth reforms to its data protection legislation.

As home to many world-leading providers of digital services, the UK has a unique opportunity to utilize its regulatory flexibility to drive continued economic growth, bolster UK competitiveness, and set an important example for other markets as they consider their own digital policies. By enacting thoughtful and robust policies, the UK can seize a “first-mover advantage, while continuing to benefit from close economic ties to—and data adequacy recognized by—the European Union.

Broadly, the U.S.-UK Business Council **encourages the UK to seek an evolution, rather than a revolution**, in its approach. Companies benefit greatly from their ability to transfer data to and from the UK, the EU, and the U.S. The UK’s policy framework can and should expand this ability to additional markets—including countries with whom the EU has not finalized an adequacy agreement.

As part of this process, the UK should consider reforms to data protection policies that have proven unexpectedly rigid or unclear. Such a circumspect approach can serve as a guide for policymakers elsewhere who are considering how to make their own regimes more flexible and more innovation-friendly.

Principles

- As with any significant changes to regulations which affect wide swaths of the economy, **it is vital to work closely with stakeholders** at each step in the process, including implementation.
- The UK should **work with like-minded partners, including the U.S.**, to coordinate approaches to the digital transformation of the economy so as to avoid discriminatory outcomes and minimize regulatory divergence.
- Reforms should focus on **expanding—not hindering—the interoperability of the UK’s data protection framework** with the policies of its trading partners.
- Similarly, measures should facilitate data flows with key trading partners and **provide multiple pathways for data transfers** to ensure ongoing legal certainty for companies.
 - In the case of new UK Standard Contractual Clauses (SCCs), they should be issued quickly by the Government, together with guidance on their use from the ICO.
- The UK should adopt a **flexible approach to granting third-country adequacy**, focusing on regulatory outcomes rather than on the similarity of legislative frameworks.

- **Future adequacy decisions should be risk-based** and should prioritize strong data protection standards to ensure any new adequacy decisions are durable and provide long-term legal certainty for businesses operating in both markets.
- Companies that operate globally and across Europe benefit tremendously from the UK's existing EU data adequacy decision. This should not be unnecessarily put at risk, and the government should **avoid unnecessary divergences** from EU data protection laws.

Specific Provisions

- **List of Legitimate Interests:** The Chamber's U.S.-UK Business Council strongly encourages the UK to create a list of legitimate interests as a basis by which personal data can be processed. We also encourage the Government to reserve the necessary flexibility to update the list in the future with input from stakeholders.
- **Cookies:** The Chamber supports proposals to amend the Privacy and Electronic Communications Regulations (PECR) to ensure that organizations can rely on other appropriate legal bases, rather than solely consent, under UK GDPR for the use of cookies (for measurement and analytics).
- **Artificial Intelligence:** We agree that the UK's AI Strategy should consider the relationship between AI and privacy. It is equally important that UK's data protection regime and its future governing framework for AI avoid duplicative, confusing, or inconsistent standards. Moreover, the potential inclusion of AI-related matters in the UK GDPR risks undermining the technology-neutral focus of the data protection regime. Rather, the Chamber supports ensuring that the underlying principles in UK GDPR are fit for purpose in order to ensure that the initiatives under the National AI Strategy can deliver their potential.

Conclusion

We look forward to further opportunities to provide input as these vital policies evolve and are implemented in the coming months. Thank you for your consideration.

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