**Follow up to the European Parliament non-legislative resolution on the adequate protection of personal data by the United Kingdom (UK)**

1. **Resolution tabled pursuant to Rule 132(2) of the European Parliament's Rules of Procedure**
2. **Reference numbers:** 2021/2594 (RSP) / B9-0272/2021 / P9\_TA-PROV(2021)0262
3. **Date of adoption of the resolution:** 21 May 2021
4. **Competent Parliamentary Committee:** Committee Civil Liberties, Justice and Home Affairs (LIBE)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The resolution focuses on different aspects of the UK regime on the protection of personal data, as assessed in the two draft adequacy decisions on the protection of personal data by the United Kingdom published on 19 February 2021. With respect to the draft adequacy decision pursuant to the General Data Protection Regulation (GDPR), the resolution first makes general observations. It notably considers that the Commission’s assessment is incomplete and inconsistent with the requirements of the Court of Justice and highlights that the European Data Protection Board (EDPB) advised the Commission to further assess specific aspects of the UK law and practice. Second, the resolution voices concerns on the restriction of certain data protection rights for purposes of immigration control (“immigration exemption”) and calls on the Commission to seek either the removal or amendment of this immigration exemption before granting an adequacy finding. Third, in the area of access by UK public authorities to data transferred from the EU, the resolution is critical of the UK system of safeguards and limitations for such access, in particular in the area of national security. Fourth, the resolution expresses concerns that the UK may apply in the future its rules on international transfers of personal data in a way that could undermine the level of protection required under the GDPR in case of onward transfers.

With respect to the draft adequacy decision pursuant to the Law Enforcement Directive (LED), the resolution expresses concerns about the UK’s cross-border data access agreement with the United States (US) under the US CLOUD Act as it would allow undue access to the personal data of EU citizens and residents by US authorities. The resolution notes the draft adequacy decisions’ thorough assessment of interception and retention powers of UK authorities of personal data for national security reasons and calls on the Commission to further assess and monitor these.

In conclusion, the resolution calls on the Commission to assure EU businesses that the adequacy decision will provide a solid, sufficient and future-oriented legal basis for data transfers; to continue to closely monitor the level of data protection in the UK in law and practice, in particular in view of any future changes to the UK data protection regime and the potential renewal of the adequacy decisions after four years; and to amend the two draft implementing decisions with a view to making them fully consistent with EU law and case law and addressing the deficiencies identified in the EDPB opinions. Finally, the resolution considers that the two draft implementing decisions as published on 19 February 2021 are not consistent with EU law, and therefore objects to their adoption and requests that national data protection authorities suspend the transfer of personal data to the UK.

1. **Response to the requests in the resolution and overview of the action taken, or intended to be taken, by the Commission:**

Regarding **paragraphs 9, 10, and 11:** in the decision on the adequate protection of personal data by the United Kingdom adopted on 28 June 2021 pursuant to the GDPR, the Commission excluded from the scope of the decision all transfers of personal data from the EU to the UK that take place for UK immigration control purposes or are otherwise subject to the “immigration exemption”. This carve-out also followed a recent decision of the England and Wales Court of Appeal of 26 May 2021 finding the “immigration exemption” to be incompatible, in its current form, with data protection requirements. The Court of Appeal’s ruling reversed a previous judgment that had concluded that such exemption was in line EU law.

With respect to **paragraphs 3, 7, 20, 23, 34, 39 and 41:** the Commission shares the concerns expressed by the EDPB and the European Parliament on possible future policy developments of the UK data protection system. Nevertheless, when conducting an adequacy assessment, the Commission has to determine whether the third country in question guarantees a level of protection “essentially equivalent” (in law and practice) to that ensured within the European Union (recital 104 of Regulation (EU) 2016/679) and which is assessed against Union law, notably the GDPR, as interpreted by the Court of Justice. In its adequacy decisions with regards the United Kingdom, the Commission therefore assessed the UK law and practice as it stood up to the time of their adoption on 28 June 2021. By their nature, any white papers, recommendations, reports, announcements, statements or other on possible future policy developments – while being informative and followed closely as part of the Commission’s ongoing monitoring – do not have any impact on the legislative framework in place today in the United Kingdom.

While recognising the current alignment of the UK data protection rules with EU legislation, the Commission’s UK adequacy decisions at the same time contain significant innovations and safeguards to address the risk of potential problematic future divergence. In particular, the duration of the adequacy findings is strictly limited in time through the introduction of a sunset clause which provides that the decisions will automatically expire four years after their entry into force. Any possible renewal of the decisions will not be automatic and will depend on whether the United Kingdom maintains a level of protection essentially equivalent to the one guaranteed in the EU. This time-limitation clearly signals to the United Kingdom that possible problematic divergences will have consequences. In addition, the decisions provide for suspension and termination mechanisms that would allow the Commission to react immediately at any time, without waiting for the four years-period to expire, if changes in UK law or practice would undermine the level of protection. In the last version of the decisions as adopted by the Commission, these mechanisms have been further strengthened, in particular by providing for a specific and strict timeframe – in principle, no longer than three months – for the UK authorities to take measures and remedy any deviation that would have an impact on the level of protection assessed in the adequacy decisions. The expiration of this period without any satisfactory action from the UK would trigger the procedure to suspend or repeal the decisions. In case of urgency, such measures can be taken immediately by the Commission.

Regarding **paragraphs 4, 5** and the **concluding paragraphs 33 to 41:** the Commission underlines that its adequacy assessments, as adopted on 28 June 2021, are based on an in-depth assessment of the current UK data protection system against the relevant EU
requirements. These adequacy findings acknowledge that, at this point in time, the UK standards offer an essentially equivalent level of protection to the EU standards set out in the GDPR and the Law Enforcement Directive (LED), as interpreted by the EU Court of Justice.

Since the publication of the two draft implementing decisions on the adequate protection of personal data by the UK in February, the Commission has listened very carefully to and discussed the draft decisions with the Parliament, both in the LIBE Committee and in Plenary, with the Member States under the comitology procedure and with the European Data Protection Board. Furthermore, due account has been taken of the most recent developments in the UK to the extent they affect the legal framework assessed in the two decisions, and of relevant case law up to the moment of adoption of the decisions.

Consequently, before their final adoption, the draft decisions have been amended on a number of important points to clarify and reinforce several of the elements on which the findings are based under the GDPR and the Law Enforcement Directive. These include aspects of specific concern to the European Parliament and the EDPB. As with any adequacy findings, the Commission will provide regular updates to the European Parliament. The Commission will also continue to work closely with the EDPB on the monitoring of the functioning of the UK adequacy decisions.