

The Data (Use and Access) Bill Risks the Free Flow of Data and UK Economic Growth by *Eleonor Duhs, Barrister, Partner and Head of Privacy at Bates Wells* (18th November 2024).

The free flow of personal data across borders is essential to the modern economy. Finance, banking, retail and hospitality all depend on it. International data flows are set to contribute \$11tn to the global economy and [exceed the value of the global trade in goods](#). The free flow of data between the UK and its [biggest trading partner](#), the EU, is therefore of crucial importance. Reforms to the UK's data protection frameworks could put EU-UK data flows at risk.

Currently, there is a free flow of data from the EU to the UK for [both general and law enforcement data processing](#). This is because the EU has [assessed the UK's frameworks](#) as providing an essentially equivalent level of protection of personal data to that in the EU. The basis for this assessment is that the UK's current data protection regime (the UK GDPR and the Data Protection Act 2018) mirror and adhere to the standards set out in the EU's data protection frameworks. The [European Affairs Committee's recent inquiry into data adequacy](#) underscored the importance of the free flow of data from the EU to the UK and the importance of preserving high data protection standards.

[A lack of free flow of personal data from the EU to the UK could cost UK business up to £1.6bn](#). It could also lead to the **suspension of the law enforcement cooperation mechanisms in the [EU-UK Trade and Cooperation Agreement](#) (see Article 693)**, thereby making citizens on both sides of the Channel less safe. **Provisions of the [EU-UK Withdrawal Agreement](#) will kick in if the UK loses the free flow of data from the EU (see Article 71)** and will also **create operational headaches for UK businesses. These obligations would require UK businesses** to navigate different data protection standards, depending on where the data they are processing originated. Peers are urged to use Second Reading of the Bill to highlight aspects of the Bill and the UK's wider post-Brexit settlements which could risk the free flow of data and thereby the government's growth agenda, such as:

- **The previous government's deletion of EU fundamental rights from the statute book through the Retained EU Law (Revocation and Reform) Act 2023, which this Bill does nothing to restore.** Although references in the UK GDPR to "fundamental rights and freedoms" are to be read as references to the ECHR as implemented through the Human Rights Act 1998, the government's ECHR memorandum states that "where processing is conducted by a private body, that processing will not usually engage convention rights". This could leave a significant gap in protection for individuals whose data is processed by private organisations and means lower data protection rights in the UK compared with the EU. For further detail see [here](#).
- **The Bill waters down the right not to be subject to solely automated decision-making.** This protection is crucial in the age of AI. Reducing protections risks the repetition of events such as the Post Office Horizon scandal. See further detail [here](#).
- Because of **doubts that the standard of protection for data subjects rights were sufficient**, the UK's current adequacy decision does not apply in the area of immigration. But although the defects which applied in the area of immigration have been remedied, these defects are in fact replicated across the entire spectrum of protection for data subject rights, **risking the free flow of data**. See [here](#).

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