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**Subject:** Internal EU27 preparatory discussions on the future relationship: "Personal data protection (adequacy decisions); Cooperation and equivalence in financial services"

**Origin:** European Commission, Task Force for Relations with the United Kingdom

**Remarks:** These slides are for presentational and information purposes only and were presented to the Council Working Party (Article 50) on 10 January 2020. The contents are without prejudice to discussions on the future relationship.

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# Internal preparatory discussions on future relationship

**1) Personal data protection  
(adequacy decisions)**

**2) Cooperation and equivalence  
in financial services**

**AD HOC WORKING PARTY ON ARTICLE 50** (*Seminar mode*)

**10/01/2020**

# General introduction

*If UK withdraws with agreement on 31 January 2020:*

*Transition period of 11 months for:*

- 1. adoption of negotiating directives;**
- 2. conduct of negotiations;**
- 3. signature/conclusion and entry into force of future agreement by 1 January 2021**

**=> *Complex and politically sensitive negotiations***

**=> *Change of regulatory regime as of 1 January 2021***

# Purpose of the seminar series

- ***Respect established EU principles and objectives:***

1. European Council (Art. 50) guidelines on the framework for the future EU-UK relationship, 23 March 2018;
2. Revised Political Declaration agreed with the UK government on 17 October 2019, setting out the framework for the future relationship between the EU and the UK.

- ***Preparing the negotiating directives***

- ***Take into account Member States' views***

- ***Commission will present the recommendation after UK withdrawal***

  - **no surprises**

  - ***allow for swift adoption***

# **Personal data protection (adequacy decisions)**

**AD HOC WORKING PARTY ON ARTICLE 50** (*Seminar mode*)  
**10/01/2020**

# I. Personal data protection

## General approach

### ***THE EUROPEAN COUNCIL GUIDELINES of March 2018 :***

*14. In the light of the importance of data flows in several components of the future relationship, it should include rules on data. As regards personal data, **protection should be governed by Union rules on adequacy** with a view to **ensuring a level of protection essentially equivalent to that of the Union.***

# I. Personal data protection

## General approach

### **POLITICAL DECLARATION:**

#### **I. BASIS FOR COOPERATION**

##### **B. Data protection**

8. *In view of the importance of data flows and exchanges across the future relationship, the Parties are committed to ensuring **a high level of personal data protection** to facilitate such flows between them.*
9. *The Union's data protection rules provide for a framework allowing the European Commission to recognise a third country's data protection standards as providing an adequate level of protection, thereby facilitating transfers of personal data to that third country. On the basis of this framework, **the European Commission will start the assessments with respect to the United Kingdom as soon as possible after the United Kingdom's withdrawal**, endeavouring to adopt decisions by the end of 2020, if the applicable conditions are met. Noting that the United Kingdom will be establishing its own international transfer regime, the United Kingdom will in the same timeframe take steps to ensure the comparable facilitation of transfers of personal data to the Union, if the applicable conditions are met. The future relationship will not affect the Parties' autonomy over their respective personal data protection rules.*
10. *In this context, the Parties should also make **arrangements for appropriate cooperation between regulators**.*

# Principles of the EU Approach

Personal data protection:

- a **fundamental right** (Art.8 of the Charter)
- an **essential prerequisite** for the free flow of personal data



# Principles of the EU Approach

Personal data protection in the context of the future relations with the UK:

**1. General framework: Adequacy decision(s)** adopted by the Commission, if UK standards provide an adequate level of protection (para. 9 of the Political Declaration)

+

**2. Future negotiations:** cooperation between regulators (para. 10 of the Political Declaration), building on GDPR mechanism for international cooperation (Art. 50 GDPR)

# **Adequacy decisions on law enforcement and on “commercial” issues**

- Exchanges of personal data are at the core of law enforcement and judicial cooperation, and increasingly important in the commercial area
- Adequacy ensures the free flow of personal data
- Alternative tools are available, but less comprehensive, less practical and more complex to put in place
- Intended depth of future partnership with the UK in law enforcement and judicial cooperation in criminal matters would be facilitated by an adequacy decision

# Data protection in the context of law enforcement and judicial cooperation in criminal matters

**(81) Political Declaration:** [The future arrangements] (...) *should also be underpinned by long-standing commitments to the fundamental rights of individuals, including continued adherence and giving effect to the ECHR, and **adequate protection of personal data**, which are both **essential prerequisites** for enabling the cooperation envisaged by the Parties (...). It should also reflect the Union's and its Member States' commitment to the Charter of Fundamental Rights of the European Union.*

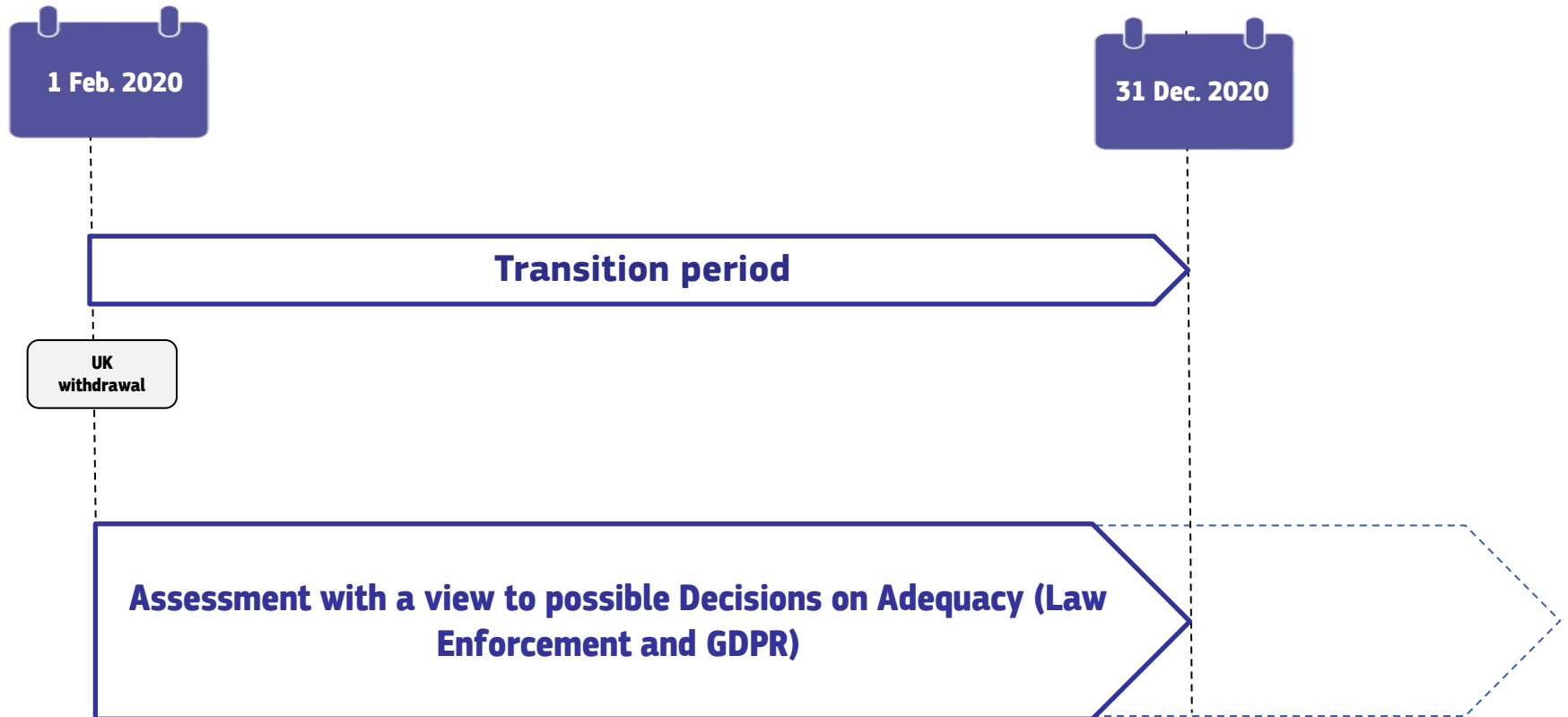
# **Data protection in the context of law enforcement and judicial cooperation in criminal matters**

Law enforcement and judicial cooperation in criminal matters as provided for in the future partnership → **underpinned by continued adequate data protection (mechanism for suspension if no adequate data protection)**

# **Data protection in the “commercial” context**

- Adequacy decision under the GDPR if the applicable conditions are met
- Adequacy decisions adopted for 13 countries
- Alternative tools for data transfers to all third countries:
  - Standard Contractual Clauses
  - Binding corporate rules
  - Statutory grounds for specific situations

# Adequacy decisions- timeline



# Steps to adopt an adequacy decision

- Assessment by the Commission, in close cooperation with third country
- Draft Commission decision (Implementing Act)
- Opinion by European Data Protection Board
- Comitology: Vote by Member States (qualified majority) in the Standing Committee
- Adoption by the College

# The UK commitment

**(9) Political Declaration:** *Noting that the United Kingdom will be establishing its own international transfer regime, the United Kingdom will **in the same timeframe** [i.e. by the end of 2020] take steps to ensure the **comparable facilitation of transfers of personal data to the Union**, if the applicable conditions are met”.*



# **Future negotiations: cooperation between regulators**

- Art. 50 GDPR: International cooperation in order to facilitate the enforcement of data protection legislation:
  - Exchange of information in the context of investigations
  - Joint investigations
  - Exchange of best practices, personnel, etc.

# Conclusions

- *Adequate personal data protection = an essential prerequisite for future relations*
- *Personal data protection for future partnership = Commission adequacy decision(s) if conditions are met + provisions in the EU-UK agreement on the cooperation between regulators*
- *Commission will endeavor to finalise adequacy assessment by the end 2020; assessment in the context of law enforcement prioritised*

# **Q & A**

## **Personal data protection (adequacy decisions)**

# **Cooperation and equivalence in financial services**

**AD HOC WORKING PARTY ON ARTICLE 50** (*Seminar mode*)  
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# Principles of the EU Approach

**General principles (relevant for the economic partnership) –  
§5 of European Council's Guidelines of April 2017 and  
§§3, 7-8, 12 of the European Council's Guidelines of March 2018 :**

- As close as possible a partnership with the UK in the future. Should cover trade and economic cooperation as well as other areas;
- Balance of rights and obligations, and a level playing field;
- Autonomy of the EU's decision making and legal order;
- Integrity of the Single Market and the Customs Union; indivisibility of the four freedoms; no "cherry picking";
- UK's status as a third country: a non-member of the EU that does not live up to the same obligations as a member and cannot have the same rights and enjoy the same benefits as a member;
- Balanced, ambitious and wide-ranging free trade agreement "insofar as there are sufficient guarantees for a level playing field";
- Any future framework should safeguard financial stability in the Union and respect its regulatory and supervisory regime and standards and their application.

# Principles of the EU Approach

## Political Declaration (§§3, 5, 17)

- Broad, deep and flexible partnership across trade and economic cooperation with a **comprehensive and balanced free trade agreement at its core**;
- The future relationship should be approached with high ambition with regard to its scope and depth, but it cannot amount to obligations/benefits of membership.

## Consequences of leaving the Single market:

- UK firms will lose EU passporting rights
- UK cannot participate anymore in European Supervisory Authorities (ESMA, EBA and EIOPA)
- UK to be treated as a third country
  - Possible equivalence decisions – but large gap with Single market
- Firms have to continue to prepare for this new, foreseeable situation

# Agenda

- I. Principles of cooperation
- II. Regulatory and supervisory cooperation
- III. Equivalence assessments
- IV. Conclusions

# **I. Principles of cooperation**

## **(§35 Pol. Decl.)**

- Reaffirm the Parties' commitment to preserving financial stability, market integrity, investor and consumer protection and fair competition;
- Respect for the Parties' regulatory and decision-making autonomy, including their ability to take equivalence decisions in their own interest;
- Wide prudential carve-out – keep ability to adopt or maintain any measure for prudential reasons.



# II. Regulatory and supervisory cooperation

## (§ 37 Pol. Decl.)

### Principle

- Preserve the EU's **regulatory and supervisory autonomy**

### Key elements

- ❑ Cooperation will be voluntary and appropriately structured
- ❑ Informal exchange of information and bilateral discussion on regulatory initiatives and other issues of interest
  - ✓ For instance, on equivalence
- ❑ Ensure, where possible, transparency and stability

## **II. Regulatory and supervisory cooperation**

**(§ 37 Pol. Decl.)**

### **Cooperation in practice**

- Flexible, based on existing models
- Regular meetings between Commission and UK authorities (Her Majesty's Treasury)
- European Supervisory Authorities/ European Central Bank/ Single Resolution Board to be involved on the EU side, plus relevant UK agencies/authorities (Bank of England, Financial Conduct Authority)
- Pre- and post-information to Council and European Parliament

### III. Equivalence assessments (§ 36 Pol. Decl.)

- Both Parties have equivalence frameworks in place that allow them to declare each others' supervisory and regulatory regime equivalent
- Parties should start assessing equivalence with respect to each other under these existing frameworks as soon as possible after the UK's withdrawal, **endeavouring to conclude assessments** before the end of June 2020
- Parties will keep their respective equivalence frameworks under review

# III. Equivalence assessments (§ 36 Pol. Decl.)

## Principles

- Equivalence decisions are **unilateral and discretionary**
  - ✓ Relevant for the future relationship, but not subject to negotiations
- EU to decide on the basis of an assessment and in protection of its own interests
- EU autonomy on equivalence not to be restricted by Free Trade Agreement

## Process

- ☐ Around 40 equivalence areas
  - ✓ Most equivalence decisions deliver prudential benefits, some provide for burden reduction and some can lead to market access
- ☐ All areas to be assessed
- ☐ Best endeavour to finalise assessments by June 2020
- ☐ Questionnaires and meetings with UK authorities, same structure as for regulatory cooperation
- ☐ Assessment of UK legislation and supervision - risk-based and proportional approach
  - ✓ as for other third countries, the higher the possible impact on EU markets and interests, the more granular the assessment
- ☐ Council and European Parliament to be regularly informed

# IV. Conclusions

- **Not business as usual – important gap with Single market**
- **EU to use its toolkit for third countries**
  - ❑ **FTA:** standard approach [see seminar on FTA of 13/1]
    - ✓ Limited commitments, notably as regards cross-border supply
    - ✓ Limited disciplines on domestic regulation
    - ✓ Prudential carve-out
  - ❑ **Regulatory and supervisory cooperation**
  - ❑ **Equivalence**
- In all cases, EU to maintain its regulatory and decision-making autonomy
- **EU to be led by its interests**
  - ❑ Preserve financial stability, market integrity, investor and consumer protection and fair competition
  - ❑ Further development of EU policies, in particular Capital Markets Union and Banking Union

## **Q & A**

### **Cooperation and equivalence in financial services**