



Brussels, November 2021

**Global Data Alliance's Comments to DCMS
on the Consultation for Data: A New Direction**

The Global Data Alliance¹ (GDA) welcomes the opportunity to provide feedback to the UK Department for Digital, Culture, Media & Sport (DCMS) on the consultation “Data: A New Direction.” The GDA is a cross-industry coalition of companies, headquartered in different regions of the world, that are committed to high standards of data privacy and security. The access to and movement of data are critical for the services that sustain global commerce, protect consumers from fraud and counterfeit products, improve health and safety, fuel innovation and promote social good.

Many aspects of the consultation are very important to GDA members. This submission focuses on *Chapter 3 – Boosting trade and reducing barriers to data flows* and offers specific views regarding cross-border data flows, given the GDA’s focus on ensuring responsible and trusted international data flows.

I. Importance of International Data Flows

We welcome the consultation’s recognition of the importance of cross-border data flows. The UK will set important global precedents as it reflects on the future of transfer mechanisms. At a time of rising protectionism across the world, the UK should continue to promote strong privacy safeguards and international data flows as pillars of the data economy, and continue to preserve data flows from the EU, the US, and other countries. The UK should also be a strong voice against localization trends and other restrictions to international data flows. We support the UK’s

¹ The Global Data Alliance is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. Alliance members are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, financial services, health, media and entertainment, natural resources, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance. For more information on the Global Data Alliance, please see: <https://www.globaldataalliance.org/downloads/aboutgda.pdf>

initiative to inculcate a risk-based approach to transfers, governed by pragmatism and effectiveness.

This work is crucial because the ability to transfer data, including personal data, across international borders is the lifeblood of the modern digital economy and a foundation for innovation in the “digital age.” Companies in all industries require the ability to transfer data across international borders. In sectors as diverse as agriculture, healthcare, manufacturing, and banking, businesses that produce a broad range of products and services are united by the need to send and receive data across international borders.²

To support the diversity of their operations and services, companies need a range of available and effective transfer mechanisms that are built on strong and predictable data protection safeguards. We appreciate the UK’s recognition that companies need multiple practical transfer mechanisms, such as adequacy determinations, standard contractual clauses like the proposed IDTA and addendum, and other mechanisms. Creating a range of mechanisms is important, because different organizations with different business models in different industries will need to transfer different types of information – and must be able to choose an appropriate transfer mechanism best suited for the particular transfers at issue.

II. Specific Views on Boosting Trade And Reducing Barriers to Data Flows

The consultation seeks feedback on a number of questions and proposals that bear on international data flows. These include views on the UK’s approach to adequacy partnerships, alternative transfer mechanisms, and how these issues align with the UK’s national data strategy more broadly.

Below, we set out GDA’s views on four questions:

Q3.2.1. To what extent do you agree that the UK’s future approach to adequacy decisions should be risk-based and focused on outcomes?

- Strongly agree
- Somewhat agree**
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

GDA recognizes that adequacy decisions are a powerful and reliable tool to enable innovation and economic activity across sectors and effectively protect people’s privacy. We strongly support DCMS’ focus on a risk-based approach, taking into account the likelihood and severity of actual risks to subjects’ data protection rights in particular contexts. A “one size fits all” approach results in unnecessary, ineffective, and expensive complexity and does not in fact advance protecting data subjects. We further welcome DCMS’ commitment to consider expanding Data Partnerships to a priority list of important trading partners. We also welcome

² See for instance GDA “Cross-Border Movement of Data: Creating Jobs and Trust Across Borders in Every Sector,” <https://www.globaldataalliance.org/downloads/GDAeverysector.pdf>

DCMS' ambition "to take a creative, collaborative and pragmatic approach" in line with the UK's global ambitions and commitment to high standards of data protection.

When considering an outcome-focused approach to adequacy, we encourage DCMS to continue prioritizing strong and predictable data protection standards as the basis for durable adequacy assessments. This approach, combined with supporting the effective use of all transfer mechanisms available under the UK data protection regime, will in and of itself contribute to bringing forward a more effective risk-based and outcome-focused approach to data transfers, and to preserving the UK's own designation of adequacy from the EU.

Q3.2.3. To what extent do you agree with the proposal to strengthen ongoing monitoring of adequacy regulations and relax the requirement to review adequacy regulations every four years?

- Strongly agree
- Somewhat agree
- Neither agree nor disagree**
- Somewhat disagree
- Strongly disagree

The GDA appreciates DCMS's intentions to expand its focus on adequacy partnerships, and we recognize that the issue of ensuring countries recognized as adequate remain committed to high standards of data protection is an important one. DCMS' plan to further leverage adequacy as a transfer mechanism for it brings many benefits to both individuals and businesses, the first one being legal certainty. In addition to the existing adequacy decisions currently recognized by the UK, DCMS announced in August that it will pursue Data Partnerships with priority economies, bringing that number closer to 50 adequacy decisions to monitor. However, the underlying process that determines whether a country is adequate can be time-consuming and resource-intensive. The ongoing monitoring of a growing number of adequacy regulations would also require a similar and constant level of resources. In addition, regular monitoring might have a negative ripple effect in creating a false sense of legal uncertainty, directly impacting the confidence and buy-in from both individual data subjects and organizations that rely on it. Ultimately, the priority should be ensuring countries treated as adequate continue to provide high standards of data protection – and that goal should hold true whether such monitoring is done on a periodic basis of every four years or on an ongoing basis.

Q3.3.2. What support or guidance would help organisations assess and mitigate the risks in relation to international transfers of personal data under alternative transfer mechanisms, and how might that support be most appropriately provided?

The GDA appreciates DCMS' focus on ensuring a broad range of transfer mechanisms are available to organizations in practice. The UK is ideally positioned to continue to promote a robust international transfer regime that recognizes multiple, practical, stable and trusted mechanisms for companies to transfer data across international borders, including adequacy, IDTAs, certifications and codes of conduct. Different organization types and business models require the use of different transfer mechanisms that are not interchangeable. In practice, larger

companies tend to rely on one or more data transfer mechanisms, using the tool most tailored to their business needs and to the specific data transfer(s) at hand. Other businesses may principally rely only on one mechanism, such as adequacy determinations or contractual clauses. It is therefore important that businesses be able to continue using the full range of existing data transfer mechanisms which are all critical to supporting global data flows and are built with strong safeguards.

We encourage DCMS to focus on recognizing mechanisms that can meet an organization's obligations in multiple jurisdictions – and thus help drive investment in strong data protection practices that support the responsible transfer of data across borders. For example, voluntary certification schemes can create an additional accountability mechanism options for organizations to use to transfer data across borders. They can also provide a more globally interoperable and market-driven system. In this respect, we want to emphasize that certification schemes are most useful for organizations when they are recognized and adopted by more than one jurisdiction – and thus can permit companies using a single certification scheme to comply with obligations in multiple jurisdictions. We encourage the UK Government to prioritize these practical benefits in focusing on the use of certifications as transfer mechanisms. Similarly, the GDA recently voiced its support of the ICO's approach to model contracts and the creation of template addendums for additional jurisdictions to support data transfers. The use of such annexes is another approach to ensure data protection safeguards can be leveraged across borders

Q3.6.1. The proposals in this chapter build on the responses to the National Data Strategy consultation. The government is considering all reform options in the round and will carefully evaluate responses to this consultation. The government would welcome any additional general comments from respondents about changes the UK could make to improve its international data transfer regime for data subjects and organisations.

In an interconnected economy, maintaining interoperability between the UK's data protection regime and the legal regimes of other jurisdictions should remain a top priority of the UK Government. This will contribute to fostering a coherent environment for businesses that seek to operate internationally and avoid further fragmenting the global data protection landscape. The UK has a unique opportunity to prioritize an approach to data protection that is practical in nature, interoperable in practice, and soundly committed to maintaining high standards of data protection and we encourage you to do so in a manner that embraces the importance of global interoperability.

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