

Data Governance and Cross-Border Trade

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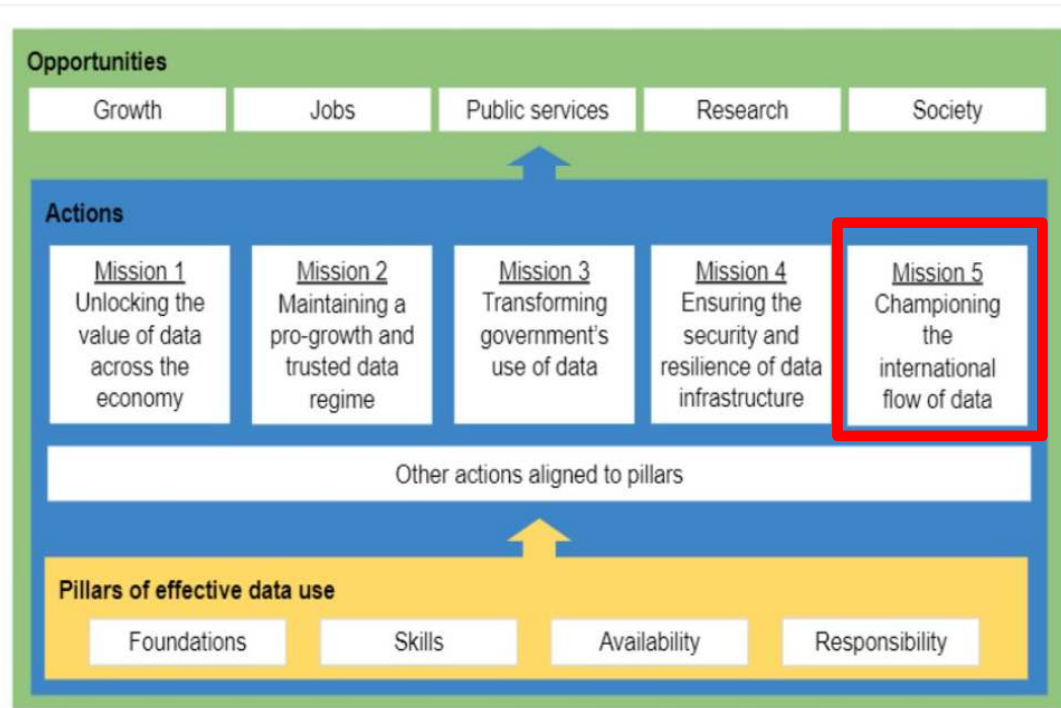
Eleonor Duhs, Director (Barrister)

Structure

- UK Government Policy on Data and Cross-Border Trade
- UK and EU Legal Frameworks for Cross-Border Transfers
- EU-UK Trade and cooperation agreement

National Data Strategy

Building world-leading data economy



National Data strategy

Mission five: International flow of data

- New and innovative mechanisms for international data transfers
- Facilitate cross-border data flows
- Remove unnecessary barriers to international data transfers
- UK 'data adequacy' with global partners to promote the free flow of data to and from the UK

Data transfers regimes in UK and EU

- GDPR
- UK GDPR
- Chapter V

Data transfers regimes in UK and EU

- Adequacy decisions (12)
- Standard Contractual Clauses

Adequacy Decisions

- Commission/SoS assess adequacy of the level of protection
- “Essentially equivalent” to that in the EU/UK

Article 45 GDPR/UK GDPR

- the third country's laws and rules governing data protection,
- relevant legislation concerning public security, defence, national security and criminal law,
- the respect for the rule of law, human rights and fundamental freedoms more generally,
- the access to personal data by public authorities,
- the rules for the onward transfer of personal data, and
- any international commitments the third country has entered into.

Problems with Data Transfers from UK/EU

- Schrems I & II
- Safe Harbor/Privacy Shield invalidated
- Standard Contractual Clauses

Problems with Data Transfers from UK/EU

- How do companies assess the rule of law/national security legislation etc in a third country?
- Technical/organisational measures are unrealistic (eg encryption)

The UK's dilemma on data protection standards

- Need to keep EU adequacy – facilitate free flow of data from EU
- Current regime is restrictive

Free flow of data and the Trade and Cooperation Agreement (TCA)

- Greater stability
- Role of Partnership Council

Role of Partnership Council re. adequacy

- Make recommendations regarding the transfer of personal data

Article INST.1: Partnership Council

Law enforcement – following suspension of provisions following loss of adequacy

- “The Partnership Council shall explore possible ways of allowing the Party that notified the suspension to postpone its entry into effect, to reduce its scope or to withdraw it.”

Article LAW.OTHER.137: Suspension

Final thoughts

- UK needs to achieve a delicate balance – keeping essentially equivalent standards whilst being pragmatic/flexible
- Effect of TCA - UK adequacy may be more stable than Safe Harbor/Privacy Shield

Further Reading and acknowledgment

References:

The UK and Digital Trade: Which way forward? Blavatnik School Working Paper, University of Oxford

European Data Protection Supervisor – Opinion 3/2021

Retained EU law - A practical guide, the Law Society (2021), Duhs & Rao

Acknowledgment:

EU law analysis: EU/UK Trade and Cooperation Agreement, Peers, S.

Contact details



Eleonor Duhs

Director (Barrister)

+44 (0) 207 861 4368

eleonor.duhs@fieldfisher.com