

## New International Data Transfers Adequacy Decision – Republic of Korea

<b>Lead department</b>	Department for Digital, Culture, Media and Sport
<b>Summary of proposal</b>	The Government proposes to grant data adequacy status to the Republic of Korea (RoK) so that UK-based organisations can transfer personal data to the RoK without restrictions or safeguards.
<b>Submission type</b>	Impact assessment (IA) – 03/08/2022
<b>Legislation type</b>	Secondary legislation
<b>Implementation date</b>	2023 tbc
<b>Policy stage</b>	Final
<b>RPC reference</b>	RPC-DCMS-5221(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	15 September 2022

### RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	The assessment of direct impacts on business and impacts on small and micro businesses are considered sufficient. The evidence used to inform the IA appears to have been improved since the consultation stage and the key impacts have now been monetised. There are several areas for improvement, particularly in relation to assessment of wider impacts, and the discussion of risks and uncertainties.

### Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	Qualifying regulatory provision (OUT)	Qualifying regulatory provision (OUT)
<b>Equivalent annual net direct cost to business (EANDCB)</b>	-£10.4 million	-£10.4 million (2019 prices, 2020 pv)
<b>Business impact target (BIT) score</b>	£52.0 million	£52.0 million

<sup>1</sup> The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

<b>Business net present value</b>	£120.5 million
<b>Overall net present value</b>	£120.5 million

## RPC summary

<b>Category</b>	<b>Quality<sup>2</sup></b>	<b>RPC comments</b>
EANDCB	<b>Green</b>	The EANDCB is considered fit for purpose. The IA includes a sufficient discussion of the counterfactual, and the classification of direct impacts on businesses is consistent with RPC guidance <sup>3</sup> .
Small and micro business assessment (SaMBA)	<b>Green</b>	The SaMBA is considered proportionate, and it includes a discussion of the size distribution of businesses in scope of the proposal. The IA explains that the majority of impacted businesses are considered small or micro businesses (SMBs). It would benefit from considering whether mitigation methods might appropriately address the potential disproportionality of familiarisation and implementation costs on SMBs.
Rationale and options	<b>Satisfactory</b>	The IA provides a sufficient rationale for intervention but only considers one option against the 'do nothing' counterfactual. The IA would be strengthened by discussing whether there are any viable alternative options to achieve the policy objectives, including different implementation options.
Cost-benefit analysis	<b>Satisfactory</b>	The IA provides a clear explanation of the methodology and data source used for the cost-benefit analysis. The IA would be strengthened by including more evidence on the merits and potential risks of the proposal against the counterfactual.
Wider impacts	<b>Weak</b>	The assessment of wider impacts is considered high-level and brief relative to the potential scale of indirect impacts on trade, competition, and innovation. The IA would also benefit from having a separate section to discuss the risks of the proposal.
Monitoring and evaluation plan	<b>Satisfactory</b>	The IA states that monitoring and evaluation (M&E) activities, including a report, are planned within 3 to 5 years of implementation. The IA would be strengthened by explaining the key success metrics of the proposal and explaining how potential risks and unintended consequences of the proposal will be identified and monitored.

<sup>2</sup> The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

<sup>3</sup> <https://www.gov.uk/government/publications/rpc-case-histories-direct-and-indirect-impacts-march-2019>

## Summary of proposal

Sections 17A and 74A of the Data Protection Act 2018 allow the UK to assess countries' or jurisdictions' data protection for the purpose of making data adequacy regulations for those countries. Data adequacy is a status granted by the UK to countries or jurisdictions that provide high standards of protection for personal data. When a country is found 'adequate', UK-based organisations can transfer personal data to that country without restrictions or safeguards.

The Government has prioritised several countries for initial assessments of their adequacy, and this IA relates to the assessment for the RoK. The proposal aims to reduce barriers and burdens to organisations transferring personal data to RoK while providing trust and confidence that all citizens' data rights are upheld. The IA considers one option against the counterfactual option of 'do nothing':

- Option 1: Do nothing – data transfers between the UK and third countries require alternative transfer mechanisms before restricted data transfers are permitted.
- Option 2: Grant adequacy status to RoK – granting such status reduces the requirement for alternative transfer mechanisms such as IDTAs, thereby removing barriers to transferring personal data to RoK.

The IA estimates the EANDCB and net present value to be -£10.4 million and £120.5 million (2019 prices, 2020 present value), respectively, over a 10-year appraisal period. The main benefits arise from the reduction in compliance and legal costs and the potential increase in trade; the cost is associated with the familiarisation of the new adequacy arrangement.

## EANDCB

The EANDCB is considered fit for purpose and supported by proportionate evidence. The IA provides a sufficient distinction between the direct and indirect impacts of the policy, consistent with RPC guidance<sup>4</sup>. The proposal is expected to be net-beneficial to businesses as they would no longer be required to purchase International Data Transfer Agreements (IDTA) to send data to the RoK. The IA explains that familiarisation cost and IDTA savings are expected to be direct, whereas the increase in export trade is expected by indirect.

The calculations for estimating the direct costs and benefits for businesses are clearly set out, and the evidence base appears to have been improved as a result of the consultation for the *Data Adequacy Assessments Umbrella IA*. The IA also uses sensitivity analysis to represent uncertainty in some key assumptions, such as using different rates of data-dependent trade for the IDTA benefit estimate.

The IA identifies a number of impacts to business that it has not monetised, including indirect supplier benefits and import benefits. The IA would be strengthened by

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<sup>4</sup> <https://www.gov.uk/government/publications/rpc-case-histories-direct-and-indirect-impacts-march-2019>

explaining the data limitations that prevent the quantification of these impacts and providing a magnitude of impact, where it is proportionate to do so.

## **SaMBA**

The SaMBA is considered fit for purpose, and it includes the size distribution of businesses in scope of the proposal. The IA estimates that 7,107 businesses are directly impacted by the proposal, with 93% of these businesses considered small or micro businesses (SMBs). The decision not to exempt SMBs appears reasonable as the proposal is expected to benefit all businesses, including SMBs. The SaMBA would be strengthened by considering whether mitigation action might be appropriate to avoid disproportionate familiarisation and implementation costs to SMBs.

## **Rationale and options**

The IA provides a sufficient discussion of the rationale for intervention. The IA explains that the adequacy decision will reduce burdens on UK businesses as they will no longer have to undertake activities to ensure data sent to RoK is protected on a periodic basis. However, the IA only considers one regulatory option: to grant adequacy status to the RoK, thereby reducing the requirement for alternative transfer mechanisms such as IDTAs and removing barriers to transferring personal data. While the Department provides a clear explanation that legislation is required, the IA would benefit from considering alternative options, including different implementation options.

## **Cost-benefit analysis**

The IA appears to be informed by a range of data sources, including a public consultation, an externally commissioned survey and desk research. The Department appears to have used the consultation to improve the evidence base and provide a more quantified impact assessment. The IA would be improved by explaining the stakeholder engagement process, including whether the impact estimates have been tested with key stakeholders.

The IA clearly sets out the key assumptions, such as the percentage of data-dependent trade between the UK and the RoK. The IA explains that a 3% business growth rate has been incorporated into the NPV estimate (paragraph 80). The IA would benefit from explaining what the growth rate is informed by and why this is a reasonable assumption.

The IA should say more about interdependence with the EU's decision-making and possible associated impacts even now that the UK has left the EU. In particular, it should assess whether or not this proposal could put the UK at risk of losing its adequacy status with the EU. The IA would benefit from considering this in more detail because it would also be relevant to future IAs for data adequacy arrangements with other countries. More broadly, the IA would benefit from further

discussion on potential risks and unintended consequences of the proposal, as well as steps to mitigate these.

## Wider impacts

The IA includes a high-level discussion of wider impacts, including competition, equalities, and trade. The IA explains that the proposal is expected to positively impact competition and trade by reducing barriers to data transfer and costs to businesses involved in cross-border data transfers. The IA also mentions increases in imports and exports and helpfully states that gravity modelling analysis based on awarding priority countries adequacy indicates that resulting imports will overtake exports in the medium-term. The IA would benefit from discussion of these impacts in more detail; it should also consider the potential impact of the proposal on innovation.

The IA estimates that the proposal should increase the number of UK-based exporters to RoK and the overall trade level with the RoK. In addition, the IA would benefit from further discussion of the potential domestic and international risks of the proposal, and potential mitigation options.

## Monitoring and evaluation plan

The IA provides a satisfactory monitoring and evaluation (M&E) plan, which sets out the key research questions, data collection plans and proposed evaluation methods. The IA includes a commitment to review the proposal and produce an evaluation report within 3 to 5 years of implementation. While the M&E outlines the quantitative and qualitative data that the Department intends to collect, the IA would be strengthened by explaining how success will be determined, including the key success metrics. It should also outline how risks and unintended consequences will be identified and monitored. Lastly, the M&E should state whether the commitment for a planned review is a statutory obligation.

## Other comments

The IA would benefit from the use of an option summary sheet from the standard IA template, summarising the costs, benefits, impacts, assumptions and net present value of the preferred option.

### Regulatory Policy Committee

For further information, please contact [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk). Follow us on Twitter [@RPC\\_Gov\\_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website [www.gov.uk/rpc](http://www.gov.uk/rpc). To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).