

## Data Adequacy Assessments Umbrella IA

<b>Lead department</b>	Department for Digital, Culture, Media and Sport
<b>Summary of proposal</b>	To assess the standards of protection for personal data for third countries in order to grant adequacy status or not to facilitate the transfer of personal data from the UK.
<b>Submission type</b>	Impact assessment (IA) – 20 April 2022
<b>Policy stage</b>	Developmental
<b>Legislation type</b>	Secondary legislation
<b>Implementation date</b>	To be confirmed
<b>RPC reference</b>	RPC-DCMS-5189(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	31 May 2022

## RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	<p>The RPC welcomes the voluntary submission of this “umbrella” IA for independent scrutiny. The IA provides the framework and methodology to assess the impacts in future IAs, which will be required for individual countries, if and when they are deemed adequate.</p> <p>The IA caveats the analysis, noting data limitations. However, the Department should continually review how it can best improve the evidence base to support the cost-benefit analysis.</p> <p>The Department should continue to engage with the RPC as it prepares IAs for individual countries and submit IAs for scrutiny, as appropriate.</p>

## Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	N/A	To be determined at further IAs for individual

<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.

		countries
<b>Equivalent annual net direct cost to business (EANDCB)</b>	Not quantified	Further IAs to be submitted for individual countries for validation of EANDCB figures
<b>Business impact target (BIT) score</b>	Not quantified	
<b>Business net present value</b>	Not quantified	
<b>Overall net present value</b>	Not quantified	

## RPC summary

<b>Category</b>	<b>Quality<sup>2</sup></b>	<b>RPC comments</b>
EANDCB	<b>Green</b>	Two groups of indicative benefits have been monetised in the IA at a high level; reduced costs to transfer data and the potential increase in trade. However, the IA must distinguish between indirect and direct impacts. Familiarisation costs are described qualitatively; the Department aims to improve its understanding of these costs as part of an evaluation but should seek to also include within the supporting IAs.
Small and micro business assessment (SaMBA)	<b>Green</b>	The IA provides a generalised SaMBA, noting the difficulty in apportioning the benefits of increased trade to SMBs. The SaMBA will need to be adapted for individual countries, depending on the scale of the current levels of data flows.
Rationale and options	<b>Satisfactory</b>	The IA explains that the rationale is to remove unnecessary trade barriers to firms who use data. The IA should seek to strengthen the rationale by using data and evidence from existing adequacy partnerships. The preferred option is appraised against the baseline. The IA must include a discussion on any other options considered, including alternatives to regulation.
Cost-benefit analysis	<b>Satisfactory</b>	The IA sets out the methodology, assumptions and data used in the cost-benefit analysis. It also highlights the data limitations such as a lack of country-specific data needed to model the impacts.
Wider impacts	<b>Weak</b>	The IA includes some discussion on the wider impacts on trade, innovation and competition, however, these need further development for future IAs. The Department should also consider any impact on consumers.
Monitoring and evaluation plan	<b>Satisfactory</b>	The IA provides a detailed framework for developing monitoring and evaluation plans for individual countries by identifying the process and impact evaluation methods as well as identifying and filling the evidence gaps.

<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](#).

## Summary of proposal

Sections 17A and 74A of the Data Protection Act 2018 allows the UK to undertake assessments of 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 which 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 restriction. However, if a country is not granted adequacy status, UK organisations are required to put in place safeguards such as International Data Transfer Agreements (IDTAs) when sending personal data.

The "umbrella" IA sets out the policy and process for assessing the adequacy and provides a summary of the potential impacts of priority countries and jurisdictions if deemed to be adequate. The Department notes that regulations will be required for each 'adequate' country, for which individual IAs will be produced.

## EANDCB

The IA monetises two groups of indicative potential benefits at a high level: the reduction in Standard Contractual Clauses (SCC) costs, which are used as a proxy for International Data Transfer Agreements (IDTAs), for an estimated number of firms that currently export data. This is calculated using survey data results to approximate the percentage of companies that export, which is then applied to the entire business population by size. Thus, giving an annual value of £360 million (table 1). The second group is increased exports for data-dependent sectors based on suppressed exports, giving a range of annual values of the benefits from £90 million to £160 million. In order to calculate the EANDCB for validation, the IA must classify the impacts as either direct or indirect<sup>3</sup> as increased exports may be considered as indirect and therefore excluded from the EANDCB. Further, the IA should consult RPC guidance on presenting business impacts in export potential or revenue (versus profit) terms<sup>4</sup>.

The IA provides a qualitative assessment of the familiarisation or transition costs, noting that these may be very small as there is no further action required for businesses to transfer personal data with countries with adequacy status. The IA should consider costs associated with legal advice that businesses may incur. It notes that evidence around familiarisation costs will be developed when evaluating the proposal ahead of preparing individual country IAs.

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<sup>3</sup> RPC guidance on direct and indirect impacts can be found [here](#).

<sup>4</sup> RPC guidance on the use of profit for the purposes of determining the impact on business can be found [here](#).

## SaMBA

For the purposes of this IA setting out the broad methodology to be followed for the future IAs supporting country-specific legislation, an adequate and generalised SaMBA has been presented. It notes that at present, small and micro businesses (SMBs) are not exempt from the compliance requirements but are likely to benefit from the proposed regime. It also provides survey results that illustrate that the composition and proportion of businesses that send data internationally as well as the associated SCC costs to do so. The IA highlights the difficulty in apportioning the benefits of potential increased trade to SMBs due to the evidence from the International Transfer Tools Survey that suggests large companies are more likely to send data internationally.

The SaMBA will need to be adapted for individual countries to understand the number of SMBs in the most affected sectors, depending on the scale of the current levels of data flows.

## Rationale and options

The IA notes the importance of international data transfers to help drive international commerce, trade and development as well as supporting innovation, law enforcement and national security. It states that the status quo represents a non-tariff barrier to trade due to the transaction costs required to transfer data internationally using Standard Contractual Clauses (SCCs, which the IA notes is replaced by IDTAs) or UK-specific IDTAs.

The IA provides some statistics from the UK Business Data Survey (UKBDS) 2020, noting the significant proportion of businesses who state they currently do not have a need to transfer data. However, it suggests that the proposal may act as an information signal or nudge to incentivise transfers in personal data or trade with countries that are then deemed adequate. This is not supported by evidence; the IA could supplement the rationale for intervention with further evidence from existing adequacy partnerships (noted in paragraph 10) to show the impact on the quantity of personal data transferred or the number of businesses that chose to do so as a result of the adequacy status.

The IA considers the impacts for making non-red rated countries adequate against the baseline. However, it should include a discussion on any other options considered by the Department, including options that would reduce the costs of IDTAs, including discussion of the expected level of contractual protection these might offer, or alternatives to regulation.

## Cost-benefit analysis

The IA sets out the methodology, assumptions and data used in the cost-benefit analysis. It also highlights the data limitations such as a lack of country-specific data needed to model the impacts, for which the Department will conduct a qualitative assessment. It notes that [as and when countries are granted adequacy, thus generating a requirement for an individual country IA] the Department will have

access to better data (via an updated UKBDS) or commission bespoke research. The Department should continue to assess how it can fill in the evidence gaps to better inform the cost-benefit analysis.

## Wider impacts

The IA includes some discussion on the wider impacts on trade, innovation and competition, however, these need further development for future IAs. Whilst noting that adequacy is about ensuring that the level of protection under UK law is not undermined when personal data is transferred to a third country, the IA should consider any unintended consequences or impacts on consumers.

The IA also discusses the benefits for data-intensive sectors as well as the benefits of seeking reciprocal arrangements whereby international data flows can happen freely in both directions. These considerations should be expanded on in individual country IAs. The IA mentions that the UK already has over 40 adequacy arrangements (paragraph 10). The IA would benefit from providing more detail on these arrangements and how they form part of the adequacy regime being sought by the policy.

## Monitoring and evaluation plan

The IA provides a detailed framework for developing monitoring and evaluation (M&E) plans for individual countries by identifying the process and impact evaluation methods as well as identifying and filling the evidence gaps. The Department should consider plans to consolidate an 'umbrella' M&E for the entire policy that brings together findings from country-specific evaluations, where appropriate.

### 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](#).