

European Scrutiny Committee

House of Commons, London, SW1A 0AA

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From: Sir William Cash MP

17 March 2021

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Draft data adequacy decisions for trade and law enforcement purposes (ESC numbers 41796-7)

The Committee has asked me to write to you concerning the draft data adequacy decisions that the EU Commission published on 19 February 2021. As one relates to the flow of personal data to the UK from the EU for [commercial](#) purposes and the other for [law enforcement](#) purposes, we thought that our scrutiny of the documents would involve both of your respective Ministerial remits.

You may be aware that following the end of the post-Brexit transition period, the Government agreed to deposit documents relating to the Northern Ireland Protocol but no other EU documents are currently being deposited. These are the interim arrangements under which EU document scrutiny is presently taking place until the Government and the House reach a new arrangement.

The draft EU data adequacy decisions have not been formally deposited by the Government and therefore we have not received an Explanatory Memorandum outlining their potential implications for UK law and policy. We consider these documents to be of significant legal and political importance and have a number of questions regarding their potential implications for the UK.

When preparing your response to the Committee, you may wish to bear in mind that effective Parliamentary scrutiny of the Government's data protection activities forms one of the grounds on which the Commission has made its initial positive data adequacy assessment. Effective Parliamentary oversight of data protection issues by the Home Affairs Committee is referred to in the draft GDPR data adequacy decision.¹ The Government itself [relies](#)² on this oversight in its submission documents to the EU. It is therefore important for the adoption and maintenance of these decisions that Government does all it can to facilitate in a meaningful way both ours and other Select Committee scrutiny.

As you know, these draft decisions are not yet 'done and dusted'. There are still some potential hurdles in the adoption process, including the opinion of the European Data Protection Board. We understand from media reports that the opinion is expected in mid-April. We would be grateful if you could update our officials as to whether that timetable is accurate and indeed as to any other indications of the likely timetable for adoption of the decisions. In any event, we would expect you to inform the Committee of any likely sticking points that emerge in the opinion and what the Government can do in response to provide any reassurance to the Commission. We are mindful of the risks of any delays to the adoption process, given that the current bridging arrangements for continued EU to UK data flows only last until the end of June at the latest.

Assuming that the decisions are adopted in time, we have a number of questions as to how the Government will ensure in future that the decisions remain in place and are extended beyond their four-year shelf life. We are aware of the potential for both the Commission to amend, suspend or revoke the decisions should it consider that the UK no longer provides "essentially equivalent" data protection to the EU. We are also aware of the potential for legal challenge of the decisions before the Court of Justice (CJEU) given the fate of both US data adequacy decisions. We also note the potential problems that could be caused for both the good functioning of the trade and law enforcement parts of the Trade and Cooperation Agreement (TCA) should the decisions run into difficulty. In view of these risks, we would like to know:

- (a) How will the Government assess and manage the risk to the maintenance of the adequacy decisions should it wish to diverge from EU data protection law in future? Divergence seems likely to us, in the light of the [article](#) in the Financial Times (FT) written by the Secretary of State for Digital, Culture, Media and Sport (The Rt Hon. Oliver

¹ See recital 3.2.3.4.

² See "Select Committees" heading, page 44 of Section F Law Enforcement, UK Government's "Adequacy Framework".

Dowden CBE MP) on 27 February, though the timing and extent is less clear.

- (b) Linked to this, how does the Government propose to approach the “invitation” in Recitals 275 of the GDPR decision and 165 of the LED decision which note the ongoing monitoring obligations of the Commission of UK adequacy and state: “To this end, the UK authorities are invited to inform the Commission of any material change to the UK legal order that has an impact on the legal framework that is the object of this Decision...”. What would it consider to be a “material change” and how wide does it consider the relevant “legal framework” to be? Would that encompass any material future changes the Government may wish to make in due course to judicial review or the Human Rights Act? How will Parliamentary scrutiny be included in that process? Will Parliament be informed at the same time as the EU Commission?
- (c) What arrangements will there be in Government for monitoring EU developments that could cause divergence between the EU and UK legal frameworks in this area, both in terms of new data protection legislation and CJEU case law? How will dialogue take place between the EU and the UK about managing such divergence? How will Parliamentary scrutiny be included in that dialogue?
- (d) How will the Government ensure that its own new adequacy assessments for non-EU countries do not cause “equivalence” difficulties in terms of onwards transfer from the UK to those countries of personal data originating from the EU? We note in this respect from the Secretary of State’s FT article that the Government is keen to adopt significantly more adequacy assessments for non-EU countries than the EU currently has.
- (e) How will the Government ensure that “equivalence difficulties” are not caused by data protection, data exchange and digital trade provisions in any international agreements between the UK and non-EU countries?
- (f) What arrangements, if any, will there be for communication between the EU, UK Government and the Information Commissioner on matters potentially affecting the maintenance of the adequacy decisions?
- (g) To what extent, if any, will the Government need to take a different or enhanced approach to maintaining the Law Enforcement data adequacy decision?
- (h) How does the Government interpret the ART.LAW.OTHER 137 in terms of possible suspension of parts or the whole of Part 3 Law

Enforcement Cooperation of the TCA? If one or either of the two adequacy decisions ceased to apply, would that be sufficient for one party to suspend obligations or it is beyond doubt that the “serious and systemic deficiencies” as regards the relevant party’s data protection would also need to be established?

- (i) How does the Government propose to keep Parliament and this Committee informed on these matters on a regular, timely, responsive and transparent basis, particularly in the lead-up to the four-year expiry/extension deadline?

We look forward to receiving a response to this letter within 10 working days.

I am copying this letter to the Chair (Julian Knight MP) and Clerk (Stephen McGinness) of the Digital, Culture, Media and Sport Committee; the Chair (Rt Hon Yvette Cooper MP) and Clerk (Elizabeth Hunt) of the Home Affairs Committee; the Chair (Rt. Hon Greg Clark MP) and Clerk (Danielle Nash) of the Science and Technology Committee; the Chair (Angus Brendan MacNeil MP) and Clerk (Jo Welham) of the International Trade Committee; the Chair (Simon Hoare MP) and Clerk (Stephen Habberley) of the Northern Ireland Affairs Committee; the Chair (Darren Jones MP) and Clerk (Dr Rebecca Davies) of the Business and Industrial Strategy Committee; the Chair (Rt. Hon Jeremy Hunt MP) and the Clerk (James Davies) of the Health and Social Care Committee; the Chair (Rt Hon Harriet Harman QC MP) and the Clerk (Lucinda Maer) of the Joint Committee on Human Rights; the Chair (the Earl of Kinnoull) and Clerk (Stuart Stoner) of the Lords European Union Committee; Rachel Marnick in the Department for Digital, Culture, Media and Sport; Alex Bernal in the Home Office; and Les Saunders and Donald Harris in the Cabinet Office.

CHAIR