

European Scrutiny Committee

House of Commons London SW1A 0AA

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From: Sir William Cash MP

6 May 2020

Rt Hon. Oliver Dowden OBE MP

Secretary of State for Digital, Culture, Media and Sport

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Commission Recommendation and Communication on tracing/contact apps to combat and exit the COVID-19 crisis: C(2020) 2523 and 2296

The Committee has asked me to write to you in connection with these two documents which it is currently scrutinising. Both relate to the development of mobile applications (apps) to combat the COVID 19 crisis and facilitate an exit strategy. We note that on 12 April the Health Secretary (Rt Hon. Matt Hancock MP) stated that the NHS was in the process of developing a contact tracing app for these purposes.

The Government's Explanatory Memorandum on these documents was due on 5 May. However, we have decided to report these documents to the House now given their urgent topicality without considering any EM submitted by that date. We look forward to reconsidering the documents in the light of your EM once received and any other Ministerial correspondence. We expect the Department to continue to fulfil its scrutiny obligations to Parliament. We would expect to hear from you directly if there are any anticipated difficulties with this both in relation to these documents and any others within your remit.

As neither of these documents is legally-binding and both simply seek to identify existing EU data protection and fundamental rights law, we do not consider them legally important in themselves. But in seeking to provide guidance on the relevance of underlying EU fundamental rights and data protection law to the political and public health imperative of combatting

COVID-19 through mobile phone apps, they have both legal and political implications.

During the transition period, we seek your reassurance that in developing the NHS app, the Government is mindful of the continued need to comply with that law and is taking account of the EU guidance from both the Commission and European Data Protection Board and the legal principles underlying it. In particular, does the Government foresee any problems in complying with the law in this context if it does not use a Bluetooth model or if it does not decentralise stored data?

We would also be grateful to learn how much interoperability, if at all, with other Member States apps the UK is seeking to achieve. This will be important for at least the duration of the transition period once restrictions on mobility are lifted throughout the EU. Should a UK app operate on an interoperable basis, drawing on EU data after the end of the transition period, data adequacy with the EU will be important. In this respect, we note in his Press Statement of 24 April after the second round of “future relationship” negotiations, Michel Barnier said that the UK’s insistence on “lowering standards and deviating from agreed mechanisms of data protection” were problematic. Could you clarify whether this accurately reflects the UK’s intent and its chances of securing UK data adequacy decisions?

Please note that I am copying this letter to the Chairs of the following other Committees of the House: Digital, Culture, Media and Sport Committee, the Health and Social Care Committee, the Science and Technology Committee and the Joint Committee on Human Rights.

I am also copying the letter to the Earl of Kinnoull and Christopher Johnson in the Lords; to Les Saunders at the Department for Exiting the EU; and to James Ainsworth, Rachel Marnick and Nicci Jerrett in your Department.

CHAIR