

# European Scrutiny Committee

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From: Sir William Cash MP

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Rt Hon. James Brokenshire MP  
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Home Office  
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London SW1P 4DF

**Passenger Name Record (PNR) data: updating international standards  
and negotiating an EU/Japan PNR Agreement  
(Council documents 12197/19 and 5378/20) (40822 and —)**

Thank you for your [letter of 23 June 2020](#) responding to questions raised by the European Scrutiny Committee in my [letter of 23 April](#) on two EU documents, the first a [Council Decision](#) establishing the EU position on changes to international (ICAO—International Civil Aviation Organisation) standards on Passenger Name Record (PNR) data, the second a [Council Decision](#) authorising the European Commission to negotiate a PNR Agreement with Japan. Both Council Decisions concern opt-in decisions which were taken before the UK left the EU on 31 January 2020. In both cases, the Government decided not to opt in.

We note with interest that the application of the principle of sincere cooperation set out in Article 129(3) of the [EU/UK Withdrawal Agreement](#) appears to mean that the Government's decision *not* to opt into the first Council Decision had little practical effect. Although you indicated in your [letter of 25 March 2020](#) that some elements of the EU's position (reflecting EU case law) went beyond what the UK considered necessary in a global context, citing in particular a requirement to delete PNR data "in accordance with the legal requirements of the source country", it seems in this case that you were in no position to articulate these concerns fully in the ICAO, even though the UK was not technically bound by the Council Decision establishing the EU position.

We note the Government's ambition to agree a framework for reciprocal transfers of PNR data with the EU after transition which should be "based on, and in some respects go beyond, precedents for PNR Agreements between the EU and third

countries—most recently, the mandate for the EU-Japan Agreement”.<sup>1</sup> There are some material differences between the UK’s [draft text for an agreement with the EU on law enforcement and judicial cooperation in criminal matters](#) (published in May 2020) and the provisions on PNR in Part Three of the [EU’s draft agreement on a new partnership with the UK](#) (published in March 2020). First, the EU makes all elements of law enforcement cooperation (including PNR transfers) conditional on the UK securing an “adequacy decision” certifying that its level of personal data protection is essentially equivalent to that required in the EU. Second, the EU imposes strict conditions on the retention of passengers’ PNR data after they have left the UK and on the onward transfer of PNR data to third countries. Third, the EU only proposes sharing the PNR data of air passengers, in line with existing EU PNR-sharing agreements with Australia and the United States and the EU’s own [PNR Directive](#)<sup>2</sup>, while the UK seeks to go further by including the PNR data of passengers travelling by train and ship as well as by air.

Given the robust position taken by the EU Court of Justice (“CJEU”) on data protection, and the specific data protection requirements set out in [Opinion 1/15](#) in relation to the proposed EU PNR agreement with Canada, it is difficult to see much scope for flexibility in the EU’s negotiating position without running the risk of a legal challenge. It is also difficult to see much scope for the UK to diverge substantially from EU precedents when negotiating its own PNR agreements with other (non-EU) third countries without putting at risk the prospect of a full adequacy decision.

While we have no further questions to raise on these Council Decisions, we ask you to provide further updates as negotiations with the EU progress on the terms of any deal on the future sharing of PNR data and to provide similar updates on the launch and progress of PNR negotiations with other third countries. We would welcome a first update in September.

I am copying this letter to the Chair (Yvette Cooper MP) and Clerk (Elizabeth Hunt) of the Home Affairs Committee; to the Chair (Hilary Benn MP) and Clerk (Gordon Clarke) of the Committee on the Future Relationship with the European Union; to the Chair (the Earl of Kinnoull) and Clerk (Stuart Stoner) of the Lords European Union Committee; to Alex Bernal of your Department and to Les Saunders and Donald Harris in the Cabinet Office.

## **CHAIR**

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<sup>1</sup> See Part 2, para 40 of the [Government’s Command Paper](#) (CP211), *The Future Relationship with the European Union: The UK’s Approach to Negotiations*, published in February 2020.

<sup>2</sup> Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.