

# European Scrutiny Committee

House of Commons London SW1A 0AA

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From: Sir William Cash MP

3 September 2020

Rt Hon. John Whittingdale MP  
Minister of State for Media and Data  
Department for Digital, Culture, Media and Sport  
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**Commission Communication “Data protection as a pillar of citizens’ empowerment and the EU’s approach to the digital transition - two years of application of the General Data Protection Regulation”: (41363), [COM \(20\) 264](#)**

Thank for your [Explanatory Memorandum](#) on the Commission’s first [review](#) of the application and operation of the [General Data Protection Regulation](#) (GDPR).

As no imminent legislative changes with potential implications for the UK even after transition were proposed by the Commission, the Committee is content to clear this non-legislative document from scrutiny.

However, the Commission’s final review of international transfers of EU personal data to third countries is stated to be subject to July’s [Schrems II](#) ruling. This ruling is of the greatest significance for the UK both now and after transition. We were therefore astonished to find no mention of the ruling in your Explanatory Memorandum, despite being published several days after the ruling.

We would be grateful for a response within 10 days outlining the Government’s view of the ruling, focussing on both how international transfers of EU personal data during transition may be affected, as well as the

UK's aspirations for durable data adequacy decisions for both commercial and law enforcement purposes from 1 January 2021. The response should also cover the following:

- What the Government will do to facilitate and support the use by business of alternative mechanisms for international data transfers (particularly from the UK to the US during transition) such as standard contractual clauses in the wake of that ruling.
- What are the implications for the way UK intelligence services currently access EU personal data for national security purposes and for corresponding UK legislation regulating those activities? We are mindful of the uncertainty of the outcome of the CJEU's future ruling in [Privacy International](#) particularly if it follows the Advocate General's view that national security activities are caught by the current E Privacy [Directive](#). Has the date been fixed yet for the delivery of the CJEU's ruling in that case?
- When is any further relevant guidance from the Commission and Information Commissioner's Office (ICO) expected to be published to assist UK businesses and other data controllers/processors when processing EU personal data in future? If published before your response to this letter falls due, a summary of the key points of the guidance and implications for UK public bodies and businesses would be helpful, together with any significant aspects of the [statements](#) and [FAQs](#) already published by the ICO and European Data Protection Board respectively.
- Is there any information yet on how quickly the Commission can replace the US Privacy Shield data adequacy decision or whether it is planning on revising standard contractual clauses in the light of the Schrems II ruling?
- How is the adequacy assessment process progressing in relation to the UK for data adequacy decisions for both commercial and law enforcement purposes<sup>1</sup>? Is adoption of these decisions by the end of the transition period realistic, given EU case law developments?
- Have there been any other EU personal data developments of relevance to the EU's assessment of UK data adequacy and/or international

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<sup>1</sup> We also note that obtaining and maintaining both commercial and law enforcement data adequacy decisions under the GDPR and Law Enforcement Data Directive respectively is currently a condition of data-sharing for various security cooperation purposes in the draft EU legal text on the EU-UK future partnership in this field.

transfers of EU personal data, in particular in the negotiations on the proposed E Privacy [Regulation](#)?<sup>2</sup>

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 Science and Technology Committee, the Joint Committee on Human Rights and the Committee on the Future Relationship with the EU.

I am also copying the letter to the Earl of Kinnoull and Christopher Johnson in the Lords; to Les Saunders at the Cabinet Office; and to Gosia Staniaszek in DCMS.

**CHAIR**

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<sup>2</sup> We last reported on this proposal on 26 March 2020: Third Report, HC 229-i (2019-21), [chapter 2](#), (26 March 2020).