

European Scrutiny Committee

House of Commons, London, SW1A 0AA

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From: Sir William Cash MP

3 September 2020

Baroness Williams
Lords Minister
Home Office
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Commission Communication: Way forward on aligning the former third pillar *acquis* with data protection rules (Commission document COM(20) 262) (ESC document 41364)

Thank you for your [Explanatory Memorandum of 18 August 2020](#) on the outcome of a Commission review identifying ten EU legal acts in the law enforcement field which may need to be amended so that their data protection provisions are fully aligned with the EU [Data Protection Law Enforcement Directive](#) (“the Law Enforcement Directive”).

You state that the post-exit transition period (during which nine of these ten legal acts continue to apply to the UK) will have ended before any new amending proposals are adopted and that, as a result, any changes will not affect UK law or be of direct relevance to the UK. As the Commission expects to bring forward proposals to amend two of these legal acts—on Joint Investigation Teams and on the European Investigation Order—before the end of 2020, it is disappointing that you do not address the possibility that the Government may have to consider two opt-in decisions, both in areas where the UK would like to maintain close cooperation with the EU after transition.¹

As well as reviewing the need to align a number of existing EU justice and home affairs laws with the Law Enforcement Directive, the Commission also indicates that feasibility studies are underway to inform “the possible future codification of EU law enforcement cooperation” and to examine changes to the Prüm

¹ See Article 127(5) of the [EU/UK Withdrawal Agreement](#) under which the UK’s Title V opt-in Protocol continues to apply to proposals amending EU justice and home affairs laws which remain binding on the UK during the transition period.

framework, for example by including new categories of data and linking Prüm to other EU central databases. Further changes to the EU Passenger Name Record (PNR) Directive may also be needed to take account of CJEU case law and the outcome of a review of Member States' implementation of the Directive.

We recognise that the nature of any changes to be proposed by the Commission, and their implications for the UK, are unclear at this stage. Nonetheless, any changes which go beyond a simple alignment with the Law Enforcement Directive may have implications for future EU/UK cooperation in this field, particularly if they raise the bar for cooperation with third countries.

You explain that the Government is seeking adequacy decisions to ensure that the EU and UK can maintain the reciprocal free flow of personal data after transition. The EU [draft text published by the EU in March 2020 for an Agreement on the New Partnership with the United Kingdom](#) makes future (post-transition) cooperation with the UK on law enforcement and criminal law matters conditional on the UK being awarded an adequacy decision under the Law Enforcement Directive and continuing to ensure standards of data protection essentially equivalent to those required by EU law.² **We would welcome your assessment of the progress being made to secure the necessary adequacy decisions and the prospects for concluding discussions by the end of 2020, as envisaged in the Political Declaration. We would also welcome your insight into the feasibility studies being carried out by the Commission on the codification of EU law enforcement cooperation and possible changes to the Prüm framework (we assume there may have been some discussion of both studies before the UK left the EU on 31 January 2020) and your views on whether or how they may affect future EU/UK cooperation in this field. Finally, as we have made clear in other correspondence with the Home Office, we would welcome an update on progress being made in negotiations with the EU on future arrangements for criminal justice and law enforcement cooperation after transition.**

We ask you to respond within ten working days.

I am copying this letter to the Security Minister (Rt Hon James Brokenshire MP), the Chair (Rt Hon Hilary Benn MP) and Clerk (Gordon Clarke) of the Committee on the Future Relationship with the European Union; the Chair (Rt Hon Yvette Cooper MP) and Clerk (Elizabeth Hunt) of the Home Affairs Committee; the Chair (Sir Robert Neill MP) and Clerk (David Weir) of the Justice Committee; the Chair (the Earl of Kinnoull) and Clerk (Stuart Stoner) of the Lords European

² See Part Three, Title One, chapter 11, Article LAW.OTHER.44 of the Agreement on suspension and disapplication. An adequacy decision under the GDPR is also necessary for sharing passenger name record (PNR) data and exchanging personal data for the purpose of combating money laundering and terrorism financing.

Union Committee; Alex Bernal of your Department and Les Saunders and Donald Harris in the Cabinet Office.

CHAIR