

European Scrutiny Committee

House of Commons, London, SW1A 0AA

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From: Sir William Cash MP

10 September 2020

Rt Hon. James Brokenshire MP
Minister of State for Security
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Review of EU rules on the use of Passenger Name Record (PNR) data and the revised EU/Canada PNR Agreement (Council documents 9954/20 and 13490/17) (ESC numbers 41425 and 39151)

The European Scrutiny Committee has considered the [Commission report](#) on Member States' implementation and application of the EU PNR Directive, your accompanying [Explanatory Memorandum of 21 August 2020](#), and your [letter of 1 September 2020](#) concerning a Council Decision authorising the Commission to renegotiate parts of a proposed EU PNR Agreement with Canada which were found by the Court of Justice (CJEU) to be incompatible with the EU Charter of Fundamental Rights.¹

In your letter, you ask us to clear from scrutiny the proposed Council Decision which was last considered by our predecessor Committee in February 2018. We are content to do so while recalling that the (then) Government considered it “essential” for the UK to opt into the proposal to influence the Council’s position on negotiations with Canada, given that the outcome could potentially set a precedent for a future PNR agreement between the EU and the UK.² Our predecessors decided to hold the proposed Council Decision under scrutiny (even though it had been adopted) in the expectation that the Government would provide progress reports on the negotiations. We have had none.

Turning to the Commission report, we are struck by the Commission’s view that “the factual and legal circumstances of the PNR Directive are different” from

¹ See [Opinion 1/15](#) issued on 26 July 2017.

² See our Thirteenth Report HC 301-xiii (2017-19), [chapter 2](#), 7 February 2018.

those considered by the Court in its Opinion on the proposed EU/Canada PNR Agreement and that (implicitly) a longer data retention period may be permissible for the sharing of PNR data amongst EU Member States than with non-EU third countries. **We would be interested to hear whether you share the Commission's view, how it has affected the changes made to the revised EU PNR Agreement with Canada, and what implications these changes may have for the sharing of PNR data between the EU and the UK after transition.**

We note that the Commission does not support further changes to the EU PNR Directive at this stage, underlining the need to focus instead on its effective implementation and application by all Member States. **Do you consider that the Commission's position makes it less likely that the EU will agree to the transfer and processing of PNR data collected by rail and sea transport operators, as envisaged in Part Three of the [UK's draft agreement on law enforcement and judicial cooperation in criminal matters](#)?**

The [EU's amended draft text on law enforcement and judicial cooperation in criminal matters](#) sets a number of conditions for the UK to meet before the EU will agree to the transfer of PNR data. They include obtaining two "data adequacy decisions", one under the EU's General Data Protection Regulation and one under the EU's Law Enforcement Data Protection Directive, as well as agreeing to remain bound by the European Convention on Human Rights (ECHR) and continuing to give effect to its provisions in national law. **Do you consider that meeting these conditions would make it easier for the UK to secure a more ambitious PNR agreement with the EU, on terms similar to the EU PNR Directive, than has been the case for other third countries, such as Australia, Canada or the US?**

We look forward to receiving your response within ten working days.

I am copying this letter to 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 the Clerk (David Weir) of the Justice Committee; the Chair (the Earl of Kinnoull) and Clerk (Stuart Stoner) of the Lords European Union Committee; Alex Bernal of your Department; and Les Saunders and Donald Harris in the Cabinet Office.

CHAIR