

European Scrutiny Committee

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From: Sir William Cash MP

19 November 2020

Rt Hon. James Brokenshire MP
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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)

Thank you for your [letter of 16 October 2020](#) responding to questions raised in our [Twentieth Report of Session 2019-21](#) and our [letter of 10 September 2020](#) concerning arrangements for sharing Passenger Name Record (PNR data) with EU and other international partners for law enforcement purposes.

We are surprised to hear that there was no Member State involvement in negotiations on the revised EU/Canada PNR Agreement and no substantive updates provided by the Commission. The reason given by the Government for opting into the proposed Council Decision authorising the EU to re-open negotiations was to influence the Council's position and role in the negotiations, given that the outcome could potentially set a precedent for a future PNR agreement between the EU and the UK.¹ The then Immigration Minister (Rt Hon. Brandon Lewis MP) told our predecessors in November 2017 that the UK (and some other Member States) had insisted on the inclusion of wording requiring the Commission to conduct the negotiations with Canada "in consultation with the relevant Council Working Party" (on which Member States are represented) and in line with any subsequent directions given by the Council. If, in practice, there was no Member State involvement in the negotiations (which took place in 2018 and 2019, while the UK was still a member of the EU) or substantive Commission updates, we assume it is because the Council Working Party did not request any.

¹ See our Thirteenth Report HC 301-xiii (2017-19), [chapter 2](#), 7 February 2018.

We note that you “do not see data adequacy as a pre-requisite to our future law enforcement arrangements with the EU” given that “there is no precedent in existing EU third country arrangements that requires data adequacy to be a prerequisite”. As you make clear later in your letter, however, the agreement the UK is seeking with the EU on PNR data transfers would be based on, “and in some respects go beyond, precedents for PNR agreements between the EU and third countries”. The point of our questions, therefore, was to understand whether the conditionality required by the EU is justified by the scope and scale of the third country arrangements requested by the UK which are, indeed, without precedent.

We have no further questions to raise but welcome your offer to report back to us on the outcome of negotiations with the EU. We would also welcome updates on any negotiations underway or planned for bilateral PNR agreements with other (non-EU) third countries, including “rollover” or continuity agreements with Australia and the United States of America.

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