

European Scrutiny Committee

House of Commons London SW1A 0AA

Tel (020) 7219 3292 Email escom@parliament.uk Website www.parliament.uk/escom

From: Sir William Cash MP

26 March 2020

Rt Hon. Oliver Dowden OBE MP

Secretary of State for Digital, Culture, Media and Sport

4th Floor

100 Parliament Street

London SW1A 2BQ

Proposed Regulation concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (ePrivacy Regulation): 5358/17

Thank you for sight of your letter of 6 March to the Chairman of the Lords' European Union Committee. We are also grateful for the previous letters received from your department before and since the election which the Committee has only now had the chance to consider.

Your letter of 6 March was in response to a letter from the Lords' European Union Committee which raises similar concerns to those previously raised by our predecessor Committee. We note that at this stage, there is no certainty as to when the Regulation might be adopted and so whether it would have to be applied by the UK before the end of the transition period. Nevertheless, the Committee still has concerns about the proposal which can be summarised in the following three questions:

- Will provisions in an adopted ePrivacy Regulation relating to processing for national security and combatting online child sexual abuse and exploitation (CSEA) be compatible with UK national interests?
- If not, then after transition would the UK seek to diverge from the Regulation if this was necessary for national security reasons and to combat CSEA?

- Could a divergent UK approach after transition affect the ability of UK business to provide services based on electronic communications to EU end users, considering the extraterritorial reach of the proposed Regulation and the UK's goal of obtaining data adequacy decisions from the EU?

We would ask you to bear these questions in mind when you provide this Committee with your next update on any developments in the negotiation of the proposed Regulation. This is a legislative file which we will be scrutinising closely, not least because of the Committee's new statutory role to assess legislative proposals for matters of "vital national interest" to the UK during the transition period (see Section 13A European Union (Withdrawal) Act 2018).

In addition, we would ask you to also take into account further developments in the [Privacy International case](#) before the Court of Justice. We note the recent Advocate General opinion on 15 January 2020 that the bulk, indiscriminate processing of communications data for national security purposes falls within the scope of the current e-Privacy Directive. We look forward to the Government's comments on the Court of Justice judgment in due course and any implications for the UK and UK legislation, in terms of both the current Directive and the proposed Regulation as its successor.

The Committee is also very interested in your explanation in your letter about UK engagement with the EU on the negotiation of EU legislative proposals during the transition period. You said:

"The newly formed UK Mission to the European Union (UKMis Brussels) is continuing to monitor the progress of the proposed Regulation and to understand emerging thinking. HMG will continue to seek to engage the EU as it develops its positions and where it is in our national interests, as we would other international organisations where possible".

In the interests of transparency, we would be grateful if you could be more specific about those means of engagement with the EU, in terms of any structure, fora, frequency and participants.

We ask that your next update be provided as soon possible and at the very least by 24 April. As a general guide, updates should be provided immediately to the Committee during the transition period if there is any expedition in the negotiations of the proposal which might mean that it would apply to the UK before the end of that period.

Please note that I am also 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 Home Affairs Committee, the Justice 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 Department for Exiting the EU; and to James Ainsworth, and Rachel Marnick in your Department.

CHAIR