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Lord Boswell of Aynho  
Chairman of the European Union Committee  
House of Lords  
London  
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MC2017/06396/DC  
26 October 2017

Dear Tim

The Government would like to thank the Committee for its work on the House of Lords Brexit: EU Data Protection Package report which was published on the 18 July 2017.

The UK is recognised as being one of the leading drivers of high data protection standards across the globe. The Government recognises the importance of maintaining these high standards, and is committed to ensuring that, after our exit from the EU, the UK will remain a global leader on data protection.

The Government's response to the conclusions and recommendations made by the Committee is set out below.

**The Government has said that it wishes to secure unhindered and uninterrupted flows of data between the UK and the EU post-Brexit, to facilitate both trade and law enforcement cooperation. We support this objective, and note that any arrangement that resulted in greater friction around data transfers between the UK and the EU post Brexit could hinder police and security cooperation. It could also present a non-tariff barrier to trade, particularly in services, putting companies operating out of the UK at a competitive disadvantage. The Government must not only signal its commitment to unhindered and uninterrupted flows of data, but set out clearly, and as soon as possible, how it plans to deliver that outcome. We were struck by the lack of detail in the Government's assurances thus far.**

The Government agrees on the importance of sharing personal data for commercial purposes and wider cooperation, including to help in the fight against serious crime and terrorism.

The UK will therefore continue to align its own data protection framework with that of the EU, to enable us to forge a strong future partnership and ensure continued law enforcement and security co-operation, which is in the interests of both the UK and the EU.



To this effect, the UK Government has proposed that the UK and the EU agree a model for protecting and exchanging personal data. As I set out in the Commons Chamber during the Leaving the EU: Data Protection debate on Thursday 12<sup>th</sup> October, we are looking at an enhanced mechanism that builds on what the existing model of adequacy provides for third countries. The Government would like to see a future UK-EU partnership that:

- maintains the free flow of personal data between the UK and the EU;
- offers sufficient stability and confidence for businesses, public authorities and individuals;
- provides for ongoing regulatory cooperation between the EU and the UK on current and future data protection issues, building on the positive opportunity of a partnership between global leaders on data protection;
- continues to protect the privacy of individuals;
- respects UK sovereignty, including the UK's ability to protect the security of its citizens and its ability to maintain and develop its position as a leader in data protection; and
- does not impose unnecessary additional costs to business.

**We urge the Government to ensure that any transitional arrangements agreed during the withdrawal negotiations provide for continuity of data-sharing, pending the adoption of adequacy decisions in respect of the UK.**

The Government agrees on the importance of maintaining uninterrupted data flows when the UK leaves the EU. It would be in the interests of both the UK and the EU to agree early to mutually recognise each other's' data protection frameworks as the basis for the continued free flow of data between the EU and the UK from the point of exit until such time as new and more permanent arrangements come into force.

**Even if the UK's data protection rules are aligned with the EU regime to the maximum extent possible at the point of Brexit, there remains the prospect that over time, the EU will amend or update its rules. Maintaining unhindered data flows with the EU post-Brexit could therefore require the UK to continue to align domestic data protection rules with EU rules that it no longer participates in setting.**

**Even if the Government does not pursue full regulatory equivalence in the form of an adequacy decision, the UK will retain an interest in the way the EU's regulatory framework for data protection develops. There is no prospect of a clean break: the extra-territorial reach of the GDPR means that the legal controls placed by the EU on transfers of personal data outside its territory will apply when data is transferred from the EU to the UK, affecting UK businesses that handle EU data.**

The Government acknowledges the UK's future interest in this policy area. Tackling future questions and challenges around data protection will require close working with a number of global partners, including the EU. This is why we are seeking to establish a new partnership with the EU, which also provides for ongoing regulatory cooperation with the EU and the UK on current and future data protection issues.

The UK has long been recognised as a leader in data protection, with the current Data Protection Act 1998 being recognised as the gold standard in data protection. We remain committed to maintaining those high standards post exit from the EU.

It is for this reason that the Government recently published the Data Protection Bill, which encompasses the provisions of the GDPR and the DPD, and which will continue to form the basis of our domestic data protection legislative framework following our exit from the EU. This will ensure that organisations that handle personal data do so in accordance with the same set of rules as those organisations in the EU.

**The way that EU institutions such as the new European Data Protection Board and the Court of Justice of the European Union interpret the EU's data protection laws could also affect the UK, albeit indirectly—as demonstrated by the experience of the United States with Safe Harbour. Any changes to EU data protection laws would potentially alter the standards which the UK would need to meet to maintain an adequate level of protection. The UK could find itself held to a higher standard as a third country than as a Member State, since it will no longer be able to rely on the national security exemption in the TFEU that is currently engaged when the UK's data retention and surveillance regime is tested before the CJEU.**

The UK already has robust data protection safeguards in place in line with existing EU law requirements and plans to implement the new EU data protection framework including the Directives relating to law enforcement by May 2018. This will ensure that our domestic framework is aligned with EU law at the time of exit. The UK is already compliant with EU law on data protection and is confident that UK national security legislation should not present a significant obstacle to data protection negotiations. The activities of UK security and intelligence agencies are governed by one of the world's most robust legal frameworks and oversight arrangements, which ensure UK intelligence activity adheres to strict principles of necessity and proportionality.

**The UK has a track record of influencing EU rules on data protection and retention. Brexit means that it will lose the institutional platform from which it has been able to exert that influence. It is imperative that the Government considers how best to replace those structures and platforms in order to retain UK influence as far as possible. It should start by seeking to secure a continuing role for the Information Commissioner's Office on the European Data Protection Board.**

The Government is open to exploring a model which allows the Information Commissioner's Office (ICO) to remain fully involved in the EU Data Protection Board which would of course reassure businesses and other stakeholders. Given the ICO's reputation as a highly regarded, pragmatic regulator, we believe that their continued participation would be invaluable to both the UK and EU's data protection regulatory frameworks as these continue to evolve.

**The EU-US Privacy Shield and the EU-US Umbrella Agreement will cease to apply to the UK post-Brexit. Because of EU rules for onward transfers, securing unhindered flows of data with the EU may require the UK also to demonstrate that it has put arrangements in place with the US that afford the same level of protection as the Privacy Shield and the Umbrella Agreement.**

As I set out in the Commons Chamber during the Leaving the EU: Data Protection debate on Thursday 12<sup>th</sup> October, the Government want to ensure that data flows between the UK and third countries with EU adequacy decisions, such as the United States, can continue on the same basis.

The UK will continue to work closely with the EU and our wider international partners to robustly safeguard privacy and promote innovation, whilst ensuring that law enforcement bodies can protect citizens from crime and terrorism.

**In the longer term, it is conceivable that an international treaty on data protection could emerge as the end product of greater coordination between data protection authorities in the world's largest markets. The Government's long-term objective should be to influence the development of any such treaty. Given the relative size of the UK market compared to the EU and US markets, and its alignment with EU rules at the point of exit, the Government will need to work in partnership with the EU to achieve that goal—again underlining the need to adequately replace existing structures for policy coordination.**

As the Government's paper on the future data protection partnership noted, global leadership and standards are needed so that individuals can be confident that their personal data is being appropriately protected wherever they access goods and services. However, this should also not undermine the provision of such goods or services, including on a cross-border basis.

It is therefore the Government's ambition for the UK to remain a global leader on data protection by promoting both the flow of data internationally and appropriate high standards of data protection. We want to continue to work closely with the EU, which has also been at the forefront of driving the improvement of global data protection standards, and our wider international partners, to work towards stronger global standards.

<https://www.gov.uk/government/publications/the-exchange-and-protection-of-personal-data-a-future-partnership-paper>

I am copying this letter to the Chair European Scrutiny Committee, to Les Saunders at DExEU, Lynn Gardner ESC, Chris Johnson EUC and DCMS scrutiny coordinator.

Yours ever

A handwritten signature in blue ink, appearing to read 'Matt Hancock', followed by a decorative flourish.

**THE RT HON MATT HANCOCK MP**