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21st September 2016

Lord Boswell of Aynho
Chair
European Committee
House of Lords
LONDON SW1A 0PW

Dear Tim

5833/12: Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data (Data Protection Directive) Unnumbered: Draft Commission Implementing Decision pursuant to Directive

95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-US Privacy Shield

8491/16: Proposal for a Council Decision on the conclusion, on behalf of the European Union, of an Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses

8245/15: Proposal for a Council Decision on the signing, on behalf of the European Union, of an Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection and prosecution of criminal offenses

Thank you for your letter on the 7th September. I would like to introduce myself as the new Minister responsible for the data protection portfolio at the Department for Culture, Media & Sport. I look forward to working with your Committee and I hope to continue the work that Baroness Neville-Rolfe has done on this file.

Here is my response to the specific issues you raised in your letter.



EU General Data Protection Regulation (GDPR) and law enforcement Directive

The GDPR will be directly applicable in the UK from the 25th May 2018, whilst the related Law Enforcement Directive will be applicable from the 5th May 2018. This is based on the assumption that the UK remains a member of the European Union (EU) at that time, and no other arrangements apply.

In light of the recent EU Referendum result, the Government is considering how best to approach the legislative and administrative requirements of this EU Data Protection Package, and the extent to which the Data Protection Act 1998 (DPA) will have to be amended or repealed. It is the Government's priority to provide a data protection framework that will work for citizens and businesses alike, whilst providing an adequate level of protection of personal data.

EU-US Privacy Shield

The Privacy Shield was adopted on the 12th July 2016, following a vote by Member States through their representatives at the Article 31 Committee on the 8th July. The formal vote had been preceded by eight prior meetings of the Article 31 Committee since the publication of the draft adequacy decision on 29 February 2016. Those meetings provided the opportunity for in-depth discussions on the draft decision and its annexes, including of further improvements to the Privacy Shield made following the opinions delivered by the Article 29 Committee and the European Data Protection Supervisor, and subsequent negotiations with the US. During those discussions UK representatives continually highlighted the importance of concerns noted in those opinions being addressed by the Commission and its US counterparts.

Finalising the Privacy Shield was seen to be in the UK's interests, because it provides a means for UK businesses to continue to transfer personal data to the US. This is a major step forward for restoring certainty and a stable legal footing for transatlantic data flows. Equally, as Baroness Neville-Rolfe mentioned in her letter on the 20th June, the Privacy Shield goes significantly further in protecting the rights of data subjects than the old Safe Harbor agreement which, as the Committee knows, had been the extant mechanism for such transatlantic transfers for some 15 years..

A key feature of the Privacy Shield adequacy agreement is its joint annual review mechanism. The Commission and the US Department of Commerce will conduct an annual review of the functioning of the Privacy Shield, involving US national security experts and European Data Protection Authorities. The Commission will issue a public report to the European Parliament and the Council, based on the annual joint review and other relevant sources, such as company transparency reports.

The Article 29 Committee has since indicated it anticipates that the first joint annual review will be key to assessing the robustness and efficiency of the Privacy Shield. The Government shares the view of the Article 29 Committee in this regard: that a period of time should be given to allow the enhanced measures under the Privacy Shield agreement to fully take effect before reaching conclusions as to its effectiveness. Therefore, while the

Government takes the view that the progress made in replacing Safe Harbour with the Privacy Shield, and in the robustness of the Shield itself since the first A29 opinion, provide a strong basis on which a legal challenge could be resisted, I will refrain from speculating in in respect of any future litigation.

EU-US Umbrella Agreement

As you are aware, the signature of the Umbrella Agreement was adopted on the 2nd June 2016. The text of the conclusion of this Agreement is now due to be adopted by both the European Parliament and the Council of the EU. UK representatives in Brussels are not yet sure when this will take place, because the Slovak Presidency has not given us an indication of its intentions on this portfolio.

It is worth noting that the European Parliament gave its consent to the signature of the Umbrella Agreement, and it is therefore likely that it will also consent to the conclusion of this Agreement.

You ask about principles and safeguards in regards to data transfers for national security purposes, given that the Umbrella Agreement does not apply in those circumstances. Data transferred to overseas liaison partners for national security purposes is governed by the Intelligence Services Act 1994 and Security Service Act 1989. Transfers to third countries outside the EEA are governed by exemptions in the ministerial certificates granted to the Security and Intelligence Agencies (SIA) under section 28(2) of the Data Protection Act 1998. Under section 28(4) DPA, individuals may challenge use of the SIAs' ministerial certificates in proceedings before the Upper Tribunal. Data processing by the SIAs in accordance with their statutory functions is in any event subject to a robust system of oversight and accountability, through ministers and (as relevant) the Information, Interception and Surveillance Commissioners. The Intelligence and Security Committee provides parliamentary oversight and individuals can make claims or complaints to the IPT or, depending on the nature of the claim, the normal civil courts.

As Baroness Neville-Rolfe stated in her letter of the 15th July, the application of the Umbrella Agreement to the UK is limited due to Article 6a of Protocol 21, which clarifies the special status of data protection rules agreed under Article 16 of the Treaty on the Functioning of the EU (TFEU) relating to Chapters 4 and 5 of Title V of the TFEU. Moreover, the UK does not participate in the EU-US Mutual Legal Assistance and Extradition Agreements, and so would not be bound by the terms of the Umbrella Agreement in relation to them. The UK would, however, be bound in relation to Agreements which we have opted-in to, such as the EU-US PNR Agreement.

Furthermore, regarding your query on the Investigatory Powers Bill - both the Regulation of Investigatory Powers Act and the Investigatory Powers Bill provide a legislative framework for the use of key investigatory powers. They make clear the safeguards that apply when relevant material is disclosed to other countries. The Secretary of State must be satisfied that satisfactory and equivalent handling arrangements are in place before sharing data with an overseas authority.

I sincerely hope to begin my tenure as Minister for Culture and the Digital Economy with strong relations with the parliamentary committees. I understand that the previous delays in responding to committee letters were addressed in Baroness Neville-Rolfe's letter to you on the 15th July and in Sue Owen's, DCMS Permanent Secretary's, letter to Eve Samson on the 30th June. DCMS have made a range of changes to their scrutiny arrangements so that we can better serve your Committee on complex issues.

I am copying this letter to Sir William Cash MP (Chair of the European Scrutiny Committee), Eve Samson (Clerk of the Commons Scrutiny Committee), Les Saunders (Cabinet Office) and Pooja Lakhani (DCMS).

Yours ever

A handwritten signature in blue ink, appearing to read 'Matthew Hancock', followed by a long, horizontal wavy line.

Rt Hon Matthew Hancock MP
Minister of State for Digital and Culture