



Department for Culture Media & Sport

Minister of State for Digital and Culture
4th Floor
100 Parliament Street
London SW1A 2BQ

T: 020 7211 6000

www.gov.uk/dcms

Lord Boswell of Aynho
Chairman of the European Union Committee
House of Lords
London SW1A 0PW

CMS 294488/DC
25 November 2016

Dear Tim

The Commission Decision on the adequacy of the protection provided by the EU-US Privacy Shield (Unnumbered Document) and the council Decisions on signature and conclusion of an Agreement between the USA and the EU on the protection of personal information relating to the prevention, investigation, detection and prosecution of criminal offences (Documents 849/16 and 8245/16)

I am writing in response to your letter dated 19 October from the House of Lords European Union Committee. You have written asking for further information on the EU-US Privacy Shield and EU-US Umbrella Agreement. I am sorry for the delay in responding to your letter.

EU-US PRIVACY SHIELD

You have requested further information on the EU-US Privacy Shield. In particular, you ask whether the prospective changes to the text - addressing key concerns raised by the article 29 Working Party, as highlighted by my predecessor in her letter of 20 June, were included in the final text of the agreement. My understanding is that the Commission did seek to address those key concerns in its subsequent negotiations with the US, which were in turn considered by the Article 31 Committee. The key revisions to the finalised framework secured were along the lines of the prospective changes anticipated at the time and included:

- additional clarifications being provided by the US on how “bulk collection of data” will only be used under specific preconditions, in a way that is as “targeted and focused” as possible;
- clarifications being provided on the role of the ombudsperson, its autonomous structure with emphasis on its independence from national security services;
- enhanced data retention rules that will ensure Privacy Shield certified companies now have to delete data that no longer serves the purpose for which it was collected;



- clarifications on procedural issues relating to future changes to relevant US law;
- clarifications in respect of onward transfer of data outside of the US and the application of purpose limitation principles therein.

Further enhancements included, a stronger set of data protection requirements to which companies will make a commitment that is enforceable under US law; new options for accessible redress for EU individuals. In addition to these improvements, the framework now offers significantly expanded cooperation with EU data protection authorities by giving them a role in the complaint resolution mechanism and in the annual review. The ombudsperson mechanism will also now provide a new channel for EU individuals to raise questions regarding US intelligence practices. The US went to considerable lengths to address the key concerns identified within the framework, and the UK welcomed the conclusion of the agreement as a more robust model.

The Committee asked for confirmation of the formal outcome of the Article 31 meeting on 8 July. As indicated above, the Privacy Shield was adopted on the 12th July 2016. Adoption came following the approval of the draft adequacy decision by the Article 31 Committee at its meeting on 8 July. At that meeting a formal vote was taken by Member States, through their representatives with 24 Member States in favour, including the UK, none against, and four abstentions. The meeting of the 8 July 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, including that of 8 July 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 as noted above.

EU-US UMBRELLA AGREEMENT

Turning now to the umbrella agreement, you ask whether any changes were made to the Agreement as a result of the European Data Protection Supervisor's (EDPS's) opinion issued on 12 February 2016. I do not believe that changes were made to the text as a result of the EDPS's opinion. While the opinion was considered it appears that the contrary view (that the Agreement is lawful as it does not reduce the rights of any individual but, rather, extends rights, and furthermore that the Agreement provides individuals in the EU that are not EU citizens with avenues for administrative redress) was persuasive in Council.

On timing, I understand that the European Parliament is expected to vote in favour of the Council Decision on the agreement on 1 December. The final step will then be for the Council to adopt the Council Decision on Conclusion. I understand that the US and other EU Member States are keen to conclude the agreement before the new US Administration takes office in the new year. Therefore, the Commission plan to issue a written procedure after the EP vote to adopt the Council Decision on Conclusion of the Agreement ahead of the EU-US JHA Ministerial Summit on 5-6 December. I should therefore be grateful if the Committee could consider lifting its scrutiny on the Council Decision on the Conclusion in time for the Council signature by 1 December, so that the UK is able to agree to the written procedure to adopt this Council Decision.

Lord Ashton of Hyde, Parliamentary Under-Secretary (Department for Culture, Media and Sport) issued a written ministerial statement (HLWS260) on 16 November, setting out the reasons and an apology for the Scrutiny override of the signing of the Umbrella Agreement. Please see the wording to the WMS below:

Scrutiny Override on EU-US Umbrella Agreement

My Rt Hon Friend the Minister of State for Digital and Culture (Matt Hancock) has made the following Statement:

The Department for Culture, Media and Sport (DCMS) is responsible for the Government's participation in European negotiations on the EU-US Umbrella Agreement which is a comprehensive data protection framework for criminal law enforcement cooperation. Due to rapid decision making at EU level the explanatory memorandum on the EU-US Umbrella Agreement, submitted for scrutiny to Parliament, was submitted late on 23 May 2016. Decisions on the signature text of the Umbrella Agreement were made by the Council of Ministers before Parliament could complete the process of scrutiny on the agreement. The Proposals were:

Proposal for a COUNCIL DECISION on the signature, 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 offences (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 offences (8245/16)

The UK voted in favour of the signature part of the agreement at JHA Council on 20 May. This decision to vote in favour of the signature at Council and the delay in submitting the explanatory memorandum on the Umbrella Agreement resulted in a scrutiny override being triggered.

The reason for the delay in submitting the explanatory memorandum was due to negotiations of the Umbrella Agreement being brought forward at short notice, leaving Member States with less time than usual to assess the text. I am very sorry that this shortened time scale did not allow normal scrutiny procedures to be followed and I hope that the House understands the reasons.

Department for Culture, Media & Sport

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 'Matt Hancock', followed by a decorative flourish.

THE RT HON MATT HANCOCK MP