HOUSE OF LORDS
European Affairs Committee

House of Lords
London
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www.parliament.uk/

The European Affairs Committee of the House of Lords was appointed to consider matters relating to the United Kingdom's relationship with the European Union and the European Economic Area, including the implementation and governance structures of any agreements between the United Kingdom and the European Union; and to consider European Union documents deposited in the House by a Minister. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published below.

This edition includes correspondence from 1 November 2024 to 31 January 2025

EUROPEAN AFFAIRS COMMITTEE

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REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE AUTOMATED SEARCH AND EXCHANGE OF DATA FOR POLICE COOPERATION, AND AMENDING COUNCIL DECISIONS 2008/615/JHA AND 2008/616/JHA AND REGULATIONS (EU) 2018/1726, (EU) 2019/817 AND (EU) 2019/818 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (THE PRÜM II REGULATION) - PE-CONS 75/23

Letter from the Chair to The Rt Tom Tugendhat MP, Minister of State for Security, Home Office

Thank you for your Explanatory Memorandum (EM) dated 20 March 2024. It was considered by the European Affairs Committee at its meeting of 30 April 2024.

The Committee agreed that the new EU Regulation establishing Prüm II raises important issues of public policy for the UK. It will inevitably have implications for law enforcement cooperation between the UK and EU under Part Three of the Trade and Cooperation Agreement (TCA). We note that this is the first time since the entry into force of the TCA that the EU has decided to amend an important aspect of the European legal framework for police cooperation.

The nature of the changes to the current Prüm system highlighted in your EM are very substantial, including:

- *an expansion of the categories of data covered*: when operational, in addition to DNA, fingerprint and vehicle registration data, Prüm II will allow for the exchange of facial image data for biometric matching and police records; biometric searches for missing persons; and the identification of human remains (where this is allowed under national law).
- *the introduction of a "centralised router model":* whereby Prüm II will operate on the basis of on a single database to be built and managed by the EU's IT Agency eu-LISA; and,
- *an expanded role for Europol*: aimed at enhancing the ability of the participating states to automatically check third country-sourced biometric data held at the agency

Consultation

However, we do not feel able to scrutinise the Government's approach to this issue on the basis of the information provided in your EM. We recall that in 2015 the decision to participate in the original Prüm arrangements during the UK's membership of the EU was the subject of a formal lengthy Parliamentary process including: a Command Paper setting out the Government's case for the UK's participation (Cm 9149, November 2015); a report from the EU Select Committee: *"The United Kingdom's participation in Prüm",* 5th Report of Session 2015-16, 7 December 2015, HL Paper 66; and, debates in both Houses, the Commons on 8 December 2015 followed, the day after, by a debate in the Lords.

Your EM says nothing about replicating any of these procedures; offers no Government undertakings to keep Parliament informed about the process and the progress of the UK's negotiation with the EU under Article 541 TCA; or any planned public consultation on the merits. We therefore look forward to considering, in your response to this letter, your proposals for addressing these omissions and the timetable you have in mind for engagement with Parliament.

We note also that a number of European civil liberty groups (including six UK based stakeholders) have raised concerns about the changes agreed to the system, including a call from Statewatch for a

democratic debate on the choice facing the UK Government. Concerns raised include: the expansion of the data categories to include facial imagery which, they argue, could see unlawfully retained photos of millions of individuals who have never been charged with a crime opened up to searches by police forces in EU Member States; fears that the broad definition of "police records" would encompass vast quantities of files, including on people who have never been charged nor convicted of an offence; and, access to driving licence data which is not routinely available for policing purposes. These concerns show the importance of wide consultation on decisions about participation in Prüm II.

Article 541 TCA

The TCA includes a mechanism for handling the choice facing the UK (Article 541 TCA). Bearing this process in mind:

(i) does the Government consider the changes introduced by Prüm II to be "substantial" and thereby engaging Article 541 TCA? and,

(ii) has the EU formally initiated the Article 541 TCA process? If so, when does the (initial) nine-month period expire? If not, has the Government discussed with the EU any potential timetable for doing so?

Beyond the issue of formal EU notification, the EU Justice Sub-Committee asked the Government, during its 2021 inquiry, about the implications of EU reform for the UK's continued participation in the Prüm system. At that time, the Government emphasised that the UK would have a choice "as to whether or not to move its standards to meet the requirements under the Prüm system", adding that there is "no compulsory requirement for us to align". However, in our view, this does not reflect the practical reality because it is difficult to conceive of circumstances in which the UK could continue to cooperate with the EU on the exchange of data covered by the Prüm I system on the basis of a reformed and amended EU law (Prüm II) – a fact you acknowledged in correspondence with us during 2022.

As the Committee anticipated in 2021, this leaves the UK with a stark decision: either the UK aligns with the new EU rules in this field, or it ceases Prüm based cooperation with the EU. Do you agree?

In your EM, you emphasise the time it will take before Prüm II will be operational (noting the requirement for the EU to act further via-tertiary legislation) and conclude that "UK participation [in Prüm II] will require an analysis of the costs of the new systems against the benefits to law enforcement". We understand the need for this. But the practical reality is that if the Government chooses not to participate in Prüm II it is effectively bringing the UK's access to this EU data to an end. Do you agree that this is a further significant factor in any assessment of whether or not to align with the Prüm II Regulation?

We retain an interest in this matter and look forward to receiving your response within the usual 10-day deadline.

2 May 2024

Letter to the Chair from The Rt Tom Tugendhat MP, Minister of State for Security, Home Office

Thank you for your letter of 2 May 2024 in response to the Explanatory Memorandum (EM) on Prüm II dated 20 March 2024, in which you have raised the following questions:

- The Government's plans to involve Parliament in the decision on whether to participate in Prüm II.

- Plans for wider consultations, noting concerns raised by organisations such as Statewatch.

- The timetable for this work, including whether Article 541 of the Trade and Cooperation Agreement (TCA) has been triggered by the European Commission.

I would like to take this opportunity to thank you and the Committee for your interest in this law enforcement cooperation capability, and for acknowledging the important issues Prüm II raises for public policy in the UK.

At present, I do not have any further details on the processes that may be invoked under the TCA in respect of Prüm II. The EU has not formally notified the UK under Article 541, meaning the UK has not yet entered the formal negotiation period with the EU. However, my officials are actively engaged with EU partners and are committed to obtaining further information through dialogue with the Commission. This will inform the options for the UK participating in Prüm II, and the future of the UK's current participation in Prüm.

I echo your views on the need to account for the concerns raised by several civil liberty groups about the new data sharing framework. I certainly want to ensure that in due course, once further information on Prüm II is available, and before deciding on UK participation, adequate checks and balances are in place to safeguard UK data and the privacy of our citizens. I also agree that the question of having access to EU data, and whether this will come to an end if the UK chooses not to participate in Prüm II, is an important factor that will also be accounted for during the Government's decision-making process.

In your letter, you note some of the changes that will be made to the current Prüm system, as highlighted in the 20 March 2024 EM. As referenced in this EM, there is no immediate impact for the UK. This is because Article 541 of the TCA has not been triggered and the Prüm II framework cannot be operationalised without new technology, which will be governed by future implementing acts. The precise nature of these implementing acts is not yet clear, as the current Prüm II Regulation only refers to the fact they will be set out by the Commission, and subsequently adopted.

We will engage with Parliament further on the topic of Prüm II participation once we are able to provide further information about the practical and legal implications for the UK, and whether the UK should enter into this framework. I recognise that Parliament will have views on the decision regarding participation, and I will ensure that you and the Committee are kept fully up to date on any key developments during this discourse.

16 May 2024

Letter from the Chair to Dan Jarvis MBE MP, Minister of State for Security, Home Office

The previous Security Minister wrote to us on this issue on 16 May 2024, responding to a letter from the Committee of 2 May 2024.

The calling of the General Election on 22 May 2024 has led to an inevitable delay in our following up on this correspondence. It was considered by the European Affairs Committee at its meeting of 10 September 2024. We have decided to retain our interest in this matter.

We note that the Government has expressed a desire to explore a wider defence and security agreement with the EU which will inevitably overlap with any discussion concerning the impact of the EU's decision to reform the operation of Prüm on the UK's future participation in these data sharing arrangements. We would therefore welcome an early opportunity to discuss this matter directly with the relevant Minister and note that our officials have already been in contact to arrange a mutually convenient time.

We do not expect a response to this letter.

11 September 2024

WORKING ARRANGEMENT ON ESTABLISHING COOPERATION BETWEEN THE EUROPEAN BORDER AND COAST GUARD AGENCY (FRONTEX) AND THE HOME OFFICE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, SIGNED ON 23 FEBRUARY 2024 – UNNUMBERED

Letter to the chair from the Rt Hon Michael Tomlinson MP, Minister of State for Countering Illegal Migration, Home Office

Frontex working arrangement with the UK.

I am pleased to announce that discussions on a working arrangement (WA) between Frontex (the European Border and Coastguard Agency) and the UK have now concluded, and the WA is due to be signed. The text of the WA and an accompanying Explanatory Memorandum (EM) will be deposited in the libraries of both Houses shortly (please see attached).

23 February 2024

Letter from the chair to the Rt Hon Yvette Cooper MP, Home Secretary, Home Office

The previous Government sent us an Explanatory Memorandum (EM) dated 23 February 2024. It was considered by the European Affairs Committee at its meetings of 21 May and 10 September 2024. We have decided to retain an interest in this matter.

The calling of the General Election in late May has unavoidably delayed our response to this letter.

On the basis that dialogue, and cooperation are vital to tackle the problems of irregular migration and cross-border crime currently faced by both the EU and UK, the Committee broadly welcomes this Working Arrangement (WA) between the EU's border agency (Frontex) and the Home Office. However, the context within which we are considering this matter has changed significantly since the EM was first deposited.

As the new Government has expressed a desire to explore a wider defence and security agreement with the EU, we would welcome an early opportunity to discuss this matter (and others) directly with you. We note that our officials have already been in contact to arrange a mutually convenient time.

We do not expect a response to this letter.

11 September 2024

PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE TAKEN ON BEHALF OF THE EUROPEAN UNION IN THE PARTNERSHIP COUNCIL ESTABLISHED BY THE TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF

Letter from the Chair to Nusrat Ghani MP, Minister for Europe, Foreign, Commonwealth and Development Office

Thank you for your Explanatory Memorandum (EM) on a proposal on UK/EU Trade and Cooperation Agreement (TCA) Governance Document on electric vehicles (EVs) and their batteries. It was considered by the European Affairs Committee at its meeting of 26 March 2024.

We welcome the removal of the tariffs outlined in this amendment to the TCA, and the Government's intention to support the UK electric vehicle and battery manufacturing industries and continue to increase exports to EU nations. We commend the Government for taking this step.

We share your regret that this amendment to the TCA occurred too late for us to undertake scrutiny, because we agree that it has significant implications for the UK/EU motor industries and for UK/EU relations more broadly. We encourage the Government to provide as much notice as possible of any potential future amendments to deadlines within the TCA. That would enable us to fulfil our scrutiny role to the full.

Below are a series of questions on which we seek your response, in the interest of supporting successful UK-EU cooperation in the area of electric vehicles and batteries.

Automotive manufacturer confidence

Given the varied readiness of UK car manufacturers to produce EVs, we agree there is as you indicate a strong case for providing "long term certainty to the sector" (paragraph 9 of your EM). However, there is little evidence of this long-term certainty thus far. The late notice delay in introducing tariffs risks undermining investor confidence in the stability of the policy and regulatory framework set by the Government. To what extent has the Government consulted automotive and battery manufacturers on tariffs and incentives? Has the Government discussed the implications of this late change to the TCA with the UK's automotive and battery manufacturers? If so, what was their response?

Ready for 2027:

We note the new date for the implementation of a 10% tariff has been delayed three years until 2027. Does the Government have a plan to support domestic manufacturers in order that they are ready to produce commercially competitive cars with the requisite components of UK/EU origin by 2027?

In the European Commission's supporting documents, they outline "semi-annual dialogues" with their automotive and battery industries. This focus on continuous assessment is an interesting approach, aiming to achieve the 70% domestic battery sourcing target alongside improved battery sustainability.21 We would be interested to learn if similar dialogues with the UK automotive and battery industries are planned to foster collaboration and achieve shared sustainability goals.

Ready for 2032 rules of origin:

Given the broad powers in the TCA for the Parties to agree to amend almost any aspect of its application, can you confirm that this extension will be a one-off move to give the UK and EU motor manufacturers time to prepare for these changes (the rationale behind the original deadline of 2024)? Has the Government considered cooperating with the EU to ensure that we are jointly ready to compete openly with China and other manufacturing nations by 2032?

UK/EU trade deficit:

There is a trade deficit between the EU and UK on vehicle trade (1.3 million EU exports to the UK in 2022, valuing €30 billion, against 0.75million UK exports to the EU in the same period, valuing €10.3 billion, according to the European Automobile Manufacturers' Association (ACEA)). Does the Government have plans to ensure the UK's competitiveness in EV manufacture to reduce the current trade deficit with the EU?

Level playing field.

We note that the amendment also includes provisions for the Commission to set aside additional funding of up to €3 billion to boost the EU's battery manufacturing industry.22 Such action could go to the heart of the so-called level-playing field aspects of the TCA which seek to regulate the Parties' policies in areas including state subsidies, competition, state-owned enterprises, taxation, and environmental policies.

Is the Government, therefore, content with the EU's plans to assist its motor-manufacturing and battery industry in this way? Does the Government have any concerns that these plans may breach aspects of the so-called level playing field provisions of the TCA? If the Government is concerned that these plans pose a potential breach of the TCA's level-playing field, what action do you intend to take to address the EU's undertakings to its EV and battery industries? Do you have similar plans to boost the UK's EV and battery industries?

We look forward to considering your response within the usual deadline of 10 working days.

27 March 2024

Letter to the Chair from Nusrat Ghani MP, Minister for Europe, Foreign, Commonwealth and Development Office

Thank you for your letter of 27 March on UK/EU Trade in Electric Vehicles.

I am pleased that the Committee welcomes the agreement we reached with the EU on extending the TCA's electric vehicle rules of origin. This agreement will support our carmakers and consumers while we scale up battery supply and work to deliver our net zero commitments.

I note your point on timing. In this case, agreement with the EU was only reached on 21 December 2023, which regrettably left a short window to implement the extension ahead of the 1 January 2024 deadline. We will endeavour to provide as much notice as possible for any potential future amendments to deadlines within the TCA, so that the Committee can fulfil its scrutiny role to the full.

I would like to respond to the questions in your letter in turn.

Automotive manufacturer confidence

The UK automotive industry is an export-focussed sector and trade agreements that reduce or eliminate tariffs are essential. The Government continues to engage industry in our free trade agreement programme to understand positions that can deliver the best outcome for UK businesses.

The rules agreed in the TCA were developed alongside industry, designed to reflect existing and developing supply chains and provide manufacturers with time to adapt. However, since the TCA was agreed in 2020, manufacturers in both the UK and EU have been affected by unforeseen and shared external shocks to supply chains, increasing the costs of key raw materials and battery components that cannot be sourced in the UK or EU. This meant that UK and EU industry were not ready to meet the original 2024 rules.

This was a joint UK-EU issue, affecting manufacturers across Europe, and we worked with the EU to ensure UK manufacturers could benefit from export-led growth and maximise the opportunities provided by the TCA.

Throughout 2023, we engaged closely with industry stakeholders to understand overall industry readiness for the TCA's EV and battery rules, which informed our position. We continue to engage closely with the sector.

Readiness for 2027

The Government is making significant investments in the sector to support electrification. At the Autumn Statement last year, we announced the single biggest Government investment in UK auto manufacturing: £2 billion in new capital and R&D support for batteries and zero emission vehicles out to 2030. As part of the Advanced Manufacturing Plan, the Government also launched a battery strategy and extended our successful Made Smarter programme.

And industry is responding. Last summer, Tata Group announced a new gigafactory investment of over £4bn supplying batteries for Jaguar Land Rover. In September 2023, BMW announced a £600m investment to make new EVs at its Mini plant in Oxford. And in November 2023, Nissan announced up to £2bn of new investment to produce two new EVs in Sunderland.

We continue to engage closely with UK industry on the challenges it faces and on how to ensure it remains competitive and a global leader in innovation. The Government developed the UK Battery Strategy following a Call for Evidence and in partnership with an expert Taskforce comprised of industry and academia. A Taskforce will continue to be convened to help ensure implementation of the strategy and to advise on its delivery. The first Taskforce meeting of 2024 took place in March.

Readiness for 2032

As you note, in agreeing the extension to the TCA's rules of origin for electric vehicles and batteries, we also agreed with the EU to remove the Partnership Council's ability to further amend these rules until 1 January 2032. This reflects our shared commitment with the EU that this is a one-off extension to provide long term certainty to the sector as we continue to scale up our domestic battery supply chain and work to deliver our net zero commitments. As I've set out above, Government and industry are working to make sure the sector is ready.

The UK and EU automotive sectors are closely interlinked, and the TCA offers a strong basis for cooperation on both automotive and on the green transition. The relevant TCA Specialised Committees and the Working Group on Motor Vehicles and their parts – which will meet for the first time in the coming months – provide a platform for regular engagement between the UK and the EU on these important issues.

UK/EU trade deficit

The UK hosts Europe's second largest auto manufacturing industry, a sector that generated £71billion of turnover in 2022, directly accounted for 166,00 jobs, and indirectly supports a further 371,000 jobs. UK industry is firmly export-oriented: exports were worth £34.4bn in 2022, with almost 8 out of 10 domestically produced cars exported to over 130 markets worldwide, mainly to the EU.

Through the investments I have set out above, we are committed to ensuring the sector continues to thrive and compete globally as we transition to net zero. Electric and hybrid vehicle manufacturing has indeed increased rapidly over the past few years, rising from 15% of total UK automotive production in 2019 to 30% in 2022.

Level playing field.

The Government actively scrutinises patterns and trends in EU subsidies and their potential or actual impact on trade and investment between the UK and EU. We will continue to closely monitor and analyse EU subsidies and their impacts, including the scheme identified in your letter.

If the UK has specific concerns, we can raise questions with the EU directly, including through the TCA committee structures. In recent months we have raised a number of subsidy control matters with the EU through the Trade Specialised Committee on Level Playing Field and the Trade Partnership Committee.

25 April 2024

Letter from the Chair to The Rt Hon Nick Thomas-Symonds, Minister for the Constitution and European Union Relations & HM Paymaster General, Cabinet Office.

The previous Government's Minister for Europe, Nusrat Ghani, wrote a letter dated 25 April 2024 to the European Affairs Committee about this Council Decision. We considered it at our meeting of 17 December 2024.

The calling of the General Election in May unavoidably delayed our response.

Given the amount of time that has elapsed since the Minister responded and the subsequent change of Government, we feel that there is little to be gained by engaging in another round of correspondence on the substance.

We would welcome however periodic updates from you about any TCA related developments in the UK/EU trade in electric vehicles.

In the meantime, we draw our interest in this document to a close and do not expect a response to this letter.

18 December 2024

MEMORANDUM OF UNDERSTANDING ON OFFSHORE RENEWABLE ENERGY COOPERATION - UNNUMBERED

Letter to the Chair from Andrew Bowie MP Minister for Nuclear and Renewables, Department for Energy Security & Net Zero

Thank you very much for the letter you sent to the Department on 21st June last year. I appreciate that you did not ask for a response to your letter, but in my role as Minister responsible for international energy, I wanted to provide you, and colleagues of the European Affairs Committee, with an update on our progress as participants of the North Seas Energy Cooperation (NSEC).

In November last year, former Minister, Graham Stuart, attended the NSEC Ministerial meeting in the Hague, alongside ministers from Belgium, Denmark, France, Germany, Ireland, Luxembourg, the Netherlands, Norway, Sweden, and the European Commission.

At this meeting, Graham endorsed the NSEC 2023-2024 Action Agenda, which looks to lower barriers to the development of offshore wind projects, through sharing best-practice and speeding up permitting procedures, developing a more integrated offshore energy system, resilient supply chains, and a better balance between energy and nature in the North Seas through coordinated maritime spatial planning.

This year sees Denmark take over the Co-presidency of NSEC, alongside the European Commission. The Danish Co-presidency's priorities for the year include Realising ambitions for offshore renewable infrastructure projects, strengthening European supply chains and industry, and an increased focus on offshore green hydrogen. On 19 February, I had a call with Lars Aagaard, Danish Minister for Climate, Energy, and Utilities, to discuss what we are both looking for from NSEC and, following this conversation, I am confident that Denmark's priorities align with our own.

I trust you will find this update useful, and we will continue to make the Committee aware of our progress in this important policy area.

7 May 2024

PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE TAKEN ON BEHALF OF THE EUROPEAN UNION WITHIN THE TRADE SPECIALISED COMMITTEE ON ADMINISTRATIVE COOPERATION IN VAT AND RECOVERY OF TAXES AND DUTIES ESTABLISHED BY THE TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART – COM (2023) 504 = 12523/23

Letter from the Chair to Victoria Atkins MP, Financial Secretary to the Treasury, HM Treasury

Thank you for your Explanatory Memorandum (EM) dated 3 October 2023 which was considered by the European Affairs Committee at its meeting of 8 November 2023.

We welcome the developments highlighted in the EM as indicative of improved UK/EU relations. We recall, however, that during our 2021 inquiry into "Trade in Goods between Great Britain and the EU" (4th Report of Session 2021-22, 16 December 2021, HL Paper 124) we heard evidence about the negative impact caused by the post-Brexit rules on VAT; in particular, the friction caused to the movement of goods and the related "burden" the changes imposed on small businesses (see paragraphs 94 – 101 of our report).

Since we published our report in 2021, what consideration has the Government, alongside the EU, given to measures beyond those highlighted in your EM that might alleviate this friction?

We look forward to considering your response within the usual 10-day deadline.

8 November 2023

Letter to the Chair from Nigel Huddleston MP, Financial Secretary to the Treasury, HM Treasury

Thank you for your letter of 8 November to my predecessor with regards to her Explanatory Memorandum of 3 October.

We continue to press the EU on the issue of fiscal representatives, and the unnecessary burdens that this requirement imposes on UK businesses. This matter was discussed at the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties when it met in London on 19 October.

While the EU continues to maintain its position, this remains a priority of the Government and we continue to seek a resolution. We will continue to raise this issue with the EU where suitable opportunities arise.

The Implementing Decisions mark significant progress in creating a legal framework to routinely exchange relevant information between the UK and EU Member States. This will enhance cross-border tax compliance and facilitate a coordinated approach towards debt recovery.

21 November 2023

GENERAL CORRESPONDENCE

INTRODUCTORY LETTER

Letter to the Chair from Sir Oliver Robbins, Permanent Under-Secretary, Foreign, Commonwealth and development Office.

I am writing to introduce myself as the newly appointed Permanent Under-Secretary. It is my pleasure to have the opportunity to work with you once again.

I recognise the crucial role that the Committee plays in the Lords in scrutinising the work of our Department, and I am committed to engaging with you to understand your priorities over this Parliament. Your leadership of the Committee's work has been highly valued, and I look forward to collaborating with you.

The FDCO is dedicated to building a strong working relationship with the Committee and I welcome your Committee's engagement on the Department's agenda, notably the UK-EU reset.

28 January 2025

PRIORITIES OF THE POLISH EU COUNCIL PRESIDENCY, JANUARY 2025 - JUNE 2025

Letter to the Chair from the Rt Hon Nick Thomas-Symonds MP, Minister for the Constitution and European Union Relations & HM Paymaster General, Cabinet Office

As the Minister responsible for UK-EU Relations, I am writing to let you know the priorities of the Polish Presidency of the Council of the European Union (EU) as agreed under the current arrangements for parliamentary scrutiny of EU business by your Committee.

Poland assumed the six-month rotating Presidency of the Council of the EU on 1 January 2025. At a press conference on 10 December 2024, Poland's Minister for EU affairs Adam Szłapka, whom I have previously met with, confirmed that security would be the organising theme of the Presidency, anchored across seven key priorities: i) defence and security; ii) protection of people and borders; iii) resistance to foreign interference and disinformation; iv) ensuring security and freedom of business; v) energy transition; vi) competitive and resilient agriculture; and vii) health security. The Polish Government has emphasised that sustaining support for Ukraine, increasing pressure on Russia, and strengthening the EU-US relationship will also be key themes during their Presidency.

The Polish Presidency is the first substantive Presidency of the new Commission, which took office on 1 December. The publication of the Commission Work Programme, expected in early February 2025, will shape much of the work of the Polish Presidency. The Commission Work Programme is expected

to include: a Competitiveness Compass, a Clean Industrial Deal, a White Paper on European Defence, further legislation on returns, reviews of policy areas most affected by possible EU Enlargement, and an omnibus item on regulatory simplification.

Defence and Security

The Polish Presidency will focus on strengthening European defence to contend with the threat posed by Russia. This priority has several pillars: first, Poland will encourage EU Member States to increase defence spending, to support improved defence capabilities and readiness; second, the Poles will push to strengthen the European defence industry; third, the Presidency will aim to strengthen defence cooperation with NATO and likeminded partners including the UK and the USA.

European security is this Government's foreign and defence priority. Recognising the important role the EU plays in the security of Europe, the Government is engaging with the EU's External Action Service to advance work towards a UK-EU Security and Defence Partnership. The Prime Minister will attend a session of the Informal European Council in February 2025 to discuss enhanced strategic cooperation with the EU, including on defence issues.

Protection of People and Borders

The Polish Presidency will press on the need to address the challenges of migration and the security of the EU's external borders. Their focus will be on reducing irregular migration, increasing the effectiveness of returns policies and strengthening the EU's response to weaponization of migration by Russia and Belarus. The Polish Presidency will also intensify efforts to tackle international organised crime networks, terrorism and radicalisation. The Government is committed to enhancing cooperation with the EU to address the common challenge of irregular migration and to strengthen our collective ability to tackle organised crime.

Resistance to Foreign Interference and Disinformation

The Polish Presidency will seek to strengthen cooperation against disinformation, information manipulation and on boosting the EU's ability to counter hostile actions in cyberspace. The Presidency will identify initiatives at the EU level that will foster increased democratic resilience. The Government will look to strengthen cooperation with the EU on tackling hybrid threats, foreign information manipulation and interference and other security issues. We have agreed to hold strategic consultations with the EU on hybrid threats.

Ensuring Security and Freedom of Business

The Polish Presidency will focus on improving the EU's competitive position. Their priority will be to strengthen the EU's competitiveness through the removal of barriers to intra-EU services trade, improved trade policy instruments and a reduction in the bureaucratic burden on EU businesses. They will also seek to prioritise economic security through increased support for key industries and sectors. Given the shared challenges we face, we want to build stronger and wider cooperation with the EU on economic security issues.

Energy Transition

The Polish Presidency will aim to strengthen the EU's energy security. Their priority will be to progress efforts to fully remove Russian fuels from the EU's energy mix. The Polish Presidency will seek to enhance the physical and cyber security of energy infrastructure across Europe. The Presidency will also focus on reducing the EU's strategic dependencies on imported technologies and critical raw materials. The Government is committed to strengthening cooperation on energy with the EU, including

with respect to delivering the TCA Energy title, reducing prices and developing more efficient trading arrangements.

Competitive and Resilient Agriculture

The Polish Presidency will advocate for a competitive and resilient European agricultural sector that is able to provide food security for all Europeans. Their primary focus will be on shaping the Common Agricultural Policy to adequately support the needs of farmers and to promote rural development. The Government has set out its ambition to negotiate a veterinary/SPS agreement with the EU to prevent unnecessary border checks and to help tackle the cost of food.

Health Security

The final priority which the Polish Presidency has set itself is working towards strengthening European health resilience. The Poles will focus on the digital transformation of healthcare, improving the mental health of adolescents and disease prevention. The Polish Presidency will also press for greater diversification of medicines supply chains to support resilience. The Government is interested in enhancing collaboration with the EU across a range of health security matters.

I look forward to my continued engagement with you and your Committee.

7 January 2025

CONGRATULATORY LETTER AND EVIDENCE SESSION REQUEST

Letter from the Chair to The Rt Hon Nick Thomas-Symonds MP, Minister for the Constitution and European Union Relations & HM Paymaster General, Cabinet Office

House of Lords European Affairs Committee

Following the decision by the House of Lords on 29 July 2024 to reappoint the European Affairs Committee, I write as Chairman to congratulate you on your appointment. Given the importance the Government has placed on the UK/EU relationship, I know that the Committee will look forward to working closely with you and your team on the many important issues involved.

I realise that the Government will want to consider how it will engage with Parliament on European issues, but in the light of your central role as the Minister for EU Relations, I wanted to lose no time in requesting an initial evidence session with you as soon as your diary allows. I will ask the Committee clerks to discuss this further with your staff.

I will be writing separately about the Committee's EU document-based scrutiny role.

29 July 2024

CONGRATULATORY LETTER AND EVIDENCE SESSION REQUEST

Letter from the Chair to The Rt Hon David Lammy MP, Secretary of State for Foreign, Commonwealth and Development Affairs - Foreign, Commonwealth and Development Office

House of Lords European Affairs Committee

Following the decision by the House of Lords on 29 July 2024 to reappoint the European Affairs Committee, I write as Chairman to congratulate you warmly on your appointment as Foreign Secretary.

Given the importance the Government has placed on the UK/EU relationship, I know that the Committee will look forward to working closely with you and your team on the many important issues involved.

The arrangements agreed with the previous Government for scrutiny of the UK's post-Brexit relationship with the EU provided for the Foreign Secretary to appear once a year; the most recent appearance by your predecessor took place in December 2023. There was also an agreement that the Europe Minister would come to us at least twice a year. I realise that the Government will want to consider how it will engage with Parliament on European issues, but I wanted to lose no time in requesting an initial evidence session with you as soon as your diary allows. I will ask the Committee clerks to discuss this further with your staff.

29 July 2024

CONGRATULATORY LETTER AND EVIDENCE SESSION REQUEST

Letter from the Chair to Stephen Doughty MP, Minister of State (Europe, North America and Overseas Territories) - Foreign, Commonwealth and Development Office

House of Lords European Affairs Committee

Following the decision by the House of Lords on 29 July 2024 to reappoint the European Affairs Committee, I write as Chairman to congratulate you warmly on your appointment as Minister for Europe. Given the importance the Government has placed on the UK/EU relationship, I know that the Committee will look forward to working closely with you and your team on the many important issues involved.

The arrangements agreed with the previous Government for scrutiny of the UK's post-Brexit relationship with the EU provided for the Europe Minister to give evidence to the European Affairs Committee at least twice a year. There was also an agreement that the Foreign Secretary would appear once a year. I realise that the Government will want to consider how it will engage with Parliament on European issues, but I wanted to lose no time in requesting an initial evidence session with you as soon as your diary allows. I will ask the Committee clerks to discuss this further with your staff.

29 July 2024

CONGRATULATORY LETTER AND EVIDENCE SESSION REQUEST

Letter from the Chair to The Rt Hon Yvette Cooper MP – Secretary of State for the Home Department – Home Office

House of Lords European Affairs Committee

Following the decision by the House of Lords on 29 July 2024 to reappoint the European Affairs Committee, I write as Chairman to congratulate you warmly on your appointment as Home Secretary. I know that the Committee will look forward to working closely with you and your team.

The Committee has taken a close interest in a number of issues on which the Home Office leads, including law enforcement cooperation, citizens' rights and mobility. I therefore wanted to take this early opportunity of requesting an evidence session as soon as your diary allows. I will, if I may, ask the Clerks to follow up with your officials.

29 July 2024

Letter to the Chair from The Rt Hon Yvette Cooper MP – Secretary of State for the Home Department – Home Office

Thank you for your letter of 29 July, and for your welcoming me into my role.

I recognise the crucial role that the Committee's oversight plays, and I am eager for the Department to foster a constructive and collaborative partnership moving forward. However, owing to diary commitments I am not able to appear to give evidence to the Committee before Christmas.

I hope it will be possible to arrange a session at a suitable alternative date in the future, and in the interim, I would of course be happy to discuss any matters that the Committee wishes to raise via correspondence.

30 September 2024

NEGOTIATIONS WITH THE EUROPEAN UNION IN RESPECT OF GIBRALTAR.

Letter to the Chair from Stephen Doughty MP, Minister of State for Europe, North America and UK Overseas Territories – Foreign, Commonwealth & Development Office.

Following our introductory meeting, I wanted to write with an update on negotiations between the UK and the EU in respect of Gibraltar.

As Gibraltar was excluded from the Trade and Cooperation Agreement, it has been without a legal framework governing its relationship with the EU since January 2021. I want to assure you that this Government, within the context of resetting our relationship with the EU, is committed to reaching an agreement which provides certainty for Gibraltar's people as soon as possible. We are therefore working hand in hand with HM Government of Gibraltar to conclude a treaty that secures the future prosperity of Gibraltar and the wider region while protecting sovereignty and the autonomy of the UK military facilities.

The Foreign Secretary, the Chief Minister of Gibraltar Fabian Picardo and I met European Commission Executive Vice-President Maroš Šefčovič and Spanish Foreign Minister José Manuel Albares in Brussels on 19 September. Discussions were constructive and productive, resulting in further progress on the most complex issues under negotiation, namely in the areas of mobility of people and goods. We agreed to remain in constant contact, with teams working closely and intensely on outstanding areas. The negotiations have been technically, and politically complex but significant progress has been made.

We remain steadfast in our support for Gibraltar and will only agree to terms that the Government of Gibraltar is content with. The UK Government is committed to the double lock – that we will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State, against their freely and democratically expressed wishes. And we will never enter into a process of sovereignty negotiations with which Gibraltar is not content. While in Gibraltar, I resolutely communicated our commitments to Gibraltar publicly at the National Day celebrations (10 September) and our desire to work constructively with the Government of Gibraltar, Spain and the EU to find a way forward, within the key parameters we have set out.

Our priority is concluding a treaty that delivers for the people of Gibraltar, but it is only prudent to prepare for any eventuality, and we have long been working with the Government of Gibraltar to do

so if a non-negotiated outcome materialises. During my visit to Gibraltar on their National Day, I saw these preparations first-hand and took stock of negotiations and non-negotiated outcome preparations with the Chief and Deputy Chief Ministers. The UK will stand fully behind Gibraltar in either scenario.

I look forward to appearing before your committee in due course, to discuss progress in the Gibraltar negotiations as well as the UK's wider bilateral relationships with Europe. In the meantime, my officials are available to provide a private briefing to your committee at any point, should that be helpful.

08 October 2024

EU FOREIGN AFFAIRS COUNCIL ATTENDANCE, 14 OCTOBER

Letter to the Chair from The Rt Hon. David Lammy MP, Secretary of State for Foreign, Commonwealth and Development – Foreign, Commonwealth and Development Office.

On 14 October I attended the EU's Foreign Affairs Council in Luxembourg at the invitation of EU Member States and the High Representative for Foreign Affairs and Security Policy (HRVP), Josep Borrell.

I wanted to draw your attention to a Written Ministerial Statement that I have laid today regarding my attendance at the Foreign Affairs Council, and that my colleague, the Minister for Latin America and the Caribbean, Baroness Chapman, has laid in the Lords. The HRVP and I agreed to establish a regular, six-monthly strategic dialogue, with the first meeting in early 2025 reflecting the importance of the foreign and security policy relationship between the UK and the EU and strengthening our cooperation in this difficult geopolitical context. In addition, we agreed to launch four new regular working groups on Russia/Ukraine, the Indo-Pacific, the Western Balkans and on Hybrid Threats. We also agreed to advance work towards a formal security partnership to address common threats and challenges.

As I note in the Statement, this was the first time a UK Foreign Secretary has attended this meeting of EU Foreign Ministers in over two years. My visit, following that of the Prime Minister's to Brussels on 2 October, marks a significant moment in our reset with Europe and has established a course towards much enhanced cooperation to address common threats and challenges. My ministerial colleagues and I will be continuing this work over the coming months.

22 October 2024

ANNUAL FISHERIES CONSULTATIONS

Letter to the Chair from Daniel Zeichner MP, Minister for Food Security and Rural Affairs - Department for Environment Food & Rural Affairs.

I am writing to outline the approach the Government is taking to the fisheries consultations taking place this autumn.

As an independent coastal State, the UK negotiates annually with other coastal States to set fishing opportunities. We will be seeking to agree total allowable catches (TACs) for 2025 (and in some instances, for 2026 also) for around 90 stocks. Our approach to those negotiations will be guided by the objectives set out in the Fisheries Act 2020 and the Joint Fisheries Statement. We will seek to ensure the long-term sustainability of fisheries in our waters and the marine environment, and we will aim to achieve a balanced outcome for all sectors of the UK fishing industry.

Coastal States consultations

Each year we negotiate with several coastal States to set the TACs for the three mains widely distributed pelagic stocks in the North-East Atlantic (i.e. mackerel, blue whiting and atlanto-scandian herring). Earlier in October, parties agreed to set those TACs at the levels advised by scientists at the International Council for the Exploration of the Sea. In parallel, we will continue to advocate for comprehensive quota-sharing agreements on these stocks that ensure we collectively do not fish above the TAC.

UK-EU bilateral and UK-EU-Norway trilateral consultations

We will commence bilateral negotiations with the EU and negotiations on the stocks we manage trilaterally with Norway and the EU this week (commencing 4 November). We envisage those consultations lasting until early December. These negotiations focus on catch limits for 2025 for a range of stocks, any temporary quota transfers for those stocks, access arrangements with the EU for certain species not covered by the UK-EU Trade and Cooperation Agreement, as well as any related fisheries management measures including for non-quota stocks.

RFMO annual meetings

We will be participating in a number of Annual Meetings of Regional Fisheries Management Organisations (RFMOs).

Our objectives are to ensure that fisheries for RFMO stocks are managed sustainably, to maximise fishing opportunities for the UK, and to ensure that RFMOs adopt measures that protect ecosystems and combat illegal, unreported and unregulated fishing.

UN and OECD

We will be participating in consultations on the UN General Assembly Resolution on Sustainable Fisheries where the UK will be seeking to promote sustainable fisheries management at a global level, including proposing text relating to the application of the precautionary principle and transparency in fisheries management.

We will also be attending the OECD's Committee on Fisheries where work will continue on an OECD Recommendation seeking to eliminate Government support to illegal, unreported and unregulated fishing.

UK-Norway and UK-Faroes bilateral consultations

Finally, we will be meeting with Norway and the Faroe Islands under our respective Fisheries Framework Agreements to negotiate possible quota exchanges and access to each other's waters for 2025.

I will provide a Written Statement once we conclude our negotiations across all the forums mentioned above.

7 November 2024

Letter from the Chair to Rt Hon James Cleverly MP, Secretary of State for the Home Department, Home Office.

Firstly, we would like to congratulate you on your appointment as Home Secretary. We hope that you will be prepared to engage with the Committee in the same constructive manner in this capacity as when you were Foreign Secretary.

As you may be aware, the Committee has been engaged in correspondence with your predecessor regarding the rights of EU citizens in the UK and UK citizens in the EU under the Withdrawal Agreement. We thank your predecessor for her most recent letter, dated 26 October 2023, in response to our letter dated 20 September 2023. It was considered at the Committee's meeting on 14 November 2023.

We are grateful for the detailed and helpful responses that your predecessor provided to the majority of the questions that we posed. We also thank the Parliamentary Under Secretary of State for Migration and Borders for the letter that he sent to the Earl of Kinnoull on 18 October as follow-up to the debate in Grand Committee on citizens' rights that took place on 11 September, which addresses similar issues.

We thank your predecessor for the additional information that she has provided about the Government's plans for implementation of the changes to the EU Settlement Scheme (EUSS) that have been proposed following the High Court judgment of December 2022 regarding the approach to those granted pre-settled status. We note the distinction that your predecessor has drawn between the residual right of permanent residence under the Withdrawal Agreement and settled status under the EUSS. It would help us to understand the implications of the Government's proposed approach if you could set out clearly the differences between the specific rights of individuals with settled status and those relying on the residual right of permanent residence under the Withdrawal Agreement. We would also welcome a more detailed explanation as to how your preferred approach is compatible with (i) the relevant sections of the Withdrawal Agreement; and (ii) the High Court's December 2022 judgment. We ask you also to explain how these rights can be demonstrated by individuals and to summarise the discussion you have had about this approach with the Independent Monitoring Authority and the European Commission. Finally, we ask you to indicate in reply to this letter whether the Home Office has made an assessment of the number of individuals who have a right of permanent residence but do not currently have settled status and, if so, to share this information with the Committee.

We acknowledge the complexity of the work to upgrade individuals to settled status automatically but, in light of the fact that the High Court judgment was issued in December 2022 and that the Government announced their plans to upgrade status automatically in July 2023, we are disappointed that implementation of this will not begin until an unspecified date in 2024. We are concerned about the implications of this for individuals since an increasing number of holders of pre-settled settled will by now already be eligible for settled status, given that it was previously anticipated that deadlines for upgrading to settled status would begin to be reached from August 2023. If our understanding of your proposals is accurate, these individuals may face difficulty in demonstrating their right of permanent residence during the period until the work to upgrade their status automatically has been completed. We urge you to commit additional resources to this project to ensure that it is delivered without undue delay.

We thank your predecessor for providing the information that we requested about how many EUSS applications have been awaiting a decision for longer than six months, longer than one year and longer than two years. We are concerned that 27% of cases have been waiting for longer than six months and that as many as 12% of cases have been waiting for longer than two years. We acknowledge the

complexity of some cases, but such delays can be expected to cause considerable anxiety and stress. We therefore ask you to indicate what steps are being taken to reduce this backlog.

We note the data provided by your predecessor which suggests that on average 71% of users of the 'View and Prove' system were satisfied with its operation in the first half of 2023. This implies that 29% of users were dissatisfied. We are concerned that this may disproportionately include more vulnerable groups such as the elderly and digitally challenged. We remain dissatisfied that the Government will not give further consideration to offering holders of (pre)-settled status the option of requesting a physical proof of status document.

We look forward to receiving your response within the normal 10-day deadline.

15 November 2023

Letter to the Chair from Rt Hon James Cleverly MP, Secretary of State for the Home Department, Home Office

Thank you for your letter of 15 November regarding the rights of EU citizens in the UK and UK citizens in the EU under the Withdrawal Agreement (WA). I look forward to working with you in my new role.

Your questions are addressed below. I have summarised some for brevity.

It would help us to understand the implications of the Government's proposed approach if you could set out clearly the differences between the specific rights of individuals with settled status and those relying on the residual right of permanent residence under the Withdrawal Agreement.

The High Court judgment found that a holder of pre-settled status under the EU Settlement Scheme (EUSS) acquires the right of permanent residence under the WA automatically once the conditions for it are met.

The substantive rights obtained through settled status – a grant of indefinite leave to enter or remain under the EUSS – are the same as the rights associated with the acquisition of the right of permanent residence under the WA. A person with the right of permanent residence under the WA (but not settled status under the EUSS) has the same rights to reside, study, work and access benefits and healthcare as a person with settled status.

The main differences between the two statuses are set out below:

Means of acquisition

As mentioned in my predecessor's letter of 26 October, settled status must be applied for and granted under the EUSS, whereas the right of permanent residence is acquired automatically by a holder of pre-settled status once the WA conditions for it are met.

Scope of individuals who may benefit.

A person with pre-settled status can apply for and obtain settled status under the EUSS as soon as they meet the mainly residence-based conditions for it, which are more generous than the WA requires. The conditions for them to acquire the right of permanent residence under the WA are more stringent. If they are not a joining family member, they also need to have been lawfully resident in the UK under the EU Free Movement Directive at the end of the transition period on 31 December 2020, and to

have been such a 'qualified person' (e.g., a worker), or their family member, for the requisite period of continuous residence in the UK (usually five years).[1]

Therefore, a person who holds pre-settled status under the EUSS, but who has not resided in the UK in accordance with the detailed requirements of the Directive as reflected in the WA, may become eligible for settled status under the EUSS, but never acquire the right of permanent residence under the WA.

As described in my predecessors in the letter of 26 October, a person may have acquired the right of permanent residence under the WA, but not yet have obtained settled status under the EUSS even though they are eligible for it. In these circumstances, the judgment does not require the UK to do more than ensure that they can benefit from the associated rights and the onus is on them to prove their status when seeking to access those rights. This is consistent with the approach taken to UK nationals by EU member states with a constitutive system for residence status under the WA.

We would also welcome a more detailed explanation as to how your preferred approach is compatible with (i) the relevant sections of the Withdrawal Agreement; and (ii) the High Court's December 2022 judgment. We ask you also to explain how these rights can be demonstrated by individuals.

Compatibility with the WA and the High Court judgment

The UK's domestic legislation, namely section 7A of the European Union (Withdrawal Agreement) Act 2020,[2] provides for the incorporation of the WA into UK law. This means that the rights under the WA (as interpreted by the High Court) are available now and directly effective in the UK.

As a result, the right of permanent residence under the WA is acquired by a pre-settled status holder by operation of law once the conditions for it are met. This means that compliance with the WA and the judgment is achieved, with all beneficiaries of a WA right of permanent residence able to benefit from the rights associated with that status.

We are now finalising our implementation to ensure that relevant individuals can rely on their WA right of permanent residence in practice where they wish to do so. This includes through updating relevant customer and caseworker guidance to reflect the judgment. We are in the process of doing so, with the following items already updated and published:

- Naturalisation as a British citizen: caseworker guidance - GOV.UK (www.gov.uk)
- Registering children as British citizens: caseworker guidance - GOV.UK (www.gov.uk)
- Registering other British nationals: caseworker guidance - GOV.UK (www.gov.uk)
- Automatic acquisition of British citizenship: caseworker guidance - GOV.UK (www.gov.uk)
- EEA nationals qualified persons: caseworker guidance - GOV.UK (www.gov.uk)

[1] The detailed guidance on the conditions that need to be satisfied for the acquisition of a Withdrawal Agreement right of permanent residence can be found at this link: EEA nationals qualified persons: caseworker guidance - GOV.UK (www.gov.uk)

[2] European Union (Withdrawal Agreement) Act 2020 (legislation.gov.uk)

We are also planning to amend the Immigration (Leave to Enter and Remain) Order 2000[3] to reflect the additional permitted absence from the UK associated with a WA right of permanent residence. In the interim, we will address this point in guidance.

The UK Government is also liaising with the Devolved Administrations, public bodies and (given their interest in relevant UK policy) the Crown Dependencies to ensure we have identified all relevant issues, and that similar provision is made in those few areas where this aspect of the judgment is relevant to an individual's rights. In the area of benefits, for example, the main departments (the Department for Work and Pensions and HM Revenue & Customs) already test for the acquisition of the right of permanent residence and so there is no need for further steps.

We will also be updating the GOV.UK main page on the EUSS to explain this aspect of the judgment to the public.

How rights can be demonstrated by individuals

The High Court judgment means that the right of permanent residence under the WA is acquired automatically in relevant circumstances. It does not require us to automatically issue a document to prove that right or to grant the person settled status. This is similar to the position under EU law, when it was in force in the UK before the end of the transition period. Although a person could choose to apply for documentation confirming a right of permanent residence in the UK, they were not required to do so, and relevant public bodies have experience in assessing whether a person enjoys such a right.

There will therefore be situations where a person's digital status under the EUSS (pre-settled status) does not match their underlying WA rights (permanent residence). This is inherent in a quasi-declaratory system in which no application is required to benefit from the right of permanent residence and that right is accrued automatically by operation of law. The same applies to UK nationals in EU member states who hold a residence card with a pre-permanent right of residence, but who have since automatically acquired the right of permanent residence.

In the UK the mismatch between a person's pre-settled status and right of permanent residence will be of limited practical consequence, as most rights are the same whether a person has permanent or temporary status, for example the right to work.

Where there are further rights attached to permanent residence, we are ensuring, as described in the section above, that the person can rely on their right of permanent residence (and, where relevant, the date of acquisition of that right) by updating relevant customer and caseworker guidance to reflect the

judgment. However, obtaining settled status under the EUSS is the easiest way for a person to prove their right to live permanently in the UK, and we will continue to encourage pre-settled status holders to apply for settled status as soon as they are eligible.

We ask you to summarise the discussion you have had about this approach with the Independent Monitoring Authority and the European Commission.

As set out in the letter of 26 October, we have kept both the Independent Monitoring Authority and the European Commission informed of our plans, and this engagement – including on how EU member states' implementation of the WA is compatible with the judgment – will continue.

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[3] The Immigration (Leave to Enter and Remain) Order 2000 (legislation.gov.uk)

We ask you to indicate whether the Home Office has made an assessment of the number of individuals who have a right of permanent residence but do not currently have settled status and, if so, to share this information with the Committee.

Given that the right of permanent residence under the WA requires the fulfilment of the relevant conditions (including continuity of residence, suitability criteria and evidence of status as a 'qualified person' or their family member), the Home Office is unable to assess this without engagement with individuals on their specific circumstances.

We acknowledge the complexity of the work to upgrade individuals to settled status automatically but, in light of the fact that the High Court judgment was issued in December 2022 and that the Government announced their plans to upgrade status automatically in July 2023, we are disappointed that implementation of this will not begin until an unspecified date in 2024. We are concerned about the implications of this for individuals since an increasing number of holders of pre-settled settled will by now already be eligible for settled status, given that it was previously anticipated that deadlines for upgrading to settled status would begin to be reached from August 2023. If our understanding of your proposals is accurate, these individuals may face difficulty in demonstrating their right of permanent residence during the period until the work to upgrade their status automatically has been completed. We urge you to commit additional resources to this project to ensure that it is delivered without undue delay.

As noted in my predecessors' letter of 26 October, the planned automated conversion of pre-settled to settled status in relevant cases is not a requirement of the judgment, just as EU member states are not required automatically to issue permanent residence cards to relevant UK nationals.

The work to automate the conversion of pre-settled status to settled status without the person needing to apply is a significant piece of work and will take time to deliver. We have provided sufficient resources to the project while balancing this against other departmental priorities.

However, pre-settled status holders do not need to wait to be automatically converted to settled status. Those who wish to secure evidence of their right of permanent residence in the UK can continue to apply for settled status and are encouraged to do so as soon as they become eligible. We have been clear on this in all our communications to pre-settled status holders, including within the emailed reminders we began issuing in March this year (as set out in the letter of 2 August). We are pleased that, to 30 September 2023, 676,850 people have already moved from pre-settled to settled status.

Irrespective of the automation work, the judgment noted that the onus is on individuals to demonstrate that they have acquired the right of permanent residence under the WA when seeking to access rights based on that status.

The action we have so far taken ensures that the WA rights of EU citizens and their family members are already fully respected and can be exercised in practice.

We are concerned that 27% of cases have been waiting for longer than six months and that as many as 12% of cases have been waiting for longer than two years. We acknowledge the complexity of some cases, but such delays can be expected to cause considerable anxiety and stress. We therefore ask you to indicate what steps are being taken to reduce this backlog.

EUSS applications are concluded as swiftly as possible and, as noted in the letter of 26 October, where applications have been waiting for longer periods, this is usually due to suitability concerns, such as a pending prosecution.

30 November 2023

Letter from the Chair to Rt Hon James Cleverly MP, Secretary of State for the Home Department, Home Office.

At its meeting of 12 December, the European Affairs Committee considered the recent changes to the UK's immigration rules set out in your statement dated 7 December 2023. As the Committee responsible for scrutinising UK/EU relations post-Brexit we were disappointed that you did not write to us setting out the detail of the changes while providing us with the reasons behind the changes and their impact, especially given our ongoing correspondence with the Government on EU Citizens' Rights.

In particular, we want to hear the Government's assessment of the impact of the changes to the EU Settlement Scheme and whether they are compatible with the Withdrawal Agreement signed with the European Union.

You should note that all issues pertaining to the status of the rights of EU citizens living in the UK and UK citizens living in the EU remain an important issue for the Committee.

We look forward to receiving your response by 15 January 2024.

13 December 2023

Letter to the Chair from The Rt Hon James Cleverly MP, Secretary of State, Home Office

Thank you for your letter of 13 December 2023 regarding the changes to the Immigration Rules for the EU Settlement Scheme (EUSS) in Appendix EU. These were contained in the Statement of Changes HC 246, laid on 7 December 2023 for implementation, where the EUSS is concerned, on 16 January 2024.

You asked us to set out the impact of these changes to the EUSS and their compatibility with the Withdrawal Agreement (WA). I have set out further information for each of the changes below.

1) **To reflect that Appendix Returning Resident now applies to those whose EUSS settled status has lapsed.**

Appendix Returning Resident was added to the Immigration Rules by the Statement of Changes HC 1780, laid on 7 September 2023, and replaced paragraphs 18, 18A, 19, 19A and 20 in Part 1 of the Immigration Rules, to which Appendix EU currently makes reference. The new Appendix provides clarity and consistency on the requirements for those applying for entry clearance as a returning resident after their indefinite leave to enter or remain has lapsed after an absence from the UK. For those with indefinite leave to enter or remain granted under the EUSS (also known as settled status) this would be after an absence of more than five consecutive years (or more than four consecutive years for Swiss nationals and their family members).

The 7 December 2023 changes to Appendix EU clarify that Appendix Returning Resident applies where a person whose settled status under the EUSS has lapsed and who wishes to return to and settle in the UK. They do not alter the period of absence permitted before settled status lapses, for which, in line

with Article 15(3) of 2 the WA, Article 13 of the Immigration (Leave to Enter and Remain) Order 2000 provides, as set out above. [1]

2) To prevent irregular arrivals and illegal entrants from making a valid application to the EUSS as a joining family member

On 9 August 2023, the Home Office implemented a change to Appendix EU to prevent illegal entrants from being able to submit a valid application to the EUSS as a joining family member. This was set out by Lord Murray of Blidworth during the 11 September 2023 House of Lords debate in Grand Committee on citizens' rights.

The 7 December 2023 changes clarify that this provision also applies to irregular arrivals, including those who arrive on small boats. This is a technical amendment to ensure that Appendix EU accurately reflects the policy intent, in reinforcing our approach to tackling illegal immigration.

The overall explanation for this provision, and of its consistency with the WA, remains as set out in my predecessor's letter to you of 26 October 2023. Article 14(3) of the WA permits the host State to require joining family members to obtain an entry visa. The EUSS family permit, available under Appendix EU (Family Permit) to the Immigration Rules, enables joining family members to obtain such a visa where the UK is concerned. As such, we consider that expecting joining family members to have entered the UK legally is compatible with the WA.

3) To require a person in the UK as a visitor to make any application to the EUSS as a joining family member within three months of their arrival.

Notwithstanding that Article 14(3) of the WA permits the host State to require joining family members to obtain an entry visa, the UK currently permits a person who entered the UK as a visitor to apply here to the EUSS as a joining family member.

Article 18(1)(b) of the WA states that persons who have a right to commence residence in the host State after the end of the transition period (such as joining family members) must apply for their residence status within three months of their arrival in the host State or by the end of the grace period (30 June 2021 where the UK is concerned), whichever is later.

The 7 December 2023 changes clarify that a person seeking to apply to the EUSS as a joining family member, where they are in the UK as a visitor, is required to apply by the same three-month deadline, unless, in accordance with Article 18(1)(d) of the WA, there are reasonable grounds for any delay in applying.

4) To add a further ground for curtailing pre-settled status granted under the EUSS

The 7 December 2023 changes amend Annex 3 to Appendix EU to enable pre-settled status granted under the EUSS to be curtailed where it is proportionate to do so where the person never met the requirements of that Appendix (or, by extension, the requirements of the WA).

This is a technical amendment for the purpose of providing additional clarity. There is currently scope under Annex 3 to Appendix EU to curtail pre-settled status (limited leave to enter or remain granted under that Appendix) where it is proportionate to do so where the person ceases to meet the requirements of that Appendix. We consider it appropriate to make clear that such leave can also be curtailed where it is proportionate to do so where the requirements of Appendix EU were never met.

[1] https://www.legislation.gov.uk/uksi/2000/1161/contents

Although, by definition, such a person will not be considered in scope of Article 10 (Personal scope) of the WA, the safeguards required under Article 21 of the WA when restricting residence rights will be applied: the curtailment decision will be subject to a right of appeal.

16 January 2024

Letter from the Chair to Rt Hon James Cleverly MP, Secretary of State for the Home Department, Home Office.

Thank you for your letter dated 30 November 2023 in response to our letter dated 15 November 2023. It was considered at the Committee's meeting of 23 January 2024.

We are grateful for the detailed response that you have provided to the majority of the questions that we put to you. We are also grateful to you for the letter you sent us on 16 January, on the Statement of Changes in Immigration Rules HC 246.

We note the Government's intention to amend the Immigration (Leave to Enter and Remain) Order 2000 in order to reflect the additional permitted absence from the UK associated with the Withdrawal Agreement's right of permanent residence. We would welcome more details on the planned amendment and an indication of when the Government plans to introduce it.

We have also noted in your response that you consulted with the Independent Monitoring Authority on your plans to respond to the High Court judgment of December 2022. However, your position seems to contradict the press release published by the IMA on 1 December 2023, which outlined its concerns with the Government's reaction to the judgment. In this regard, we draw your attention to the note at the end of the press release where "the IMA notes that while plans for automatic upgrade from pre-settled status to settled status continue to be developed by the Home Office, the IMA does not have sufficient detail to make a full assessment of them" (emphasis added).

The IMA's main concerns include:

- "The extension of pre-settled status does not go far enough to implement the judgment and that therefore this element continues to be incompatible" with the Withdrawal Agreement. The IMA continues: "The extension does not change the fact that pre-settled status is time-limited".
- "Maintaining expiry period for pre-settled status may have practical effects on citizens exercising their rights, for example those who are seeking employment or accommodation";
- The implementation of the second part of the High Court's judgment. "This found that permanent residence rights under the Agreements accrue automatically to a pre-settled status holder where the relevant conditions in the Agreements are met. The IMA is concerned that there will remain a lack of clarity for citizens and public authorities regarding the rights of some citizens who hold pre-settled status but who are in fact in possession of permanent residence rights".

The IMA's concerns, which we share and which we note you did not draw to our attention, are, in our view, at odds with the repeated statements we have received from the Government that its response to the High Court judgment of December 2022 is compatible with the UK's obligations under the Withdrawal Agreement. We therefore ask for an update on how the Government plans to address the IMA's concerns.

We look forward to receiving your response within the normal 10-day deadline. In addition, we ask for a further report on work in progress on citizens' rights by 3 June 2024.

24 January 2024

Letter to the Chair from Rt Hon James Cleverly MP, Secretary of State for the Home Department, Home Office.

Thank you for your letter of 24 January regarding the Independent Monitoring Authority's (IMA) press release of 1 December 2023 on the Government's implementation of the High Court judgment of 21 December 2022 concerning pre-settled status under the EU Settlement Scheme (EUSS).

Your questions are summarised and addressed below.

We would welcome more details on the planned amendment [to the Immigration (Leave to Enter and Remain) Order 2000] and an indication of when the Government plans to introduce it.

Under the Immigration (Leave to Enter and Remain) Order 2000 ('the 2000 Order'), a person's pre-settled status under the EUSS will lapse automatically if they are absent from the UK for more than two consecutive years (in line with the approach to limited leave in other routes) and a person's settled status under the EUSS will lapse automatically if they are absent from the UK for more than five consecutive years (in line with the absence permitted in such cases by Article 15(3) of the Withdrawal Agreement).[1] In both instances, there are exceptions for those posted overseas as a member of HM Forces or on Crown service and for those accompanying such a person.

However, following the High Court judgment a pre-settled status holder who has automatically acquired a right of permanent residence under the Withdrawal Agreement will also benefit from the five-year permitted absence provision. That will be so in any event, given the direct effect of the Withdrawal Agreement, but we plan to amend the 2000 Order to ensure that it does not conflict with this.

The Home Office is currently working through the detail of the changes. Once we have confirmed a laying date, I will write to the Committee to provide a further update.

We ask for an update on how the Government plans to address the IMA's concerns [on the UK's implementation of the High Court judgment] as set out in their press statement of 1 December 2023.

As set out in my letter of 30 November 2023, the UK's domestic legislation (namely section 7A of the European Union (Withdrawal) Act 2018, inserted by section 5 of the European Union (Withdrawal Agreement) Act 2020), provides for the incorporation of the Withdrawal Agreement into UK law. This means that the rights under the Withdrawal Agreement, as interpreted by the High Court, are available now and directly effective in the UK.

The Government's position is that it is compatible with the Withdrawal Agreement for pre-settled status to continue to have an expiry date. The High Court judgment did not say otherwise. It expressly distinguished between pre-settled status and the underlying Withdrawal Agreement right of residence,[2] making clear that the underlying right cannot expire for failure to make a further EUSS application before the expiry of pre-settled status and emphasising that an expiry date for pre-settled status is: "unlawful insofar as it ... purports ... to abrogate rights of residence arising under the Agreements" (paragraph 193 of the judgment).

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[1] Or more than four consecutive years in the case of a Swiss citizen or their family member (in line with the Swiss Citizens' Rights Agreement).

[2] For example, at paragraphs 151 and 193 of the judgment

Pre-settled status is therefore to be regarded, in accordance with Article 18(1)(a) of the Withdrawal Agreement, as the document evidencing the Withdrawal Agreement residence status conferring the rights under Title II of Part Two held by that person, rather than as constituting that residence status in itself. Therefore, as the expiry date of pre-settled status no longer purports to abrogate the underlying residence right, the UK's approach is in accordance with the Withdrawal Agreement.

It is also equivalent to the approach in those EU Member States taking a constitutive approach to residence rights under the Withdrawal Agreement, where the residence document issued to UK citizens and their family members has an expiry date. On this point, I draw the Committee's attention to the fact that it is explicit under EU law that all Withdrawal Agreement residence documentation must have an expiry date, as set out within the Commission Implementing Decision (EU) 2022/1945. It is also our understanding that, in some EU Member States, UK citizens and their family members will face difficulties accessing some of their Withdrawal Agreement rights unless they hold a valid residence document.

Where the acquisition of the right of permanent residence is concerned, we have ensured that in the small number of areas where there are further rights attached to permanent residence, a person can rely on their Withdrawal Agreement right of permanent residence without obtaining settled status under the EUSS. However, irrespective of how the UK ensures that a person can rely on the Withdrawal Agreement right of permanent residence once acquired, it is undoubtedly in the best interests of such a person to obtain secure evidence of their right to reside in the UK indefinitely. The quickest and easiest way of doing this – in all cases – is to obtain settled status under the EUSS as soon as they are eligible for it.

The Home Office has engaged with the IMA since the High Court judgment and continues to do so. While we do not accept that the judgment or the Withdrawal Agreement obliges us to makes further changes on these issues, we continue to consider with the IMA the more practical concerns it has raised – while noting that such practical consequences will continue to exist for UK citizens and their family members in some EU Member States.

I note the Committee's request for a further report on work in progress on citizens' rights by 3 June, and understand that the Foreign, Commonwealth & Development Office has approached the Committee's clerks to arrange this.

2 February 2024

Letter from the Chair to Rt Hon James Cleverly MP, Secretary of State for the Home Department, Home Office.

Thank you for your letter dated 2 February 2024 which was considered by the European Affairs Committee at its meeting of 27 February. We are grateful for the detailed response that you have provided to the questions that we put to you.

The issues surrounding the implementation of the rights that EU citizens living in the UK and UK citizens living in the EU enjoy by virtue of the Withdrawal Agreement remain of interest to the Committee. We will continue to scrutinise the Government's policy in both areas and may return to questions related to either of these topics in the future.

We look forward to a further update from you on the issue of EU citizens' rights by 3 June.

28 February 2024

Letter to the Chair from Tom Pursglove MP, Minister of State for Legal Migration and the Border, Home Office

Amendments to the Immigration (Leave To Enter And Remain) Order 2000.

I am writing to draw your attention to a draft statutory instrument that has been laid before Parliament today.

In his letter of 2 February, the Home Secretary informed you of our plans to amend the Immigration (Leave to Enter and Remain) Order 2000 (the 'LTERO'), to ensure consistency with the High Court judgment of 21 December 2022[1] concerning pre-settled status under the EU Settlement Scheme (EUSS).

As set out in that letter, under the current drafting of the LTERO, a person's pre-settled status under the EUSS (five years' limited leave to enter or remain) will lapse automatically if they are absent from the UK for a continuous period of more than two years; and a person's settled status under the EUSS (indefinite leave to enter or remain) will lapse automatically if they are absent from the UK for a continuous period of more than five years.[2] As a result of the judgment, a pre-settled status holder who has automatically acquired a right of permanent residence under the Withdrawal Agreement will also benefit from the five-year permitted absence provision.

The draft statutory instrument laid today – (The Immigration (Leave to Enter and Remain) (Amendment) Order 2024) – removes the inconsistency between the LTERO and the judgment by permitting all status holders under the EUSS – whether they hold pre-settled or settled status – to be absent from the UK for a period of five consecutive years before their status automatically lapses.

The changes do not affect the scope for the Home Office to cancel or curtail pre-settled status by decision under the Immigration Rules for the EUSS in Appendix EU[3] where the holder has not acquired the right of permanent residence and has ceased to be eligible for pre-settled status by exceeding the absence(s) permitted under the Withdrawal Agreement.[4] Any such decision will be subject to a right of appeal.

Whilst these changes will help to ensure clear implementation of the High Court judgment, we continue to encourage pre-settled status holders who meet the eligibility requirements for settled status to apply to switch as soon as they are eligible to do so. This provides them with secure evidence of their right to reside in the UK indefinitely. As of 31 December 2023, nearly 746,000 people had already switched from pre-settled to settled status. [5]

11 March 2024

Letter to the Chair from Lord Sharpe of Epsom, Parliamentary Under Secretary of State, Home Office

I am writing to inform you of changes to the Immigration Rules which are being laid today.

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[1] The Independent Monitoring Authority for the Citizens' Rights Agreements, R. (On the Application Of) v Secretary of State for the Home Department [2022] EWHC 3274 (Admin) (21 December 2022) (bailii.org).
[2] Or a continuous period of more than four years in the case of a Swiss citizen or their family member (in line with the Swiss Citizens' Rights Agreement).
[3] Paragraphs A3.3 and A3.4 of Annex 3 to Appendix EU: Immigration Rules - Immigration Rules Appendix EU - Guidance - GOV.UK (www.gov.uk).
[4] After absence(s) from the UK of more than six months in any 12-month period, subject to certain exceptions.
[5] https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-december-2023

Changes relating to the EU Settlement Scheme (EUSS)

We are amending the relationship requirements under Appendix Victim of Domestic Abuse (VDA) to include all partners with pre-settled status under the EUSS.

As you know, the EUSS in Appendix EU enables EU, other European Economic Area (EEA) and Swiss citizens living in the UK by the end of the transition period on 31 December 2020, and relevant family members, to obtain immigration status. Appendix VDA provides access to immediate settlement for victims of domestic abuse who meet its relationship requirements. They currently include, together with their dependent children, any partner sponsored under Appendix FM by an EEA or Swiss citizen with settled status or (based on their residence in the UK before the end of the transition period) pre-settled status under the EUSS.

The changes expand the scope of those immediate settlement provisions to include a spouse, civil partner or durable partner with pre-settled status under the EUSS (meaning that the relationship was formed before the end of the transition period), and their dependent children. We will also include them within the scope of the Migrant Victims of Domestic Abuse Concession (outside the Immigration Rules) so that they can obtain leave outside the rules with access to public funds pending the outcome of an application in the UK under Appendix VDA. This will ensure that partners of EEA and Swiss citizens with EUSS status are treated equally under these domestic abuse provisions, regardless of whether the relationship was formed before or after the end of the transition period.

The changes do not affect the existing provisions under the EUSS, which are more generous than the Withdrawal Agreement requires, for the right of residence to be retained where a relevant family relationship has broken down permanently as a result of domestic abuse. In addition, a person granted immediate settlement under Appendix VDA will still be able to apply for settled status under the EUSS at the point at which they would otherwise have been eligible for it, based on their continuous residence in the UK. However, in line with Article 18(1)(h) of the Withdrawal Agreement, the changes also require a person resident in the UK before the end of the transition period – where they seek to obtain settled status under the EUSS in place of indefinite leave to enter or remain granted to them under another route – to have held their existing indefinite leave at the end of the transition period.

Appendix AR: Administrative Review EU has been redrafted and simplified in line with Appendix AR: Administrative Review. The latter has been redrafted in line with Law Commission recommendations on simplification of the Immigration Rules, but the policy remains unchanged. Appendix AR: Administrative Review EU has also been amended to remove the scope to apply out-of-time for administrative review of a relevant EUSS decision taken before 5 October 2023. Individuals will have had more than five months to apply out of-time for administrative review and will continue to be able to apply to the First-tier Tribunal to appeal out-of-time. The scope to apply for administrative review of a relevant EUSS decision taken from 5 October 2023 was removed by HC 1780.

The changes to the Immigration Rules are being laid on 14 March 2024 and will come into effect on 4 April 2024.

14 March 2024

Letter to the Chair from Tom Pursglove MP Minister of State for Legal Migration and the Border, Home Office

I am writing to update you on the changes being made to the EU Settlement Scheme (EUSS). These changes support the practical implementation of the High Court judgment in the judicial review

proceedings brought by the Independent Monitoring Authority for the Citizens' Rights Agreements (IMA).

In its judgment, the High Court found that the underlying Withdrawal Agreement residence right of a person with pre-settled status does not expire for failure to make a second application to the scheme and a pre-settled status holder automatically acquires the right of permanent residence under the Withdrawal Agreement once the conditions for it are met.

The UK's domestic legislation (namely section 7A of the European Union (Withdrawal) Act 2018, inserted by section 5 of the European Union (Withdrawal Agreement) Act 2020), provides for the incorporation of the Withdrawal Agreement into UK law. This means that the rights under the Withdrawal Agreement, as interpreted by the High Court, are, and always have been, available to citizens.

Our implementation of the judgment has therefore focused on ensuring that it continues to be easy for citizens, government departments and third parties, such as employers and landlords, to evidence their rights, or to check that they are in place.

Since September 2023, we have been extending, by two years, the pre-settled status of those who had not switched to settled status before the original expiry date of their presettled status grant. This ensures that no pre-settled status holder loses their ability to easily evidence their rights because they have not made a further application to the EUSS. Later this year, we intend also to move to an approach where we are, where possible, either converting eligible pre-settled status holders to settled status without them needing to apply to the EUSS or curtailing pre-settled status where an individual has ceased to meet the relevant requirements, and we consider that it is proportionate to do so. This will support our aim of aligning people's EUSS status with their underlying rights.

We also recently amended the Immigration (Leave to Enter and Remain) Order 2000 to provide for all EUSS status holders' leave to lapse after an absence from the UK of more than five consecutive years. This ensures that pre-settled status holders who have automatically acquired a Withdrawal Agreement permanent residence right can benefit from the longer absence protection, and this addresses the inconsistency between the Order and the rights under the Withdrawal Agreement, as clarified by the IMA judgment.

We therefore believe our legal framework to be compliant with the judgment. However, we have continued to work closely with the IMA on implementation to ensure that the changes we have made work in practice. Having listened to concerns raised by the IMA about some of the potential implications of our proposals, we have decided to make some further changes to support our implementation.

Changes to Home Office online checking services

The Home Office will remove the pre-settled status expiry date from the digital profiles shown to third parties, including employers and landlords, via the suite of online checking services (Right to Work, Right to Rent and View and Prove). The requirement to carry out a repeat check on pre-settled status holders for those conducting Right to Work and Right to Rent checks will also be removed from the Right to Work and Right to Rent checking services.

Changes were made to Home Office guidance for employers and landlords and the information displayed when undertaking a check using the online services in October 2023 to reflect the judgment, clarifying that a person's rights do not expire for failure to make a second application to the EUSS. However, we accept that there is a risk that the continued visibility of an expiry date on the online checking services, and the requirement to re-check status, may adversely impact pre-settled status holders in practice. These changes will provide clarity to third parties and help avoid that risk.

We expect these changes to be made, and the relevant guidance to be updated, in the next few weeks. We are also considering if amendments to related legislation are required to clarify these changes.

Changing the length of pre-settled status extensions

We will also change the duration of pre-settled status extensions from two to five years. This will provide additional assurance to pre-settled status holders of their continuing rights, in light of the judgment.

The EUSS has been a great success, with 5.7 million people obtaining a grant of status through the scheme. We have gone above and beyond our obligations under the Withdrawal Agreement, and equivalent agreements with the other EEA states and Switzerland, and are pleased that so many of our family, friends, and neighbours have obtained the status they need to remain in the UK. As set out above, we consider our legal framework to be compliant with the judgment and these changes, alongside the changes we had already made to the EUSS, will ensure that citizens can continue to easily exercise their rights in practice.

21 May 2024

Letter from the Chair to Tom Pursglove MP Minister of State for Legal Migration and the Border, Home Office

Thank you for your letter dated 21 May 2024, informing the Committee of the changes being made to the EU Settlement Scheme.

We are pleased that the Government has agreed to changes that support the practical implementation of the December 2022 High Court judgment in the judicial review brought by the Independent Monitoring Authority for the Citizens' Rights Agreements (IMA).

23 May 2024

Letter to the Chair from The Rt. Hon Lord Hanson of Flint, Minister of State, Home Office

I am writing to inform you of changes to the Immigration Rules which are being laid today.

Changes to the EU Settlement Scheme (EUSS)

The EUSS enables EU, other European Economic Area (EEA) and Swiss citizens living in the UK before the end of the transition period on 31 December 2020, and their family members, to obtain the UK immigration status they need to continue living in the UK.

In accordance with the Citizens' Rights Agreements, the changes in respect of the Immigration Rules for the EUSS in Appendix EU are as follows:

- To refer to the scope for the Secretary of State to automatically convert pre-settled status under the EUSS to settled status (indefinite leave to enter or remain under Appendix EU) where the person qualifies for this and without the need for them to make a further valid application.
- To apply the procedural provisions in Annex 2 to the consideration of whether a person granted limited leave to enter or remain under Appendix EU continues to meet eligibility requirements.

- To enable a child applying to the EUSS who was resident in the UK before the end of the transition period, and has turned 21 years of age since then, to rely on the fact that they were aged under 21 at the end of the transition period and therefore have to meet no requirement as to dependency on their parent(s).
- To enable an EEA or Swiss citizen applying to the EUSS as a family member who has retained the right of residence, following the death or divorce of the relevant EEA or Swiss citizen who was resident in the UK before the end of the transition period, to meet simpler criteria.
- To require a joining family member to apply to the EUSS within three months of their first (not latest) arrival in the UK since the end of the transition period (or later where there are reasonable grounds for their delay).
- To enable limited leave to enter or remain granted under the EUSS (also referred to as pre-settled status) to be curtailed (subject to a right of appeal) for helping a person after the end of the transition period to obtain, or to attempt to obtain, EUSS leave or an EUSS family permit fraudulently.

These changes to the Immigration Rules are being laid on 10 September 2024 and will come into effect on 8 October 2024.

10 September 2024

Letter to the Chair from Seema Malhotra MP, Minister for Migration & Citizenship, Home Office

EU SETTLEMENT SCHEME AUTOMATION

I am writing to update you on changes to the EU Settlement Scheme (EUSS) that are being announced today. These changes will help to reduce the burden on individuals, align people's EUSS status with their underlying Withdrawal Agreement (WA) rights as far as possible, and ensure that it remains easy for citizens, government departments and third parties to evidence and check those rights in practice.

From this month, the Home Office will be introducing a process to convert eligible pre-settled status holders to settled status where possible without the need for them to make a further application to the EUSS. There will be a phased approach to implementing this process, subject to ongoing monitoring and stakeholder engagement.

In the initial phase, we will continue to extend pre-settled status by five years shortly before it is due to expire to ensure that nobody loses their rights for failure to make a second application to the EUSS. After the extension has been applied, the Home Office will automatically check pre-settled status holder details against tax and benefit records to confirm if they have been continuously resident in the UK for five years or more and therefore may be eligible for settled status.

Further checks will also be made to ensure the person continues to meet EUSS suitability requirements These checks have always been used to confirm eligibility under the scheme. If a pre-settled status holder passes these checks and the data indicates they have been continuously resident in the UK and Islands for five years, then pre-settled status will be converted automatically to settled status.

We will shortly be informing the first cohort of pre-settled status holders that the Home Office will be considering their eligibility for settled status under this process. The first grants of settled status under this process are expected to be issued in the coming weeks. Pre-settled status holders will not need to take any action. Individuals will be notified if we are able to convert their pre-settled status to settled

status and their digital status will be updated automatically. We will also inform individuals if we are unable to convert their pre-settled status to settled status and advise them on next steps.

The second phase of this process will be delivered later in 2025. In that phase, the Home Office intends to introduce a manual caseworking function to facilitate grants of settled status to cases that require additional consideration, such as those under 21 years old and non-EEA citizens. The Home Office also plans to make border crossing data available to caseworkers as an additional data source to evidence UK residence.

Under the second phase, we hope to be in a position to reconsider cases that we were unable to convert to settled status under the initial phase of the process. We are also considering the appropriate next steps for cases where a pre-settled status holder has ceased to meet the conditions of their pre-settled status by not maintaining their continuous residence in the UK and will provide further information in due course.

The Home Office will continue to engage with key stakeholders and gather input and feedback to ensure the needs and rights of EU citizens, in particular those who may be vulnerable, are at the forefront of our plans for implementation.

I will write to the Committee again with further updates when the process is expanded.

16 January 2025

SANDEEL DISPUTE

Letter to the Chair from Nusrat Ghani MP, Minister for Europe, Foreign, Commonwealth & Development Office

I am writing to inform you that the EU has initiated the first stage of the Trade and Cooperation Agreement's dispute process in relation to HMG and Scottish Government measures, which ban sandeel fishing in English North Sea waters and Scottish waters.

We received a letter on 16th April from the Secretary-General of the European Commission formally requesting that we enter consultations. Consultations must now take place within 30 calendar days, unless agreed otherwise, with the aim of endeavouring to reach a mutually agreed solution.

We took the decision to close our North Sea waters to all sandeel fishing to protect seabirds. This closure is fully compliant with our obligations under the EU-UK Trade and Cooperation Agreement and applies equally to UK and non-UK vessels. This was a necessary step to safeguard vulnerable seabird populations, including species like kittiwakes who are at serious risk and builds on domestic measures already in place - the UK has not allocated any quota to fish sandeel to UK vessels in three years.

We will keep you updated on developments as the case progresses.

26 April 2024

Letter from the Chair to Stephen Doughty MP, Minister of State for Europe, North America and Overseas Territories Foreign - Commonwealth and Development Office

In April, your predecessor as Minister for Europe, Nusrat Ghani MP, wrote to us to state that the EU Commission had initiated the first stage of the Trade and Cooperation Agreement's dispute resolution process in relation to "HMG and Scottish Government measures" that ban Sandeel fishing in the English North Sea and Scottish Waters.

She also undertook to provide updates "as the case progresses". To date, we have received no further information and note that in late October it appears that the dispute moved to the next stage with the Commission requesting the establishment of an arbitration panel. In light of these events, we would welcome your update on this dispute including when you anticipate the arbitration panel will be established; its membership; the predicted timetable for it to begin its deliberations; and, when you expect it to deliver its decision.

We look forward to considering your response within the usual 10-day deadline.

20 November 2024

Letter to the Chair from Rt. Hon Nick Thomas-Symonds MP, Minister for the Constitution and European Union Relations & HM Paymaster General - Cabinet Office

Thank you for your letter of 20 November regarding the dispute under the UK-EU Trade and Cooperation Agreement in relation to UK and Scottish Government closures of sandeel fishing in English North Sea waters and all Scottish waters. I am responding as the Minister for EU Relations.

As you note, the EU has indeed progressed the case to the second stage of the dispute resolution process by requesting the establishment of an arbitration tribunal. The Tribunal was formally appointed on 18 November, and is chaired by Dr Penelope Ridings, with Professor Hélène Ruiz Fabri and Hon. Justice David Unterlater serving as panellists. We have also agreed with the EU to employ the services of the Permanent Court of Arbitration to serve as the registry facilitating the dispute.

My officials, along with their EU counterparts, met with the Tribunal last week, where they agreed the procedural order for the arbitration process - which you can find published on the PCA's website https://pca-cpa.org/en/cases/334/- and also the initial timelines for the process, which are listed below for your convenience.

- Amicus Curaie submissions - due by 28 November 2024
- The EU's written submission (Memorial) - due by 9 December 2024
- The UK's written submission (Counter-Memorial) - due by 9 January 2025
- Hearing - 28-30 January 2025 (with 27 January 2025 in reserve)
- Supplementary written submissions from both Parties (if any) - due by 10 February 2025

The Tribunal has not yet indicated when they intend to issue a ruling, however, the TCA requires they make an interim ruling by the end of February 2025 (unless they consider more time is required, in which case this can be extended to the end of March 2025). The timing of a final ruling will then depend on whether the Parties wish to comment on the Tribunal's interim report.

I will keep you updated on significant developments.

3 December 2024

Letter from the Chair to Rt. Hon Nick Thomas-Symonds MP, Minister for the Constitution and European Union Relations & HM Paymaster General - Cabinet Office

Thank you for your letter dated 3 December 2024 which was considered by the European Affairs Committee at its meeting of 17 December.

We are grateful for your comprehensive update about the progress towards establishing the arbitration panel, its membership, and its procedures, ahead of the agreed hearing date in late January. We welcome your promise to keep us informed about "significant developments" and look forward to hearing from you again in due course.

18 December 2024

LAUNCH OF UK-EU COMPETITION COOPERATION AGREEMENT NEGOTIATIONS

Letter to the Chair from Kevin Hollinrake MP, Minister of State, Department for Business & Trade & Nusrat Ghani MP, Minister for Europe, Foreign, Commonwealth & Development Office

We are writing to update you on the launch of negotiations between the UK and EU on a Competition Cooperation Agreement.

The UK-EU Trade and Cooperation Agreement provides for a separate agreement to be reached to facilitate cooperation on competition matters between the UK's and EU's competition authorities. This agreement will benefit the UK by creating a formal framework to cooperate and strengthen cross-border enforcement of competition law. It will create a forum for dialogue between the UK's and EU's competition authorities to discuss how best to face emerging and rapidly changing markets, and how to tackle anticompetitive business conduct within them.

This agreement complements the reforms included in the Digital Markets, Competition and Consumers Bill, which is currently progressing through Parliament. Part 5 of the Bill includes provisions to enhance cooperation between the UK's competition and consumer authorities and their overseas counterparts through the refinement of the UK's information sharing laws applying to those UK authorities, and the introduction of investigative assistance powers.

Officials in the Department for Business and Trade and the Foreign, Commonwealth and Development Office have contacted EU counterparts and are due to commence formal negotiations at the end of April. The Competition and Markets Authority will be involved with the negotiations by providing technical insights on how cooperation will work in practice.

We are committed to keeping Parliament updated on the progress of these negotiations. We will write again at the conclusion of talks to provide more detail on the negotiated terms of the agreement. Our officials are also available to provide a briefing to the clerks of your Committees during the course of negotiations, should that be helpful.

We have written in similar terms to Rt Hon. Liam Byrne MP, Chair of the Business and Trade Committee and Dame Meg Hillier MP, Chair of the Public Accounts Committee. We have also copied this letter to Lord Goldsmith KC, Chair of the House of Lords International Agreements Committee.

19 April 2024

Letter to the Chair from The Rt Hon Nick Thomas-Symonds MP, Minister for the Constitution and European Union Relations & HM Paymaster General - Cabinet Office, and Justin Madders MP, Minister for Employment Rights, Competition and Markets - Department of Business and Trade.

Earlier this year, the previous Government wrote to your Committee about the commencement of negotiations between the UK and EU on a Competition Cooperation Agreement. We are pleased to inform you that we have now concluded technical negotiations with the European Commission.

As noted in the previous letter, the UK-EU Trade and Cooperation Agreement provides for this separate agreement to be reached to facilitate cooperation on competition matters between the UK's and EU's competition authorities.

The text as agreed by the Parties must now pass through respective UK and EU internal procedures before it can be formally signed. Should the agreement be signed, it will be formally laid before Parliament for scrutiny under the provisions of the Constitutional Reform and Governance Act 2010 (CRaG). We expect this to take place in 2025.

Our officials are also available to provide a briefing to the clerks of your Committee at any point, should that be helpful.

5 November 2024

SUMMARY OF ACTIVITIES UNDERTAKEN BY THE PARTNERSHIP COUNCIL, TRADE PARTNERSHIP COMMITTEE AND SPECIALISED COMMITTEES UNDER THE TRADE AND COOPERATION AGREEMENT (TCA)

Letter to the Chair from Leo Docherty MP Minister for Europe, Foreign, Commonwealth & Development Office

Please find enclosed a summary of activities undertaken by the Partnership Council, Trade Partnership Committee and Specialised Committees under the Trade and Cooperation Agreement (TCA), covering the period from January to December 2023.

All Specialised Committees met at least once in 2023, and the UK and EU have had constructive discussions across a broad range of areas. These discussions have focussed on supporting proper implementation of the TCA so that UK businesses and citizens reap the full benefits of the agreement, as well as wider shared challenges such as supply chain resilience and the green transition. We look forward to continuing these discussions in 2024.

The government intends to report these activities to both the European Scrutiny Committee and European Affairs Committee on a regular basis.

9 January 2024

Letter from the Chair to The Rt Hon Nick Thomas-Symonds MP, Minister for the Constitution and European Union Relations & HM Paymaster General, Cabinet Office

Given the decision by the House of Lords to reappoint the European Affairs Committee, I am writing to you to explain a brief hiatus in the European legislative scrutiny work undertaken by my Committee and, previously, by the Windsor Framework Sub-Committee.

Following the dissolution of Parliament on 30 May 2024 the Windsor Framework Sub-Committee ceased to exist. It is expected that a decision on arrangements for scrutiny of Northern Ireland affairs will be taken once the House returns in October. Until then, it is unclear which Committee (or Committees) of the House will consider EU legislation relevant to Northern Ireland deposited in Parliament by Government Ministers. I note that the picture in the Commons is also unclear.

As a consequence, the process by which I and the Chair of the Sub-Committee used to 'sift' these documents to the relevant Committees of the House for consideration will be suspended until our EU related Committee structure is confirmed.

I hope that when the House returns from conference recess in October the picture will be clearer and, that between then and Christmas, we will be ready to return to our important document-based scrutiny role considering all new EU documents deposited in Parliament by the Government since late May 2024. The European Affairs Committee also retains an interest in a number of dossiers deposited for scrutiny earlier this year, including an agreement between the Home Office and Frontex, and an EU Regulation introducing reforms to the Prüm data sharing arrangements. Both of these documents are of relevance to the Government's plans to reform UK/EU security arrangements and the Committee will be in touch separately about these matters.

I would welcome an early informal discussion (with the Cabinet Office or Foreign, Commonwealth and Development Office, as appropriate) to consider a mutually convenient approach to how the European Affairs Committee works with the Government to scrutinise UK/EU relations, although formal discussions should wait until our Committee structure is clear. (Under arrangements agreed with the previous Government we were already due to undertake a review).

I am sure that the Members of the European Affairs Committee will also look forward to discussing future arrangements for scrutiny and note that both my and your officials have already begun to discuss these matters tentatively.

30 July 2024

Letter to the Chair from The Rt Hon Nick Thomas-Symonds MP, Minister for the Constitution and European Union Relations & HM Paymaster General, Cabinet Office

Thank you for your letters of 29 and 30 July, and for your warm wishes for my new role as Minister for the Constitution and European Union Relations. I look forward to working with your Committee as we seek to reset the UK's relationship with Europe and deepen the UK's relationship with the EU.

In my role, I will drive the Government's EU agenda, overseeing the existing relationship, and leading the cross-government work to deepen our relationship with the EU in the future. The FCDO will remain responsible for bilateral relationships, including with our European partners, and the Gibraltar negotiations using the department's diplomatic expertise.

I will be glad to discuss my priorities and your request for an evidence session, when we meet on the 4th of September.

With regards to your letter on document-based scrutiny, I want to underline how important I consider the role of Parliament and your Committee in scrutinising the Government's work.

I have noted your Committee's decision to pause this work until there is clarity on arrangements for scrutiny of Northern Ireland affairs in Parliament. Our officials remain in close contact to ensure this important work can resume smoothly following the House's return from conference recess and look forward to beginning discussions about future arrangements for scrutiny in the autumn.

I highly value the work and expertise of your Committee on the various aspects of the UK's relationship with the EU and look forward to working with you over the coming months and years as the UK renews that essential relationship.

02 September 2024

THE EUROPEAN POLITICAL COMMUNITY

Letter from the Chair to Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs, Foreign, Commonwealth and Development Office

Thank you for your letter dated 19 October 2023, which the European Affairs Committee considered at its meeting on 8 November 2023.

We are pleased that, in accordance with the commitments that you made to us in February 2023, the Department provided us with an official-level briefing on the Government's priorities prior to the EPC meeting and that you have written to us about its outcomes. We acknowledge that EPC summits are an opportunity for a series of bilateral and multilateral meetings and ask you to provide us with more details about these in the letters sent to us following future summits, without references to joint statements and announcements published elsewhere.

We were disappointed not to hear more about plans for the forthcoming European Political Community summit in the United Kingdom in 2024. In response we ask you to provide us with an indication of the Government's objectives for the summit and the issues that are expected to be prioritised. Would you also be able to confirm that the summit will be held during the first half of 2024?

The Committee is also interested to learn why the final press conference in Granada, where it was expected that details about the summit in the UK would be announced, was cancelled.

We ask you to reply within the usual 10-day deadline.

8 November 2023

Letter to the Chair from the Rt Hon Lord Cameron, Secretary of State for Foreign, Commonwealth and Development Affairs, Foreign, Commonwealth and Development Office

I am delighted to have the opportunity to work with you once again, in my new role as Foreign Secretary. Thank you for your letter dated 8 November 2023, addressed to my predecessor. I am writing to update you on the government's work in relation to the European Political Community (EPC).

I recognise your Committee's interest in this area. We value the EPC as an important platform for leader-level coordination on pan-European issues. It is important that we continue to reflect on how the EPC can be most effective and that we consult with partners to find a model that delivers for all leaders. We are in the process of seeking these views and I look forward to updating you on plans for a UK-hosted summit.

As you know, The Prime Minister has successfully used previous summits to drive forward our interests on energy, illegal immigration, and security. I expect these themes to remain central to the EPC.

The Prime Minister was pleased with the discussions he held with a wide range of counterparts in Granada. With regard to future summits, I will endeavour to provide fuller details on these engagements. The decision not to hold a press conference at the end was taken by the hosts.

Thank you for your continued interest in the Government's work on Europe. I look forward to meeting you and your Committee soon.

20 November 2023

Letter to the Chair from the Rt Hon Lord Cameron of Chipping Norton, Secretary of State for Foreign, Commonwealth and Development Affairs, Foreign, Commonwealth and Development Office

I am writing to inform that the Prime Minister has agreed to host European leaders in the UK on the 18th of July 2024 for the fourth European Political Community (EPC) Summit.

The Summit will focus on preparing international challenges, including supporting Ukraine and countering illegal immigration.

Previous EPC summits have been valuable in galvanising pan-European cooperation outside of the EU framework. At the Prague Summit, the continent came together to send a powerful message of support for Ukraine and the UK re-engaged with the North Seas Energy Cooperation. During the Chisinau Summit, the UK provided support to Moldova to counter Russian malign activity and launched new organised immigration crime cooperation with Bulgaria. And at the Granada Summit, the Prime Minister agreed an eight-point plan to tackle illegal immigration and led discussion on our collective approach to Artificial Intelligence.

The Government is working closely with EPC partners to promote coherence across this and future EPC summits.

I have instructed my officials to keep you update on preparations for the UK Summit.

18 March 2024

Letter to the Chair from the Rt Hon David Lammy MP, Secretary of State for Foreign, Commonwealth and Development Affairs - Foreign Commonwealth and Development Office

EUROPEAN POLITICAL COMMUNITY AND MINISTERIAL RESPONSIBILITIES

Thank you for your letter dated 29 July.

By way of background, the Prime Minister gave an oral statement on the European Political Community to the House of Commons on Monday 22 July, which was repeated in the House of Lords on Tuesday 23 July.

Both the Prime Minister and I were delighted to host the summit so early in this government's tenure. At Blenheim, we demonstrated a shared, continent-wide commitment to work together to meet the challenges we face. It was the first step in the resetting of our relationship with Europe, which I am committed to delivering across this parliamentary term.

On Ukraine, the summit made clear once again that Europe will do what is required for as long as it take. 44 countries agreed in the margins of the EPC on the need to tackle the Russian Shadow Fleet.

I was also pleased that for the first time the EPC could directly address shared challenges posed by irregular migration, looking at how we could collectively tackle people smuggling and might take a whole of route approach to finding a more sustainable status quo.

On energy, we emphasised the need for regional solutions to finding more affordable, secure and sustainable energy. And on defending democracy, we set out the practical steps that we can take – both at national and international level – to build a more comprehensive and resilient response to foreign information manipulation and interference.

In future, I hope that the EPC will continue to provide an even more effective forum to demonstrate continental cooperation on these issues. We will now engage with Hungary, Albania and Denmark in a new Quad format to ensure that we are maximising continuity between meetings, whilst retaining the informality and space for bilateral conversations that makes this format such a success.

Separately, I wanted to draw your attention to the Written Ministerial Statement (WMS) that was laid on Wednesday 24 July (HLSW18 'Machinery of Government'), which detailed Machinery of Government changes across Government. The WMS announced that the FCDO will remain responsible for bilateral relationships, including with our European partners, the Gibraltar negotiations and Europe strategy, using my department's diplomatic expertise. The Ministerial structures under the UK's treaties with the European Union will move to the Cabinet Office. The Paymaster General, as Minister for the Constitution and European Union Relations, will drive the Government's European Union agenda, overseeing the existing relationship, and leading the cross-government work to deepen our relationship with the EU in the future.

Finally, I note your request for an evidence session and have asked my officials to liaise with your Committee's clerks.

Please accept my thanks again for your engagement and interest in the EPC, and I look forward to working with you in the future as we reset our relations with our European partners.

17 September 2024

Letter to the Chair from Stephen Doughty MP, Minister of State for Europe, North America and UK Overseas Territories - Foreign - Commonwealth and Development Office

I am writing to update you following the Prime Minister's attendance at the European Political Community summit in Budapest, Hungary on 7 November. I am attaching the Written Ministerial Statement that the Foreign Secretary laid in the House of Commons and Baroness Chapman in the House of Lords.

The EPC in Budapest brought together European leaders for the fifth time to discuss shared challenges. After it was first included on the agenda at the EPC summit at Blenheim Palace this July, migration is now established as an area of focus for the EPC. The Prime Minister chaired a roundtable discussion on the subject, calling for increased international cooperation in targeting the gangs who profit from people

smuggling and the need for a 'whole-of-route' approach. He also highlighted £75m of recently announced additional funding for the UK's Border Security Command and bilateral initiatives to tackle organised immigration crime in cooperation with Western Balkans countries.

EPC meetings are important moments to reiterate the continent's support for Ukraine. In a meeting with President Zelenskyy, the Prime Minister highlighted a new package of 56 sanctions targeting Russia's military-industrial complex and Russian-backed mercenary groups, which the Foreign Secretary announced earlier that day. Showing support for Moldova was also high on the Prime Minister's agenda in Budapest, against the backdrop of recent Russian electoral interference. The Prime Minister attended the second leader-level meeting of European Friends of Moldova, chaired by re-elected Moldovan President Sandu, and underlined the UK's continued support for Moldova and its democratic institutions. Leaders from France, Germany, Italy, Poland and Romania and the Presidents of the EU Commission and European Council also attended.

Beyond the formal agenda, the Prime Minister continues to value the EPC for the opportunity it provides to discuss important issues directly with European leaders. In addition to bilaterals with Presidents Sandu and Zelenskyy, the Prime Minister met the leaders of Albania, Denmark, Czechia, Finland, Ireland, Kosovo, Norway, Poland, Portugal and Serbia, as well as EU Commission President Ursula von der Leyen.

Following our experience of hosting the Blenheim EPC, UK officials engaged with Hungarian counterparts to share lessons learnt ahead of Hungary's summit. We will do the same with Albania, who will host the next EPC in the first half of 2025.

27 November 2024

HORIZON EUROPE AND COPERNICUS UPDATE

Letter from the Chair to The Rt Hon Michelle Donelan MP, Secretary of State for Science, Innovation and Technology, Department for Science, Innovation & Technology

UK association to Horizon Europe and Copernicus

Thank you for your letter dated 12 October 2023. This was considered by the Committee at its meeting on 14 November 2023.

As you note in your letter the Committee received an Explanatory Memorandum from HM Treasury relating to the agreement between the UK and the EU providing for UK association to Horizon Europe on 27 September 2023. This was useful to the Committee in providing us with additional detail about the terms of the agreement. We also thank you for the information that you have provided to us about the operation of the "corrective mechanism" designed to prevent the UK from paying a disproportionate net contribution to the scheme and note the information provided in the EM regarding arrangements in the event of UK overperformance.

We regret that you did not confirm in your reply that the Government believes that, in future, scientific collaboration should be considered on its own merits. This point is pertinent since the UK and EU will need to reach further agreements if the UK is to associate to future EU programmes, including any successor to Horizon Europe, which is currently funded until 2027.

It is unclear to us why no date for formal adoption of the agreement by the Specialised Committee on Union Programmes has yet been set, given the significance of this agreement, the fact that the draft decision has now been published and the apparent urgency, given that these arrangements are due to

become binding on the UK and EU from 1 January 2024. We ask you to provide us with a further update on the anticipated timetable and to account for this delay.

We note that you suggest in your reply that the Government's decision not to pursue association to the Euratom research and training programme, and Fusion4Energy/ITER, was a consequence of the impact of the delay of over two years, compared to the timetable that was originally envisaged. We acknowledge that it may have proved difficult for UK researchers to resume their participation in these programmes after a two-year absence, but we nevertheless regret that this situation arose. In our view, this is a tangible example of the delay to UK association having had long-term implications for UK-EU scientific cooperation. We ask you to keep the UK's relationship with these programmes under review.

We welcome your indication that collaboration with the EU and other partners will form a "key part" of the Government's planned investment in the domestic fusion sector. We ask you to provide us with an update on this when more detail about these plans is announced.

We look forward to a response within the usual 10-working day deadline.

15 November 2023

Letter to the Chair from The Rt Hon Michelle Donelan MP, Secretary of State for Science, Innovation and Technology, Department for Science, Innovation & Technology

I know you have closely followed developments on the UK's association to EU Programmes, I am writing with an update to my previous letter on this issue on 6 September as well as in response to your latest letter on this issue on 15 November. I apologise for the delay in responding to this, but I wanted to provide you with a substantive update.

On Monday 4 December the UK and EU will sign our bespoke new agreement finalising the UK's association to the Horizon Europe and Copernicus programmes. This deal is set to create and support thousands of new jobs as part of the next generation of research talent. It will help deliver the Prime Minister's ambition to grow the economy and cement the UK as a science and technology superpower by 2030.

As part of the new deal negotiated over the last six months, the Prime Minister secured improved financial terms of association to Horizon Europe that are right for the UK – increasing the benefits to UK scientists, value for money for the UK taxpayer. It ensures:

1. UK taxpayers will not pay for the time where UK researchers have been excluded since 2021, with costs starting from January 2024.
2. The UK will have a new automatic clawback that protects the UK as participation recovers from the effects of the last two and a half years. It means the UK will be compensated should UK scientists receive significantly less money than the UK puts into the programme. This was not the case under the original terms of association.

Later today we expect UK and EU representatives to meet in the format of the Specialised Committee on Participation in Union Programmes, where they are due to sign a decision to adopt Protocols I and II and amend Annex 47 of the Trade and Cooperation Agreement, thereby formalising the UK's association to Horizon Europe and Copernicus.

I will meet in Brussels with EU Research and Innovation Commissioner Iliana Ivanova and members of the UK and EU R&D sectors to discuss and promote efforts to boost UK participation in Horizon Europe and Copernicus.

My visit to Brussels marks the start of joint UK-EU work to ensure that UK businesses and researchers and their international counterparts come together and seize the opportunity that UK association to the programmes brings.

Researchers, academics, and businesses of all sizes can confidently bid for a share of the more than £80 billion available through the two programmes, with calls for the 2024 Work Programme already open. It builds on the Government's record-breaking backing for R&D, with a commitment to invest £20 billion in UK R&D by 2024-25, borne out in recent announcements like the £500 million boost to the AI Research resource and £50 million for battery manufacturing R&D, announced in the Autumn Statement.

DSIT will shortly launch a communications campaign to maximise participation in Horizon Europe and Copernicus from researchers, academics and businesses of all sizes in the UK. Encouraging smaller businesses to pitch for, and win, Horizon and Copernicus funding supports DSIT's aim to help the UK's promising science and tech firms scale-up and grow. Officials will work closely with key sector stakeholders to ensure this message reaches businesses of all kinds, who might not have previously considered applying, as well as researchers and academics in every part of the country.

4 December 2023

Letter to the Chair from Rt Hon Peter Kyle MP, Secretary of State for Science, Innovation and Technology – Department for Science, Innovation & Technology.

10th Research and Innovation Framework Programme (FP10)

I am writing to inform you that on 26 September 2024, my department will be publishing a Position Paper setting out initial UK views on the EU's 10th Research and Innovation Framework Programme (FP10), the successor to Horizon Europe, which will run from 2028 to 2034. The Position Paper is attached for your reference.

The UK is pleased to have been associated to Horizon Europe since the start of 2024, and as such, we have been following the developments around its successor Programme with interest, whilst focusing on boosting our participation and uptake of Horizon Europe opportunities amongst the UK research and business community.

The document we are publishing tomorrow is therefore our first step in supporting the work of the EU and its Member States to develop an impactful next Research and Innovation Funding Programme which delivers science of the highest quality to the benefit of all participants. Research and innovation will be critical to growing the economy, seizing the opportunities of net zero, rejuvenating healthcare systems and creating opportunities for citizens, the world over.

As you will see in the Position Paper, it is our view that an FP10 that addresses the pressing global problems we all face, and directly improves people's lives, should be grounded in the principles of excellence and openness. Excellence will be key to harnessing the full potential of Europe's research and innovation capabilities across the entire research pipeline. It is critical to maintain the principle of openness through the equal participation of likeminded associated countries in all areas of the programme from its very conception, with exclusions removed wherever possible to ensure collaboration between likeminded partners on key technologies. This will enable the best research capabilities to work together to tackle shared challenges.

FP10 should also keep what works in Horizon Europe, with stable and predictable support so that all our researchers and innovators have a programme which they understand and can easily access.

Through a careful balance between curiosity-driven research and applied research and innovation, FP10 can remain flexible and responsive to future global challenges.

Having associated to Horizon Europe, we are keen to make UK participation in that Programme a success. We will continue to work with the research community, the EU, Member States and third countries to ensure that through our continued involvement in the European Framework Programmes, we can be at the forefront of what is a global competition, combining the deep strengths of our R&D systems for economic growth and resilience.

As such, the UK will, of course, be interested in potentially associating to FP10 assuming it is open, relevant and provides good value for our research community and the taxpayer. The UK Government will continue to follow developments on FP10 closely and will engage with the research sector, the EU and the Member States as this process moves forward over the coming months and years.

For information, this letter has also been sent to the respective chairs of the Science, Innovation and Technology Committee, the Science and Technology Committee, the European Affairs Committee, the Treasury Committee, the Energy Security and Net Zero Committee, and the Foreign Affairs Committee. I will place copies of this letter and the position paper into the Libraries of both Houses.

We are grateful for previous engagement by Select Committees on the Horizon Europe Programme and look forward to continued collaboration as plans for FP10 develop.

25 September 2024

UK – EU DATA ADEQUACY

Letter from the Chair to the Rt Hon Peter Kyle MP, Secretary of State for Science, Innovation and Technology, Department for Science, Innovation and Technology.

This letter sets out the key conclusions and recommendations which the House of Lords European Affairs Committee draws from our recent inquiry into UK-EU data adequacy.

In launching our inquiry in March 2024, we had very much in mind the expiry in June 2025 of the European Commission's current two decisions which award EU data adequacy status to the UK, under the EU General Data Protection Regulation (GDPR) and Law Enforcement Directive (LED). Our inquiry sought to explore, among other matters, the utility of the current UK-EU data adequacy arrangements, the challenges they might face, and the implications if the UK's adequacy status was lost. Given the remit of our Committee, our inquiry necessarily focused on data adequacy in the UK-EU context, but it raised wider international issues which we also addressed. We note that the House of Lords International Agreements Committee is conducting an inquiry into data and digital trade which covers international issues in more detail.

We held seven evidence sessions and received 21 written submissions but were not able to hold a final evidence session with the then-Minister and to produce a report before the summer recess, given the timing of the General Election. Now, the political context has changed significantly — in particular, the previous Government's Data Protection and Digital Information Bill (DPDI Bill), which was the focus of much of our evidence, fell at dissolution. Nevertheless, the June 2025 expiry of the UK's EU adequacy status still looms, and the Government plans a Digital Information and Smart Data Bill covering some of the same issues as its predecessor's DPDI Bill.

We therefore judge that our key conclusions and recommendations, set out below, remain relevant, and could usefully inform the Government's new Bill and its engagement with the European Commission on the adequacy renewal process.

We bring the following Conclusions and Recommendations to your attention.

The UK-EU data adequacy regime since 2021: Should the UK seek to retain EU adequacy status?

a) Losing EU data adequacy status would impose significant extra costs and administrative burdens on businesses and public-sector organisations which share data between the UK and the EU, including law enforcement agencies and the NHS. It would raise new barriers to international trade and economic cooperation, and to trust in the UK's digital economy, running counter to the Government's objective of boosting economic growth. Losing adequacy would also have an adverse impact on Northern Ireland under the Belfast/Good Friday Agreement and the Windsor Framework agreement with the EU.

b) We heard a range of estimates of the economic value of retaining data adequacy, but all were substantial. We conclude that adequacy reduces administrative burdens and compliance costs, increases legal certainty, makes the UK a more attractive location for investment, and supports digital growth. The Government should therefore pursue data protection policies that are aimed at retaining the UK's data adequacy status with the EU, under both the General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED). Securing adequacy renewal decisions from the European Commission in the first half of 2025 should be the Government's immediate data protection policy priority.

c) To limit uncertainty, the Government should engage early with the European Commission and other EU stakeholders with a view to ensuring that the adequacy renewal process is on a positive track and providing reassurance as soon as possible about the retention of adequacy status. In this context, we welcome the call you held on 16 September with the European Commissioner for Justice. The Government should also explore the prospects for securing future adequacy renewal decisions from the Commission which do not expire after a fixed period, as is the case with the EU's other data adequacy arrangements.

d) The retention of GDPR after Brexit was beneficial in that it allowed EU-UK data flows and existing data protection processes to continue without interruption. However, the GDPR regime is far from perfect, and in several respects, problems remain with the legislation, its level of prescription, and its interpretation and implementation in the UK, which continue to create regulatory uncertainty for organisations. While compliance with GDPR can itself be costly, the loss of data adequacy would also lead to significant financial penalties for many organisations.

Risks to the UK's adequacy status

e) There are two distinct EU institutional risks to the continuation of the UK's adequacy status: the European Commission's adequacy renewal decisions for the UK in 2025; and the possibility of a legal challenge to Commission adequacy decisions in the Court of Justice of the EU (CJEU). Of these two risks, a successful challenge to the legality of Commission decisions before the CJEU is more likely than a Commission decision not to renew the UK's adequacy status.

f) When the Commission decides in 2025 whether to renew the UK's adequacy status, it is likely to give significant weight, alongside legal and technical issues, to wider political and economic factors. It is therefore essential that the Government takes this into consideration as it approaches the adequacy renewal process.

g) Given the economic benefits that also flow to the EU, the European Commission seems highly likely to want to renew the UK's adequacy status in 2025. It is therefore in both the UK and the European Commission's interests to ensure, to the extent that it is possible, that UK-EU

data arrangements are compatible with the CJEU's case law. The Government should work with the Commission to this end. It should bear in mind that the Commission and European Parliament scrutinised closely the previous Government's Data Protection and Digital Information Bill. The Government should engage with the Commission and other EU stakeholders, in good time, in order to explain and provide reassurance with respect to any planned data protection reforms, in particular in areas such as the independence of the Information Commissioner's Office and any new role for Ministers to add new grounds of 'legitimate interest' for data processing. The Government should engage with the Commission similarly with respect to any changes in other relevant areas such as the Investigatory Powers Act.

h) The Government should approach the renewal of the UK's adequacy status as part of its wider 'reset' of relations with the EU.

i) The Government should develop its policies on data and data-related matters taking account of the potential implications for the UK's adequacy status. It should aim to maintain high data protection and privacy standards which are also in line with other important international standards such as the Council of Europe's Convention 108 on data protection. In its response to this letter, the Government should update us on the UK's status with respect to the Protocol amending the Convention, which the UK has signed but not yet ratified.

j) There is scope for beneficial reforms to the way in which the UK GDPR is currently operating, particularly regarding its cost to businesses, which would not necessarily jeopardise the UK's adequacy status. In this context, in preparing its Digital Information and Smart Data Bill, the Government should take account of the amendments to the previous Data Protection and Digital Information Bill which were adopted before the Bill fell at dissolution.

Wider international data protection policy

k) There is an active debate among policymakers around the world about the nature of future arrangements for international data flows with appropriate and feasible privacy safeguards. Adequacy may be coming under increasing strain as the basis of any international data protection regime, owing to its limited ability to scale across many jurisdictions and the political dimension which the process inevitably brings.

l) The UK is in a unique position with respect to international data protection policy. It is an associate member of the emerging Global Cross-Border Privacy Rules (CBPR) system and has strong historic connections with several of its members, including in APEC. Among CBPR members and associates, it also has the most experience dealing with, and a data protection regime that is closest to that of, the EU. There is an opportunity for the UK to act as a trusted and responsible data bridge. The Government should be fully engaged in the international debate about future data protection arrangements with the aim of ensuring that the outcome serves UK interests, in enabling digital innovation, and rights and protections the public expect to be in place.

m) In finding the right balance between the European and international regimes, we urge the Government to be mindful of the ways in which its international data protection policies may be a risk to the UK's EU adequacy status. Without undermining its position in international fora, the Government should also aim to keep the EU institutions informed about its broad objectives and initiatives.

We would be grateful for a response to this letter within a month.

We also wish to invite you to give evidence to us on the issues raised by our inquiry which are dealt with by your Department, in the coming months while the adequacy renewal process is still in its early stages. We are pursuing separately an evidence session with the Home Secretary to discuss the law enforcement aspects of our inquiry.

We are aware of our responsibilities to publish the evidence on which our conclusions are based, do justice to the contributions of our witnesses, and inform wider debate on these issues, which are crucial for Britain's prosperity and security. The remainder of this letter therefore comprises, as appendices, summary background information on data adequacy and the UK-EU data adequacy regime (Appendix A); and a summary of the evidence we received (Appendix B). Our conclusions and recommendations above relate to the relevant sections of supporting evidence in Appendix B.

Finally, we would like to thank all those who provided evidence, and our specialist adviser Steve Wood.

APPENDIX A: DATA ADEQUACY: BACKGROUND INFORMATION

What is data adequacy?

Adequacy is a legal mechanism that allows the transfer of personal data from one jurisdiction to another (or the granting of access to data in one jurisdiction to organisations in another), while maintaining data protection standards set by the home jurisdiction.

In a jurisdiction that operates an adequacy system, domestic legislation empowers a government or other authority to grant adequacy status to another jurisdiction. If jurisdiction A grants adequacy status to jurisdiction B, a company or other organisation that is subject to the law of jurisdiction A can lawfully transfer personal data to a company or organisation in jurisdiction B as if that organisation were in jurisdiction A, without any additional safeguards or measures above those required for transfers within jurisdiction A. An adequacy decision applies only to the personal data that is covered by the legislation under which the adequacy decision is made. An adequacy decision may further specify that it applies only to transfers made for certain purposes or to certain sectors or types of organisations.

Adequacy is only one of several legal mechanisms that allow the transfer of personal data between jurisdictions with safeguards for data protection. The principal alternatives to adequacy are:

- Standard Contractual Clauses (SCC). These are issued by the relevant authority in the home jurisdiction and are signed up to by both parties to a data transfer.
- Binding Corporate Rules (BCR). These may be used for international transfers within a single corporate group. They must be approved by the relevant authority.

How does the EU data adequacy system work?

EU data protection law extends to the European Economic Area (EEA); when the European Commission acts under EU data protection law, it does so for the whole EEA.

Two pieces of EU law authorise the European Commission to adopt adequacy decisions with respect to third countries:

- the General Data Protection Regulation (GDPR), which does not cover criminal law enforcement;[1] and
- the Law Enforcement Directive (LED), which covers only criminal law enforcement.[2]

Under this legislation, as reinforced by the jurisprudence of the Court of Justice of the EU (CJEU), the European Commission may grant adequacy status where a third country has data protection standards that are "essentially equivalent" to those of the EU.

European Commission adequacy decisions require sign-off by the EU Member States. The European Data Protection Board (EDPB) must provide the European Commission with its formal opinion on each proposed adequacy decision. The EDPB comprises the heads of one data protection supervisory authority from each EU Member State plus the head of the European Data Protection Supervisor, the EU administrative body supporting the system.

As of September 2024, the European Commission has issued adequacy decisions for 15 jurisdictions: Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Isle of Man, Israel, Japan (organisations falling under the Act on the Protection of Personal Information and subject to the Supplementary Rules), Jersey, New Zealand, Republic of Korea, Switzerland, United Kingdom, United States (commercial organisations participating in the EU-US Data Privacy Framework) and Uruguay.[3] In May 2024 it was announced that formal adequacy discussions had been opened between the European Commission and Kenya.[4]

What is the UK's post-Brexit data protection regime?

When the UK left the EU, it kept the GDPR as retained EU law, through the European Union Withdrawal Act 2018, supplemented by the Data Protection Act 2018 (both as amended by subsequent secondary legislation).[5] This secondary legislation renamed the retained GDPR as 'UK GDPR'. The UK GDPR includes the power for the UK Government to make its own adequacy decisions, but the UK also took on the European Commission's existing adequacy decisions with respect to third countries, as retained EU law. The secondary legislation also immediately extended UK adequacy status to the EEA.

What are the arrangements for the UK's EU data adequacy?

The UK-EU Trade and Cooperation Agreement (TCA) (Article 782) specified that, for EU data protection purposes, and given the UK's retention of the GDPR, the UK would not count as a third

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[1] Regulation (EU) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119 (4 May 2016)

[2] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119 (4 May 2016)

[3] European Commission, 'Adequacy Decisions': https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en[accessed 2 October 2024]

[4] Delegation of the European Union to Kenya, 'Kenya and the EU launch very first Adequacy Dialogue on the African continent': https://www.eeas.europa.eu/delegations/kenya/data-protection-kenya-and-eu-launch-very-first-adequacy-dialogue-african-continent_en?s=352 [accessed 2 October 2024)

[5] The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419)

country as long as it did not amend the GDPR, pending the European Commission's adoption of adequacy decisions for the UK.[6]

The European Commission adopted adequacy decisions for the UK on 28 June 2021 — one each under the GDPR[7] and the LED.[8] The two decisions are legally distinct from each other and adopted under separate processes.

The UK is the only third country to have EU adequacy status under the LED.

Both of the EU's adequacy decisions for the UK expire after four years. These are the only EU adequacy decisions to be sunsetted (other EU adequacy decisions are subject only to a review, at least every four years). The Commission said that it was appropriate to sunset its decisions on the UK given that, after the end of the post-Brexit transitional arrangements, the UK would "administer, apply and enforce a new data protection regime compared to the one in place when it was bound by EU law" and that this might "notably involve amendments or changes to the data protection framework assessed" in the decisions, "as well as other relevant developments".[9] Both of the UK adequacy decisions provide that they may be extended beyond their initial expiry date.

What is the Global Cross-Border Privacy Rules (CBPR) system?

The CBPR system is a voluntary government-backed data privacy certification programme intended to enable international data flows while allowing organisations to show that they meet data protection standards. Countries can become members of the system by signing up to a set of data protection principles and rules. Companies and organisations in member countries can then apply for, and receive, certification as being compliant.

The CBPR system began as an initiative within the Asia-Pacific Economic Cooperation (APEC) group. However, in 2022 the Global CBPR Forum was established, which is open to non-APEC countries. The Forum also allows associate member status.

The full members of the Global CBPR Forum are Australia, Canada, Japan, the Republic of Korea, Mexico, the Philippines, Singapore, Taiwan[10] and the US.

The UK became the first associate member of the CBPR Forum in 2023.[11] In August 2024, Bermuda, the Dubai International Financial Centre, and Mauritius also gained associate status.[12]

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[6] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 149 (30 April 2021). For further background to post-Brexit UK-EU data protection arrangements, see, by our predecessor Committee: European Union Committee, Brexit: the EU data protection package (3rd Report, Session 2017-19, HL Paper) Beyond Brexit: trade in services (23rd Report, Session 2019-21, HL Paper 248), and, with respect to law enforcement, Beyond Brexit: policing, law enforcement and security (25th Report, Session 2019-21, HL Paper 250).

[7] Commission Implementing Decision (EU) 2021/1772 of 28 June 2021 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom, OJ L 360 (11 October 2021)

[8] Commission Implementing Decision (EU) 2021/1773 of 28 June 2021 pursuant to Directive (EU) 2016/680 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom, OJ L 360 (11 October 2021)

[9] Commission Implementing Decision (EU) 2021/1772, paragraph 288; Commission Implementing Decision (EU) 2021/1773, paragraph 172

[10] Participating as Chinese Taipei

[11] Department for Science, Innovation and Technology, Press Release: UK gets new status in global data privacy certification programme on 6 July 2023: https://www.gov.uk/government/news/uk-gets-new-status-in-global-data-privacy-certification-programme [accessed 10 October 2024]

[12] Global CBPR Forum, 'Members and Associates': https://www.globalcbpr.org/about/membership/ [accessed 2 October 2024]

APPENDIX B: SUMMARY OF EVIDENCE

The UK-EU data adequacy regime since 2021: Should the UK seek to retain EU adequacy status?

Expected consequences if the UK were to lose EU adequacy status.

1. The previous Government pointed out that the UK had granted adequacy status to the EU, so if the UK lost its adequacy status from the EU — covering transfers from the EU to the UK — the free flow of personal data in the other direction "would not be automatically suspended". [1]However, our evidence underlined that the value of the current UK-EU adequacy arrangement lies precisely in the fact that it enables two-way data flows. For example, Joe Jones of the International Association of Privacy Professionals said that it is the "bilateral combination of the arrangements that is so important to organisations on both sides of the channel and the Irish Sea".[2]

2. All our witnesses except one said that the consequences of the UK losing EU adequacy status would be negative. Overall, witnesses said that losing adequacy would increase friction, complexity, uncertainty and thus costs in trade and other interactions between the UK and EU, which would probably feed through into higher prices for consumers;[3] and that losing adequacy would probably also reduce innovation and consumer choice, hurt consumer confidence, and damage the reputation and attractiveness of the UK and UK institutions, as potential destinations for international investment and collaboration.[4] It would also require new activity of the Information Commissioner's Office (ICO), to help organisations navigate a new no-adequacy environment (for example, assisting businesses to put new standard contractual clauses in place).[5]

3. Lori Baker, Director of Data Protection at the Dubai International Financial Centre Authority, was the only witness who said that losing adequacy might be "not necessarily to the UK's disadvantage", at least after an initial period. She suggested that "there are many companies and privacy professionals looking for a new approach to data protection regulation and the UK may be the right country to provide it"[6]

4. In terms of the cost of losing adequacy, the lawyer Eleonor Duhs, the not-for-profit technology organisation Reset, the NHS Confederation and Understanding Patient Data (in a joint submission) and Dr Karen Mc Cullagh, Associate Professor of Law at the University of East Anglia, all cited a study by the New Economics Foundation and the UCL European Institute from 2020, before the European Commission's original adequacy decisions for the UK, which had estimated that failing to secure adequacy status would impose additional compliance costs on UK businesses of £1.0-1.6 billion.[7] Asked about the possible costs to the economy of losing

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[1] Written evidence from HM Government (Department of Science, Innovation and Technology) (DAT0013)
[2] Q 1 (Joe Jones); see also written evidence from the Advertising Association (DAT0010)
[3] Q 54 (Neil Warwick)
[4] For example, Q 57 (Nicola Watkinson)
[5] Q 3 (Joe Jones), Q 32 (John Edwards)
[6] Written evidence from Lori Baker (DAT0022)
[7] Written evidence from Eleonor Duhs (DAT0005), Reset (DAT0006), Dr Karen Mc Cullagh (DAT0008) and the NHS Confederation and Understanding Patient Data (DAT0017); see UCL European Institute and New Economics Foundation: The Cost of Data Inadequacy (November 2020https://www.ucl.ac.uk/european-institute/sites/european_institute/files/ucl_nef_data-inadequacy.pdf [accessed 2 October 2024]

adequacy now, the Information Commissioner, John Edwards, told us that he had seen a range of estimates but that the cost would be "enormous".[8]

5. Witnesses including the Information Commissioner,[9] the Advertising Association, the Market Research Society, and the International Regulatory Strategy Group[10] said that any loss of adequacy status would be particularly difficult for small and medium-sized companies (SMEs), because they had less capacity to operate the alternative mechanisms that would be required.

6. We heard specific examples of the way in which losing adequacy status could cause problems across a wide range of sectors — from UK-based data-processing,[11] international payments systems,[12] cross-border family law cases,[13] and international efforts against money-laundering and cybercrime,[14] to medical[15] and other research,[16] medical treatment (in the NHS and for UK citizens abroad), and NHS international collaborations (including those aiming to raise extra revenue).[17] The NHS Confederation and Understanding Patient Data, in a joint submission, estimated that the cost to the NHS of any loss of adequacy could be in the tens of millions of pounds.[18]

7. The Northern Ireland Human Rights Commission (NIHRC) and Equality Commission for Northern Ireland (ECNI), in a joint submission, and the Armagh-based Centre for Cross Border Studies said that in the context of the Belfast/Good Friday Agreement and the Ireland/Northern Ireland Protocol any loss of adequacy status by the UK would raise difficulties for both North-South and East-West cooperation, at both individual and institutional levels.[19] The NIHRC and ECNI further argued that data protection rights are fundamental rights within the terms of the Belfast/Good Friday Agreement, and that any loss of adequacy by the UK would therefore constitute a violation of the 'no diminution of rights' commitment under Article 2 of the Protocol.

8. With respect to law enforcement cooperation under Part 3 of the UK-EU Trade and Cooperation Agreement (TCA), the former Home Office official Martin Kelly pointed out that the UK having EU adequacy status is not a legal requirement for the operation of Part 3, and that the EU's law enforcement agencies have relationships with counterparts around the world without the home jurisdictions of such international partners having the status. He therefore said that, if the UK were to lose adequacy, continued operation of the law enforcement cooperation tools in Part 3 of the TCA was "technically not impossible". It would, however, be "very difficult".[20] Robert Jones of the National Crime Agency said that his organisation "would be concerned … if anything undermined our ability to exchange data",[21] and Peter

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[8] Q 29 (John Edwards)
[9] Q 31(John Edwards)
[10] Written evidence from the International Regulatory Strategy Group (DAT0004), Advertising Association (DAT0010) and Market Research Society (DAT0016)
[11] Written evidence from the Association of British Insurers (DAT0014), UK Finance (DAT0020)
[12] Written evidence from UK Finance (DAT0020)
[13] Written evidence from Eleonor Duhs (DAT0005)
[14] Written evidence from the International Regulatory Strategy Group (DAT0004)
[15] Written evidence from Cancer Research UK (DAT0007), the NHS Confederation and Understanding Patient Data (DAT0017)
[16] The UK Data Service, University of Essex (DAT0012)
[17] Written evidence from the Association of British Insurers (DAT0014), NHS Confederation and Understanding Patient Data (DAT0017)
[18] Written evidence from the NHS Confederation and Understanding Patient Data (DAT0017)
[19] Written evidence from the Centre for Cross Border Studies (DAT0003) and the Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland (DAT0019)
[20] Q 49 (Martin Kelly)
[21] Q 64 (Robert Jones)

Ayling of the National Police Chiefs' Council said that "The seamless transition of data and digital communications must be a high priority, and anything that jeopardises that would be unwelcome".[22]

9. Almost all our witnesses assessed as less satisfactory than adequacy the alternative mechanisms that may be used for international data transfers if no adequacy status is in place. Alternative mechanisms were seen as more complex, more burdensome, more costly and more limited in scope, while also being less robust. The International Regulatory Strategy Group said that, compared to adequacy, "no alternative scenario is available currently to provide equivalent safeguards for consumers, legal certainty and timely access to data for businesses",[23] and the Association of British Insurers said that adequacy was "without question" "the most legally sound and stable way to transfer personal data between the UK and the EU27/EEA".[24] UK Finance said that "putting in place alternative arrangements could involve thousands of contracts to review and amend" and that the process was "likely to cost millions of pounds and take hundreds of hours of time". It also noted that the approvals process for binding corporate rules, to enable international data transfers within multinational companies in the absence of adequacy, has been known to take several years.[25] Zach Meyers of the Centre for European Reform suggested that, in a "worst-case" interpretation, the CJEU's Schrems II decision implied that standard contractual clauses might not be useable at all as an alternative to adequacy, because they cannot address concerns about government access to personal data.[26]

10. With respect to law enforcement cooperation, Robert Jones of the National Crime Agency said that, if the UK lost adequacy status, with respect to organised crime he was "confident that there are channels where [law enforcement agencies] could carry on exchanging information" with EU counterparts, but that there would be a need for "overlapping multiple bilateral arrangements with other partners for them to be able to disseminate data to us", a prospect that he did "not relish … as an operational leader".[27]

11. The UK's are the only EU adequacy decisions which are sunsetted. Paul Sexby, a practising data protection officer, and the not-for-profit technology organisation Reset both suggested that uncertainty over the UK's adequacy status could deter investment. [28] Neil Warwick of the Federation of Small Businesses (FSB) said that the organisation was "really concerned about the whole cliff edge thing again" (although he also assessed as "low" the likelihood of the UK losing adequacy overnight with no knowledge of subsequent arrangements).[29]Joe Jones of the International Association of Privacy Professionals suggested that the Information Commissioner's Office (ICO) might have to divert resources to prepare UK organisations for a potential loss of adequacy.[30]

12. UK Finance said that any loss of adequacy would be especially disruptive if the decision were sudden or unexpected.[31] The Advertising Association and the Data & Marketing Association suggested that the UK might be better-prepared for any loss of adequacy than it once would

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[22] Q 64 (Peter Ayling)
[23] Written evidence from the International Regulatory Strategy Group (DAT0004)
[24] Written evidence from the Association of British Insurers (DAT0014)
[25] Written evidence from UK Finance (DAT0020)
[26] Q 17 (Zach Meyers); see also Q 74 (Professor Swire)
[27] Q 64, 70 (Robert Jones)
[28] Written evidence from Paul Sexby (DAT0002), Reset (DAT0006)
[29] QQ 56-57 (Neil Warwick); see also Q 56 (Nicola Watkinson)
[30] Q 3 (Joe Jones)
[31] Written evidence from UK Finance (DAT0020)

have been, partly as a result of the Brexit process,[32] but Neil Warwick said that, if possible, the Federation of Small Businesses (FSB) would want a transition period to help its members to adjust.[33] Nicola Watkinson of TheCityUK said similarly that her sector "would need a really long lead time".[34]

13. Several witnesses said that, if the UK were to lose adequacy status, they would expect the UK and European Commission to implement one or several immediate 'workarounds', to avoid the cliff-edge scenario and buy time in which to take steps that would see adequacy restored. As precedents, witnesses pointed to the aftermath of the CJEU's two Schrems rulings against the EU's data protection arrangements with the US.[35] Some witnesses also suggested that, if the Commission had concerns about the UK's data protection regime, it had alternatives to immediately and completely withdrawing its adequacy decisions[36] (although Ruth Boardman of the International Privacy and Data Protection Group suggested that the UK practices that are most likely to raise EU concerns are not sector-specific, which might reduce the scope for solutions that differentiate among sectors or types of data, along the lines of the adequacy arrangement between the EU and Japan).[37]

The value of UK-EU data adequacy

14. The previous Government said that it was working to retain EU adequacy status, because "Maintaining data adequacy between the UK and the EU facilitates the free flow of personal data, keeping compliance costs low for businesses and the public safe in both jurisdictions".[38] The then-Government estimated the value of maintaining adequacy at £410 million in saved compliance costs (with a range of £190-£460 million) and £240 million in retained export revenue (with a range of £210-£420 million). Over ten years, the then-Government put the estimated Net Present Value of continued adequacy at £2 billion (2019 prices, 2020 present value), with the range between £1.6 and £3.4 billion. The Conservative European Forum said that these figures included only direct UK-EU trade, so might underestimate the total value once supply chain effects are counted in.[39] Dr Karen Mc Cullagh of UEA Law School cited research suggesting that countries with EU adequacy decisions exhibit a 6-14% increase in digital trade.[40].

15. All our witnesses agreed that adequacy was valuable. They said that it reduced administrative burdens and compliance costs, increased legal certainty, and made the UK a more attractive location to invest and do business.[41] Representative organisations described adequacy as "crucial" in financial services[42] and clinical trials,[43] "highly valuable" in advertising,[44] "very important" in data and marketing,[45] "essential" in market research[46] and "fundamental to

[32] Written evidence from the Advertising Association (DAT0010) and Data & Marketing Association (DAT0015)
[33] Q 59 (Neil Warwick)
[34] Q 56 (Nicola Watkinson)
[35] For example, Q 24 (Zach Meyers, Neil Ross)
[36] For example, written evidence from Reset (DAT0006), Open Rights Group (DAT0021)
[37] Q 57 (Ruth Boardman)
[38] Written evidence from HM Government (Department of Science, Innovation and Technology) (DAT0013)
[39] Written evidence from the Conservative European Forum (DAT0018)
[40] Written evidence from Dr Karen Mc Cullagh (DAT0008)
[41] For example, Q 17 (Bojana Bellamy), Q 50 (Nicola Watkinson, Ruth Boardman)
[42] Written evidence from the International Regulatory Strategy Group (DAT0004)
[43] Written evidence from Cancer Research UK (DAT0007)
[44] Written evidence from the Advertising Association (DAT0010)
[45] Written evidence from the Data & Marketing Association (DAT0015)
[46] Written evidence from the Market Research Society (DAT0016)

numerous NHS endeavours", [47] and said that it "significantly benefits" UK research organisations.[48] Dr Karen Mc Cullagh of UEA Law School said that having EU adequacy status also carried a reputational benefit for the UK, and reassured consumers, who "increasingly value high levels of data protection".[49]

16. Witnesses said that adequacy status was valuable partly because of its simplicity and wide scope, compared to the alternatives. The Information Commissioner contrasted the "absolutely seamless and frictionless" nature of adequacy with the "proliferation of instruments" required outside an adequacy framework.[50] Joe Jones of the International Association of Privacy Professionals called adequacy "rather brutal but simple";[51] and the Market Research Society was among witnesses who noted that this simplicity made adequacy especially valuable for small- and medium-sized firms (SMEs).[52]

17. Witnesses pointed to three features of the UK context that heightened the value of EU adequacy: the services-based nature of the UK economy; the UK's strengths and ambitions in science ('science superpower'); and the scale and breadth of the EU-UK relationship. The previous Government said that £161 billion (21%) of UK-EU trade was data-enabled in 2022,[53] and Zach Meyers of the Centre for European Reform told us that around 45% of the UK's ICT exports went to the EU.[54]

18. The Northern Ireland Human Rights Commission (NIHRC) and Equality Commission for Northern Ireland (ECNI), in a joint submission, and the Armagh-based Centre for Cross Border Studies highlighted the particular value of data adequacy in the context of the Belfast/Good Friday Agreement, in facilitating both North-South and East-West cooperation.[55]

19. With respect to law enforcement cooperation, Peter Ayling of the National Police Chiefs' Council said that adequacy was "enormously beneficial" in transitioning to the use of the tools under Part 3 of the Trade and Cooperation Agreement (TCA). [56] For the National Crime Agency, Robert Jones said that his organisation "would obviously want to do everything we can to preserve the current arrangements".[57]

20. Lori Baker, Director of Data Protection at the Dubai International Financial Centre Authority, was the only witness to raise doubts about the long-term value of EU adequacy for the UK. She pointed out that it enables data transfers only from the EU to the UK and, in effect, from the UK to those other jurisdictions that have EU adequacy status. This leaves data transfers between the UK and the rest of the world uncovered. However, within the UK-EU context, even Ms Baker said that adequacy was "an important mechanism for the free-flow of data … [which] provides certainty to businesses sharing data between both jurisdictions".[58]

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[47] Written evidence from the NHS Confederation and Understanding Patient Data (DAT0017)
[48] Written evidence from The UK Data Service, University of Essex (DAT0012)
[49] Written evidence from Dr Karen Mc Cullagh (DAT0008)
[50] Q 29 (John Edwards)
[51] Q 1 (Joe Jones)
[52] Written evidence from the Market Research Society (DAT0016)
[53] Written evidence from HM Government (Department of Science, Innovation and Technology) (DAT0013)
[54] Q 17 (Zach Meyers)
[55] Written evidence from the Centre for Cross Border Studies (DAT0003) and the Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland (DAT0019)
[56] Q 64 (Peter Ayling)
[57] Q 64 (Robert Jones)
[58] Written evidence from Lori Baker (DAT0022)

The operation of the UK's current data protection and data-sharing arrangements

21. Our witnesses largely welcomed the retention of the EU GDPR in UK law after Brexit. This not only facilitated the receipt of EU adequacy status but also allowed the uninterrupted continuation of data flows and existing data protection processes and entailed a continued commitment to high data protection standards.[59]

22. However, witnesses also identified a number of shortcomings in the UK GDPR and the way in which it is being interpreted and implemented. Cancer Research UK referred to problems in the field of clinical research.[60] The Advertising Association, Data & Marketing Association and Market Research Society all said that organisations in the UK tended to over-rely on consent as a basis for processing and to make too little use of the other — sometimes more straightforward — permissible bases for processing data;[61] Bojana Bellamy, President of the Centre for Informational Policy Leadership at Andrews Kurth LLP, referred to "consent fatigue".[62] Ruth Boardman of the International Privacy and Data Protection Group said that some requirements were overly bureaucratic and that employees sometimes turned their right to make subject access requests into a means of pressuring their employers, concluding that this part of the GDPR "does not work well".[63] Eleonor Duhs was concerned that the great complexity of the GDPR regime was such as to raise rule of law concerns.[64]

23. Witnesses also said that the costs of GDPR were "significant" and "huge".[65] Dr Karen Mc Cullagh of UEA Law School and the lawyer Eleonor Duhs both cited academic research which estimated that the GDPR led to an 8.1% fall in profits across all sectors and a 2.1% fall in profits in the ICT sector, with smaller ICT firms suffering more of a profit loss than larger ones.[66] However, Dr Mc Cullagh cautioned that some of the costs might be one-off, and both she and Bojana Bellamy of the Centre for Informational Policy Leadership suggested that such figures did not capture the potential gains from GDPR in terms of firm reputation and customer satisfaction.[67] Several witnesses said that the costs of GDPR hit small- and medium-sized firms (SMEs) particularly hard; Neil Warwick of the Federation of Small Businesses (FSB) called GDPR "a huge mountain to climb" and indicated that it was still causing compliance concerns for FSB members.[68]

24. With respect to law enforcement cooperation under Part 3 of the TCA, Dr Nora Ni Loideain, Director of the Information Law and Policy Centre at the Institute of Advanced Legal Studies, University of London, noted that it is difficult so far to assess the operation of the new regime, given how recently it came into being. She also noted a lack of oversight of relevant processes, and a gap in statistics on data exchanges for law enforcement purposes.[69] Our witnesses from law enforcement agencies made clear that law enforcement cooperation was more difficult than it had been pre-Brexit, in particular with respect to the UK's loss of access to the

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[59] For example, written evidence from Reset (DAT0006), Market Research Society (DAT0016), Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland (DAT0019)
[60] Written evidence from Cancer Research UK (DAT0007)
[61] Written evidence from the Advertising Association (DAT0010), Data & Marketing Association (DAT0015) and Market Research Society (DAT0016)
[62] Q 18 (Bojana Bellamy)
[63] QQ 50, 52 (Ruth Boardman)
[64] Q 1 (Eleonor Duhs) and written evidence from Eleonor Duhs (DAT0005)
[65] Q 20 (Bojana Bellamy); written evidence from the Advertising Association (DAT0010) and Data & Marketing Association (DAT0015)
[66] Written evidence from Eleonor Duhs (DAT0005) and Dr Karen Mc Cullagh (DAT0008)
[67] Q 20 (Bojana Bellamy); written evidence from Dr Karen Mc Cullagh (DAT0008)
[68] Q 50 (Neil Warwick)
[69] Q 35 (Nora Ni Loideain)

Schengen Information System (SIS II) database. However, they also detailed ways in which their organisations had worked, and were continuing to work, to mitigate the difficulties. Robert Jones of the National Crime Agency said that the new arrangements for UK access to the Prüm system were "very successful", and, with respect to the alternatives to SIS II, Peter Ayling of the National Police Chiefs' Council said that "a suboptimal system has been made considerably better over time".[70]

Risks to the UK's adequacy status

25. Our evidence made clear that the institutional set-up of the EU, and the sunsetted nature of the European Commission's current adequacy decisions for the UK, mean that the continuation of the UK's adequacy status faces two distinct potential hurdles: the Commission's renewal decisions by June 2025; and a potential case at, and then negative ruling by, the Court of the Justice of the EU (CJEU), against a Commission adequacy decision for the UK. A CJEU case could potentially be brought against the Commission's past (2021) or prospective future adequacy decisions for the UK, and separately against the Commission's decisions under either the GDPR or the LED.

26. . Witnesses pointed out that considerable evidence was available about the approaches that the Commission and CJEU were likely to take to their decisions (or potential decisions) on the UK and about the factors that they were likely to take into consideration. This evidence can be found in the relevant legislation; past Commission assessments and decisions (including on the UK in 2021); past advisory opinions of the European Data Protection Board; and the jurisprudence of the CJEU.

European Commission renewal decisions in 2025

27. The UK is the only third country to have the GDPR as its legal 'starting point' with respect to data protection. There was a difference of views among our witnesses as to whether this gives the UK more, or less, scope to operate a regime that differs from GDPR:

    • Professor Elaine Fahey, Professor of Law and Humanities at City, University of London, and Dr Elif Mendos Kuşkonmaz, Lecturer in Law, University of Essex (in a joint submission) and the not-for-profit technology organisation Reset, argued that the fact that the UK started with the same legislation as the EU made any divergence easier to spot and potentially more likely to be seen as significant.[71] On this view, third countries that started with very different data protection approaches and regimes had more scope to diverge from EU law and practice.

    • The previous Government and Lori Baker of the Dubai International Financial Centre Authority argued, on the contrary, that, even if the UK did amend its law so that it started to diverge from the GDPR, its legislation would still be far closer to that of the EU than any other third country, including third countries which had EU adequacy status.[72] Given this situation, Ms Baker suggested that, for the Commission to withdraw adequacy status from the UK, while maintaining it with other third countries, would lack credibility and threaten to cast doubt on the supposedly evidenced-based nature of the whole EU adequacy system.[73] Eleonor Duhs agreed

[70] QQ 62-63 and Q 65 (Robert Jones and Peter Ayling)
[71] Written evidence from Reset (DAT0006), Professor Elaine Fahey and Dr Elif Mendos Kuşkonmaz (DAT0011)
[72] Written evidence from HM Government (Department of Science, Innovation and Technology) (DAT0013), Lori Baker (DAT0022)
[73] Written evidence from Lori Baker (DAT0022)

that "if the UK's data adequacy doesn't continue then the bar for adequacy will be set impossibly high".[74]

28. The adequacy decisions for the UK are the only EU adequacy decisions which are sunsetted. The Commission's decisions on the UK in 2025 will therefore be the first in which it must decide whether to renew adequacy status, as opposed to awarding it in the first place. There was some discussion among our witnesses as to whether this might make the Commission's past practice a less reliable guide to its likely approach to the UK process in 2025 than would otherwise be the case. The previous Government suggested that the Commission might consider only developments since its (the Commission's) previous decisions on the UK, in 2021, "rather than starting from scratch".[75] The then-Government noted that the Commission had taken this approach in its recent joint review of other countries with adequacy status. [76] Joe Jones of the International Association of Privacy Professionals agreed that post-2021 developments were the Commission's most likely focus.[77]

29. The fact that the Commission's 2025 decisions will be on renewal, rather than on an initial awarding of adequacy, was one of the factors that witnesses cited in arguing that the decisions were likely to be positive for the UK. Dr Karen Mc Cullagh of UEA Law School argued that the bar for securing renewal was lower than for securing the status in the first place.[78] Several witnesses pointed out that, while the Commission had turned countries down for adequacy status, it had never withdrawn it once granted.

30. In theory, the European Commission's adequacy decisions are technical ones, in which a third country's data protection regime is assessed, on the basis of evidence, against criteria set out in law. However, among witnesses who addressed the issue, there was a large degree of consensus that, in practice, the Commission would also give significant weight to wider political and economic factors. For example, Dr Karen Mc Cullagh of UEA Law School, who has conducted extensive research on the Commission's adequacy decision-making, told us that the Commission gives the "actual or potential trading relationship" between the EU and a third country "equal if not greater weight" in its determinations.[79] Witnesses also referred to the Commission's strategic objectives with respect to a third country, and the general state of the EU's relationship with it. From his distinct perspective, the Information Commissioner said that if there were a risk to the UK's adequacy status, "it is a risk based on political machinations, rather than on principled analysis".[80]

31. The partly pragmatic nature of the Commission's adequacy decision-making was a further factor that led our witnesses largely to think that a positive renewal decision for the UK in 2025 was the more likely outcome. For example, Dr Karen Mc Cullagh of UEA Law School said that the Commission "will not want to jeopardise [the trade relationship] given the economic value of bidirectional personal data flows between the EU and UK".[81] The Conservative European Forum said that "there is strong support for the adequacy decisions

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[74] Q 4 (Eleonor Duhs)
[75] Written evidence from HM Government (Department of Science, Innovation and Technology) (DAT0013)
[76] 8 Report from the Commission to the European Parliament and the Council on the first review of the functioning of the adequacy decisions adopted pursuant to Article 25(6) of Directive 95/46/EC, COM/2024/7 final (15 January 2024)
[77] Q 4 (Joe Jones)
[78] Written evidence from Dr Karen Mc Cullagh (DAT0008)
[79] Written evidence from Dr Karen Mc Cullagh (DAT0008); see also Q 4 (Eleonor Duhs), Q 17 (Bojana Bellamy, Zach Meyers), Q 22 (Zach Meyers)
[80] Q 30 (John Edwards)
[81] Written evidence from Dr Karen Mc Cullagh (DAT0008)

within the European Commission",[82] and the lawyer Eleonor Duhs said that the Commission "will do everything it can" to maintain the UK's status.[83] The likelihood of the UK losing adequacy status was assessed as "non-negligible" by UK Finance,[84] but "moderate" by Professor Fahey and Dr Kuşkonmaz,[85] "quite low" by Neil Ross of techUK[86] and "low" by Dr Mc Cullagh and the Data & Marketing Association.[87] The International Regulatory Strategy Group saw the UK's status as being under "no immediate threat",[88]and Zach Meyers of the Centre for European Reform said that the political considerations in play suggested that "adequacy would not be at risk from the Commission" "unless the UK did something terribly egregious".[89]

Possible ruling by the Court of Justice of the EU

32. There was a large measure of consensus among our witnesses that, of the Commission and the CJEU, the latter is the greater risk to the continuation of the UK's adequacy status. For example, the not-for-profit technology organisation Reset called the CJEU "the more exacting forum" of the two and said that the Court "has in recent years consistently taken a more absolute line than the Commission (and most of the Member States) in defence of fundamental privacy rights".[90] Several witnesses pointed out that, in its two Schrems rulings, the CJEU had struck down previous EU adequacy arrangements with a partner as important as the United States. (The key issue in the strike-down was the risk of disproportionate access — and the nature of oversight of the access — by US national security and law enforcement agencies to personal data held by private entities, and the risk of this including transferred data from the EU.) Professor Peter Swire, Professor of Law and Ethics at Georgia Tech Scheller College of Business, told us that "there is an enormous difference between the position of the Commission and the jurisprudence to date of the Court of Justice … when the Commission says yes, it is not over".[91]

Policies and policy areas of interest and potential concern

33. Witnesses identified a large number of UK policies and practices which they said would or could be of interest and potential concern to the European Commission and/or Court of Justice of the EU (CJEU), as they consider (or potentially consider) the UK's data adequacy status. Our evidence included some detailed technical discussion of these issues, but much of this discussion concerned provisions of the previous Government's Data Protection and Digital Information Bill (DPDI Bill) — which was itself being amended in Parliament during our evidence-taking. We have therefore simply consolidated these issues into a single list below, in order to alert the Government to policy matters where it should proceed with an awareness of their potential relevance to the UK's data adequacy status.

34. The issues which witnesses said would be of interest and potential concern to either or both of the European Commission and Court of Justice as they consider, or potentially consider, decisions about the UK's adequacy status included:

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[82] Written evidence from the Conservative European Forum (DAT0018)
[83] Written evidence from Eleonor Duhs (DAT0005)
[84] Written evidence from UK Finance (DAT0020)
[85] Written evidence from Professor Elaine Fahey and Dr Elif Mendos Kuşkonmaz (DAT0011)
[86] Q 17 and Q 22 (Neil Ross)
[87] Written evidence from Dr Karen Mc Cullagh (DAT0008), Data & Marketing Association (DAT0015)
[88] Written evidence from the International Regulatory Strategy Group (DAT0004)
[89] Q 22 (Zach Meyers)

[90]Written evidence from Reset (DAT0006)

- regulatory standards and divergence from the EU, including on:

  o the rights of, and standards of protection for, data subjects[92] — including the threshold to exercise rights, the accessibility of effective redress, and subjects' rights under the prospective regulation of artificial intelligence (AI),[93] automated decision-making (ADM) and facial recognition;[94]

  o lawful bases for data processing and the ability to designate legitimate interests by secondary legislation made by Ministers;[95]

  o the possibility of ending end-to-end encryption;[96]

  o the retention of passenger name recognition (PNR) records;[97]

  o UK Government access to personal data for national security and law enforcement purposes; [98]

- aspects of the UK's national security regime under the Investigatory Powers Act 2016, including data collection and retention, surveillance powers and practices, and the role of the Investigatory Powers Tribunal (with concerns potentially heightened by aspects of the Investigatory Powers (Amendment) Act 2024):[99]

- potential risks posed by onward transfers of data from the UK to other third countries (including under the UK-US Cloud Agreement) (and including unintentional as well as intentional transfers); [100]

- the independence and effectiveness of the Information Commissioner's Office (ICO);[101]

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91 Q 72 (Peter Swire)

92 Q 45 (Dr Loidein), Q 56 (Neil Warwick); written evidence from the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament (DAT0001), International Regulatory Strategy Group (DAT0004), Eleonor Duhs (DAT0005), Reset (DAT0006), Conservative European Forum (DAT0018), Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland (DAT0019), UK Finance (DAT0020)

93 Q 41 (Dr Loidein); written evidence from The UK Data Service, University of Essex (DAT0012), UK Finance (DAT0020)

94 Q 41 (Dr Loidein); written evidence from Eleonor Duhs (DAT0005), The UK Data Service, University of Essex (DAT0012)

95 For example, Q 21 (Zach Meyers)

96 Q 75 (Professor Swire)

97 Written evidence from the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament (DAT0001); Q 35 (Dr Loidein)

98 Q 6 (Joe Jones), Q 17 (Zach Meyers), Q 22 (Bojana Bellamy), Q 23 (Neil Ross), Q 72 (Professor Swire)

99 Q 5 (Joe Jones), Q 17 (Zach Meyers), Q 22 (Bojana Bellamy), Q 23 (Neil Ross), Q 41 (Dr Loidein), Q 72 (Professor Swire); written evidence from the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament (DAT0001), Dr Karen Mc Cullagh (DAT0008), Professor Elaine Fahey and Dr Elif Mendos Kuşkonmaz (DAT0011)

100 Written evidence from the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament (DAT0001), International Regulatory Strategy Group (DAT0004), Eleonor Duhs (DAT0005), Reset (DAT0006), Professor Elaine Fahey and Dr Elif Mendos Kuşkonmaz (DAT0011), Conservative European Forum (DAT0018), the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland (DAT0019), Open Rights Group (DAT0021)

101 Q 5 (Eleonor Duhs); written evidence from the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament (DAT0001), International Regulatory Strategy Group (DAT0004), Eleonor Duhs (DAT0005), Reset (DAT0006), Advertising Association (DAT0010), The UK Data Service, University of Essex (DAT0012), Association of British Insurers (DAT0014), Market Research Society (DAT0016), the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland (DAT0019), UK Finance (DAT0020), Open Rights Group (DAT0021)

- the deletion in UK law of the concept of EU fundamental rights and their replacement by references to the European Convention on Human Rights (ECHR), and the ending of the supremacy of EU law;[102]
- any legal cases which provide grounds for concern about UK data protection standards;[103]
- the wider UK legislative and policy landscape in areas relevant to data protection, primarily with respect to human rights, the rule of law, and the UK's obligations under international law — including the UK's stance with respect to the European Convention on Human Rights (ECHR), and its non-ratification so far of the Protocol amending the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data ('Convention 108+').[104]

The scope for change and legislative reform

35. As noted above, witnesses identified a number of shortcomings in the way in which the UK GDPR is currently operating. In this context, they often welcomed the reform intentions of the previous Government's Data Protection and Digital Information Bill (DPDI Bill). However, it was the DPDI Bill that also raised many of the issues that some witnesses said might be of concern to the EU, to the point of potentially jeopardising the UK's adequacy status.

36. A number of witnesses commended the direction of travel that the Bill had taken during its parliamentary proceedings, through the amendments made to the original text. For example, the Data & Marketing Association said that the "amendments made by the Bill to UK GDPR provide some helpful clarifications and interpretations"[105] and the Advertising Association called the Bill a "step in the right direction".[106] Neil Ross of techUK assessed the DPDI Bill as "quite a carefully calibrated evolution of the data protection regime" and, when he gave evidence in April 2024, described matters as being "in quite a good place".[107] He said that he understood that the previous Government had consulted with the European Commission,[108] and Joe Jones of the International Association of Privacy Professionals said that his "strong sense is that the reforms have been designed with a view to retaining EU adequacy".[109]

37. More widely, witnesses said that there was scope for the UK to make reforms without necessarily risking its adequacy status. Ruth Boardman of the International Privacy and Data Protection Group said that "there are certainly amendments that can be made that would reduce the burden on business without risking adequacy being lost",[110] and the former Home Office official Martin Kelly said that "It was always accepted, throughout the adequacy discussion process, that over time there would be some divergence. There is no problem with that".[111] Witnesses including Professor Fahey and Dr Kuşkonmaz and the Data & Marketing Association suggested that the main lesson for the UK from the European Commission's recent review of other third countries with adequacy status was that such countries could maintain

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[102] Q 5 (Eleonor Duhs); written evidence from Eleonor Duhs (DAT0005)
[103] For example, written evidence from the Data & Marketing Association (DAT0015)
[104] For example, Q 6 (Joe Jones), Q 23 (Bojana Bellamy), Q 43 (Dr Loideain); written evidence from Eleonor Duhs (DAT0005)
[105] Written evidence from the Data & Marketing Association (DAT0015)
[106] Written evidence from the Advertising Association (DAT0010); see also Q 27 (Bojana Bellamy, Zach Meyers), Q 52 (Neil Warwick), Q 56 (Ruth Boardman)
[107] QQ 17-19 and Q 21 (Neil Ross)
[108] Q 17 (Neil Ross)
[109] Q 6 (Joe Jones); see also Q 41 (Martin Kelly)
[110] Q 50 (Ruth Boardman)
[111] Q 43 (Martin Kelly)

data protection laws that were quite different from that of the EU, and introduce innovations in their data protection regimes, and still enjoy EU adequacy status.[112]

38. With respect to navigating the EU adequacy regime as a third country, Japan was the country which witnesses cited most often as an example that the UK might usefully follow — more in terms of the 'how' than the 'what', in the words of Josh Lee Kok Thong, Managing Director for Asia-Pacific at the Future of Privacy Forum.[113] The Advertising Association said that the case of Japan "demonstrates how countries can bridge differences through constructive engagement and a willingness to adapt existing frameworks",[114] and the Data & Marketing Association said on the basis of the Japanese case that "maintaining a close relationship [and] being open and transparent about changes made in domestic law and why … give strong pointers about an effective approach".[115]

39. From their different perspectives, and independently of its potential implications for the UK's adequacy status, the lawyer Eleonor Duhs, Cancer Research UK and Neil Ross of techUK all warned against any lowering of data protection standards that might reduce the public's trust and willingness to share their data.[116]

Wider international data protection policy

40. It was clear from our evidence that the potential for onward transfers of EU citizens' data, from an EU-adequate third country to a non-adequate one, is for the EU among the most sensitive of data protection issues. Now that the UK is able to make its own adequacy decisions, Dr Mc Cullagh of UEA Law School said that it must ensure that they "cannot be used as a 'back door' to circumvent GDPR adequacy requirements, particularly in respect of onward transfers", because "Doing so would jeopardise the EU-UK adequacy decision".[117] Professor Swire confirmed that "there is a tension" between retaining EU adequacy and the UK's actual and potential arrangements of its own with non-EU states.[118]Several witnesses suggested that potential transfers from the UK to non-EU-adequate members of the Global Cross-Border Privacy Rules (CBPR) system would raise EU concerns of this kind. Zach Meyers of the Centre for European Reform noted the exclusion of onward transfers under CBPR from the EU's adequacy decision for Japan.[119] .

41. However, witnesses — including the Civil Liberties Committee (LIBE) of the 2019–24 European Parliament — also largely indicated that the UK's current associate status in the Global CBPR Forum, and even potential full participation in the CBPR system, would not necessarily jeopardise its retention of EU adequacy status.[120] Witnesses including the previous Government pointed out that several countries were members of the Forum while also having EU adequacy.[121] Josh Lee Kok Thong of the Future of Privacy Forum was somewhat more cautious, saying that "it was hard to say for sure" what the implications for the UK's adequacy

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[112] Written evidence from Professor Elaine Fahey and Dr Elif Mendos Kuşkonmaz (DAT0011), Data & Marketing Association (DAT0015)
[113] Q 76 (Josh Lee Kok Thong)
[114] Written evidence from the Advertising Association (DAT0010)
[115] Written evidence from the Data & Marketing Association (DAT0015)
[116] Q 21 (Neil Ross); Written evidence from Eleonor Duhs (DAT0005), Cancer Research UK (DAT0007)
[117] Written evidence from Dr Karen Mc Cullagh (DAT0008)
[118] Q 79 (Peter Swire)
[119] Q 25 (Zach Meyers); see also Q 14 (Joe Jones)
[120] Written evidence from the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament (DAT0001)
[121] Written evidence from HM Government (Department of Science, Innovation and Technology) (DAT0013)

would be of full CBPR membership. He advocated "regular dialogue and review of the arrangement and cooperation with the EU" as a means of addressing any concerns.[122].

42. Our evidence made clear that the future of international data protection arrangements is very much up for current discussion, among policymakers, experts and stakeholders in several parts of the world. Joe Jones of the International Association of Privacy Professionals suggested that there were two broad approaches to the future international environment: one in which the EU adequacy system continues to expand and eventually becomes a global regime; and one featuring new multilateral arrangements.[123]

43. Witnesses differed on the potential for the CBPR system to develop into a wider international data privacy regime. Zach Meyers of the Centre for European Reform tended towards caution, pointing to the low number of firms that had signed up to the system so far and saying that it "has quite a long way to go before it can compete with the GDPR" in terms of the number of firms it covers.[124] Joe Jones of the International Association of Privacy Professionals too said that the GDPR had become "the global model".[125] Other witnesses, such as Bojana Bellamy (Centre for Informational Policy Leadership), Neil Ross (techUK), Professor Swire and the Information Commissioner,[126] warned of the limitations of GDPR and its international expansion, and were more upbeat about the opportunities represented by the CBPR. Professor Swire said that an adequacy system "just does not scale".[127]

44. Josh Lee Kok Thong of the Future of Privacy Forum and Bojana Bellamy of the Centre for Informational Policy Leadership both felt that the UK had a potential role to play in international discussions around future global data protection arrangements.[128] Josh Lee Kok Thong said that the UK was "in a unique position vis-à-vis the adequacy system under the GDPR as well as the CBPR system" and that the country could "potentially position itself as a leader in the conversation on cross-border data transfers globally".[129]

22 October 2024

Letter to the Chair from the Rt Hon Peter Kyle MP, Secretary of State for Science, Innovation and Technology, Department for Science, Innovation and Technology.

UK-EU Data Adequacy

Thank you for your letter received on 22 October regarding the European Affairs Committee's conclusions and recommendations from your inquiry into UK-EU data adequacy. I am grateful for the ongoing work of the Committee on this matter.

This letter sets out my response on behalf of the Department for Science, Innovation and Technology, as the department responsible for the EU's adequacy decision on the general processing of personal data as well as for engaging with the European Commission on their adequacy review of the UK. The Home Office has also provided responses to the Law Enforcement recommendations, as the responsible department for the Law Enforcement adequacy decision.

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[122] Q 77 and Q 78 (Josh Lee Kok Thong)
[123] Q 12 (Joe Jones)
[124] Q 25 (Zach Meyers)
[125] Q 1 (Joe Jones)
[126] Q 17 (Bojana Bellamy, Neil Ross), Q 25 (Bojana Bellamy, Neil Ross), Q 34 (John Edwards)
[127] Q 78 (Peter Swire)
[128] Q 25 (Bojana Bellamy), Q 77 (Josh Lee Kok Thong), Q 78 (Josh Lee Kok Thong)
[129] Q77 (Josh Lee Kok Thong), Q 78 (Josh Lee Kok Thong

The UK-EU data adequacy regime since 2021: Should the UK seek to retain EU adequacy status? (Recommendations A-D)

This Government is committed to strengthening the UK's relationship with the EU to put it on a more solid, stable footing. Following their meeting in Brussels on 2 October, the Prime Minister and President of the European Commission have agreed to strengthen cooperation between the EU and UK, working closely together to address wider global challenges. The Department for Science, Innovation and Technology's priorities are focused on accelerating innovation and productivity through science, safely developing technology and driving forward a modern digital government. It is clear that a stronger relationship with the EU and our European partners is key to delivering these objectives.

An important element of this strong relationship is the flow of personal data between the UK and EU. The two personal data adequacy decisions that the EU adopted in respect of the UK in 2021 - for the general processing of personal data under the General Data Protection Regulation (GDPR) and the processing of personal data for law enforcement purposes under the Law Enforcement Directive (LED) - are to be reviewed by the European Commission in advance of the 27 June 2025 deadline. The UK has its own unilateral adequacy decisions in respect of the EU, which enable the flow of personal data from the UK to the EU. Both ensure the safe flow of personal data between the EU and the UK.

I thank the Committee for its work in gathering evidence on the economic importance of these adequacy decisions, in particular the case studies and examples of its value across private and public sectors as well as for British citizens. My department's own research has shown that the European Union (EU)/European Economic Area (EEA) is the biggest partner for UK data transfers. Over three quarters (77%) of UK businesses that transfer personal data internationally send or receive it from the EU/EEA.[1] With adequacy arrangements in place, EU and UK businesses, from SMEs to large multinationals, can exchange personal data in an easy and safe way, without putting in place costly alternative transfer mechanisms. In addition, the EU's law enforcement data adequacy decision provides certainty and trust for operational partners sending personal data from the EU to the UK. Those data flows support our cooperation on matters of law enforcement and security, helping us to tackle crime and bring perpetrators to justice.

The importance of data adequacy was also recently publicly highlighted by a joint statement from the EU and UK Trade & Cooperation Agreement (TCA) Domestic Advisory Groups. Whilst adequacy is not a legal prerequisite for cooperation under the TCA, our reciprocal adequacy decisions support data sharing under the TCA, enabling cross-border trade and law enforcement and criminal justice cooperation. Taken together, this emphasises why maintaining the EU's data adequacy decisions in respect of the UK is of such importance to this Government.

As set out in your letter, engaging closely with the European Commission to secure the successful renewal of the EU's data adequacy decisions of the UK is a priority for this Government. I have met the European Commissioner for Justice twice, on 16 September and again on 15 October, to discuss the importance of efficient and safe personal data sharing between our two jurisdictions. These meetings were constructive, and it is my intention to request an early meeting with the future new Commissioner for the Directorate-General for Justice and Consumers, with responsibility for data protection. More broadly, Ministers and officials in DSIT and the Home Office have engaged, and will continue to engage with EU officials, providing technical materials and information to support a swift renewal.

It is expected the review will commence with technical discussions between the European Commission and the UK Government, following which the Commission will publish draft decisions. The European Parliament and European Data Protection Board will provide non-legally binding opinions, and the

[1] UK Business Data Survey 2024, DSIT (2024)

Commission can amend its decisions based on these opinions. EU Member States will then vote on the Commission's decisions. We acknowledge and respect that the review is the European Commission's unilateral assessment process. The UK has no decision-making power in this process, and it is for the EU to decide how to manage their own adequacy decisions. However, we stand ready to engage with all EU stakeholders regardless of their role in the adequacy process, to explain our domestic framework and the Government's ambition in enabling growth and innovation with robust data protection standards at its heart.

I agree with your assessment on the importance of avoiding the unlikely, but significant, disruptive impact of a no-adequacy scenario for both of the UK's adequacy decisions. Furthermore, I believe that stable personal data flows are important for both the EU and UK public and have acknowledged organisations' views about the uncertainty posed by the current sunset clause, but appreciate it is for the EU to decide how to monitor their own adequacy decisions.

Risks to EU Adequacy (Recommendations E-J)

The Government stands ready to continue to engage on legislation that would be within scope of the EU's review, including the DUA Bill which was introduced on 23 October by Baroness Jones of Whitchurch into the House of Lords. The DUA Bill has three core objectives: growing the economy, improving UK public services, and making people's lives easier. To achieve these aims, large parts of the DUA Bill relate to non-data protection measures such as Digital Verification Services, the National Underground Asset Register and Smart Data schemes. The data protection measures within the Bill will be underpinned by a revamped Information Commissioner's Office (ICO), the UK's independent authority responsible for regulating data protection and privacy laws, with a new structure and powers of enforcement - ensuring people's personal data will be protected to a high standard.

In the development of the DUA Bill, the Government has considered the importance of retaining our EU adequacy decisions from the EU. The Bill will maintain the UK's high standards of data protection and we are confident the legislation will allow the UK to preserve its adequacy status. DSIT and Home Office officials will keep the European Commission updated as the Bill's progresses through parliament. In addition to the DUA Bill, both DSIT and the Home Office will continue to engage closely with the European Commission on other relevant legislation, including the Investigatory Powers (Amendment) Act 2024, on which Home Office officials have updated the European Commission throughout the Act's passage.

Beyond legislative reform, I acknowledge the Committee's reference to wider risks facing the EU's adequacy decisions in respect of the UK, including the potential of a legal challenge being brought at the Court of Justice of the EU (CJEU). Subject to the nature of such a challenge, the CJEU may need to determine whether the UK provides an "essentially equivalent" level of protection for personal data. In our view, the UK's data protection standards and regime are compatible with the 'essentially equivalent' standard. The UK will provide the EU with thorough information on its data protection framework to enable the EU to conduct a robust assessment that satisfies the adequacy criteria (including those set by CJEU case law) with the aim of minimising the risk of a legal challenge.

Wider international data protection policy (Recommendations K-M and I)

The legal and regulatory frameworks governing international data flows are becoming increasingly complex and fragmented. The UK is committed to working with international partners to shape practical, real-world solutions to facilitate personal data flows. The approach of this Government is focused on balancing ambition with international partners while maintaining our adequacy status with the EU.

On the Global Cross-Border Privacy Rules (CBPR), the UK's associate status in the Forum allows us to participate in discussions with a wide range of international partners, promote the UK's approach to data protection and data flows, and focus on the principles that we have in common to help raise global personal data protection standards. In particular, the UK is working closely with the Global CBPR Forum members to review and update the CBPR programme requirements (the Forum's data protection standards and principles) to modernise them and facilitate greater interoperability between different data protection and privacy frameworks.

Several members of the Global CBPR forum also have positive adequacy decisions from the EU, and the UK will continue to ensure that UK citizens personal data receives the high level of data protection they expect under UK data protection legislation when being transferred overseas.

The UK is also an active member of the EU Adequate Countries Network which provides a forum for countries and regulators with EU adequacy status to discuss topics and share best practices on data protection. The Network brings like-minded countries together with unique capacity to cooperate in an agile, flexible, and practical way, adapted to the different needs, size, and legal systems of our jurisdictions.

The Committee's letter also specifically addresses the Protocol (C108+) amending the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (C108). As you are aware, the UK has been a strong supporter of C108 and C108+, as one of the first signatories of both Conventions. It is our intention to ratify when and if we are able to do so, but we acknowledge the difficulties presented by Article 14(1) of C108+ which would require the UK to allow the free flow of personal data to all other C108+ signatories without additional data protection checks, which is not currently compatible with the UK's domestic data transfer regime based on high data protection standards.

Thank you again to the Committee for the evidence collected as part of this inquiry along with producing the conclusions and recommendations. My department will await an invitation to provide oral evidence to the committee on this matter.

20 November 2024

Letter from the Chair to the Rt Hon Peter Kyle MP, Secretary of State for Science, Innovation and Technology, Department for Science, Innovation and Technology.

Thank you for your letter dated 20 November 2024. It was considered by the European Affairs Committee at its meeting of 14 January 2025.

We are grateful for the responses you provided to the conclusions and recommendations of the Committee's inquiry into UK-EU data adequacy. We retain an interest in this matter and would welcome periodic updates from you about any future developments.

We would welcome the opportunity to hear directly from you in a public evidence session. We suggest that details should be discussed at the official level and hope that the session could take place before the expiry of the current data adequacy arrangement in June 2025.

14 January 2025