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

TO2018/00863/DC
18th January 2018

Dear Tim

I am writing to you to provide an update on the progress of the proposed regulation for the Free Flow of non-personal Data in the European Union (FFoD), further to Matt Hancock's letter of 18 December and in response to your letter of 16 November.

As outlined in my predecessor's letter, there was agreement to an informal mandate for trilogue discussions at the 20 December meeting of COREPER. The decision to accelerate the adoption of an informal mandate was made by the Presidency on the basis of support expressed by the majority of ministers during a debate at a meeting of the Telecommunications Council on 5 December. The UK has been a consistent supporter of action on the free flow of non-personal data and to tackle data localisation in the EU and considers this file to be of significant importance to driving future trade and the development of the digital economy. Whilst we recognise that it would have been preferable to have more time to work through the file, the Government supported its speedy adoption so as not to obstruct the business of the Council on what is an important regulation. The file has been allocated to the European Parliament's Internal Market Committee (IMCO) and is scheduled for an initial discussion on 23 January. A more detailed timeline is yet to be confirmed.

I note your request that the Government provide the committee with additional information on areas detailed in the October Explanatory Memorandum. A comprehensive response to the points you have raised and an update on the areas where we sought clarification is set out at Annex A. I hope your Committee finds this helpful in its deliberations noting that my officials are happy to provide further information where needed. It was not possible to provide this information earlier due to the rapid negotiation that took place in December. Indeed the draft text to which you referred in your last letter was altered during the course of negotiations as member states, including the UK and likeminded member states, sought changes to meet our objective of retaining the scope and ambition of the original Commission proposal, as well as other clarifications. In line with the advice we provided to the committee in December, the UK supported the informal mandate for trilogue as we believed the final tabled document did not include any text that went substantially against the UK's position on this file.



There was a compromise in some areas - such as public sector insourcing being defined as out of scope - the final text broadly retained the scope and ambition of the Commission text and resolved many of the points of clarification set out in the explanatory memorandum of 12 October. Crucially for the Government, there were no further exemptions (i.e. beyond public security) added to the data localisation prohibition. This was the main concern for the Government as it could have considerably reduced the impact of the regulation. I enclose a copy of the mandate text that is now publically available.

I can assure the Committee that the Government has made every effort to meet its scrutiny obligations. I can also assure the Committee that we will continue to keep you up-to-date on progress as the trilogue progresses to allow for further scrutiny of this important file. We will also ensure the Scrutiny Reserve is maintained and respected on this file as proceedings unfold and ahead of the point at which the proposal returns to the Council of Ministers.

I am copying this letter to Sir William Cash, the clerks of each Scrutiny Committee, Les Saunders at DEXEU and Agim Zekaj, DCMS scrutiny coordinator.

Yours ever

Best wishes
Margot

MARGOT JAMES MP
Minister for Digital and the Creative Industries