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Sir William Cash MP  
Chair  
European Scrutiny Committee  
House of Commons  
London SW1A 0AA

TO2018/00863/DC

18th January 2018

Dear Bill

**Free flow of non-personal data in the European Union: 12244/17, ESC ref 39028**

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), and to respond to your reports of 29 November and 19 December 2017.

Since the update provided to you in Matt Hancock's letter of 13 December, the Estonian Presidency achieved its ambition to obtain an informal mandate for trilogue discussions at the 20 December meeting of COREPER. The file has been allocated to the European Parliament's Internal Market Committee (IMCO) and is scheduled for an initial discussion at the January 23 meeting. A more detailed timeline is yet to be confirmed.

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 the 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 consider 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, as we did not want to obstruct the business of the Council on what is an important regulation.

I note your concern that the Government has yet to provide the committee with the clarifications it has sought on the proposal. A comprehensive response to the points you have raised is set out at Annex A. I hope your committee finds this helpful in its deliberations and 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 during December. Indeed the draft text to which you referred in your last letter, was altered significantly 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 new text that went against the UK's position on this file.

There was compromise on 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, which 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 Lord Boswell, 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