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Sir William Cash MP  
Chair of the European Scrutiny Committee  
House of Commons  
London  
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28 September 2018

**Opt-in Decision on the Proposal of the European Parliament and the Council on European Production Orders and European Preservation Orders for cross-border access to electronic evidence in criminal matters.**

I am writing to inform you of the Government's decision not to opt in to the Proposal of the European Parliament and the Council on European Production Orders and European Preservation Orders for cross-border access to electronic evidence in criminal matters.

**Law enforcement access to data held by service providers is an important issue and we support the underlying objective of improving cross-border access to electronic evidence. However, from the start of discussions on this issue, we have not supported the need for new EU legislation. That is because** it is not clear how new EU legislation will be a practical and effective way to address the global issue of providing lawful access to data held anywhere in the world, even outside of the EU's jurisdiction.

I would also like to respond to your recent correspondence on the e-evidence proposals. **You asked whether I accept that this is an area of exclusive EU competence, or would become one with the adoption of the proposed Regulation, and whether a decision to opt into the proposed Regulation would impede or prevent the UK from negotiating and concluding its own bilateral UK-US Data Access Agreement. If and when it is adopted, the proposed regulation will create a set of common rules which overlap significantly with the subject matter of the proposed agreement with the United States. I accept that for this reason, and had the United Kingdom opted in to the proposal and the proposal subsequently adopted, the Court of Justice would likely have concluded that it was unlawful as a matter of EU law for the UK to conclude the agreement on the basis that it was capable of affecting those rules or**

**altering their scope. A finding to this effect would have prevented the United Kingdom from concluding the agreement.**

**The Committee also asked what assessment has been made as to whether a bilateral UK-US Data Access Agreement might affect the prospects for securing a comprehensive data protection agreement with the EU post-exit. The UK-US Agreement will be fully compliant with EU law, but not reliant on it. The Agreement will be facilitative rather than compulsive. In other words, it will enable US authorities to make direct requests for communications content from UK telecommunications companies, but a company in the UK will not be obliged under UK law to comply with any order that is served; the Agreement will simply require the removal of certain legal obstacles which would otherwise prevent service providers from complying with orders. We therefore consider that any UK-US agreement should not pose a risk to a future agreement on data protection with the EU.**

**Finally, the Committee requested further information on the practical implications of being bound only by the Directive, should the UK decide not to participate in the proposed Regulation, and how this might affect requests for electronic evidence made under other EU criminal law instruments in which the UK participates. The UK will need to fully implement the Directive if it comes into force before we leave the EU or during any Implementation Period. The e-evidence proposals are an additional tool to the EIO. A European Preservation Order and European Production Order can be distinguished from the EIO because of their direct applicability to compel a legal representative to preserve and / or produce the electronic evidence sought. The EIO however, is a broader power that seeks to streamline mutual legal assistance measures and is used for a number of different investigative or evidential uses. The two can operate separately. Therefore, not being party to the e-evidence proposals will not hinder our operability under the EIO.**

**I will place a copy of this letter in the House Library to inform Parliament of the Government's opt in decision.**

I am copying this letter to Lord Boswell, Chair of the Lords European Union Committee; Chris Johnson, Clerk to the Lords Committee; Lynn Gardner, Clerk to your Committee; Les Saunders, Department for Exiting the European Union; and Alejandra Bernal, Departmental Scrutiny Coordinator.



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