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Ysgrifennydd y Cabinet dros yr Economi, Ynni a'r Gymraeg  
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Llywodraeth Cymru  
Welsh Government

Chair of the Culture, Communications, Welsh Language, Sport, and International Relations  
Committee

13 May 2024

Dear Chair

Further to the Committee's report on the Data Protection and Digital Information Bill Supplementary Legislative Consent Memoranda (LCM) No.3 (Conclusion 6), and the laying of Supplementary LCM No.4 on 25 April, attached is a copy of our updated assessment in relation to the Trade and Co-operation Agreement and UK Government Data Protection and Digital Information Bill.

I am copying this letter to the Legislation, Justice and Constitution Committee.

Yours sincerely

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Cabinet Secretary for Economy, Energy and Welsh Language

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## **Annex 1 - Trade and Co-Operation Agreement and the Data Protection and Digital Information Bill – Analysis**

### **Will the Bill impact the UK's compliance with data protection provisions in the TCA?**

1. Our view is that the UK Data Protection and Digital Information Bill ('the Bill'), including the amendments detailed in [Supplementary Legislative Consent Memorandum](#) No.4 laid 25 April, will not have a direct or immediate impact on the UK's compliance with the Trade and Co-Operation Agreement (TCA), which is a Free Trade Agreement (FTA) between the UK and EU.
2. Our view is that the changes to the UK data protection framework proposed by the Bill as drafted are unlikely to impact on the UK's compliance with TCA, as its data protection provisions are generally broad and high level, except rules on data transfer relating to law and enforcement matters, which are more specific.
3. However, we are concerned that that the Bill signals the beginning of the UK's divergence from the data protection regime currently in place across the EU and the UK (the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA)). Regulatory divergence over the medium-to-long-term has the potential to undermine the data protection provisions in the TCA across a broad range of policy areas, including digital trade which is essential for public services and private businesses, and law and enforcement.

### **Why could the UK's divergence from the EU's data protection regime undermine the TCA?**

4. Data adequacy decisions<sup>1</sup> made by the EU about the UK confirm that the UK is recognised as having an equivalent level of protection for personal data as the EU, enabling personal data to flow freely between the EU and the UK, supporting public services and private businesses. The UK adequacy decisions also help to facilitate implementation of the TCA which includes a commitment by the EU and UK to uphold high levels of data protection standards.
5. Our view is that there are a number of provisions within the Bill as drafted that potentially undermine the current data protection framework, and therefore may threaten relevant adequacy decisions. These concerns include provisions relating to the independence of the Information Commissioner, onwards transfer of data, the rights of individuals, risk mitigation, additional grounds for data processing and high-risk data processing.
6. The potential loss of EU data adequacy is a key concern from a trade perspective. This would be a major threat for Welsh exporting businesses whose main overseas market continues to be the EU. From a broader perspective, the loss of data adequacy would also impact the delivery of those public services which rely on the flow of personal data between UK and the EU.

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<sup>1</sup> [Adequacy | ICO](#) – UK Information Commissioner's Office website

7. UK Government have provided assurances that they see no threat to the adequacy agreement by the Bill. However, we have no evidence to prove or disprove this. We have requested that UK Government share a copy of its risk assessment on the matter on several occasions, but we are yet to receive it.
8. An assessment of the likely impact of the Bill on data adequacy decisions has been undertaken by Welsh Government which supports concerns raised by others, including the [Northern Ireland Executive](#). We continue to seek assurances from UKG on the matter.