

Rebecca Evans AS/MS  
Cabinet Secretary for Economy, Energy and Planning  
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref

Delyth Jewell MS  
Chair Culture, Communication, Welsh Language, Sport  
and International Relations Committee  
Senedd Cymru

05 February 2025

Dear Delyth,

Further to the laying of a Legislative Consent Memorandum (LCM) on the Data (Use and Access) Bill ('the Bill') on 2 January, I attach a copy of our updated assessment in relation to any potential impact of the Bill on the Trade and Co-operation Agreement (TCA). I am copying this letter to each of the Committees to which the LCM has been referred.

The previous First Minister made a commitment regarding the sharing of assessments of the impact of UK Government Bills on the TCA in January 2024, when responding to the Committee's recommendations relating to the International Relations Annual Report 2022-23. The commitment stated that *'the Welsh Government LCMs on Bills that impact on the UK-EU Trade and Cooperation Agreement should set out our assessment of such an impact'*.

I would like to clarify how I intend to fulfil the commitment. The TCA is the UK's most important trade deal and as such, the Welsh Government always considers how draft legislation could impact on our existing international obligations. Many UK Government Bills will have no identifiable impact on the TCA, or on any of our international obligations. In these cases, we would not provide an assessment to the Senedd. Where a Bill has a clear impact on the obligations made in the TCA, an assessment will be provided to the Committee only in relation to the provisions which the Senedd is asked to consent to. Including the provisions that do not engage devolved matters within technical assessments of Bills would place an unreasonable burden on Welsh Government teams and duplicate work that the UK Government will have already carried out. Assessments will continue to be provided in writing, as a separate document to the LCM itself.

In cases where my officials are concerned that UK government policy is incompatible with the TCA, we will continue to raise these concerns directly with the UK government.

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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.

However, it is ultimately for the UK government to ensure it has carried out its own due diligence and is compliant with any international obligations.

I trust that this approach will provide the Committee with the information required.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive style with a clear, legible font.

**Rebecca Evans AS/MS**

Cabinet Secretary for Economy, Energy and Planning

Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio

cc. Chair, Economy, Trade and Rural Affairs Committee

Chair, Climate Change, Environment and Infrastructure Committee

Chair, Equality and Social Justice Committee

Chair, Legislation, Justice and Constitution Committee

## **Annex 1 - Trade and Co-Operation Agreement and the Data (Use and Access) 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 (Use and Access) Bill ('the Bill'), 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 the 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 the 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, as with the previous UK Government's Data Protection and Digital Information (DPDI) Bill (which fell following the dissolution of Parliament), we are concerned that this Bill could signal the beginning of the UK's divergence from the data protection regime currently in place across the EU by diluting the protections provided by UK legislation set out in 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 a number of provisions within this Bill that potentially undermine the current data protection framework, and therefore may threaten relevant adequacy decisions.
6. The key concerns relate to:
  - provisions which will dilute a data subjects' rights, such as the dilution of protections around automated decision-making;
  - the addition of duties for the Information Commissioner which may impact upon the requirement for the Commissioner's complete independence, free of direct or indirect external influence;
  - the different standard of treatment of international data transfers compared to the EU, which may be an impediment to adequacy should this matter be litigated; and,
  - The totality of the Secretary of State's regulation-making powers result in a high degree of control around data protection with limited safeguards.

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

7. 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, and which rely on smooth data transfers with the EU, particularly multinationals with parent or sister companies based in EU countries. If the UK were to lose its data adequacy status, implementation of the safeguards required by the EU would mean additional administrative and reporting requirements for businesses, as they would be required to undertake additional, potentially costly, compliance activities.
8. From a broader perspective, the loss of data adequacy could also impact the delivery of those public services which rely on the flow of personal data from the EU, for example in education and local government. From a Health perspective the risks are even more significant, with the loss of data adequacy potentially affecting the Welsh NHS and impacting aspects of our cooperation with the EU on health.
9. The UK government has provided assurances that it sees no threat to the adequacy agreement by the Bill. However, we have no evidence to prove or disprove this. Welsh Ministers have requested that the UK government shares a copy of its risk assessment on this matter, but we have not had it. Officials also will continue to seek assurances from the UK government on this matter.
10. Officials will continue to monitor the potential impact of the Bill on EU data adequacy and the TCA as it continues its passage through Parliament.