DRAFT OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Foreign Affairs and the Committee on International Trade

on the implementation report on the EU-UK Trade and Cooperation Agreement (2022/2188(INI))

Rapporteur for opinion: Katarina Barley
The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Foreign Affairs and the Committee on International Trade, as the committees responsible, to incorporate the following suggestions into their motion for a resolution:

1. Recalls that the application of Part Three of the Trade and Cooperation Agreement\(^1\) (TCA) on law enforcement and judicial cooperation in criminal matters is contingent on the protection of human rights and fundamental freedoms and the commitment to high-level protection of personal data;

2. Expresses its concerns over current legislative processes in the UK that would put these conditions at risk, namely the Retained EU Law Bill, the Bill of Rights Bill and the Data Protection and Digital Information Bill;

3. Stresses that Part Three of the TCA allows for extended data flows between the EU and the UK, such as the exchange of DNA data, passenger name record data and criminal record information; underlines, therefore, that it is of the utmost importance that the UK ensures adequate data protection standards, so as not to put EU standards at risk when sharing data with the UK;

4. Underlines the risks in the liberal onward transfer of personal data to non-EU countries that do not provide for an adequate level of protection; recalls that a primary data recipient may only transfer personal data onwards if the recipient is also subject to rules affording an adequate level of protection; stresses, therefore, that the UK must ensure that its data transfers to non-EU countries are based on regulations, appropriate safeguards and derogations;

5. Condemns the UK’s general and broad exemption from the data protection principles and data subject rights for the processing of personal data, set out in its Data Protection Act, for immigration purposes; believes that the exemption in cases in which giving effect to data subjects’ rights would jeopardise effective immigration control or in the investigation or detection of activities that would undermine the maintenance of effective immigration control does not comply with the principle of legal certainty and therefore, is not sufficient to prevent arbitrary decision-making;

6. Expresses its concern over the proposed UK Data Protection and Digital Information Bill, which would allow for automated decision-making; stresses that this bill would deprive individuals of their right, protected in the EU under the EU General Data Protection Regulation\(^2\) and internationally under the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, not to be subject to a decision based solely on automated processing (including profiling) that has either a legal or similarly significant effect on them;

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\(^1\) Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ L 149, 30.4.2021, p. 10).

7. Deplores the provisions in the new UK Data Protection and Digital Information Bill that weaken the obligations for data controllers and processors, including the new provisions that only require a senior responsible individual to be appointed when carrying out processing, which is likely to result in a high risk to individuals; deplores, equally, the provisions removing the requirement to designate a non-UK based representative for data controllers and processors that is subject to UK data protection rules, and those eliminating the obligation to consult with the UK data protection supervisory authority prior to processing when the controller’s assessment indicates that the processing is likely to result in a high risk;

8. Highlights that the UK data protection supervisory authority has found multiple instances of enforcement failures and that its statistics show very low rates of hard enforcement; recalls that, in order to ensure a high level of data protection, the anticipated rules must be enforced and individuals must have access to an effective complaints procedure;

9. Urges the UK to fulfil the data protection requirements for the processing of passenger name record data, in line with Article 552 of the TCA; deplores the long transition period of three years, which is delaying the implementation of the requirement to delete passengers’ personal data after their departure from the country;

10. Underlines that Article 541 of the TCA provides for an amendment procedure in the event that EU law under the Prüm framework is amended substantially; recalls, therefore, that the UK’s participation in the newly revised Prüm framework is not automatic and should be conditional on the UK maintaining its current human rights standards and ensuring an adequate data protection framework;

11. Points out that, with regard to the necessary revision of the adequacy decision for the transfer of personal data to the UK in two years, it is of the utmost importance that guaranteeing the rights protected under the European Convention on Human Rights be non-negotiable and that Parliament closely monitors any non-compliance;

12. Recalls that the fundamental right to a fair trial includes, among other things, the right to information, the right to interpretation and translation, the right to have a lawyer, the right to be presumed innocent and the right to be present at trial, as well as special safeguards for children who are suspects or accused persons in criminal proceedings and the right to legal aid, which must also be ensured in the course of judicial cooperation in criminal matters with non-EU countries;

13. Recalls that, in order to ensure effective extradition procedures, an arrest warrant must be executed as a matter of urgency and, in the event that a person does not consent to the extradition, a hearing must take place within 21 days of the arrest; recalls that, in order to safeguard the fundamental right to a fair trial, these time limits must not be exceeded.