



House of Commons  
European Scrutiny Committee

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**Twenty-first Report of  
Session 2019–21**

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Documents considered by the Committee on 16 September 2020, including the following COVID-19 related documents:

EU support to the fisheries sector  
Aviation and climate change: COVID-19 and UK/EU future  
relationship negotiations

*Report, together with formal minutes*

*Ordered by The House of Commons*

*to be printed 16 September 2020*

## Notes

### Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

### Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee) *
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

### Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

### Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the [parliamentary website](#). Documents awaiting consideration by the Committee are listed in "Remaining Business": [www.parliament.uk/escom](http://www.parliament.uk/escom). The website also contains the Committee's Reports.

\*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

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# 1 EU Circular Economy Action Plan<sup>1</sup>

## This EU document is politically important because:

- the Government acknowledges the desirability of continued engagement between Northern Ireland and the EU as part of ongoing policy work for legislation subject to alignment under the Protocol; and
- the Government insists that, under no circumstances, will the direction of UK policy be influenced by the EU, even in areas where Northern Ireland must continue to align and where there is a common framework in place to avoid unintended divergence across the UK.

## Action

- Report to the House.
- Draw to the attention of the Environmental Audit Committee; the Environment, Food and Rural Affairs Committee; the Northern Ireland Affairs Committee; and the Committee on the Future Relationship with the EU.

## Overview

1.1 The Commission’s recent Circular Economy Action Plan has direct implications for Northern Ireland as it suggests legislative changes that would apply in Northern Ireland under the terms of the Ireland/Northern Ireland Protocol. It consequently has indirect implications for the rest of the UK as waste policy is an area where it has been determined that cooperation between the nations of the UK — including Northern Ireland — will be necessary post-Brexit through a “common framework”.

1.2 Following our first consideration of the Action Plan, we [wrote](#) to the Parliamentary Under-Secretary of State (Rebecca Pow MP) on 9 July 2020 seeking additional information on the Government’s approach to future engagement with the EU in this area.

1.3 The Minister has [responded](#), noting that the UK “may take note of the EU’s priorities and ongoing work in this area to support the interests of UK consumers, manufacturers and suppliers”, but “under no circumstances should this influence our direction of travel in the UK, where policy decisions shall be made in the interests of the domestic landscape.”

1.4 That said, the Minister goes on to recognise that the UK common framework for resources and waste policy will need to take account of the “specific nuances that will need to be applied in Northern Ireland given the requirements of the Protocol.”

1.5 She says that the terms of future UK-EU engagement on policy work relating to legislation subject to alignment under the Protocol remains to be agreed, but will most likely take place via the Joint Committee process. The Minister assures us that decisions made there will be reflected in the work to develop the common framework for waste, whilst ensuring UK autonomy to reflect domestic priorities in this area.

<sup>1</sup> Commission Communication: A new Circular Economy Action Plan “For a cleaner and more competitive Europe”; [6766/20](#) + ADD 1, COM(20) 98; Legal base: —; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 41133.

1.6 Finally, the Committee asked the Minister to set out the Government’s position on whether the Single Use Plastics Directive<sup>2</sup> — referenced in the Action Plan — should be incorporated into the Protocol as the Commission has proposed. The Minister says that the Government is not seeking to renegotiate the Protocol and that it must be implemented in a way that upholds the Belfast (Good Friday) Agreement and respects the unique circumstances of Northern Ireland.

## Our assessment

1.7 We note an inherent tension in the Minister’s letter between a recognition that coordination across the UK on policies covered by the Protocol will need to recognise Northern Ireland’s obligations, while on the other hand insisting that, under no circumstances, will EU law influence the direction of UK policy in this area.

1.8 The reality is that the UK in respect of Northern Ireland will not only be influenced by EU law in this area but will be obliged to apply it. As coordination between the four nations on policy in this area will presumably seek to take into account the approaches taken in each of their jurisdictions, that means taking EU law into account as it will be the applicable law in one of those nations. The extent to which it influences policy developments elsewhere is a matter of choice but to expect that there are no circumstances under which it might influence the approach is, in our view, unrealistic.

1.9 We take note of the fact that there is no agreement on the terms of future UK-EU engagement concerning policy work relating to legislation subject to alignment under the Protocol.

1.10 As to the inclusion of the Single Use Plastics Directive in Annex 2 of the Protocol, we take note of the Minister’s comment and will pursue the Government’s approach to this matter in our scrutiny of the Commission’s proposal on changes to be made to the Protocol.

## Action

1.11 We report the Minister’s response to the House given its political interest but require no further information from her. We draw it to the attention of the Environmental Audit Committee; the Environment, Food and Rural Affairs Committee; the Northern Ireland Affairs Committee; and the Committee on the Future Relationship with the EU.

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2 Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment.

## 2 COVID-19 Response: EU support to the fisheries sector<sup>3</sup>

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**This EU document is politically important because:**

- it applies during the transition period; and
- introduces flexibility that could be used by the UK.

**Action**

- Report to the House.
- Draw to the attention of the Environment, Food and Rural Affairs Committee.

### Overview

2.1 To help the fishery and aquaculture sectors respond to the impact of the COVID-19 pandemic, the EU agreed legislation allowing fisheries funding to be re-directed in order to support the temporary cessation of business activities and the storage of unsold products. We [wrote](#) to the Parliamentary Under-Secretary of State (Victoria Prentis MP) on 18 June requesting further information on the use of this flexibility in the UK.

2.2 In her recent [response](#), the Minister explains that all of the UK Administrations are using the flexibility in order to direct funding to COVID-19 support measures. Scotland, Wales and Northern Ireland have chosen to deliver financial support to their aquaculture industries as follows:

- Scotland is providing £1.25m to compensate aquaculture businesses for actual costs related to storage of aquaculture production.
- In Wales, short-term funding will cover up to 50% of an aquaculture company's income foregone during March and April 2020, up to a maximum of £10,000 (with a total available budget of £100,000).
- In Northern Ireland, the level of compensation for aquaculture businesses reflects the lost income from fish sales during the period March-May 2020 inclusive, with the maximum support limited to €30,000 (£27,000) per undertaking.

2.3 Northern Ireland has also approved a £200,000 scheme of support, subject to economic appraisal, to assist Lough Neagh inland fishers. This will draw funding under Article 33 (temporary cessation) of the revised European Maritime and Fisheries Fund (EMFF) Regulation. Similar to the aquaculture scheme, the compensation payments will be based on the income foregone as a result of the COVID-19 pandemic.

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<sup>3</sup> Proposal for a Regulation amending Regulation amending Regulation (EU) No 1379/2013 and Regulation (EU) No 508/2014 as regards specific measures to mitigate the impact of the COVID-19 outbreak in the fishery and aquaculture sector; Council document [7153/20](#), COM(20) 142; Legal base: Articles 43(2), 175 TFEU, QMV, Ordinary Legislative Procedure; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number 41170.

2.4 England has re-purposed £773,000 of EMFF funding to support COVID-19 recovery through health and safety, and fishing port and harbours investment. This will support on-board and port side investments to help achieve COVID-19 safe workspaces.

2.5 To achieve the initiatives detailed above, an amendment to the UK's EMFF Operational Programme has been submitted to the Commission which will re-allocate funds. All UK Administrations will continue to assess the extent to which live projects may have been affected by the COVID-19 pandemic and, where projects are no longer viable, funding may be re-allocated to COVID-19 recovery purposes. In most cases, applicants have advised that they expect projects to go ahead. However, reports the Minister, there have been numerous requests across the UK to extend project time-scales due to delays caused by COVID-19.

### **Action**

2.6 We are content with the response provided by the Minister and require no further information. We are reporting the Minister's response to the House and drawing it to the attention of the Environment, Food and Rural Affairs Committee.

## 3 Northern Ireland Protocol: Illegal timber arrangements<sup>4</sup>

**These EU documents are legally and politically important because:**

- it covers an area with which Northern Ireland must maintain alignment after the end of the post-Brexit Transition Period, but the UK and EU disagree on how the legality of timber imports into Northern Ireland from certain countries should be guaranteed.

### Action

- Write to the Minister.
- Draw to the attention of the Northern Ireland Affairs Committee, the Environment, Food and Rural Affairs Committee and Committee on the Future Relationship with the EU.

### Overview

3.1 Illegal logging has a negative impact on forests, and on the people who live in them and rely on the resources that forests provide. The EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan encouraged trade in timber that is harvested legally and verified as such by partner countries. This system is governed by Voluntary Partnership Agreements (VPAs) between the EU and partner countries. Once a VPA has been agreed, partner countries can issue FLEGT licences to verify the legality of timber harvest.

3.2 The Commission is proposing the conclusion, and signature, of a VPA between the EU and Honduras. While this will be the eighth such VPA to be concluded, only Indonesia has an approved licencing scheme and can issue FLEGT Licences.

3.3 Under the terms of the Ireland/Northern Ireland Protocol annexed to the Withdrawal Agreement, Northern Ireland must continue to apply both the EU's FLEGT Licencing Regulation<sup>5</sup> and the EU Timber Regulation.<sup>6</sup> In his [Explanatory Memorandum](#), the Minister of State (Rt Hon. Lord Goldsmith of Richmond Park) acknowledges that the EU Regulation establishing the FLEGT licencing system will continue to apply directly in Northern Ireland after the Transition Period. The UK takes the view, however, that UK VPAs with partner countries will extend to Northern Ireland. As a consequence, the UK will need to negotiate with Honduras to replicate that country's partnership agreement

4 (a) Proposal for a Council Decision on the conclusion of the Voluntary Partnership Agreement between the EU and Honduras on forest law enforcement, governance and trade in timber products to the EU (b) Proposal for a Council Decision on the signing, on behalf of the Union, of the Voluntary Partnership Agreement between the EU and Honduras on forest law enforcement, governance and trade in timber products to the EU; (a) [COM \(20\) 341](#), (b) COM (20) 342; Legal base: (a) Articles 207(3), 207(4), 218(6)(a)(v) and 218(7) TFEU, QMV (b) Articles 207(4) and 218(5) TFEU. QMV; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; (a) 41439 (b) 41440.

5 Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community.

6 Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.

with the EU. That is in line, he says, with the UK's wider commitment to replicating the EU's VPAs with partner countries as they become able to issue FLEGT licences to ensure that UK timber traders can still import FLEGT-licenced timber.

3.4 To date, adds the Minister, the UK has agreed and ratified a VPA<sup>7</sup> with Indonesia (the only country currently capable of issuing FLEGT licences), and is in the process of agreeing a VPA with Ghana and will shortly be beginning work on a VPA with Vietnam. The Government has written to the remaining VPA countries — including Honduras — to express the UK's continued commitment to FLEGT.

3.5 The Minister also notes, in parentheses, that the UK's position has not yet been expressly accepted by the EU. In fact, the European Commission is clear in a Brexit Preparedness notice<sup>8</sup> that Northern Ireland would be covered by EU VPAs rather than UK VPAs. The Commission explains that, as imports of timber into Northern Ireland constitute imports into the EU for the purposes of compliance with the Protocol, such imports from a FLEGT licencing country will have to be accompanied by FLEGT licences issued by that country under the VPA with the EU.

## Our assessment

3.6 We note the difference of opinion between the Government and the Commission as to the application of EU VPAs to Northern Ireland. Clearly, it is a matter which requires swift resolution.

3.7 In its preparedness notice, the Commission sets out its reasoning, notably that:

- in the Protocol, the EU and the UK have agreed that, insofar as EU rules apply to and in Northern Ireland, Northern Ireland is treated as if it were a Member State; and
- timber and timber products imported into Northern Ireland from a FLEGT licencing country will amount to imports into the EU and will have to be accompanied by FLEGT licences issued by that country under the VPA with the EU.

3.8 The Commission presents its argument as a logical outcome of the agreement that the EU Timber Regulation and EU FLEGT Licencing Regulation continue to apply in Northern Ireland. From a wider perspective, the over-arching logic of the Protocol is to avoid the need for border checks on goods crossing the land border between Northern Ireland and the Republic of Ireland.

3.9 On the other hand, the Government accepts its responsibilities under the Protocol but argues that Northern Ireland can be covered under UK VPAs as they will replicate EU VPAs. Even if the Commission accepted this statement of intent, we consider it possible

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7 [Voluntary Partnership Agreement](#) between the United Kingdom of Great Britain and Northern Ireland and the Republic of Indonesia on Forest Law Enforcement, Governance and Trade in Timber Products into the United Kingdom of Great Britain and Northern Ireland,

8 [Notice to stakeholders](#): Withdrawal of the United Kingdom and EU rules in the field of fight against illegal logging and associated trade.

that the EU might seek a legally-binding commitment in order to protect the integrity of its single market and avoid the need for checks on timber and timber products crossing from Northern Ireland into Ireland.

3.10 We will seek further clarity from the Minister in response to the Commission's preparedness notice and the nature of any commitment that the Government would be willing to give on replicating the EU's VPAs.

## Action

3.11 Based on our assessment, we have written to the Minister, as set out below, to clarify the Government's approach. We are copying our letter to the Northern Ireland Affairs Committee, the Environment, Food and Rural Affairs Committee and the Committee on the Future Relationship with the EU.

### ***Letter from the Chair to the Minister of State (Rt Hon. Lord Goldsmith of Richmond Park), Department for Environment, Food and Rural Affairs***

We have considered your Explanatory Memorandum (EM) on the above documents.

We wish to explore your position that Northern Ireland — which is required to maintain alignment with the EU's FLEGT Licencing Regulation — should be covered by UK Voluntary Partnership Agreements replicating those that the EU has agreed with partner countries. You note, in parentheses, that the EU has not expressly accepted your position. In fact, the European Commission appears to take the opposite view — that Northern Ireland should be covered by EU VPAs with partner countries.

We would welcome your view on the logic set out by the Commission in its Brexit preparedness notice on this matter — i.e. that imports into Northern Ireland will effectively be imports into the EU as the UK and EU have agreed that insofar as EU rules apply to and in Northern Ireland (as the FLEGT Licencing Regulation does), Northern Ireland is treated as if it were a Member State; and that consequently the products will have to be accompanied by FLEGT licences issued by that country under the VPA with the EU. We ask that you explain clearly how the UK in respect of Northern Ireland could meet its obligations under the Protocol without applicable products being covered by EU VPAs.

From your EM, your argument appears to be based on the UK's intention to replicate the EU's VPAs with partner countries. Could you please spell out what form those commitments have taken and whether you would be willing to grant a legally-binding guarantee to replicate the EU's VPAs?

The over-arching logic of the Protocol is, of course, to avoid the need for border checks on goods crossing the land border between Northern Ireland and the Republic of Ireland and so this is an important matter to resolve as soon as possible.

We look forward to your response within ten working days.

## 4 Aviation and climate change: COVID-19 and UK/EU future relationship negotiations<sup>9</sup>

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### These EU documents are politically important because:

- they give formal effect to the UK’s participation in the ‘Pilot Phase’ of CORSIA (the international aviation community’s effort to reduce greenhouse gas emissions by way of a Carbon offsetting scheme);
- they change the ‘baseline’ year for the scheme; meaning that emissions reduction targets will be calculated against data from 2019—not 2020—to take account of the significant drop in traffic—and thus emissions—consequent on the COVID-19 pandemic; and
- they are related to the EU’s own scheme—the EU ‘ETS’—and raise questions regarding the UK’s future ‘linking’ to it—or participation in other schemes—at the end of the transition period.

### Action

- Draw this Report chapter to the attention of the Transport Committee, the Environmental Audit Committee, the International Trade Committee and the Environment, Food and Rural Affairs Committee.

### Background

4.1 The first document under scrutiny ([41251](#)) concerns the authorisation of the EU to vote—on the behalf of Member States—in favour of a number of minor technical changes to the operation and implementation of CORSIA. The second—[41260](#)—outlines the amendments deemed necessary to give effect to these changes in EU law.

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9 Document (a) Proposal for a Council Decision on the position to be taken on behalf of the European Union in the International Civil Aviation Organization, in respect of notification of voluntary participation in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) from 1 January 2021 and of the option selected for calculating the aeroplane operators’ offsetting requirements during the 2021–2023 period + Annex; Council and COM number: 7973/20 + ADD 1, COM(20) 194; Legal base: Article 192(1) and 218(9) TFEU, OMV; Department: Transport; Devolved Administrations: Consulted; ESC number: 41251. Document (b) Proposal for a Council Decision amending Council Decision (EU) 2016/915 as regards the reference period intended to be used for measuring growth of CO<sub>2</sub> emissions, to take account of the consequences of the COVID-19 pandemic in the context of CORSIA + Annex; Council and COM number: 8122/20 + ADD 1, COM(20) 219; Legal base: Article 192(1) and 218(9) TFEU, OMV; Department: Transport; Devolved Administrations: Consulted; ESC number: 41260.

4.2 Since the Committee’s first consideration of the documents,<sup>10</sup> both have been adopted and,<sup>11</sup> at the 220th Session of the ICAO Council in June 2020, the EU voted in favour of the proposed changes to CORSIA.

4.3 By way of background, CORSIA (the Carbon Offsetting and Reduction Scheme for International Aviation) is a Carbon reduction mechanism—agreed under the auspices of the International Civil Aviation Organization (ICAO)—that mandates flight operators on routes between participating States to offset any increase in emissions covered by the scheme above a baseline of an average of 2019 and 2020 emissions.

4.4 The most significant of the changes under consideration concerns the use of data from 2019—rather than 2020—for calculating CORSIA’s ‘baseline’ year. This change was justified by ICAO as necessary to take account of the impact of COVID-19 on international aviation with air traffic dropping markedly since its onset. It is expected that for 2020, total greenhouse gas emissions from aviation will be considerably lower than for 2019. With 2020 serving as the baseline year for CORSIA, ICAO argued that, without amendment, the use of disproportionately low emissions data for CORSIA would lead to higher offsetting costs for operators.

4.5 In its Fifteenth Report of Session 2019–2021, the Committee noted the Government’s support for ICAO’s planned amendment of CORSIA and highlighted its discussion of the EU’s ‘Emissions Trading Scheme’ (EU ETS).

4.6 The Committee went on to explain the differences between CORSIA and EU ETS: CORSIA is a CO<sub>2</sub> ‘offsetting’ scheme where emissions reductions that cannot be achieved in the aviation sector alone are compensated by schemes in other parts of the economy with greater reductions potential, whereas the EU’s ETS operates in a slightly different way and is known as a ‘cap-and-trade’ system.<sup>12</sup> The UK currently participates in the EU ETS and will do so until the end of transition period (as established by the UK/EU Withdrawal Agreement). The Government has recently consulted on creating a UK ETS at the end of the transition period.<sup>13</sup> Domestic and international systems often allow for the possibility of being connected or ‘linked’ to other schemes in order to provide for larger Carbon trading markets.

4.7 The Committee subsequently requested further information from the Government on its thoughts on linking a UK ETS to the EU’s ETS after the end of the transition period and the details of any discussions that it has had with the EU in this regard.

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10 See Fifteenth Report HC 229–xi (2019–21), [Chapter 2](#) (2 July 2020).

11 [Council Decision \(EU\) 2020/954](#) of 25 June 2020 on the position to be taken on behalf of the European Union within the International Civil Aviation Organization as regards the notification of voluntary participation in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) from 1 January 2021 and the option selected for calculating aeroplane operators’ offsetting requirements during the 2021–2023 period; and [Council Decision \(EU\) 2020/768](#) of 9 June 2020 amending Decision (EU) 2016/915 as regards the reference period intended to be used for measuring the growth of CO<sub>2</sub> emissions, to take account of the consequences of the COVID-19 pandemic in the context of CORSIA.

12 A full background to the operation of CORSIA and EU ETS can be found in the Committee’s Fifteenth Report of Session 2019–21.

13 See HM Government, [‘The future of UK carbon pricing: UK Government and Devolved Administrations’ response](#) (June 2020).

## The Government's response

4.8 Parliamentary Under Secretary of State at the Department for Transport, Kelly Tolhurst MP, wrote in response to the Committee on 21 July 2020.<sup>14</sup>

4.9 The Minister's response to the Committee's questioning is poor and does not directly provide the information that was requested. With regard to whether the Government has had discussions with the EU on linking to the EU ETS, the Minister states only that "[negotiations] with the EU on these matters are ongoing". As further requested, details of these discussions—if they have taken place—are not provided.

4.10 The Committee also asked a number of supplementary questions relating, in particular, to whether the introduction of an interim Carbon Emissions Tax—as suggested in the event of a no trade deal Brexit—would be compatible with EU requirements for a future relationship agreement that the UK shall:

[Implement] a system of carbon pricing of at least the same scope and effectiveness of that provided by the EU Emissions Trading System.

Again, the Government does not directly answer this question and, instead, rehearses lines from its negotiating documents.<sup>15</sup>

4.11 Finally, the Committee was interested to hear whether the Government had considered the possibility of linking a future UK ETS to similar systems of non-EU Member States. In light of the opening of trade negotiations with New Zealand, the Committee asked whether linking was being discussed with New Zealand. The Minister does not answer this question and makes the general statement that:

A UK ETS would have the potential to evolve in different ways, this could include linking to other emissions trading systems in the future.

## Action

4.12 The Committee is disappointed with the Government's engagement on this important issue and wishes to remind the Minister of the importance of effective scrutiny for good policy-making and her role in facilitating this.

4.13 This Report chapter has been drawn to the attention of the Transport Committee, the Environmental Audit Committee, the International Trade Committee and the Environment, Food and Rural Affairs Committee.

14 Letter from Kelly Tolhurst MP to Sir William Cash MP, 21 July 2020.

15 Mainly, HM Government, ['The Future Relationship with the EU: The UK's Approach to Negotiations'](#) (February 2020) CP211 pp 22.

## 5 Brexit: The future operation of the Channel Tunnel<sup>16</sup>

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### These EU documents are legally and politically important because:

- they concern the operation of the Channel Tunnel Fixed Link at the end of the transition period—as established by the UK/EU Withdrawal Agreement—and primarily relate to the Tunnel’s joint UK/France safety arrangements;
- the Commission argues that to ensure the safe operation of the Tunnel after EU law ceases to apply in the UK, the Treaty of Canterbury—which provides for the joint UK/France governance of the Tunnel—requires amendment. Importantly, the documents would authorise France to negotiate and conclude an agreement with the UK giving effect to these suggested changes; and
- the Commission’s authorisation is conditional on France; requiring that any agreement reached with the UK:
  - ensures that the UK/French authority responsible for safety on the Channel Tunnel applies all relevant EU law (including on the UK side);
  - provides that in the event of a dispute concerning safety on the Tunnel being submitted for arbitration, if the dispute raises a question relating to the interpretation of EU law, the arbitral tribunal should not decide on the matter itself but request a ruling from the Court of Justice of the EU (CJEU) and all rulings will be binding on the arbitral panel; and
  - provides that in circumstances of emergency or failure of the joint UK/French authority to comply with a decision of the arbitral tribunal, France will retain the right to act unilaterally to regain control of the French section of the Tunnel.

### Action

- To write to the Minister responsible for the handling of the documents, Rachel Maclean MP, and request further information on:
  - the Government’s alternative proposals for safety arrangements on the Channel Tunnel Fixed Link at the end of the transitional period; and
  - for the Government to keep the House updated on the progress of negotiations with France.
- Draw to the attention of the Transport Committee, the International Trade Committee, and the Committee on the Future Relationship with the E U.

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16 Document (a) Proposal for a Decision of the European Parliament and of the Council empowering France to negotiate an agreement supplementing its existing bilateral Treaty with the United Kingdom concerning the construction and operation by private concessionaires of a Channel Fixed Link; Council and COM number; 9974/20 and COM(20) 622; Legal base; Article 91 TFEU, QMV; Dept: Transport; Devolved Administrations; consulted; ESC number; 41434. Document (b) Proposal for a Regulation of the European Parliament and of the Council amending Directive (EU) 2016/798, as regards the application of railway safety and interoperability rules within the Channel Fixed Link; Council and COM number; 9976/20 and COM(20) 623; Legal base; Article 91 TFEU, QMV; Dept; Transport; Devolved Administrations; consulted; ESC number: 41435.

## Background

5.1 The ‘Channel Tunnel Fixed Link’ is the UK’s only surface transport connection to mainland Europe. The term ‘Fixed Link’ is used to describe the British and French terminals—at Folkestone and Coquelles respectively—and the tunnel itself (comprising two running tunnels and a service tunnel).<sup>17</sup> Legally, the tunnels comprise a British section and a French section with an international frontier.

5.2 The Fixed Link is unique as a consequence of its status as joint UK/France infrastructure and this necessitates special operational and management arrangements. The Tunnel is governed by the Anglo-French ‘Intergovernmental Commission’ (IGC) which was established by the Treaty of Canterbury (signed by the UK and France in 1986). Although the IGC is formally charged with ensuring the safe operation of the Fixed Link, in practice, the Channel Tunnel Safety Authority (CTSA) is responsible for the day-to-day safe running of the Tunnel. This includes making safety proposals to the IGC, drawing up, monitoring and enforcing safety regulations, and investigating and reporting on any safety incidents.

5.3 Notwithstanding the international law-based origins and management of the Fixed Link, a number of important EU laws govern the operation of, and provision of services through, the Tunnel.<sup>18</sup> These laws include rules on railway safety, interoperability, and the issuance of vehicle and infrastructure certificates and authorisations.

5.4 In terms of the commercial operation of the Tunnel, Getlink is responsible for its management and runs its own Eurotunnel Shuttle vehicle service. It also earns revenue from other services running on the Tunnel (i.e. DB Schenker freight services and Eurostar passenger trains).<sup>19</sup>

### Proposed EU legislation

5.5 In light of the UK’s withdrawal from the EU and the forthcoming end of the transition period (as established by the UK/EU Withdrawal Agreement), the Commission has published two legislative proposals intended to: (1) clarify the status of the IGC under EU law; and (2) ensure the safe and efficient operation of the Fixed Link. Taken together (and with the Government’s response), these documents raise questions of significant legal and political importance. Practically, they concern the future operation of the Fixed Link—i.e. whether trains will continue to run between the UK and France after 31 December 2020—and, more generally, the future role of EU law in the UK, the oversight of the Court of Justice of the European Union (CJEU) in this regard, and the authority of EU agencies in the UK.

17 The Channel Tunnel Fixed Link connects to the ‘High Speed 1’ (HS1) rail line at Folkestone and terminates at London St Pancras International railway station (this stretch of line is known as ‘the Channel Tunnel Rail Link’). Throughout this chapter the terms ‘Fixed Link’, ‘Channel Tunnel’ and ‘Tunnel’ are used interchangeably.

18 This is a consequence of the UK’s membership of the EU—and France’s ongoing membership—and the development of the EU rail *acquis* since the signing of the Treaty of Canterbury.

19 Getlink is responsible for the management and operation of the Tunnel until 2086 (as per a concession agreement made between the original concessionaires and the UK and France).

### ***Proposed Council Decision (document (a) (41434))***

5.6 The proposed Council Decision would authorise France to negotiate and ratify an agreement with the UK to ensure the safe and efficient operation of the Channel Tunnel Fixed Link at the end of the transition period (the point at which the majority of EU law ceases to apply in the UK).<sup>20</sup>

5.7 Although not directly addressed in the Commission’s Explanatory Memorandum, without an agreement on the future safety framework applicable to the Fixed Link, there is a danger of legal and practical uncertainty; with a lack of clarity over whether EU standards and mandated procedures and practices should continue to apply—as they do on the UK side of the Tunnel whilst the UK applies EU law—or an alternative system devised. As joint UK-French infrastructure, a clear resolution is necessary; otherwise significant disruption is a real possibility.

5.8 The UK and France share responsibility for safety on the Fixed Link through the IGC. The EU’s Explanatory Memorandum on the proposed Council Decision explains that, until the end of the transition period, the IGC is a ‘national safety authority’ for the purposes of EU law; charged with overseeing matters relating to railway safety and interoperability on the Fixed Link. The EU’s stated position is that it would be preferable, at the end of the transition period, to continue to have a single safety authority applying the same rules across the entirety of the Fixed Link.

5.9 After the end of the transition period, the IGC will be a body entrusted by a Member State (France) and a third country (the UK) with tasks relating to railway safety. However, EU law does not foresee the possibility that a national safety authority be entrusted by a Member State and a third country. Therefore, unless steps are taken, at the end of the transition period, the IGC will cease to be the EU-approved national safety authority for the Fixed Link, and EU law will no longer be applicable to the parts of the Fixed Link within the UK’s jurisdiction.

5.10 In terms of process, the Commission argues that a Council Decision is needed to enable France to enter into negotiations with UK as the area concerned—railways law and policy—is heavily regulated at EU-level and falls within the EU’s exclusive external competence.<sup>21</sup>

5.11 As per the terms of the proposed Council Decision, any agreement that France reaches with the UK must: (1) ensure that the IGC applies all relevant EU rail safety laws on the Fixed Link (including on the UK side); (2) in the event of a dispute being submitted for arbitration (in accordance with Article 19 of the Treaty of Canterbury), if the dispute raises a question relating to the interpretation of EU law, the arbitral tribunal should not decide on the matter itself but request a ruling from the CJEU and all rulings will be binding on the arbitral panel; and (3) in circumstances of emergency or failure of the IGC

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20 It is envisaged that this agreement would take the form of a protocol to the Treaty of Canterbury.

21 Meaning that only the EU and not an individual Member State can negotiate an international agreement.

to comply with a decision of the arbitral tribunal (and by extension a ruling of the CJEU), France will retain the right to act unilaterally to regain control of the French section of the Fixed Link.<sup>22</sup>

5.12 It is important to note that, once adopted, the proposed Council Decision will prevent France from negotiating and concluding any agreement with the UK that substantively deviates from these conditions. If, as an example, France wished to agree to less stringent provisions on the continued application of EU law on the UK side of the Fixed Link, a new Council Decision would be required. The time constraints involved in negotiating a new Council Decision and the public nature of this and adoption make major concessions on these issues difficult to envisage.

5.13 The EU legal acts listed in the proposal are: Directive (EU) 2016/798; Directive (EU) 2016/797; and Regulation (EU) 2016/796.<sup>23</sup> The proposal cites these acts as “...relevant to the tasks of National Safety Authorities [i.e. the IGC]...” and specifies compliance with their terms “as amended or replaced, as well as of the acts adopted on their basis”. This implies a dynamic form of alignment with all future EU law in this area including EU tertiary legislation (i.e. delegated and implementing acts).<sup>24</sup>

5.14 Taken together, these acts constitute the ‘Technical Pillar’ of the ‘Fourth Railway Package’. The Technical Pillar was introduced with the aim of boosting the competitiveness of the EU railway sector by reducing costs and administrative burden.

5.15 The Technical Pillar allows the European Union Agency for Railways (ERA) to issue vehicle authorisations and safety certificates across the EU (reducing the need for multiple authorisations and certificates issued by individual national authorities). Under the Technical Pillar, the ERA was also given sole authority for issuing authorisations and certificates for inter-Member State operations (i.e. on services running between Member States). This includes the Channel Tunnel, however, the ERA will not assume responsibility for issuing safety certificates and vehicle authorisations—from the IGC—until 31 December 2020. Authorisations relate to the conditions that must be met for locomotives to be placed on the market—by manufacturers—and, for certificates, those that must be complied with by railway undertakings to operate services.

5.16 The Technical Pillar also defines EU ‘Technical Specifications for Interoperability’ (TSIs). These standards specify the technical and operational thresholds that must be met by rail subsystems or parts of subsystems in the EU (‘subsystems’ include, but are not limited to, infrastructure, trackside control-command and signalling, and rolling stock). Equipment that is TSI-compliant is automatically authorised to run on infrastructure that

22 Articles 1(4) and 1(5) of the proposed Council Decision, respectively, set-out further stipulations relating to the standing of concessionaires and users of the Fixed Link before courts or tribunals within the meaning of Article 19(1) TFEU and the broader compatibility of any agreement with EU law. Article 2 requires France to keep the Commission informed of the progress of negotiations with the UK and, where appropriate (presumably when considering issues of EU law), to invite the Commission to participate in negotiations as an observer.

23 [Directive \(EU\) 2016/798](#) of the European Parliament and of the Council of 11 May 2016 on railway safety (Text with EEA relevance); [Directive \(EU\) 2016/797](#) of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (Text with EEA relevance); and [Regulation \(EU\) 2016/796](#) of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 (Text with EEA relevance).

24 This point is explored in further detail in the ‘General comments’ section of this chapter.

applies the relevant TSIs. Examples of TSIs include those specifying line layout, track parameters and track resistance to traffic loads, however, TSIs also cover issues such as identifying barriers to accessibility for people with disabilities or reduced mobility.<sup>25</sup>

5.17 The 2010 European Scrutiny Committee reported on the Technical Pillar of the Fourth Railway Package—as 9 linked documents—on 27 February 2013.<sup>26</sup> The Committee considered the package to be politically important and recommended it for debate on the floor of the House. The debate was moved by then Minister of State at the Department for Transport, Simon Burns MP, on 25 April 2013.<sup>27</sup> During the debate, Mr Burns explained that the cross-border role envisaged for the ERA would ultimately prevent the IGC from issuing authorisations and certificates. No further comment was made on the potential implications of the package for the Fixed Link.

5.18 In correspondence to the 2015 European Scrutiny Committee, the then Parliamentary Under Secretary of State at the Department for Transport, Clare Perry MP, indicated that the Government intended to vote in favour of the adoption of the Technical Pillar.<sup>28</sup>

5.19 It appears that these conditions—on the applicability of EU law to the Fixed Link, the role of the CJEU, and France’s ability to act unilaterally to ensure enforcement—would have to be included in the text of any supplementary agreement or protocol to the Treaty of Canterbury (that France would be authorised to negotiate, in accordance with the proposed Council Decision). It is not clear, however, whether the role of the IGC would require modification. The IGC is currently charged with responsibility for safety-related issues but this function does not directly extend to oversight of the application of specific EU laws (as is envisaged by the Commission).

### ***Proposed Regulation (document (b) (41435))***

5.20 The proposed Regulation complements the proposed Council Decision and would ensure that the negotiating conditions discussed above, if agreed by both sides, are compatible with EU law.

5.21 The proposed amendments would serve two main purposes: (1) to allow the IGC to be recognised as a national safety authority for the purposes of EU law (this is not currently possible for joint bodies established between a Member State and third country); and (2) allow Member States to designate a safety authority competent for a single piece of rail infrastructure situated partly in the territory of a Member State and partly in the territory of a third country.

5.22 In light of the proposed Council Decision, the arbitral role envisaged for the CJEU and the ability for France to regain control for the French section of the Tunnel are also provided for. These points are expressed in general terms in order to ensure their relevance in EU law beyond the present situation.

25 The introduction of new TSIs—and the amendment of existing standards—is often made by way of EU delegated act with scrutiny and time restricted compared to the processes in place under the Treaties for the adoption of EU secondary legislation.

26 See Thirty-third Report HC 86–xxxiii (2012–13), [Chapters 1–4](#) (27 February 2013).

27 HC Deb 25 April 2013, vol 561, [cols 1035–1058](#).

28 [Letter from Claire Perry MP to the Chairman of the European Scrutiny Committee](#), 15 July 2015.

5.23 Finally, the proposal specifies that in proceedings before the CJEU, third countries may participate in “the same way as a Member State”.

### The Government’s position

5.24 The Minister responsible for the proposals, Rachel Maclean MP, wrote to the Committee by way of [Explanatory Memorandum](#) (EM) on 11 August 2020. The Minister’s EM is thorough and provides detailed background information on the proposals.

5.25 The Minister is clear that the proposals are not consistent with the Government’s objectives for the UK “as an independent and sovereign nation outside the EU”. The Minister further states that the Government has been clear with the Commission and France that:

...any jurisdiction for the CJEU in UK territory from the end of the transition period is not compatible with the UK’s red lines and does not reflect its status as a third country.

5.26 The Minister makes an almost identical statement regarding the suggestion of dynamic alignment with EU laws and, furthermore, raises serious concerns over the lack of clarity from the EU on the recognition of the IGC as a national safety authority beyond 2020 and the future role of the ERA.<sup>29</sup>

5.27 At the same time, the Minister is keen to stress the importance of the Fixed Link to the UK and that its continued smooth operation—on the basis of a unified safety regime—is its number one priority. The Government’s commitment to the IGC is made clear, however, the Minister is less forthcoming with alternative proposals for the operation of the Channel Tunnel at the end of the Transition Period. Indeed, the Minister mentions ‘split regulation’ models, mutual recognition and cooperation but the details of these ideas are not fleshed-out in any meaningful way. The same is also true of the EU’s proposals for CJEU oversight of parts of any agreement; a UK alternative is not offered.

5.28 In terms of process, the Minister is not especially clear on the view of industry on the proposals, stating only that the maintenance of the IGC’s role and the unified safety regime is preferred. Furthermore, unlike the stipulation in the proposed Council Decision that France keep the Commission informed on the progress of negotiations with the UK, the Government does not make any similar commitment to the Committee or, indeed, the House.

### General comments

5.29 The most significant implications of the EU’s proposal for the Fixed Link and the UK are centred the around the issues of dynamic alignment with EU law, and the role of the EU Agency for Railways.

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29 This last point is considered in detail in the next section (‘General comments’).

### *Dynamic alignment with EU law*

5.30 As a condition for the authorisation of any agreement between the UK and France, the proposed Council Decision provides that the IGC must ensure the application to the Channel Tunnel of the:

...provisions of Union law relevant to the role of National Safety Authorities within the meaning of Article 3(7) of Directive (EU) 2016/798, and in particular of that Directive, Directive (EU) 2016/797 and Regulation (EU) 2016/796, as amended or repealed, as well as of the acts adopted on their basis.<sup>30</sup>

5.31 As briefly mentioned above, this stipulation would appear to oblige the UK to align with all current and future EU law in this area including EU tertiary legislation (i.e. delegated and implementing acts). This is a result of the IGC governing the UK and French sides of the Fixed Link and the EU's position that this is undertaken in line with the listed EU legal acts "as amended or repealed, as well as of the acts adopted on their basis".

5.32 In terms of the practical consequence of this arrangement, as outlined above, the legal acts listed in the proposed Council Decision comprise the Technical Pillar of the Fourth Railway Package and relate to compliance with specific EU technical standards.

5.33 These standards—known as TSIs—are not, however, merely technical in nature, covering, for example, specifications for train signalling. The above mentioned TSI on accessibility for people with disabilities or reduced mobility was introduced as a way of giving effect to parts of the UN Convention on the Rights of Persons with Disabilities.<sup>31</sup> The use of TSIs in this way is novel but points to the possibility of more normative issues being subject to this form of regulation in the future.

5.34 Any agreement to dynamically align with EU law on the Fixed Link would, unless specified otherwise, require adherence with these more qualitative TSIs. It must be remembered that the development of EU law in this area was justified as necessary to boost the competitiveness of the EU rail industry. Although unlikely, it cannot be ruled-out that more level playing field(esque) requirements are the subject of specific TSIs in the future. Consideration must be also be given in this regard to the Government's stated intention not to seek a formal relationship with the ERA and, thus, the limited ability that the UK will have to influence the development of such standards in the future.

5.35 The scope of application of TSIs—and the listed legal acts—is an issue further complicated by the unique character of the Fixed Link as shared infrastructure. The responsibility of the IGC covers the Tunnel as marked by its boundaries at Folkestone and Coquelles, however, in terms of its operation, on the UK side, services do not start and end at Folkestone but run to/from London St Pancras International. This is without changes to locomotives and, to the Committee's best knowledge, any difference in regulatory environment applicable to rail infrastructure.

30 This quote has been amended as the text appears to include a typographic error and reads "and in particular of that Directive" [underlining added] rather than "and in particular of that Directive".

31 Articles 3 (general principles) and 9 (accessibility) are especially important in this regard.

5.36 A consequence of this situation would appear, in the short to medium term and save specific domestic provision being made, de facto alignment with EU rules from Folkestone to St Pancras.<sup>32</sup>

### *Additional context relevant to the proposed Council Decision*

5.37 The Commission’s proposal is not its first foray into legislating for the future operation of the Fixed Link (in light of the UK’s withdrawal from the EU). Our predecessor Committee considered the Commission’s ‘no-deal’ Channel Tunnel proposal in March 2019 and noted its political importance.<sup>33</sup> Since adopted as Regulation (EU) 2019/503,<sup>34</sup> it provided a legal basis for the Commission to extend the validity of certain safety certificates covering the Tunnel for 3 months of no-deal Brexit.<sup>35</sup>

5.38 Although not covering interoperability issues per se, the EU’s unilateral extension of certificate validity was conditional on the UK doing likewise and:

...maintaining safety standards and procedures... which are identical to Union requirements being applied to the infrastructure which is used for the purposes of ensuring cross-border rail connectivity with the United Kingdom...<sup>36</sup>

5.39 It is interesting that the EU did not prescribe specific legal acts that should be complied with, like in the present case, and adopted a seemingly looser approach to ensuring equivalence.<sup>37</sup>

5.40 Finally, it is important to briefly note the history of TSIs and their application to the Fixed Link. Rather than applying in isolation to the Tunnel, TSIs have applied alongside other safety rules developed by the Channel Tunnel Safety Authority.<sup>38</sup> A notable example in this regard is the TSI covering safety in railway tunnels (which did not apply to the Fixed Link until relatively recently).<sup>39</sup> Although giving effect to the majority of TSIs, examples of divergence do exist on the Fixed Link, however, these are primarily a consequence of its unique infrastructure rather than a result of a choice between which standard should apply i.e. CTSA-authored rules versus relevant EU TSIs.<sup>40</sup>

32 This would present itself as the simplest way of ensuring continued interoperability and safety and could be provided for through the retention and amendment of relevant EU law under the EU (Withdrawal) Act 2018.

33 Fifty-ninth Report HC 301–lvii (2017–19), [Chapter 4](#) (13 March 2019).

34 [Regulation \(EU\) 2019/503](#) of the European Parliament and of the Council of 25 March 2019 on certain aspects of railway safety and connectivity with regard to the withdrawal of the United Kingdom from the Union (Text with EEA relevance).

35 A ‘no-deal’ Brexit was defined by the Commission as a situation where the UK/EU Withdrawal Agreement was not ratified either by the UK or EU.

36 Preamble (5) to Regulation (EU) 2019/503.

37 The ability, in practice, for differences to be tolerated in standards between those that are ‘listed’ versus those that are deemed to be ‘identical’ is likely to be very small. It would perhaps only be the way in which they are promulgated—and given effect to between legal regimes—that would be capable of some variance. For example, an EU law being copied wholesale into UK law versus its main provisions being regulated for.

38 As mentioned in the introduction to this chapter.

39 This was after the IGC requested a technical opinion from the ERA regarding the compliance of Tunnel safety standards with the Safety in Rail Tunnels TSI and other EU measures (see ERA Opinion of 21 March 2011).

40 As an example, specific rules apply on the Fixed Link to train traction systems and compliance with the relevant TSI is not sufficient to guarantee operation on the Tunnel.

5.41 The prevailing regulatory environment of the Tunnel is one that is conditioned by EU law and where divergence is the exception rather than the rule with thus being the case for some time.

### ***The future role of the EU Agency for Railways***

5.42 The proposed Regulation would allow the IGC to be recognised as a national safety authority under EU law and to issue safety certificates and authorisations valid for the French side of the Tunnel. Importantly, the status of the IGC as an EU-recognised national safety authority—and its ability to issue safety certificates and authorisations for the entire Fixed Link—will end on 31 December 2020. This is in line with the role envisaged for the ERA in the Fourth Railway Package and will take effect unless a decision is made by the Commission empowering the IGC beyond 31 December 2020.<sup>41</sup>

5.43 The main practical consequence of this change is that, save for Commission recognition of the IGC's role, trains from France would be able to reach mid-way in the Tunnel in reliance on ERA documentation, bypassing the IGC in respect of the French half of the Fixed Link, but leaving the IGC with decision-making powers for the UK half of the Tunnel. This would effectively hollow-out the role of the IGC and mark a major change in the governance of the Fixed Link.<sup>42</sup>

5.44 An alternative, as suggested by the Government, would be for the IGC to continue to be recognised as the sole safety authority for the purposes of EU law—after 31 December 2020—and for an agreement to be reached on the mutual recognition of French/ERA- and UK-issued safety documents covering the line beyond Folkestone and Coquelles respectively.

### **Action**

5.45 The Committee have written to the Minister responsible for the handling of the documents, Rachel Maclean MP, and requested further information on: the Government's alternative proposals for the operation of the safety regime applicable to the Channel Tunnel Fixed Link at the end of the transitional period; and for the Government to keep the House updated on the progress of negotiations with France.

5.46 We have drawn this chapter to the attention of the Transport Committee, the International Trade Committee, and the Committee on the Future Relationship with the European Union.

### ***Letter from the Chair to the Under-Secretary of State (Racheal Maclean MP), Department for Transport***

The Committee have asked me to thank you for your joint Explanatory Memorandum (EM) of 11 August 2020 on the two above listed documents.

41 Whereby, as mentioned above, the ERA will be the sole issuing authority in the EU for certificates and authorisations covering cross-border/intra-EU journeys between Member States.

42 The envisaged role of the ERA and the status of the Fixed Link as an important cross-border constituent part of the trans-European transport network (TEN-T) means that this change has, however, been known of for some time.

The Committee believes that the proposed Council Decision—and linked Regulation—constitute documents of significant legal and political importance. We are grateful for the detailed information that you have provided on their content, and the clarity with which you have explained the Government’s assessment of their potential implications for UK transport law and policy.

An agreement with France on the Channel Tunnel Fixed Link—reached in accordance with the conditions stipulated in the proposed Council Decision—would be unprecedented. As you explain in your EM, dynamic alignment with EU laws, oversight of the application and interpretation of EU law in the UK by the Court of Justice of the European Union (CJEU), and the potential future role of the European Union Agency for Railways (ERA) on the Fixed Link, would not be consistent with the Government’s ‘red lines’ or reflect the status of the UK as a non-EU Member State. We note your rejection of any agreement with France covering the Channel Tunnel that would give effect to these obligations and linked responsibilities.

The Committee is, however, disappointed that your EM did not include details of the Government’s alternative proposals for the operation of the Channel Tunnel at the end of the Transition Period. The unique status of the Channel Tunnel as the UK’s only surface transport connection to mainland Europe and as joint UK/France infrastructure makes an agreement securing its continued safe operation critically important. Indeed, without an agreement on the prevailing safety regime applicable to the Tunnel, there is the real possibility of significant disruption to its operation.

With this mind, we request further information and your views on the following points:

- Whether it is possible for different rules on safety and interoperability to apply on the UK and French sides of the Fixed Link or, for safety, technical or other reasons, the same rules have to apply across the entirety of the Fixed Link;
  - if the application of two sets of rules is possible (i.e. EU rules and those that would satisfy the Government’s ‘red lines’), whether the role of the Intergovernmental Commission (IGC) would have to be clarified to take account of this;
  - if one set of identical rules has to apply on both sides of the Fixed Link, what a system that satisfies current EU laws, but does not require (dynamic) alignment on the UK-side of the Tunnel, would look like;
- Whether there is any difference in terms of the safety and interoperability requirements applicable to rail infrastructure on the Fixed Link versus High Speed 1; and
- Whether the UK will request that the (forthcoming) ability for the ERA to issue authorisations and certificates for rail services and vehicles applicable to the French side of the Fixed Link is disappled so as to protect the role of the IGC.

The Committee notes that the proposed Council Decision would require France to keep the Commission updated on the progress of negotiations with the UK and we seek a similar commitment from you that the Government will do likewise and provide the House with regular progress reports.

Once again, the Committee appreciates your engagement on this issue but, given the clear legal and political importance of the proposals, we reserve the right to take further action should you not provide satisfactory responses to the above listed requests for further information.

We require a response to this letter within five working days.

## 6 Documents not considered to be legally and/or politically important

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### Department for International Development

(41461) Report from the Commission to the European Parliament and the Council Annual report on the European Union's humanitarian aid operations financed in 2019.  
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COM(20) 358

### Department for Transport

(41422) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A new approach to the Atlantic maritime strategy — Atlantic action plan 2.0 An updated action plan for a sustainable, resilient and competitive blue economy in the European Union Atlantic area.  
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COM(20) 329

### Foreign and Commonwealth Office

(41356) Council Decision (CFSP) 2020/850 of 18 June 2020 amending Decision 2014/386/CFSP concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol.  
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(41401) Council Decision (CFSP) 2020/907 of 29 June 2020 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.  
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(41445) Council Decision (CFSP) 2020/1127 of 30 July 2020 amending Decision (CFSP) 2019/797 concerning restrictive measures against cyber-attacks threatening the Union or its Member States.  
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(41446) Council Implementing Regulation (EU) 2020/1125 of 30 July 2020 implementing Regulation (EU) 2019/796 concerning restrictive measures against cyber-attacks threatening the Union or its Member States.  
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(41456) Report from the Commission Monitoring the application of European Union law 2019 Annual Report.  
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COM(20) 350

## HM Revenue and Customs

(41458) Proposal for a Council Decision on the position to be taken on behalf  
 — of the European Union in the Administrative Committee for the  
 COM(20) 361 Customs Convention on the international transport of goods under  
 cover of TIR Carnets as regards the proposal to amend the Convention.

## HM Treasury

(39550) Proposal for a Regulation of the European Parliament and of the  
 7049/18 Council on European Crowdfunding Service Providers (ECSP) for  
 Business.  
 + ADDs 1–3

COM(18) 113

(41388) Report from the Commission to the European Parliament and the  
 — Council on the follow-up to the discharge for the 2018 financial year  
 (Summary).

COM(20) 311

(41418) Report from the Commission to the European Parliament, the Council  
 — and the Court of Auditors on the Guarantee Fund for External Actions  
 and its Management In 2019.

COM(20) 327

(41436) Proposal for a Regulation of the European Parliament and of the  
 — Council amending Regulation (EU) 2016/1011 as regards the exemption  
 of certain third country foreign exchange benchmarks and the  
 COM(20) 337 designation of replacement benchmarks for certain benchmarks in  
 cessation.

## Annex

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### *Documents drawn to the attention of select committees:*

(‘SNC’ indicates that scrutiny (of the document) is not completed; ‘SC’ indicates that scrutiny of the document is completed)

**Environmental Audit Committee:** EU: Circular Economy Action Plan [Commission Communication (SC)]; Aviation and climate change: COVID-19 and UK/EU future relationship negotiations [Proposed Decisions (SC)]

**Environment, Food and Rural Affairs Committee:** EU Circular Economy Action Plan [Commission Communication (SC)]; COVID-19 Response: EU support to the fisheries sector [Proposed Regulation (SC)]; Northern Ireland Protocol: Illegal timber arrangements [Proposed Decisions (SNC)]; Aviation and climate change: COVID-19 and UK/EU future relationship negotiations [Proposed Decisions (SC)]

**Committee on the Future Relationship with the European Union:** EU Circular Economy Action Plan [Commission Communication (SC)]; Northern Ireland Protocol: Illegal timber arrangements [Proposed Decisions (SNC)]; Brexit: The future operation of the Channel Tunnel [Proposed Decision] [Proposed Regulation (SNC)]

**International Trade Committee:** Aviation and climate change: COVID-19 and UK/EU future relationship negotiations [Proposed Decisions (SC)]; Brexit: The future operation of the Channel Tunnel [Proposed Decision] [Proposed Regulation (SNC)]

**Northern Ireland Affairs Committee:** EU Circular Economy Action Plan [Commission Communication (SC)]; Northern Ireland Protocol: Illegal timber arrangements [Proposed Decisions (SNC)]

**Transport Committee:** Aviation and climate change: COVID-19 and UK/EU future relationship negotiations [Proposed Decisions (SC)]; Brexit: The future operation of the Channel Tunnel [Proposed Decision] [Proposed Regulation (SNC)]

# Formal Minutes

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**Wednesday 16 September 2020**

Members present:

Sir William Cash, in the Chair

Jon Cruddas	Mr David Jones
Richard Drax	Craig Mackinlay
Margaret Ferrier	Anne Marie Morris
Mrs Andrea Jenkyns	Greg Smith

## **Scrutiny Report**

Draft Report, proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 6 read and agreed to.

Annex agreed to.

*Resolved*, That the Report be the Twenty-first Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

[Adjourned until a date and time to be fixed by the Chairman.]

## Standing Order and membership

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The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at [www.parliament.uk](http://www.parliament.uk).

**Current membership**

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

[Allan Dorans MP](#) (*Scottish National Party, Ayr Carrick and Cumnock*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Margaret Ferrier MP](#) (*Scottish National Party, Rutherglen and Hamilton West*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Mrs Andrea Jenkyns MP](#) (*Conservative, Morley and Outwood*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Mr David Lammy MP](#) (*Labour, Tottenham*)

[Marco Longhi MP](#) (*Conservative, Dudley North*)

[Craig Mackinley MP](#) (*Conservative, South Thanet*)

[Ann Marie Morris MP](#) (*Conservative, Newton Abbot*)

[Charlotte Nichols MP](#) (*Labour, Warrington North*)

[Greg Smith MP](#) (*Conservative, Buckingham*)