HOUSE OF LORDS
European Union Committee

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London
SW1A 0PW
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The primary purpose of the House of Lords European Union Select Committee is to scrutinise EU law in draft before the Government take a position on it in the EU Council of Ministers. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published where appropriate.

This edition includes correspondence from 1 July – 13 October 2019

EU INTERNAL MARKET SUB-COMMITTEE

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Letter to the Chairman from Michael Ellis MP, Minister of State, Department for Transport

Thank you for your letter regarding the Explanatory Memorandum (EM) dated 10 October 2018 concerning the above proposal (Real Driving Emissions (RDE) Package 4 and 2nd Act of World Harmonised Light Vehicle Test Procedures (WLTP)).

Your letter referred to the technical difficulties that we had with the publication of the document on the Delegates Portal. We do not think that the problem is likely to recur, however in order to guard this we have checked that our notification settings are still in place and are sufficiently comprehensive, and have run a series of detailed spot checks over a period of months to check for any irregularities. No further problems have been revealed by this, but we will continue to run regular checks.

You also asked for further information on when the provisions under the file would come into force and whether the requirements for the remedial measures under a recall scenario remained unchanged in the final text.

Following clearance by the European Parliament and Council, the proposal was published as Commission Regulation (EU) 2018/1832 in November and applied from the 1 January 2019. Certain provisions within the Regulation come into effect at later dates. The in-service conformity requirements using RDE testing will be mandatory for all cars from September this year and September 2020 for vans. On-Board Fuel Consumption Monitoring (OBFCM) will be mandatory for all cars from January 2021 and a year later for vans. The amended provisions for WLTP and RDE testing do not affect existing approvals and will only become applicable when a vehicle is being approved as a new type.

I can also confirm that the requirements for any remedial measure that necessitates a recall have remained unchanged in the final text; mandating at least 90% recalled within 2 years.

3 July 2019

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN RULES AND PROCEDURES FOR COMPLIANCE WITH AND ENFORCEMENT OF UNION HARMONISATION LEGISLATION ON PRODUCTS AND AMENDING REGULATIONS (EU) NO 305/2011, (EU) NO 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 AND (EU) 2017/1369 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, AND DIRECTIVES 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU AND 2014/90/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (15950/17)

Letter to the Chairman from Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility, Department for Business, Energy & Industrial Strategy

Thank you for considering this proposal at your meeting on 31st January and granting a scrutiny waiver. I am writing to provide an update about the progress of the file and a response to the questions you asked.

Although we anticipated this the file going to Council on 18th-19th February, the file took much longer than expected to move through trilogues and the jurist-linguist stage to produce a final text which

was adopted by the European Parliament on 17th April. The final text is much more proportionate, better preserves Member State competency and includes many of the amendments to the Commission text which the UK supported. I have detailed these further below.

The proposal went to COREPER on 15th February and to Council as an 'A' point (not for discussion) on 14th June where it was adopted. I would like to take this opportunity to apologise to the Committee that I did not write to you ahead of the Council meeting. I was keen to update you once we had a final text and a Council date, but we received very little notice that it would be on the agenda so there was insufficient time to write to seek a formal extension to the waiver.

At Council the UK voted against the proposal due to our concerns about the impact of Article 4 on businesses and the inadequate consideration that was given to understanding the impact on different groups affected. Article 4 states that if a product is placed on the EU market there must be an economic operator based in the EU who is responsible for compliance tasks. Throughout the negotiations the UK has argued that the impact of this article has not been adequately assessed and could have a disproportionate impact on small and medium businesses. This concern is of particular relevance to the UK as we are leaving the EU and it will have a potential impact on UK businesses doing trade in the EU. During negotiations, the role of the economic operator was expanded with additional responsibilities for compliance, such as actively taking corrective actions to remedy non-compliance if requested by a market surveillance authority, and that played a part in our decision to vote against.

Considering their own concerns over the impact on business of Article 4, the House of Commons Scrutiny Committee recommended that the Government vote against the proposal. In taking the decision to vote against the proposal, we took into account the concerns expressed by the Commons Scrutiny Committee and the recommendation they made.

I would like to confirm that our decision to vote against does not alter the UK's support for the overall objective of the proposal to strengthen market surveillance.

We tabled a joint statement for the Council minutes in collaboration with Slovakia, Bulgaria and Luxembourg. This outlined our support for the objective of the proposal to strengthen market surveillance and clarified for the record that our reservations on the proposal were focused on the impacts that of Article 4 would create for business.

Ultimately, the UK's final position did not change the outcome and the proposal was adopted by 24 votes in favour. Two Member States opposed the proposal (UK and Slovakia) and two abstained (Bulgaria and Luxembourg). We anticipate that it will come into force in July 2019 and be directly applicable from July 2021. How it applies to the UK will depend on the terms of any arrangements the UK agrees on its exit from the EU and the outcome of the Future Economic Partnership negotiations.

I have addressed your specific questions below in light of the final text agreed. Extracts in bold are taken from your letter dated 31st January 2019.

In your letter of 13 November 2018, you welcomed improvements to the text in the Council's compromise. For example, you noted that it would better preserve Member State competency over market surveillance, make the powers of market surveillance authorities more proportionate and better define the functioning of the Union Product Compliance Network. As greater clarity emerges on the final compromise, could you please set out if and to what extent these improvements will be preserved?

During trilogues many of the amendments to the original Commission's proposal that we supported were retained in the final compromise text, including the reduced scope of Article 4.

- Economic operator in the EU responsible for compliance: The Council's text had made this more risk-based, reducing the number of product directives it applied to from 70 to 17. This more risk-based approach has largely been maintained in the final text, although the Measuring Instrument and Non-Automatic Weighing Instruments directives have been added. Whilst the reduced scope has largely been preserved, the strength of the provisions in the final text has increased. Rather than only being responsible for compliance information, the economic operator responsible for compliance has additional responsibilities. For example,

actively taking corrective actions to remedy non-compliance if requested by a market surveillance authority.

- Declaration of conformity: The requirement for manufacturers to have their declaration of conformity available on their website was deleted from the Council text and in the final compromise text.
- Single liaison office: The requirement for Member States to appoint a market surveillance authority as a single liaison office was preserved in the Council text and is included in the final compromise text. The UK was flexible on the development of this article as we supported the Commission's intention to bring greater coherence to market surveillance, but already had this function in the UK through the Market Surveillance Coordination Network.
- Powers of market surveillance authorities: In the Council text these powers were less prescriptive and more proportionate. These improvements have largely been retained in the final compromise text.
- Union Testing Facilities: The UK had not supported the power for the Commission to create Union designated testing facilities because it risked creating a two-tier system. In the Council text, the article had been amended so that the Commission would identify gaps in testing provisions before building new ones. This amendment was not retained in the final compromise text, but there is a stipulation that Union designated facilities can only test for public bodies, therefore avoiding disruption of the commercial market.
- The Union Compliance Network: In the Council text the role, composition and activities of the network was clearer and these clarifications have been retained in the final compromise text. However, the Council also made some concessions to the European Parliament's position. For example, there is an added emphasis on the Network identifying common priorities for market surveillance activities, and some additions to the Network's activities such as evaluating the Member State's national surveillance strategies.
- International cooperation: The provisions outlining how the Commission can share market surveillance related information with the regulatory authorities of third countries have been maintained, as have the provisions for the Commission to approve specific systems of product-related pre-export control carried out by third countries.
- Member state competency: Most amends to preserve member state competency have been maintained, although in some areas the Council did compromise so the Commission has the power to use implementing acts. For example, if there is a product or product category were serious risk is continuously identified, the Commission (in consultation with the Network) may adopt implementing acts determining the uniform condition of checks.

Has the Government assessed the financial implications of this requirement for UK SMEs? Is there any action the Government could take to support SMEs in this regard?

One of the reasons the UK negotiated for amendments to Article 4 (requirement to have an economic operator based in the EU responsible for compliance) is because we believed the impact on SMEs had not been adequately assessed. Now that the proposal has been adopted and it is clear which products the legislation will apply to and what activities the person will be responsible for, the Government will be able to assess which SMEs will be affected and what the financial impact might be. The Government will ensure that there is relevant guidance provided to SMEs in good time about what the changes mean, what they need to do, and what support may be available.

We would also welcome more detail on the new market surveillance digital service being developed by the Government and its relationship, if any, with the EU market surveillance systems Rapex and ICSMS. Could you please also clarify when this digital service is expected to be in place?

The Government's new market surveillance digital service (Product safety database) will enable UK market surveillance authorities to track and manage investigations into unsafe products and report unsafe or non-compliant products. It will enable market surveillance authorities to share information

with each other, supporting more effective cooperation and collaboration. The system is currently being tested and roll out to Trading Standards teams in Local Authorities has started to allow the system to be improved by user feedback. Its relationship with Rapex and ICSMS will depend on the outcome of EU Exit negotiations.

Thank you for the time and detailed consideration that the Committee has given to this proposal. I appreciate your input and hope you will understand the reasons that the Government felt it necessary to vote against the proposal.

I would like to reassure the Committee that the Government remains committed to a strong market surveillance system, based on risk and underpinned by robust intelligence.

4 July 2019

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON WORK-LIFE BALANCE FOR PARENTS AND CARERS AND REPEALING COUNCIL DIRECTIVE 2010/18/EU (8633/17)

PROPOSAL FOR A DIRECTIVE ON TRANSPARENT AND PREDICTABLE WORKING CONDITIONS IN THE EUROPEAN UNION (16018/17)

Letter to the Chairman to Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility, Department for Business, Energy & Industrial Strategy

Thank you for your letter in February clearing the Work Life Balance Directive from scrutiny. You had previously released the Transparent and Predictable Working Conditions Directive from scrutiny, in June 2018.

I can confirm that both Directives were voted on and adopted by Council at an EPSCO meeting on June 13th. The UK voted in favour of both Directives.

There have been no substantial changes to either Directive since April following the negotiations between the Romanian Presidency and the European Parliament.

11 July 2019

COMMISSION DELEGATED REGULATION (EU) …/... OF 12.3.2019 ON UNMANNED AIRCRAFT SYSTEMS AND ON THIRD-COUNTRY OPERATORS OF UNMANNED AIRCRAFT SYSTEMS (7586/19)

Letter from the Chairman to Baroness Vere of Norbiton, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum (EM) dated 3 June 2019 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 11 July 2019.

The regulation of drones in the EU is an area of ongoing interest for the Sub-Committee, and was the subject of our 2015 report *Civilian Use of Drones in the EU*.[1] We note also increasing public interest in this matter in the light of incidents such as the disruption at Gatwick airport in December 2018.

Taken together, the Delegated and Implementing Regulations form a matrix of requirements for drone operations from low to high risk. However, the rules for operations in the low risk 'open' category appear most comprehensive. We would therefore be grateful for further information on when and how rules will be developed for operations in the 'specific' category, particularly in relation to "standard scenarios", and whether these will be harmonised across Member States.

We are also interested in the Government's view on how easily the requirements under these Regulations will be understood by retail consumers, and we would like further detail on what

[1] European Union Committee, Civilian Use of Drones in the EU (7th Report, Session 2014-15, HL Paper 122)

information on obligations for operators and pilots will be provided at the point of purchase. Is the Government taking any specific action to raise awareness of new EU and domestic requirements among existing drone users? Could you also provide further information on how the EU requirements are to be enforced?

Lastly, is the Government going to make preparations for the provisions in the Implementing Regulation, given that this will not be incorporated into domestic law if the UK leaves the EU by June 2020? Does uncertainty over the Implementing Regulation's application to the UK have any implications for the Drones Bill under preparation?

We have decided to clear the file from scrutiny. We look forward to a response to this letter in due course.

11 July 2019

PROPOSED REGULATION ON ELECTRONIC FREIGHT TRANSPORT INFORMATION (9060/18)

Letter to the Chairman from Michael Ellis MP, Minister of State, Department for Transport

I am writing to provide you with the update you requested on the outcome of the Transport Council on 6 June and am grateful to the Committee for providing a scrutiny waiver on this proposal ahead of the Council.

The text put to the Council remained broadly the same as outlined in my predecessor's letter to you on 16 May, with the principle amendment relating to the relationship with international conventions. As set out in that letter, the text required the Commission to seek to achieve interoperability with internationally accepted data models and to minimise compliance costs for both operators and Member State governments.

The Transport Council reached a General Approach on the basis of that text, with the UK in support. The new Finnish Presidency is now preparing to enter trilogue negotiations with the European Parliament and held a working group on 8 July to give Member States the opportunity to discuss the main areas of difference with the Parliament's position. The conclusion was that this related to (1) the removal of the option for operators to continue to use paper documents, if they wish; (2) on the use of delegated acts throughout and (3) the relationship (of the system) with international conventions. Some Member States continued to voice support for the use of paper documents and the impact it could have on SMEs should this become a mandatory requirement. There was also support for the continued use of implementing acts to those articles to which they would apply, as set out in the General Approach text while, on (3), there was support for seeking clarification on this point.

The Government will, of course, inform the Committee of further progress later in the year.

18 July 2019

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON RAIL PASSENGERS' RIGHTS AND OBLIGATIONS (RECAST) (12442/17)

Letter to the Chairman from Andrew Jones MP, Parliamentary Under Secretary of State, Department for Transport

Following your letter of 16 November 2017 about my Department's Explanatory Memorandum (EM 12442/17), Paul Maynard's letter of 21 December 2017 provided you with some further information. I am writing now to update you on the progress made on the recast of the EU Regulation on rail passengers' rights and obligations (Regulation (EC) 1371/2007).

The Commission issued its proposals for the recast in September 2017. In the Council, discussions of the proposals have taken place in Land Transport Working Group meetings under each Presidency. Progress Reports have been made by successive Presidencies to Transport Council in December

2017, June 2018, December 2018 and June 2019. The Progress Report of December 2018 from the Austrian Presidency included an initial draft of a Council text for the first three Chapters of the Regulation. The Romanian Presidency continued discussions, making further progress towards a complete Council text. The draft Council texts have been discussed in detail by Member States, and we expect the current Finnish Presidency to issue a further draft Council text during the summer, before Working Group meetings resume in September.

Member States' views

A wide range of views have been expressed in Working Groups. A fundamental concern for several Member States is the potential impact on their rail industries of reducing the scope for exempting domestic rail services from most of the Regulation's provisions (Article 2). At the same time, other Member States have expressed strong views that all rail passengers should be able to benefit from the Regulation, now that it has been in force for 10 years. In the most recent draft Council text, the Romanian Presidency tried to find a compromise to address this issue, by adding a power for Member States to continue to apply an exemption where it is already in place, on the same time-limited basis as in the current Regulation.

Another key issue concerns the through-ticketing proposals (Article 10), on which again there are polarised views. Some Member States feel that any change to the current Regulation would disadvantage train operators, while others believe that the Commission proposals do not go far enough and that all train operators should be required to offer through-tickets for any journey in the EU.

With Member States holding such widely differing views on many aspects of the Regulation, it has not been an easy task for the Presidencies to offer compromises in their draft Council texts. The most recent Presidency Progress Report acknowledged that, while their draft Council text was an important step towards a compromise, there still remained further preparatory work to do.

European Parliament Position

The European Parliament in its November 2018 Plenary adopted its own compromise text for the recast Regulation. The European Parliament text includes a number of amendments that would strengthen rail passengers' rights further. In particular it would:

- restrict Member States' power to allow exemptions from some provisions of the Regulation to urban passenger services only (instead of urban and suburban services);
- allow Member States who have an existing exemption in place for domestic (long-distance) services to retain it for 12 months from the date the recast Regulation comes into force;
- require train operators and ticket vendors to offer through-tickets, including for cross-border journeys, and also give passengers who had bought separate tickets covering a single journey equivalent rights to information, assistance, care and compensation as if they had bought a through-ticket;
- raise the minimum levels of compensation paid for delays and delete the proposed *force majeure* clause;
- reduce the minimum notice to be given by passengers with disabilities or reduced mobility who need assistance in a station, from the 48 hours in the Commission's proposal to a range from 12 hours down to no pre-notification being required, based on the number of passengers in the station per day; and
- require all new or refurbished trains, by two years from the date the recast Regulation comes into force, to provide at least eight designated spaces for carrying assembled bicycles.

Next steps

The Finnish Presidency are hoping to make progress on these proposals over the autumn, potentially to reach a General Approach, based on a draft Council text they expect to issue soon. However, with Member States' views differing widely on several issues, it is difficult to predict how quickly they will be able to reach a compromise position that the Presidency could put to Transport Ministers for their agreement.

I hope that this information is useful. Further updates on the progress of the recast of this Regulation will be provided in due course.

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL DISCONTINUING SEASONAL CHANGES OF TIME AND REPEALING DIRECTIVE 2000/84/EC (12118/18)

Letter to the Chairman from Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility, Department for Business, Energy & Industrial Strategy

Thank you for your letter of 27 June. I note that the Committee is retaining this file under scrutiny.

The Government continues to strongly oppose the draft Directive. We are actively working to convince other Member States to support our position.

Update on proposals

Negotiations on the proposals within Council has slowed down over the last few months.

The file therefore was not a substantive item on the agenda of the Transport Council on 6 June 2019. It formed part of 'any other business' item which included several other current legislative proposals. The draft minutes of the Council show that it took note of those proposals without further discussion.

We do not anticipate speedy progress towards trilogue discussions or adoption.

As Finland was one of the original proponents of the idea to end the seasonal time changes, we believe that the new Finnish Presidency will wish to progress the file. We are waiting to hear what priority the Presidency will give towards negotiating the proposals.

Legal position

The legal position continues to be a subject of discussion in Council working parties. Unfortunately, we are not able to share the advice provided by the Council Legal Service. However, we and many other Member States do not believe that the use of Article 114 TFEU to advance these proposals is justified. Proposals brought forward under Article 114 TFEU must genuinely have as their object the improvement of conditions for the establishment and functioning of the internal market. We believe that the evidence presented by the Commission so far does demonstrate this or justify the proposals. There has been an increasing number of calls from a wide group of Member States (including the UK) for a full impact assessment. Although the Commission has previously resisted these calls, we understand that it is now considering them more seriously.

UK Consultation

In your letter, you asked about Government plans for a public consultation, and about the circumstances in which the UK would be required to comply with the proposal. These two points are connected. As I mentioned, negotiations are moving slowly, and we are not convinced that the proposal would be agreed in time for Member States to notify the Commission by April 2020.

European Parliament position

In March 2019, MEPs voted fora two year delay in implementation of the Directive from the year of adoption. This delay is welcome, as the original Commission timescale seemed over-ambitious.

The Parliament has proposed a co-ordination mechanism. The stated aim of this mechanism is that it "should discuss and assess the potential impact of any envisaged decision on a Member State's standard times on the functioning of the internal market, in order to avoid significant disruptions". This is a positive development and goes some way to address the concerns of many Member States around creating a patchwork of different time zones.. However, establishing this mechanism does not itself ensure that all Member States will take decisions which will support the smooth functioning of the EU.

Devolved Administrations

My colleague Lord Henley presented a paper on this subject at the Joint Ministerial Committee (Europe) meeting on 13 June. This was attended by Ministers and other representatives from Devolved Administrations (DAs) who all confirmed that they agree with the UK Government position. My officials will be working with theirs to develop an updated evidence base which will take account of wider socio-economic factors.

Responses from Member States

In answer to the Committee's question, Lord Henley has received responses to his most recent letter from Denmark and Cyprus. We are continuing to discuss the proposals with these and many other Member States.

I hope this information is helpful to the Committee. I can assure members of the Committee that I, and my Ministerial colleagues, are working to strongly oppose these proposals. We are working with like-minded Member States on a common approach.

23 July 2019

REGULATION ESTABLISHING THE SPACE PROGRAMME OF THE UNION AND THE EUROPEAN UNION AGENCY FOR THE SPACE PROGRAMME AND REPEALING REGULATIONS (EU) NO 912/2010, (EU) NO 1285/2013, (EU) NO 377/2014 AND DECISION 541/2014/EU (9898/18)

Letter to the Chairman to the Rt Hon Jo Johnson MP, Minister of State for Universities, Science, Research and Innovation, Department for Business, Energy & Industrial Strategy

Thank you for your letter of 27 June. I will ensure that you are updated on the timings for discussions of the bracketed articles related to third country participation and the EU's security interests as soon as we have more clarity on the matter.

In answer to your first question, the views of Member States on third country participation have been mixed. Some are supportive of stronger collaboration with third countries and international organisations, while others seek to increase the EU's 'strategic autonomy' in space, limiting the scope for third country participation. We are working with all our partners in the Council and hope to achieve a positive outcome that allows for the fullest level of participation possible for the UK and other third countries.

Turning to your second question, Article 32 hasn't been discussed in Council since December 2018, as it has remained bracketed as part of the ongoing work on third country participation in the programme. Some Member States have previously wanted to include a territoriality clause, stipulating that the implementation of Copernicus services by entrusted entities should be performed in sites located in the EU, in this Article. We expect the matter to be resolved later this year or early next year.

The costs of participation in EU space programmes as a third country are subject to individual negotiations for each programme. As the text of the bracketed Article 7 currently states, any programme participation is subject to "the conditions laid down in a specific agreement covering the participation of the third country or of the international organisation to any Union programme …"

The unhelpful addition in Article 31 states: *"provided that the interest of the Union is protected*, the European Space Agency shall be entrusted with the following tasks …". While the UK would have preferred for this condition to be left out, it was the result of a compromise with the European Parliament to retain the word 'shall', which better protects ESA's overall role, rather than have it changed to 'may'.

In response to your final question, we support the Space Council as an effective governance mechanism to coordinate space activities in Europe and build on the existing and effective partnership between the EU and ESA. We welcome a focused approach to European Space Policy, with ESA and the EU working together and building on their existing partnerships, but not duplicating or encroaching on their existing roles. We are therefore supportive of organising such Space Councils

on a more regular basis to help achieve these objectives and are committed to staying involved in the development of European space policy after Brexit.

9 August 2019

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2009/103/EC OF THE EUROPEAN PARLIAMENT AND THE COUNCIL OF 16 SEPTEMBER 2009 RELATING TO INSURANCE AGAINST CIVIL LIABILITY IN RESPECT OF THE USE OF MOTOR VEHICLES, AND THE ENFORCEMENT OF THE OBLIGATION TO INSURE AGAINST SUCH LIABILITY (9365/18)

Letter to the Chairman from Baroness Vere of Norbiton, Parliamentary Under Secretary of State, Department for Transport

Thank you for your letter of 21 December 2018 about the European Commission's proposed amendments to the Motor Insurance Directive ("the Directive"). The Committee asked for a summary of responses to the consultation on the policy options and challenging issues being considered in light of the Vnuk judgment; for an indication of when the Government's response is expected to be published, and to be kept informed of developments in negotiations.

I attach a copy of the summary of responses to the consultation. It can also be found online at: https://www.gov.uk/government/consultations/motor-insurance-consideration-of-the-vnuk-judgment. There were 902 responses. Most respondents expressed concerns about the Vnuk judgement, with 94% stating that implementing the judgement as it currently stands would be worse than the current UK position on motor insurance. Amongst respondents, 72% would rather compulsory motor insurance is only required for motor vehicles used "in traffic".

You asked for an indication of when the Government response is likely to be published. Work in this area continues but it is as yet unclear when the Government will be in a position to publish the response.

The Government continues to seek amendments to the proposal in working group negotiations. Following the conclusion of the 5th working group on 18 June, the Finnish Presidency is now taking discussions forward, with the next round of negotiations scheduled for 3 October, 31 October and 28 November. Discussions will continue to focus on scope, exemptions and insolvency.

Although little progress has been made to date this is because Member State positions are finely balanced. On scope and exemptions, Member States are split between two blocs. One group is seeking a broad scope where vehicles would require compulsory third-party motor insurance in a wide range of scenarios. The other group, which includes the UK, favours a narrow scope with specific exemptions for motorsports and Light Electric Vehicles.

On the issue of managing the insolvency of motor insurers, there is a split in views. Some of the large Member States, including the UK, favour a home-based regulatory framework, whilst other Member States, prefer a host-based framework. The key difference between the two approaches is that the former encourages stronger regulation and less risky behaviour, and the latter allows Member States to attract business by offering looser regulatory frameworks.

The proposal has made more definitive progress in the European Parliament. The Internal Market Committee adopted a report that is favourable overall to the UK position. This was put to a vote at a plenary session on 13 February, where Parliament adopted the majority of the amendments. The Government has identified several of these amendments as being particularly helpful to the UK in terms of narrowing the scope of the Directive, particularly in relation to low-risk vehicles, motorsports, insurance cover and claims history reporting.

The Committee also asked for more detail about how insurance checks at borders would be implemented under the proposed Directive. The Commission's intention is that Member States would be permitted to conduct checks on insurance that are non-discriminatory, necessary and proportionate. Such checks would either have to form part of a general system of checks on the

national territory and not require the vehicle to stop, or be carried out as part of a control which is not aimed exclusively at checking insurance.

The proposed Directive otherwise prohibits insurance checks that would hinder the free movement of vehicles around the European Union. Member States who would wish to avail themselves of these powers would have discretion about how they implement such checks. The most likely means would be for Member States to use a network of roadside automated number plate recognition cameras linked to a motor insurance database to determine whether vehicles passing the cameras are covered by insurance.

I will, of course, continue to keep the Committee informed of further progress on this proposal. We can expect the Finnish Presidency to continue to take the talks forward but indications are that they are not confident that the negotiations will conclude under their stewardship, which will end in December 2019.

On the matter of the UK's future access to the Green Card free circulation area, the UK meets all of the requirements for UK motorists to travel without a Green Card in the EEA after Brexit and the Government continues to urge the Commission to take the implementing decision that would confirm this, as other European insurers are pressing their governments to do.

Finally, with regards arrangements between the Republic of Ireland and Northern Ireland, we would expect our Irish partners to push for a pragmatic outcome on Green Cards. Motorists from the UK, including those from Northern Ireland, will be required to carry a Green Card in the absence of an implementing decision from the EU. Green Cards have been accepted in the UK since before we joined the EEC; our domestic law has also accepted other compliant proofs of insurance since 1974. Therefore, Irish motorists, for example, will be able to use windshield insurance discs as proof of insurance when travelling in the UK.

Within the Brexit context, a decision was taken not to alter this approach as part of our broad negotiating offer to the EU. The Government will review this position after six months if reciprocity is not forthcoming.

12 September 2019

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE PROGRAMME FOR SINGLE MARKET, COMPETITIVENESS OF ENTERPRISES, INCLUDING SMALL AND MEDIUM-SIZED ENTERPRISES AND EUROPEAN STATISTICS AND REPEALING REGULATIONS (EU) NO 99/2013, (EU) NO 1287/2013, (EU) NO 254/2014, (EU) NO 258/2014, (EU) NO 652/2014 AND (EU) 2017/826 (9890/18)

Letter to the Chairman from Lord Duncan of Springbank, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy

On 8 August 2019 the EU Exit Strategy (XS) Committee concluded that UK ministers and officials should cease attendance at non-essential EU meetings. Following this decision HMG officials will no longer attend the working party responsible for drafting the Regulation for the Single Market Programme. Consequently, the Government will not be able to provide a meaningful update to the Committees in advance of the adoption of the final text of the Regulation at Council, as requested by the European Scrutiny Committee.

Trilogue negotiations for the Single Market Programme are scheduled to commence in October. The primary point of contention between the Council and the Parliament relates to the budget envelope for the Programme. However, the sections of the regulation governing budget and third country provisions have been excluded from trilogue discussions.

As UK ministers and officials will have no further role in shaping the Regulation for this file, I am writing to formally request that Explanatory Memorandum 9890/18 on the Single Market Programme be cleared from scrutiny.

16 September 2019

Letter from the Chairman to Lord Duncan of Springbank, Parliamentary Under Secretary of State

Thank you for the letters dated 31 October and 15 November 2018, and 19 March and 16 September 2019 on the above proposal. The EU Internal Market Sub-Committee considered your letters by correspondence.

We welcome the responses to our initial questions given in the letter of 31 October 2018. We were, however, disappointed that the subsequent request for a scrutiny waiver was not sent in time to be considered by the Committee, despite advice given to officials by committee staff. Did the Government vote in favour of the Partial General Approach referenced in your letter of 19 March 2019?

We were further disappointed, and surprised, by your most recent request to clear the file on the basis of the Government's decision to cease attendance at "non-essential" EU meetings. It is the Government's responsibility, as part of its wider accountability to Parliament, to support the Committee's scrutiny of EU documents, whatever its present policy on withdrawing from EU meetings. We note also the assurance given in Lord Callanan's 9 September 2019 letter, that the Government will "continue to meet its commitments to update the Committee on the progress of files that the Committee have held under scrutiny".[2]

An agreement is yet to emerge on key elements of this proposal, notably the budget and conditions for third country participation. The final shape of these provisions is likely to have a significant bearing on the Government's decision on UK participation, as well as on the financial contribution to be paid by the UK should it accede to the Programme as a third country. The Committee has a legitimate expectation that the Government will continue to provide regular updates on these issues.

Could you therefore please provide a fuller explanation of the Department's process for determining which files the UK will continue to attend meetings on? Do you intend to keep files under review, in the light of the possibility that developments are relevant to the UK? Other than working party meetings, what channels of information on this file are available to UK ministers and officials to enable you to keep the Committee updated?

We consider the overall handling of this file to have fallen short of the appropriate standard, and we are not content to clear it from scrutiny. We look forward to a response to this letter within 10 working days.

8 October 2019

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON TYPE-APPROVAL REQUIREMENTS FOR MOTOR VEHICLES AND THEIR TRAILERS, AND SYSTEMS, COMPONENTS AND SEPARATE TECHNICAL UNITS INTENDED FOR SUCH VEHICLES, AS REGARDS THEIR GENERAL SAFETY AND THE PROTECTION OF VEHICLE OCCUPANTS AND VULNERABLE ROAD USERS, AMENDING REGULATION (EU) 2018/… AND REPEALING REGULATIONS (EC) NO 78/2009, (EC) NO 79/2009 AND (EC) NO 661/2009 (9006/18)

Letter to the Chairman from Baroness Vere of Norbiton, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Committee's letter of 24 May. I am writing as requested to provide further information on the above proposal and to request scrutiny clearance before a vote in Council. When my predecessor wrote to your Committee on 2 May the Government expected a vote to take place later that month. However, that did not take place and, while there is still little clarity on timing, it is now expected later this month or during October, before we leave the EU.

[2] Letter from Lord Callanan, Minister of State for Exiting the European Union, to the Earl of Kinnoull, Chair of the House of Lords European Union Committee (9 September 2019): https://www.parliament.uk/documents/lords-committees/eu-select/scrutiny-brexit-negotiations/barclay-letter-meeting-attendance.pdf [accessed 2 October 2019]

The Committee asked for the Government's view on three points which I have addressed below:

1. The Committee cited concerns expressed by the president of the Automobile Association, Edmund King OBE, about Intelligent Speed Assistance (ISA) and asked if the Government had assessed the impact of ISA on driver behaviour:

ISA is not a new technology and Government funded research reported in 2007 on the effect of voluntary ISA on driver behaviour and attitudes.

The behavioural results from the car trials showed that advisory ISA reduced the amount of speeding among every category of user. It also affected driving on every road category, except the 60 mph rural roads where there was comparatively little speeding by the participants in the pre-ISA baseline assessments.

Participants in the trials believed that attention to speed limits and to potential hazards, such as other road users and pedestrians, had increased. The researchers noted that ISA appeared to have raised participant's perception of safety and encouraged them to develop more effective driving styles.

2. The Committee expressed interest in the extent to which ISA affects vehicle fuel efficiency and emissions:

Between 2009 and 2012 studies using UK data and published in respected technical journals predicted both mandatory and voluntary ISA to reduce CO2 emissions by 5.8 per cent and 3.4 per cent respectively on roads with a speed limit of 70 mph. On other roads the effect was found to be very small, and for some urban roads with low speed limits, an increase in emissions was predicted.

However, it is also worth noting that the detailed assessment of costs and benefits prepared by the European Commission in support of the proposed amendments to the General Safety Regulation suggested that a slight reduction of average speed due to ISA could reduce fuel consumption and CO2 emissions between 1 per cent and 9 per cent depending on road type.

3. The Committee requested information on any representations Government received from stakeholders, including UK manufacturers, on the compromise text:

As your Committee will be aware, officials have engaged throughout the negotiating process with the Society of Motor Manufacturers and Traders and several manufacturers directly. This enabled the Government to influence the proposal and achieve a compromise text which aligned with UK policy objectives.

Since publication of the compromise text on 28 March 2019 the Government has received relatively few representations. As outlined in the previous letter to you, we received confirmation from both Caterham and Morgan that while the outcome on pedestrian protection exemptions was not ideal, the almost 15-year lead time would enable them to consider technical and commercial solutions to mitigate the potential impact on their businesses.

The Government has received nothing further from manufacturers or key stakeholders, but has received a significant quantity of correspondence from Members of Parliament and their constituents focussed almost entirely on the incorrect reporting of the introduction of speed limiters from 2022.

The dossier is now expected to be put to the Council of Ministers for final adoption in September or October. The Government remains content with the outcome of negotiations and supports the adoption of the final text. However, if the UK is not present at the relevant Council meeting, or if we do not have scrutiny clearance or waivers from both Committees by that point, it is likely that we will signal our abstention on this item. No further changes will be made to the text and I should therefore be grateful if the Committee would clear the proposal from scrutiny.

16 September 2019

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) 2019/501 AND REGULATION (EU) 2019/502 AS REGARDS THEIR PERIODS OF APPLICATION (11940/19)

Letter from Chris Heaton-Harris MP, Minister of State, Department for Transport

On 10 September I sent your Committee an Explanatory Memorandum on the above proposal to change the end dates of the existing EU 'no deal' contingency Regulations for road and aviation connectivity, to take account of the extension of the Article 50 period to 31 October. I am writing now to inform you of further developments.

At the time of the EM we did not know the exact timetable for the proposal to be considered by the Council of Ministers and the European Parliament, but we did of course expect that it would be taken forward swiftly. I can now confirm that the proposal had an initial discussion at 27 in the Council's Article 50 structures, followed by discussions in the Land and Aviation Working Groups.

As you know, the UK is no longer attending EU meetings except those which are significant to the UK's continued interests, especially on UK exit, sovereignty, international relations, security, or money. The proposed amendment to the EU 'no deal' contingency Regulations is significant to the UK's interests on leaving the EU, so the UK attended the Land and Aviation Working Group meetings that considered the proposal, and the discussion at the Coreper meeting mentioned later in this letter.

At the Working Group meetings, the UK notified the Member States and the European Commission of the action we have taken to provide equivalent rights to EU road transport operators and airlines for the extended periods. We noted that for road transport the legislation we have already made and notified to Member States is open-ended, and not only reciprocates the EU offer but also gives Member States the same level of cabotage as they have currently.

Member States supported the proposal and considered it important to accelerate the legislative procedure to ensure preparedness after 31 October 2019. The Presidency noted that a recital would be added justifying the reduction of the eight-week period for national parliaments to express their opinion, to facilitate the adoption of the Regulation as a matter of urgency. Member States made no amendments to the text.

On this basis, the proposal was put to Coreper to confirm that, should the European Parliament agree to use the 'urgence' procedure and approve the Commission's proposal without any amendments (other than the insertion of text justifying the reduction of the eight-week period for national parliaments to express their opinion), the proposal would then be put to the Council of Ministers for approval and adoption. Coreper agreed to this and authorised the Presidency to request that the European Parliament use the 'urgence' procedure.

The European Parliament has subsequently agreed to adopt the 'urgence' procedure. This means that MEPs will only have limited discussion of the proposal, and are scheduled to adopt it at plenary on 22 October.

Once this has taken place the proposal will be put to the Council of Ministers for final adoption. We understand that this will take place at the Employment, Social Policy, Health and Consumer Affairs Council on 24th October. The UK will abstain, in line with our previous position on the exclusion of Gibraltar from the measures.

The final Regulation will then be published in the Official Journal and will enter into force on the following day. However, as you know, the two Regulations it amends would only apply after the Treaties cease to apply to the UK in the event of a 'no deal' exit.

10 October 2019