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 January to 31 March 2019

## EU INTERNAL MARKET SUB-COMMITTEE

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Thank you for your letters dated 23 July and 11 December 2018. The EU Internal Market Sub-Committee considered these letters at its meeting on 17 January 2019 and decided to clear the proposal from scrutiny.

*17 January 2019*

## 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 from Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility, Department for Business, Energy & Industrial Strategy**

Thank you for your letter of 21 December 2018 to my colleague Oliver Henley. I note your requests for further information about aspects of this file. In addition to answering your specific questions, I would like to provide the Committee with a full update on negotiations on the proposals.

Update on proposals

There have been a few developments since we were last in touch with your Committee. The Transport Council met on 3 December 2018 and received a progress report. This includes the Austrian Presidency's revised text which postpones the implementation of the Directive by two years until April 2021. This text also increases the notification period for any changes to Member States' time zones from 6 months to 18 months. The Government supports any moves to extend the transposition period. However, this does not affect our overall position on the Directive which is to continue to strongly oppose.

The Secretary of State for Transport represented the UK at Transport Council. The Austrian Presidency acknowledged that Member States need more time to formulate a position. Many Member States reiterated their existing positions on the proposals but there was no substantial discussion. Some Member States continue to be concerned about the potential for new time borders with neighbouring countries.

There have been no further meetings of the Land Transport Working Party and therefore no further negotiations have taken place. It will now be for the Romanian Presidency to decide how to take the proposals forward. We understand from UKRep that the Romanian Presidency will not organise any working group meetings on the proposal until the second half of its Presidency. They plan to hold an informal Transport Council on 26-27 March 2019. We expect that this meeting will provide some indication of how the Presidency will take the proposals forward. The next full meeting of the Transport Council is on 6 June 2019. It is not yet clear whether the proposals will go to General Approach at that meeting. I will continue to update your Committee on the progress of negotiations.

We have identified several Member States who are opposed to the proposals or have not yet made their final decisions. Oliver Henley has written to Ministers in each of these countries setting out our concerns and inviting them to join discussions with us about the future of the proposals. We are part of a like-minded group of Member States opposed to the Commission's proposals.

Legal Basis

I would now like to address the legal basis of the proposals. Article 114 TFEU is the legal basis for measures approximating national laws which have as their object the establishment and functioning of the internal market. It is a far-reaching power, that can be used to harmonise national laws in a wide variety of areas.

However the power of TFEU114 is not unlimited. It is not enough simply to show that there are disparities between national laws (or as in this case that some Member States are unsatisfied): it must

also be shown that removing those disparities (or changing the means of harmonisation) would improve the functioning of the internal market. This means that the Commission does not have a general power to regulate the internal market, and measures must genuinely have as their object the improvement of the conditions for the establishment and functioning of the internal market. Whilst Article 114 is the correct legal base to bring forward proposals such as these, there are legitimate concerns that these specific proposals do not improve the functioning of the internal market. The Commission has produced insufficient evidence to justify the need the change. Therefore, in the Government's view, the use of Article 114 to advance these proposals is not justified. We have raised these points in Council negotiations.

Devolved Administrations

We wrote to the Devolved Administrations (DAs) in November 2018. My officials have also been in contact with their opposite numbers in all three administrations. I can confirm that all three DAs support the UK Government position that the current system of daylight saving should be maintained. The Scottish Government believes that the proposed Directive would create practical difficulties for those making a living in northern and rural areas. They have told us that the proposed Directive would have a particular impact on the farming community and other outdoor workers and could also have a negative effect on Scottish rural business in general. The Welsh Government is concerned about the Directive's potential impact on various aspects of life in Wales including agriculture, energy, health, schools and transport. Officials in the Northern Ireland Executive have similar concerns.

I hope this information satisfies the questions raised.

*21 January 2019*

**Letter from the Chairman to Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility**

Thank you for your letter dated 21 January 2019 on the above proposal, which the EU Internal Market Sub-Committee considered at its meeting on 7 February 2019.

We have decided to retain the file under scrutiny. We would be grateful for an update on negotiations after the informal Transport Council on 26-27 March. Please include any developments in relation to the Member States who had not yet reached a position on the proposal.

We would also be grateful for your view as to whether the backstop arrangement (according to the terms of the Draft Withdrawal Agreement) would require Northern Ireland to comply with EU rules on time changes.

We look forward to receiving your response in due course.

*8 February 2019*

## PROPOSAL FOR A DIRECTIVE AMENDING DIRECTIVE 2009/33/EU ON THE PROMOTION OF CLEAN AND ENERGY-EFFICIENT ROAD TRANSPORT VEHICLES (14183/17)

**Letter from Jesse Norman MP, Minister of State, Department for Transport**

Thank you for your letter of 22 November on the above proposal, I am writing as requested to provide you with further information, including on the Romanian Presidency's plans for the proposal.

My letter of 14 November commented that it was unclear whether the Austrian Presidency would be able to achieve a General Approach at the 3 December Transport Council, as negotiations were still some way from being finalised. In the event, the Presidency felt that the proposal was not yet ready for a General Approach so instead issued a progress report. The proposal will now be taken forward by the Romanian Presidency who have scheduled two further Council working group meetings this month and have indicated that they intend to seek a mandate from the Committee of Permanent Representatives (COREPER) on 25 January to open trilogue negotiations with the European Parliament.

The issues remaining for further discussion and resolution at forthcoming working group meetings are:

- Exemptions & scope: several Member States wanted to widen the scope e.g. to include coaches. Generally there is a preference for keeping exemptions to a minimum. There are concerns around coaches given the non-availability of zero emission vehicles and regarding the availability of the necessary recharging infrastructure;
- Definitions: good progress was made at the last working group on 15 November, with the UK taking a lead in securing consistency between the definition of a clean vehicle with cars and vans CO2 Regulation (i.e. those emitting less than 50gCO2/km). Further discussion is required on the definition of alternative fuel powered vehicles;
- Minimum procurement targets: there is a wide variety of views regarding the level of ambition. We are broadly content with the ambition currently set out but, as noted below, need to do more work to seek to establish current baselines; and
- Transposition period: there is a difference of views on a 24 or 36 month implementation period.

Although there is still further work to do, I welcome the progress made so far and I am confident that a consensus can be found which meets the Government's objectives for the Directive.

With regard to our work on the Commission's Impact Assessment, as I mentioned in my previous letter to the Committee, we have reviewed the analysis but it was not possible to draw UK conclusions given the lack of UK specific data. As noted we are therefore in the process of working with stakeholders and the European Commission to try to obtain data to (i) try to establish UK baselines for each mode of transport covered by the Directive, (ii) from this, assess how the Directive's targets might therefore be delivered in the UK, and (iii) estimate the costs and benefits to the UK in implementing the Directive.

Having said this, the last Working Group meeting on 15 November clarified that there is sufficient flexibility within the CVD's headline targets to enable subsidiarity on how these are subsequently delivered nationally by Member States. For example, the current working text has a 35% UK target for all cars and vans procured in a given year to be clean vehicles (as defined) up to 2025. Given the commitment in the Road to Zero strategy I believe we would be well placed to deliver this. This flexibility meets one of our key negotiating objectives.

You asked about the involvement of the devolved administrations in the negotiations. I wrote to them on 5 December to inform them of the current state of play and invite their views on our approach to the negotiations.

I will, of course, continue to keep the Committee informed of further developments on this proposal.

*14 January 2019*

**Letter from Jesse Norman MP, Minister of State**

Further to my letter of 14 January on the above proposal, I am writing to inform you that the Presidency and the European Parliament have concluded their trilogue discussions and reached a provisional agreement. This is now expected to be approved at a plenary session of the European Parliament at the end of March, and subsequently adopted in the Council of Ministers.

When I last wrote to you in January there were four principal issues in the proposal that remained for further discussion and resolution. The provisional agreement has addressed these as follows:

- Exemptions & scope: coaches remain excluded but refuse collection vehicles are included in the final text;
- Definitions: as championed by the UK there is now consistency between the definition of a M1, M2 and N1 clean vehicle with the new cars and vans $CO_2$ Regulation i.e. those emitting less than 50g$CO_2$/km. The definition of a 'clean' alternative fuel powered M3, N2 & N3 vehicle has been improved but remains complex - it includes vehicles fuelled by 100%

biofuels, plug in hybrid buses but not non-plug in ones. However, given the nascent market for clean vehicles in these categories the definition is an acceptable compromise;

- Minimum procurement targets: the final targets included in the provisional agreement would support the UK climate change and Road to Zero commitments. These are procurement targets of new 'clean' vehicles across the aggregate of all UK public procurements (subject to contract values prescribed in European procurement rules) in two periods, from spring 2021 up to December 2025 of 38.5% for cars and vans, 10% for trucks and 45% for buses (half should be zero emission) and from 2025 to December 2030 of 38.5%, 15% and 65% respectively. A new recital (12a) has also been added, which is consistent with the UK's negotiating objectives, noting that, "*Member States should have the flexibility to distribute efforts to meet the minimum targets within their territory, in accordance with their constitutional framework and in line with their transport objectives*.";
- Transition period: a 24 month implementation period has been included, rather than 36 months.

Other, more minor, changes have also been made to the text, including a clause enabling the Commission to adopt implementing acts to facilitate the reporting arrangements under the Directive. This simply covers setting out the format of Member States' reports and their transmission arrangements. On this basis I am content with these provisions.

I welcome the progress that has been made and I am satisfied that the provisional agreement goes a long way to meeting the Government's objectives for the Directive. Subject to the approval by the European Parliament at the end of March, the Clean Vehicle Directive is now expected to be adopted by the Council in early April. This means that it is likely to be published in the Official Journal and come into force by the end of April/early May, and the transposition deadline is therefore likely to be April/May 2021.

No further changes are expected to be made to the text and I would therefore be grateful if the Committee could clear the proposal from scrutiny.

My last letter noted that we were in the process of working with stakeholders and the European Commission to try to obtain data to establish UK baselines and assess how the Directive's targets might therefore be delivered in the UK (including estimates of the costs and benefits). In the event we received limited data from the Commission as the relevant data sources will not be in place until the Directive is adopted, as well as some limited information from another source. We will therefore continue to seek data as part of our work on options for developing potential implementation.

*27 March 2019*

## PROPOSAL FOR A REGULATION SETTLING EMISSION PERFORMANCE STANDARDS FOR NEW PASSENGER CARS AND LIGHT COMMERCIAL VEHICLES AS PART OF THE UNION'S INTEGRATED APPROACHTO REDUCE CO2 EMISSIONS FROM LIGHT-DUTY VEHICLES AND AMENDING REUGLATION (EC) NO 715/2007 (RECAST) (14217/17)

**Letter from Jesse Norman MP, Minister of State, Department for Transport**

Further to my letter of 13 November 2018, I am writing on the above Regulation, which are now in the final stages before adoption into EU law.

As reported in my previous letter, a General Approach was reached on the proposal at the Environment Council of 9 October 2018. The General Approach text included an increase in the CO2 reduction target for cars from 30% to 35% by 2030; an increase in the Zero and Low Emission (ZLEV) benchmark for cars from 30% to 35% by 2030; and strengthened reporting requirements for manufacturers in order to ensure that current CO2 declarations are not artificially inflated. The proposals for vans were agreed without a change in ambition, remaining at 15% in 2025 and 30% in 2030 for both CO2 reduction and ZLEV benchmark.

In a plenary vote on 3 October 2018, the European Parliament voted for a CO2 reduction of 20% by 2025 and 40% by 2030 for both cars and vans, as well as increased ambition on zero and low-emission vehicles benchmarks.

Trilogue discussions commenced on 10 October 2018, with four further discussions taking place throughout November and December. On 17 December 2018 a draft agreement was reached.

The draft agreement will require CO2 reductions of 15% by 2025 for both cars and vans, using a 2021 Worldwide harmonised Light vehicles Test Procedure (WLTP) baseline, and reductions of 31% for vans and 37.5% for cars by 2030.

The ZLEV benchmarks which provide vehicle manufacturers with additional incentive to register vehicles with tailpipe emissions <50g CO2/km, were agreed at 15% for both cars and vans by 2025, increasing to 30% for vans and 35% for cars by 2030.

Two additional factors have also been applied that will affect compliance strategies for meeting these benchmarks –

- For Plug-In Hybrids meeting the <50g CO2/km, a factor of 0.7 will apply;
- For vehicles qualifying for the transitional market penetration incentive, a factor of 1.85 will apply. This refers to ZLEVs registered in Member States with a market share of ZLEVs below 60% of the 2017 EU average. As well as being registered in an eligible Member State, a maximum threshold of 1,000 vehicles will exist for each Member State, and a cap of 5% whereby if the share of ZLEVs exceeds 5% in the Member State, then the incentive shall no longer apply there. However, as the UK is one of the largest ZLEV markets in the EU, this incentive will not apply to ZLEVs registered here.

The niche volume derogation, which some UK manufacturers benefit from, has been retained at 300,000 vehicles per annum and until 2028, beyond the Commission's proposal to remove it in 2025.

Other provisions in the draft agreement include:

- An obligation for the European Commission to monitor and report fuel consumption meter data to prevent the gap between real-world emissions and the reported laboratory-tested emission data from growing, with an additional obligation to assess the feasibility of adjusting the CO2 targets from 2030 as a result if appropriate;
- Provisions on in-service conformity, including the development of procedures for testing and on detecting strategies for artificially improving a vehicle's CO2 performance;
- The tightening of provisions related to the transition from the use of New European Drive Cycle (NEDC) to the WLTP; and
- A provision requiring the Commission to evaluate the possibility of developing a methodology for the assessment and reporting of lifecycle emissions.

When entering into these negotiations, the Government had three broad objectives –

- Support higher ambitions regarding CO2 reduction targets;
- Promote zero emission vehicle production; and
- Promote measures that maximise the advantages to UK industry from the global shift to clean economic growth.

The proposed agreement meets all three of these objectives. The CO2 reduction targets have increased from the Commission's original proposals of 30% for both cars and vans by 2030 to 37.5% and 31% respectively.

The measures that will encourage the deployment of zero-emission vehicles have also increased in ambition, now requiring 35% of cars to be classified as a ZLEV by 2030 rather than 30%, although this is a bonus-only mechanism, meaning that there is no disincentive should a manufacturer not hit the target.

Additionally, the UK was successful in retaining not only the small volume manufacturer derogation, which is used by a number of UK manufacturers registering <10,000 cars into the EU market, but also

in retaining the niche volume manufacturer derogation, used by UK manufacturers registering between 10,000 and 300,000 cars into the EU market per year.

The draft agreement will now return to both the Council of Ministers and European Parliament for final approval shortly. I would therefore be grateful if the Committee could clear the proposal from scrutiny.

Once agreed, the final Regulation will be published in the Official Journal of the European Union and enter into legal effect. When completed, the new Regulation will come into force on 1 January 2020, and will repeal the existing legislation regulating car and van emissions.

Whether this Regulation will apply to vehicles registered in the UK will however depend on the form of EU Exit that the UK negotiates. If the UK leaves the EU without a deal, the EU acquis will be copied into UK legislation at the point of EU Exit on 29 March 2019. If this Regulation has been published in the Official Journal of the European Union and has entered into legal effect by this date, then it would be copied into UK law, with the Government having the ability to lay a Statutory Instrument to correct for deficiencies within the retained text. As the new Regulation would have a coming into force date of 1 January 2020, a Statutory Instrument correcting the text of the two existing regulations, the Road Vehicles Emissions Performance Standards (Cars and Vans) (EU Exit) (Amendment) Regulations 2019 has already been laid and awaits debate.

In all other scenarios, it is expected that the UK will enter into an Implementation Period, currently due to finish on 31 December 2020. It is expected that during this period, UK vehicle registrations will continue to be captured by these regulations, with negotiations on the future relationship between the UK and EU determining whether UK vehicle registrations will continue to be captured after this date.

*26 February 2019*

**Letter from the Chairman to Jesse Norman MP, Minister of State**

Thank you for your letters dated 13 November 2018 and 26 February 2019 on the above proposal. The EU Internal Market Sub-Committee considered your letters at its meeting on 28 March 2019 and decided to clear the file from scrutiny.

*28 March 2019*

## COMMISSION COMMUNICATION: TOWARDS THE BROADEST USE OF ALTERNATIVE FUELS - AN ACTION PLAN ON ALTERNATIVE FUELS INFRASTRUCTURE (14333/17)

## COMMISSION DELEGATED REGULATION (EU) …/... OF 17.11.2017 SUPPLEMENTING DIRECTIVE 2014/94/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS RECHARGING POINTS FOR L-CATEGORY MOTOR VEHICLES, SHORE-SIDE ELECTRICITY SUPPLY FOR INLAND WATERWAY VESSELS AND REFUELLING POINTS FOR LNG FOR WATERBORNE TRANSPORT, AND AMENDING THAT DIRECTIVE AS REGARDS CONNECTORS FOR MOTOR VEHICLES FOR THE REFUELLING OF GASEOUS HYDROGEN (14971/17)

**Letter from Jesse Norman MP, Minister of State, Department for Transport**

I am writing in response to your letter of 2 February 2018 on the

Communication 'An Action Plan on Alternative Fuels Infrastructure' and the associated delegated regulation.

You asked when the standards in the delegated regulation would come into force. The first point to mention is that there have been further developments affecting these standards.

The delegated regulation was published in the Official Journal of the European Union on 4 May 2018, coming into legal effect on 24 May 2018. The standards contained within were due to apply from 24

May 2020. However, immediately after publication, concerns were raised by some Member States and the European Committee for Standardisation that the standards that had been legislated for were deficient and inappropriate for some of the modes of transport and infrastructure being regulated.

The European Commission's intention with regard to the standards was to ensure the interoperability between the vehicle/vessel and the recharging/refuelling point – this was achieved successfully by the regulation.

However, as some of the technical standards had been newly drafted, this meant that there was no prior evidence base for their use and therefore no practical examples of their successful use between the recharging/refuelling points and all the modes of transport that the Commission wished to legislate for.

Once this came to light, the European Commission therefore agreed that the standards were deficient and set out additional plans to further amend the regulation. The amendments required were not significant, but provided necessary clarity for infrastructure operators. It is due to this amendment that I have not been able to respond your questions sooner, as my officials have been unable to confirm the standards that are ultimately to be regulated.

The amendments have now been agreed at technical committee level by Member State representatives and the Commission, but have not yet been published and sent to the Council and European Parliament for a decision.

A summary of the changes is at Annex A. Following publication, the standards contained therein will not enter into force for two years. However, it is important to note that whether they will apply in the UK will depend on the form of EU Exit that the UK negotiates, and whether the new regulation enters into legal effect before 29 March 2019 in the event of the UK leaving the EU without a deal.

*4 March 2019*

## PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES AS REGARDS THE ACCESSIBILITY REQUIREMENTS FOR PRODUCTS AND SERVICES (14799/15)

### Letter from the Chairman to the Rt Hon Lord Henley, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy

Thank you for your letter dated 18 October 2018 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 17 January 2019.

We remain interested in the extent to which any developments in the text would impose new obligations on UK entities and the expected financial implications of this. We would also be grateful for an update on when the proposed Directive would become applicable.

We have decided to retain the file under scrutiny. We look forward to a response to our letter, including an update on trilogue negotiations and the points of difference between the European Parliament and Council, in due course.

17 January 2019

Letter from Rt Hon Lord Henley, Parliamentary Under Secretary of State

Thank you for your letter dated 31 October about the above proposal, hereby referred to as the European Accessibility Act (EAA), requesting an update on progress in the negotiations. Now that a provisional text is available I am able to give you a substantive reply.

**Outcome of negotiations**

At the 7th trilogue on 8 November, agreement was reached on all outstanding issues, and subsequently the Council Secretariat issued a provisional EAA text on 19 December.

Throughout trilogue discussions we worked with like-minded Member States to try to achieve a balanced outcome and limit expansion of the scope beyond the General Approach agreed in

December 2017. For example we successfully resisted such expansion to include tourism services, and application of the accessibility requirements in the EAA to all publicly procured goods and services, by limiting application to goods and services that are within the scope of the EAA. We also protected the existing exemption for micro businesses providing services as well as securing a disproportionate burden test. We are content with the time allowed for implementation and transitional measures, for example balancing the development of self-service terminals with flexibility for their continued use until the end of their economic life, or for 20 years (whichever is sooner).

**Next steps and voting intention**

The jurist linguists process on the file is now under way with a meeting of Member States to discuss this scheduled this month. Adoption by the European Parliament is anticipated at the plenary during March. Member States will then be invited to give their final approval of the EAA; this is likely to happen before the UK leaves the EU. Since the General Approach the text has moved away from our preferred position, most significantly through prescriptive provisions on answering calls to the 112-emergency service, and the addition of payment terminals to the scope. On balance I have concluded that the UK should maintain its previous position of abstention in the final vote.

Once the EAA has entered into force Member States will have three years in which to adopt the national measures necessary to comply with the EAA. Member States will be required to apply those measures six years after the EAA has entered into force. Given this timescale, the Government will consider under what scenarios the UK may need or wish to align with all or part of the EAA post EU-Exit, and ensure that implementation is in keeping with discussions about our future relationship with the EU.

**Release from scrutiny**

Now that negotiations on the EAA have concluded, I would ask that the Committee agrees to release the file from scrutiny, so that the UK can vote on the final text.

*13 February 2019*

**Letter from the Chairman to the Rt Hon Lord Henley, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy**

Thank you for your letter dated 13 February 2019 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 14 March 2019 and decided to clear the file from scrutiny.

*14 March 2019*

## PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PREVENTIVE RESTRUCTURING FRAMEWORKS, SECOND CHANCE AND MEASURES TO INCREASE THE EFFICIENCY OF RESTRUCTURING, INSOLVENCY AND DISCHARGE PROCEDURES AND AMENDING DIRECTIVE 2012/30/EU (14875/16)

## OPINION OF THE EUROPEAN CENTRAL BANK PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PREVENTIVE RESTRUCTURING FRAMEWORKS, SECOND CHANCE AND MEASURES TO INCREASE THE EFFICIENCY OF RESTRUCTURING, INSOLVENCY AND DISCHARGE PROCEDURES AND AMENDING DIRECTIVE 2012/30/EU (10182/17)

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

In my letter of 12 November 2018, I said I would update the Committee on the progress of the above proposal once trilogue discussions had been completed.

Political agreement was reached on the Directive on 19 December last year, as result of which a number of small changes were made to the General Approach text agreed in October 2018. The

main changes relate to additional provisions for the position of workers during a restructuring. These provisions clarify that existing worker protections are not undermined by the restructuring framework set out in Title II of the Directive. Provisions setting out requirements for company directors have also been re-inserted into the text having been rejected earlier by Member States during Council Working Group discussions. However, the requirements are light touch and they are closely aligned with the UK's existing domestic legislation. There have been changes in the circumstances where mandatory appointment of insolvency practitioners is required, but there is no overall requirement for mandatory appointment in all cases, which is in line with existing UK policy, where, for example, restructuring by way of a scheme of arrangement does not require the appointment of an insolvency practitioner.

There is now a presumption that Member States should implement the Directive within two years from the date of publication in the Official Journal, rather than the three years proposed in the General Approach text. (This is apart from measures on electronic communications where implementation is five years, other than lodging of appeals, which is seven years.) However, where Member States have difficulty in implementing within the two year period, they may request a further year, but will need to notify the Commission six months before the end of the two year implementation period.

Assuming publication of the Directive in March 2019 and, on the basis the current Brexit implementation period set out in the Withdrawal Agreement ends in December 2020, the UK will not be required to implement the Directive. You will however be aware that the Withdrawal Agreement provides the option for the implementation period to be extended for a limited time if necessary, thus opening up the possibility for the Directive needing to be implemented in the UK. We are nevertheless content that the text agreed as a result of the political negotiations remains compatible with key areas of importance for the UK, for example, sufficient protection for creditors and flexibility for Member States to take account of national concerns, whilst promoting increased business rescue across the EU.

The text has now been sent to jurist linguists for formal translation and final adoption of the proposal is expected shortly.

I hope this update has been helpful.

*1 March 2019*

## PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COMMON RULES ENSURING BASIC AIR CONNECTIVITY WITH REGARD TO THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FROM THE UNION (15788/18)

### Letter from the Chairman to Baroness Sugg CBE, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum (EM) dated 14 January 2019 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 24 January 2019.

We welcome the Commission's proposal, as it would ensure that basic air connectivity between the UK and the EU would be preserved in the event of 'no deal', thus avoiding the most severe disruptions to business and citizens.

We note however that some elements of the proposal require further clarification, notably the practical implementation of the cap on frequencies and the absence of provisions on commercial arrangements such as code sharing and leasing. On the latter, has any clarity emerged on whether the exclusion of those arrangements from the proposal would mean that they are ruled out?

We further note that trade associations such as Airports Council International Europe and the International Air Transport Association have stated that the proposed cap on air frequencies, coupled with restrictions on code sharing and leasing, would lead to flight cancellations. We would welcome an update on whether the Government shares this assessment once further clarity on these elements is gained.

Could you please provide further details on the rationale for allowing UK carriers already operating to remain majority-owned or controlled by EU/EEA entities but requiring new UK entrants to be majority-owned by UK nationals?

Please could you confirm if the proposed restriction on negotiating bilateral agreements would include agreements intended to come into force after the proposed Regulation ceased to apply?

Finally, we would be grateful for an update on the progress of negotiations and would be interested to know if any substantial amendments to the draft text are expected.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 10 working days.

*24 January 2019*

**Letter from Baroness Sugg CBE, Parliamentary Under Secretary of State**

Thank you for your letter of 24 January on the above Commission proposal to ensure basic air connectivity between the UK and EU in the event of a 'no deal' exit.

**Cap on frequencies and provisions on code-sharing and leasing**

Amendments to the proposed Regulation have been put forward during both European Council working group and European Parliament discussions which seek to address these points. The amendments would, if agreed, remove the cap on frequencies for direct passenger flights between the UK and EU Member States, but include a frequency cap on 5th freedom all-cargo services by UK airlines between EU Member States and third countries.

The amendments also include provisions removing restrictions allowing code sharing and leasing of aircraft.

The Council has not yet agreed to include these amendments in its formal position ahead of negotiations with the European Parliament, but that appears to be the likely outcome. If so, this will be welcome to the industry and the trade bodies you mention; I am in regular dialogue with industry stakeholders on this measure.

**Airline ownership and control**

The Commission has not set out its rationale for allowing UK carriers already operating to remain majority-owned and controlled by EU/EEA nationals while new entrants would have to be majority owned by UK nationals, but our understanding is that the Commission's starting point was to do the minimum required to maintain existing connectivity pending the conclusion of a withdrawal agreement and future aviation agreement, rather than to allow for new operations.

**Negotiating bilateral agreements**

Amendments recently put forward in working group discussions would, if adopted, allow member states to negotiate bilateral arrangements with the UK for the period after the Regulation expires, but such agreements could not cover the period up to March 2020. As is the case for the suggested amendments referred to above, the Council has not yet included these changes in its formal position but looks likely to do so.

**Update on the progress of negotiations and amendments to the draft text**

In addition to the main developments outlined above, I expect the Council working group to complete its consideration of the proposal in the next week, including its position on the amendments proposed by the European Parliament, so that COREPER can confirm the Council's position ahead of trilogue discussions with the European Parliament. We understand these could take place on 19th February.

*7 February 2019*

**Letter from the Chairman to Baroness Sugg CBE, Parliamentary Under Secretary of State**

Thank you for your letter dated 7 February 2019 on the above proposal, which the EU Internal Market Sub-Committee considered at its meeting on 21 February 2019.

The proposed amendments appear to offer some welcome improvements to the text. Could you please set out how significant a frequency cap on 5th freedom all-cargo services would be for the UK? Have there been any substantial discussions on 5th freedom rights for passenger services during negotiations?

You noted in your EM that the proposed requirement for operators to seek authorisations from individual Member States would be a significant burden for operators. Have there been any developments in relation to this aspect of the text?

We have decided to retain the file under scrutiny. We look forward to a response to this letter, including a general update on negotiations, within 15 working days. We remain particularly interested in the provisions relating to the negotiation of bilateral agreements.

*21 February 2019*

**Letter from Baroness Sugg CBE, Parliamentary Under Secretary of State**

Thank you for your letter following the EU Internal Market Sub-Committee meeting on 21 February. I am now writing to provide an update on this negotiation.

As you will appreciate, negotiations are being taken forward as a priority and the proposal is moving quickly to its final stages. There have been a number of working group discussions in the Article 50 machinery of the Council (without the UK present), and the measures then returned to the aviation working group with the UK present. The European Parliament also took the proposal forward quickly, through a simplified procedure, which enabled the Presidency to open trilogue negotiations on 19 February.

At the trilogue meeting, the Presidency reached a provisional agreement with the European Parliament. The provisional agreement will now be put to the European Parliament Plenary for approval on 13 March and then to a Council of Ministers meeting for final adoption, probably on either 18 or 19 March.

The provisional agreement includes a number of improvements made in Council working group, which were highlighted in my letter of the 7th February. These include:

- removal of the cap on frequencies for direct passenger flights between the UK and EU Member States, but include a time limit on the operation of 5th freedom all-cargo services by UK airlines between EU Member States and third countries;
- provisions allowing code sharing on flights between the UK and the EU and leasing of aircraft that were not included in the original proposal;
- allowing Member States to negotiate bilateral agreements or arrangements with the UK for the period after the Regulation expires, but such agreements or arrangements could not cover the period up to March 2020, when the proposed Regulation would cease to apply.

We welcome these amendments.

Your letter also asked several questions concerning the proposal. You asked for details on how significant a frequency cap on 5th freedom traffic rights for all-cargo services would be for the UK. We understand UK airlines are already adjusting their operational schedules in line with the EU Regulation so we do not anticipate the frequency cap to have any unexpected impacts on services.

As the UK was not a party to the detailed discussions on specific provisions in the Regulation, I cannot confirm whether there were any substantial discussions on 5th freedom traffic rights for passenger services.

Under the Regulation, UK airlines will need to gain an authorisation from individual Member States in order to operate, as is the case with third country airlines operating to EU Member States. This aspect has remained unchanged in the current text.

I should also note that the Government has given a clear commitment to put in place equivalent measures for EU airlines. A policy statement was published on the 7th of March 2019 setting out how the UK intends to provide the necessary permissions to Member State airlines in order for them to operate to the UK.1

The UK has maintained its Parliamentary scrutiny reserve throughout. While we welcome the proposal and consider the amendments that have been made to the text during negotiations to be helpful, the UK did not support the Coreper mandate because of the way Gibraltar was treated in the text, particularly the inclusion of text noting Spain's legal position on sovereignty over the land on which the Airport is situated without any text noting the UK position. Also, Gibraltar was explicitly excluded from the scope of the measure. As the Prime Minister has said, when it comes to the future relationship with the EU, the UK will negotiate on behalf of the entire UK family, including Gibraltar. The UK therefore intends to abstain when this proposal comes to Council.

*7 March 2019*

**Letter from the Chairman to Baroness Sugg CBE, Parliamentary Under Secretary of State**

Thank you for your letter dated 7 March 2019 on the above proposal. The EU Internal Market Sub-Committee considered the letter at its meeting on 21 March 2019 and decided to clear the file from scrutiny.

We would be grateful for an update after the vote in Council, including the Government's assessment of the final text, in due course. We are particularly interested in the provisions on ownership and control requirements, and what these would mean for airlines with a UK shareholder base.

*21 March 2019*

## PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CERTAIN ASPECTS OF AVIATION SAFETY WITH REGARDS TO THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FROM THE UNION (15795/18)

**Letter from the Chairman to Baroness Sugg CBE, Parliamentary Under Secretary of State, Department for Transport**

Thank you for your Explanatory Memorandum (EM) dated 14 January 2019 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 24 January 2019.

We share your support for measures designed to minimise any potential disruption to air services in a 'no deal' scenario. We note that the proposal would give organisations more time to obtain new certificates. Do you consider that this can be achieved in the proposed 9 months? Does this timeline pose any challenges?

Could you please clarify if UK organisations can already apply to replace the EASA-issued certificates and approvals in scope of the proposal? We would also be grateful for details on the procedures for replacing these certificates and approvals.

Given that the Regulation would apply to UK entities, we find it surprising that the Government has not consulted on the proposal on the basis that it will not apply to the UK. Has the Government engaged with stakeholders since the submission of your EM? We would also welcome a summary of any views received from the devolved administrations.

[1] *Air services from the EU to the UK in the event of 'no deal'* https://www.gov.uk/guidance/air-services-from-the-eu-to-the-uk-in-the-event-of-no-deal

Could you please also set out if and to what extent the Government intends to reciprocate the measures contained in the Commission's proposal, if it came into force?

Finally, we would be grateful for an update on the progress of negotiations and would be interested to know if any substantial amendments to the draft text are expected.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 10 working days

*24 January 2019*

**Letter from Baroness Sugg CBE, Parliamentary Under Secretary of State**

Thank you for your letter of 24 January seeking further information about the above proposal.

**Certificates**

For many certificates and approvals issued under the relevant EU legislation, organisations are already able to apply for a certificate from the European Union Aviation Safety Agency (EASA), which would apply from Exit day. For other certificates, for example aircraft type certificates, EASA will not be able to consider applications for third country certificates from the organisations covered by the proposed Regulation until after Exit day. This is because the certificates relate to obligations placed on the "State of Design" by the Convention on International Civil Aviation ("the Chicago Convention"). Currently this role is carried out on behalf of the UK by EASA, but it will revert to the Civil Aviation Authority (CAA) on Exit day. The organisations concerned will therefore need to be certified and overseen by the CAA before they can make an application for an EASA certificate covered by the proposed Regulation. On Exit day, their EASA certificate will automatically become a CAA certificate (see below).

We understand that the normal procedures for obtaining the certificates from EASA will apply. These are set out in Commission Regulation 748/2012. The organisations concerned will previously have been certified by EASA, so they will be familiar with the application process and EASA will have significant knowledge of the organisations and their products. This should help the certification process to proceed quickly and smoothly. I therefore believe that a period of 9 months is not unreasonable for the organisations concerned to apply for and receive certificates. If this does not prove to be the case, the Commission has the power to extend the deadline through a delegated act.

**Stakeholder engagement and devolved administrations**

The proposed Regulation does not directly regulate UK industry, rather it provides for the continuing validity of existing certificates. Given it is a Commission proposal for the future EU27 we have limited input into the over the proposals so no formal consultation has been carried out with UK industry. Nevertheless, given that the Regulation affects UK entities, we are in regular contact with stakeholders most affected, including weekly telephone calls at official level. This includes ADS Group (the association for aerospace, defence, security and space sectors), Rolls Royce and Airbus. The proposed Regulation has been discussed during those telephone conferences and it has been welcomed and supported the industry participants.

As aviation safety regulation is a reserved matter we have not had detailed discussions with the devolved administrations on this issue. However, they were consulted on the content of the Explanatory Memorandum and did not express any concerns.

**Reciprocity**

The Government has no plans to directly reciprocate the measures set out in the proposed Regulation, as we have already set out that certificates issued by EASA or by the competent authority of a Member State or of an EEA State prior to Exit day will generally remain valid in UK law for up to two years and will be treated as if it were issued by the CAA. Certain certificates, particularly those issued in relation to products and parts, will have unlimited validity. Further information can be found in the Explanatory Memorandum accompanying the Instrument.

The certification recognition is laid out in Schedule 3 to the Aviation Safety (Amendment etc.)(EU Exit) Regulations 2019, which were laid before Parliament on 26 November 2018.

**Progress of Negotiations**

Working group discussions show that other Member States are content with the principle behind the proposed Regulation. Most discussion has been around how the Regulation will work in practice. In the European Parliament, the proposal is being considered by the TRAN Committee through a simplified procedure, which is expected to be concluded swiftly.

To date, the European Parliament seems inclined to mirror the Council's position. Given the progress that has been made, the Presidency obtained a mandate from COREPER on 1 February to open discussions with the European Parliament.

*7 February 2019*

**Letter from the Chairman to Baroness Sugg CBE, Parliamentary Under Secretary of State**

Thank you for your letter dated 7 February 2019 on the above proposal, which the EU Internal Market Sub-Committee considered at its meeting on 21 February 2019.

We have decided to clear the file from scrutiny and look forward to an update on the final text in due course.

*21 February 2019*

## PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COMMON RULES ENSURING BASIC ROAD FREIGHT CONNECTIVITY WITH REGARD TO THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FROM THE UNION (15843/18)

**Letter from the Chairman to Jesse Norman MP, Minister of State, Department for Transport**

Thank you for your Explanatory Memorandum (EM) dated 16 January 2019 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 24 January 2019.

While we welcome measures to mitigate the impact of a 'no deal' Brexit on the UK road haulage sector, we would be grateful for further details of the potential implications of this proposal.

We consider it regrettable that the text, as currently drafted, would exclude the possibility for Member States to negotiate or enter into bilateral road freight agreements while the Regulation was in force. This could be particularly challenging for haulage operations on the island of Ireland.

We note that the proposal does not include cabotage and cross-trade rights, and only the latter is provided for by ECMT permits. Has the Government assessed the potential impact of these limitations on Northern Irish hauliers in Ireland? We would also welcome clarity on whether the Government would extend cabotage and cross-trade rights to Irish hauliers in Northern Ireland, or the whole of the UK, in a 'no deal' scenario.

Please could you confirm if the proposed restriction on negotiating bilateral agreements would include agreements intended to come into force after the proposed Regulation ceased to apply?

Would this proposal have any implications for UK hauliers who have already applied for ECMT permits?

We would be grateful for further information on the impact of the proposal on the ability of UK hauliers to transit through Member States to third countries. Please could you also explain if and how current rights for Irish hauliers to transit to third countries through the UK would be affected by a 'no deal' Brexit?

Finally, please share with us any views you received from the devolved administrations during the preparation of your EM. We would also be grateful for an update on the progress of negotiations, including the outcome of the first working group and to know if you expect any substantial amendments to the draft text.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 10 working days.

*24 February 2019*

**Letter from Jesse Norman MP, Minister of State**

Thank you for your letter of 24 January. I will reply to your questions on the European Commission's proposed road haulage regulation in order below.

You note that, as drafted, the Commission's proposal does not include cabotage or cross-trade and you ask whether the Government has assessed the potential impact on Northern Irish hauliers. Our figures indicate that 25% of international work undertaken by Northern Irish hauliers is cabotage work, so if these rights were not guaranteed then this would have an appreciable impact.

I understand that several EU Member States have suggested expanding the scope of the proposal to guarantee rights for UK hauliers to undertake cabotage and cross-trade operations in the EU until the end of 2019. It is too soon to say whether the final text will see such an expansion of scope.

On the scope of the UK's reciprocal action, officials have written to the Commission confirming the Government's intention in a 'no deal' scenario to allow hauliers from other Member States holding a Community Licence to continue to conduct haulage business to, from and within the UK as they can now, including cabotage. A Statutory Instrument (SI) giving effect to this will be laid before Parliament shortly. We hope this will support efforts in Council discussions to extend the scope of the Commission proposal to ensure a genuinely reciprocal arrangement. If this is not the case, however, the Government has reserved the right to amend its approach in due course, for instance to suspend cabotage rights of EU hauliers in the UK.

You ask if the proposed restriction on negotiating bilateral agreements would include negotiations on agreements intended to come into force after the proposed regulation ceased to apply. That does seem to be the intention behind the Commission's drafting. However, we understand that this issue has also been the subject of discussions between the EU27, and the UK would support any loosening of the restriction in Council discussions.

The Commission's drafting does not necessarily mean that there will be a gap after December 2019 while new arrangements are agreed. It is the Government's view that, in a number of cases, existing bilateral agreements will revive, and therefore do not need to be negotiated and concluded. The EU could formally approve the negotiation by Member States of new bilaterals where the existing agreements do not revive. Alternatively, the Member States could authorise the Commission to negotiate a separate EU-UK agreement to come into effect in 2020. We would not expect the EU to commit to a particular approach at this stage, but the Commission's proposal should not necessarily be read as creating an impasse on 1 January 2020.

In the event that a Withdrawal Agreement is not concluded, but this measure is agreed as proposed, UK hauliers would not need ECMT permits for carrying goods to and from the EU up to the end of 2019. However, they would need them for cross-trade operations, and for transit of the EU to a third country. As on other issues relating to the scope of the Commission's proposal, we understand there has been discussion on these points amongst Member States, and we will support those seeking to broaden its coverage to provide UK hauliers with a fuller range of operating rights without recourse to ECMT permits.

As regards the interaction of the proposal with the allocation of 2019 ECMT permits, we have written to all applicants to advise them of the proposal. Recent indications by some Member States (notably France) are that they will continue unilaterally to allow UK hauliers access, even in the event that the proposal does not become adopted into EU law.

Our intention is to inform applicants of whether their application has been successful this week, but not to seek payment for permits, or issue them, until there is greater clarity as to the prospects for the Commission's measure – probably in late February or early March. This will mean that hauliers who conclude they no longer require a permit will not be charged for one, and that permits that are not needed can be reallocated to hauliers 'next in the queue' in the allocation process.

We recognise the importance for Irish hauliers to be able to cross through the UK (the "land bridge"). The SI we are laying will also have the effect of continuing these rights, and we understand that there has already been discussion between Member States regarding the possible amendment of the Commission proposal to ensure the ability of Northern Irish hauliers to cross the Republic of Ireland en route to Great Britain (e.g. Belfast-Dublin-Holyhead).

You ask about any views that we received from the Devolved Administrations during the preparation of the Explanatory Memorandum (EM). As usual, we consulted with the Devolved Administrations in preparation of the EM. They asked for further information on our views on bilateral agreements and the interplay of the proposal with ECMT. We will, of course, continue to keep them informed on the progress of the proposal in negotiations.

Finally, you ask for an update on the progress of negotiations. The Commission presented the draft regulation to the Council's Land Transport Working Group on 7 January. Member States raised questions focusing on external competence, and it was decided to take further discussions at 27 through the Council's Article 50 structures. We have been advised that the measure will return for discussion to the Land Transport Working Group, which includes the UK, shortly.

In the European Parliament (EP), the proposal is being considered by the TRAN Committee. Due to time pressure, the EP is applying a simplified procedure (Rule 50 of the Rules of Procedure) which allows the file to advance at a faster pace. No amendments have so far been published, but during their initial discussion of the proposal on 22 January, Members of European Parliament requested clarification on similar issues to those raised by Member States.

*5 February 2019*

**Letter from the Chairman to Jesse Norman MP, Minister of State**

Thank you for your letter dated 5 February 2019 on the above proposal, which the EU Internal Market Sub-Committee considered at its meeting on 21 February 2019.

We are grateful for your informative letter and note with interest that several Member States seek a more liberal arrangement for UK hauliers in a 'no deal' scenario.

We have decided to retain the file under scrutiny. We look forward to a comprehensive update on negotiations and subsequent amendments to the text within 15 working days. We remain particularly interested in the final scope of provisions (e.g. transit rights, cross-trade and cabotage), the nature of restrictions relating to negotiating bilateral agreements and overall implications for UK-Irish haulage. We would also welcome an update on preparations to maintain haulage between Gibraltar and the EU in a 'no deal' scenario.

*21 February 2019*

**Letter from Jesse Norman MP, Minister of State**

Thank you for your letter following the EU Internal Market Sub-Committee meeting on 21 February. I am now writing to provide an update on this rapidly moving negotiation.

As indicated in my previous letter of 5 February, following discussions at 27 through the Council's Article 50 structures, the proposal returned to the Council Land Transport Working Group at 28, where things have moved very quickly. Following a discussion in the Working Group on Monday 11 February, the Presidency obtained a mandate from Coreper on 15 February to enter trilogue discussions with the European Parliament. The European Parliament adopted its position in Plenary on 13 February opening the way for trilogue discussions to take place.

Two trilogue meetings took place on 18 and 21 February, at which the Presidency reached a provisional agreement with the European Parliament.

The provisional agreement contains a number of changes compared to the Commission's original proposal, notably:

- Expanding the scope of the measure to cover regular and special regular passenger transport (buses and coaches) until the Interbus Agreement is expanded. Passenger transport section

has also been amended to include cabotage services in Irish border counties until September 2019;

- Guaranteeing rights for UK hauliers to undertake limited cross-trade and cabotage operations i.e. two instances in seven days for the first four months and subsequently one instance in seven days for the next three months. This was the most contentious issue during trilogue discussions, and the European Parliament would have preferred to remove haulage cabotage from the measure altogether;
- Relaxing the restriction on Member States' rights to negotiate with the UK so that the restriction applies only to negotiations in respect of the period of validity of the Regulation.

The provisional agreement will now be put to the European Parliament Plenary for approval on 13 March and then to a Council of Ministers meeting for final adoption as soon as possible after that. I will, of course, keep you informed of the outcome.

The UK has maintained its Parliamentary scrutiny reserve throughout. Although we welcome the proposal and consider the amendments that have been made to the text during negotiations to be helpful, we did not support the Coreper mandate because Gibraltar was excluded from the scope of the measure. The UK Government is disappointed that the text that will go forward for adoption does not cover Gibraltar. As the Prime Minister has said, when it comes to the future relationship with the EU, the UK will negotiate on behalf of the entire UK family, including Gibraltar. The UK therefore intends to abstain when this proposal comes to Council.

If the Regulation is approved in its current form, the measure would offer haulage rights, including cabotage, for a limited period without the need for a permit. This would remove the immediate need for bilateral agreements, although we continue to prepare for bilateral arrangements with Member States just in case the Regulation is not adopted in time.

*12 March 2019*

**Letter from the Chairman to Jesse Norman MP, Minister of State**

Thank you for your letter dated 12 March 2019 on the above file, which the EU Internal Market Sub-Committee will consider in due course. I am, however, content to grant a scrutiny waiver ahead of the upcoming Council vote.

*14 March 2019*

**Letter from the Chairman to Jesse Norman MP, Minister of State**

Thank you for your letter dated 12 March 2019 on the above proposal. The EU Internal Market Sub-Committee considered the letter at its meeting on 21 March 2019 and decided to clear the file from scrutiny.

We would be grateful for an update after the vote in Council, including the Government's assessment of the final text, in due course. In particular, we would be interested to understand how the phased restrictions on cabotage and cross-trade rights are expected to be enforced.

*21 March 2019*

PROPOSAL FOR A REGULATION LAYING DOWN RULES AND PROCEDURES FOR COMPLIANCE WITH AND ENFORCEMENT OF UNION HARMONISATION LEGISLATION ON PRODUCTS AND AMENDING REGULATIONS (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 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 20 December and for your letter of 21 December. I am writing to provide the additional information requested as well as an update about the negotiations.

You asked about the Government's policy position on measures to increase cooperation between market surveillance authorities and customs authorities. The Government supports cooperation between market surveillance and customs authorities. There is already a high level of operational cooperation between them, supported by the current legislative framework. For example, Custom Authorities share intelligence with Market Surveillance Authorities to enable targeted product checks. The new Office for Product Safety and Standards (OPSS) will soon take on responsibility for a product safety intelligence team, the Single Point of Contact, to cement this sharing of knowledge to the benefit of product safety outcomes. OPSS is also committed to enhancing existing cooperation between Market Surveillance Authorities.

You also requested an outline of the feedback gathered from stakeholders. Our discussions with British Retail Consortium, Amazon and the Association of Manufacturers of Domestic Appliances (AMDEA), the Business Reference Panel, Market Surveillance Authorities through the Market Surveillance Co-ordination Committee and the National Product Safety Focus Group indicated that in general there was support for the principles of the proposal to strengthen market surveillance to ensure consumers are protected and there is a level playing field for businesses. However, there were concerns about some of the specifics, such as the proportionality of some of the measures, the additional cost for businesses (especially small and medium ones), and whether measures were sufficiently targeted to non-compliance which poses a risk rather than just administrative non-compliance.

With regard to the costs of developing IT infrastructure, our understanding is that Article 34 (Information and communication system) will be funded by the Commission and would most likely focus on improving existing EU market surveillance systems Rapex (notification for products presenting a serious risk to the consumer) and ICSMS (notification system for products which are non-compliant but low-risk). The UK market surveillance authorities currently use both Rapex and ICSMS. Therefore, whilst there may be familiarisation costs associated with using the updated systems (eg. staff time, training), we do not anticipate there to be a requirement either for new IT infrastructure to be developed or for national systems to be integrated with EU systems.

The UK is currently developing a new market surveillance digital service which will meet our market surveillance needs after we leave the EU. The service is being designed with Market Surveillance Authority users in order to meet their specific needs and to make it easy to interact with. We are mindful to ensure that in the development phase it remains flexible to take account of wider developments, particularly in relation to the EU.

I also wanted to take this opportunity to update you on progress on the proposal. This file was discussed at Coreper on 23 November with a particular focus on Article 4 (Requirement to have a person in the EU responsible for compliance). The UK supported other Members States' interventions to remove the article, but there was insufficient support for removal and the Council adopted the revised text drafted by the Working Group. The Council text better targets the provisions of Article 4 towards products representing a risk to the consumer than the Commission's original. However, it is worth noting that the European Parliament Mandate supports the original scope of the proposal where Article 4 applies to all harmonised Union legislation.

The file is now in trilogues. Overall, the Council's General Approach is more proportionate and better preserves Member State competency than the Commission's original proposal and is much more aligned to the UK's position than the European Parliament's Mandate. Trilogue negotiations so far suggest that the European Parliament may be willing to move towards the Council's position on some articles, notably on Article 4. However, on others the Council may move towards Parliament's position. Examples include Article 5 (Declaration of conformity), Article 15 (Market surveillance measures) and Article 20 (Union testing facilities). Given the differences between the Council and Parliament positions on a number of articles, it is too soon to have clarity on what the final compromise text will look like.

The new Romanian Presidency is committed to finalising the proposal as soon as possible. Further trilogues are scheduled through January with a view to securing final agreement in the first week of February. We anticipate it going before the Competitiveness Council on 18-19 February.

The UK Government supports the overarching principles of the proposal, but we are awaiting the compromise text before taking a view on whether the proposal is sufficiently risk-based. We ask that scrutiny be lifted or waived so that the UK can take a position of opposition or abstention, depending on how trilogue negotiations develop and what provisions are secured or conceded in the compromise text.

*16 January 2019*

**Letter from Lord Boswell to Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility**

Thank you for your letter dated 16 January 2019 on the above proposal. The EU Internal Market Sub-Committee considered it at its meeting on 31 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?

It now appears likely that the requirement to have a person responsible for compliance established in the EU will be retained—albeit with limitations to its scope. 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?

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?

We have decided to grant a scrutiny waiver ahead of the Competitiveness Council of 18- 19 February 2019. We look forward to a response to this letter, including an update on progress in trilogue negotiations and the Council vote, in due course.

*31 January 2019*

## PROPOSAL FOR A REGULATION ON THE MUTUAL RECOGNITION OF GOODS LAWFULLY MARKETED IN ANOTHER MEMBER STATE (15965/17)

**Letter from Rt Hon Lord Henley, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy**

Following my letter of 5 November, I am writing to update the Committee on the progress of the Commission's proposal for a new Regulation on the mutual recognition of goods lawfully marketed in another Member State.

As you will recall, the UK supported adoption of the General Approach at Competitiveness Council on 28 May following clearance from scrutiny by your Committee on 18 May. On 6 September, the

European Parliament adopted its first reading position on the Commission's proposal and the file entered trilogue negotiations. These negotiations concluded on 21 November, when provisional agreement on the proposal was reached by all the institutions.

The UK is supportive of the compromise text agreed at Coreper in November, as it broadly reflects the Council's General Approach and delivers on the Government's objectives to ensure that:

- the new Regulation does not introduce disproportionate new administrative burdens for businesses and that the administrative provisions are implemented in a clear and business-friendly manner; and
- the new Regulation does not alter the existing balance between facilitating trade in non-harmonised goods while preserving Member States' right to regulate nationally in certain circumstances.

During trilogue negotiations, my officials successfully worked with like-minded Member States to ensure that the compromise text remains closely aligned to the Council's General Approach position, namely on:

- The voluntary mutual recognition declaration, which is a tool that businesses can use to facilitate market access. The compromise text provides a clear process, which gives businesses flexibility over completing the declaration while not introducing disproportionate administrative burdens.
- The process for assessing goods, whereby a Member State authority determines whether a good has been lawfully marketed and informs the relevant business of its decision. The compromise text provides for a clear and transparent process for this assessment, with explicit timeframes and responsibilities for both national authorities and businesses.
- The problem-solving procedure, which offers businesses a non-judicial route to enforce their rights under the MRP. The compromise text provides for a robust mechanism through which businesses can challenge administrative decisions from national authorities, while also preserving Member States' rights to enforce their national regulations in certain circumstances.

I have enclosed a short summary of the compromise text for the Regulation in Annex A.

I understand that the provisional agreement for the proposal is expected to be formally adopted at Council in early March. The UK intends to support the Regulation when it is put to a vote.

Following adoption at Council, the Regulation will be published in the Official Journal of the EU and come into force 20 days later. I thank the Committee for their consideration of this proposal and, pending any unexpected changes to its progress or substance, I will be concluding correspondence on this file.

*13 February 2019*

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

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

I am writing to provide an update on trilogue negotiations on the above proposal and to thank the Committee for lifting scrutiny.

Talks have been moving at pace between the Council and European Parliament with both institutions recognising the time constraints presented by the imminent European parliamentary elections.

I have been acutely aware of the overlap between this proposed Directive and our major reform programme to modernise working practices. This overlap has enabled the UK to drive this agenda in the EU and be a leading voice throughout the negotiations. It has enabled us to ensure that the General Approach at EPSCO in June 2018 was a positive step forward for the EU and took account of our domestic reforms.

It is clear that the focus of the European Parliament in the negotiations is to broaden the protections for the most vulnerable workers and to introduce measures to ensure that flexibility for the employer does not come at the unreasonable expense of the worker, what we term one-sided flexibility. This is an issue that the UK Government is looking closely at, both in the 'Good Work Plan' and with the recent report from the Low Pay Commission also making a number of recommendations on the subject. I expect a compromise to include such protections. Given the UK's position as one of the first Member States to consider this, we will continue to provide leadersip so that the compromise takes account of the considerable progress that we have already made on this issue.

While the final compromise is not yet clear, I hope to be able to endorse the text at adoption subject to the outcome of trilogue negotiations. However, I am conscious that any provisions introduced during trilogue negotiations need to compliment our domestic work.

*14 February 2019*

## PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING THE RESPECT FOR PRIVATE LIFE AND THE PROTECTION OF PERSONAL DATA IN ELECTRONIC COMMUNICATIONS AND REPEALING DIRECTIVE 2002/58/EC (REGULATION ON PRIVACY AND ELECTRONIC COMMUNICATIONS) (5358/17)

### Letter from the Chairman to Margot James MP, Minister of State, Department for Digital, Culture, Media and Sport

Thank you for your letters dated 18 June and 20 December 2018 on the above file. The EU Internal Market Sub-Committee considered them at its meeting on 17 January 2019.

In your earlier letter, you suggest that the necessity of further provisions under the ePrivacy Regulation may become clearer once the full effectiveness of the GDPR is known. Has the relationship between the GDPR and the proposed Regulation been explored further in Working Group discussions?

Which, if any, of the stakeholder concerns have been addressed by the Austrian Presidency's compromise, or subsequent developments in negotiations?

We recognise the difficulty of legislating for electronic services and communications, given their fast pace of development. We are therefore interested to know if this proposal includes mechanisms to enable it to account for emerging technological developments. In addition, does it include any high-level governing principles?

We reiterate our request for a fuller assessment of the proposal's consistency with the principle of subsidiarity. In your more recent letter, you note that "the next text needs to be clear that national security is outside the scope of Union law". Does this matter raise subsidiarity concerns?

We have decided to retain this document under scrutiny and look forward to a response to this letter, including an update on progress in negotiations, in due course. We are also interested in developments on the references made by European courts, including the Investigatory Powers Tribunal, to the Court of Justice of the European Union.

*17 January 2019*

### Letter from Margot James MP, Minister of State

Thank you for your letter of 17 January 2019. I am writing to provide an update on the proposed EU ePrivacy Regulation (5358/17) and address the questions raised in your letter.

Since I last wrote, the Romanian Presidency has held six working groups focused on three areas of debate: the relationship between the ePrivacy Regulation and new emerging technologies, permitting processing for the purposes of tackling online child sexual abuse and exploitation, and the scope of the Regulation with regards national security and defence. The Presidency has produced possible compromise solutions to address these issues and these are currently being discussed in the working party.

As I set out in my previous letter, we believe the current Council text, and the Presidency's recent proposals are going in the right direction but we continue to believe that it needs to be clearer on three key issues: clarity of scope when M2M operates through both public and private networks; the relationship with the GDPR, being clear when one text prevails over the other in order to ensure as much legal certainty as possible; and which services are captured by the scope of the Regulation, to ensure that organisations know what the impact will be on their services and business models.

The relationship between GDPR and the proposed ePrivacy Regulation

The proposed ePrivacy Regulation sets out rules for the protection of electronic communication data, and data that is about a device or stored on it. It provides specific rules that are added to the GDPR for personal data in these circumstances and also complements the GDPR by covering areas out of its scope: protecting the confidentiality of electronic communications of legal persons and of non-personal data. This would mean that a more specific, relevant article in the ePrivacy Regulation should take precedence over a GDPR article on the same matter.

As mentioned in my previous letter, there continues to be a debate on the relationship between the proposed Regulation and the GDPR. The previous Austrian Presidency introduced provisions for further compatible processing of electronic communications metadata with imposed safeguards, inspired by the GDPR. However, there are still elements of the proposal which some Member States (MSs) consider could be more closely aligned with the GDPR, such as the legal bases for processing in Articles 6 and 8.

For example, currently under the GDPR, information society providers may use the legitimate interest provision to use cookies to track end-users' online activities to inform targeted advertising strategies. Under the proposed Regulation, these types of cookies would require end-users' explicit consent.

Stakeholders' concerns addressed during the Austrian Presidency

The Austrian Presidency's overall aim was to bring the proposal closer to the GDPR which would address permitted processing of metadata, protection of terminal equipment with restricted rules on cookies and privacy settings. The element of the Regulation that required browsers to be the gatekeeper of end-users' privacy settings was also addressed.

- Many concerns had been raised by stakeholders, including Small to Medium Enterprises (SMEs), browser providers and online-advertisers with regards to article 10, which relates to privacy setting by browsers. Issues raised included: the burden for browsers and app, the competition advantage browser providers would gain, the link to fines for non-compliance and the impact on end-users such as consent fatigue. The Austrian Presidency removed this article in the Council text.

  Whilst the Presidency has removed this article, with support from some Member States, others (and some civil rights groups) would prefer to keep this and have a simple and light provision on the information about privacy settings to be provided to the end-user.

- With regards to permitted processing, the Presidency introduced provisions on further compatible processing of electronic communications metadata, inspired by the GDPR. Also, to ensure responsible treatment of the data in question, the Presidency has complemented this new provision with corresponding safeguards, again taking inspiration from the GDPR. This has gone some way to addressing tech and telecommunications stakeholders' concerns that the initial text would hinder digital innovation and technological developments, however some Member States believe there is still a need to continue to work on the drafting and to ensure there are sufficient legal bases for processing, to ensure the Regulation is future-proof so the text doesn't become obsolete after adoption.

- The Austrian Presidency addressed concerns raised by the cyber-security industry by creating a provision in the permitted processing article for the detection or prevention security attacks on end users' terminal equipment.

- With regards to the protection of terminal equipment, the issue of conditional access to website content and the need to not undermine legitimate business models, the Presidency

made several proposals regarding this issue in respective recitals to reflect Member States' views. However, some Member States believe further work is required on this in the text.

Discussions under the Romanian Presidency have so far focused on the three issues set out at the beginning of my letter.

Mechanism in the ePrivacy Regulation proposal for emerging technological development

The Commission proposed that the recast of the ePrivacy Directive would address technological developments in the evolving digital landscape.

How the proposal regulates innovative technologies, specifically machine-to-machine (M2M), Internet of Things and Artificial Intelligence is being considered in working groups. It has been made clear that electronic communications networks and services which are not publicly available (closed network) are outside the scope of the proposed Regulation.

However, some Member States continue to request further clarity in terms of scope when the above technologies are operated via a mixture of publicly available network and closed networks such as households, internal business operations and public wireless networks.

In relation to M2M and IoT, the proposal maintains the obligation regarding the confidentiality of electronic communications by means of public electronic communications networks and publicly available electronic communications services that currently apply.

Principle of subsidiarity and National Security

The Commission observes that action by Member States to achieve the purpose of this Regulation would result in a fragmented level of protection across the Union and potentially restrict the free flow of data. Accordingly, the Commission believes that action is thus needed at Union level. The government is broadly content and will in due course assess the finalised version of the proposal to determine its consistency with the principle of subsidiarity.

In respect of national security, Article 4(2) of the Treaty of the European Union is clear that national security is the sole preserve of Member States and outside the scope of Union law. The new e-Privacy Regulation, in Article 2, excludes matters which are outside the scope of Union law and, we argue, makes the position clear.

However, as this point has been the subject of debate, including in the Privacy International case, we would like to see clarifications to the text which would put the matter beyond doubt.

European Court Cases

You asked for an update about references to the CJEU. Regarding the Investigatory Powers Tribunal reference to the CJEU in the Privacy International case, which requested a Preliminary Ruling on the compatibility of the collection, retention and use of bulk communications data with EU law in light of the CJEU judgment in Watson, we await the Court's consideration.

In other related cases that the UK is aware of, the CJEU handed down its decision in Ministerio Fiscal in October last year. This was a Spanish reference to the Court of Justice of the European Union (CJEU) in which the UK intervened. The case concerned the meaning of 'serious crime' for the purposes of interpreting the requirements in the CJEU's DRIPA judgment (Tele2/Watson, 2016) on accessing retained communications data. The main conclusion was that it is only where the level of intrusion is serious (i.e. allowing precise conclusions to be drawn concerning the private lives of the persons concerned) that the offence being investigated must be serious. This was our interpretation of the 2016 CJEU judgment (and indeed the High Court's interpretation in April) but we were pleased to see it confirmed by the CJEU.

There are several other related cases going before the CJEU, likely after Privacy International, which the UK is considering intervention. These are C-520/18 Ordre des Barreaux; C-511/18 - C-512/18 LQdN & Others; and C-746/18 HK.

Timescales

As the proposals are still going through the EU legislative process, I am unable to confirm at this stage when the Regulation will be adopted and become applicable. We continue to work closely with the Romanian Presidency, Member States and the Commission in Council seeking to ensure that the

proposal permits processing electronic communications for the purpose of tackling Child Sexual Exploitation and Abuse (CSEA) whilst protecting the confidentiality of electronic communication and at the same time encouraging digital innovation. I will write to the Committee again once we have any further information and a clearer understanding of timescales.

*12 March 2019*

## PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PORT RECEPTION FACILITIES FOR THE DELIVERY OF WASTE FROM SHIPS, REPEALING DIRECTIVE 2000/59/EC AND AMENDING DIRECTIVE (5454/18)

**Letter from Nusrat Ghani MP, Parliamentary Under Secretary of State, Department for Transport**

I am writing to update you on the progress of discussions on the above proposal, which has now reached its final stages.

Following the General Approach reached on the proposal on 7 June 2018, the Bulgarian Presidency handed the proposal over to the Austrian Presidency to continue work on it.

On 15 October 2018, the European Parliament's Committee on Transport and Tourism ("TRAN") adopted its report on the proposal, and trilogue discussions subsequently opened in November 2018. The European Parliament mainly supported the Commission's original Proposal as drafted and the initial trilogue discussion indicated that they were content with the majority of the Council's General Approach. However, there were a number of differences between the General Approach and the amendments put forward by the European Parliament. These proposed amendments included some positive outcomes for the UK. For example, the introduction of a more flexible arrangement for an indirect fee for garbage and delivery of passively-fished waste, which would allow passively-fished waste to be delivered and paid for outside of the indirect fee system and so align to existing UK practices. Another example is the addition of a cap on the 100% 'indirect fee' ensuring that a maximum amount of waste (determined by the storage capacity of the ship concerned) can be delivered for payment of a fixed fee. Any additional waste delivered would be subject to direct fees. This amendment will help ensure that ports or their users are not disproportionately burdened.

However, the amendments also included some areas of concern, for example the introduction of new elements such as the general prohibition on the discharge of plastics and fishing gear, the concept of actively fished waste, prewash procedures for high-viscosity substances, and related amendments to Directive 2005/35/EC. These would extend the scope of the PRF Directive from 'delivery' of waste to a port reception facility to include requirements for the 'discharge' of polluting substances from ships into the sea (covered internationally by MARPOL), and in so doing risk further extension of EU competence.

There was also one significant proposed amendment on the suggested inclusion in scope of amendments to Directive 2005/35/EC, in that this would not only extend the scope of the PRF Directive as outlined above, but would fundamentally extend the scope of the definition of "polluting substances" in the 2005 Directive to include all MARPOL annexes.

Negotiations took place over three trilogues, ending with a provisional agreement on 12 December 2018. EU Member States shared many of the same concerns as the UK and we were therefore successful in blocking the introduction of the proposed unwelcome new elements outlined above, while retaining the welcome amendments such as the more flexible arrangement for an indirect fee and the addition of a cap.

An additional positive measure which the UK was successful in gaining was an important amendment to allow for exemptions from the general requirement to produce Port Waste Management Plans for small non-commercial ports (e.g. sailing clubs). This key exemption will reduce the financial and administrative burdens for small non-commercial ports, and recreational craft users. In addition, the UK was instrumental in securing a provision to assist the short sea shipping industry (i.e. the maritime transport of goods over short distances) which enables ports to reduce fees for this sector.

The provisional agreement reached during the trilogue negotiations is a positive outcome for the UK. We expect that it will be put to the European Parliament Plenary for approval shortly (possibly in the week beginning 11 February) and will then be put to the Council of Ministers for final adoption into EU law. No further changes are expected to be made to the text and I would therefore be grateful if the Committee could clear the proposal from scrutiny.

*14 January2019*

**Letter from the Chairman to Nusrat Ghani MP, Parliamentary Under Secretary of State**

Thank you for your letters dated 25 June 2018 and 14 January 2019 on the above proposal. The EU Internal Market Sub-Committee considered them at its meeting on 7 February 2019 and decided to clear the proposal from scrutiny.

*8 February 2019*

## PROPOSAL ON ESTABLISHING CONTINGENCY MEASURES IN THE FIELD OF SOCIAL SECURITY COORDINATION FOLLOWING THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FROM THE EUROPEAN UNION (5949/19)

**Letter from the Chairman to Alok Sharma MP, Minister of State for Employment, Department for Work and Pensions**

Thank you for your Explanatory Memorandum (EM) dated 25 February 2019, which the EU Internal Market Sub-Committee will consider in due course. I am, however, content to grant a scrutiny waiver ahead of the upcoming Council vote.

*14 March 2019*

**Letter from the Chairman to Alok Sharma MP, Minister of State for Employment**

Thank you for your Explanatory Memorandum (EM) dated 25 February 2019 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 21 March 2019.

We recognise that the objective of EU contingency legislation is to alleviate the effects of a 'no deal' Brexit on the EU and its citizens. At the same time, this proposal would have substantial implications for UK citizens who have exercised freedom of movement rights under EU law. We would therefore be grateful for further information on the following:

- What the absence of provisions for 'applicable legislation' will mean for workers who may be subject to the social security legislation of the UK and an EU Member State, such as frontier workers.
- The Government's assessment of how many UK citizens might be affected by the absence of 'applicable legislation' arrangements.
- What progress the Government has made on arrangements for continued access to public healthcare by UK citizens resident in the EU and how the Government plans to communicate changes to those affected.
- The Government's analysis of the proposal's application to Gibraltar, given the Commission's position that contingency measures will not include Gibraltar.
- The extent to which the UK may be able to conclude bilateral agreements on social security coordination with Member States.
- What support the Government can provide to UK citizens affected by the terms of this proposal, should it come into force.

We are mindful that the legislative process for this file has been accelerated and that final adoption is imminent. We have therefore decided to clear it from scrutiny. Nonetheless, we would be grateful for a response to our questions within 10 working days.

*21 March 2019*

## PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CERTAIN ASPECTS OF RAILWAY SAFETY AND CONNECTIVITY WITH REGARD TO THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FROM THE UNION (6340/19)

**Letter from Andrew Jones MP, Parliamentary Under Secretary of State, Department for Transport**

On 28 February I provided your Committee with an Explanatory Memorandum (EM) on the above proposed Regulation. I am writing now to bring you up to date with some further, and very welcome, developments.

As reported in the EM, the Council Working Group and the European Parliament TRAN Committee had considered the proposal without making amendments and it was therefore expected to be finally adopted without change. However, an ad hoc working group has since looked at the proposed Regulation and revised the text, resulting in a substantial expansion of the original proposal.

There are two particularly significant improvements to the proposed Regulation. Firstly, the provisions have now been expanded to cover rail safety certificates, train driver licences and operator licences as well as safety authorisations.

Secondly, the Regulation would now apply, also positively, to services both through the Channel Tunnel and on the island of Ireland, since it has been amended to cover rail services as well as cross-border infrastructure. However, UK licences and certificates will only remain valid on border-crossing sections, up to Calais Frethun (France) and Dundalk (Ireland) designated as the relevant border-crossing stations. This means that both Eurostar and Northern Ireland Railways will have to continue with contingency measures to ensure continuity of operations beyond these stations, something with which Government continues to actively support them.

The amended proposal also extends the validity of the safety authorisation, train driver licences, operator licences and safety certificates to nine months from the date the UK leaves the EU, an increase on the three-month extension in the original proposal.

In addition, the amendments include various obligations on the UK to continue to align with EU rules in these areas, for these specific services only, for the duration of the extension period and to cooperate with the sharing of information with EU National Safety Authorities as appropriate. The nine-month extension is conditional on the UK maintaining alignment and can be withdrawn.

As you know, the Government's priority continues to be to work towards a Withdrawal Agreement. However, we welcome the improved contingency measures in the amended Regulation which will further support the smooth continuation of cross-border rail services both through the Channel Tunnel and on the island of Ireland if no deal is reached. We are committed to maintaining an effective, coherent rail services safety regime for the Channel Tunnel and on the island of Ireland and continue to work closely with other Member States on this issue. The extended recognition period for UK and IGC-issued licences, authorisations and certificates for cross-border rail operations as well as infrastructure is therefore also very welcome.

The timetable for the proposal remains broadly as I set out in the EM, with approval by the European Parliament plenary now scheduled for 13 March and final adoption at a subsequent meeting of the Council of Ministers on 18 or 19 March. However, given the changes made in working group we also expect that there will be a 'mini trilogue' with the European Parliament on 11 March.

The Government will wish to support the proposal when it is put to the Council of Ministers on 18 or 19 March, and I would therefore be grateful if the Committee could clear from scrutiny or grant a 'scrutiny waiver' before that date.

*7 March 2019*

**Letter from the Lord Whitty to Jesse Norman MP, Minister of State, Department for Transport**

Thank you for your EM dated 28 February 2019 on the above file and subsequent letter dated 7 March 2019, which the EU Internal Market Sub-Committee will consider in due course. I am, however, content to grant a scrutiny waiver ahead of the upcoming Council vote.

*14 March 2019*

**Letter from the Chairman to Jesse Norman MP, Minister of State, Department for Transport**

Thank you for your Explanatory Memorandum (EM) dated 28 February 2019 and letter dated 7 March 2019 on the above proposal. The EU Internal Market Sub-Committee considered these documents at its meeting on 21 March 2019.

We have decided to clear the file from scrutiny. We would be grateful for an update on your assessment of the progress made by Eurostar and Northern Ireland Railways on the additional continuity measures required to maintain cross-border rail services, within 10 working days.

*21 March 2019*

## PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A EUROPEAN LABOUR AUTHORITY (7203/18)

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

I am writing to update you on progress ahead of the expected vote on the adoption of the proposal to establish a European Labour Authority. I last wrote to you in November 2018, providing an update on the file and explaining my reasoning for voting in favour of the file at EPSCO on 6 December 2018.

A General Approach was reached at EPSCO with all bar two Member States voting in favour. The UK was able to support the General Approach after the Council Presidency found a compromise by removing social security coordination from the scope of the ELA Mediation Board. The UK had been vocal in our concern about the potential for duplication and loss of expertise as well as the lack of added value this would bring.

Trilogue negotiations have been taking place since early January, and reports to COREPER are that they are progressing substantially, with an agreement expected to be finalised by mid-February.

If the final text is in line with the General Approach on key points, I propose that the UK supports the final agreement.

Our strong preference would be to keep social security coordination outside the scope of the ELA mediation process, however we may be able to support inclusion so long as the integrity and role of the social security Administrative Commission is protected.

The UK supports the overall aims of the proposal and is content that its adoption would not impose additional legislative obligations on Member States nor impact national competencies.

*11 February 2019*

**Letter from Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility**

Following on from my letter last week, I am now able to provide further updates on the process of the Trilogue discussions on the European Labour Authority (ELA).

Discussions are drawing to a close and the draft Regulation maintains the aims and functionality of the text agreed at General Approach. The ELA will support Member States on concerted and joint inspections, carry out analysis and risk assessments on issues of cross-border labour mobility, support Member State capacity building and in tackling undeclared work. The text retains the acknowledgment of Member State competencies and respects Member State requirements on participation in joint and concerted inspections.

In my last letter I said the UK preference would be to keep social security coordination outside the scope of the ELA. It now looks likely that social security coordination will be within the scope of the ELA. The UK has stated previously that it could support the inclusion so long as the integrity and role of the social security Administrative Commission is protected. A compromise has been proposed that provides more detail on the relationship between the ELA and the Administrative Commission, and will preserve the current acquis and ensure proper scrutiny by the Administrative Commission of ELA opinions on social security disputes. As such I am able to support this compromise.

The UK supports the proposal overall and I request that scrutiny is lifted as soon as possible, ahead of the next Council meeting, to allow a vote on adoption. We do not have confirmation of the date of the Council meeting where this Regulation will be voted on, but we expect it to be in the series of meetings in March.

*19 February 2019*

## PROPOSAL FOR A REGULATION AMENDING (EU) NO 168/2013 ON THE APPLICATION OF THE EURO 5 STEP TO THE TYPE-APPROVAL OF TWO- OR THREE-WHEEL VEHICLES AND QUADRICYCLES (7343/18)

**Letter from Jesse Norman MP, Minister of State, Department for Transport**

Thank you for your letter dated 7 June 2018. I am grateful to the Committee for clearing the proposal from scrutiny, and am writing now to provide an update on negotiations and the further information you requested on the Government's assessment of the number of L-category vehicles in use in urban areas of the UK and their contribution to air pollution.

L-category vehicles represent a broad group of vehicles, ranging from quadricycles to motorised scooters, and covering an equally broad range of applications. Conventional motorcycles and mopeds account for the significant majority of licensed L-category vehicles on the road in the UK. Although these vehicles represent 3.7% of all licensed vehicles on the road, they account for less than 1.0% of all vehicle miles travelled and therefore have a limited overall effect on air quality. This is demonstrated in data from the National Atmospheric Emissions Inventory, which suggests that in 2016 motorcycles and mopeds contributed approximately 0.3% of the total road transport emissions of oxides of nitrogen (NOx) for urban driving.

The most prevalent pollutants for L-category vehicles are hydrocarbons, originating from unburnt or partially burnt fuel. The Euro 4 emissions standard, which became mandatory for all new L-category vehicles on 1 January 2017, improved standards for hydrocarbon emissions. The planned implementation of the Euro 5 standard from 1 January 2020 should deliver a further reduction in the limits for this pollutant, bringing standards to a similar level to those for passenger cars.

The Commission's proposal seeks to implement the Euro 5 standard at the earliest feasible date for the vast majority of L-category vehicles, in order to maximise air quality benefits. Delayed implementation of the standard was proposed for a small number of specialist vehicle categories to allow suitable technology to be developed in a cost effective manner.

Enduro and trial motorcycles represent a significant proportion of these specialist vehicles within the UK. These are primarily used for off-road competitions rather than in urban environments. UK vehicle registration data indicates that 5,935 of these vehicles were registered in 2017 compared to a total of 104,655 motorcycle and moped registrations in that year. Owing to the low numbers of these vehicle on the road, their tendency to be used away from urban areas, and their typically low annual mileage, it is considered that delayed implementation of Euro 5 for these vehicles will have a negligible impact on air quality.

Given that the proposal was straightforward, with limited changes to the test procedures and applicable dates, there was little working group discussion before a mandate was agreed at Coreper authorising the Presidency to open trilogue negotiations with the European Parliament. The European Parliament's own consideration of the dossier was similarly straightforward, and the trilogue negotiations quickly concluded a draft final deal. No substantive changes have been made to the proposal other than a change of implementation date of the Euro 5 standard for enduro and trial motorcycles, utility three-wheeled mopeds and light quadricycles. This has been changed from 2022 to 2024. This date is compatible with the conclusions of the Commission's environmental effect study of the benefits of the Euro 5 step, wherein additional time was suggested to allow a transition to low emission powertrain technologies. For the reasons set out above, we do not consider this change in implementation date to have any material impact on air quality. The final legislation is expected to come into force on 20 February 2019.

*19 February 2019*

**Letter from the Chairman to Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility**

Thank you for your letters dated 3 December 2018, 8 February 2019 and 19 February 2019, which the EU Internal Market Sub-Committee considered at its meeting on 28 March 2019.

The Government has given an undertaking not to agree to draft EU policies or laws that have been deposited in Parliament until the committees of both Houses have completed their scrutiny work. It is therefore highly regrettable that you voted in favour of the file at Council while it was still held under scrutiny.

This situation could in fact have been avoided by keeping the Sub-Committee and its staff informed of developments in a timely manner. We are further disappointed that your recent letters contained only superficial details of negotiations.

We have now decided to clear the proposal from scrutiny. However, we expect to receive a detailed letter on the role of the European Labour Authority according to the final text and what implications this will have for the UK, within 30 working days.

*28 March 2019*

## PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PROMOTING FAIRNESS AND TRANSPARENCY FOR BUSINESS USERS OF ONLINE INTERMEDIATION SERVICES (8413/18)

**Letter from Rt Hon Lord Henley, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy**

Thank you for your response to my letter on the European Commission's proposed Platform-to-Business Regulation, and for clearing the file from scrutiny. In your letter, the committee raised a number of questions which I have copied below in bold. Please find the answers to each of these, and additional information, below.

**Your earlier letter explains that the proposed measures would be reviewed three years after coming into force and an EU Observatory would be established to monitor emerging issues and effectiveness of intervention in the platform economy. Does the Government intend to establish domestic arrangements to mirror these activities after the UK leaves the EU?**

There are various areas of divergence between the current approach of the Council and the European Parliament, which means the text of the Regulation is not yet finalised. As such, it is not possible to state at this point whether the Government would retain or repeal the Regulation in UK law if it is agreed in time to apply in the UK before EU rules cease to apply to it. This will also affect the decision on whether a similar Observatory would need to be established in the UK.

In addition, and related to this issue, two separate reviews are currently being conducted. In the Industrial Strategy the Government announced that it would review the current competition regime to ensure it remains world class. A central part of this review will be to assess the impact of digital markets and platforms and whether this means we need to adjust the regime.

The Government also commissioned an independent expert panel led by Professor Jason Furman to examine the UK's competition regime in the context of the digital economy. The panel's review is considering ways that the UK can further capitalise on the opportunities presented by an increasingly data-driven economy and has been looking explicitly at the relationships between dominant platforms and their business users. The panel's findings will be published early this year.

Once the reviews have reported, the Government will assess whether additional steps need to be taken regarding the functioning of the competition regime in the digital age.

**We would also be grateful for your view on when this proposal is likely to come into force and your assessment of its likely overall impact.**

The Romanian Presidency of the Council of the European Union is hoping to complete the trilogue process by mid-February in order to adopt the Regulation before the final European Parliament plenary session in April 2019. The Regulation is likely to enter into force on the twentieth day following its publication. The application date is still under consideration and could be 6 or 12 months after publication.

We believe the light-touch approach taken by the Council will improve transparency and fairness for businesses without stifling innovation or competition amongst platforms. The current Parliament text places greater burdens on platforms and brings search engines into scope. We are concerned that some of these proposed measures do not have a sufficient evidence base. We will continue to play an active role in the trilogue negotiations to ensure that the Regulation remains light-touch and that UK objectives are met.

**We have decided to clear the file from scrutiny. We look forward to a response to this letter, including an update on the outcome of the upcoming Competitiveness Council, in due course.**

On 29 November 2018, the Competitiveness Council agreed a general approach on the platform-to-business Regulation. The UK, along with the Czech Republic, Estonia, Finland, Ireland, Latvia and Poland, expressed reservations on the enforcement provisions. We wanted to ensure the Regulation remains proportionate and would not oblige Member States to provide for public enforcement by dedicated supervisory bodies or any other ex officio enforcement.

On 6 December, the European Parliament's Internal Market Committee (IMCO) voted in favour of the report of the rapporteur Christel Schaldemose. As stated above, there is some divergence between the Parliament and Council texts, with the Council seeking a more light-touch approach. On 12 December 2018, the first platform-to-business trilogue meeting took place, followed by a second trilogue on 28 January. These meeting were regarded as constructive by participants, but no substantial progress has been made on the text so far. A further trilogue is planned for 12 February 2019.

I hope this answers all your questions.

*31 January 2019*

## PROPOSAL FOR A COUNCIL DIRECTIVE RECASTING DIRECTIVE (EU) 98/2003 ON THE RE-USE OF PUBLIC SECTOR INFORMATION (8531/18)

### Letter from the Chairman to Margot James MP, Minister of State, Department for Digital, Culture, Media and Sport

Thank you for your letter dated 19 December 2018 on the above proposal. The EU Internal Market Sub-Committee considered it at its meeting on 31 January 2019.

You suggest that if Article 6(5) entered into force during an implementation period, you would seek to negotiate on the definition of high value datasets, which under the Council's proposal would be

determined by an implementing act. To what extent do you expect the UK to be able to influence the preparation of this implementing act after Brexit, if an implementation period is agreed?

We would be interested in a summary of feedback provided by the devolved administrations and local authorities. We would also welcome an update on the Government's impact assessment of the proposal, once available, including any assessment in relation to the requirement for high value datasets to be offered free of charge and the impact this would have on public bodies that already have a commercial charging model.

More broadly, we are interested in the Government's view of whether this proposal would be beneficial for the UK, should the UK be required to implement it.

We have decided to retain the file under scrutiny. We look forward to a response to this letter, including an update on trilogue discussions, in due course.

*31 January 2019*

**Letter from Margot James MP, Minister of State, Department for Digital, Culture, Media and Sport**

I am writing to inform the Committee that the negotiations on the recast Public Sector Information (PSI) Directive (8531/18) have now concluded, and a compromise text was agreed between the Council and Parliament at trilogue on 22 January, subsequently endorsed unanimously at COREPER on 6 February. A Ministerial vote for adoption is expected in either March or April. Therefore, I am writing to update the Committee on the outcome of negotiations and to request scrutiny clearance for the UK to vote in favour, if still in Council at that time.

I previously wrote to you on 19 December 2018 updating you on the progress of the recast Directive. In particular, I highlighted the content of the file in the Council and the UK Government's position on the most significant issues in the Directive, and indicated that I was minded to support adoption subject to the conclusion of negotiations.

**Result of Negotiations**

I am pleased to inform you that the UK has achieved the substance of the negotiating objectives outlined in my previous letter. Most significantly, we have achieved the primary objective of seeking a further temporary derogation for Public Sector Bodies (PSBs) who would be greatly affected by this Directive, if the UK had to transpose the Directive in full. Further details on outcomes of negotiations on the recast Directive in relation to the issues I highlighted in my previous letter are provided below.

<u>"High Value" Datasets in Articles 6.5 and 13</u>

PSBs and Public Undertakings holding designated "high value" datasets must make them available free of charge and through Application Programming Interfaces (APIs) by default. However, the UK has worked with like-minded Member States to ensure the inclusion of a provision that enables Member States to exempt datasets belonging PSBs and Public Undertakings that are required to generate revenue to recover costs (eg Ordnance Survey) for up to two years, if these datasets are designated as "high value" by a Commission implementing act. Any Commission implementing act could only come into force after the transposition of the Directive itself; the deadline is expected to be March or April 2021.

Furthermore, we were successful in changing the method by which the Commission could designate a "high value" dataset from a delegated act to an implementing act. Implementing acts require considerably more scrutiny and consultation with Member States in comitology than delegated acts, and also more time to come into force. "High value" datasets will be designated by implementing acts from a list of broad categories derived from the G8 Open Data Charter. These are: Geospatial; Earth Observation and Environment; Meteorological; Statistics; Company and Company Ownership; and Mobility (primarily transport issues). The list of dataset categories may be updated by the Commission via delegated acts. Regarding UK influence on any such implementing acts, Article 128(7) of the Withdrawal Agreement states that where draft Union acts identify or refer directly to specific Member State authorities, procedures, or documents, the United Kingdom shall be consulted by the EU on such drafts, with a view to ensuring the proper implementation and application of those acts by and in the United Kingdom.

The UK is scheduled to leave the EU on 29 March with an implementation period lasting until 31 December 2020. In this case, the UK would not have to transpose the recast Directive. This is because the recast Directive has a transposition period of 24 months, and as adoption is expected in March or April, this would mean a deadline of March or April 2021.

The Withdrawal Agreement does provide for an extension of the implementation period by either one or two years. If either option is taken, this would mean the UK would have to transpose the recast Directive. Yet given the outcome of negotiations, and the further exemption provided for PSB datasets deemed "high value" for up to two years after they are designated as such, even if the implementation period is extended by two years it is unlikely that there will be a requirement for a UK PSB to make a "high value" dataset free of charge, although it remains possible.

Database Rights in Article 1.5

The risk of PSBs having their database rights removed has been averted. PSBs are now more explicitly unable to refuse to provide data for re-use on any database rights grounds not specifically permitted in the PSI Directive, but that had been the UK's understanding under the previous Directive.

Removal of the Second "Charging Exception" in Article 6.2.b

This has been removed. However, this exception is not widely used in the UK.

Public Undertakings in Article 2.3

Public undertakings in the energy, postal, transport and utilities sectors are now included in the scope of the Directive. Many UK undertakings in these sectors are private (e.g. the Royal Mail) and are thus not affected. Whilst impact to HM Government will be limited, there may be impacts upon undertakings in the scope of local authorities and the Devolved Administrations. My officials have engaged with local authorities and the Devolved Administrations and will continue to engage on potential subsequent effects within their competence.

**Impact Assessment**

My officials have conducted a preliminary impact assessment regarding the effect on UK PSBs holding datasets likely to be designated "high value", if the UK had to implement the Directive in full. This has been produced from evidence supplied by the Ordnance Survey; Met Office; HM Land Registry; Coal Authority; the UK Geospatial Commission; the UK Hydrographics Office; National Registers of Scotland; and Ordnance Survey Northern Ireland.

Based on their responses, we estimate a Net Present Social Value (NPSV) of -£28m over 10 years. This figure represents the direct benefit to current purchasers of "high value" datasets, the direct fall in government revenue, and the cost to PSBs of supplying a greater volume of data. As the former two effects equate to zero, this negative NPSV is a result of costs incurred by public sector bodies in servicing the re-use of "high value" datasets.

There are anticipated to be large benefits of this Directive that are not captured by this impact assessment. This includes the benefit to new businesses who would utilise the datasets at a lower cost, as well as wider benefits to society through the knock-on effects of innovation.

**I must emphasise these statistics are preliminary findings and not the product of a full RPC impact assessment.** This work has been done to increase HM Government's understanding of the potential impacts of the recast Directive, because as I have noted in previous correspondence, I do not believe the Commission's impact assessment is suitable. I am sharing them with you in order to assist your scrutiny of this file.

**Devolved Administrations and Local Authorities**

My officials have had several rounds of discussions at official level in Scotland and Northern Ireland on the general thrust of the recast Directive and what it means specifically for them and their sponsored bodies. These rapidly narrowed down to the "high value" datasets issues and there have been contributions to the preliminary impact assessment from the most affected bodies: Registers of Scotland; National Records of Scotland; and Land and Property Services Northern Ireland. Both Administrations felt that there might be a further burden upon their Public Undertakings, dependent on the naming of particular datasets, and would expect to contribute further if a full impact assessment was undertaken after the vote. We have communicated with Welsh Government officials

on this question yet have had very limited response; this could be because it has no Trading Funds and very little deviation from the open licensing terms in the default mode of the present Directive. The Local Government Association stated that local authorities in England do not derive income from licensing datasets in the UK's response to the Commission's call for evidence for its 2017 public consultation, and our impact assessment return from MHCLG did not raise any areas of concern.

**Vote for Adoption**

I anticipate that the recast PSI Directive will proceed to Council for adoption in either March or April, and therefore it is possible the UK may be present for the vote. Given the result of negotiations I would wish to support adoption if the UK is still in Council at that time, and therefore request scrutiny clearance to do so.

I hope this is helpful and trust it provides sufficient clarification regarding your concerns on this file.

*28 February 2019*

**Letter from Lord Whitty to Margot James MP, Minister of State**

Thank you for your letter dated 28 February 2019 on the above proposal, which the EU Internal Market Sub-Committee will consider in due course. I am, however, content to grant a scrutiny waiver ahead of the upcoming Council vote.

*14 March 2019*

**Letter from the Chairman to Margot James MP, Minister of State**

Thank you for your letter dated 28 February 2019 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 21 March 2019 and decided to clear the file from scrutiny.

We note that, depending on the Exit outcome, the UK may not be required to comply with the recast Directive. Does the Government plan to bring forward domestic policy initiatives on the re-use of public sector information?

*23 March 2019*

## PROPOSAL FOR A DIRECTIVE AMENDING DIRECTIVE (EU) 2017/1132 AS REGARDS CROSS-BORDER CONVERSIONS, MERGERS AND DIVISIONS (8561/18)

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

Following my letter dated 22nd November 2018 I am writing to request clearance ahead of the Competitiveness (Compet) Council on the 18th February 2019. I have provided an update on negotiations below as well as the Government's policy position on the cross-border conversions, mergers and divisions proposal.

Due to the technical nature of this proposal, Council working group negotiations have been held regularly2 but have progressed steadily despite pressure from the Commission to complete the file before the European Parliament's election in May. In order to achieve this, they have scheduled for Coreper on Wednesday 30th January with a view to going to Compet Council on the 18th February. For the UK to vote in favour of the file we require the proposal to be lifted from scrutiny and would therefore be grateful if the Committee could consider the progress outlined below including an updated assessment of the impact of the file on the UK.

Since my last letter conditional Cabinet Clearance has been provided on the condition that BEIS officials continue to work with HMT colleagues. My officials have done that, alongside HMRC

[2] Dates include: 9th Sep 2018, 1st Oct 2018, 22nd Oct 2018, 5th Nov 2018, 14th Nov 2018, 5th Dec 2018, 8th Jan 2019, 22nd Jan 2019 and (upcoming) 4th Deb 2019

colleagues, and recently submitted written comments to the Romanian Presidency and Commission containing ideas on better protection of creditors during a conversion.

**Transposition of the Proposal**

It remains the case that if the Directive is adopted during the course of the currently proposed implementation period the timeline for transposition for the proposal means that the UK will not have to transpose this legislation into domestic law. In the unlikely case that the proposal does need to be transposed – based on circumstances that are not currently known – officials do not consider that the proposal offers any overly problematic issues for domestic law. This is an opinion shared by HMT and HMRC.

Whilst complicated, the process itself is based on the existing Cross-Border Mergers regime and in working groups, UK delegates, alongside other Member States, have argued for the file to mirror this process as far as possible. This has largely been reflected in changes to the text over the previous six months.

**Outstanding issues**

As aforementioned, BEIS officials submitted written comments on the protection of creditors. Through liaising with HMRC we advised that in order to protect the UK tax base (as well as other Member States), the text needs to allow for a clear administration process which is vital to ensure that UK tax authority is able to claim tax liabilities established after the end of a financial year in which a company had converted its seat of incorporation. We consider this an area for clarification rather than a red line.

Aside from this issue the proposal contains no substantive issues for the UK

**Working Group Contributions**

Other areas where the UK has contributed in technical discussions include employee participation rights, protection of members and the scope of the Directive. We have also sought assurances with the Ministry of Justice that there are no issues regarding applicable law in situations whereby a legal issue arises against a company in a country after that company has departed.

In working groups, the legislation on cross-border conversions, mergers and divisions has many areas of contention for Member States, particularly on whether rights around "employee participation" - the legislative requirement for communication with employees before and during the conversion process - should be preserved. The role and functions of the independent expert and the status of their report have also been subject to extensive debate. Member States in the Council continue to negotiate the technical and procedural detail in this area.

**Conclusion**

My officials have indicated a preference to vote in favour of the proposal as it provides useful input in an area of law previously lacking, outlined in the ECJ's 2017 decision in the Polbud case. Furthermore, although this legislation marks a departure from current practice, our liaison with other government departments has not led us to believe that any element of it is unworkable. Lastly, this would be in line with our objective of using our influence and voice within the EU to help shape future policy and remain close partners in the future.

My officials will continue to engage closely with HMT and HMRC to ensure that our views broadly supporting the Commission's intentions are sustained after EU Exit, particularly in view of the Government's commitment to enhanced corporate transparency to combat economic crime both here and internationally. These proposals align with this view and will contribute to this aim.

*5 February 2019*

**Letter from the Chairman to Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility**

Thank you for your letters dated 22 November 2018 and 5 February 2019 on the above proposal. The EU Internal Market Sub-Committee considered your letters at its meeting on 14 February 2019 and decided to clear the file from scrutiny.

## 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)

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

Trilogue negotiations on the above proposal have now concluded and there is provisional agreement on a compromise between the European Council and European Parliament. I am therefore writing to request that scrutiny is lifted ahead of adoption at European Council. As EU legislative proposals can go to any European Council for adoption, it is not certain that it will be at the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) meeting on 15 March 2019. I am therefore requesting a response from the Committee at the earliest opportunity.

We are yet to see the full text of the compromise but know that it is based on the Member States introducing the following:

- 10 working days of paternity leave compensated at a level equivalent to at least sick pay.
- A payment or allowance for a minimum 2 months of parental leave per parent, per child (4 months unpaid leave already exists), compensated at a level defined by Member States.
- A requirement to introduce a minimum of 5 days carers' leave, the details of which are to be defined by Member States.

The UK Government supported the General Approach on the Work Life Balance Directive in June 2018, where Council agreed amendments to the European Commission's proposal. During Trilogue negotiations we have been effective in steering potential compromises to areas which limit the impact on the UK and which are not a major departure from the General Approach. I therefore intend to support the compromise proposal at adoption.

The compromise text requires Member States to implement the Directive three years after it enters the Official Journal of the EU.

11 February 2019

Letter from Chairman to Kelly Tolhurst MP

Thank you for your letter dated 11 February 2019 on the above proposal, which the EU Internal Market Sub-Committee considered at its meeting on 21 February 2019.

We have decided to clear the file from scrutiny and look forward to an update on the final text in due course.

*21 February 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)

## PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2008/96/EC ON ROAD INFRASTRUCTURE SAFETY MANAGEMENT (RISM) (9040/18)

**Letter from Jesse Norman MP, Minister of State, Department for Transport**

Thank you for your letter of 22 November. I am grateful to the Committee for clearing the proposed Road Infrastructure Safety Management Directive from scrutiny, and for granting a waiver on the proposed General Safety Regulation. I am writing as requested to provide your Committee with a further update on the outcome of the Council consideration of both proposals.

The Presidency was able to achieve a General Approach on the proposed **Road Infrastructure Safety Management Directive (9040/18)** at the 3 December Transport Council, on the basis of the compromises set out in my previous letter. The General Approach text is therefore aligned with UK objectives. In particular, we welcome the inclusion of text stating that Member States will be able to define their own road network of 'primary roads'.

The proposal was also considered by the European Parliament TRAN Committee on 10 January 2019. The Committee adopted its report on the proposal and agreed a mandate to open trilogue negotiations. The TRAN report is supportive of the general objectives of the proposal and agrees that the objective can be achieved by improving transparency and follow up of infrastructure safety management procedures; introducing network-wide assessments; extending the scope beyond the TEN-T network; and setting general performance requirements for road markings and signs.

The amendments put forward in the TRAN report would extend the scope of the Directive to include parts of road tunnels, bridges and intersections as well as urban areas. There were also amendments which would integrate electronic and digital means to the assessments tools, to enable road users to report road safety concerns to the responsible authorities, and for users to be given more information about the infrastructure they use through dedicated signs and markings. Our position has been to support these amendments given they balance the burden on Member States with improving safety for road users.

The Romanian Presidency opened trilogue negotiations with the European Parliament on 23 January, and after three meetings reached provisional agreement on 21 February. The agreement fully addresses our concerns on scope, signs and the non-binding nature of the annexes. The provisional agreement text has clarified the scope, requires the Commission to provide guidance to Member States on 'forgiving roadsides' and a methodology for systematic assessments, and sets up a Member State expert group to establish what standards might be needed for making road signs readable for autonomous vehicles (taking advice from the UN). Additional text has also been included on establishing systems for the voluntary reporting of accidents, and a requirement on Member States to report, by 2025, on the network-wide safety classification. We have supported these additions to the text as they provide further clarity to the scope and are sensible ways to meet the vision for the Directive.

You asked for more information about the responses of the Devolved Administrations to the proposal and to developments in negotiations. We consulted the Devolved Administrations in the preparation of the original Explanatory Memorandum and have also sought their views about the changes made to the proposal during the negotiations. Northern Ireland had some specific comments, including that they do not use the definition of 'primary road' in their roads classification system and were concerned how 'primary road' would be defined in the Directive. The General Approach text mitigates this concern as Member States are able to define their own primary road network.

Northern Ireland also had concerns about the inclusion in the proposal of a mandatory requirement to make road markings and signs readable by automated vehicles. They were therefore supportive of the approach to await the outcome of wider work.

We anticipate the European Parliament will vote to approve the provisional agreement text at its March plenary, possibly in the week commencing 11 March, and the file will then return shortly thereafter to a meeting of the Council of Ministers for final adoption. The Government is content with the outcome of negotiations and would wish to support the proposal in the Council.

The Presidency was also able to achieve a General Approach on the proposed **General Safety Regulation (9006/18)** at the Competitiveness Council on 29 November, which was also aligned with the UK's objectives and the compromises set out in my previous letter.

As your Committee noted, during Council Working Group negotiations some Member States sought a more ambitious timeframe for the implementation of the legislation, but the UK, along with others, opposed such a move. In its compromise text, the Austrian Presidency supported the retention of the original implementation timeframe and did not propose any amendments to it.

In your letter of 22 November, you asked if we see a possibility for the UK to influence the development of implementing acts on the rules on test procedures and technical requirements. I can confirm that we do see several opportunities to influence these requirements as they progress.

The UK is respected internationally for its work on vehicle standards and has a strong track record of providing expertise and leadership in this area. Following our exit from the European Union our ambition is to have a mutual recognition of type approvals as part of any future agreement, with a single test for both markets. Under this model we would expect the UK and EU to work closely together in developing new standards.

The majority of vehicle safety requirements applied in the EU are developed and agreed within the UNECE World Forum for Harmonization of Vehicle Regulations. The UK joined this forum before we became an EU Member State, and we have always played an active role. The UK chairs two important working groups and is respected for its expert contributions. It is difficult to make predictions but we expect that the high level of influence we currently enjoy will not diminish, providing an ongoing opportunity for the UK to shape the technical requirements that will also be applied by the EU.

The Commission also develops legislation through a number of forums such as technical working groups, Comitology committees, etc. In common with some EEA members such as Norway, the UK intends to negotiate for committee attendance with observer status to ensure a continued role in influencing EU vehicle regulations which would apply to the UK.

The European Parliament Internal Market and Consumer Protection Committee (IMCO) completed its report on the proposal on 20 February. The IMCO report includes similar amendments to the Council text on issues such as technical neutrality, but differs on issues concerning delegated/implementing acts and entry into force dates. The Romanian Presidency will begin trilogue discussions with the European Parliament on the proposal as soon as possible, with a first trilogue scheduled for 14 March and a second on 25 March. The Presidency hopes to reach a provisional agreement within two trilogue meetings.

I will, of course, continue to keep the Committee informed of further developments on both proposals.

*12 March 2019*

**Letter from Nusrat Ghani MP, Parliamentary Under Secretary of State, Department for Transport**

Thank you for your letter of 22 November on the above proposals. I am writing in response to the Committee's queries as set out in your letter and to update you on the December Transport Council.

I am grateful to the Committee for clearing the proposed Regulation establishing a European **Maritime Single Window** from scrutiny. At the Transport Council, Member States supported the Austrian Presidency's proposed compromise text and called for a swift conclusion of the file under the incoming Romanian Presidency. The Austrian Presidency concluded that the Council had approved a General Approach.

The General Approach is an improvement on the original proposal and the UK therefore supported it. It includes a number of important revisions, many of which are designed to increase clarity and transparency. For example, several new definitions have been added and many of those originally included have been modified: the responsibility for the accuracy of data has been clarified as have the responsibilities of the various actors involved; the confidentiality and protection of sensitive personal and commercial information has been strengthened; provisions have been made for additional national reporting obligations which may be introduced only in exceptional circumstances; and new provisions added to clarify that Member States without maritime ports are exempt from the need to introduce a Maritime Single Window.

The revisions also include a new Article, 8b, which the Presidency added in response to working group discussions on the links with customs procedure, and which recognises synergies with existing customs arrangements. The new provisions set out that the Regulation shall not prevent exchange of information between customs authorities of the Member States or between customs authorities and economic operators using the electronic data-processing techniques referred to in Article 6(1) of Regulation (EU) 952/2013, and that the relevant information of the Entry Summary Declaration referred to in Regulation (EU) No 952/2013 shall, where compatible with Union customs law, be made available to the National Single Windows for reference and, where appropriate, reused for other reporting obligations to be listed in a future implementing act.

The revisions also include an extension to the date of application of the Regulation to six years (previously four) in light of concerns expressed during negotiation about the need to develop a number of delegated and implementing acts to support transposition. For this reason, time limits of two years for delegated and implementing acts and three years for the development of the harmonised reporting interface, have been included.

The European Parliament TRAN Committee has also been considering the proposal and adopted its report on it on 10 January. MEPs have expressed support for revising the original Directive and are seeking amendments to strengthen the proposals, particularly in relation to further harmonisation of national reporting requirements, strengthening co-operation between authorities and declarants, and clear governance mechanisms to ensure the smooth flow of data between authorities and between Member States to reduce, as far as possible, administration for vessels calling at EU ports and improve the maritime logistics chain. We expect trilogue discussions between representatives of the Council and the European Parliament to begin in mid-January to reach a compromise between the two positions.

Turning to the proposal on **electronic freight transport information**, your letter requested further information on the Commission's delegated powers. The Commission's powers to adopt delegated acts are referred to in articles 2, 11 and 12. Article 2 would allow the Commission to add to the list of EU acts already in scope of this proposal. This could be a useful way of updating the documentation's requirements as EU rules change, but it could also be used to extend requirements to cover further legislation which exists already. Articles 11 and 12 would allow the Commission to supplement the rules on certification on the platforms developed and service providers established as

part of the proposal. We are content with the scope for secondary legislation set out in the current proposal. However, we intend to question whether delegated, as opposed to implementing, acts are appropriate in all cases.

The Committee also requested further information on third country participation in the proposed certification system, as well as a broader assessment of the proposal's implications in light of Brexit, specifically in terms of interoperability between any IT systems developed in the UK and equivalent systems in the EU. Understandably, the Commission sees the non-acceptance of electronic documents by third countries as a barrier to their use. They have provisionally suggested, however, the use of bilateral agreements with third countries as one means of mitigating this, which would mean a third country would not be disadvantaged.

In the two working group meetings that have taken place so far (both in July), comments from Member States mainly centred on the more technical aspects of the proposal. The Austrian Presidency produced a brief progress report for the 3 December Transport Council. We understand there will be further negotiations under the Romanian Presidency.

The European Parliament TRAN Committee is also considering the proposal and aims to complete its report on it later this month. The Rapporteur's draft report welcomes the proposal. The Rapporteur does, however, believe that the scope can be enlarged to include other regulatory information, for example around driver's qualifications, thereby further incentivising industry. The draft report also re-states the importance of digital security as a way of re-assuring industry.

We will, of course, keep you informed of any new developments on both proposals.

*16 January 2019*

**Letter from Nusrat Ghani MP, Parliamentary Under Secretary of State, Department for Transport**

I wrote to your Committee on 16 January to provide you with a report on the outcome of the last Transport Council on 3 December. In that letter I said that we expected trilogue discussions with the European Parliament to begin in mid-January to reach a compromise between the Council and European Parliament positions.

I am grateful to your Committee for clearing this proposal from scrutiny and am writing now to provide an update following the successful completion of trilogue meetings and provisional agreement on a final text. The text will now go forward for approval by the European Parliament and formal adoption by the Council of Ministers as soon as possible.

Since my previous letter, the Romanian Presidency has held two trilogue meetings with the European Parliament, on 21 January and 7 February, where a range of issues were discussed and a small number of compromise amendments added to the text. These include the introduction of the principle of technological neutrality, mandatory provision for the public availability of ship arrival and departure times (with an exemption for security purposes) and a compromise regarding the time limit for the empowerment of the Commission to adopt delegated acts (four years). These were all essential issues for the European Parliament and the UK was able to accept revisions in these areas as they did not disturb our initial negotiating position.

Significant support for the proposal has been expressed by major ship owners and port lobby groups, including the European Sea Ports Organisation, the European Community Shipowners' Association and the World Shipping Council. They have welcomed the enhanced harmonisation which implementation will bring as well as the further reduction in administrative burdens and costs and have called for the proposal to be formally adopted as soon as possible.

A significant number of delegated acts are required to support implementation and, for this reason, the new Regulation will come into effect six years after adoption (in 2025). Since this will fall outside the Implementation Period in the draft Withdrawal Agreement, the UK does not envisage that it will be necessary to implement any of the measures it contains. However, given the strong support from industry, we will be considering – as part of the Brexit process – whether any suitable revisions should be made to the UK's National Maritime Single Window.

*5 March 2019*

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE CREATIVE EUROPE PROGRAMME (2021 TO 2027) AND REPEALING REGULATION (EU) NO 1295/2013 (9170/18

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE LABELLING OF TYRES WITH RESPECT TO FUEL EFFICIENCY AND OTHER ESSENTIAL PARAMETERS AND REPEALING REGULATION (EC) NO 1222/2009 (9185/18)

PROPOSAL FOR A DECISION AMENDING COUNCIL DIRECTIVE 96/53/EC AS REGARDS THE TIME LIMIT FOR THE IMPLEMENTATION OF THE SPECIAL RULES REGARDING MAXIMUM LENGTH IN CASE OF CABS DELIVERING IMPROVED AERODYNAMIC PERFORMANCE, ENERGY EFFICIENCY AND SAFETY PERFORMANCE (9144/18)

**Letter from Jesse Norman MP, Minister of State, Department for Transport**

I am writing to inform your Committee of progress in the negotiations on the above proposals from the third phase of the Commission's Mobility Package, and to request scrutiny clearance of them both.

**9185/18: proposed Regulation on labelling of tyres**

The Austrian Presidency did not give much Working Group time to this dossier, but the early indications were that Member States were generally supportive of the objective and scope of the proposal. Since then, the Romanian Presidency has taken discussions forward in Working Group, most recently on 12 February, and now intends to seek a General Approach on the proposal at the Energy Council on 4 March. We have been working closely with UK industry, and other Member States to ensure the proposed text is suitable, and the principle changes made in negotiations are set out below.

**Delegation of Power**

The Commission originally proposed an extension of the existing delegation of power to cover changes to the content and format of tyre labelling; this included information on mileage and abrasion, provided that suitable testing methods are available.

Following negotiations the introduction of mileage and abrasion as parameters have been removed from the Commission's scope of delegated powers, as suitable testing methods do not currently exist. Instead, the text provides for the Commission to assess the introduction of these parameters once suitable testing methods become available, and if appropriate to present a legislative proposal.

**Rescaling of tyre performance parameters**

In its original proposal, the Commission proposed to rescale the existing tyre label parameters. We agree that further development and improvement of tyre characteristics is likely to lead to a need for re-scaling of the label parameters at some time in the future, but the Commission has not provided evidence that this point has yet been reached. Following negotiations the proposal has therefore been amended to revert back to the original tyre performance parameters contained in EU Regulation 1222/2009. This amendment is a good outcome because it reflects the current technological development of tyre performance. It will be several years before all but a minority of premium tyres will be able to meet the top labelling categories that the Commission had originally proposed, so to change the label parameters at this point would create the impression to consumers that tyre standards are on the decline, rather than improving across the market as is the case.

My officials have worked closely with British Tyre Manufacturing Industry Association and Tyre Industry Federation on the proposal to ensure that it achieves effective outcomes for UK industry and consumers. As a result of improvements made in Working Group negotiations, the Government is broadly content with the proposal and believes that the Presidency will be able to achieve a General Approach at the Competitiveness Council on 4 March. We would wish to support this, and I would therefore be grateful if the Committee could clear the proposal from scrutiny before that date.

The European Parliament is also considering the proposal and it's Industry, Research and Energy Committee is expected to complete its report on 19 February. We therefore expect that trilogue negotiations will begin in March. I will, of course, be happy to keep the Committee informed of further developments.

**9144/18: proposed Decision on maximum length in case of cabs**

As you may recall from the Explanatory Memorandum, the Commission's original proposal provided for the removal of an artificial obstacle to the introduction of longer, more aerodynamic and potentially safer cabs on heavy goods vehicles. The Presidency has put forward compromise text which requires the Commission to complete the relevant type approval process within three months and these vehicles to be operated in the EU within fifteen months of the Council Decision coming into force. The proposed Decision is expected to be adopted at the Council of Ministers shortly.

*19 January 2019*

**Letter from the Chairman to Jesse Norman MP, Minister of State, Department for Transport**

Thank you for your letter dated 19 February 2019 on the above proposals. The EU Internal Market Sub-Committee considered your letter at its meeting on 21 February 2019 and decided to clear both files from scrutiny.

*25 February 2019*

## PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ADDRESSING GEO-BLOCKING AND OTHER FORMS OF DISCRIMINATION BASED ON CUSTOMERS' NATIONALITY, PLACE OF RESIDENCE OR PLACE OF ESTABLISHMENT WITHIN THE INTERNAL MARKET AND AMENDING REGULATION (EC) NO.2006/2004 AND DIRECTIVE 2009/22/EC (9611/16)

**Letter from Rt Hon Lord Henley, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy**

I write further to my letter of 7 November 2017 to update you on the Geo-Blocking Regulation. Your Committee was also copied into my letters to Sir William Cash MP, Chair of the Commons European Scrutiny Committee, of the 14 February and 27 March 2018. Your Committee cleared this file from scrutiny on 30 March 2017.

Since my last letter to you there have been several developments in relation to the Geo-Blocking Regulation:

1. On 21 November 2017 agreement was reached in the Trilogue process.
2. On 28 February 2018 the Geo-Blocking Regulation was adopted by the General Affairs Council.
3. On 2 March 2018 the Geo-Blocking Regulation was entered into the Official Journal of the European Union.
4. On 12 November 2018 the Geo-Blocking (Enforcement) Regulations 2018, which made provision for the domestic enforcement of the Geo-Blocking Regulation, were laid before Parliament.
5. On 3 December 2018 the Geo-Blocking Regulation entered into force in the UK and the Geo-Blocking (Enforcement) Regulations 2018 came into force.

Since my last letter, there has been more detail published on what will happen to the Geo-Blocking Regulation in the event of a "no deal" exit from the European Union. This can be found in the Technical Notice available on GOV.UK.3

Given the Geo-Blocking Regulation is now in force, I would be grateful if your Committee could now consider this file to be closed.

*25 February 2019*

## PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING HORIZON EUROPE - THE FRAMEWORK PROGRAMME FOR RESEARCH AND INNOVATION, LAYING DOWN ITS RULES FOR PARTICIPATION AND DISSEMINATION (9865/18)

## PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ESTABLISHING THE SPECIFIC PROGRAMME IMPLEMENTING HORIZON EUROPE – THE FRAMEWORK PROGRAMME FOR RESEARCH AND INNOVATION (9870/18)

**Letter from Chris Skidmore MP, Minister of State for Universities, Science, Research and Innovation, Department for Business, Energy & Industrial Strategy**

I would like to thank you for granting a scrutiny waiver for Competitiveness Council on 30th November. This allowed the UK to vote in favour of the Partial General Approach, along with 25 other Member States. Lithuania and Hungary abstained because their calls for specific widening measures were not met. Changes to the text were not significant and the framework remains excellence-focussed, open to non-Member States and of potential value to the UK. As anticipated, terms for association were not discussed.

Discussions centred around the structure of Horizon Europe's Pillar 2, the budget available for European Partnerships, the scope of the new European Innovation Council (EIC) and grants for researchers returning to the EU. While many aspects of the Horizon Europe proposal are yet to be agreed, the Partial General Approach is a welcome development that indicates a positive direction of travel towards a framework that could be of value to the UK.

**You asked the Government's opinion on inclusion of 'Industry' TFEU Titles as legal bases and the extent to which Horizon Europe should attempt to address the regional divide in EU research funding and whether they are likely to impact the timetable for reaching final agreement on Horizon Europe.**

Before a conclusion is reached on the inclusion of 'Industry' TFEU Titles as legal bases for Horizon Europe, more policy content needs to be agreed. Only then can an appropriate legal base be negotiated. The UK is therefore supportive of the pragmatic approach initiated by the Austrian Presidency, which has been to bracket the legal base for later discussion. This issue will remain unresolved until later in the negotiation process, and constructive inter-institutional dialogue will be needed to reach a timely resolution.

On the regional divide in EU research funding, the UK Government believes that Horizon Europe should remain excellence-based. Addressing the divide should be not a main purpose of the programme; it can be reduced without compromising the core principles of the programme – excellence, openness and EU added value. Instead, we support dedicated "widening" measures, as under Horizon 2020, that are run separately from the three pillars.

While EU13 Member States have been vocal about their desire for increased widening measures under Horizon Europe, this did not prevent agreement being reached on the Partial General Approach at Competitiveness Council. Therefore, we have no reason to believe that this issue is likely to impact the overall timetable for reaching a final agreement.

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[3] "Geo-blocking of online content if there's no Brexit deal" (https://www.gov.uk/government/publications/geo-blocking-of-online-content-if-theres-no-brexit-deal/geo-blocking-of-online-content-if-theres-no-brexit-deal)

**You also requested an update on developments relevant to Article 12 and future UK association to Horizon Europe and the meaning of "decisional power" in relation to Association Agreements.**

There has been no further discussion in the Council of the EU on the terms for third country association (Article 12). This topic has been bracketed for discussion at a later stage in the development of the Programme. Article 12 contains the reference to 'decisional power', and it is currently unclear when this will be clarified. This may happen as part of the Horizon Europe negotiations, during Multiannual Financial Framework negotiations, or in any future negotiations on association.

*7 January 2019*

**Letter from Chris Skidmore MP, Minister of State for Universities, Research and Innovation**

I am writing to you to request a scrutiny waiver for the Explanatory Memorandum covering 9865/18 and 9870/18, which was submitted to Parliament in June 2018. The documents concern the proposals for the Horizon Europe Framework Programme.

I would also like to thank you for previously granting us scrutiny waivers for the Horizon Europe Regulation (9865/18) and Decision (9870/18). This allowed the UK to participate fully in Competitiveness Council on 30 November 2018, where we voted in favour of the Partial General Approach (PGA) on the Regulation along with 25 other Member States.

In our letter of 7 January, we detailed that this PGA was a welcome development that indicated a positive direction of travel towards a Framework Programme that could be of value to the UK. Agreement of the PGA has allowed the European Council to begin trilogues with the European Parliament and the European Commission to agree a compromise on their two versions of the text. We will closely monitor developments to identify any amendments in trilogues that could impact the UK and continue to influence where possible during this process.

**UK position on Horizon Europe**

As set out in our Explanatory Memorandum, our priorities for the framework Programme are that is:

i. excellence focused

ii. open to the world

iii. added value.

We are broadly content with the current direction of travel of both the Regulation and Decision in European Council, and will continue to actively participate in the Council discussions to influence the development of the Programme in line with these priorities.

**Further Partial General Approach (PGA)**

The Romanian Presidency of the Council of the EU is now seeking a PGA on the Horizon Europe Decision at the upcoming Competitiveness Council on 19 February. The exact elements of this proposal to be part of the vote will be determined approximately a week ahead of the Competitiveness Council meeting. At that point, it will be too late to seek a waiver, so I am writing now with the information available.

We expect the PGA to focus on the elements of the proposal on which agreement is likely to be more easily reached. This could include detail on missions; a new feature of the programme that are planned to prioritise investment and set direction to achieve objectives with societal relevance. The process for the selection is still to be agreed, as are the themes for the first Horizon Europe missions. We will continue to work with EU counterparts to seek to influence the selection of the missions in line with UK priorities, and will discuss their development with the European Council and the European Commission.

There is a possibility that the **legal base** of the Decision will form part of the PGA. The Commission's proposal for Horizon Europe set out a dual legal basis for the Decision. This would give

a greater role to the European Parliament in shaping the Decision text than the single legal base that was used for previous Framework Programmes.

The current Council text returns to a single legal base. This is consistent with the European Council's legal advice that, based on the Commission's original proposal, there is no need for a second legal base. A second, 'industrial' legal base would only be appropriate if there is an introduction of additional industrial components that are not already supported by the Regulation text. At September's Competitiveness Council, Member States (including the UK) were unanimous in their support for the Council Legal Service's Opinion.

The approach taken by the Austrian Presidency was to 'bracket' the legal base for later discussion. The Romanian Presidency may do the same, or may seek to include the legal base as part of the PGA with the aim of reaching a timely conclusion on the package. The UK Government intends to continue its support of a legal base appropriate to the policy content of the Specific Programme.

**Our ask**

The Government would like the flexibility to vote in favour of, or against, the PGA depending on whether the Council text continues to align with UK priorities and whether the appropriate legal base is used.

We expect that the outcome of the upcoming Competitiveness Council will not affect the probability of the UK seeking association to Horizon Europe.

*21 January 2019*

**Letter from the Chairman to Chris Skidmore MP, Minister of State for Universities, Research and Innovation**

Thank you for your letters dated 7 January 2019, 21 January 2019 and 20 March 2019, which the EU Internal Market Sub-Committee considered at its meeting on 28 March 2019.

We have decided to grant your request for a scrutiny waiver ahead of a Partial General Approach on the Specific Programme Decision. We would be grateful for an update on the Council vote and a fuller assessment of the Partial General Approach, if it is agreed, in due course. We would also welcome an update on developments in negotiations on the Regulation.

*28 March 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 from Rt Hon Lord Henley, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy**

I am writing to you to provide an update on EM 9890/18 on the proposed EU Single Market Programme.

On 29 November the Competitiveness Council formally supported a Partial General Approach on the Single Market Programme regulation. In January the European Parliament produced a report setting out a list of amendments to this regulation. These amendments were then voted on at a plenary session in Strasbourg on 12 February.

The Parliament adopted the proposed amendments by 520 votes to 125. The amendments adopted at first reading include: a stronger focus in the programme objectives on market surveillance, sustainability and digital developments; the promotion of enterprise networks and scale-up measures for SMEs; actions to improve quality standards for consumers, including the issue of dual quality; and

joint actions aimed at strengthening product safety, enforcement of consumer protection rules and product traceability.

Most notably, the amendments call for an increased financial envelope of €6.5bn (currently €4bn), which includes an allocation of €3bn (currently €1bn) towards strengthening the competitiveness of SMEs, plus specific allocations for both market surveillance and consumer protection.

However, having voted in favour of the amendments, the Parliament made the decision not to proceed any further in pursuing a partial agreement in trilogues with Council, and have closed the file for negotiation until the next legislature and the new European Parliament. Consequently, the UK will most likely be unable to further influence the shape of the regulations while we are a Member State. It is also unlikely that the regulation will be finalised in time for the Spending Review, when it was anticipated that a decision on future participation in the Single Market Programme would be made.

Nonetheless, BEIS officials will continue their engagement with colleagues across Whitehall with an eye to making a provisional decision on participation in the Single Market Programme. This will help to ensure that HMG is in as strong a position as possible when a final decision on programme participation is required in the future. An informed decision on UK participation will require the final detail of the Single Market Programme regulation and sufficient progress on the development of all EU programmes for the 2021-27 MFF. It will also be necessary to understand whether the elements of the Programme that are of the most interest to the UK could be more favourably accessed as part of the FEP negotiations.

*19 March 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 from the Chairman to Chris Skidmore MP, Minister of State for Universities, Research and Innovation, Department for Business, Energy and Industrial Strategy

Thank you for the letters dated 26 October and 17 December 2018 on the above proposal. The EU Internal Market Sub-Committee considered these letters at its meeting on 17 January 2019.

We welcome the detailed information provided on third country access in the earlier letter.

In relation to EUSST, this letter described the UK's role in the consortium as "leading". On the other hand, Jean-Jacques Tortora, Director of the European Space Policy Institute, has described the potential loss of the UK in EUSST as "limited" because "the UK has no major national assets in the programme".[4] We would therefore be grateful for further details on the level and nature of UK involvement to date. We would also welcome an update on any developments in response to your efforts to secure the possibility of third country participation in the programme.

You note in the more recent letter that the provisions relating to the relationship between ESA and the proposed EU Agency have much improved on the original draft. Please would you provide further information on these changes? You also raise a concern about the future ability of the European Centre for Medium-Range Weather Forecasting (ECMWF) to continue to be able to deliver Copernicus services from Reading. Has any further clarity been gained on this matter?

Finally, we would welcome a specific update on any developments in relation to the security provisions under Article 25.

We have decided to retain the document under scrutiny. We look forward to a response to our questions, as well as a general update on negotiations, within 30 working days.

*17 January 2019*

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[4] Brexit and Industry and Space Policy workshop proceedings (November 2018): http://www.europarl.europa.eu/RegData/etudes/STUD/2018/626084/IPOL_STU(2018)626084_EN.pdf [accessed 17 January 2019]

**Letter from Chris Skidmore MP, Minister of State for Universities, Research and Innovation**

I am writing to provide you with an update on the progress of this draft regulation, following that which was provided in December. I apologise for not writing to update you on this matter earlier, but as I am sure you understand, we are working to a very fast-moving timetable.

Under the Austrian Presidency, the EU Council finalised a Partial General Approach (PGA) text at a COREPER meeting on 19 December 2018. This was followed by the first trilogue with the European Parliament and the Commission on 14th January 2019. Since this first trilogue, the EU Council Working Party on Space has, under the Romanian Presidency, been working hard to reach a compromise text that is acceptable to the three parties.

However, outstanding issues remained on several key articles. These concern Article 5 (Access to space), Article 30 (Role of the EU Agency for the Space Programme (EUSPA)), and Article 31 (Role of the European Space Agency (ESA)). The UK continues to actively promote the independence of ESA, maintain that ESA should remain a strong delivery partner and its work should not be duplicated or encroached upon by EUSPA.

While the regulation outlines the broader framework by which further negotiations will be bound, the fine detail of UK participation in the EU Space Programme will not be set by this regulation, but by specific agreements which will be negotiated at a later date, as set out in my letter from December. Core articles related to third country participation (Articles 7,8 and 25) remain square bracketed for the time being.

There was another COREPER meeting on Friday 22nd February at which the Presidency was given a mandate for its proposed compromise text. The UK also provided support for the text, while indicating that, on the above described contentious issues, the Presidency should not deviate too far from the Council position. The next trilogue is taking place on Tuesday 26th February and will focus on reaching a provisional agreement on text acceptable to both the European Council and European Parliament on the aforementioned articles.

*26 February 2019*

**Letter from Chris Skidmore MP, Minister of State for Universities, Research and Innovation**

Thank you for your letter of 17th January 2019 regarding the draft regulation proposed by the European Commission to establish the EU Space Programme from 2021-2027.

I note the reference to the potential loss of the UK in the EUSST programme as "limited".

It is realistic to suggest that EUSST is not necessarily a day-one issue for the UK or for the EU upon exiting the EU. However, although EUSST is operational, the programme is still being developed and its final operational capability is still to be determined. Any changes to the future EUSST programme will only be considered for the next MFF from 1 January 2021. Additionally, should the UK remain in the programme, we would be adding additional national assets to the programme which could significantly improve the outputs of the EUSST.

The UK was a founding member of the EUSST Consortium and we remain committed to EUSST until the end of the current MFF.

Our aim from its inception has been to fully contribute to the development of EUSST. The UK's contribution to the programme thus far has included the use of sensors (such as telescopes, radar, and laser range-finders), analysis of data, and thought-leadership in the Consortium's Steering and Security Committees. On the latter, we have been instrumental in helping to shape and develop progress of the programme. Other Consortium members have welcomed our valuable input in this regard.

Due to rules established under the EC Decision 541/2014/EU which established the EUSST Consortium, it is not possible for third countries to participate in EUSST. With a "no deal" Brexit, the UK will automatically cease participation in EUSST on 29 March. However, with a Withdrawal Agreement, we expect to continue to participate in the programme until 31 December 2020. Beyond

that date, EUSST will be subject to the EU Space Regulations currently under negotiation. These draft regulations are also clear that third country participation in EUSST will not be permitted, but it may be possible through negotiation for the UK to receive EUSST data services as a third country customer. We believe the Commission's and EU Member States' position is unlikely to change on SST and third country participation.

Given our limited EUSST options, we have been undertaking a wide-ranging review of the UK's SST requirements and current capability to help inform our policy moving forward. While we have continued to make a strong case for continued participation in EUSST, we assess that EUSST is unlikely to provide a sufficient single solution to meet UK requirements in the short-medium term and we would need to further develop UK capability in this area. EUSST is also heavily reliant on SST data from the US and is likely to continue to be so for the foreseeable future. In light of our existing, bilateral data sharing agreements with the US, the EU's access to such data is unlikely to provide any additional capability as we will continue to work bilaterally with the US.

As it appears increasingly unlikely that any third country participation will be allowed in EUSST beyond 2020, we are preparing a comprehensive business case to set out options for meeting UK SST requirements. These requirements and associated options will be considered with industry and we are actively engaging with the MOD who are considering their own SST needs.

You have also requested further information on what changes have been made to improve on the original draft of the Regulation with regards to the relationship between ESA and the propose EU Space Programmes Agency.

Modifications advocated by the UK have sought to be complementary and avoid overlap with European Space Agency (ESA) activities. The UK Government has made a strong case in EU Council Working Groups to this end. Amendments in the compromise text achieved in these Working Groups and used as the basis for the Partial Mandate to begin negotiations with the European Parliament were published by the European Council on 20 December 2018 (https://www.consilium.europa.eu/register/en/content/out?&typ=ENTRY&i=ADV&DOC_ID=ST-15767-2018-INIT . These include:

i. Article 27(a): Additional text stating there will be "clear distribution of tasks and responsibilities between … the Agency (expanded GSA) and the European Space Agency…, building on their respective competence and avoiding any overlap in tasks and responsibilities"

ii. Article 30(d): Reference to the Agency providing "technical" expertise to the Commission has been removed.

iii. Article 31(1): ESA's role has been secured for tasks related to the EU Programme: "ESA shall be entrusted" with tasks, rather than "may be entrusted".

iv. Article 31(2): ESA is recognised as an essential partner in the implementation of the programme and revised text makes direct reference to the ESA-EU bilateral 2004 Framework Agreement as the legal basis for the forthcoming Financial Framework Partnership Agreement (FFPA). This amendment seeks to ensure the autonomy of ESA is respected in the forthcoming FFPA which will define the responsibilities and obligations of the Commission and ESA.

With regards to the European Centre for Medium-Range Weather Forecasting (ECMWF) you have asked for clarity on the future delivery of these services from Reading.

To date the European Parliament have not made any changes to the draft Space Regulation which would have an impact on ECMWF Copernicus related activities remaining in the UK.

Article 32 (1)(b), which concerns the work carried out by entrusted entities (other than the European Space Agency and EUMETSAT) has been deemed a horizontal issue and will therefore by concluded at a later date. There have been attempts to modify the EU Space Regulation draft text from the European Council side, but at COREPER on 19th December 2018 the proposed changes were set aside as "BREXIT related" and will be subject to further discussion after trilogue.

You have also asked for an update on any developments in relation to the security provision under Article 25.

Article 25 governs industrial participation in sensitive contracts relating to the 'essential security interests of the Union'. The European Commission's original proposal stated that for the purpose of protecting the essential security interests of the Union and its Member States, regard shall be had to "the need for eligible undertakings to be established in a Member State, to commit to carry out any relevant activities inside the Union and to be effectively controlled by Member States or nationals of Member States".

The UK Government has made a strong case in EU Council Working Groups for modifications to this article to allow for potential third country participation. As mentioned, articles of a horizontal nature such as this are now to be considered at a later date.

*28 February 2019*