



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 15 October 2019 – 31 January 2020

EU INTERNAL MARKET SUB-COMMITTEE

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

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

Thank you for your letter dated 8 October 2019. I will answer your questions in turn.

Did the Government vote in favour of the Partial General Approach referenced in your letter of 19 March 2019?

As anticipated, the Competitiveness Council on 29 November 2018 supported the Partial General Approach, with the Minister abstaining as the Lords had not yet lifted the reserve. I regret that the request for a scrutiny waiver arrived too late to be considered by the Committee. The decision to seek a waiver was delayed by a lack of clarity at the time as to how the UK should vote on files pertaining to the 2021-27 Multiannual Financial Framework (MFF).

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

The Government – including BEIS – will make decisions on attendance on a case by case basis based on the agendas of the meetings. The UK will continue to attend meetings when it is in our interests, with particular regard to meetings on UK exit, sovereignty, international relations, security, or finance. This provides the right amount of flexibility to ensure UK interests remain protected. The Government will continue to provide updates to the Committee on the progress of this file and will review the policy of non-attendance in the case of developments that are significant to the UK. However, the main points of interest for the UK relate to the financial envelope and terms for third-country accession to the Programme. As with other MFF regulations, these points will not form part of trilogues as they will be decided next year at the political level. Therefore, the Government does not anticipate that it will resume attendance at meetings on this file.

Whilst the UK will not attend all the relevant EU meetings, meeting dates and agendas, as well as the latest form of the draft legislation, will remain available to HMG officials via the Delegates Portal for as long as the UK remains an EU Member State. The UK will also continue to work with like-minded Member States to monitor progress on the file. A working group on 8 October 2019 considered the proposed European Parliament amendments to the Partial General Approach text. The first round of trilogue discussions on this file is currently scheduled for 22 October 2019.

18 October 2019

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

Thank you for your letter dated 18 October 2019 on the above proposal. The EU Internal Market Sub-Committee considered it at its meeting on 21 January 2020, as there was not time to consider it prior to the Dissolution of Parliament.

The Committee shares the Government's strong interest in the areas of the overall financial envelope and third-party participation in MFF programmes, and we would appreciate further updates on these issues as and when discussions are had at political level.

In the meantime, in the light of the UK's imminent exit from the EU, we have decided to clear this proposal from formal scrutiny.

21 January 2020

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)

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Letter from the Chairman to the Rt Hon Chris Skidmore MP, Minister of State, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 21 December 2019 on the Horizon Europe proposal (9870/18) and the vote in the November Competitiveness Council. The EU Internal Market Sub-Committee considered it at its meeting on 21 January 2020.

In our letter in July 2019, we requested a comprehensive update on the progress of this file, which we have not received. Horizon Europe, and especially the UK's possible participation therein, is of particular interest to the Committee.

In the light of the UK's imminent exit from the EU, we have decided to clear the Horizon Europe Regulation and Decision from formal scrutiny, along with the proposal to establish a Space Programme (9898/18).

However, we would welcome a response to this letter in due course setting out the latest position regarding negotiations on both programmes, and providing information about thirdparty participation as and when this is considered at political level.

21 January 2020

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)

Letter from the Chairman to Helen Whatley MP, Parliamentary Under Secretary of State, Department for Digital, Culture, Media, & Sport

We wrote to your predecessor, Rt Hon Michael Ellis QC MP, in April 2019 approving a request for a scrutiny waiver and asking for a comprehensive update on this proposal, including details of policy content agreed so far and any key changes from the original proposal.

We have yet to receive this update. However, in the light of the UK's imminent exit from the EU, we have decided to clear this proposal from formal scrutiny.

The Internal Market Sub-Committee remains interested in the progress of this file and the Government's plans for participation as a third country, and we would appreciate a detailed update from you on the file. We look forward to a response to this letter in due course.

21 January 2020

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

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

Thank you for your letter dated 16 September 2019 on the above proposal. The EU Internal Market Sub-Committee considered the letter at its meeting on 16 January 2020 and decided to clear the file from scrutiny.

17 January 2020

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) (5358/19)

Letter to the Chairman from Nigel Adams MP, Minister for Sport, Media and the Creative Industries, Department for Digital, Culture, Media & Sport

I am writing to provide an update on the proposed EU ePrivacy Regulation (5358/17).

Since my predecessor wrote to you in March 2019, there have been a number of developments under the Finnish Presidency including technical changes made to contentious Articles where HMG's concerns have been addressed, including the material scope of the regulation and policing child sexual abuse material online. Outside of the formal Council process, you should note that the outcome of the CJEU ruling in the *Planet49* court case, referred by the German court on how consent is obtained from end-users, could impact on the progress of the Regulation.

Below are specific updates:

Permitted Processing and Child Sexual Exploitation and Abuse (CSEA)

The Finnish Presidency has introduced a provision to permit the processing of electronic communications to detect Child Sexual Exploitation and Abuse (CSEA) and the Article has been separated into four parts: (i) permitted processing of electronic communications content; ii) permitted processing of electronic communications metadata; iii) compatible processing of electronic communications metadata; and iv) processing of electronic communications data for the purpose of detecting, deleting and reporting material constituting child pornography

Whilst the provision for permitted processing for CSEA has been welcomed by the UK and likeminded Member States, this provision only allows for the capture of child sexual abuse material (CSAM). This excludes a range of other CSEA activity as defined in Articles 3-7 of Directive 2011/93/EU, such as the online solicitation of children for sexual purposes (online grooming). Currently, many online platforms and services process communications content in order to detect and prevent online child sexual exploitation and abuse material and activity. This includes the solicitation / grooming and live streaming of child sexual abuse. The UK believes that, notwithstanding the need for appropriate legal obligations, service providers' voluntary activity in line with their own clear and legitimate interest in eradicating CSEA from their platforms will always have a role to play.

The debate on CSEA provision continues to evolve in Council to the extent that there is now a debate on whether CSEA provision should be part of a broader definition of serious crimes (including Terrorism) that could be introduced as state law restrictions in the Regulation.

Material Scope of the Regulation - National Security and Emerging Technologies

The UK is pursuing text that would ensure there is a clear exemption for national security and we have submitted wording that would achieve this aim. This will ensure that ePrivacy restrictions are not inadvertently brought to bear in future on processing for which this Regulation or the previous directive was not designed or intended.

In relation to seeking consent for emerging technologies (e.g. Internet of Things, Machine to Machine communication and Connected Vehicles), it has now been clarified that it is not a requirement to seek consent for authorising technical storage or accessing information on end-users' terminals that is necessary and appropriate for the purpose of service provision. This partly addresses one of the queries we put to the European Commission to clarify which services are captured by the scope of the Regulation to ensure that stakeholders know if they will be impacted.

Direct Marketing

The definition of direct marketing has been refined to emphasise that any form of advertising sent through publicly available electronic communication to specific end-users is in scope of the Regulation. This narrows the scope and permits online advertisers to use generic behavioural targeting in present online advertising advert banners to cluster of end-users without them logging into a specific website. Voice-to-voice calls, automated calling and SMS all remain in scope.

Outcome of CJEU ruling of the Planet49 court case on consent and the impact on the Regulation

On 1 October 2019, the CJEU ruled that a controller who relies on a pre-ticked box does not legally obtain consent from end-users. The ruling is from a court case (C-673/17) where the German Federation of Consumer Organisations took legal action against an online lottery company, Planet49, which had used a pre-ticked box to authorise the installation of cookies for tracking and targeting.

The CJEU's ruling will strengthen the European Commission's argument to align the ePrivacy Regulation's cookie rules with the GDPR's rules on consent. The GDPR's consent rules require that consent is freely given, informed, specific, unambiguous and revocable.

General Approach

Following the summer recess, the Finnish Presidency expressed an interest in progressing the file to Coreper and General Approach in order to resolve issues that the Council has not been able to agree on over the previous 33 months. The most recent Working Group took place on 22 October 2019, resulting in the Presidency concluding that further discussion is needed on the current text. It therefore remains unclear if and when the file will go to a vote.

Timescales and Next Steps

As the proposal is 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 Finnish Presidency, Member States and the Commission in Council, seeking to ensure that the proposal addresses the UK's specific technical asks on processing to detect child sexual exploitation and abuse whilst protecting the confidentiality of electronic communication and encouraging digital innovation. I will write to the Committee again once we have further information and a clearer understanding of timescales.

4 November 2019

Letter to the Chairman from Nigel Adams MP, Minister for Sport, Media and the Creative Industries

I am writing to provide an update on the proposed EU ePrivacy Regulation as per your request.

Since I last wrote to you in October 2019, three significant events took place towards the end of the Finnish Presidency including a vote at Coreper for a General Approach; a published progress report detailing the work done on the proposal to reach a consensus during the Finnish Presidency between July to December 2019; and the Member States' Ministers debate on the proposal at the Transport, Telecommunications and Energy Council on 3 December 2019.

Below are the specific updates:

Outcome of the votes at Coreper to progress towards a General Approach

In early November 2019 the Finnish Presidency announced its imminent plan to take the proposal to Coreper on 22 November 2019 for a vote to reach a General Approach. As mentioned in my letter dated 30 October 2019, the UK and the majority of Member States have long-standing concerns with the text.

As far as the UK is concerned, there has been partial progress. However, we remain extremely concerned about the potential impact of the Regulation on the detection and prevention of Child Sexual Exploitation and Abuse (CSEA) activities, particularly where these are undertaken on a voluntary basis.

At the scheduled Coreper on the 22 November 2019, the UK indicated it could not support the proposal, and the ePrivacy Regulation proposal was ultimately rejected. This was the closest the proposal had got to reaching a General Approach in The Council of the European Union.

Eight Member States voted for and 15 (including the UK) voted against. The UK's principal objection to the proposal is due to the direct negative impact the current text would have on tackling Child Sexual Exploitation and Abuse (CSEA). Nonetheless, we did not commit ourselves to necessarily supporting a text which answered the CSEA concern but did not address other UK concerns with the proposed text which also remained an issue (e.g. around scope and emerging technologies).

As Coreper was unable to endorse the text moving to General Approach, the Presidency moved to invite the Transport, Telecommunications and Energy Council (TTE) to take note of a progress report on the file, which was issued 27 November.

Content of the Finnish Presidency Progress Report

The Presidency published its Progress Report on 27 November 2019. The content details specific issues discussed at the ten working groups and the subsequent number of compromise text drafted in order to strike a balance.

The main issues acknowledged in the Progress report include:

- Processing of electronic communications data for the purposes of prevention of child abuse imagery and how a number of Member States expressed that processing of electronic communications data for preventing other serious crimes, in particular terrorism, should also be allowed in the ePrivacy Regulation.
- Concerns on protection of terminal equipment information evolved to conditional access to website content without undermining current business models while respecting the privacy of electronic information.
- The scope of the Regulation when it comes to processing of electronic communications data by the end-users or entrusted third parties after receipt, or upon receipt for ensuring the security of the end-user's network and information systems.
- ePrivacy proposal interaction with new technologies such as Machine-to-Machine (M2M) and Internet of Things (IOT).

21 January 2020

PROPOSAL FOR A REGULATION LAYING DOWN RULES AND PROCEDURES FOR COMPLIANCE WITH AND ENFORCEMENT OF UNION HARMONISATION LEGISLATION ON PRODUCTS AND AMENDING REGULATIONS (15950/18)

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

Thank you for your letter dated 4 July 2019 on the above proposal, which the EU Internal Market Sub-Committee considered at its meeting on 16 January 2020.

We have decided to clear the file from scrutiny. We would nonetheless be interested to know whether the Government has assessed the implications of Article 4 for SMEs, as mentioned in your letter, and what the outcomes of any such assessment might have been. We would be grateful for a response to this letter within 10 working days.

17 January 2020

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

Thank you for considering this proposal with the Committee and clearing this file from scrutiny. The proposal was adopted by the EU in June as EU Regulation 2019/1020 on market surveillance and compliance of products.

You have asked whether the Government has assessed the implications of Article 4 of the Regulation for SMEs, and what the outcomes of any such assessment might have been. When I last wrote to the Committee on this matter in July, the negotiations on the EU Withdrawal Agreement were in progress. These have now concluded and the timetable and likely impact of the EU Regulation is much clearer.

As a result, the Government is now able to better understand how commerce may be affected and to review the impact of the Regulation on businesses across the UK. We want to ensure that those businesses affected, including those trading with the EU, are fully prepared. The EU is also in the process of developing guidance on the Regulation which will make it clearer what businesses outside the EU will need to do and how it applies in different sectors.

The Government will review the EU guidance alongside the regulatory arrangements within the UK in order to understand who is impacted and how to ensure we can provide appropriate information and support to UK businesses.

25 January 2020

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

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

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

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

As you know, the UK is no longer attending EU meetings except those which are significant to the UK's continued interests, especially on

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

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

Member States supported the proposal and considered it important to accelerate the legislative procedure to ensure preparedness after 31 October 2019. The Presidency noted that a recital would be added justifying the reduction of the eight-week period for national parliaments to express their

opinion, to facilitate the adoption of the Regulation as a matter of urgency. Member States made no amendments to the text.

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

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

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

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

10 October 2019

Letter from the Chairman to Chris Heaton-Harris MP, Minister of State

Thank you for your Explanatory Memorandum (EM) dated 10 September 2019 and your letter dated 10 October 2019 on the above proposal. The EU Internal Market Sub-Committee considered them at its meeting on 31 October 2019. We would be grateful for two points of clarification:

- Does this proposal maintain temporary fifth freedom rights for all-cargo air services?
- Has the Government consulted with stakeholders in the road transport sector, in addition to the consultations with the aviation sector you describe in your EM?

In our report Brexit: road, rail and maritime transport we also considered the use of ECMT road haulage permits as a contingency arrangement, and highlighted their limitations in terms of both number and scope of market access. Could you provide an update on the ECMT permits expected to be available to the UK in 2020, including whether the Government is seeking to negotiate an increase in their number or scope?

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

1 November 2019

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE DIGITAL EUROPE PROGRAMME FOR THE PERIOD 2021-2027 (10167/18)

Letter from the Chairman to Nigel Adams MP, Minister of State, Department for Digital, Culture, Media and Sport

We last received an update on this file from your predecessor, Margot James MP, on 11 April 2019. In the light of the UK's imminent exit from the EU, we have decided to clear this proposal from formal scrutiny. However, we remain interested in the progress of this file, in particular with regard to potential third-party participation provisions, and we would appreciate a further update from you as the MFF negotiations draw to a close.

21 January 2020

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 715/2007 ON TYPE APPROVAL OF MOTOR VEHICLES WITH RESPECT TO EMISSIONS FROM LIGHT PASSENGER AND COMMERCIAL VEHICLES (EURO 5 AND EURO 6) AND ON ACCESS TO VEHICLE REPAIR AND MAINTENANCE INFORMATION (10347/19)

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

Thank you for your Explanatory Memorandum (EM) dated 4 July 2019 on the above proposal. The EU Internal Market Sub-Committee considered it at its meeting on 30 January 2020.

We are grateful for the updates on this proposal received at official level during the Dissolution of Parliament, and we have decided to clear the proposal from scrutiny. We concur with the Government's view that this proposal offers legal certainty for manufacturers in the light of the ongoing appeal regarding Commission Regulation (EU) 2016/646.

30 January 2020