Dear Secretary of State,

International agreements

I am writing to thank you for your letter of 25 January 2019, and the attached lists of bilateral and multilateral agreements which the Government has either already signed or expects to sign in the near future.

As you know, the European Union Committee has been charged with scrutinising Brexit-related international agreements for the remainder of the current session of Parliament, and our first scrutiny report will appear on 6 February 2019. Your letter was helpful in clarifying the scale of the task ahead, and we are also grateful for the assistance given by officials, particularly from your Department and from the Foreign and Commonwealth Office, as we have set up effective scrutiny processes.

We would, however, be grateful for further explanation of the Government’s criteria for including certain agreements, and not others, in the list. What is the rationale for the sequencing of the Government’s programme of rollover agreements? What consideration have you given to the trade-offs that are implicit in rolling over specific agreements ahead of the commencement of wider, bilateral negotiations with third parties post-Brexit?

Your letter states that some EU international agreements will not be rolled over, because “we signed the agreement as a member in our own right and so our membership will therefore continue”. Does this category include ‘mixed agreements’, namely those where the responsibility to implement the agreement’s obligations are shared between the EU and the individual Member States? If so, could you set out your reasons for concluding that such agreements will continue to apply to the UK post-Brexit? We note that some agreements included in your lists (such as the EU-Canada Comprehensive Economic and Trade Agreement) are mixed: on what basis have you decided that some mixed agreements need to be rolled over, while others do not?

We note also that the lists do not include any agreements falling within the scope of the EU’s area of freedom, security and justice (AFSJ). This is a shared competence, but the EU has entered into a number of international agreements on behalf of its Member States. Will agreements falling within the scope of the AFSJ need to be rolled over, and, if so, which ones? If they are not to be rolled over, by what means will the Government ensure that the UK’s cooperation with partners in the areas of data sharing, law enforcement and internal security is not disrupted?
At the evidence session you attended on 23 January 2019, we discussed the deadline for signing these agreements and having them scrutinised by Parliament during the 21-day period specified in the Constitutional Reform and Governance Act 2010. We understood you to say that, in the event of a “no deal” Brexit, in circumstances where there is insufficient time to lay an agreement for the full 21 days before ratification, the Government would seek apply agreements provisionally, under Article 25 of the Vienna Convention on the Law of Treaties. Please can you confirm that this is the case and/or set out in what “exceptional circumstances”, if any, the Government would seek to rely on section 22 of the CRAG Act 2010?

The lists also state that several agreements in the field of transport are expected to be concluded “in the form of a Memorandum of Understanding”, and we understand that, though these agreements are included in your lists, they will not be laid before Parliament or subject to the procedures set out in the Constitutional Reform and Governance Act 2010. We would be grateful for further explanation of the Government’s approach to rolling over these agreements, and of the legal status of such Memoranda of Understanding.

Finally, we note that some key EU trade agreements, including with South Korea and (as of 1 February) Japan, are not included in your lists. What are the Government’s plans in respect of these agreements?

I am copying this letter to the Foreign Secretary and the Secretary of State for International Trade. We will also publish it on the Committee’s website

Yours sincerely,

Tim Boswell

Lord Boswell of Aynho
Chairman of the European Union Committee