



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 February - 23 April 2020

EU INTERNAL MARKET SUB-COMMITTEE

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PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND THE
COUNCIL AMENDING REGULATION (EC) NO 1071/2009 AND REGULATION (EC)
NO 1072/2009 WITH A VIEW TO ADAPTING THEM TO DEVELOPMENTS IN THE
SECTOR (9668/17)

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

My predecessor last wrote to your predecessor Committee on the above proposal, which forms the 'market pillar' of the first phase of the Commission's Mobility Package, on 1 July 2019. I am writing now to update you on the further progress of this dossier, which is now in the final stages of the legislative process.

As you know, the Government decided that the UK should withdraw from most EU meetings from 1 September 2019, while continuing to attend if and when it was in the UK's interests to do so, with particular regard to meetings on UK Exit, sovereignty, international relations, security, or finance. The Government took the view that the UK should continue to attend meetings discussing legislation on market access and cabotage where provisions are liable to apply to UK post-Brexit under non-EU mechanisms and to have a material impact on the UK as a third country.

As predicted in the 1 July letter the Finnish Presidency opened trilogue negotiations with the new European Parliament in autumn 2019, together with the other dossiers in the market and social pillars of the Package. Proposed compromise texts were developed for all of the dossiers during these discussions, which concluded in mid-December.

The proposed compromise text for the proposal to amend Regulation (EC) 1071/2009 on market access is broadly comparable to the earlier General Approach text, and is accordingly mainly acceptable to us. The text retains the compromise wording that the UK had won earlier in the year, limiting the scope of van regulation to those vans over 2.5 tonnes which do international work for hire and reward and setting a lower threshold for financial standing for vans. It also retains provisions allowing countries to mandate the provision of parking spaces at premises, and we are broadly content with the refinements of the rules on tackling letterboxing and dealing with conduct of transport managers.

Our 1 July letter also mentioned the less welcome provision to require vehicles to return to their state of establishment on a regular basis. At the time of the General Approach this provision was not endorsed and accordingly was deleted. However, during the trilogue negotiations the European Parliament successfully pressed for the provision to be included and the compromise text therefore provides for vehicles to return to their state of establishment every eight weeks.

On cabotage, as you may recall the General Approach retained the existing wording of Regulation (EC) 1072/2009, providing for 3 trips in 7 days. This was supported by the UK in common with other Member States and was not changed during the trilogue phase.

In its General Approach, the Council agreed a position on the "cooling-off" period which set a period of 5 days following the end of a set of cabotage operations, during which an operator would not be able to undertake further cabotage in the same Member State. As set out in the 1 July letter, the UK hoped that a further reduction in the number of days would be made during the trilogue negotiations. The European Parliament argued for a 60 hour cooling off period, and following the negotiations the proposed compromise provides for a 4 day cooling off period. We still consider this presents problems for the island of Ireland and we opposed this measure.

The proposed compromise texts on all of the market and social pillar dossiers were presented at Coreper for analysis with a view to agreement. They were then put to the European Parliament TRAN Committee on 21 January. The TRAN Committee voted to approve the text.

The next stage is for the final Jurist Linguist versions of the texts to be prepared, to ensure that they are consistent in all languages. This process is not expected to be completed before April. The final legislation will then be formally adopted by the Council of Ministers and the European Parliament, and published in the Official Journal. The Regulation amending Regulation (EC) 1071/2009 on market access will enter into force 20 days after publication in the OJ, and will apply from 18 months after the date of entry into force.

3 February 2020

PROPOSED REGULATION ON ELECTRONIC FREIGHT INFORMATION (9060/18)

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

My predecessor last wrote to you on 18 July on the above proposal, which as you may recall is part of the third phase of the Mobility Package and deals with the exchange of electronic freight information.

As stated in the 18 July letter, a General Approach was agreed at the Transport Council on 6 June 2019, and this allowed the Finnish Presidency to open Trilogue discussions with the new European Parliament. Trilogue meetings were held on 25 September, 7 and 26 November 2019, resulting in a proposed compromise text.

The main amendment in the proposed compromise text is a reduction (from 5 years to 4.5 years) in the period after which the Commission should evaluate the implementation of the Regulation and prepare its report. Otherwise the text remained broadly as outlined in the 18 July letter.

The proposed compromise text was presented at Coreper for analysis with a view to agreement. The texts were then put to the European Parliament TRAN Committee on 21 January. The TRAN Committee voted to approve the text. The text is currently being scrutinised by the Jurists Linguists to ensure that they are consistent in all languages. This is a precursor to formal adoption by the Council of Ministers and the European Parliament, and publication in the Official Journal, which is expected later in 2020. The Regulation will enter into force 20 days after publication in the OJ and will be directly applicable in EU Member States.

As you know, the Government decided that the UK should withdraw from most EU meetings from 1 September 2019, while continuing to attend if and when it was in the UK's interests to do so, with particular regard to meetings on UK Exit, sovereignty, international relations, security, or finance. As the final discussions of this proposal did not affect the UK in these areas, we did not participate in these meetings.

3 February 2020

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 561/2006 AS REGARDS ON MINIMUM REQUIREMENTS ON MAXIMUM DAILY AND WEEKLY DRIVING TIMES, MINIMUM BREAKS AND DAILY AND WEEKLY REST PERIODS AND REGULATION (EU) 165/2014 AS REGARDS POSITIONING BY MEANS OF TACHOGRAPHS (9670/17)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2006/22/EC AS REGARDS ENFORCEMENT REQUIREMENTS AND LAYING DOWN SPECIFIC RULES WITH RESPECT TO DIRECTIVE 96/71/EC AND DIRECTIVE 2014/67/EU FOR POSTING DRIVERS IN THE ROAD TRANSPORT (9671/17)

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

My predecessor, Michael Ellis, last wrote to you on the above proposals, which form the 'social pillar' of the first phase of the Commission's Mobility Package, on 1 July 2019. I am writing now to update you on the further progress of these dossiers, which are now in the final stages of the legislative process.

As you know, the Government decided that the UK should withdraw from most EU meetings from 1 September 2019, while continuing to attend if and when it was in the UK's interests to do so, with particular regard to meetings on UK Exit, sovereignty, international relations, security, or finance. The Government took the view that the UK should continue to attend meetings discussing legislation on worker postings/drivers hours where provisions are liable to apply to UK post-Brexit under non-EU mechanisms and to have a material impact on the UK as a third country.

As predicted in the 1 July letter the Finnish Presidency opened trilogue negotiations with the new European Parliament in autumn 2019 on the dossiers in the market and social pillars of the Package. Proposed compromise texts were developed for all of the dossiers during these discussions, which concluded in mid-December.

The changes made to the texts of the social pillar proposals during the trilogue discussions are summarised below.

Proposed Regulation on driving and rest time (9670/17)

There is one key change from the General Approach text in the proposed compromise text. The scope of the drivers' hours and tachograph regulations has been extended from goods vehicles with a maximum permissible mass over 3.5 tonnes to those with a maximum permissible mass of at least 2.5 tonnes. The UK did not support this due to the high cost of compliance for affected businesses and the lack of evidence that it would have safety benefits.

However, these regulations will only apply to such vehicles when used in international transport operations from July 2026, and they are also exempt when they are not used for hire or reward. The six-year lead-in time for fitting tachographs in these vehicles is a significant improvement on the initial European Parliament position, which did not provide for any lead-in time.

Aside from the above change the proposed compromise text is broadly consistent with the General Approach text, and I am content with it.

Proposed Directive on enforcement and posting of workers (9671/17)

The enforcement measures and the new conceptual framework for the posting of workers in the Council's General Approach has largely been retained in the proposed compromise text.

The proposed compromise text also maintains the General Approach limit to two additional activities of loading and/or unloading in the course of a return bilateral international transport operation (which

would be exempt from the postings rules) across both the inbound and outbound legs has been maintained.

However, the General Approach only allowed for this additional exemption to apply to vehicles that have a smart tachograph fitted. The proposed compromise text now allows drivers of vehicles not fitted with a smart tachograph to take advantage of this exemption from the point that the new posting rules come into force within the EU until 2023 (a period of around 18 months). Drivers will need to record on their tachograph every time they cross the border of a Member State. From 2023, only vehicles fitted with the Version 2 smart tachographs will be able to take advantage of this exemption. The smart tachograph will assist in the enforcement of this additional exemption, since it will record border crossing data automatically.

This outcome is acceptable to the UK due to the short period of time that this exemption can be used for in vehicles not fitted with smart tachographs.

The proposed compromise text also imposes new requirements on the European Commission to seek to introduce equivalent posting rules into its agreements with third countries. The UK did not support this change due to a lack of evidence for the need for this in such agreements.

The proposed compromise texts on all of the market and social pillar dossiers were presented at Coreper for analysis with a view to agreement. The texts were then put to the European Parliament TRAN Committee on 21 January. The TRAN Committee voted to approve the text.

The next stage is for the final Jurist Linguist versions of the texts to be prepared, to ensure that they are consistent in all languages. This process is not expected to be completed before April. The final legislation will then be formally adopted by the Council of Ministers and the European Parliament, and published in the Official Journal. The Regulation on driving and rest time will enter into force 20 days after publication in the OJ and will be directly applicable in EU Member States. The Directive on enforcement and posting of drivers will come into force the day after publication in the OJ, and deadline for Member States to transpose it into national law will be 18 months after the date of entry into force.

3 February 2020

TACKLING ONLINE DISINFORMATION: A EUROPEAN APPROACH (8578/18)

Letter to the Chair from Caroline Dinenage MP, Minister of State, Department for Digital, Culture, Media & Sport

As you are aware, the EU Commission began an investigation into "fake news" in Autumn 2017. This included a public consultation and the creation of a High-Level Expert Group comprising sector experts from across the EU. Since then, the Commission published a series of commitments towards tackling this pressing issue, including a Code of Practice ahead of the 2019 EU elections to protect them from malicious activity. To date, there have been three Communications relating to EU action to tackle online disinformation. DCMS submitted Explanatory Memorandums for each:

April 2018 - 'Tackling online disinformation: a European approach' [EM 8578/18]

This Communication summarised the views of the EU Commission on the challenges associated with disinformation online including charting the rise of disinformation across the EU, facilitated by the increase of the use of digital platforms. The Communication called upon platforms to step up efforts to tackle disinformation, arguing that measures taken by online platforms, particularly social media platforms, had not been sufficient. The Communication stated that the EU needed to take action to ensure a consistent approach towards an issue, which due to the nature of the internet, crosses borders. The EU Commission set out four principles to focus on: improving transparency; promoting diversity of information; fostering credibility of information; and fashioning inclusive

solutions. There were no specific policy implications from this Communication on UK Government policy.

EM submitted: May 2018

December 2018 - *'Action Plan against Disinformation' and 'Report on the Implementation of the Communication "Tackling Online disinformation: a European Approach"'* [EM 15475/18]

The Action Plan outlined how the actors behind disinformation may be internal, within Member States, or external, including state and non-state actors. It set out 4 pillars for the coordination of the Union's response to disinformation: 1) Improving the capabilities of Union institutions to detect, analyse and expose disinformation; 2) Strengthening coordinated and joint responses to disinformation; 3) Mobilising the private sector to tackle disinformation; and 4) Raising awareness and improving societal resilience. The Action Plan included commitments from Member States ahead of the EU election in May 2019. Securing any election is a priority for the UK however these commitments did not impact on the UK's work to tackle disinformation.

The Communications set out the EU Commission's assessment of the progress made in the implementation of the April Communication actions. The report concluded that the actions outlined in the April Communication have been accomplished or launched.

Joint EM submitted: January 2019

June 2019 - *'Report on the implementation of the Action Plan Against Disinformation'* [EM 10372/19]

This Communication reported on the Commission's assessment of the progress made to implement the "Action Plan Against Disinformation". It detailed the effectiveness of the measures taken by the Commission, tech companies and civil society and made recommendations for future disinformation action. The report concluded that the implementation of the Action Plan by Member States deterred attacks while increasing capabilities to expose disinformation during the EU elections. Following the extension to Article 50 in March 2019, and ahead of the UK taking part in the European elections, officials worked with platforms to ensure the UK met the commitments outlined in the Action Plan. The recommendations outlined in the report did not require action from Member States.

EM submitted: July 2019

Many of the actions and policies proposed and implemented across Member States are broadly in line with the action the UK is taking to tackle disinformation. For example, the EU Code of Practice pays close attention to the issue of platform transparency around disinformation activity. Platform transparency is a crucial element of the regulatory model outlined in the UK's Online Harms White Paper. The Government has committed to publishing further detail on the regulatory framework in due course. Given the UK's has now exited the EU, the impact of any new EU actions in this space is limited.

Finally I would like to take this opportunity to thank all members of the committee for their interest and scrutiny in this area. Outside of the EU, the UK remains committed to tackling disinformation in all its forms.

26 February 2020

PROPOSAL FOR A REGULATION 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 Chair to Nigel Adams MP, Minister of State, Department for Digital,
Culture, Media & Sport**

Thank you for your letter dated 21 January 2020 on the above proposal. The EU Internal Market Sub-Committee considered it at its meeting on 6 February 2020, along with your previous letter dated 4 November 2019 and correspondence from the Minister for Digital and the Creative Industries dated 12 March 2019

We continue to have an interest in this proposal, notwithstanding the UK's exit from the EU, because of the concerns raised by the Government and stakeholders about its provisions and the extended territorial scope of the Regulation should it ever come into force.

We would therefore be grateful for some points of clarification.

UK interest and the scope of the Regulation

Your November letter indicated that the UK had been pursuing additional text that would set out a clear exemption for national security. We would be grateful for confirmation about whether this text has been taken up by either the outgoing or incoming Presidency.

We share the Government's concerns around ensuring that ePrivacy allows for the prevention and detection of serious criminal activity, especially CSEA, and we welcome the Council's broader discussion about how to reflect these imperatives within the proposed Regulation. However, your letter of 21 January noted that the intended approach of the Croatian Presidency was not yet clear, and the UK exited the EU on 31 January.

How does the UK Government intend to continue to influence the direction of this proposal at Council-level, and stay informed about emerging thinking about how ePrivacy should tackle vital issues such as the prevention and detection of CSEA and steps to ensure national security?

More broadly, what steps is the Government taking to ensure that the voices of UK businesses and other stakeholders continue to be heard as negotiations on ePrivacy proceed, in particular given the commitment not to undermine existing business models?

And, finally, given the uncertainty about the Regulation's wider scope and application to emerging technologies, are you able to give us an update on how the Council Working Group might seek to tackle this issue, given that the rapid pace of technological and digital advancement must be taken as a given?

GDPR

In previous correspondence, we agreed with the Government that the ePrivacy proposal's interaction with the GDPR was a potential cause for concern. We previously understood that some Member States wished for there to be greater alignment with GDPR, in particular the legal bases for processing in Articles 6 and 8. Do the revisions that have been made by the Finnish Presidency resolve some of these issues?

In addition, we were told previously that it was too soon to determine to what extent further provisions under ePrivacy would be required, and that this would need to be assessed after the full effectiveness of the GDPR was clear. Are you now able to provide us with an update, or to estimate when it might be possible to make this assessment?

We would welcome a response to this letter in 10 working days, and further updates in due course as negotiations continue.

6 February 2020

Letter to the Chair from Rt Hon Oliver Dowden CBE MP, Secretary of State for Digital, Culture, Media and Sport, Department for Digital, Culture, Media & Sport

Thank you for your letter dated 6 February 2020 on the above proposal.

Your letter acknowledged the impact of the proposed Regulation in the UK regardless of our third country status, given the extraterritorial scope of the Regulation, and noted HMG and stakeholders concerns in relation to its provisions as currently drafted.

Details on the particular points of clarification you requested are provided below.

UK interest and the scope of the Regulation

The current text (5979/20) provides that the Regulation does not apply to activities which fall outside of the scope of EU law, and in any event activities concerning national security. We are therefore content that the current draft ensures that national security is excluded from the scope of the Regulation. However, the latest text proposed by the Croatian Presidency proposes changes to articles 6-8 and the associated recitals only and the Presidency has indicated that they are currently considering modifications to other provisions, such as those related to scope.

The Presidency has stated that it does not intend to discuss Child Sexual Exploitation and Abuse (CSEA) further at this stage. We continue to monitor this area and will provide you with an update if this changes.

The newly formed UK Mission to the European Union (UKMis Brussels) is continuing to monitor the progress of the proposed Regulation and to understand emerging thinking. HMG will continue to seek to engage the EU as it develops its positions and where it is in our national interests, as we would other international organisations where possible. HMG understands the importance of ensuring national security remains out of scope as well as preventing and removing CSEA content online. HMG continues to engage with international partners on this vital issue – for example, the Home Office is a permanent board member of the WePROTECT Global Alliance against online child sexual exploitation alongside the European Commission, enabling us to progress our CSEA agenda and promote our online harms agenda.

General Data Protection Regulation (GDPR)

In relation to Articles 6 and 8, which indicate a move towards greater alignment with the GDPR, the Croatian Presidency has proposed 'legitimate interest' as a legal basis for the processing of metadata and for the processing and storing of information on end-users' terminal equipment.

The new compromise text is yet to be discussed in the Telecoms working group. In principle, the proposed text could allow websites and applications (e.g. broadcasters, retailers & newspapers) that are accessible free of charge but rely on advertisements for their funding models to rely on 'legitimate interests' as a legal basis for processing in order to plant cookies. The end-user's interests will be deemed to override the interests of the service provider in a number of specified circumstances. For example, where the information is intended to be used for profiling or where the information contains special categories of personal data (as defined in the GDPR). In relation to service providers e.g. websites sharing end-users personal metadata with third parties, such information cannot be shared unless anonymised. There is also a requirement to carry out an impact assessment, inform the end-user of their right to object to the processing and for providers to have technical protection during transit in place such as pseudonymisation and encryption.

The GDPR review is currently ongoing and a European Commission report will be published in the spring. Under Article 97 of the GDPR, the Commission should submit a report by 25 May 2020. The UK will consider the report carefully, along with recommendations raised which may warrant potential changes to the e-Privacy Regulation.

6 March 2020

Letter from Chair to Rt Hon Oliver Dowden CBE MP, Secretary of State, Department for Digital, Culture, Media & Sport

Thank you for your letter dated 6 March 2020 on the above proposal, responding to a set of requests for clarification in our letter dated 6 February 2020. The EU Internal Market Sub-Committee has considered your response by correspondence.

While we welcome the Government's commitment to ensuring that national security remains out of scope of this proposed legislation, and that the fight to prevent and remove CSEA content online is not hampered by any new provisions, we note that your letter does not address the issue of how UK businesses' interests – and those of other stakeholders – will be represented as part of the UK Mission's work monitoring this proposed Regulation. Given ePrivacy's potential consequences for UK businesses, notwithstanding our exit from the EU, we hope that the Government will also engage with the EU on issues such as the need not to undermine existing business models.

You also do not set out how the Council working group is tackling the issue of ensuring that any regulation is appropriately flexible to cope with emerging technologies. We appreciate that the UK Government no longer participates in the Telecoms working group, but we would be interested in your analysis of how Member States are tackling this issue.

As your letter notes, working group discussions continue, and several key issues, such as around CSEA, may re-emerge. We would be grateful for updates in due course about the progress of negotiations and the Telecoms working group's approach to making ePrivacy fit for emerging technologies, and for a specific update in the summer on the issue of GDPR's effectiveness following the Commission's May report.

We continue to take an active interest in this matter, and look forward to receiving a response in due course.

19 March 2020

PROPOSAL FOR A REGULATION LAYING DOWN RULES AND PROCEDURES FOR COMPLIANCE WITH AND ENFORCEMENT OF UNION HARMONISATION LEGISLATION ON PRODUCTS AND AMENDING REGULATIONS (15950/17)

Letter from the Chair to Nadhim Zahawi MP, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 25 January 2020 on the above file, which the EU Internal Market Sub-Committee considered by correspondence.

We would be grateful if you could keep us updated on developments regarding the EU guidance on the Regulation and the Government's plans for assessing the Regulation's impact on UK businesses and helping them prepare for its application

We continue to take an active interest in this matter, and look forward to receiving a response in due course.

19 March 2020

COMMUNICATION ON SECURE 5G DEPLOYMENT IN THE EU – IMPLEMENTING THE EU TOOLBOX (5664/20)

Letter from the Chair to Matt Warman MP, Minister for Digital and Broadband, Department for Digital, Culture, Media & Sport

Thank you for your Explanatory Memorandum dated 13 February 2020 on the above Communication, which the EU Internal Market Sub-Committee has considered by correspondence.

Although this dossier is not a legislative proposal, telecoms cybersecurity is of significant interest both nationally and internationally. By its very nature, the telecoms sector is highly interconnected, and the Communication's proposals for measures that EU Member States could take to mitigate cybersecurity risks and increase the resilience of their telecoms supply chains may have implications for the UK's own steps towards those goals.

We have therefore agreed to retain this document for further scrutiny and would welcome an update from you by 31 May 2020 regarding steps being taken by Member States, if any, to implement the EU toolbox conclusions, with an assessment of the implications of these for the UK's own measures to secure its telecoms network and diversify the telecoms supply chain.

In addition, the Sub-Committee has noted that the Scrutiny History section of your EM contained a confused paragraph regarding the House of Lords scrutiny process, which stated that – on the basis of a letter of 31 January 2020 regarding the clearance from scrutiny of a number of dossiers – “the date cleared for this document will be 31 January 2020”. Officials have clarified that, although this statement appears to refer to the newly deposited Communication, this was intended to refer to a previous document – a Commission Recommendation on 5G cybersecurity (8068/19) – that was cleared at the sift in the House of Lords and thus never under scrutiny.

We would ask that, in the future, full and detailed Scrutiny History paragraphs are provided in EMs in the same way as for the House of Commons. Staff of the Lords EU Committee can always be contacted to confirm the scrutiny history of a dossier if there is uncertainty in the Department.

19 March 2020

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS—A EUROPEAN STRATEGY FOR DATA (6250/20)

Letter from the Chair to John Whittingdale MP, Minister of State for Digital, Department for Digital, Culture, Media, & Sport

Thank you for your Explanatory Memorandum (EM) dated 13 March 2020 on the above document, which the EU Internal Market Sub-Committee considered at its meeting on 24 March 2020.

As you note in the EM, several of the proposals outlined in the communication are still in the early development stages and it is currently unlikely that they will be finalised while EU law still applies to the UK. Nonetheless, they could have significant knock-on implications for UK businesses and public sector bodies. We have therefore decided to retain this document for further scrutiny and would welcome an update by 31 May 2020 regarding the views expressed by the Government in its response to the Commission's consultation on the document.

In your reply to us, could you please also set out if the proposed common data spaces and cloud infrastructures are expected to be open to participation from UK businesses and public sector bodies? If so, has the Government given preliminary consideration to the potential benefits and drawbacks of UK participation in these structures?

Finally, we would be grateful for an overall assessment of how the Commission's data strategy compares to the National Data Strategy currently being developed by the Government.

25 March 2020