

European Scrutiny Committee

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From: Sir William Cash MP

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Transparency of the UK-EU Joint Committee

The Committee today considered the outcome of the UK-EU Joint Committee meeting of 12 June, taking into account your Explanatory Memorandum of 3 June on the various amendments put forward by the EU to correct “errors and omissions” in the Withdrawal Agreement and the Protocol on Ireland / Northern Ireland.¹ In particular, we took note of the Government’s approval for a Decision by the Joint Committee to accept some of the EU’s proposed changes to that Agreement with respect to the financial settlement and the social security provisions, but withholding its consent, at least for the time being, from any changes to the Protocol.

As you will be aware from our letter of 11 June, the Committee is disappointed with the Government’s handling of this matter with respect to both substance and process. Your stated commitment to the House of Lords EU Committee that Ministers would “do everything [they] can to update the Commons and allow it to interrogate the approach that we and the EU are taking” has not been borne out in practice because the Government has, so far, failed to provide the information necessary for Parliament to scrutinise effectively the work of the Joint Committee and the UK position taken at its meetings.

In particular, we were only aware of the changes to the Withdrawal Agreement to be discussed at the Joint Committee on 12 June because the European Commission’s proposals had to be submitted for scrutiny under our

¹ [Council Decision 2020/769 of 10 June 2020](#); deposited in Parliament as document COM(2020) 195.

existing procedures for scrutiny of European Union documents. These procedures do not extend to the formal decision-making powers of the Joint Committee, and do not take into account the UK Government's role in determining its agenda. Your Explanatory Memorandum to Parliament failed to clarify the potential policy implications of the EU's proposals relating to the Protocol for the UK, and the Government's position on them.

As a result, we had no formal confirmation that the Government would not accept the changes to the Protocol at last week's Joint Committee meeting until after the fact, despite your commitment that Ministers would endeavour to ensure "that Parliament *finds out first*" about the Government's intentions in relation to the work of that body (our emphasis).² We note in this respect that the statutory prohibition on the UK agreeing to the adoption of Decisions by the Joint Committee by written procedure was meant to enhance Ministerial accountability for the Government's actions in that Committee. Clearly this will not be the case if Parliament is only informed of the Government's position on decisions taken by the Joint Committee ex-post, in which case it is immaterial by which manner they were approved.

Turning to the substance of the Joint Committee Decision of 12 June, it is clear from your Memorandum that the Government considered the EU's proposals to adjust the financial settlement and social security rules in the Withdrawal Agreement to be technical in nature. Nevertheless, Parliament should have the opportunity to examine whether acts of the Joint Committee are indeed purely technical or whether they may have wider legal, policy or financial implications before they are agreed to by the Government.

More important still, as regards the draft amendments to the Protocol on Ireland/Northern Ireland, we are still waiting for the Government's assessment of their implications for the UK. We do not know if Ministers have definitively rejected those amendments, or will continue to discuss them with the EU ahead of a future meeting of the Joint Committee. We note in this regard that even a rejection of those EU proposals could have policy implications, for example if the absence of a particular EU act in the Protocol could affect the coherence or functioning of the relevant regulatory framework in Northern Ireland.

Overall, it is clear that the effective parliamentary scrutiny of the Government's preparations for, and actions in, the Joint Committee will require a substantial change in your approach to transparency, to ensure proper accountability of Ministers for their position within those bodies.

² House of Lords Select Committee on the European Union: Uncorrected oral evidence by the Rt Hon. Michael Gove MP on "[Progress of UK-EU future relationship negotiations](#)" (5 May 2020), Q11.

In light of the above, we have a number of questions in relation to the implications of the EU's draft amendments to the Protocol on Ireland/Northern Ireland. In addition, we are reiterating our request for a number of practical commitments from the Government to improve parliamentary scrutiny of the work of the UK-EU Joint Committee in the future, given the many important decisions that body is yet to take in the coming months in relation to the practical implementation of the Protocol on Ireland/Northern Ireland in particular.

1. The EU's proposed amendments to the Protocol on Ireland/Northern Ireland

In relation to the EU's proposed amendments to the Protocol on Ireland/Northern Ireland, we ask you to:

- explain for each individual proposed addition of EU legislation whether the Government agrees that its addition is "essential for the application of the rules of the Internal Market for goods to Northern Ireland" as the EU claims, and what the implications of accepting or rejecting those additions would be for the UK, and for Northern Ireland in particular;
- set out the practical implications of the proposed "explanatory notes" on the application of the EU's trade defence measures under the Protocol on Ireland/Northern Ireland, in particular for Northern Irish producers affected by unfairly dumped or subsidised imports;
- clarify whether it has definitively rejected the EU's request for these adjustments to the Protocol, or whether the Government will continue to discuss them with the EU; and
- clarify whether the EU has informed the Government of any further omissions or errors it is intended to propose to address by means of a future Decision of the Joint Committee, or indeed if the Government itself intends to do so.

2. Arrangements for scrutiny of future Joint Committee activities

In our view, the Government's approach to transparency of the activities of the UK-EU Joint Committee of 12 June, as evident from the above, also demonstrates the need for an effective mechanism for parliamentary scrutiny of the position taken by the Government within that Committee.

It is an anomaly that Parliament has to use its general scrutiny procedures for EU affairs – whose long-term future beyond the end of the transition period is uncertain - to hold the Government to account for the activities and output of the Joint Committee. After all, Decisions by that Committee can be taken long

beyond the end of transition and have the same legal effect as the Withdrawal Agreement and therefore merit particular scrutiny. More specifically, we should not have to rely on the EU's publication of its own position for meetings of the Joint Committee for Parliament to be aware of the nature of specific Decisions or Recommendations that Committee is being asked to consider.

It is therefore clear that the requests made by ourselves and seven other Select Committees in March 2020 for advance publication by the Government of draft Decisions of the Joint Committee, including its position thereon, remains a necessary, appropriate and proportionate mechanism to ensure proper accountability of the actions of the UK Ministers in the Joint Committee.

We have asked for a number of commitments in that respect, set out at the end of this letter. We hope our requests will form the basis for constructive discussions between our staff and your officials on the necessary practical arrangements to ensure Parliament can scrutinise the policy, legal and financial implications of the work of the Joint Committee appropriately and effectively.

3. Transparency of activities of the Specialised Committees

We also want to highlight the lack of Government transparency of the work of the Joint Committee – and its Specialised Committees – which do not relate to formal Decisions or Recommendations.

In particular, it has already become clear that the Specialised Committees are rapidly becoming a key forum for exchange of views on the implementation of the Withdrawal Agreement, including in relation to potential disagreements between the UK and the EU about the interpretation of the Agreement, or as preparatory work for future Decisions of the Joint Committee. However, the Government has, without any clear justification, drawn a veil of secrecy over their activities which in turn also hampers Parliament's ability to effectively scrutinise their work, and their input into the work of the Joint Committee itself.

For example, the EU's intention to propose amendments to the Protocol on Ireland/Northern Ireland was already communicated to the Government at the meeting of the Specialised Committee on the Protocol, which took place on 30 April 2020. However, no further details were shared with Parliament until the Commission formally published its proposals in mid-May, and even 6 weeks later, no summary of the minutes of that Specialised Committee meeting has been published (despite the option to do so under the Withdrawal

Agreement). Similarly, it first became clear through press reports that the Government used the Specialised Committee on Financial Provisions on 19 May 2020 to challenge the EU's assertion that the UK needs to contribute over €200 million (£180 million) more than anticipated to the EU's 2020 budget under the financial settlement in the context of the coronavirus crisis. The Treasury only confirmed this to us on 9 June, even though we in fact requested clarity on this before the Specialised Committee had even met, on 7 May.³

Our requests in this regard are also set out at the end of this letter. In particular, given the importance of the Specialised Committees, Parliament should be given access to their agendas. The Government has provided no justification for not doing so to date, and we understand they are in fact shared with the European Parliament by the European Commission. The Cabinet Office should make a similar arrangement with Parliament without delay.

4. Requests for commitments in relation to parliamentary scrutiny of the Joint Committee

Building on your previous correspondence with a number of Select Committee Chairs, and in light of the lack of transparency in advance of the Joint Committee's Decision of 12 June, we are seeking the following commitments from the Government on transparency of the Joint Committee and its Specialised Committees:

- The Government should inform Parliament of all proposals for Decisions and Recommendations to be taken by the Joint Committee to Parliament, accompanied by a statement of the Government's assessment of their implications and its overall position. These submissions should take place with sufficient time to allow for effective scrutiny by interested Committees, and in any event – where applicable – no later than the point where the Specialised Committees submit proposals for Decision or Recommendations to the Joint Committee.
- Given that the UK Government's agreement is necessary for the adoption of the agenda for each Joint Committee meeting, Ministers can insist on a delay in deciding on draft Decisions or Recommendations to allow for Parliament to consider those acts prior to their adoption. Except where time-sensitive, the Government should in principle seek to defer the timing for adoption of such acts of the

³ [Letter](#) from Sir William Cash, Chair of the European Scrutiny Committee to Rt Hon. Steve Barclay, Chief Secretary to the Treasury (7 May 2020).

Joint Committee to facilitate parliamentary scrutiny. If the Government approves an act of the Joint Committee before such parliamentary scrutiny can be completed, the Government should have to justify why this was considered necessary by means of a Written Statement.

- Parliament should be given access to the agendas of the Specialised Committee without delay, given they are already shared by the European Commission with the European Parliament.
- With respect to the transparency of the Joint Committee and Specialised Committee more generally, the Government should share meeting schedules and summaries of the minutes for the Joint Committee, the Specialised Committees and the Joint Consultative Working Group on Northern Ireland with Parliament.

We ask you to provide the requested information and commitments in writing within before the end of June. We also look forward to discussing these issues with you in person when you give evidence in the near future.

I am copying this letter to Simon Hoare MP, Chair of the Northern Ireland Affairs Committee and Nicholas Beech, Clerk of that Committee; Hilary Benn MP, Chair of the Committee on the Future Relationship and Gordon Clarke, Clerk of that Committee; to the Lord Kinnoull and Christopher Johnson in the Lords; and to Claire Valling and Les Saunders in your Department.

CHAIR