



HOUSE OF LORDS

European Union Committee

12th Report of Session 2019–21

**Scrutiny of international
agreements: three
agreements on the
Channel Fixed Link,
and one agreement on
the Energy Charter
Treaty**

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The European Union Committee

The European Union Select Committee and its five sub-committees are appointed each session to consider EU documents and draft laws; to consider other matters relating to the UK's relationship with the EU, including the implementation of the UK/EU Withdrawal Agreement, and the Government's conduct of negotiations on the United Kingdom's future relationship with the European Union; and to consider matters relating to the negotiation and conclusion of international agreements generally.

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EU Goods Sub-Committee
EU Security and Justice Sub-Committee
EU Services Sub-Committee
International Agreements Sub-Committee

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The Members of the International Agreements Sub-Committee are:

<u>Lord Foster of Bath</u>	<u>Lord Lansley</u>	<u>Lord Robathan</u>
<u>Lord Gold</u>	<u>Baroness Liddell of Coatdyke</u>	<u>The Earl of Sandwich</u>
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Sub-Committee staff

The current staff of the Sub-Committee are Dominique Gracia (Clerk), Andrea Ninomiya (Policy Analyst), Alexander Horne (Legal Adviser) and George Stafford (Committee Assistant).

Contact details

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SUMMARY

This is the European Union Committee's twenty-fourth report on treaties, or international agreements, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (CRAG). It is the second such report prepared by the new International Agreements Sub-Committee under the EU Committee's revised Terms of Reference, which include the provision "to consider matters relating to the negotiation and conclusion of international agreements".¹ Under these new Terms of Reference, the International Agreements Sub-Committee has taken on responsibility for scrutinising all international agreements laid before Parliament under CRAG.

This report addresses four agreements, considered at the International Agreements Sub-Committee's meeting on 30 September 2020, on which we report for information:

- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands concerning Border Controls on Rail Traffic between the Netherlands and the United Kingdom using the Channel Fixed Link (CP 254, 2020) (the Border Controls Agreement);
- Agreement between the Government of the French Republic, the Government of the Kingdom of Belgium, the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland amending and supplementing the Agreement between the Government of the Kingdom of Belgium, the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Rail Traffic between Belgium and the United Kingdom using the Channel Fixed Link with Protocol, done at Brussels on 15 December 1993 (CP 283, 2020) (the Rail Traffic Agreement);
- Special Arrangement between the Government of the French Republic, the Government of the Kingdom of Belgium, the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Security Matters relating to Trains using the Channel Fixed Link (CP 284, 2020) (the Security Matters Agreement); and
- Final Act of the International Conference and Decision by the Energy Charter Conference in respect of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty (CP 286, 2020).

1 Procedure Committee ([1st Report](#), Session 2019-21, HL Paper 29), approved by the House on 17 March 2020

Scrutiny of international agreements: three agreements on the Channel Fixed Link, and one agreement on the Energy Charter Treaty

CHAPTER 1: AGREEMENTS REPORTED FOR INFORMATION

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands concerning Border Controls on Rail Traffic between the Netherlands and the United Kingdom using the Channel Fixed Link (CP 254, 2020)²

Agreement between the Government of the French Republic, the Government of the Kingdom of Belgium, the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland amending and supplementing the Agreement between the Government of the Kingdom of Belgium, the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Rail Traffic between Belgium and the United Kingdom using the Channel Fixed Link with Protocol, done at Brussels on 15 December 1993 (CP 283, 2020)³

Special Arrangement between the Government of the French Republic, the Government of the Kingdom of Belgium, the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Security Matters relating to Trains using the Channel Fixed Link (CP 284, 2020)⁴

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- 2 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands concerning Border Controls on Rail Traffic between the Netherlands and the United Kingdom using the Channel Fixed Link (CP 254, 2020): <https://www.gov.uk/government/publications/uknetherlands-agreement-concerning-border-controls-on-rail-traffic-between-the-netherlands-and-the-united-kingdom-using-the-channel-fixed-link-cs-n> [accessed 21 September 2020]
 - 3 Agreement between the Government of the French Republic, the Government of the Kingdom of Belgium, the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland amending and supplementing the Agreement between the Government of the Kingdom of Belgium, the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Rail Traffic between Belgium and the United Kingdom using the Channel Fixed Link with Protocol, done at Brussels on 15 December 1993 (CP 283, 2020): <https://www.gov.uk/government/publications/agreement-between-france-belgium-netherlands-and-uk-amending-the-agreement-between-belgium-france-and-uk-concerning-rail-traffic-between-belgium-an> [accessed 21 September 2020]
 - 4 Special Arrangement between the Government of the French Republic, the Government of the Kingdom of Belgium, the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Security Matters relating to Trains using the Channel Fixed Link (CP 284, 2020): <https://www.gov.uk/government/publications/special-arrangement-between-the-governments-of-france-belgium-the-netherlands-and-the-uk-concerning-security-matters-relating-to-trains-using-the-ch> [accessed 21 September 2020]

1. Each of the above Agreements (hereafter the Border Controls Agreement, the Rail Traffic Agreement, and the Security Matters Agreement, respectively) relates to the decision to provide direct train services between the United Kingdom and the Netherlands using the Channel Fixed Link (more commonly known as the Channel Tunnel). The Agreements were laid before Parliament on the 13 August 2020, and the scrutiny period under the Constitutional Reform and Governance Act 2010 (CRAG) expires on 6 October 2020.

The new agreements

2. The original agreements relating to the Channel Fixed Link train service, known as the Tripartite Special Arrangement and the Tripartite Agreement, were signed in 1993. They only apply between the UK, Belgium and France. In April 2018, Eurostar commenced operating a service between the UK and the Netherlands. Presently, this requires what is known as a “hub stop” at Brussels, where passengers who embark in the Netherlands are required to disembark at Brussels Midi Station to clear Schengen exit and UK entry border controls before re-boarding the train and completing their journey.
3. The Rail Traffic Agreement amends and supplements the original Tripartite Agreement between the UK, France and Belgium, which, amongst other things, governs the operation of juxtaposed border controls on international passenger rail services. The parties to the Tripartite Agreement and the Netherlands have agreed to amend and supplement the Tripartite Agreement to add the Netherlands as a contracting party, which will provide a legal basis for the exercise of border controls on all rail passengers travelling via the Channel Fixed Link between the UK, the Netherlands and Belgium.
4. While the Netherlands indicate that they intend to apply the Agreement provisionally, pending ratification, the UK, France and Belgium have all indicated that they will not be provisionally applying the Agreement. However, the Explanatory Memorandum (EM) notes that a direct service between the UK and the Netherlands is scheduled to commence towards the end of 2020 and, as the Agreement is not expected to enter into force before the direct service commences, or to be provisionally applied by the UK, a separate bilateral treaty (the Border Controls Agreement) has been agreed between the UK and the Netherlands to establish juxtaposed border controls. This agreement is discussed further below.
5. The EM indicates that the Rail Traffic Agreement will be implemented by way of a statutory instrument (the Channel Tunnel (Miscellaneous Provisions and International Arrangements) (Amendment) Order 2020) made under section 11 of the Channel Tunnel Act 1987 and laid before Parliament on 1 September 2020.⁵
6. The Security Matters Agreement amends the original Tripartite Special Arrangement of 1993 (a separate agreement from the Tripartite Agreement), which provides for the responsible authorities and officers of Belgium, France and the UK to work together to provide for the security of trains using the Fixed Link. This allows for cooperation on the security of trains; contingency planning; the designation of security zones (such as passenger terminals, stabling yards and maintenance facilities) to provide safe locations

5 Channel Tunnel (Miscellaneous Provisions and International Arrangements) (Amendment) Order 2020 ([SI 2020/915](#))

for searching and screening people and baggage; and training and information sharing. Unlike the Rail Traffic Agreement, the UK, Belgium and the Netherlands propose to apply the Security Matters Agreement provisionally prior to ratification, and the EM indicates that no new legislation is required to implement the Agreement in UK law.

7. Finally, as noted above, the Border Control Agreement between the UK and the Netherlands is a bilateral agreement that contains provisions that allow for the temporary exercise of juxtaposed border controls in the Netherlands pending the entry into force of the amended Tripartite Agreement (renamed the Quadripartite Agreement). The Border Control Agreement also contains several provisions specific to the operation of border controls in respect of the Netherlands-UK rail traffic, which will continue in force once the Quadripartite Agreement has entered into force. The EM notes that this agreement will be provisionally applied to ensure that the direct service between the UK and the Netherlands can commence on time. It has been reported that this service may commence from the end of October 2020.⁶
8. The Border Control Agreement will be implemented by way of a statutory instrument (the Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020) made under section 11 of the Channel Tunnel Act 1987 and laid before Parliament on 1 September 2020.⁷
9. One effect of these three agreements is that the existing model of juxtaposed border checks will be extended to the Netherlands to allow passengers to be checked, prior to departure, successively by border officials from the departure and arrival countries. The Government has indicated that UK Border Force officials will be stationed in Amsterdam and Rotterdam and able to carry out checks before boarding, as they already do in France and Belgium. It also allows for further cooperation between the police forces of the four countries involved in the fight against cross-border crime.⁸

The Eurotunnel and Brexit

10. In addition to the arrangements described above, there is a further international agreement applicable to the Channel Fixed Link, namely the Treaty of Canterbury, which provides for the joint UK/France governance of the Tunnel, and which established the Anglo-French Intergovernmental Commission (IGC).
11. As a result of the UK's withdrawal from the EU and the forthcoming end of the transition period, the European Commission has published two legislative proposals intended to clarify the status of the IGC under European Union law and ensure the safe and efficient operation of the Fixed Link.
12. The Government provided the European Union Committee with an EM on these proposals on 11 August 2020, which notes concerns with the Commission's approach. In particular, it highlights that, if the Commission's approach is adopted, this could potentially lead to continued dynamic

6 Rebecca Smithers, 'Eurostar to launch direct Amsterdam to London route in October', The Guardian (24 August 2020): <https://www.theguardian.com/business/2020/aug/24/coronavirus-eurostar-says-london-to-amsterdam-direct-is-back-on-track> [accessed 22 September 2020]

7 Channel Tunnel (Arrangements with the Kingdom of the Netherlands) Order 2020 (SI 2020/916)

8 'New Eurostar treaties open up direct travel from Amsterdam to London', Gov.UK (7 July 2020): <https://www.gov.uk/government/news/new-eurostar-treaties-open-up-direct-travel-from-amsterdam-to-london> [accessed 21 September 2020]

alignment on EU rules and a role for the CJEU, which would be contrary to UK Government policy.⁹ The proposal has been cleared from scrutiny by the Lords European Union Committee, on the grounds that any agreement would be examined by the International Agreements Committee. The European Scrutiny Committee has already picked up several concerns with the Government.¹⁰ We are writing to the Government to ask them what practical consequences the proposals, if adopted, would have for the Channel Fixed Link and will publish that letter and the response on our website.¹¹

13. We report these Agreements to the House for information.

Final Act of the International Conference and Decision by the Energy Charter Conference in respect of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty (CP 286, 2020)¹²

14. The Energy Charter Treaty (ECT) sets rules for the regulation of cross-border trade and investment in the energy sector. It is a multilateral agreement with 53 contracting parties, including the UK and the EU. The Final Act of the International Conference and Decision by the Energy Charter Conference in respect of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty (the 1998 Trade Amendment) was an amendment to the ECT, which was adopted in 1998 and entered into force in 2010. It covers an area of exclusive EU competence. It continues to apply in the UK during the implementation period.
15. The Government's EM notes that the UK is taking steps to ratify the 1998 Trade Amendment in its own right. It laid the Agreement before Parliament on 2 September 2020, and the scrutiny period under CRAG expires on 7 October 2020.
16. The 1998 Trade Amendment currently applies in and to the UK, and its continued effect in UK law is ensured by section 4(1) of the European Union (Withdrawal) Act 2010, so no new legislation is required for implementation.
17. The Government's EM clearly sets out the three key changes made to the ECT via the 1998 Trade Amendment.¹³ It also notes that Article 6 of the 1998 Trade Amendment provides for provisional application and that, if the Amendment does not enter into force from the end of the transition period, the UK plans to apply it provisionally until the date of entry into force. Given that Article 42(4) of the ECT suggests that the 1998 Trade Amendment would only enter into force on the ninetieth day after the UK deposits its instrument of ratification, acceptance or approval, it appears

9 Department for Transport, *Explanatory memorandum on European Union Legislation: [http://europeanmemoranda.cabinetoffice.gov.uk/files/2020/08/200811 - EM - European Union Legislation regarding the Channel Tunnel.pdf](http://europeanmemoranda.cabinetoffice.gov.uk/files/2020/08/200811_-_EM_-_European_Union_Legislation_regarding_the_Channel_Tunnel.pdf)* [accessed 22 September 2020]

10 Letter from the Chair of the European Scrutiny Committee to the Parliamentary Under Secretary of State at the Department of Transport, dated 16 September 2020: <https://committees.parliament.uk/publications/2644/documents/26299/default/> [accessed 30 September 2020]

11 <https://committees.parliament.uk/committee/448/eu-international-agreements-subcommittee/>

12 Final Act of the International Conference and Decision by the Energy Charter Conference in respect of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty (CP 286, 2020): <https://www.gov.uk/government/publications/final-act-of-the-international-conference-and-decision-by-the-energy-charter-conference-in-respect-of-the-amendment-to-the-trade-related-provisions-of> [accessed 21 September 2020]

13 Notably, technical amendments reflecting the entry into force of the Marrakesh Agreement, establishing the WTO; an extension of product coverage of the ECT to "energy related equipment" and the possibility for the Energy Charter Conference to introduce a binding customs duty standstill regime.

likely that the UK will have to provisionally apply the Amendment for at least a short period of time.

18. On the question of consultation, the EM notes that the content of the 1998 Trade Amendment is a reserved matter. It simply states that the UK Government has “advised the Devolved Administrations that the UK will be ratifying the 1998 Trade Amendments to ensure continuity of the current arrangements”. Whilst the subject matter of the Amendment may not be especially contentious, this is an unfortunate approach. Many international agreements will relate to reserved matters, but we would expect to see an appropriate level of engagement with the views of the devolved administrations and for these to be communicated to us. This is an issue that we have raised previously, and we will return to it if practice does not improve.
19. **We report the Energy Charter Treaty 1998 Trade Amendment to the House for information.**

APPENDIX 1: LIST OF MEMBERS, DECLARATIONS OF INTEREST AND SUB-COMMITTEE STAFF

Members of the European Union Select Committee

The report was approved by the Chair of the EU Select Committee, Lord Kinnoull, as authorised under paragraph 11.55 of the Companion to the Standing Orders and Guide to the Proceedings of the House of Lords.

Declarations of interest

The Earl of Kinnoull (Chair)

Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy

Chairman, Culture Perth and Kinross, in receipt of governmental subsidy

Chairman, United Kingdom Squirrel Accord, in receipt of governmental monies

Shareholdings as set out in the register

International Agreements Sub-Committee Members and staff

Lord Foster of Bath

No relevant interests

Lord Gold

No relevant interests

Lord Goldsmith (Chair)

Partner, Debevoise & Plimpton LLP

Lord Kerr of Kinlochard

Chairman, Centre for European Reform

Deputy Chairman, Scottish Power plc

Member, Scottish Government's Standing Council on Europe

Lord Lansley

Director, LOW Associates Ltd

Chair, UK-Japan 21st Century Group

Trustee, Radix

Baroness Liddell of Coatdyke

Adviser, PricewaterhouseCoopers

Association Member, Bupa

Chair, Annington Ltd

Honorary Chair, Britain-Australia Society Education Trust

Trustee, Northcote Educational Trust

Lord Morris of Aberavon

No relevant interests

Lord Oates

Chair, Advisory Committee, Weber Shandwick UK

Director, Centre for Countering Digital Hate

Lord Robathan

No relevant interests

Earl of Sandwich

No relevant interests

Lord Watts

No relevant interests

The Committee staff are Dr Dominique Gracia (Clerk), Alexander Horne (Legal Adviser), Andrea Ninomiya (Policy Analyst), and George Stafford (Committee Assistant).

A full list of Members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/register-of-lords-interests/>