

**EXPLANATORY MEMORANDUM ON A PROPOSAL FOR A DECISION OF THE COUNCIL ESTABLISHING AN EU POSITION AHEAD OF A WITHDRAWAL AGREEMENT OR TRADE AND CO-OPERATION AGREEMENT GOVERNANCE COMMITTEE**

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**COM (22) 363.**

**Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Specialised Committee on Road Transport as regards the technical and procedural specifications of the use of the Internal Market Information System ('IMI') by the United Kingdom and the contribution to its costs**

**ANNEX to the proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Specialised Committee on Road Transport as regards the technical and procedural specifications of the use of the Internal Market Information System ('IMI') by the United Kingdom and the contribution to its costs**

Submitted by the Department for Transport, 28 November 2022.

**SUBJECT MATTER**

1. This draft decision seeks agreement in the Specialised Committee on Road Transport on the terms under which the UK should have access to the Internal Market Information ("IMI") system. The Specialised Committee met on 21 November 2022 and agreed the draft decision.
2. Through the UK-EU Trade and Co-operation Agreement (TCA), the UK and EU agreed that road hauliers from each party should have unlimited rights to carry goods between the UK and EU. They also agreed some limited rights for a haulier from one party to carry goods between two points within the other party, including between two points within one country. Movements between two points within one country are known as "cabotage".
3. Within the EU, even EU hauliers do not have unlimited cabotage rights. Where EU hauliers do exercise limited cabotage rights, in certain circumstances their drivers may be deemed to be operating as "posted workers", whereby they would have to follow the labour laws (such as about minimum wages) of the member state where they are driving. To help establish this, companies must provide information about the trip on an EU system (the Internal Market Information ("IMI") system).

4. It was agreed in the TCA negotiations that where UK hauliers choose to make use of cabotage rights, they should provide information through the IMI in the same way as EU hauliers do. The parties agreed in Article 7 paragraph 5 of Section 2 of Part A of Annex 31 of the TCA that the detailed arrangements for UK access to the IMI should be set by the Specialised Committee on Road Transport. They also agreed the principle that each party would contribute to the costs associated with the IMI as specified in Article 7 paragraph 6 of Section 2 of Part A of Annex 31 of the TCA. This decision, as agreed by the Specialised Committee, confirms the necessary detailed arrangements.
5. The decision was identified as a proposed EU document subject to scrutiny following the agreement reached between the Government and the Committees in mid-October.

## **SCRUTINY HISTORY**

6. This text has not previously been scrutinised by the Committee.
7. The "IMI Regulation" (Regulation (EU) No 1024/2012) was subject to scrutiny as EU document 13635/11, COM (11) 522: Proposal for a Regulation of the European Parliament (EP) and Council on Administrative Cooperation through the Internal Market Information System. The then BIS submitted an EM dated 14 September 2011. The House of Commons European Scrutiny Committee reported on three occasions that the proposal raised issues of political importance (reports 42, 55 & 61, 10/12) and completed scrutiny on 27 March 2012. The House of Lords European Union Committee considered the proposal in sub-committee B and completed scrutiny on 21 November 2011.
8. EU document 5278/17, COM (16) 821 concerned a proposal to amend Regulation (EU) 1024/2012. This was a Proposal for a Directive of the European Parliament and Council on the enforcement of Directive 2006/123/EC on services in the internal market laying down a notification procedure for authorisation schemes and requirements related to services and amending Directive 2006/123 and Regulation (EU) No 1024/2012. BEIS submitted an EM dated 30 January 2017. The House of Commons European Scrutiny Committee reported on four occasions that the proposal raised issues of legal and political importance (reports 33, 16/17 and reports 2, 11 & 46, 17/19) and completed scrutiny on 28 November 2018. The House of Lords European Union Committee considered the proposal in sub-committee B and completed scrutiny on 14 September 2017.
9. EU document 8838/17, COM (17)256 concerned a proposal to amend Regulation (EU) 1024/2012. It was a Proposal for a Regulation of the EP and Council to establish a single digital gateway to provide information,

procedures, assistance and problem solving services and amending Regulation (EU) 1024/2012. BEIS submitted an EM dated 10 July 2017. The House of Commons European Scrutiny Committee reported on the proposal on three occasions as raising issues of political importance (reports 1, 2 & 11, 17/19) and completed scrutiny on 24 January 2018. The House of Lords European Union Committee considered the proposal in sub-committee A and completed scrutiny on 25 January 2018.

## **MINISTERIAL RESPONSIBILITY**

10. The Secretary of State for Transport.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

11. The technical and procedural specifications relate to the implementation of access for UK hauliers abroad, which are matters for the UK Government across the UK.
12. Implementation in practice of postings of workers provisions in the UK falls in part to competent authorities, which are the Traffic Commissioners for Great Britain and in Northern Ireland a unit of the devolved government.
13. Policy responsibilities for implementation domestically are reserved to the UK Government for Scotland and Wales and are devolved for Northern Ireland.
14. If an operator from Northern Ireland is making a journey that qualifies under the requirements of posting, then they would also need to use the IMI system, in the same way as an operator from Great Britain.
15. The Northern Ireland Civil Service has been consulted in the preparation of this Explanatory Memorandum. No issues were raised.

## **LEGAL AND PROCEDURAL ISSUES**

16. **Legal Base:** Article 218(9) TFEU. The changes are also based on the TCA (particularly Annex 31, Part A, Section 2).
17. **Voting Procedure:** qualified majority.
18. **Timetable for adoption and implementation:** The Commission tabled their proposal on 28 July 2022. The Council gave its approval on 8 November (Council Decision (EU) 2022/2197).

## **POLICY IMPLICATIONS**

19. As noted above in the “subject matter” section, the need for this decision was agreed between the parties and is consequential to the TCA.
20. Article 7 (paragraphs 5 and 6) of Section 2 of Part A of Annex 31 of the TCA states that:
  - “5. The Specialised Committee on Road Transport shall set the technical and procedural specifications of the use of the IMI system by the United Kingdom.
  - “6. Each Party shall participate in the operating costs of the IMI system. The Specialised Committee on Road Transport shall determine the costs to be borne by each Party.”
21. The principle of UK use of the system, and of a financial contribution, were therefore agreed in the TCA. The question for the Government, in considering the proposed approach, is whether the terms of access are workable and fair.
22. UK hauliers will have to provide the same information in the same format as EU hauliers. The Government agrees this is a reasonable approach.
23. Participation in the IMI system allows UK authorities to check the compliance of EU hauliers operating cabotage within the UK with certain UK labour laws including minimum wage provisions.
24. The Department for Transport consulted between 24 June and 5 August 2022 about possible UK legislation to make postings requirements a condition of cabotage undertaken by EU hauliers further to the TCA. It is considering the position further to the consultation.


## **CONSULTATION**

25. There has not been specific consultation and impact assessment about this technical and procedural decision because it is consequential from the TCA. There was an open consultation about possible domestic legislative changes connected with the posting of workers requirements between 24 June and 5 August 2022. A summary of the responses to the consultation is likely to be published soon.

## FINANCIAL IMPLICATIONS

26. As the Decision notes, there are two types of financial contribution to be paid by the UK:
- a one-off fee of € 232,835 (£202,084). This amount was calculated based on the total development costs of the public interface; and
  - an annual overall maintenance cost of IMI Front Office and Back Office of the posting of drivers module, to be paid yearly. The first year's payment is €86,204 (£74,819).
27. The Government accepts this amount is an appropriate and reasonable share of the total system costs, attributed to the UK. (The sterling values of the payments are based on the official exchange rate on 21 November 2022 and the exchange rate to be used is subject to confirmation.)

## MINISTERIAL NAME AND SIGNATURE



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