

THE CHANNEL ISLANDS AND THE EUROPEAN UNION

INTRODUCTION

The Channel Islands comprise the Bailiwicks of Guernsey and Jersey. They have a combined population of approximately 160,000, and a combined GDP of approximately €6 billion. They are located just off the coast of France, in the English Channel. The Islands' economies are mainly based on financial services, tourism and agriculture.

The Bailiwicks are British Crown Dependencies, with a direct allegiance to the British Crown which goes back over 800 years. They are not part of the UK, but the UK Government is constitutionally responsible for the Islands' defence and for formal international representation, while Channel Islanders are British Citizens. The Islands enjoy a high degree of autonomy, including their own parliamentary, fiscal and judicial systems. The constitutional relationship between the Crown Dependencies (the Bailiwicks of Guernsey and Jersey, and the Isle of Man) and the UK and the EU is different to the constitutional relationship between the UK Overseas Territories (such as the Falkland Islands and Gibraltar) and the UK and the EU.

The formal relationship between the Channel Islands and the EU is enshrined in Protocol 3 of the UK's 1972 Accession Treaty, and confirmed in what is now Article 355 (5) (c) of the EU Treaties. Under Protocol 3, the Islands are part of the Customs Union and are essentially within the Single Market for the purposes of trade in goods, but are third countries (ie outside the EU) in all other respects. However the Channel Islands have a close relationship with the EU in many different fields, not simply those covered by the formal relationship under Protocol 3, as this note explains. Both Jersey and Guernsey voluntarily implement appropriate EU legislation or apply the international standards on which they are based.

TRADE AND INVESTMENT

As small islands, Guernsey and Jersey have a services based economy. Virtually all manufactured goods are imported. The main exports of goods are agricultural and fisheries products. Exports of goods from the Channel Islands to the EU and from the EU to the Channel Islands are treated as intra-EU trade. Through being a part of the customs union, the Channel Islands apply the Common External Tariff (CET) to imports of goods from third countries. The Channel Islands are not within the EU common system of VAT so trade in goods is not subject to the EU Principal VAT Directive. For those areas covered by Protocol 3, EU legislation is directly applicable and the Channel Islands are regarded as part of the UK Member State.

▪ Agriculture

Both Bailiwicks have a long agricultural tradition, and although the farming industry is less important in both absolute and relative terms than it was in the past, it remains vital for the fabric of the rural economy. Both Islands are noted for their dairy products made from the unique Guernsey and Jersey cattle breeds, as well as for other products such as cut flowers, potatoes, wine and cider.

Many of these products are exported to the EU. The detailed rules setting out the conditions with respect to trade in agricultural products are set out in EC Regulation 706/73, as amended. Under this Regulation the Channel Islands must adhere to EU rules to facilitate and enable trade in such products including in relation to veterinary legislation; animal health; plant health; marketing of seeds; food; feeding stuffs; and quality and marketing standards. The implementation of legislation is underpinned by active cooperation between veterinary, agricultural and food safety experts in the Channel Islands and their EU counterparts. For example under the auspices of the European and Mediterranean Plant

protection Organization (EPPO) France, the UK, Guernsey and Jersey are collaborating in the Colorado Beetle Campaign (CBC), an early warning system designed to protect the vital potato export industry.

The Channel Islands are outside the Common Agricultural Policy (CAP): they do not pay into nor receive funds from the EU budget. However Regulation 706/73 imposes certain constraints on the Channel Islands' own systems of agricultural support: state aid for exports of certain agricultural products to Member States and to non-EU countries may not exceed the relevant aid, refund or compensatory amount permitted to be granted by the UK under the respective EU rules. Although outside the CAP, the Channel Islands are indirectly influenced by it and the rural development programme in each Bailiwick is consistent with the direction of travel of CAP reform. For example agricultural support in both Guernsey and Jersey has been 'decoupled' from production for several years.

- Fisheries

Both Guernsey and Jersey have a small but vibrant fisheries sector. EU fisheries conservation measures do not apply directly to the Channel Islands under Protocol 3. However under the Fisheries Management Agreements (FMAs) that each has with the UK, Guernsey and Jersey have agreed to comply with the UK's EU obligations under the Common Fisheries Policy (CFP) for their extended territorial sea. Under the terms of the FMAs, fish stocks to which the EU's Total Allowable Catch (TAC) rules apply which are caught by any fishing vessel registered in the relevant Bailiwick count against quota allocated to the UK under the CFP. Guernsey and Jersey vessels are British flagged and are treated as EU vessels when they land fish in an EU Member State (but only for that purpose). The Channel Islands do not pay into or receive money from the EU (or UK) budget, including the European Maritime and Fisheries Fund - EMFF.

- Competition policy

Competition policy per se is not within the scope of Protocol 3 (although normal conditions of competition in trade in agricultural products apply) so there is no obligation on the Channel Islands to follow general EU competition rules. However the Channel Islands' own legislation deals with competition questions in a manner consistent with treatment of similar questions under EU competition law. The EU's robust competition rules have over time increasingly set the global standard and it is beneficial for the Channel Islands that there is such a body of law to draw on. EU competition law protects companies in the Channel Islands from abuse of a dominant position by an EU based supplier to a local company (eg in the energy field); and it prevents a company treating the Channel Islands differently through price discrimination.

- Investment

The Channel Islands are third countries for the purposes of the EU's Common Commercial Policy (CCP). Only those provisions within EU trade and investment agreements that give improved market access to the EU for goods from a non-EU country will therefore apply directly in the Channel Islands by virtue of Protocol 3. For international agreements related to other aspects of trade and investment, the Channel Islands continue to rely on the UK to represent them internationally and extend agreements to the Channel Islands on their behalf where agreed.

TRANSPORT, ENERGY AND THE ENVIRONMENT

▪ Environment

Protection of the environment on land and in the surrounding marine areas is crucial for the unique ecosystems of the Channel Islands. Environmental legislation is not covered by Protocol 3 but in some cases EU environmental standards, in areas like air and water quality, are used as guidelines for domestic legislation in the Channel Islands, even though there is no legal obligation to do so. The Channel Islands are committed to some international environmental standards on which EU legislation has subsequently been based. For example, the Channel Islands are covered by the UK's ratification of the Basel Convention on the control of trans-boundary movements of hazardous waste and their disposal, although for the purposes of the EU's implementing legislation in this area they are third countries. There is close bilateral cooperation with the UK and France on maritime protection.

▪ Transport

Air and sea links are vital for small island economies like Guernsey and Jersey. The Channel Islands are outside the EU for the purposes of transport, since this is a service provision which is not covered by Protocol 3. However virtually all aviation and shipping links from the Channel Islands are to the UK, France and other EU destinations. This requires the operator (the airline or ferry company) and the airport or port to comply with relevant EU standards. For example, the Islands' airports have recently been formally assessed by the Commission as meeting EU aviation security standards – an assessment endorsed by the EU's aviation security committee. Otherwise transport legislation in the Channel Islands is largely based on international standards set by bodies such as the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO). These international standards have often been transposed into EU law, and built upon.

▪ Energy

Like transport, energy services are a service under EU law and so outside the scope of Protocol 3. EU electricity Directives in the Third Energy Package therefore generally do not apply in the Channel Islands. However the bulk of the energy needs in the Channel Islands are met from supplies from the EU, mainly by electricity cable interconnectors from France, so the Channel Islands have a strong interest in a properly functioning, competitive EU energy market, with security of supplies. Each Bailiwick has significant marine energy resources (both wind and tidal current) that, if developed, could be exported into the EU to assist with climate change commitments. The proximity of the Flamanville nuclear power station to the Channel Islands makes EU competence for nuclear safety standards under the Euratom Treaty of importance. There is close cooperation between the Channel Islands and the French authorities on emergency planning and on radioactive sampling.

▪ Telecommunications

The Channel Islands are not members of the International Telecommunications Union and the UK Regulator, OFCOM, manages and licences spectrum rights of use on the Channel Islands' behalf. The Channel Islands are therefore directly affected by the relevant European legislation concerning spectrum and benefit from being part of a larger European group when harmonising spectrum usage in international negotiations. The Channel Islands are part of the UK telephone numbering plan which is managed by OFCOM in accordance with the relevant EU Directives. However, Channel Islands consumers going abroad (and UK/EU consumers visiting the Channel Islands) do not currently benefit from the lower voice and data charges secured by the EU Roaming Regulations.

PEOPLE

- Tourism

Guernsey and Jersey are attractive tourist destinations with their natural beauty and their unique culture and heritage. Tourism is therefore an important industry. The Channel Islands are part of the Common Travel Area (CTA) with the UK and Ireland. This provides for passport-free travel and simplified entry procedures. It does not derive from EU law but predates it and hence is not linked to Protocol 3. Like the UK and Ireland, Guernsey and Jersey are outside the visa/check-free Schengen area and so operate border controls for flights or ships arrivals from countries other than the UK or Ireland. EU nationals are not subject to any visa controls.

- Immigration and emigration

As small islands, Guernsey and Jersey need to apply a labour and immigration policy which responds to the needs of the economy while ensuring that housing and population development is sustainable. Controls in respect of the right to work by EU nationals in the Channel Islands are dealt with under the respective domestic legislation in each island, subject to the requirement set out in Protocol 3 that the Channel Islands must treat all EU nationals equally. So, for example, in the application of their immigration policies they cannot favour, say, British nationals over other EU nationals.

Protocol 3 excludes “Channel Islanders” from the provisions of the Treaty relating to the free movement of persons provisions of the Treaty. However for Protocol 3 purposes, a person who was born (or who has at least one parent or grandparent who was born) in the UK, or who has resided in the UK for 5 years is not a “Channel Islander”. Such people do enjoy free movement throughout the EU (including the right to work and reside).

- Data protection

The protection of personal data, and ensuring that when such data needs to be transferred to another jurisdiction it is done efficiently and securely, is vital for public bodies and for industry in Guernsey and Jersey. Guernsey and Jersey’ domestic data protection legislation is based on EU law Guernsey and Jersey are among a small group of third country jurisdictions that have been officially assessed by the Commission as meeting current EU data protection standards. The Channel Islands Data Protection Commissioner regularly attends meetings with her EU counterparts.

TAX AND FINANCE

- Financial Services

The economies of Guernsey and Jersey make a positive contribution to growth in the wider European economy. As major well-regulated financial centres, both Guernsey and Jersey are significant net providers of liquidity and investment funds to the EU economy, as has been demonstrated by various independent studies. For both Islands combined the level of banking deposits held in 2013 was around £236 billion (= €295 billion) and the level of funds was £492 billion (= €615 billion). These deposits and funds are drawn into the UK and the rest of Europe largely from the rest of the world and the Islands’ marketing efforts are directed at increasing this flow from the Far East, Gulf and other wealth creating countries outside of Europe. Financial services firms are major employers in the islands, with over a quarter of the workforce (19,000 jobs) employed in the sector. The Channel Islands therefore share a strong interest in a sustainable, stable regulatory environment, both locally and in their key export markets, and their supervisory authorities work closely with European counterparts to ensure this.

Protocol 3 does not cover services, so the Channel Islands are treated as third countries for the purposes of EU financial services legislation. The Channel Islands have a robust and internationally respected system of financial regulation. Their own independent regulators enjoy excellent regulatory cooperation with their EU counterparts, including with the new European Supervisory Authorities. The Guernsey and Jersey regulators were in the first wave of third country jurisdictions to have Memoranda of Understandings approved by the European Securities and Markets Authority (ESMA) with respect to the Alternative Investment Fund Managers Directive (AIFMD). The regulators are taking an increasing profile in international standards bodies. On that basis, they work with European Institutions directly or in collaboration with the EU counterparts to ensure effective supervision of cross border firms' activities.

- Taxation

Guernsey and Jersey have the same need as EU Member States to protect their public finances, which are also totally dependent on direct and indirect taxation regimes designed to meet the domestic economic needs of each jurisdiction (0% standard rate of corporate tax, 10% for banks and some other financial services and 20% for individuals and certain companies), underpinned by strong general anti-avoidance rules (GAAR). The Channel Islands therefore have common cause with the EU in tackling tax evasion, fraud and aggressive tax avoidance and believe these objectives are best achieved by working in partnership, as part of the wider international community, in the development and effective implementation of internationally agreed standards.

The Channel Islands have shown themselves by their actions to be reliable, active and cooperative partners of the EU in the field of tax cooperation. They voluntarily committed in 2003 to the EU's Code of Conduct on Business Taxation and their corporate tax regimes have been assessed as being fully compliant with the Code. They have entered into bilateral arrangements with all EU Member States under the EU Savings Directive. They have joined the OECD/Council of Europe Multilateral Convention on Mutual Assistance in Tax Matters. They are in the "Early Adopters Group" (including almost all EU Member States) that is developing and promoting automatic exchange of information as the new global standard.

- International Sanctions

The Channel Islands fully recognise the obligations (domestic and international) that follow from their positions as International Finance Centres and accordingly adopt all EU sanctions and asset freezes voluntarily, to ensure institutions regulated in the Islands cannot be used as a 'back door' from Europe for parking or transferring targeted assets. All EU restrictive measures imposed since January 2011 have been implemented and are administered robustly, while significant attention is paid to the grant of any licences or authorisations, and the Islands' competent authorities communicate proactively with their counterparts in Member States.

- Tackling Financial Crime

The Channel Islands recognise the important role they have to play in tackling financial and economic crime, particularly in the areas of anti-money laundering (AML) and countering terrorist financing (CFT). The IMF assessed Jersey's and Guernsey's compliance with AML/CFT standards, concluding their legal systems and enforcement were among the strongest in the world. Many EU Member States, including the UK and Germany, also recognise the Channel Islands AML/CFT regimes as equivalent to the relevant EU Directive. Meanwhile the Islands participate actively and constructively in the development of new international standards, including providing input to the 2012 consultation process for the revision of the EU AML/CFT Directive. In an international context, the World Bank's Puppet Masters report cited

the Channel Islands as valuable models in the areas of Beneficial Ownership and Company Law respectively.

- Asset recovery

Helping countries that have emerged from dictatorship to recover assets illegally hidden abroad during the dictatorship is a priority for the international community. As major international finance centres, Guernsey and Jersey are playing an active part in these international efforts. The Channel Islands were among the founder members of the Camden Asset Recovery Inter-Agency Network (CARIN) in 2004. Guernsey will have the CARIN Presidency in 2015. Both Jersey and Guernsey participate actively in the exchange of information and co-operation through CARIN, the European Judicial Network, Eurojust and the Egmont Network of Financial Intelligence Units. The Channel Islands have participated in the Stolen Asset Recovery initiative (StAR) of the United Nations Office on Drugs and Crime (UNODC) and of the World Bank since the outset in 2007, and contributed to successive Fora on Asset Recovery organised by the G8, as part of the Deauville Accord.

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The Channel Islands Brussels Office (CIBO)

In 2011 the governments of Guernsey and Jersey established a joint government office in Brussels to help promote and protect the Channel Islands interests in Europe and to strengthen engagement with the EU institutions and the individual Member States. For further information about the Channel Islands and the EU, or about the work of the Brussels office, please contact CIBO on info@channelislands.eu. You may also want to look at its website www.channelislands.eu.