



House of Commons
European Scrutiny Committee

**Fifteenth Report of
Session 2016–17**

Documents considered by the Committee on 26 October 2016

*Report, together with formal minutes,
minutes of evidence and appendices*

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Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

Staff

The staff of the Committee are Eve Samson (Clerk), David Griffiths, Terry Byrne, Leigh Gibson, Sibel Tanner, Alistair Dillon, Peter Cost (Clerk Advisers), Arnold Ridout (Legal Adviser) (Counsel for European Legislation), Joanne Dee (Assistant Legal Adviser) (Assistant Counsel for European Legislation), Mike Winter (Second Clerk), Julie Evans (Senior Committee Assistant), Jane Bliss, Rob Dinsdale, Beatrice Woods, (Committee Assistants), and Ravi Abhayaratne, Paula Saunderson (Office Support Assistants).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is (020) 7219 3292/5465. The Committee's email address is escom@parliament.uk.

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Meeting Summary

The Committee considered the following documents:

Brexit related issues

The Committee is now looking at documents in the light of the UK decision to withdraw from the EU. Issues are explored in greater depth in report chapters and, where appropriate in the summaries below, but the Committee notes that in the current week the following issues have also arisen in documents or in correspondence with Ministers:

- **The UK’s intention to seek to retain or replace any provisions of the EU-Cuba agreement post-Brexit.**
- **Prüm**—In correspondence with the Committee, the Minister for Policing and Fire Services at the Home Office has confirmed that the Government is continuing with the implementation of the **Prüm** package for sharing data on dna profiles, fingerprints and vehicle registration data, and that it should be possible for the UK to reach agreement on participation in **Prüm** once it has left the UK, although it would be “premature to speculate” on whether the Government intends to enter into such an agreement.
- **Cross-border parcel delivery**—Management of, and preparation for, any trade-offs between the wider Brexit negotiations and individual proposals, such as the proposal to reduce the costs of cross-border parcel delivery;
- **European Border and Coast Guard**—how the basis and scope for the UK to cooperate with the European Border and Coast Guard would differ before and after the UK’s withdrawal from the EU.

Airport Security Equipment

The Committee considered a proposed Regulation to set up a legally-binding certification procedure for various types of screening equipment used at airports in the EU. It decided to recommend a Reasoned Opinion for breach of the subsidiarity principle, which requires that the EU should only legislate if Member States themselves cannot sufficiently achieve the policy in question and it can be better achieved by the EU in terms of both scope and impact. (The French National Assembly has already issued its own Reasoned Opinion.)

The proposed Regulation has the worthy aim of helping a wider choice of compliant airport security screening equipment to reach the EU-wide market more quickly than at present and could aid innovation. However, the committee was concerned that:

- it was unclear that the proposal strikes the right balance between action necessary at EU level and action best left to Member States as it does not explicitly refer to the ability of Member States to continue to apply higher security standards for aviation equipment (“More Stringent Measures”) permitted by the Civil Aviation Security Regulation;

- the Commission’s assumption that Member States would not voluntarily improve upon their existing cooperation at national level on the testing of equipment was questionable; and
- the benefits of EU action might be undermined by the risk to confidential data associated with the equipment and related procedures and by the cost and bureaucracy involved for Member States in setting up certification processes and bodies.

Not cleared; Reasoned Opinion recommended for debate in European Committee A; further information requested and drawn to the attention of the Transport and Home Affairs Committees

Establishing a European Border and Coast Guard

The European Border and Coast Guard became operational on 6 October and is intended to ensure “an efficient, high and uniform” level of control at the EU’s external borders. The Regulation establishing the European Border and Coast Guard builds on aspects of the Schengen free movement rules in which the UK does not participate. It will not therefore apply to the UK but includes provisions on operational cooperation with the UK which will apply while the UK remains a member of the EU, as well as provisions on cooperation with third (non-EU) countries which will apply once the UK has left the EU. The European Scrutiny Committee asked the Immigration Minister (Robert Goodwill) to explain how the basis and scope for the UK to cooperate with the European Border and Coast Guard would differ before and after the UK’s withdrawal from the EU. In his response, the Minister says that the Government has yet to agree its negotiating position on future cooperation with the European Border and Coast Guard, but adds that it will form part of “wider negotiations for the UK’s exit from the EU” on which the Government “will not be giving a running commentary.

The Committee makes clear that it did not request “a running commentary”, but a considered analysis of the provisions of the Regulation establishing the basis for cooperation with the UK before and after Brexit takes place. It says that such an analysis could have been provided without in any way prejudicing the Government’s negotiating position. The Committee notes that the Government’s negotiating position will need to be informed by an assessment of the contribution that cooperation with Frontex (the precursor to the European Border and Coast Guard) has made to safeguarding the UK’s borders, mitigating pressures at the external borders of the UK’s neighbours, and facilitating the return of illegal immigrants. The Committee asks the Minister to share his assessment with Parliament and to indicate how the Government intends to involve Parliament in any decisions on future cooperation with the European Border and Coast Guard after the UK has left the EU. As the European Border and Coast Guard is now operational, the Committee clears the Regulation from scrutiny.

Cleared; further information requested; drawn to the attention of the Home Affairs Committee and the Committee on Exiting the European Union.

Investments for jobs and growth

The Commission has presented a Communication on strengthening EU investments for jobs and growth by developing proposals to extend the European Fund for Strategic Investments, both in terms of duration and size, and to create an EU External Investment Plan. It accompanies the Communication with a proposed Regulation to implement extension of the European Fund for Strategic Investments to 2020 and to increase the investment target to €500 billion (£424 billion). The Commission also draws attention to separate legislative proposals it is presenting in relation to the External Investment Plan. The Government is, in principle, supportive of extending the European Fund for Strategic Investments as suggested and the EU External Investment Plan. Given that the proposals outlined in the Communication are subject to separate scrutiny, we have cleared this document from scrutiny. However, we have retained the proposed Regulation, one of those proposals, under scrutiny pending information from the Government about Council consideration of it and, in the context of Brexit, about the possible financial consequences for the UK.

(a) Commission Communication: Strengthening EU investments for jobs and growth: Cleared; (b) Proposed Regulation concerning the European Fund for Strategic Investments and the European Investment Advisory Hub: Not cleared; further information requested

EU-Cuba Political Dialogue and Cooperation Agreement (PDCA)

This PDCA is the first bilateral agreement between the EU and Cuba. It aims to serve as a basis for increased cooperation and dialogue across a broad range of policies. The Committee raises two sets of issues with the Government. The first is a lack of transparency as to the extent to which the EU is exercising competence and the extent to which Member States are exercising their competence. The second is the question of whether any part of the PDCA will apply to UK-Cuba relations post-Brexit and whether the UK will seek to replace any provisions that do not apply post-Brexit. The Committee decided to waive scrutiny in advance of a decision in Council.

Not cleared; scrutiny waiver granted; further information requested.

European Fisheries Control Agency

A Commission Communication at the end of 2015 on the effective management of Europe's external border proposed the establishment of a European Border and Coast Guard Agency (EBCA), based on the existing External Borders Agency (Frontex), with enhanced powers and a right to intervene in crisis situations.

This package of measures included a proposed Regulation which would amend the remit of the European Fisheries Control Agency (EFCA) in order to allow it to cooperate with the new Agency, notably by supporting national authorities carrying out coastguard functions at national, EU and, where appropriate, international level.

When the Scrutiny Committee first reported to the House on 24 February 2016, it noted that information gathered by the EFCA and shared with the new Agency and with other Member States would be used for the prevention, detection and investigation of crime, as well as for migration control. The Government therefore considered that the proposal

constituted a partial Justice and Home Affairs measure triggering the UK’s opt-in, and said that it would press for the legal bases in Title V of Part III of the Treaty on the Functioning of the European Union to be cited. It also said that, even if this was not agreed, it would, in line with its current approach, take an opt-in decision by the deadline of 16 March 2016, having regard to the benefits that would arise from the proposal, and its effect on UK assets and resources.

Following further developments the UK is now broadly content with the policy content of the proposal, having satisfied itself that potentially problematic elements in the proposal—such as capacity sharing and joint multipurpose operations—would be voluntary for Member States. It has also confirmed that the UK chose not to exercise its pre-adoption opportunity to opt-in, but may wish to do so after the measure is adopted.

Not cleared; further information requested.

Cross-border parcel delivery

As high delivery costs are perceived by businesses as the most serious single barrier to e-commerce, the Commission has proposed new rules to increase price transparency for cross-border parcel delivery and to improve regulatory oversight of the market. Following the vote to leave the EU, the Minister has told the Committee that the Government will continue to negotiate constructively while “ensuring that this negotiation does not have a negative impact on the wider deal being negotiated.” The Committee asks the Minister how such trade-offs will be resolved and what consultations the Government is undertaking to ensure that it is fully aware of the risks involved in any trade-off. Information is also requested on the progress of discussions.

Not cleared; further information requested; drawn to the attention of the Committees on Business, Energy and Industrial Strategy and on Exiting the European Union.

Documents drawn to the attention of select committees:

(‘NC’ indicates document is ‘not cleared’ from scrutiny; ‘C’ indicates document is ‘cleared’)

Business, Energy and Industrial Strategy Committee: Cross-border parcel delivery services [Proposed Regulation (NC)]

Exiting the European Union Committee: Establishing a European Border and Coast Guard [Proposed Regulation (C)]; Cross-border parcel delivery services [Proposed Regulation (NC)]

Home Affairs Committee: Establishing a European Border and Coast Guard [Proposed Regulation (C)]; Aviation Security [Proposed Regulation (NC)]

Transport Committee: Aviation Security [Proposed Regulation (NC)]

1 Cross-border parcel delivery services

Committee’s assessment	Politically important
<u>Committee’s decision</u>	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Exiting the European Union Committee
Document details	Proposal for a Regulation on cross-border parcel delivery services.
Legal base	Article 114; ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(37821), 9706/16 + ADDs 1–6, COM(16) 285

Summary and Committee’s conclusions

1.1 High prices for parcel delivery deter consumers and small businesses from buying and selling cross-border within the EU. Two particular reasons for this market failure have been identified. First, consumers and small businesses lack information about available delivery services, providers and prices. Second, regulation of cross-border parcel delivery is very limited. As part of its package of measures designed to boost cross-border e-commerce, the Commission proposes to increase price transparency for cross-border parcel delivery and improve regulatory oversight of the market.

1.2 When the Committee first considered the proposal at its meeting of 6 July, the Committee raised a series of questions. Several of these were related to the UK’s departure from the EU given that the Government’s Explanatory Memorandum had been submitted prior to the Referendum.

1.3 The details of the response from the Minister for Small Business, Consumers and Corporate Responsibility, (Margot James), are set out below. Her Brexit-related comments are inevitably of a tentative nature. In summary, she notes that the terms of the legislation could be applicable to the UK after it has withdrawn from the EU but that this depends on a number of factors, including the terms negotiated “in relation to access to the EU Single market”. She adds that the UK intends to play a full role in the negotiation of the Regulation keeping in mind that this may be applicable to the industry once the UK exits the EU, depending on the terms which are agreed. The Government will be mindful to ensure that this negotiation does not have a negative impact on the wider exit deal being negotiated.

1.4 **We note that the Government will continue to negotiate constructively while “ensuring that this negotiation does not have a negative impact on the wider deal being negotiated.” If there needs to be a trade-off between negotiations on this and other elements of the Digital Single Market on the one hand and the wider negotiation on the other, how will that be resolved? What consultations is the Government undertaking to ensure that it is fully aware of the risks involved in any trade-off?**

1.5 On the negotiation of this proposal specifically, we note that a Presidency compromise text was published on 12 October for discussion among officials on 18 October. We look forward to further information about progress in both Council and the European Parliament, including the Government’s view on the compromise text and any specific concerns that the Government is raising during the negotiations.

1.6 We consider that the Minister’s letter raises issues that will be of interest to both the Committees on Business, Enterprise and Industrial Strategy and on Exiting the European Union. We therefore draw it to the attention of those Committees. We retain the proposal under scrutiny and look forward to a response well in advance of any Council meeting at which agreement to a General Approach is anticipated.

Full details of the documents

Proposal for a Regulation on cross-border parcel delivery services: (37821), [9706/16](#) + ADDs 1–6, COM(16) 285.

Background

1.7 The Commission’s 2012 Communication on e-commerce¹ identified improving the physical delivery of goods ordered online as one of the key elements for e-commerce growth. Subsequently, its 2013 Parcel Roadmap² set out various actions but, despite some improvements, the Commission considers that further measures are needed to improve both price transparency and regulatory oversight. This is because the prices for some cross-border services are still high and not all national regulatory authorities have the ability to collect the data needed to monitor the evolution of parcel markets.

1.8 Earlier in the year, the Government submitted a “non-paper” to the European Commission advocating regulation of cross-border parcel delivery and making various suggestions, including improvement of transparency and market oversight. The Government emphasised the need for transparency of information not only about price but about other aspects of service such as delivery options and the cost of returns.³

1.9 The Committee’s Report of 6 July⁴ sets out further information on: the background to the Commission’s proposal; the details of that proposal; the Government’s position; and the issues raised by the Committee.

Minister’s letter of 10 October 2016

1.10 On the likely timetable for adoption of the legislation, the Minister notes:

“The Slovakian Presidency has an ambition to reach a Common Approach by December 2016. It is not yet clear whether this is achievable or likely timings beyond this stage.”

1.11 As to whether the UK would wish to apply the terms of the legislation to some degree after withdrawing from the EU, the Minister says:

1 COM(11) 942.

2 COM(13) 886.

3 “Opportunities to develop cross-border parcel delivery”, UK Government, January 2016.

4 Seventh report HC 71–v (2016–17), [chapter 5](#) (6 July 2016)

“Whether the UK would want to apply the terms of the legislation to some degree after the UK has left the EU is dependent, amongst other things, on:

- the terms negotiated for the UK in relation to access to the EU Single market;
- whether the Digital Single Market forms part of that; and
- whether the final agreed text of the Regulation meets the aims we set out in our original non-paper.”

1.12 The Minister goes on to observe:

“There would be some limited potential for divergent domestic and EU laws on cross-border parcel delivery to operate as a barrier to trade. However, we would aim to identify in advance where that could be the case and consider measures to mitigate such barriers.”

1.13 In response to the Committee’s question about how active a role the Government intends to play during negotiations, the Minister says:

“Until European Union exit negotiations are concluded, the UK remains a full member and all the rights and obligations of EU membership remain in force. During this period the Government intends to continue to negotiate, implement and apply EU legislation.

“As previously set out, the Government was proactive in explaining the UK’s views on what it thought the Commission should focus on in respect of cross-border parcels through the publication of a non-paper. We intend to play a full role in the negotiation of the Regulation keeping in mind that this may be applicable to the industry once the UK exits the EU, depending on the terms which are agreed, but ensuring that this negotiation does not have a negative impact on the wider deal being negotiated.”

1.14 The Minister responds to the Committee’s query regarding consultation of the Devolved Administrations in the following terms:

“The Devolved Administrations have been approached for comment on this Regulation. Overall, the response has been limited but it is worth noting that the Government is fully aware of the need to maintain good parcel delivery services to all parts of the UK, especially when it comes to the end product of online retail. The Government recognises that a wider focus is needed when it comes to tackling delivery costs, and has set out to ensure that online retailers have all the relevant information to hand, to make sure that they are both complying with existing law and making sure that consumers are getting the best deal when it comes to delivery costs.

“Whilst this is not specific to cross-border delivery, the principles are the same and could be followed on a wider stage. We intend to submit the short guidelines to the Commission as a form of best practice, and ask them to consider something similar to go onto the COSME-funded website they are launching as one of the measures in the cross-border parcels regulation.”

1.15 The Committee noted that, having completed their assessment of affordability of tariffs, national regulatory authorities are required to submit confidential and non-confidential versions of their assessment to the Commission. The Committee asked whether guidance should be included within the proposal as to what should be considered ‘confidential’ and ‘non-confidential’, or whether provision should be made for such details to be decided at a later date, so as to ensure consistency of information across jurisdictions. The Minister responds in the following terms:

“In terms of defining what should be considered confidential and non-confidential, this is something the UK intends to raise at working group level to understand if further consideration of what should fall within these remits should be considered domestically or if, this is something that should be given to the ERGP [European Regulators’ Group for Postal Services] to consider and produce guidance on to ensure consistency of information across jurisdictions.”

1.16 As regards the extent to which Royal Mail’s approach of charging a standard price for cross-border parcel delivery within the EU, regardless of the specific destination and actual cost incurred, is standard practice among universal service providers, the Minister says:

“According to information provided through the Commission impact assessment,⁵ there are a number of pricing models used by Member States for international standard parcels. Ten Member States use a universal price to all other Member States with the others using a varying number of zones ranging from 2–27.”

1.17 The Committee noted that, in its paper earlier in the year, the Government emphasised the need for greater transparency of information about aspects of parcel delivery other than price, such as delivery options. As these aspects did not appear to be included in the Commission proposal, the Committee asked whether the Government would be pressing for their inclusion. The Minister responds:

“The Commission have emphasised that the measures in the cross-border parcels regulation are part of a package and that complementary measures as part of the wider Digital Single Market (DSM) package should all contribute to deliver the overall policy objective. Whilst we recognise the potential benefit of exploring additional measures such as obligations on retailers, we also recognise any sort of intervention here would need to be supported by a strong evidence base as to the benefit and not impose any additional burdens on business. The Commission has ruled out the prospect of introducing any obligations on retailers as part of this measure.”

1.18 Finally, the Committee asked whether the proposal goes far enough in helping consumers to understand and compare prices given that transparency of tariffs is applicable only to those set by universal service providers. In response, the Minister says:

“UK consumers are well served by existing price comparison mechanisms. As the proposal is designed to help consumers and SMEs as both receivers

5 <http://data.consilium.europa.eu/doc/document/ST-9706-2016-ADD-4/en/pdf> Pricing for International standard parcels is unavailable for Estonia, Cyprus, Luxembourg and Portugal.

and senders of goods and not necessarily starting or in their resident Member State—for example a UK consumer arranging for shipment of a good from Croatia to the UK—the current proposal should be a good indicator of the ceiling price for basic delivery services in each Member State.”

Previous Committee Reports

Seventh report HC 71–v (2016–17), [chapter 5](#) (6 July 2016).

2 EU external borders: role of the European Fisheries Control Agency

Committee’s assessment	Legally and politically important
Committee’s decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation amending Council Regulation (EC) No. 768/2005 establishing a Community Fisheries Control Agency
Legal base	Article 43(2) TFEU, ordinary legislative procedure, QMV
Department	Environment, Food and Rural Affairs
Document Numbers	(37402), 15395/15, COM(15) 669

Summary and Committee’s conclusions

2.1 A Commission Communication⁶ at the end of 2015 on the effective management of Europe’s external border launched a new package of measures, intended to address “weaknesses and gaps” in the management of the EU’s external borders, and proposed the establishment of a European Border and Coast Guard Agency (EBCA), based on the existing External Borders Agency (Frontex), with enhanced powers and a right to intervene in crisis situations.

2.2 The wider package of measures put forward by the Commission included two proposed Regulations—one⁷ to amend the remit of the European Maritime Safety Agency (EMSA) to allow it to cooperate with the new agency in support of national authorities’ coastguard activities, and this document, which would have a similar effect as regards the European Fisheries Control Agency (EFCA). In particular, the proposal would require the Agency to cooperate with the other two agencies, and introduce a new article, aimed at supporting national authorities carrying out coastguard functions at national, EU and, where appropriate, international level.

2.3 The Government said that it was considering its detailed position in the context of the Commission’s wider migration package, but noted that information gathered by the EFCA and shared with the other two Agencies and with other Member States would be used for the prevention, detection and investigation of crime, as well as for migration control. It therefore considered that the proposal constituted a partial Justice and Home Affairs measure triggering the UK’s opt-in, and said that it would press for the legal bases in Title V of Part III of the Treaty on the Functioning of the European Union to be cited. It also said that, even if this was not agreed, it would, in line with its current approach, take an opt-in decision by the deadline of 16 March 2016, having regard to the benefits that would arise from the proposal, and its effect on UK assets and resources.

6 (37406), 15403/15: Twentieth Report HC 342–xix (2015–16) [chapter 10](#) (20 January 2016); see other relevant chapters (37403), 15398/15: Eleventh Report HC 71–ix (2016–17), [chapter 8](#) (14 September 2016); Sixth Report HC 71–iv (2016–17), [chapter 7](#) (15 June 2016); Twenty-eighth Report HC 342–xxvii (2015–16), [chapter 11](#) (13 April 2016); and Twenty-fifth Report HC 342–xxiv (2015–16), [chapter 10](#) (9 March 2016).

7 (37401), 15390/15: see Twenty-fourth Report HC 342–xxiii (2015–16), [chapter 6](#) (24 February 2016).

2.4 Since we first reported to the House on 24 February 2016, there have been a number of developments on this proposal and on the parallel proposals regarding the EBCA and EMSA, and, in each case, the UK is now broadly content with the policy content. In the case of the EFCA, it has satisfied itself that potentially problematic elements in the proposal—such as capacity sharing and joint multipurpose operations—would be voluntary for Member States, and has confirmed that the UK chose not to exercise its pre-adoption opportunity to opt-in, but may wish to do so after the measure is adopted.⁸

2.5 **This proposal has now been adopted as Regulation 2016/1626, and has come into force. The Government has asserted that the UK opt-in is engaged, but we do not agree.⁹ The Government’s position therefore is that some or all of the Regulation does not apply to the UK when the text of it makes no such indication. That may change if the government opts in post adoption, which it is thinking of doing. We ask the Minister whether the Government has decided to opt-in post adoption and, if so, to what extent.**

2.6 **If the response is that the Government is not going to opt-in, we ask the Minister to indicate whether he has taken any other step (such as a minute statement) to make it clear that the UK opt-in applies and that the UK has not opted in. We also ask him:**

- **whether the UK will seek to challenge the instrument on the grounds that it does not indicate that the UK opt-in applies and has not been exercised; and**
- **whether, in the light of the joint letter of 3 June 2014 from the then Home Secretary and the then Justice Secretary,¹⁰ he nevertheless considers that the Regulation applies to the UK.**

2.7 **We should be grateful for a reply to these questions by the end of November.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No. 768/2005 establishing a Community Fisheries Control Agency: (37402), [15395/15](#), COM(15) 669.

Background

2.8 In view of the fragmentation of the Schengen free movement area, and the growing number of Member States introducing temporary internal border controls to stem the current flow of refugees and migrants, the Commission put forward in December 2015 a Communication—A European Border and Coast Guard and effective management of Europe’s external borders—launching a new package of measures intended to address “weaknesses and gaps” in the management of the EU’s external borders.

⁸ All three proposals have been progressed simultaneously by written procedure in order to ensure consistency between each component, with final Council approval having been given on 14 September. The Regulation has now come into force (on 6 October 2016).

⁹ The consistent view of the Committee (and the EU institutions) is that the UK opt-in under protocol 21 is only engaged if the measure has a legal basis from Title V or Part Three TFEU, which is not the case here.

¹⁰ Setting out the [Government Position on the JHA Opt-in](#). See the fourth and fifth paragraphs.

2.9 The most significant of these was the establishment of a European Border and Coast Guard Agency (EBCA), based on an enhancement of the EU's existing External Borders Agency (Frontex), but the Commission has also proposed two additional measures, one of which would amend the remit of the European Maritime Safety Agency (EMSA) to allow it to cooperate with the EBCA in support of national authorities' coastguard activities.

2.10 The other proposal, contained in this document, would have a similar effect in relation to the European Fisheries Control Agency (EFCA) which was established under Regulation (EC) No. 768/2005 in order to coordinate control and inspection by Member States, and to assist them in fulfilling their obligations under the Common Fisheries Policy (CFP). It also coordinates measures to control illegal, unreported and unregulated (IUU) fishing; contributes to the training of inspectors and exchange of practice between Member States; and performs tasks relating to the international obligations of the Union and its Member States.

2.11 More specifically, the proposal would amend the existing Regulation in two respects. First, by including an obligation on the Agency to cooperate with the EMSA and the proposed EBCA to support national authorities carrying out coastguard functions by providing services, information, equipment and training, and by coordinating multipurpose operations. Secondly, by requiring it, through improved cooperation with the other two agencies, to support national authorities carrying out coastguard functions at national, EU and, where appropriate, international levels. In the process, it would address the sharing of information generated by ship reporting systems; the provision of surveillance and communication services; capacity building at national and Union level; and capacity sharing.

2.12 As we noted in our Report of 24 February 2016, the Government intended to consider its detailed position on the proposal in the context of the Commission's wider migration package, but had observed that, as part of its remit, the EFCA had already developed expertise in risk management strategies, and the identification of possible IUU fishing, as well as expertise on work with third countries. It also said that the amendments would enable information gathered by the EFCA to be used for the prevention, detection and investigation of crime, including the trafficking of humans, weapons and drugs, and for migration control, and would allow the Commission to make recommendations for cooperation on coastguard functions and the exchange of information and cooperation at national, EU and international level.

2.13 In view of this, the Government considered that the Justice and Home Affairs obligations within this measure formed one of its predominant purposes, and that consequently it was a partial JHA measure triggering the UK's opt-in. It therefore proposed to press for the legal bases¹¹ in Title V of Part III of the Treaty on the Functioning of the European Union to be cited so as to clarify the JHA nature of the measure, and that the opt-in applies. At the same time, it cautioned that, since the proposal would be amending a fisheries measure, the Commission was unlikely to agree that the opt-in applied in this case, but it added that, even if Title V TFEU legal bases are not cited, the Government considered that the JHA opt-in had been triggered, and would take an opt-in decision (for which the three month deadline expired on 16 March 2016).

11 Article 77(2) (d) and Article 87(2)(a) TFEU.

2.14 The Minister also commented that the Government was committed to taking all opt-in decisions on a case-by-case basis, having regard to the national interest, whilst paying particular regard to the benefit derived from sharing fisheries information and intelligence which can be used by other national authorities for law enforcement purposes, and from cooperation to strengthen the EU's external border and tackle human trafficking. He further noted that the proposal on capacity sharing would extend the EFCA's remit, and that, whilst this may be the most effective way to control the EU's external border, the scope of the proposed solutions and measures, and their impact on and use of UK assets and resources, needed to be fully explored and assessed.

Minister's letters of 26 April, 25 July and 20 September 2016

2.15 We have subsequently received a number of letters from the Minister of State at the Department for Environment, Food and Rural Affairs (George Eustice). The first of these, on 26 April 2016, said that, following discussions at working group level, a compromise Presidency text had been endorsed by COREPER on 22 February, which included wording making it clear that capacity sharing and participation in joint multipurpose operations would be voluntary for Member States, thereby addressing one of the UK's main concerns. He added that the Government would wish to ensure that the text was protected in future negotiations, most notably the trilogue discussions which were expected to commence shortly, and that, as it was supported by a sufficient number of Member States to form a qualified majority, the UK wished to support it as well. However, he recognised that we might not yet be ready to clear the document from scrutiny, and also promised to provide an update on the legal basis of the proposal.

2.16 This was followed by a further letter on 25 July 2016, confirming that, in the light of the positions taken within COREPER and the European Parliament, formal adoption of the proposal was expected to take place by written procedure before the summer recess, once the texts relating to this body, and to the EBCA and EMSA, had been aligned. The Minister also addressed the Government's position on the opt-in, observing that, although the decision to leave the EU had been taken, the UK would continue to negotiate, implement and apply EU legislation, and assert the JHA opt-in, in line with the current approach. In particular, he confirmed that, as regards the pre-adoption opt-in deadline of 16 March 2016, the UK Government did not opt-in, but may wish to do so after the measures are adopted.

2.17 In his most recent letter of 20 September 2016, the Minister says, with few Council opportunities in September, and given the Slovakian Presidency's desire to complete the adoption process, all three dossiers in the package were being progressed simultaneously by written procedure in order to ensure consistency between each component. He adds that, whilst the UK is happy, in principle, for the proposal to be adopted as addressing its concerns, it had abstained, as the Parliamentary Scrutiny process had not been completed. He concludes by saying that final approval was given by the Council on 14 September, and that the regulation would enter into force on 6 October.

Previous Committee Reports

2.18 Twenty-fourth Report HC 342–xxiii (2015–16), [chapter 4](#) (24 February 2016).

3 Political Dialogue & Cooperation Agreement with Cuba

Committee's assessment	Legally and politically important
<u>Committee's decision</u>	(a) Not cleared from scrutiny; conditional scrutiny waiver granted; further information awaited (b) Not cleared from scrutiny; further information awaited
Document details	(a) Proposal for a Council Decision on the signing and provisional application of the Political Dialogue and Cooperation Agreement (PDCA) with Cuba; (b) Proposal for a Council Decision on the conclusion of the PDCA with Cuba
Legal base	(a) Article 37 TEU, Articles 207, 209, 218(5) and 218(8); unanimity TFEU; unanimity (b) Article 37 TEU, Articles 207, 209, 218(6)(a) and 218(8) TFEU; unanimity
Department	Foreign and Commonwealth Office
Document Numbers	(a) (38103), 12495/16 + ADD 1, JOIN(16) 42; (b) (38104), 12497/16 + ADD 1, JOIN(16) 43

Summary and Committee's conclusions

3.1 The Political Dialogue and Cooperation Agreement with Cuba (PDCA) is the first bilateral agreement between the EU and Cuba. It is intended to replace a Council Common Position of December 1996.

3.2 The objective of the Agreement is to create a stable framework for EU-Cuba relations instead of ad hoc dialogue and piecemeal cooperation that has characterized the relationship between the EU and Cuba to this point. The PDCA will serve as a platform for increased cooperation and dialogue on a very broad range of policy areas, across three main pillars: political, cooperation and trade.

3.3 On 22 September 2016 Federica Mogherini, the High Representative of the European Union for Foreign Affairs and Security Policy, said this about the Agreement between the EU and Cuba:

“The bilateral Agreement between the EU and Cuba is the result of a fruitful and constructive work the EU and Cuba have done together, and marks the turning point in our relations. This contractual arrangement creates a clear common framework for intensified political dialogue, increased cooperation across a wide range of policy areas, and a precious platform for developing joint action on regional and international issues.”

3.4 The Agreement is a mixed agreement¹² although there is no indication in the texts of the proposals or otherwise of the extent to which the EU and the Member States are exercising competence.

3.5 The Minister for Europe and the Americas (Sir Alan Duncan) indicates that the proposal for the signing and provisional application of this Agreement may be put to COREPER in November with a view to it being adopted at the Foreign Affairs Council on 12 December.

3.6 This PDCA is in line with the UK’s policy of greater engagement with Cuba. It does however raise the familiar legal issue of the lack of transparency as to the extent to which the EU is exercising competence and the extent to which the Member States are exercising competence. It is the policy of the Government that Member States should normally exercise their competence, including shared competence, leaving the EU to exercise only its exclusive competence. It is important for Member States to assert their competence in a concrete fashion as it is clear from the Singapore and Canada Agreements that the EU Commission is seeking to limit Member States’ involvement in international agreements. This agreement includes provisions on the four subjects currently giving rise to most contention in litigation on the Singapore agreement: transport, investment, property rights and sustainable development.¹³

3.7 Furthermore Article 86 of the agreement provides for the European Union (and not expressly the Member States) to trigger provisional application of this Agreement. The proposal would authorise the EU to trigger provisional application of the whole of the Agreement including the (so far unspecified) matters in respect of which Member States are otherwise exercising competence. The sensitivity of provisional application can be judged from the fact that the German Constitutional Court approved German agreement to the Comprehensive Economic and Trade Agreement with Canada on the basis that provisional application was limited to matters which were of exclusive EU competence and that Germany (and therefore other Member States) had the power to terminate provisional application if this was not the case.

3.8 The PDCA with Cuba raises questions about post Brexit relations between the UK and Cuba:

- Will the PDCA, or any part of it, apply to the UK after the UK has officially left the EU?
- Will the UK seek to replace any provisions of this agreement which do not apply post Brexit with an agreement of its own?

12 A mixed agreement is entered into jointly by the EU and the Member States in their own right; the member States exercising competence over matters for which only they have competence and possibly matters which are shared competence for which either the EU or the Member States can exercise competence.

13 In the current litigation over the Singapore Agreement argument has focussed on four areas: transport (covered by Article 55 of the Cuba Agreement), investment (Article 80 of the Cuba Agreement), intellectual property rights (Article 73 of the Cuba Agreement) and sustainable development (labour rights and environment) (Articles 38 and 47 of the Cuba Agreement).

3.9 In the light of these considerations we grant a waiver from scrutiny for document (a) on the signing and provisional application of the document on condition:

- **The Minister indicates before signifying his agreement what steps he has taken or intends to take (by way of seeking amendment to the text or by laying a minute statement) to clarify that the UK is exercising competence to sign the Agreement in respect of all matters within its own competence or within shared competence; and**
- **That provisional application is limited to matters of exclusive EU competence.**

3.10 We retain both proposals under scrutiny.

Full details of the documents

(a) Joint Proposal for a Council Decision on the signing, on behalf of the European union, and provisional application of the Political Dialogue and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Cuba, of the other part.: (38103), [12495/16](#) + ADD 1, JOIN(16) 42; (b) Joint Proposal for a Council decision on the conclusion, on behalf of the European Union, of the Political Dialogue and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Cuba, of the other: (38104), [12497/16](#) + ADD 1, JOIN(16) 43.

The Agreement

3.11 The Objectives of the Agreement stated in Article 2 of the Agreement are as follows:

- “Consolidate and strengthen existing relations between the Parties in the areas of political dialogue, cooperation and trade on the basis of mutual respect, reciprocity, common interest and respect for the sovereignty of the Parties;
- “Accompany the process of updating the economy and society in Cuba by providing a comprehensive framework for dialogue and cooperation;
- “Engage in a result-oriented dialogue on the basis of international law in order to strengthen bilateral cooperation and mutual engagement in international fora, in particular the United Nations, with the aim of strengthening human rights and democracy, achieving sustainable development and ending discrimination in all its aspects;
- “Support efforts to achieve the goals of the 2030 Agenda for Sustainable Development framework;
- “Promote trade and economic relations in conformity with the rules and principles governing international trade as stipulated in the World Trade Organization (WTO) Agreements;
- “Enhance regional cooperation in the Caribbean and Latin American regions with the aim of developing, where possible, regional responses to regional and global challenges and promoting the sustainable development of the region;

- “Promote understanding by encouraging contact, dialogue and cooperation between societies of Cuba and EU countries, at all levels.”

3.12 In its explanatory memoranda on each proposal the Commission explains:

- “The Agreement builds essentially on a three-pillar structure:
- “political dialogue (Part II): the relevant provisions cover a range of policy areas, including human rights, small arms and light weapons, disarmament and non-proliferation of weapons of mass destruction, terrorism, serious crimes of international concern (including the International Criminal Court), unilateral coercive measures (i.e. US embargo), combating the production, trafficking and consumption of illicit drugs, combating racial discrimination, xenophobia and related intolerance, and sustainable development.
- “cooperation and sector policy dialogue (Part III): these provisions cover a very wide range of areas for future cooperation, including political and legal (governance and human rights, justice, citizen security and migration), social, environmental, economic and developmental issues. Particular attention is also given to regional (Caribbean and Latin American) integration and cooperation; and
- “trade and trade cooperation (Part IV): this Part codifies the conventional (WTO-related) basis for EU-Cuba trade. In addition, it includes provisions on trade facilitation and cooperation in areas such as technical barriers to trade and standards, with a view to improving the prospects for deeper economic relations. It also includes a clause envisaging the future development of a stronger framework for investments.
- “Part V (Institutional and Final Provisions) establishes an institutional framework composed of a Joint Council and a Joint Committee. It also includes a provision on the fulfilment of Obligations which contains measures to be taken and the procedure for action to be followed should one of the parties fail to fulfil its obligations under the Agreement.
- “The Agreement is concluded for an unlimited period and can be terminated at six months’ notice.”

Ministers Explanatory Memorandum of 5 October 2016

3.13 The Minister explains the UK Government’s position in the following terms:

- “The UK Government has supported the negotiation and conclusion of the Agreement as it will help to promote UK and EU interests and values in Cuba, and support change and development that benefits the Cuban People.”
- “On human rights, the UK Government continues to have concerns around freedom of expression and association in Cuba. The human rights elements of the Agreement will complement the traditional bilateral work the UK already does on human rights and help to address our concerns.”

3.14 The Minister had this to add about the British business community's interest in Cuba:

“There is an increasing interest in Cuba among the British business community as a place to trade and invest. In May, the Lord Mayor of London visited Havana to take forward discussions on financial and professional services cooperation. In April 2015, Lord Hutton of Furness led a trade mission representing 30 UK companies to Cuba.”

Previous Committee Reports

None.

4 Tax evasion and avoidance, money laundering, terrorist financing

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information awaited
Document details	Proposed Directive about prevention of the use of the financial system for the purposes of money laundering or terrorist financing
Legal base	Articles 50 and 114 TFEU, ordinary legislative procedure, QMV
Department	HM Treasury
Document Number	(37927), 10678/16 + ADDs 1–2, COM(16) 450

Summary and Committee's conclusions

4.1 The EU wishes to counter the financing of terrorism and increasing transparency of financial transactions and corporate entities. The Commission has accordingly proposed a Directive to amend the Fourth Anti-Money Laundering Directive. When, in September 2016, we considered this proposal we heard from the Government of its support for five amendments in the proposed Directive. But we heard also about its concerns relating to three other aspects of the proposal see para 4.7 below, which it intended to address in negotiation of the proposed Directive. We kept the document under scrutiny and asked to hear about progress in negotiation of the proposal, particularly in relation to the concerns and reservations the Government had mentioned to us.

4.2 The Government now tells us that it has discerned a Justice and Home Affairs issue relating to sharing of data from registers between Financial Intelligence Units and law enforcement authorities. It says that it is considering whether, if the legal base is not altered, the UK should opt-in to the proposal.

4.3 **As the Government is very well aware, we share the widely held legal view that it is not possible to exercise the UK's opt-in in relation to a legislative proposal which does not have a Justice and Home Affairs legal base. Nevertheless, we wish to hear, as promised, what the Government's decision is on this matter.**

4.4 **We remind the Government that we also wish to hear about developments in negotiation of the proposed Directive, particularly in relation to the three concerning aspects of concern it has mentioned to us previously. We should like this information before a draft General Approach goes to COREPER.**

4.5 **Pending responses on both Justice and Home Affairs issue and developments in negotiation the document remains under scrutiny.**

Full details of the documents

Proposed Directive amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC: (37927), [10678/16](#) + ADDs 1–2, COM(16) 450.

Background

4.6 In recent years the EU has introduced legislative and non-legislative measures concerned with money laundering, terrorist financing and tax evasion and avoidance. Most recently, in July 2016, the Commission published a Communication concerning a range of matters including strengthening the link between the Fourth Anti-Money Laundering Directive and tax transparency rules.¹⁴ At the same time the Commission presented this proposed Directive to amend the Fourth Anti-Money Laundering Directive. The aim is countering financing of terrorism and increasing transparency of financial transactions and corporate entities. The Commission also proposed consequential changes to the relevant company law rules under Directive 2009/101/EC, the First Company Law Directive.

4.7 When, in September 2016, we considered this proposal we heard from the Government of its support for five amendments in the proposal, saying that they provide clarity which would help in the implementation and enforcement of the provisions of the Fourth Anti-Money Laundering Directive. However, it described concerns about the three other aspects of the proposal, which it intended to address in negotiation of the proposal. These were about proposals to:

- reduce the registration threshold from 25% shareholding to 10% for some companies;
- register the beneficial owners of all trusts and trust-like legal arrangements and to make this information widely accessible; and
- introduce automated centralised mechanisms which allow the identification of any natural or legal person holding or controlling payment or bank accounts

4.8 The Government also expressed reservations about the findings of the Commission’s impact assessment of the proposal, noting in particular some financial implications.

4.9 We kept the document under scrutiny and asked to hear about progress in negotiation of the proposal, particularly in relation the concerns and reservations the Government had mentioned to us.

The Minister’s letter of 20 October 2016

4.10 The Economic Secretary to the Treasury (Simon Kirby) writes now to tell us that the Government has now concluded that it triggers the UK’s Justice and Home Affairs (JHA) opt-in in relation to the provisions relating to sharing of data from registers between Financial Intelligence Units and law enforcement authorities, which it considers falls within the scope of Article 87 TFEU. The Minister continues that:

14 (37924) 10977/16: see Eleventh Report, HC 71–ix (2016–17), [chapter 6](#) (14 September 2016).

- in line with its position on the Fourth Anti-Money Laundering Directive itself, the Government considers that sharing data for law enforcement purposes is one of the predominant purposes of the measure, and therefore that this is a partial JHA measure;
- the Government will be taking an opt-in decision “in the usual way”; and
- unless the legal base is changed, the Government would consider the UK bound by the proposal on adoption of an opt-in.

4.11 The Minister says that he will update us on the Government decision to opt-in shortly.

Previous Committee Reports

Eleventh Report, HC 71–ix (2016–17), [chapter 6](#) (14 September 2016).

5 Investments for jobs and growth

Committee's assessment	Politically important
<u>Committee's decision</u>	(a) Cleared from scrutiny; (b) Not cleared from scrutiny; further information requested
Document details	(a) Commission Communication: Strengthening EU investments for jobs and growth; (b) Proposed Regulation concerning the European Fund for Strategic Investments and the European Investment Advisory Hub
Legal base	(a) —; (b) Articles 172, 173, third paragraph of 175 and 182(1) TFEU; ordinary legislative procedure; QMV
Department	HM Treasury
Document Numbers	(a) (38072), 12192/16, COM(16) 581; (b) (38074), 12201/16 + ADDs 1–3, COM(16) 597

Summary and Committee's conclusions

5.1 Commission proposals to extend the Investment Plan for Europe's European Fund for Strategic Investments, both in terms of duration and size, and to create an EU External Investment Plan were endorsed by the June 2016 European Council. The Commission has now presented a Communication on strengthening EU investments for jobs and growth by developing both proposals. It accompanies the Communication with a proposed Regulation to implement extension of the European Fund for Strategic Investments to 2020 and to increase the investment target to €500 billion (£424 billion). The Commission also draws attention to separate legislative proposals it is presenting in relation to the External Investment Plan.

5.2 The Government recalls to us its welcome for the Investment Plan for Europe and its focus on reforms to raise growth prospects across the EU and the emphasis on increasing private sector investments. It says that in principle it supports an extension of the European Fund for Strategic Investments, which should, however, be informed by evaluations stipulated in the present governing Regulation. The Government tells us that it also supports initiatives that leverage the EU Budget to maximise the impact of the EU's external lending and is, in principle, supportive of the EU External Investment Plan.

5.3 Given that the proposals outlined in the Communication are subject to separate scrutiny, we clear this document from scrutiny. However, we retain the proposed Regulation, one of those proposals, under scrutiny pending information from the Government about Council consideration of it and, in the context of Brexit, about the possible financial consequences for the UK. We wish to have that information before any draft General Approach or Political Agreement goes to COREPER.

Full details of the documents

(a) Commission Communication: Strengthening European Investments for jobs and growth: Towards a second phase of the European Fund for Strategic Investments and a new European External Investment Plan: (38072), [12192/16](#), COM(16) 581; (b) Proposed

Regulation amending Regulations (EU) No 1316/2013 and (EU) 2015/1017 as regards the extension of the duration of the European Fund for Strategic Investments as well as the introduction of technical enhancements for that Fund and the European Investment Advisory Hub: (38074), [12201/16](#) + ADDs 1–3, COM(16) 597.

Background

5.4 In November 2014 the Commission’s Communication *An investment plan for Europe* proposed a European Fund for Strategic Investments (EFSI), to mobilise €315 billion (£283 billion) for investment, a pipeline of investment projects, an investment advisory hub (to be known as the European Investment Advisory Hub or EIAH) and a wider package of reforms to improve the investment climate, including action to remove barriers in the single market and improve regulation.¹⁵ In June 2015 Regulation (EU) No. 2015/1017 established the EFSI and the EIAH. The Regulation established a €21 billion (£18 billion) guarantee fund, of which €16 billion (£14 billion) comes from the EU budget and €5 billion (£4 billion) from the European Investment Bank (EIB)) to enable the EIB Group to undertake additional lending and catalyse at least €315 billion (£267 billion) of additional investment between 2015 and 2018.

5.5 On 28 June 2016, the European Council concluded that the “Investment Plan for Europe, in particular the EFSI, has already delivered concrete results and is a major step to help mobilise private investment whilst making smart use of scarce budgetary resources”. It noted that the Commission intended to put forward soon proposals on the future of the EFSI.¹⁶

5.6 In June 2016 the Commission presented its Communication on establishing a new partnership framework with third countries under the European Agenda on Migration.¹⁷ This included a suggestion for an “ambitious” External Investment Plan, which was endorsed by the June 2016 European Council.¹⁸

The documents

5.7 In its Communication, document (a) the Commission notes that since November 2014, it has mobilised significant EU financial resources, which it asserts has been done in an innovative way that maximises the impact of public funds and mobilises private investment. It reports that the EIB Group, through the EFSI, mobilised almost €116 billion (£98 billion) of investment across 26 Member States in less than a year. The Commission discusses measures to continue this approach, putting forward new ways to continue to maximise the impact of the EU budget and mobilise private sector investment.

5.8 The Commission outlines its activity in relation to the Investment Plan for Europe. First, is its proposed Regulation to extend and reinforce the EFSI and enact technical changes to the EIAH, document (b)—described below. Secondly, the Commission focuses on its efforts to remove obstacles to investment and to complete the single market:

15 (36540), 16115/14: see Thirty-second Report HC 219–xxxi (2014–15), [chapter 1](#) (4 February 2015), Thirtieth Report HC 219–xxix (2014–15), [chapter 5](#) (21 January 2015) and Twenty-seventh Report HC 219–xxvi (2014–15), [chapter 7](#) (17 December 2014).

16 <http://www.consilium.europa.eu/en/press/press-releases/2016/06/28-euco-conclusions/>.

17 (37842), 10014/16 + ADDs 1–4: see Seventh Report HC 71–v (2016–17), [chapter 13](#) (6 July 2016).

18 *Op cit.*

- it cites initiatives already tabled, such as lowering capital charges for insurance and reinsurance companies as regards infrastructure investments and the adoption of practical guidance on the application of state aid rules in the context of public funding of infrastructure;
- it notes that the Energy Union, the single market and the digital single market strategies, the circular economy package and international trade and investment agreements all contain specific measures that will remove barriers, promote innovation and further improve the environment for investment, when fully implemented; and
- it draws particular attention to its Communication “Capital Markets Union: Accelerating Reform”.¹⁹

5.9 Based on these initial results of the Investment Plan the Commission presents a proposed Regulation, document (b) to extend the EFSI, both in terms of duration and size. It sets out the legislative framework required to extend the EFSI until 2020 and increase the investment target to €500 billion (£424 billion). In addition to extending the EFSI, the Commission proposes a series of technical measures to improve the EFSI, in particular to:

- reinforce the EFSI’s operational focus on market failures and sub-optimal investment situations;
- enhance the geographical coverage of the EFSI and support take up in less developed and transition regions; and
- improve the transparency of the EFSI investment decision-making process.

5.10 The proposed Regulation would also introduce delivery of EIAH technical assistance at a more local level via agreements with relevant local players. It is envisaged that a more decentralised EIAH will help to broaden the geographical diversification of EFSI.

5.11 The Commission’s proposal is accompanied by a Staff Working Document, together with an executive summary, evaluating the use of the EU Guarantee that forms the EFSI and the functioning of the Guarantee Fund during its first year of activity until 30 June 2016.

5.12 In its Communication the Commission also outlines a “European External Investment Plan” to promote sustainable development, jobs and growth in partner countries and to address root causes of migration. It sets out at a high level the various elements that make up the Plan endorsed at the June 2016 European Council. The Commission identifies external investment, through its contribution to economic growth in developing countries, as a key means of tackling the root causes of migration as well as contributing to achievement of the sustainable development goals. It says that this will also provide opportunities for private enterprises and contribute to European economic growth.

19 (38086), [12302/16](#) about which we will be reporting in due course.

5.13 The Commission’s plan focusses on Africa and the EU Neighbourhood and takes a comprehensive approach containing three key parts:

- mobilising investment;
- stepping up technical assistance; and
- supporting economic and structural reforms to improve the business and broader policy environment.

5.14 In relation to mobilising investment the Commission is proposing creation of a new European Fund for Sustainable Development (EFSD). This Fund would combine finance from existing regional investment platforms (for Africa and for the Neighbourhood), the European Development Fund and the EU Budget to create an EFSD Guarantee of €3.35 billion (£2.84 billion). It expects that such guarantee would leverage up to €44 billion (£37 billion) of additional public and private investment in the targeted regions. The Commission suggest that Member States and other partners should match the EU contributions, which could increase the total additional investment to €88 billion (£75 billion). It presents this initiative in more detail in a separate document containing the proposed Regulation to establish the EFSD.²⁰

5.15 As part of ‘stepping up technical assistance’, the Commission says that:

- it has freed up resources to help partner countries attract more investment;
- this technical assistance will focus on better identifying, preparing and promoting projects, as well as improving the visibility and accessibility of EU financing opportunities through a project web portal; and
- it plans structured dialogues with local private sectors in order to understand better their needs and the constraints to investment, as well as public-private policy dialogues in partner countries to identify key challenges and opportunities.

5.16 In relation to ‘supporting economic and structural reforms to improve the business and broader policy environment’, the Commission says that:

- it proposes to reinforce existing economic and social policy dialogues between the EU and partner countries;
- this will be done with the objective of promoting policies and institutions that are conducive to sustainable investment and economic stability; and
- as part of its commitment to sustainable development, it will make full use of existing initiatives under its energy and climate change agenda.

5.17 The Commission lists, in addition to the proposed Regulation to create an EFSD, the elements of its External Investment Plan package as:

- a proposed Decision granting an EU guarantee to the EIB against losses under financing operations supporting investment projects outside the EU;²¹

20 (38085), 12290/16 on which we will be reporting shortly.

21 (38069), 12197/16, on which we will be reporting shortly.

- a Commission Report on a mid-term review of the application of the Decision No. 466/2014/EU as regards the EU guarantee to the EIB against losses under financing operations supporting investment projects outside the EU;²²
- a Commission Report on 2015 EIB external activity with a EU budgetary guarantee;²³
- a proposed Regulation amending Council Regulation No. 480/2009 establishing a Guarantee Fund for external actions;²⁴ and
- three proposed Commission Decisions concerning the ‘Creation of the Africa Investment Platform’ and repealing Decision C(2015)5210, the ‘Neighbourhood Investment Platform’ and amendment of Commission Decision C(2016)3436 on the Neighbourhood Investment Facility under the European Neighbourhood Instrument, and a measure for a contribution to the EFSD Guarantee Fund to be financed from the 11th European Development Fund.

The Government’s view

5.18 In his Explanatory Memorandum of 6 October 2016 the Chief Secretary to the Treasury (Mr David Gauke) first reminds us that until Brexit negotiations are concluded, the UK remains a full member of the EU, that all the rights and obligations of EU membership remain in force, that during this period the Government will continue to negotiate, implement and apply EU legislation and that the outcome of the negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

5.19 The Minister then says that:

- the Government welcomed the Investment Plan for Europe and its focus on reforms to raise growth prospects across the EU and the emphasis on increasing private sector investments;
- it announced in July 2015 that the UK will make £6 billion of UK guarantee available from a number of relevant institutions, for example the UK Guarantees Scheme, to co-finance EFSI infrastructure projects in the UK;
- the Government welcomes the EFSI’s strong start and the significant EFSI financing for UK infrastructure projects and SMEs;
- the EFSI is an important step in demonstrating the effectiveness of making more innovative use of the EU Budget, leveraging it to boost investment in the real economy and enhancing its value for money; and
- in principle the Government supports an extension of the EFSI, however this should be informed by the evaluations stipulated in the present EFSI Regulation.

22 (38070), 12199/16 + ADDs 1–4, on which we will be reporting shortly.

23 (38071), 12200/16: see Fourteenth Report HC 71–xii (2016–17), chapter 11 (19 October 2016).

24 (38073), 12193/16, on which we will be reporting shortly.

5.20 The Minister continues that:

- the Government also supports initiatives that leverage the EU Budget to maximise the impact of the EU’s external lending;
- it is, in principle, supportive of the EU External Investment Plan; and
- in particular, the innovative structure combining new guarantees with other existing grant financing to unlock both public and private sector investment is welcomed and critical to tackling the root causes of migration and delivering economic growth.

5.21 Turning to the financing arrangements proposed by the Commission the Minister tells us that they will be considered as part of the mid-term review of the Multiannual Financial Framework.²⁵ Meanwhile he says that:

- to extend the EFSI, the Commission proposes financing this primarily through reallocations totalling €1.65 billion (£1.4 billion) from the Connecting Europe Facility to the EFSI Guarantee Fund;
- this would be supplemented by up to €150 million (£127 million) from the unallocated margin in the EU Budget’s Heading 1, Smart and inclusive growth;
- the Government welcomes the Commission’s attempts to fund these new measures predominantly through reallocations;
- on the External Investment Plan, the Commission proposes to make €750 million (£636 million) available for the EFSD Guarantee until 2020;
- this would be comprised of a majority from the off-budget European Development Fund;
- the Commission intends to mobilise the Contingency Margin or reallocations from existing programmes for the remainder; and
- use of the Contingency Margin requires offsetting in the future years of the Multiannual Financial Framework, thus having no impact on the overall payments ceiling of the framework.

Previous Committee Reports

None.

25 (38057), 12183/16 + ADD 1, on which we will be reporting shortly.

6 Establishing a European Border and Coast Guard

Committee’s assessment	Legally and politically important
Committee’s decision	Cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the Committee on Exiting the European Union
Document details	Proposal for a Regulation on the European Border and Coast Guard
Legal base	Articles 77(2)(b) and (d) and 79(2)(c) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(37403), 15398/15 + ADD 1, COM(15) 671

Summary and Committee’s conclusions

6.1 The Commission’s proposal for a European Border and Coast Guard has been negotiated “at breath-taking speed”.²⁶ Published last December as part of an array of measures to respond to the pressures generated by the migration and refugee crisis, the proposal was agreed in September and the European Border and Coast Guard became operational on 6 October. It establishes a European Border and Coast Guard Agency (“the Agency”) as the successor to the EU’s External Borders Agency (Frontex) with stronger powers to ensure “an efficient, high and uniform level” of control at the EU’s external borders.²⁷ In the words of the EU Commissioner for Migration, Home Affairs and Citizenship (Dimitris Avramopoulos):

“The European Border and Coast Guard will ensure a truly collective European management of our borders, based on the principle that security of our common EU external borders is a responsibility shared amongst all EU countries. There should no longer be shortages of staff or equipment for operations at our external borders. The external border of one Member State is the external border of all Member States. The new Agency will support, monitor and, when necessary, reinforce the national border guards, focusing primarily on early detection and prevention of weaknesses in the management of the external borders.

“Whilst Member States will keep their sovereignty and national border guards will remain the key actors for managing their borders, the European Border and Coast Guard will work as a safety net: In exceptional situations, when a Member State is unable to cope with the situation on its own, the European Border and Coast Guard will be able to step in, drawing on a pool of resources provided by the Member States.”²⁸

26 See the [EP’s press release](#) of 22 June 2016.

27 See the [Commission’s fact sheet](#) on the European Border and Coast Guard.

28 See the [European Commission Statement](#) of 6 July 2016.

6.2 The Executive Director of the new Agency says that it will be “stronger and better equipped to tackle migration and security challenges at Europe’s external borders”, adding:

“Its mandate has wider scope and new powers that will allow it to act effectively. The Agency will conduct stress tests at the external borders to identify vulnerabilities before a crisis hits. It will now also be able to offer operational support to neighbouring non-EU countries who ask for assistance at their border and share intelligence on cross-border criminal activities with national authorities and European agencies in support of criminal investigations.”²⁹

6.3 The European Border and Coast Guard Regulation builds on aspects of the Schengen free movement rules in which the UK does not participate. The UK has not therefore taken part in its adoption and will not be bound by its provisions. The proposed Regulation does, however, include provisions on operational cooperation with the UK, as a non-participating EU Member State, which broadly replicate those previously in place with Frontex.

6.4 When we last considered the proposed Regulation at our meeting on 14 September, we asked the Immigration Minister (Mr Robert Goodwill) to provide an analysis of the provisions of the Regulation dealing with the Agency’s cooperation with the UK while it remains a member of the EU and those dealing with the Agency’s cooperation with third (non-EU) countries which will apply after the UK leaves the EU. We made clear that the analysis should explain how the basis and scope for the UK to cooperate with the Agency would differ before and after the UK’s withdrawal from the EU.

6.5 In his reply, the Minister tells us that the Government has yet to agree its negotiating position on future cooperation with the Agency once the UK has withdrawn from the EU, but adds that it will form part of “wider negotiations for the UK’s exit from the EU” on which the Government “will not be giving a running commentary”.

6.6 We did not request “a running commentary” on the UK’s Brexit negotiations. Rather, we asked the Minister to explain how the basis and scope for the UK to cooperate with the Agency is likely to differ before and after the UK’s withdrawal from the EU. His brief response takes us no further, even though it would be perfectly feasible for him to provide the analysis we requested without in any way prejudicing the Government’s negotiating position. We note, for example, that while the UK remains a member of the EU, the Agency is required to facilitate operational cooperation and may exchange information with the UK. The UK has a right to request to participate in specific activities undertaken by the Agency (and has frequently done so in relation to joint operations coordinated by the Agency’s predecessor, Frontex) and to attend Management Board meetings.³⁰ None of these provisions would apply once the UK leaves the EU. Future cooperation with the Agency would instead be based on “working arrangements” specifying the scope, nature and purpose of the cooperation or, for action on UK territory, a “status agreement” based on a model to be developed by the Commission.

29 See the [press release](#) issued by the Council at the official launch of the European Border and Coast Guard Agency on 6 October 2016.

30 For recent examples of Frontex-coordinated operations in which the UK has participated, see Frontex’s [General Report](#) for 2015.

6.7 In developing its negotiating position on future cooperation with the Agency, the Government will need to assess the contribution that cooperation with Frontex has made to safeguarding the UK’s borders, mitigating pressures at the external borders of the UK’s neighbours, and facilitating the return of illegal immigrants. We ask the Minister to share his assessment with Parliament and to indicate how the Government intends to involve Parliament in any decisions on future cooperation with the Agency after the UK has left the EU.

6.8 As the European Border and Coast Guard is now operational, we clear the proposed Regulation from scrutiny but draw our observations on future UK cooperation with the Agency to the attention of the Home Affairs Committee and the Committee on Exiting the European Union.

Full details of the documents

Proposal for a Regulation on the European Border and Coast Guard and repealing Regulation (EC) No. 2007/2004, Regulation (EC) No. 863/2007 and Council Decision 2005/267/EC: (37403), [15398/15](#) + ADD 1, COM(15) 671.

Background

6.9 Our earlier Reports listed at the end of this chapter provide a detailed overview of the Commission proposal and the Government’s approach.

The Minister’s letter of 10 October 2016

6.10 The Minister first explains the basis on which the new European Border and Coast Guard Agency will be able to cooperate with UK before its withdrawal from the EU:

“The new Regulation carries over the text from the Frontex Regulation which enables the UK to continue to participate in operations and other activities on an ad hoc basis and by mutual consent. It also allows us to maintain our seat at the Management Board as a non-voting observer.

“UK officers participate in an observer/advisor role which means that they cannot exercise any law enforcement powers. Recent support to Frontex operations has included the deployment of debriefing and screening staff, and interpreters. In addition to UK staff resource, the UK has also committed to deploy Border Force Cutter ‘HMC Protector’ and chartered vessel ‘Fastnet Sentinel’ to continue to support search and rescue operations in the Mediterranean until March 2017.

“Whilst the UK remains a member of the EU, it is expected that we will provide a similar level of operational support to the European Border and Coast Guard Agency, to that provided to Frontex this year.”

6.11 Turning to future cooperation with the Agency once the UK has left the EU, the Minister observes that “the UK’s negotiating position has yet to be agreed”, but adds:

“However, the new Regulation does include provisions for the Agency to cooperate with third countries. Article 54(3) states that “The Agency shall have the possibility of carrying out actions at the external borders involving one or more Member States and a third country neighbouring at least one of those Member States, subject to the agreement of that neighbouring third country, including on the territory of that third country.’ Such cooperation would be voluntary and on the basis of an agreed operational plan.

“It is important to note however that our future cooperation with the European Border and Coast Guard Agency will be considered as part of wider negotiations for the UK’s exit from the EU. The Prime Minister has made clear that the Government will not be giving a running commentary on negotiations and I will update the Committee in due course.”

Previous Committee Reports

Eleventh Report HC 71–ix (2016–17), [chapter 8](#) (14 September 2016); Sixth Report HC 71–iv (2016–17), [chapter 7](#) (15 June 2016); Twenty-eighth Report HC 342–xxvii (2015–16), [chapter 11](#) (13 April 2016); Twenty-fifth Report HC 342–xxiv (2015–16), [chapter 10](#) (9 March 2016) and Twentieth Report HC 342–xix (2015–16), [chapter 10](#) (20 January 2016).

7 Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House

Department for Business, Energy and Industrial Strategy

Other

(38132) 12863/16 + ADD 1 COM(16) 618	Report from the Commission to facilitate the calculation of the assigned amount of the European Union, and the report to facilitate the calculation of the joint assigned amount of the Union, its Member States and Iceland pursuant to Article 3(7bis), (8) and (8bis) of the Kyoto Protocol for the second commitment period, as required under Article 3(2) of Council Decision (EU) 2015/1339 Plus Commission Staff Working Document accompanying the Report.
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Department for Communities and Local Government

(38021) 11701/16 COM(16) 464	Report from the Commission to the European Parliament and the Council on progress by Member States in reaching cost-optimal levels of minimum energy performance requirements.
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Department for Environment, Food and Rural Affairs

(38115) 12847/16 COM(16) 632	Report from the Commission to the European Parliament and the Council 9 th Financial Report From the Commission to the European Parliament and the Council on the European Agricultural Fund for Rural Development (EAFRD) 2015 Financial Year.
(38129) 12896/16 + ADD 1 COM(16) 613	Proposal for a Council Decision on the position to be adopted, on behalf of the European Union, in the Sanitary and Phytosanitary Sub-Committee established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other Plus Annex to the proposal.
(38138) 13009/16+ADD 1 COM(16) 643	Proposal for a Council Regulation fixing for 2017 and 2018 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks Plus Annex to the proposal.
(38140) 12884/16 COM(16) 653	Proposal for a COUNCIL REGULATION amending Regulation (EU) No 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products.

Department for International Development

(38089) Report from the Commission to the Council and the European Parliament
 12373/16 on the activities of the EU Platform for Blending in External Cooperation
 COM(16) 600 (EUBEC) from August 2014 until end of 2015 (DFID Lead EM Due 30
 September).

Department for Transport

(38084) Report from the Commission to the European Parliament and the Council
 12287/16 on the exercise of the power to adopt delegated acts conferred on the
 COM(16) 562 Commission under Regulation (EU) No. 70/2012 of 18 January 2012 on
 statistical returns in respect of the carriage of goods by Road.

(38111) Report from the Commission to the European Parliament and the Council
 12675/16 Report on the application of Regulation (EU) No 181/2011 concerning the
 COM(16) 619 rights of passengers in bus and coach transport and amending Regulation
 (EC) No 2006/2004.

Foreign and Commonwealth Office

(38159) Proposal of the High Representative of the Union for Foreign Affairs and
 12505/16 Security Policy to the Council for a Council Decision repealing Common
 Position 697/96 on Cuba.

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HM Treasury

(38112) Proposal for a Decision of the European Parliament and of the Council
 12737/16 on the mobilisation of the European Globalisation Adjustment Fund
 COM(16) 622 following an application from Estonia — EGF/2016/003 EE/Petroleum and
 chemicals.

Formal Minutes

Wednesday 26 October 2016

Members present:

Sir William Cash, in the Chair

Geraint Davies Mr Jacob Rees-Mogg

Richard Drax Kelly Tolhurst

Peter Grant Mr Andrew Turner

Kate Hoey

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 7 read and agreed to.

Resolved, That the Report be the Fifteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Wednesday 2 November at 1.45pm.]

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No. 143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Geraint Davies MP](#) (*Labour/Cooperative, Swansea West*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Peter Grant MP](#) (*Scottish National Party, Glenrothes*)

[Damian Green MP](#) (*Conservative, Ashford*)

[Kate Green MP](#) (*Labour, Stretford and Urmston*)

[Kate Hoey MP](#) (*Labour, Vauxhall*)

[Calum Kerr MP](#) (*Scottish National Party, Berwickshire, Roxburgh and Selkirk*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Craig Mackinlay MP](#) (*Conservative, South Thanet*)

[Mr Jacob Rees-Mogg MP](#) (*Conservative, North East Somerset*)

[Alec Shelbrooke MP](#) (*Conservative, Elmet and Rothwell*)

[Graham Stringer MP](#) (*Labour, Blackley and Broughton*)

[Kelly Tolhurst MP](#) (*Conservative, Rochester and Strood*)

[Mr Andrew Turner MP](#) (*Conservative, Isle of Wight*)

[Heather Wheeler MP](#) (*Conservative, South Derbyshire*)

The following members were also members of the committee during the parliament:

[Nia Griffith MP](#) (*Labour, Llanelli*)

[Kelvin Hopkins MP](#) (*Labour, Luton North*)