



House of Commons  
European Scrutiny Committee

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# Thirty-second Report of Session 2016–17

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Documents considered by the Committee on 22 February 2017

*Report, together with formal minutes*

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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](http://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/>.

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## Meeting Summary

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The Committee looks at the significance of EU proposals and decides whether to clear the document from scrutiny or withhold clearance and ask questions of the Government. The Committee also has the power to recommend documents for debate.

### **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 detail in report chapters and, where appropriate, in the summaries below, but the Committee notes that in the current week the following issues and questions have arisen in documents or in correspondence with Ministers:

#### ***Europol***

- Will the provisions of the new Europol Regulation on the transfer of personal data to third countries make it easier or harder for the UK to exchange sensitive law enforcement information with Europol once the UK leaves the EU?
- How might any conditions imposed on Denmark in establishing new operational arrangements with Europol, for example in relation to the jurisdiction of the Court of Justice or Schengen membership, affect the scope and content of any new post-Brexit agreement between the UK and Europol?

#### ***Dublin rules allocating responsibility for asylum applications made in the EU***

- Does the Government accept that any agreement on future UK participation in the Dublin system post-Brexit is likely to be based on whatever text emerges from the current negotiations on Dublin reform and could, therefore, include some form of redistributive mechanism for Member States experiencing large inflows of asylum seekers?

#### ***Organ Donation***

- What are the implications of Brexit for the exchange of human organs intended for transplantation?

## Summary

### **Commission Work Programme 2017**

Each year the Commission sets out its legislative and policy priorities for the year ahead giving an indication of the legislative proposals likely to emerge over the following months. The third such annual work Programme of President Jean-Claude Juncker's Commission highlights 21 key initiatives it commits to deliver by the end of 2017 in order to implement its 10 political priorities, and is the first to be published following the EU referendum in June 2016. Following publication of the Commission Work Programme (CWP), the Presidents of the three main EU Institutions signed a joint declaration of the EU's legislative priorities for 2017. The agreement is the first of its kind and formally outlines a number of key policy areas in which the European Institutions aim to make progress over the coming year.

It has been the usual practice of the Committee to recommend the document for debate on the floor of the House. The Committee is extremely disappointed that, following extensive work involving most of the Departmental Select Committees, our recommendation for a debate of the previous CWP (2016) has not been acceded to by the Government. Given that it is over a year since CWP 2016 was recommended for debate, and that it has now been superseded by CWP 2017, we reluctantly rescind our recommendation that it be debated.

*Cleared from scrutiny; drawn to the attention of relevant Select Committees*

### **Denmark's participation in Europol**

The Committee notes that the agreement on Denmark's participation on Europol will have clear implications for the UK's future relationship with Europol once it leaves the EU.

A new Europol Regulation will take effect on 1 May. Denmark participates fully in Europol but has a general opt-out of all EU justice and home affairs measures adopted after the Lisbon Treaty took effect in December 2009 and cannot participate in the new Regulation. In December, the Presidents of the European Council and Commission and the Danish PM issued a declaration announcing that Denmark and Europol would agree new operational arrangements to take effect from 1 May which are intended to "minimise the negative impact of Denmark's departure from Europol". The proposed Council Implementing Decision is the first step in developing these new arrangements. It would designate Denmark as a third (non-EU) country, meaning that Europol would then be able to negotiate a new cooperation agreement with Denmark. The Government raises no objection, underlining the importance of ensuring "continued practical law enforcement cooperation" between Europol and Denmark. It says that progress has been faster than anticipated, resulting in a scrutiny override. The Committee asks the Government to explain why Denmark cannot continue to participate in Europol, relying on provisions contained in its EU Treaty Protocol on the Position of Denmark and in the new Europol Regulation. The Government is asked to comment on the declaration since it appears to impose conditions on Denmark's future cooperation with Europol which the UK (post-Brexit) would be unlikely to meet. The Government is also asked to account for the delay in depositing the proposed Council Implementing Decision since this, rather than the pace of negotiations, appears to be the primary reason for the scrutiny override.

*Cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the Committee on exiting the European Union.*

### **EU asylum reform**

The Immigration Minister (Robert Goodwill) provides a brief update on negotiations on the Commission’s second package of asylum reforms which concerns EU rules on who qualifies for international protection, asylum procedures, reception conditions and a new EU resettlement framework. The UK has not opted into any of these proposals but they nevertheless remain of interest given that any significant divergence in the asylum rules which apply in the UK and elsewhere in the EU could have an impact on the UK’s asylum system post-Brexit. The Committee reminds the Minister that it awaits further information on a number of concerns raised by the International Rescue Committee on the proposed EU Resettlement Regulation and that it expects to receive progress reports on the negotiations.

*Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee*

### **Comitology: proposed Regulation on adapting remaining legal acts to Lisbon procedures**

The Committee presses Government to ensure third country provisions which may affect the UK after Brexit should be agreed whilst the UK has influence as a Member State rather than leave them to the uncertainty of the EU subordinate legislation procedures.

EU subordinate legislation can be made by the Commission, if such powers are conferred by parent Directives, Regulations or Decisions. Before Lisbon, such legislation was made in committees, a process known as “comitology”. Much of it was aligned to Lisbon legislative procedures as either delegated acts (Article 290 TFEU) or implementing legislation (Article 291 TFEU) by the 2011 Comitology Regulation.

These proposals are intended to align remaining pre-Lisbon subordinate legislation which are still subject to the old “regulatory procedure with scrutiny” (RPS) with mostly the new delegated acts procedure. This seems very technical, but it is politically important to Member States who opposed a previous alignment attempt in 2013. Subordinate legislation can still impact significantly on Member States and they consider that they have better control over the legislation in the case of implementing acts.

The Government has residual concerns about these new proposals as national experts will still not be able to block proposals as they might in RPS. But it is happier this time round because:

- the proposals reference the 2016 Common Understanding on Delegated Acts and its commitment to early national expert consultation on draft legislation; and
- some acts are being aligned with implementing acts, rather than delegated acts.

It is not clear yet whether the proposals will apply before Brexit. Even so it is unlikely that they would have a significant impact on the UK and there are no obvious Brexit

implications. But the Committee warns the Government that we will be monitoring the use of EU subordinate legislation in proposals for any aspects of third country provisions which could affect the UK after Brexit. It is better to settle such provisions now as a part of agreed texts whilst the UK is still a Member State than to leave them to the unpredictability of EU subordinate legislation processes after Brexit.

*Not cleared from scrutiny; further information requested on the progress of negotiations.*

### ***Tax evasion and avoidance, money laundering, terrorist financing***

The Commission has proposed an amendment of the Fourth Anti-Money Laundering Directive, in the context of the EU wish to counter financing of terrorism, money laundering and tax evasion and avoidance, including by increasing transparency of financial transactions and corporate entities. We have considered the matter thrice previously and have heard that, while the Government welcomed the proposal, it had concerns on issues relating to shareholding thresholds for company registrations, registration of beneficial owners of all trusts and trust-like legal arrangements, and registers of bank and payment accounts. The Government tells us now of a Council text agreed for negotiation in trilogues with the European Parliament. This not only addresses the three issues the Government had drawn to our attention previously, but also proposes a less onerous due diligence process for domestic politically exposed persons. When the Government next reports we have asked to know the implications, in the Brexit context, of the 36 month implementation period for the proposed registers of bank and payment accounts provisions and whether the Government proposes that there should be UK legislation post-Brexit, to counter financing of terrorism, money laundering and tax evasion and avoidance, similar to the EU legislation.

*Not cleared from scrutiny; further information requested.*

### ***Documents drawn to the attention of select committees:***

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

**Exiting the European Union Committee:** Europol: agreement with Denmark [Council Implementing Decision (C)]

**Health Committee:** Organ donation [Commission Report (NC)]

**Home Affairs Committee:** EU asylum reform [(a), (b) and (c) Proposed Regulations, (d) Proposed Directive (NC)]; EU asylum reform: revision of the Dublin rules, the EU Agency for Asylum and safe countries of origin [(a) and (b) Proposed Regulation (NC), (c) Proposed Regulation and (d) Proposed Decision (C)]; Europol: agreement with Denmark [Council Implementing Decision (C)]

In addition, the Commission Work Programme 2017, has been brought to the attention of relevant Select Committees.

# 1 Ports

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Cleared from scrutiny. Recommendation for debate on the floor of the House, decision reported on 3 September 2014 and confirmed on 21 July 2015, now rescinded
Document details	(a) Proposed Regulation about market access to port services and financial transparency of ports; (b) Proposed Regulation about market access to port services and financial transparency of ports (First reading): General approach.
Legal base	Article 100(2) TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(a) (34955), 10154/13 + ADDs 1–5, COM(13) 296; (b) (36373), 13764/14, —

## Summary and Committee's conclusions

1.1 A proposed Regulation about market access to port services and the financial transparency of ports has been under negotiation since May 2013. Since September 2014 the European Scrutiny Committee has pressed for the proposal to be debated on the floor of the House. We took evidence from the Minister of State, Department for Transport (Mr John Hayes), on the matter on 14 December 2016, when he indicated he would vote against the proposal.<sup>1</sup> We have been awaiting confirmation of the Government's vote. We also wished to know its intention as to implementation of the Regulation given the probable proximity of the date for it coming into force and Brexit.

1.2 The Minister now confirms that the Government did vote against the proposal in January 2017 and says that it entered a Minute Statement in support of its vote. As for implementation of the Ports Services Regulation, he comments that until Brexit the Government has an obligation to ensure that EU legislation is implemented and that the Port Services Regulation will be transferred into UK law at the point of exit and future changes will be a matter wholly and solely for Parliament. The Minister also takes the opportunity to clarify two points covered in his evidence to us in December 2016.

**1.3 Given this conclusion to the legislative process leading to adoption of the Port Services Regulation we rescind the debate recommendation and clear the documents from scrutiny. We note that, where QMV applies, the scrutiny reserve resolution only prevents Ministers voting *for* legislation without clearance, and no scrutiny override has technically occurred.**

**1.4 However, we emphasise yet again that the Government's failure to schedule a debate on this important issue on the floor of the House is disgraceful. It is the House's duty to scrutinise the Government's actions in relation to EU legislative proposals, and the Government should provide time for debate on significant issues such as this.**

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<sup>1</sup> Oral evidence taken on 14 December 2016, [HC 884](#), Q2.

## Full details of the documents

Proposed Regulation establishing a framework on the market access to port services and the financial transparency of ports: (34955), [10154/13](#) + ADDs 1–5, COM(13) 296; (b) Proposed Regulation establishing a framework on market access to port services and financial transparency of ports (First reading): General approach: (36373), [13764/14](#), —.

## Background

1.5 Given the continued failure of the Government to schedule a debate and the likelihood that the Council would adopt a final text of the proposal before the end of the year we took evidence on 14 December 2016 from the Minister as to both the reason for the Government’s continued failure to schedule a debate and the substance of the text agreed with the European Parliament. Immediately after that evidence session the Minister wrote to confirm the Government’s intention to vote against adoption of the proposed Regulation when it came to the Council. In January 2017 we noted the Government’s intention to vote against this proposal when it went to the Council. We asked to hear from the Minister after that Council telling us the result of the vote and giving us a copy of the Government’s minute statement. We were aware that the provisions of the Regulation might apply close to the likely date of Brexit. So we asked also to know whether, if the Regulation were to apply before Brexit occurs, with what enthusiasm the Government would pursue implementation. Meanwhile the documents remained under scrutiny and our debate recommendation stood.

## The Minister’s letter of 9 February 2017

1.6 The Minister now tells us that the proposed Regulation was adopted by the Council on 23 January 2017 and that the UK was the only Member State to vote against its adoption. He says that the UK also entered the following Minute Statement:

“The United Kingdom welcomes that this Regulation is significantly less onerous than originally proposed. Nevertheless, even in its amended form, the UK regrets its adoption, considering its provisions (other than those promoting transparency of public funding) unnecessary and largely inappropriate for the promotion of investment and efficiency at European ports, and particularly those in the UK. Believing that it would have a detrimental effect on the UK’s competitive and efficient ports, the United Kingdom is voting against the Regulation.

“The experience of the UK’s deregulated, competitive, predominantly privately owned and largely unsubsidised ports sector over recent decades demonstrates conclusively that deregulated ports operating in an environment of fair competition, can and will invest to develop in line with current and future transport requirements.”

1.7 The Minister comments that:

- this statement recognises that UK ports do compete, at the margin, with those on the Continent;
- they have to do so often against highly subsidised competition;
- they are more exposed to the regulatory burdens;
- as our Chairman has said in the House, the efficiency and competitiveness of the UK ports sector is essential to the UK as an island trading nation; and
- the Government is determined to safeguard that efficiency and competitiveness.

1.8 The Minister tells us that the Commission also entered a statement, in relation to Recital (45), on State Aid and that the Government agrees with the Commission's view here that public funding of certain access infrastructure located within the area of a port may constitute State Aid.

1.9 The Minister also takes this opportunity to clarify two points that arose on 14 December 2016, when he gave evidence to us.<sup>2</sup> He says first, in relation to Question 7, that Wisbech, not being a port listed in the annex to the Trans European Transport Network Regulation, is not within the scope of the Port Services Regulation. The Minister says secondly, that, having reviewed the exact wording of Question 13 he wishes to be clear that UK Representatives did not support the text in the June 2016 COREPER meeting. He comments further that:

- UK Representatives have never registered support for the proposal;
- in fact, at the June 2016 COREPER meeting they entered an abstention by the UK;
- the COREPER stage did not constitute a formal vote, so the UK position was only recorded as a parliamentary scrutiny reservation at that stage;
- the longer-term decision on whether to abstain or oppose when the proposal was finally put to the Council was quite rightly left for the incoming Ministerial team to determine; and
- he was in no doubt that the UK should oppose.

1.10 Turning to the question as to whether, and with what enthusiasm, the Government would pursue implementation, if the Regulation were to apply before Brexit occurred, the Minister says that:

- the Prime Minister has made clear that the UK will not remain a member of the European Economic Area following Brexit;
- the effects of withdrawal will be clear—the UK will take back control of its laws and bring an end to the jurisdiction of the Court of Justice of the EU in the UK;

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<sup>2</sup> Oral evidence taken on 14 December 2016, [HC 884](#), Q7 & 13.

- while the UK remains a member of the EU the Government still has an obligation to ensure that legislation is implemented; and
- the Port Services Regulation will be transferred into UK law at the point of exit and future changes will be a matter wholly and solely for Parliament.

## Previous Committee Reports

Twenty-sixth Report HC 71-xxiv (2016–17), [chapter 1](#) (18 January 2017), Eighth Report, HC 71-vi (2016–17), [chapter 1](#) (13 July 2016); Twenty-eighth Report HC 342-xxvii (2015–16), [chapter 2](#) (13 April 2016), Twenty-third Report HC 342-xxii (2015–16), [chapter 1](#) (10 February 2016), Sixteenth Report HC 342-xv (2015–16), [chapter 3](#) (6 January 2016), Fourteenth Report HC 219-xiv (2014–15), [chapter 1](#) (15 October 2014), Twelfth Report HC 219-xii (2014–15), [chapter 2](#) (10 September 2014), Tenth Report HC 219-x (2014–15), chapter 1 (3 September 2014), Fifth Report HC 219-v (2014–15), [chapter 2](#) (2 July 2014), Twenty-third Report HC 83-xxi (2013–14), [chapter 9](#) (20 November 2013) and Sixth Report HC 83-vi (2013–14), [chapter 2](#) (19 June 2013).

## 2 Comitology—adapting remaining legal acts to Lisbon procedures

Committee’s assessment	Legally and politically important
<u>Committee’s decision</u>	Not cleared from scrutiny; further information requested
Document details	Proposed Regulations adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny (a) to Articles 290 and 291 TFEU; (b) in the Justice field to Article 290 TFEU
Legal base	(a) Articles 33, 43(2), 53(1), 62, 64(2), 91, 100(2), 114, 153(2) (b), 168(4)(a), 168(4)(b), 172, 192(1), 207, 214(3) and 338(1) TFEU; ordinary legislative procedure; QMV; (b) Article 81(2) TFEU; ordinary legislative procedure; QMV
Department	Exiting the European Union
Document Numbers	(a) (38475), 5623/17 + ADD 1, COM(16) 799; (b) (38481), 5705/17 + ADD 1, COM(16) 798

### Summary and Committee’s conclusions

2.1 The Lisbon Treaty substantially altered the procedures for EU subordinate legislation. Previously the Commission only had the power to adopt implementing legislation subject to one or other of various “comitology” procedures. Now it can be given the power to adopt either:

- implementing legislation,<sup>3</sup> where uniform conditions for implementation’ are needed (as defined in Article 291 TFEU); or
- delegated legislation<sup>4</sup> “for measures to ‘supplement or amend certain non-essential elements of a basic legislative act’ (as defined in Article 290 TFEU).

2.2 One form of the previous comitology procedure, the regulatory procedure with scrutiny (RPS), was not automatically transferred by the 2011 Comitology Regulation<sup>5</sup> to the new implementing legislation procedures, as were the other procedures. At this time RPS still covers 168 existing basic acts and continues to apply in those acts until they are formally amended and adapted to the Lisbon Treaty.

3 Subject to procedures similar to the previous comitology procedures, whereby the adoption of an implementing act by the Commission is subject to its scrutiny (to varying degrees of stringency) by a committee of the representatives of the Member States chaired by the Commission itself.

4 The main characteristic of the delegated legislation procedure is that the Council or the European Parliament may block the adoption of the proposed subordinate legislation by the Commission.

5 182/2011.

2.3 So in 2013 the Commission wanted to adjust a number of powers for it to adopt subordinate legislation by RPS to the post-Lisbon delegated legislation procedure. It therefore proposed three legislative alignment proposals (Omnibus I, II and III)<sup>6</sup> but these were blocked by Member States, including the then UK Government. They objected to the use of the delegated legislation procedure and the removal of the ability of Member States experts on the committees to block proposals. They preferred the implementing legislation procedure because they considered it gives them a greater influence over the legislation. Our predecessors supported the Government in their view, welcoming that as a result of the eventual withdrawal<sup>7</sup> of the previous proposals “the Commission will now need to address on a case-by-case basis the updating of the remaining subordinate legislation powers which use the Regulatory Procedure with Scrutiny”.<sup>8</sup>

2.4 The Commission proposals state that the question of alignment of acts was taken up again during discussions on the Inter-Institutional Agreement on Better Law-Making (IIA).<sup>9</sup> The Commission committed to a new proposal by the end of 2016. Document (a), which seeks alignment for non-justice related acts and (b) for those in the justice field are the outcome of that commitment.

2.5 Although the Government now tell us that it remains opposed to losing the ability of its expert representative on an RPS committee to block or amend a proposal, its opposition has been tempered by:

- commitments in the “Common Understanding on Delegated Acts”<sup>10</sup> which accompanied the IIA to consult national experts early on the preparation of draft delegated acts; and
- a more nuanced approach to alignment taken by the Commission this time, reflected in its alignment of some RPS procedures with implementing acts, rather than delegated legislation.

**2.6 Given the expected timings of the Brexit negotiations and the mitigations offered by the “Common Understanding on Delegated Acts”, we do not think that these proposals are likely to have a significant impact on the UK before its withdrawal from the EU. Nevertheless, we ask the Minister to highlight any particular measures of concern caught by alignment to delegated act procedures when he next writes.**

**2.7 We do not think that these proposals themselves have Brexit implications. But we intend to consider the relationship between Brexit and EU subordinate legislation further in our scrutiny of other legislative proposals. For example, we will be interested**

6 Proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny, COM(13) 451; Proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny, COM(13) 452; Proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 and 291 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny, COM(13) 751.

7 See the Official journal of the EU, [C 2015/80](#), 7 March 2015, p.17.

8 See paragraph 22.7 of the Thirty-ninth Report HC 219-xxxvii (2014–15), [chapter 22](#) (24 March 2015).

9 Inter-institutional Agreement on Better Regulation, [9121/15](#), COM(15) 216. We referred this document for debate: European Committee C, Better Regulation, 8 February 2016, [cols 1–10](#).

10 Common Understanding between the European Parliament, the Council and the Commission on Delegated Acts, Annex to the IIA, [COM\(15\) 216](#).

**to learn whether the UK has a policy of ensuring that any provisions in current legislative proposals affecting third country cooperation with the EU are settled favourably whilst the UK still has influence as a Member State before Brexit and not left subject to the unpredictability of Commission delegated or implementing powers.**

**2.8 In the meantime, as the Government is not entirely happy with all aspects of the current proposals we retain them under scrutiny and would be grateful if the Minister could update us on significant developments in the negotiations.**

## Full details of the documents

(a) Proposed for a Regulation of the European Parliament and the Council adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union: (38475), [5623/17](#) + ADD 1, COM(16) 799; (b) Proposal for a Regulation of the European Parliament and the Council adapting a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny to Article 290 of the Treaty of the Functioning of the European Union: (38481), [5705/17](#) + ADD 1, COM(16) 798.

## The proposals

2.9 Document (a) outlines that each basic act will be amended as described in the annex to the proposal. There are a number of amendments to each basic act which use the RPS procedure. The references to RPS are deleted and reworded using standard wording for delegated acts. This rewording is based on the assumption that, in principle, measures covered by RPS correspond to those covered by delegated acts. In the very few cases where the RPS procedure is replaced by implementing acts an introductory remark is added and they are exercised in accordance with the Comitology Regulation. The addendum to document (a) is the list of acts that will be amended.

2.10 Document (b) contains further similar proposals. Specifically, the document proposes to amend three acts in the area of justice that currently use RPS to delegated acts. There are no implementing acts in this document. Due to the nature of the proposals in the area of justice having a different legal basis, a different proposal has been put forward for these acts.

## The Government's view

2.11 In his Explanatory Memorandum of 13 February 2017, the Minister of State for Exiting the EU (Mr David Jones) first repeats the standard statement about the Government's position in the EU until it exits.<sup>11</sup>

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<sup>11</sup> On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

## *Policy implications*

2.12 The Minister first outlines the Commission’s rationale for seeking to align a number of pre Lisbon legal acts subject to RPS, as set out in the 1999 Comitology Decision<sup>12</sup> with post-Lisbon delegated acts governed by Article 290(1) TFEU. He says that:

- the Commission notes the similarity in the definitions of “delegated acts” in Article 290(1) TFEU and acts which the 1999 Comitology Decision<sup>13</sup> made subject to RPS;
- in both cases, the acts in question are of general application and seek to amend or supplement certain non-essential elements of the legislative instrument; and
- for that reason, the revision of the Comitology Decision by the 2011 Comitology Regulation,<sup>14</sup> adopted on the legal basis of the Treaty Article dealing with implementing powers (Article 291(3) TFEU) did not include Article 5a of the Comitology Decision. It also provided that RPS was to be provisionally maintained for those acts which referred to Article 5a of that Decision.

2.13 The Minister then describes the Commission’s efforts made since then to align RPS acts to delegated acts. He recalls that:

- when first proposed in 2013, the proposals were blocked by the Council and the current proposals notes the difficulty the Council, including the then UK Government, had with the Commission’s approach; and
- in its Explanatory Memorandum on the 2013 proposals, the Government said that it disliked the Commission’s omnibus approach to alignment and questioned the rationale.

2.14 The Minister further explains the then Government’s opposition, which was partly founded on important differences between RPS and delegated acts. He highlights that under the 2013 proposals:

“...the formal role of a committee of Member States’ representatives with technical expertise in their fields would be removed. This would have removed an important mechanism that Member States had to block and amend Commission proposals that were available under RPS. Such use of delegated acts under the 2013 proposals would have risked delegated acts being adopted without properly taking into account their potential impacts. This was why the Government believed the alignment of old RPS procedures to delegated acts should have been taken on a case-by-case approach.”

2.15 Since that unsuccessful initiative, the Minister recalls:

- in April 2016 the Presidents of the Council, Commission, and European Parliament signed the Inter-Institutional Agreement on Better Law-Making (IIA);

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12 Decision 1999/468/EC, as amended by Council Decision 2006/512/EC.

13 Article 5a.

14 182/2011.

- accompanying the IIA was the ‘Common Understanding on Delegated Acts’;
- this non-legally binding understanding committed the Commission ‘to gathering, prior to the adoption of delegated acts, all necessary expertise, including through the consultation of Member State’s experts and through public consultations’;
- the UK voted in favour of the IIA on Better Law-Making in Council;
- the ‘Common Understanding on Delegated Acts’ requires the Commission to consult designated Member State experts in the preparation of draft delegated acts;
- these consultations are to happen in a timely manner and Member States are to be given draft delegated acts with sufficient time to prepare their views;
- the Commission should also give Member States the opportunity to respond in writing to any changes to draft delegated acts; and
- at the end of consultation meetings with Member State experts, the Commission shall state the conclusions that have been drawn from the meetings, including how they will take forward the expert’s views into consideration and how they shall proceed.

2.16 The Minister says that the consultation of national experts:

“has the effect of addressing the concerns the Government has had about technical expertise not been included in the drafting of delegated acts. The Government welcomes the steps taken to include the relevant expertise from Member States that will see the delegated acts process informed by the expertise that was lacking previously. Therefore the Government is, in principle, more open to the alignment of the RPS procedure to delegated acts than it was prior to the adoption of the IIA.”

2.17 Nevertheless the Minister says that the Government still has outstanding concerns because old expert committees under RPS procedures had the right to block proposals. The Minister comments:

“Despite greater transparency and consultation in the delegated acts procedure, Member States would not be able to block proposals as they could under the RPS procedure. However, should the Commission take on the views of Member State experts promptly as stipulated in the Common Understanding, the likelihood of Member States wishing to block proposals will be reduced.

“The Government notes with approval the proposal from the Commission to align some RPS procedures to that of implementing acts. This is evidence that the Commission may have taken a more nuanced approach to alignment than it had done in the 2013 proposal.

“The Government will therefore take the approach in Council that whilst we can support the alignment of RPS to delegated acts more than we have done in the past, the Government does still have some concerns around this.”

2.18 He also confirms that there is no precise timetable yet for negotiations on the proposals.

### Previous Committee Reports

None, but see (35507), 15882/13: Eleventh Report HC 71-ix (2016–17), [chapter 22](#) ( 14 September 2016) and Thirty-fourth Report HC 83-xxxi, [chapter 4](#) (5 February 2014); (35189), 12730/13 and (35179), 12539/13: Twenty-sixth Report HC 83-xxiii (2013–14), [chapter 9](#) (4 December 2013); Thirteenth Report HC 83-xiii (2013–14), [chapter 14](#) (4 September 2013); (35179), 12539/13: Thirty-ninth Report HC 219-xxxvii (2014–15), [chapter 22](#) (24 March 2015).

## 3 Organ donation

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Committee’s assessment	Politically important
<a href="#">Committee’s decision</a>	Not cleared from scrutiny; further information requested; drawn to the attention of the Health Committee
Document details	Report from the Commission on the implementation of EU Directive 2010/53/EU setting standards of quality and safety of human organs intended for transplantation
Legal base	—
Department	Health
Document Number	(38440), 5042/17 + ADD 1, COM(16) 809

### Summary and Committee’s conclusions

3.1 The EU’s Organ Donation Directive sets minimum standards that must be met across all Member States in the EU, ensuring the quality and safety of human organs for transplantation. The aim is to promote effective movement and end-use of donated organs across all Member States, while ensuring that members of the public in each Member State have increased confidence in the quality and safety of donated organs.

3.2 The Commission’s Report concludes that implementation of the Directive has been adequate across the EU, although it notes some difficulties in interpretation, implementation and enforcement of the legislation.

3.3 In the context of the UK’s withdrawal from the EU, it is relevant to note that Chapter V of the Directive sets out provisions for the exchange of organs with third countries and European organ exchange organisations, such as Eurotransplant. Exchange is conditional on the establishment of agreed arrangements between each Member State and the third country or European organ exchange organisation. Furthermore, it shall only be allowed where the organs:

- can be traced from the donor to the recipient and vice versa; and
- meet quality and safety requirements equivalent to those laid down in the Directive.

3.4 The Parliamentary Under-Secretary of State for Health, (Lord O’Shaughnessy), explains that the Report has no policy implications for the UK, which is deemed to be fully compliant with the Directive.

3.5 The Government has subsequently provided some statistics on the levels of organ donation between the UK and other countries.<sup>15</sup> These show a very small volume of such donations. In 2015–16, for example, the UK received 13 organs from overseas deceased donors, while 18 were donated.

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15 <http://www.odt.nhs.uk/pdf/activity-report/appendices.pdf>

**3.6 We have no concerns about the document or about the Government’s Explanatory Memorandum. We do seek clarity, however, on the implications of the UK’s withdrawal from the European Union.**

**3.7 Clearly, the volumes of donation between the UK and other Member States are low but are nevertheless vital for those receiving a donor organ. We note that the Directive allows for the exchange of organs between EU Member States and third countries and European organ exchange organisations. We would welcome confirmation that the Government shared our interpretation of the Directive in that respect. Furthermore, we would welcome confirmation that the sharing of organs between EU Member States—including the Republic of Ireland—and third countries is not automatic and would require bilateral agreements between the UK and individual Member States. Finally, does the UK participate in any European organ exchange organisations? We consider these to be factual questions to which the Government can respond without jeopardising the Brexit negotiations.**

**3.8 Pending a response to our queries, we retain the document under scrutiny and look forward to a response by the end of March. We draw the document to the attention of the Health Committee.**

### **Full details of the documents**

Report from the Commission on the implementation of EU Directive 2010/53/EU setting standards of quality and safety of human organs intended for transplantation: (38440), [5042/17](#) + ADD 1, COM(16) 809.

### **The Commission’s Report**

**3.9 The Directive<sup>16</sup> requires Member States to report implementation progress to the European Commission every three years. The Commission prepares a Report on the basis of the information received from Member States.**

**3.10 The Report concludes that implementation has been adequate. The legislation has resulted in the establishment of competent authorities that oversee the activities from donation to transplantation in each country. The authorities apply a framework for quality and safety including authorisation, inspection and vigilance.**

**3.11 However, the Report notes difficulties in interpretation, implementation and enforcement of the legislation in some countries. The Commission intends to follow-up with these Member States and to address situations where the legislation might not have been fully or correctly implemented.**

**3.12 The UK is considered to be fully compliant with the legislation. The Directive was implemented into UK law on 27 August 2012 through the Quality and Safety of Organs Intended for Transplantation Regulations 2012.**

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<sup>16</sup> Directive 2010/53/EU.

## Minister's Explanatory Memorandum of 18 January 2017

3.13 The Minister explains that the Human Tissue Authority (HTA) is the UK's Competent Authority responsible for ensuring compliance with the provisions of the Directive and NHS Blood and Transplant (NHSBT) is a delegated body with responsibility for the provision and allocation of donated organs in the United Kingdom and Northern Ireland and specific measures around severe adverse reactions and event reporting and the import and export of organs.

3.14 On the benefits of the Directive, the Minister says:

“The main benefits of the Directive are to ensure that the donation and procurement of organs comply with recognised standards of quality and safety in all Member States and carry the same basic quality and safety guarantees. Organs imported into the UK from other EU countries will therefore have been procured and distributed to the same high quality and safety standards implemented and regulated within the UK.”

3.15 He adds:

“There are no policy implications for the UK. This Report gives Parliament, the HTA (the UK's Competent Authority), NHS Blood and Transplant, responsible for the provision and allocation of donated organs in the United Kingdom and Northern Ireland, and clinicians and patients the necessary assurance that the UK is fully compliant with the provisions of the Directive.”

## Previous Committee Reports

None.

## 4 Tax evasion and avoidance, money laundering, terrorist financing

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Committee's assessment	Legally and politically important
<a href="#">Committee's decision</a>	Not cleared from scrutiny; further information requested
Document details	Proposed Directive about preventing use of the financial system for 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 Commission has proposed amendment of the Fourth Anti-Money Laundering Directive, in the context of the EU wish to counter financing of terrorism, money laundering and tax evasion and avoidance, including by increasing transparency of financial transactions and corporate entities. We have considered the matter thrice previously and have heard that, while the Government welcomed the proposal, it had concerns on issues relating to shareholding thresholds for company registrations, registration of beneficial owners of all trusts and trust-like legal arrangements, and registers of bank and payment accounts.

4.2 The Government tells us now of a Council text agreed for negotiation in trilogues with the European Parliament. This text not only addresses the three issues the Government had drawn to our attention previously, but also proposes a less onerous due diligence process for domestic politically exposed persons.

**4.3 We are grateful to the Government for its encouraging account of where matters stand on this proposed Directive. However, we are retaining the document under scrutiny pending accounts from the Government on developments in the trilogue discussions.**

4.4 **Additionally, when the Government next reports we should like to know:**

- **the implications, in the Brexit context, of the 36 month implementation period for the proposed registers of bank and payment accounts provisions; and**
- **whether it proposes that there should be UK legislation post-Brexit, to counter financing of terrorism, money laundering and tax evasion and avoidance, similar to the EU legislation.**

## Full details of the document

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

4.5 The EU wishes to counter financing of terrorism, money laundering and tax evasion and avoidance, including by increasing transparency of financial transactions and corporate entities. Amongst Commission proposals in this regard is a proposed Directive to amend the Fourth Anti-Money Laundering Directive, presented in July 2016. We have considered the matter thrice previously and have heard that, while the Government welcomed the proposal, it had concerns on issues relating to shareholding thresholds for company registrations, registration of beneficial owners of all trusts and trust-like legal arrangements, and registers of bank and payment accounts. We also heard that the Government was considering a Justice and Home Affairs opt-in to the proposal (although the widely held legal view is that it is not possible to opt in to a legislative proposal which does not have a Justice and Home Affairs legal base).

4.6 When, in November 2016, we last considered this proposal the Government told us that it had decided to (purport to) opt in to the proposed Directive. It also said that Council working party consideration of the proposal had resolved the shareholding thresholds issue, but that the other two matters of concern for the UK were still being discussed. However, the Government added that the Presidency intended to seek agreement on a General Approach at the December 2016 ECOFIN Council.

4.7 We noted that the Government was purporting to opt into the proposed Directive. Our view, widely shared, is that the UK opt-in is not engaged unless a proposal has a legal base found in Title V of Part Three TFEU. However, we reminded the Government that this difference of view would have no practical effect, since the whole of the proposal, once enacted, would anyway apply to the UK. As for the substance of the proposal, we noted the Government's success in relation to shareholding thresholds, but that the other two matters were outstanding. So we continued to hold the document under scrutiny pending information about satisfactory outcomes. However, if such outcomes were achieved in time for the ECOFIN Council, we granted a waiver from the Scrutiny Reserve Resolution for that Council meeting. We would, of course, expect to receive a prompt report if that situation materialised.

## The Minister's letter of 3 February 2017

4.8 The Economic Secretary to the Treasury (Simon Kirby), reminding us that the Presidency had aimed to agree on a General Approach at the ECOFIN Council of 6 December 2016, says that:

- in the event no agreement was reached at the ECOFIN meeting;
- the proposal was considered by COREPER on 20 December 2016 with a view to entering into trilogues;

- as the matter remains under scrutiny, the UK maintained an abstention in COREPER; and
- trilogues will begin shortly and the Maltese Presidency hopes to complete negotiations during its term.

4.9 The Minister then tells us, in relation to beneficial ownership of trusts, that:

- during the ECOFIN discussion, the Government restated the UK’s commitment to tackling illicit finance, but also reminded Member States of the need to strike the correct balance between transparency and the fundamental rights of individuals;
- in particular, it highlighted the legal risks around providing public access to beneficial ownership registers for trusts, which had been illustrated by a French Constitutional Council ruling on this very question;
- in recognition of these risks, the Council dropped the proposal for mandatory public access to trust information;
- Member States agreed on a compromise whereby law enforcement authorities, businesses with anti-money laundering/counter-terrorist financing responsibilities and those with a “legitimate interest” would have access, but Member States could define the conditions under which a “legitimate interest” could be claimed;
- this compromise was an important step forward and it helped to address a UK negotiating priority; and
- if it holds during trilogues, the Government will gather evidence on potential definitions through a public consultation on the amendments.

4.10 Turning to registers of bank and payment accounts, the Minister says that:

- the Government has consistently called for a realistic timeframe for the proposed register of bank and payment accounts;
- the Council has now agreed to extend the implementation deadline until 36 months after the amending Directive comes into force; and
- whilst the Government remains concerned about the scope and costs of the proposal, this extended timeframe will allow it to consider in more depth the UK’s approach to implementation, including a full appraisal of the options to maximise proportionality and minimise the costs and risks involved.

4.11 The Minister also tells us of discussion about politically exposed persons (PEPs), saying that:

- in November 2016 a proposal was tabled to reopen the provisions in the Fourth Anti-Money Laundering Directive relating to PEPs;
- this would allow firms to apply customer due diligence measures to low-risk “domestic” PEPs, rather than enhanced due diligence;

- the Government called for a similar approach when the Directive was originally negotiated and it continues to support the proportionate application of due diligence measures to PEPs and those close to them;
- the Government welcomed this new amendment to the Directive;
- at the December 2016 ECOFIN Council it registered its strong support, highlighted the disproportionate approach currently being taken by several banks and provided examples of parliamentarians whose families had been adversely affected; and
- the Government was successful in securing improvements to the text and the Council agreed to take them forward, though they have yet to be agreed with the European Parliament.

### Previous Committee Reports

Eighteenth Report HC 71-xvi (2016–17), [chapter 8](#) (16 November 2016), Fifteenth Report HC 71-xiii (2016–17) [chapter 4](#) (26 October 2016) and Eleventh Report, HC 71-ix (2016–17), [chapter 6](#) (14 September 2016).

## 5 Taxation: double taxation dispute resolution

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Not cleared from scrutiny; further information requested
Document details	Proposed Council Directive on double taxation dispute resolution mechanisms in the EU
Legal base	Article 115 TFEU, special legislative procedure, unanimity
Department	HM Treasury
Document Number	(38214), 13732/16 + ADDs 1–3, COM(16) 686

### Summary and Committee's conclusions

5.1 The Commission has proposed a Council Directive about resolving disputes between Member States on how double taxation should be eliminated in a business context. When, in December 2016, we considered this proposal we asked the Government how it envisages double taxation agreements working with the remaining Member States post-Brexit and whether it expects any difficulties to arise during negotiation of the proposed Council Directive.

5.2 The Government now tells us that its bilateral agreement with each Member State will continue post-Brexit. It explains differences in these various bilateral agreements, in relation to dispute resolution, and of its expectation that the UK and the remaining Member States will eventually subscribe to an Organisation for Economic Cooperation and Development (OECD) convention on such dispute resolution. As for difficulties arising during negotiation of the proposed Council Directive, the Government tells us that there has been significant disagreement amongst Member States, including about whether a Council Directive was an appropriate method for improving resolution of double tax disputes and that the Maltese Presidency's hope for a political agreement at the May 2017 ECOFIN Council meeting currently seems unlikely to be met.

**5.3 We are grateful to the Government for the information it now gives. However we retain the document under scrutiny, pending further accounts of Council consideration of the proposal.**

### Full details of the document

Proposed Council Directive on Double Taxation Dispute Resolution Mechanisms in the European Union: (38214), [13732/16](#) + ADDs 1–3, COM(16) 686.

### Background

5.4 Double taxation arises when two countries both tax the same income or capital. This can create obstacles for business operating cross border and have a negative impact on

cross border investment. The Commission has proposed a Council Directive to lay down rules which would provide mechanisms for resolving disputes between Member States' tax authorities about how double taxation should be eliminated in a business context.

5.5 When we considered this matter in December 2016 the Government, telling us that it supported the proposed Council Directive, said that it believes that double taxation is a serious obstacle for businesses operating across borders and for international investment, and is committed to improving double tax dispute resolution mechanisms. It did not suggest that there is any problem for the UK with this proposed Council Directive. However before considering the matter again we asked to hear from the Government on two points. We wished to know how the Government envisaged double taxation agreements working, particularly in relation to dispute resolution, with the remaining Member States post-Brexit. We wished also to hear about whether the Government expected any difficulties to arise during negotiation of the proposed Council Directive. Meanwhile the document remained under scrutiny.

### **The Minister's letter of 9 February 2017**

5.6 The Financial Secretary to the Treasury (Jane Ellison) tells us now that the UK has double taxation agreements with all the other Member States, which will continue to apply on withdrawal. She comments further that:

- each of these agreements contains a dispute resolution provision, a “Mutual Agreement Procedure” article;
- this requires tax authorities to endeavour to resolve disputes about taxation not in accordance with the agreement and provides for a similar process to that in the proposed Council Directive;
- six of the agreements (Belgium, France, Germany, Spain, the Netherlands and Sweden) also currently contain a mandatory binding arbitration provision which helps to ensure resolution of disputes;
- the Government anticipates that six further agreements with Member States (Austria, Ireland, Italy, Luxembourg, Poland and Slovenia) will be modified to include a mandatory binding arbitration provision over the next two to three years;
- this is a result of the UK and these states committing to implement and adopt arbitration, as in the report on Action 14 (Making Dispute Resolution Mechanisms More Effective) of the OECD's Base Erosion and Profit Shifting (BEPS) project,<sup>17</sup> and being a part of the group of countries which negotiated the text of an arbitration provision for inclusion in the multilateral convention which will modify tax treaties in order to implement BEPS recommendations;
- consequently, the Government expects that over 90% of new mutual agreement procedure cases with Member States after UK withdrawal will be with countries where the UK has some provision for arbitration in its double tax agreements;

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17 See <http://www.oecd.org/tax/beps/beps-actions.htm>.

- the remaining 10% of cases will still have access to the mutual agreement procedure as a method for endeavouring to resolve disputes; and
- the Government will also continue to encourage the remaining Member States to adopt provisions on mandatory binding arbitration in the UK’s double tax agreements with them, either through the multilateral convention or in bilateral tax treaty negotiations.

5.7 As to whether the Government expects any difficulties to arise during negotiation of the proposed Council Directive, the Minister says that:

- the first Council working party meeting on the proposal was held on 18 January 2017;
- Member States discussed their general views on the proposed directive as well as the first two articles;
- difficulties did arise—there was significant disagreement amongst Member States, including about whether a Council Directive was an appropriate method for improving resolution of double tax disputes;
- the Government continues to support use of a Council Directive;
- it would provide more certainty to taxpayers than other options suggested by Member States at the meeting, such as a non-binding Commission Recommendation or an extension of the EU Arbitration Convention<sup>18</sup> (which could take years to ratify);
- the Maltese Presidency has indicated that it would like the proposed Council Directive to be a priority during its term, and the proposal is on a draft agenda for possible political agreement at the May 2017 ECOFIN Council meeting; and
- such agreement currently seems unlikely.

## Previous Committee Reports

Twenty-second Report HC 71-xx (2016–17), [chapter 7](#) (7 December 2016).

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18 See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:41990A0436>.

## 6 Financial services regulatory framework: resolution and recovery and capital requirements

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Not cleared from scrutiny; further information requested
Document details	(a) Proposed Directive concerning bank resolution and recovery; (b) Proposed Directive about the ranking of unsecured debt instruments in insolvency hierarchy; (c) Proposed Directive concerning aspects of capital requirements; (d) Proposed Regulation concerning aspects of capital requirements
Legal base	Article 114 TFEU, ordinary legislative procedure, QMV
Department	Treasury
Document Numbers	(a) (38300), 14777/16 + ADDs 1–2, COM(16) 852; (b) (38301), 14778/16 + ADDs 1–2, COM(16) 853; (c) (38303), 14776/16 + ADDs 1–2 COM(16) 854; (d) (38304), 14775/16 + ADDs 1–3, COM(16) 850

### Summary and Committee's conclusions

6.1 The Commission has proposed three Directives and a Regulation with complex and technical provisions concerning bank resolution and recovery, the ranking of unsecured debt instruments in insolvency hierarchy and aspects of capital requirements. These interrelated proposals affect many important aspects of EU financial regulation.

6.2 The Government is generally supportive of the Commission's proposals. But it has told us of the need to ensure that EU legislation is entirely consistent with agreed international standards, is flexible and proportionate and has appropriate technical detail set in the primary legislation.

6.3 The Government has now given us a first update on Council working group consideration of the proposals. It tells us, in the context of Brexit, of the possible timetable for adoption and implementation of the proposals. It comments about its intention that the UK will continue to be strongly supportive of international rule-setting for financial services, post Brexit.

**6.4 We are grateful to the Government for this account of where matters stand on negotiation of these proposals and look forward to further reports in due course. Meanwhile the documents remain under scrutiny.**

**6.5 We note the Government's comments in relation to these proposals and Brexit.**

## Full details of the documents

(a) Proposed Directive amending Directive 2014/59/EU on loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU, Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC: (38300), [14777/16](#) + ADDs 1–2, COM(16) 852; (b) Proposed Directive on amending Directive 2014/59/EU of the European Parliament and of the Council as regards the ranking of unsecured debt instruments in insolvency hierarchy: (38301), [14778/16](#) + ADDs 1–2, COM(16) 853; (c) Proposed Directive amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures: (38303), [14776/16](#) + ADDs 1–2 COM(16) 854; (d) Proposed Regulation amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012: (38304), [14775/16](#) + ADDs 1–3, COM(16) 850.

## Background

6.6 Following the very severe financial crisis some years ago the EU adopted a considerable amount of regulatory legislation aimed at restoring the stability of the financial services sector and preventing future problems. Much of the legislation was based on internationally agreed standards. Although the legislation has concerned all Member States, implementation of significant parts of it has been centralised for eurozone Member States through development of the Banking Union.

6.7 Practical experience of the legislation and further development of standards in international fora have led to the need for amendment of important elements of the EU legislation. Most recently the Commission published a Communication analysing the results of a public inquiry it conducted in 2015 and 2016 into the EU regulatory framework for financial services. The Communication also set out the intentions for legislative and non-legislative proposals in response to the outcome of the inquiry. At the same time the Commission presented legislative proposals, for amendment to present legislation concerning capital requirements for credit institutions and investment firms, bank recovery and resolution, central counterparties and the Banking Union's Single Resolution Mechanism.<sup>19</sup>

6.8 Amongst the Commission's proposals were these proposed Directives and proposed Regulation which concern bank resolution and recovery, the ranking of unsecured debt instruments in insolvency hierarchy and aspects of capital requirements. These complex and technical proposals affect many important aspects of EU financial regulation. They range from measures to ensure the regulation of non-bank entities is more appropriate and proportionate to measures to implement recent significant developments in international standards. There are significant interrelationships between them.

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19 (38311) 14903/16 + ADDs 1–2: see Twenty-fifth Report HC 71-xxiii (2016–17), [chapter 6](#) (11 Jan 2017).

6.9 When we considered these proposals in January 2016 we heard that the Government is generally supportive of the Commission’s proposals. But its comments to us about the very detailed provisions showed its laudable wish to ensure that EU legislation is entirely consistent with agreed international standards, is flexible and proportionate and does not give the European Securities and Markets Authority and the Commission powers to set technical detail which ought to be in the primary legislation. We said that clearly the Government would need to negotiate carefully much of the many details it had drawn to our attention to ensure everything in them when adopted meets its concerns. So we asked to be kept informed regularly about negotiating developments on each proposal. More generally we asked to be told soon about the likely implementation dates of the proposals in the context of the probable Brexit date. We wanted also to have the Government’s assessment of the consequences for the UK of these proposals—in particular would its aim post-Brexit to be closer to the relevant international standards or the EU ones, if there were any divergence between the two?

### **The Minister’s letter of 14 February 2017**

6.10 The Economic Secretary to the Treasury (Simon Kirby) tells us that the negotiations for the proposals to amend the Banking Recovery and Resolution Directive (BRRD), documents (a) and (b), the Capital Requirements Directive (CRD), document (c), and the Capital Requirements Regulation (CRR), document (d), (together known as CRD IV) are being taken forward by the Maltese Presidency as a single package and accordingly he is updating us on all of these elements. He says first that:

- the Government has made clear to the Commission that it welcomes the opportunity to implement important measures in line with internationally agreed minimum standards, such as the leverage ratio and the Net Stable Funding Ratio (NSFR), as proposed for the CRR;
- it has also welcomed the commitment to proportionality for smaller firms and measures that will see capital requirements lowered for SME and infrastructure lending; and
- these proposals are developing as set out in to us in his Explanatory Memoranda.

6.11 The Minister reports that at the December 2016 ECOFIN Council, the Government outlined UK priorities for international harmonization, regulatory flexibility and proper scrutiny of the Intermediate Holding Companies (IHC) proposal for the CRD. Reporting further that Council working groups commenced in January and are ongoing, the Minister says that the main issues that have been discussed so far are:

### ***Pillar 2 capital requirements, as proposed for the BRRD***

- the Government has supported flexibility for regulators, as in the aims set out in its Explanatory Memorandum;
- other Member States have been supportive of the UK positions;

### ***IFRS (International Financial Reporting Standards) 9, concerning 'expected loss' measurements, as proposed for the CRR***

- as noted in its Explanatory Memorandum the Government supports the introduction of an IFRS 9 transition phase and has pushed in negotiations for implementation before the end of 2017, prior to the entry into force of the new accounting standard;
- Member States have agreed to take the IFRS 9 measures forward separately and on an expedited timeline, which is in line with the Government's objective;
- technical discussions on the shape of the transition will be taken forward in the coming months;

### ***Market Risk, as proposed for the CRR***

- the Government has not seen sufficient evidence to justify a substantial deviation from, or significant delay in the implementation of, Basel Committee on Banking Supervision (BCBS) standards for Market Risk;
- the general view of other Member States has been supportive of the UK position;

### ***Other BCBS requirements, as proposed for the CRR***

- most Member States are broadly in support of implementing measures such as the leverage ratio, NSFR and large exposures measures in line with BCBS standards;

### ***IHCs, as proposed for the CRD***

- the Government has argued in the working groups that the new measure on IHCs was included without proper scrutiny, and may be protectionist in a way that could impose costs on firms that are not appropriately justified by any resolution or financial stability benefits;
- the Commission is continuing to defend its proposal as a necessary measure to support resolution;
- the views of other Member States are mixed;
- the Government is continuing to conduct analysis of potential impacts and is engaging with counterparts on an ongoing basis;

### ***Remuneration, as proposed for the CRD***

- there is some support from other Member States for higher proportionality thresholds;
- in line with the concerns expressed in the Explanatory Memorandum, the Government should continue to consider the impact of these proposals and the appropriate level of regulation for smaller firms;

### ***Total Loss Absorbing Capacity (TLAC)/minimum requirements for own funds and eligible liabilities (MREL), as proposed for the CRR and the BRRD***

- as stated in its Explanatory Memorandum, the Government has argued that it is important that the Financial Stability Board (FSB)'s TLAC standard is implemented fully and that the proposals do not impose constraints on the flexibility for the resolution authority to set an appropriate quality and quantity of loss absorbing debt to support a firm's resolution strategy;
- currently, some of the Commission's proposals on MREL are maximum harmonizing and do not align with the FSB's TLAC standard;
- rectifying this is one of the Government's key priorities in working groups;
- some Member States are seeking a weaker standard;

### ***Large exposure requirement, as proposed for the CRR***

- as set out in its Explanatory Memorandum the Government supports this measure, which would align EU regulation with existing standards;

### ***Ranking of unsecured debt instruments in insolvency hierarchy, as proposed for the BRRD***

- as we were informed in the Explanatory Memorandum, the Government and the Bank of England are considering the detail of the proposal to ensure it does not prevent the UK approach to structural subordination;
- Member States broadly supported the conceptual approach and fast tracking the proposed Directive; but
- Member States asked for consideration to be given to the transposition timetable.

6.12 The Minister tells us that the European Parliamentary groupings have now selected their rapporteurs, on the CRD proposals, Peter Simons (DE, S&D), and on the BRRD ones, Gunnar Hökmark (SE, EPP). He undertakes to provide us with further information on parliamentary timeframes and objectives when these emerge.

6.13 Turning to the relationship of these proposals to Brexit the Minister says first that:

- based on the expected timeline of negotiations in and between the Council and the European Parliament, and the completion of processes such as jurist linguists, the Government would envisage final legislative adoption of the package to take place no earlier than late 2018 or early 2019; and
- entry into force and implementation timelines then vary depending on the measure, for example the NSFR proposal has a two year delay before implementation.

6.14 As for the consequences for the UK of these proposals, in particular whether the Government's aim post-Brexit would be to be closer to the relevant international standards or the EU ones, if there were any divergence between the two, the Minister says that:

- the UK will be free to make its own choices on this matter post-Brexit;
- the UK has always been a strong proponent and voice in international rule-setting fora, including the BCBS, and will continue to be so;
- the Government is not able to speculate on UK rulemaking at some unspecified point in the future;
- the Government has already indicated that it intends to ‘onshore’ EU legislation into the UK system ready for Brexit; and
- this will be its focus in the medium term, alongside negotiations on the final EU/UK relationship.

### **Previous Committee Reports**

Twenty-fifth Report HC 71-xxiii (2016–17), [chapter 6](#) (11 Jan 2017).

## 7 EU asylum reform: revision of the Dublin rules, the EU Agency for Asylum and safe countries of origin

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Committee's assessment	Politically important
<u>Committee's decision</u>	(a) and (b) Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee  (c) and (d) Cleared from scrutiny
Document details	(a) Proposal for a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person (recast)  (b) Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No. 439/2010  (c) Proposal for a Regulation establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU  (d) Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Sweden
Legal base	(a) Article 78(2)(e) TFEU, ordinary legislative procedure, QMV  (b) Article 78(1) and (2) TFEU, ordinary legislative procedure, QMV  (c) Article 78(2)(d) TFEU, ordinary legislative procedure, QMV  (d) Article 78(3) TFEU, QMV, consultation of EP
Department	Home Office
Document Numbers	(a) (37747), 8715/16, COM(16) 270  (b) (37749), 8742/16, COM(16) 271  (c) (37090), 11845/15 + ADD 1, COM(15) 452  (d) (37407), 15405/15, COM(15) 677

## Summary and Committee’s conclusions

7.1 These documents all concern different aspects of the EU’s asylum rule book. Document (a)—the proposed “Dublin IV” Regulation—would streamline the existing rules and procedures for determining the Member State responsible for examining an application for international protection made in the EU. It is intended to ensure quicker access to an asylum procedure and discourage secondary movements between Member States. More controversially, the proposed Regulation would introduce a new “corrective allocation” or fairness mechanism to redistribute asylum seekers from over-burdened Member States in an attempt to ensure a more equitable and sustainable means of sharing responsibility at times of high migratory flows. Participation in the new fairness mechanism would be optional, but opting out would be costly—€250,000 (£212,337)<sup>20</sup> for each relocated asylum seeker that a Member State refuses to accept.

7.2 Document (b) would establish a European Union Agency for Asylum to replace the existing European Asylum Support Office (EASO). The new Agency would have stronger powers to monitor the application of EU asylum rules and to provide operational and technical assistance to Member States whose asylum and reception systems experience “disproportionate pressure”.

7.3 Document (c) would establish a common EU list of seven safe countries of origin to support the swift processing of applications for international protection which are likely to be unfounded. The list includes six Western Balkans countries—Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia, plus Turkey. There is no provision for a common EU list under existing EU asylum law—the designation of a safe third country takes place at national level, based on an agreed set of criteria.

7.4 Document (d) dates back to December 2015. It would suspend, but not release, Sweden from the obligation to accept asylum seekers relocated from Greece and Italy under Council Decisions adopted in September 2015. The suspension would last for a year and is justified on the grounds of “exceptional pressure” on Sweden’s asylum and migration systems.

7.5 All four proposals are subject to the UK’s Title V (Justice and Home Affairs) opt-in. The UK participates fully in the existing Dublin rules (set out in the Dublin III Regulation) and in the European Asylum Support Office but the Government decided not to opt in to the successor arrangements proposed by the Commission in documents (a) and (b). Nor did it opt in to documents (c) or (d). Negotiations are continuing on the first three documents.

7.6 The Immigration Minister (Mr Robert Goodwill) responds to a number of questions which remain outstanding from our earlier Reports on documents (a) and (b) and provides a brief update on negotiations. He updates us on developments concerning safe countries of origin and clarifies what appeared to be a disparity in the number of individuals who would be affected by the temporary suspension of Sweden’s relocation obligations.

7.7 The Minister tells us that the December Justice and Home Affairs Council agreed a mandate to begin negotiations with the European Parliament on the proposed EU Asylum Agency Regulation. We ask him to outline the main differences between the compromise text agreed by the Council and the Commission’s original proposal. We remind him that we await a response (outstanding since July) on the following questions:

- whether the UK will remain bound by the current Regulation establishing the European Asylum Support Office (EASO)—the proposed EU Asylum Agency Regulation would repeal the EASO Regulation but does not indicate the effect of the repeal on Member States not participating in the new Agency; and
- whether EASO and the new EU Asylum Agency could co-exist and the extent to which the enhanced mandate and functions of the new Agency could operate alongside EASO’s more limited mandate.

7.8 The Minister reiterates the Government’s view that the UK will be able to participate in the Dublin system on the basis of the current rules (set out in the Dublin III Regulation) while it remains a member of the EU. He is unwilling to speculate on continued UK participation in Dublin once the UK leaves the EU. We ask the Minister whether he accepts that any agreement on future UK participation in Dublin post-Brexit is likely to be based on whatever text emerges from the current negotiations and could, therefore, include some form of redistributive mechanism. As the UK has not opted in to the proposed Dublin IV Regulation, we also ask him how much leverage the Government will have to resist changes which would make it more difficult for the UK to participate in Dublin post-Brexit.

7.9 Given the uncertainties as to the UK’s future relationship with the Dublin system and with the proposed EU Asylum Agency once the UK leaves the EU, we request progress reports on negotiations. These should explain how any compromise texts agreed by the Council differ from the Commission’s original proposals and the main changes sought by the European Parliament. Meanwhile, documents (a) and (b) remain under scrutiny.

7.10 Turning to the proposed Regulation on safe countries of origin—document (c)—we consider that the Government’s decision not to opt in and the outcome of the referendum make the questions raised in our earlier Reports redundant. We therefore clear the proposal from scrutiny. We have no further questions to ask on document (d) and also clear it from scrutiny.

### Full details of the documents

(a) Proposal for a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person (recast): (37747), [8715/16](#), COM(16) 270; (b) Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No. 439/2010: (37749), [8742/16](#) + COM(16) 271; (c) Proposal for a Regulation establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU on common procedures for

granting and withdrawing international protection, and amending Directive 2013/32/EU: (37090), [11845/15](#) + ADD 1, COM(15) 452;(d) Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Sweden in accordance with Article 9 of Council Decision (EU) 2015/1523 and Article 9 of Council Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece: (37407), [15405/15](#), COM(15) 677.

## Background

7.11 Our earlier Reports listed at the end of this chapter provide a detailed overview of the documents and the Government’s position.

## The Minister’s letter of 10 February 2017

### *The proposed Dublin IV Regulation—document (a)*

7.12 The Government has told us, based on assurances given by the Commission that, while the UK remains a member of the EU, it will be able to participate in the Dublin system on the basis of the current rules (set out in the Dublin III Regulation) if it does not opt in to the proposed successor Regulation—document (a). We asked the Minister to explain how two sets of procedural rules applying different time limits throughout the Dublin process and, in some cases altering the basis on which the responsible Member State is determined, could be made to work. He responds:

“The Commission was very clear when it published the proposal that should the UK not opt into the revised Dublin IV Regulation, the existing Dublin III Regulation would continue to apply between the UK and other Member States. We believe this will remain the case while we remain a member of the European Union. There is a clear precedent for two Dublin regimes operating in parallel as seen with regard to relations with Denmark—between 2003 and 2006—when different rules applied between States, with Denmark’s relationships using the rules of the Dublin Convention when others operated the Dublin II Regulation.”

7.13 To help us evaluate the benefit of the Dublin system for the UK, we requested details of transfers to and from the UK under the current rules as well as the Minister’s assessment of the impact of Dublin procedures on the total number of asylum applications examined by the UK each year. The Minister responds:

“The UK has removed nearly 12,000 asylum seekers from the UK between 2005 and 2015 under Dublin. As per statistics provided to Eurostat, in 2015, the UK removed over 500 asylum seekers to other Member States, but accepted transfer of approximately 130 cases under the Dublin Regulation. Further statistics on Dublin transfers between Member States can be found on the Eurostat website.”

7.14 We asked the Minister to explain why the Commission has sought to narrow the scope of the humanitarian clause (also referred to as the sovereignty clause) in its Dublin IV proposal and to indicate whether it is an attempt to constrain the unilateral assumption

of responsibility for asylum seekers by individual Member States, as occurred during the summer of 2015 when the German government temporarily suspended the Dublin rules. He tells us:

“The proposed limitation on the use of the ‘sovereignty clause’ is interesting and controversial. We agree that it may be an attempt to constrain Member States from taking decisions to examine large numbers of claims even where not responsible under the Regulation, as happened in the late summer of 2015. Indications that the Regulation would not be applied had dramatic and far-reaching consequences, seemingly influencing large-scale movements across Europe inspired by the idea that the Regulation would not be applied. Announcements of a return to the normal application of the Regulation did not receive such wide publicity, by which time a chain of events had already been set in motion.”

7.15 The Minister says that negotiations on the proposed Dublin IV Regulation are continuing under the Maltese Presidency, adding:

“We expect the discussions to continue to be controversial; with Member States divided in their views on the proposed mandatory redistribution system, negotiations have been escalated to Ministerial level, including at the JHA [Justice and Home Affairs] Council, where discussions on ‘effective solidarity’ have taken place. However, Member States remain divided. I will update as discussions progress.”

### ***The proposed EU Asylum Agency Regulation—document (b)***

7.16 The Minister updates on progress in negotiations:

“The Slovakian Presidency, wishing to secure agreement on this proposal, sought endorsement from COREPER on 20 December for a Presidency compromise text and a mandate to start negotiations with the European Parliament. Although the majority of Member States could support the compromise text of the Regulation, several Member States still have specific reservations concerning Chapter 5 on ‘monitoring’ and Chapter 6 on ‘operational and technical assistance’. As you are aware, the Government has decided not to opt-in to this proposal and therefore did not have a vote on the Presidency compromise text.”

### ***Post-adoption opt-ins***

7.17 In light of the Government’s decision not to opt in to documents (a) and (b), we asked the Minister whether the possibility of a post-adoption opt-in to one or both proposals had been excluded, or whether the Government might wish to review its decisions once negotiations are concluded. He comments:

“As you are aware, the Government has the opportunity to opt in to EU measures post-adoption. At this stage it is not possible to say what the final texts on these proposals will look like and whether elements to which the Government is opposed will have been removed (or even added). However,

I can assure the Committees that the Government will follow these negotiations closely and that all decisions to participate in EU measures will be taken in the national interest.”

### ***Implications of the EU referendum***

7.18 In light of the referendum outcome, we asked the Minister whether (as part of exit negotiations) the Government would seek to maintain UK participation in the Dublin system once the UK leaves the EU and to indicate how readily this could be achieved. Similarly, we asked whether the Government envisaged establishing some form of cooperation with the proposed EU Asylum Agency or, if it continues to exist, the European Asylum Support Office once the UK leaves the EU. The Minister responded:

“The question of how the UK deals with asylum applicants arriving in the UK from EU Member States and shares information with the EU and international partners is of course a key consideration as part of the process of leaving the EU and establishing a new relationship. The Government will also consider how the UK can support the EU in asylum and wider migration matters as part of our considerations.”

### ***A common EU list of safe countries of origin—document (c)***

7.19 We last considered this proposal in January 2016 and held it under scrutiny, despite the Government’s decision not to opt in, as we considered that the Government had not adequately addressed the questions we had raised. These concerned: the Government’s view on the inclusion of Turkey in the common EU list of safe countries of origin; the implications of a Court of Appeal judgment in July 2015 suspending the UK’s “detained fast-track procedures” (since the ability to apply these procedures was one of the reasons given by the Government for not participating in the 2013 Asylum Procedures Directive which sets out criteria for designating safe countries of origin); the conferral of powers on the Commission temporarily to remove a country from the common EU list; and whether the Government consulted the Devolved Administrations on the proposed Regulation (as this was unclear from the Government’s Explanatory Memorandum).

7.20 The Minister does not address these questions or indicate whether any headway has been made in negotiations. He explains that, at the request of the Council and the European Parliament, the European Asylum Support Office (EASO) has produced country of origin information reports on Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey, the countries proposed by the Commission for inclusion in the common EU list of safe countries of origin list. He adds that the reports, which are publicly available on the EASO website, “provide factual information and do not provide a recommendation on whether a country should be included on the EU common list of safe countries of origin”.<sup>21</sup>

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21 The EASO makes clear that the reports “refrain from making any assessments or policy conclusions” and that they “aim to support the ongoing negotiations on the EU list of safe countries of origin by offering a factual knowledge base for more informed policy discussions”.

### ***Outstanding questions concerning the relocation of asylum seekers to Sweden—document (d)***

7.21 Our earlier Report on this document highlighted an apparent disparity in the number of asylum seekers who would be affected by the temporary suspension of Sweden’s relocation obligations. These obligations were set out in two separate Council Decisions adopted in September 2015. The Minister explained:

“As you note, Sweden agreed to relocate 1,369 individuals under the first relocation Decision. The original Commission proposal for a second relocation Council Decision (COM (2015) 451 final) proposed a Swedish commitment to relocate a total of 4,469 individuals, which included 2,011 places to be relocated from Hungary. However, Hungary did not wish to participate as a beneficiary of relocation and therefore the Council Decision, once adopted on 22 September 2015, committed Sweden to relocating 3,766 individuals.

“The difference in relocation numbers is therefore as a result of changes to the second relocation decision agreed by Council prior to adoption on 22 September 2015.”

### **Previous Committee Reports**

Twenty-fifth Report HC 71-xxiii (2016–17), [chapter 7](#) (11 January 2017), Seventh Report HC 71-v (2016–17), [chapter 1](#) (6 July 2016), Sixth Report HC 71-iv (2016–17), [chapter 1](#) (15 June 2016), Twentieth Report HC 342-xix (2015–16), [chapter 9](#) (20 January 2016), Sixteenth Report HC 342-xv (2015–16), [chapter 13](#) (6 January 2016), and Sixth Report HC 342-vi (2015–16), [chapter 8](#) (21 October 2015).

## 8 EU asylum reform

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Committee's assessment	Legally and politically important
<a href="#">Committee's decision</a>	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
Document details	<p>(a) Proposal for a Regulation establishing a Union Resettlement Framework</p> <p>(b) Proposal for a Regulation on standards for determining who qualifies for international protection, a uniform status for refugees or individuals eligible for subsidiary protection, and the content of the protection granted</p> <p>(c) Proposal for a Regulation establishing a common procedure for international protection in the European Union and repealing Directive 2013/32/EU</p> <p>(d) Proposal for a Directive laying down standards for the reception of applicants for international protection (recast)</p>
Legal base	<p>(a) Article 78(2)(d) and (g) TFEU, ordinary legislative procedure, QMV</p> <p>(b) Articles 78(2)(a) and (b) and 79(2) TFEU, ordinary legislative procedure, QMV</p> <p>(c) Article 78(2)(d) TFEU, ordinary legislative procedure, QMV</p> <p>(d) Article 78(2)(f) TFEU, ordinary legislative procedure, QMV</p>
Department	Home Office
Document Numbers	<p>(a) (37966), 11313/16, COM(16) 468</p> <p>(b) (37967), 11316/16 + ADD 1, COM(16) 466</p> <p>(c) (37968), 11317/16 + ADDs 1–2, COM(16) 467</p> <p>(d) (37969), 11318/16, COM(16) 465</p>

### Summary and Committee's conclusions

8.1 In 2016 the Commission proposed a comprehensive package of EU asylum reforms which is intended to establish “an effective and protective” asylum system “based on harmonised rules and mutual trust between Member States”. The reforms have been put forward in two phases. The first phase concerned changes to the Dublin rules and to the associated Eurodac database which establish criteria and mechanisms for allocating

responsibility for asylum claims made within the EU. It also included a proposal to transform the European Asylum Support Office into a new EU Asylum Agency with a stronger mandate to oversee the application of EU asylum laws.

8.2 Documents (a) to (d) form part of the second phase of asylum reforms. Document (a)—the proposed EU Resettlement Regulation—would apply to third country (non-EU) nationals outside the EU who are in need of international protection. The Commission believes that a comprehensive EU framework for resettlement would lead to a gradual “scaling up” of Member States’ collective resettlement efforts, enable the EU to contribute more effectively to global resettlement initiatives by making a single, EU-wide resettlement pledge, and “discourage irregular and dangerous journeys and save lives” by offering “alternative legal pathways” to the EU.<sup>22</sup>

8.3 The remaining documents would apply to third country nationals who are already in the EU when they apply for asylum. Document (b)—the proposed Qualification Regulation—concerns the criteria applied by Member States to determine whether a third country (non-EU) national seeking asylum qualifies for international protection. The Commission believes that “applicants for international protection must have the same chance of obtaining the same form of protection, or having their claim rejected, irrespective of where they apply for asylum in the Union”.<sup>23</sup> Its aim is to produce greater convergence in asylum recognition rates across the EU, harmonise the rights accorded to beneficiaries of international protection, introduce more frequent “status reviews”, and apply stricter rules to discourage secondary movements between Member States.<sup>24</sup>

8.4 Document (c)—the proposed Asylum Procedures Regulation—would harmonise asylum procedures throughout the EU in an attempt to reduce the “pull factors” which may draw individuals to Member States with the most favourable asylum recognition rates and reception conditions and result in an uneven distribution of asylum seekers and sharing of responsibility amongst Member States. Document (d)—the proposed Reception Conditions Directive—has a two-fold purpose: to ensure that all Member States provide “sufficient and decent reception conditions” while an application for international protection is being examined, and to reduce “wide divergences” in the reception conditions currently provided by Member States. The proposal takes the form of a Directive rather than a Regulation as the Commission recognises that full harmonisation is neither feasible nor desirable given the “significant differences in Member States’ social and economic conditions”.<sup>25</sup>

8.5 We have been critical of the Government’s handling of these documents which are all subject to the UK’s Title V (Justice and Home Affairs) opt-in. Despite recommending at our meeting on 14 September that the Government’s opt-in decisions should be debated, the opt-in debate did not take place until 19 December, *after* the three month deadline for opting in at the negotiating stage had expired on all four proposals. We have asked the Immigration Minister (Mr Robert Goodwill) to give evidence in person to explain why there have been substantial lapses in the scrutiny process and how he intends to prevent any recurrence in the future.

22 See p.5 of the Commission’s explanatory memorandum accompanying the proposed Regulation.

23 See the Commission’s [fact sheet](#) on its latest asylum reform proposals.

24 See the Commission’s [infographic](#) on the changes proposed.

25 See p.6 of the Commission’s explanatory memorandum accompanying the proposed recast Directive.

8.6 In his latest update, the Minister assures us that:

“...we are committed to high quality and timely parliamentary scrutiny; it remains a priority and we will continue to monitor our handling of scrutiny.”

8.7 He responds to outstanding questions from our earlier Reports on these documents and provides a brief progress report on negotiations.

**8.8 We are grateful for the Minister’s update which sets out the Maltese Presidency’s approach and Member States’ concerns. We remind him that we await further information on a number of the concerns raised with us by the International Rescue Committee (IRC) which are set out in the Conclusions of our Twenty-fourth Report agreed on 14 December. For ease of reference, these are:**

- **the Government’s position on the involvement of the European Parliament in agreeing the annual Union resettlement plan;**
- **the Government’s position on the deployment of EU teams to third countries to assist with the processing of applications for resettlement;**
- **the Government’s position on the figures put forward by the IRC as representing a “fair and achievable share” of the EU’s and the UK’s global responsibility towards refugees—for the EU, a minimum of 108,000 refugees a year over five years and for the UK (if it does not participate in the EU resettlement scheme) 15,608 refugees a year over five years; and**
- **the Minister’s assessment of the likely gap between the ICR’s recommended figure for the UK and the number actually resettled in the UK over the next five years.**

8.9 We ask the Minister to confirm that he has issued a Written Ministerial Statement informing the House of the Government’s decision not to opt into the proposed EU Resettlement Regulation and the reasons for its decision.

8.10 We ask the Minister to provide progress reports on the negotiations with a view, once the outcome is clearer, to explaining the potential impact of any divergences in the asylum rules applied by the UK and the EU on the UK’s asylum system once it has left the EU. We expect the Minister to set out the main differences between the Commission’s original proposals any general approach agreed by the Council and to update us on any developments in the European Parliament.

8.11 The documents remain under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.

### **Full details of the documents**

(a) Proposal for a Regulation establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014: (37966), [11313/16](#), COM(16) 468. (b) Proposal for a Regulation on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and

amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents: (37967), [11316/16](#) + [ADD 1](#), COM(16) 466. (c) Proposal for a Regulation establishing a common procedure for international protection in the European Union and repealing Directive 2013/32/EU: (37968), [11317/16](#) + ADDs 1–2, COM(16) 467.(d) Proposal for a Directive laying down standards for the reception of applicants for international protection (recast): (37969), [11318/16](#), COM(16) 465.

## Background

8.12 Our earlier Reports listed at the end of this chapter provide a detailed overview of the proposals and the Government’s position.

### The Minister’s letter of 10 February 2017

8.13 We asked the Minister, when providing progress reports on negotiations, to indicate whether the proposals are likely to lead to a greater or lesser degree of convergence in the asylum rules and procedures applied by the UK and by other EU Member States and, once the outcome is clearer, to provide an assessment of the impact that different rules might be expected to have on the UK asylum system post-Brexit.

8.14 The Minister responds:

“As I set out in my letter of 11 January, this is a matter for the Government to consider as part of considerations for exiting the EU. The Government notes that if the EU adopts the proposals in their current form, there may be some divergences between the asylum rules in EU and the UK. The Government will consider potential impact of convergence and divergence and, as previously committed, will keep the Committee fully abreast of developments at the earliest opportunity.”

8.15 He provides the following update on negotiations:

“Negotiations on the Asylum Procedures Regulation, Qualification Regulation, Reception Conditions Directive (recast) and EU Resettlement Framework are continuing at working level. Whilst less controversial than the other three asylum proposals [proposed Regulations reforming the Dublin rules and Eurodac and transforming the European Asylum Support Office into the EU Asylum Agency], the first reading of these proposals has revealed some divisions between Member States in their national approach to asylum systems, particularly on elements of the proposals which will require the investment of significant resources. As expected, a number of Member States raised concerns with the choice of a Regulation as opposed to a Directive. On the resettlement proposal, some Member States share our view on the importance of retaining national resettlement schemes. There are some concerns on the financial elements of the proposal, which we agree with, that funding for national schemes should not be jeopardised by funding EU resettlement.”

8.16 The Minister describes how the Maltese Presidency is expected to take forward negotiations:

“Going forward, we understand the Maltese Presidency will seek to simplify and expedite discussions on the texts of the draft Qualification Regulation, the draft Asylum Procedures Regulation, the draft Reception Conditions Directive and the draft Dublin Regulation by adopting a thematic approach. The Presidency proposes to discuss them in three themes: Limiting Abuse and Secondary Movements; Socio-Economic Rights of Asylum Seekers and Beneficiaries of International Protection; and Guarantees for those with Special Needs. As discussions are ongoing, I will provide a further update in due course.”

### Previous Committee Reports

Twenty-sixth Report HC 71-xxiv (2016–17), [chapter 8](#) (18 January 2017), Twenty-fifth Report HC 71-xxiii (2016–17), [chapter 10](#) (11 January 2017), Twenty-fourth Report HC 71-xxii (2016–17), [chapter 2](#) (14 December 2016), Twentieth Report HC 71-xviii (2016–17), [chapter 1](#), [chapter 2](#) and [chapter 3](#) (23 November 2016), and Twelfth Report HC 71-x (2016–17), [chapter 1](#), [chapter 2](#) and [chapter 3](#) (14 September 2016).

## 9 Minamata Convention on Mercury: Ratification and implementation

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Committee's assessment	Legally and politically important
<u>Committee's decision</u>	Cleared from scrutiny; further information required
Document details	(a) Proposal for a Council Decision on the conclusion of the Minamata Convention on Mercury; (b) Proposal for a Regulation of the European Parliament and of the Council on Mercury, and repealing Regulation (EC) No. 1102/2008
Legal base	(a) Article 192(1) TFEU in conjunction with Article 218(6)(a); consent; QMV (b) Articles 192(1) and 207 TFEU; ordinary legislative procedure; QMV
Department	Environment, Food and Rural Affairs
Document Numbers	(a) (37503), 5772/16 + ADD 1, COM(16) 42; (b) (37502), 5771/16 + ADDs 1–4, COM(16) 39

### Summary and Committee's conclusions

9.1 The Minamata Convention is the main international legal framework for regulating emissions of mercury. The EU and 26 Member States (including the UK) are signatories to the Convention.

9.2 These two documents address different aspects of the ratification process. The first is a draft Council Decision authorising the conclusion of the Convention by the EU, and the second is a draft Regulation which would address the gaps in existing EU legislation which need to be filled in order to enable ratification to take place.

9.3 The Committee reported on these documents at its meetings of 9 March and 7 December 2016. While neither document raised any significant policy concerns, the Committee decided to press for more information on the outstanding legal issues. A scrutiny waiver was granted on 7 December, allowing the Government to support the proposals on condition that:

- the Government indicated what steps it had taken to make clear the EU action is limited to matters for which it has exclusive competence; and
- the Government informed the Committee of the eventual outcome of the discussion in Council by the end of January 2017.

9.4 In a letter of 24 January, the Parliamentary Under-Secretary of State, (Dr Thérèse Coffey), explained that a compromise text had been reached on the proposed Regulation, agreeing:

- one substantive legal base (Article 192(1)—Environment); and

- a compromise on the phase out of dental amalgam, incorporating the flexibility advocated by the UK and the need to respect Member States' competence over health services and medical care as set out in the Treaty.

9.5 On the draft Decision, she said that negotiations were continuing. She was silent on the Committee's query as to the steps that the Government had taken to make it clear the EU action is limited to matters for which it has exclusive competence.

9.6 In our response of 8 February, we retained both documents under scrutiny, reiterating our request that the Government set out the steps it has taken or plans to take—whether by amendment or by minute statement—to make it clear that the EU action under the Decision is limited to matters for which it has exclusive competence.<sup>26</sup>

9.7 The Minister has now written with a further update. She notes that the final version of the Regulation will be adopted formally by the Council after European Parliament agreement in March. On the Decision, she says that Ministers will be invited to approve it “in principle” at the 28 February Environment Council.

9.8 The UK was successful, she says, in pressing for the Decision to be amended to include a Declaration of Competence in order to clarify the extent of the obligations being assumed by the EU. As the final wording in the Declaration could imply that the EU has exclusive competence over aspects of the Minamata Convention, the UK intends to enter a written statement.

9.9 This statement, says the Minister, explicitly clarifies the UK's understanding that the Declaration does not alter the distribution of competences between the EU and its Member States and does not imply that the EU has exclusive competence over any aspect of the Convention for which the EU and the Member States share competence.

9.10 The Minister requests that the documents be released from scrutiny ahead of the 28 February Environment Council.

**9.11 On the Regulation, we note that a compromise was reached on the phase-out of dental amalgam in line with the UK's negotiating objectives.**

**9.12 Regarding the Council Decision, we commend the practice of attaching a declaration of competence in order to clarify the extent of the obligations being assumed by the EU. We also commend the practice of the UK providing clarity, in the form of a minute statement, as to the extent that the EU is exercising competence—where this is not clear in the text of the Decision authorising conclusion by the EU of the agreement in question. In each case it should be clear that the EU is only exercising exclusive and not shared competence. This supports the Government's policy (with which we agree) that shared competence should be exercised by Member States.**

**9.13 We are content to release both documents from scrutiny but would be grateful if the Minister would provide us with the actual text of the declaration and the minute statement.**

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26 Where the EU has exclusive competence only it can exercise that competence. Where competence is shared either the EU or the Member States can exercise competence, the choice is a political one.

## Full details of the documents

(a) Proposal for a Council Decision on the conclusion of the Minamata Convention on Mercury: (37503), 5772/16 + ADD 1, COM(16) 42; (b) Proposal for a Regulation of the European Parliament and of the Council on Mercury, and repealing Regulation (EC) No. 1102/2008: (37502), 5771/16 + ADDs 1–4, COM(16) 39.

## Background

9.14 When the EU signed the Convention, it did so on the basis that the measures it introduced already existed to a very large extent within the EU by virtue of Regulation (EC) No. 1102/2008. However, to the extent that this is not the case, document (b)—which would repeal and re-enact that Regulation—seeks to address those gaps in a number of areas, notably the import of mercury; the export of certain mercury added-products; the use of mercury in certain manufacturing processes; new mercury uses in products and manufacturing processes; mercury use in artisanal small-scale gold mining (AGSM); and mercury use in dental amalgam.

9.15 We commented in our Report of 9 March 2016 that, although we would be interested to see the impact assessment which the Government had promised, neither document appeared to raise any significant policy concerns. We noted, however, that there were legal issues and agreed with the Government’s intention that the Decision should be amended to clarify not only that the EU had adopted the required internal rules, but also that the EU was only assuming obligations under the Convention to the extent it had competence.

9.16 In our Report of 7 December 2016, we granted a scrutiny waiver, on condition that (a) the Government indicate what steps (if any) it had taken to make clear the EU action is limited to matters for which it had exclusive competence—whether by amendment of the text or by minute statement, and (b) that it informed us of the eventual outcome of the discussions in the Council by the end of January 2017.

9.17 We discussed the documents again at our meeting of 8 February 2017 and re-iterated our request for information on the Government’s attempts to secure clarity in terms of the EU’s exercise of competence.

## Minister’s letter of 24 January 2017

9.18 On the timing of negotiations, the Minister explained:

“Trilogue discussions between the European Parliament, Commission and Council were concluded on the Regulation in early December. A text which was provisionally acceptable to all parties has since been endorsed by the European Parliament Environment (ENVI) Committee. This text will now progress to a European Parliament plenary vote which would most likely be held in March before then returning to Council for formal adoption by Ministers. The Council Decision continues to move at a different pace to the Regulation, and therefore may not be agreed at the same Council.”

9.19 Regarding the outcome of discussions on the Regulation, she says that the final text will have one single substantive legal base (Article 192(1), TFEU). On dental amalgam, she explained that an outcome had been secured which provided for flexibility in line with the Government’s objectives:

“The use of dental amalgam in bulk form will be prohibited from 1 January 2019 but it will still be possible to use it in pre-dosed encapsulated form. The use of dental amalgam for dental treatment of deciduous teeth, children under 15 years and pregnant or breastfeeding women will be prohibited from 1 July 2018 but practitioners may derogate on the ground of specific medical needs.

“On the question of phase out of dental amalgam, Member States are required, by 1 July 2019, to draw up national plans on the measures they intend to implement to phase down the use of dental amalgam. The Commission is invited to submit a report, and if appropriate, a legislative proposal, by 30 June 2020 regarding the feasibility of phase out of dental amalgam use in the long term, and preferably by 2030 but must respect Member States’ competence on health services and medical care as established in the Treaty, and take into account Member States’ national plans.”

9.20 On the Decision, she said that negotiations were continuing and that the UK had been pressing for amendment of the text in line with the UK’s position.

### **Minister’s letter of 20 February 2017**

9.21 On the Regulation, the Minister explains that Jurist Linguists finalised the text on the 15 February and it is expected to be formally adopted by the Council after a European Parliament vote in March.

9.22 On the Council Decision, she says that working party negotiations have now concluded and that the Environment Council will hold a vote on 28 February on whether to approve the Council Decision “in principle”. If the Decision is approved, she says, it would then need to be voted on by the European Parliament before returning to the Council for formal adoption.

9.23 The Minister sets out the UK’s negotiating achievements in the following terms:

“The UK was successful in pressing for the Decision to be amended to include a Declaration of Competence in order to clarify the extent of the obligations being assumed by the EU. As the final wording in the Declaration could imply that the EU has exclusive competence over aspects of the Minamata Convention, the UK intends to enter a written statement.

“This statement explicitly clarifies our understanding that the Declaration does not alter the distribution of competences between the EU and its Member States and does not imply that the EU has exclusive competence over any aspect of the Convention for which the EU and the Member States share competence.”

9.24 The Minister concludes:

“The UK fully supports the EU becoming a Party to the Minamata Convention and it is in our interests for the EU and other Member States to be able to participate fully in the first Conference of the Parties, which is expected to take place in September 2017. I therefore request that the Committee lifts scrutiny prior to the Environment Council vote on 28 February so that the UK can support the Council Decision.”

### **Previous Committee Reports**

Twenty-second Report HC 71-xx (2016–17), [chapter 4](#) (7 December 2016); Twenty-fifth Report HC 342-xxiv (2015–16), [chapter 3](#) (9 March 2016).

## 10 Commission Work Programme 2017

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Cleared from scrutiny; drawn to the attention of relevant Select Committees
Document details	Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Commission Work Programme 2017: Delivering a Europe that protects, empowers and defends
Legal base	Article 17 TEU
Department	Exiting the European Union
Document Number	(38208), 13668/16 + ADDs 1–7, COM(16) 710

### Summary and Committee's conclusions

10.1 Each year the Commission sets out its legislative and policy priorities for the year ahead. This process means that interested parties both understand the political priorities of the Commission and have some idea of the detailed legislative proposals likely to emerge.

10.2 The Commission published its annual Work Programme (CWP) on 25 October 2016. We report annually on the CWP, to draw the attention of the House to the most significant of the Commission's legislative and strategic proposals for the year ahead.

10.3 This is the third annual work Programme of President Jean-Claude Juncker's Commission, highlighting 21 key initiatives the Commission commits to deliver by the end of 2017 in order to implement its 10 political priorities. It is also the first CWP to be published following the EU referendum in June 2016 and the decision of the UK to leave the European Union.

10.4 The Juncker Commission has adopted a more focused approach to the work programme than did its precursors, and this is continued in the current programme. The Government notes that the current Commission has brought forward 23, 23 and 21 new priority dossiers in the 2015, 2016 and 2017 CWPs respectively, compared with an average of around 130 new initiatives per year under President Barroso. The Committee welcomes this trend. It is also welcome that the Commission continues to pursue its REFIT agenda (which assesses the adequacy of EU legislation in force), although the number of proposed withdrawals, repeals, and measures to undergo the REFIT process is smaller than previous years.

10.5 Among the key initiatives, which are set out in more detail below, there are several which will be of particular interest to the House and the relevant Select Committees. The Commission:

- with the aim of empowering citizens and businesses, intends to complete the implementation of the **Digital Single Market Strategy**;
- aims to provide a fair deal for consumers through delivering on promises made through the **Energy Union Strategy**;
- will implement a range of strategies aimed at strengthening its industrial base and building a deeper and fairer **Economic and Monetary Union**, including through the completion of Banking Union;
- will propose a **European Pillar of Social Rights**, including well-functioning and sustainable welfare systems;
- aims to make the EU a **stronger global actor**, in addition to action on migration; and
- has set itself an overarching priority of **building institutions that take responsibility, listen and deliver**.

10.6 On 13 December 2016, the Presidents of the three main EU Institutions signed a Joint Declaration of the EU’s legislative priorities for 2017. The agreement is the first of its kind and formally outlines a number of key policy areas in which the European Institutions aim to make progress over the coming year.

10.7 The Joint Declaration states that:

“Delivering results where they are most needed requires that the European Parliament, the Council and the European Commission work closely together in particular when it comes to the European legislative process. That is why we have committed (...) to agree each year on a number of proposals to which we want to give priority treatment in the legislative process.”

10.8 At the political level, the implementation of the Joint Declaration will be monitored regularly through joint meetings of the Presidents of the three Institutions in March, July and November 2017.

10.9 In 2013, our predecessor Committee argued that scrutiny of the CWP should be improved. We accordingly adopted a new process for scrutiny of the CWPs in 2015 and 2016. The Committee, following work with other Select Committees, set out, in a single consolidated document, which of the proposals merited particular scrutiny. However, following the EU Referendum in June 2016, and the significant impact this has had on the forward work programmes of Select Committees, most conducting inquiries on the impact of Brexit in their specific areas, together with the establishment of Committees shadowing the new Government Departments responsible for Exiting the EU and International Trade, we have adopted a different approach to the current document. We

have informed Select Committees of the publication and content of the CWP, but instead of recommending a debate, our staff have highlighted aspects of the CWP relevant to each Committee, in the expectation of being able to inform their wider work.

10.10 **The Commission Work Programme provides a comprehensive overview of the Commission’s priorities for the year ahead. The subsidiarity implications of the CWP will depend on how the proposals develop and the Government states that “more detail on adherence to the principle of subsidiarity will be provided in the EM on each legislative proposal as it is brought forward”. We therefore await the detail of the proposals before making firm judgements on these issues.**

10.11 **It has been the usual practice of the Committee, given the wide-ranging nature of the CWP, the interest of Members across the House and the opportunity it offers to scrutinise the Commission’s priorities and plans for the coming year at an appropriately early stage, to recommend the document for debate on the floor of the House. The Committee is extremely disappointed that, following extensive work involving most of the Departmental Select Committees, our recommendation for a debate of the previous CWP (2016) has not been acceded to by the Government. This is exacerbated by the fact that the recommendation for a debate, first made in December 2015, specified that the debate should take place before the February recess in 2016.**

10.12 **Given that it is over a year since CWP 2016 was recommended for debate, and that it has now been superseded by CWP 2017, we reluctantly rescind our recommendation that it be debated.**

10.13 **We note that the Government has committed to make time available for a series of general debates on the UK’s future relationship with the EU. In the expectation that these debates will provide a forum in which Members can bring a wide range of issues emanating from the CWP to the floor of the House, we are not recommending the CWP 2017 for a specific debate. It may be that individual proposals arising from the CWP are recommended for debate when the Committee considers them in more detail in the future.**

10.14 **We welcome the Government’s consultation with the Devolved Administrations in advance of the Explanatory Memorandum and note its commitment to continue to work with them to coordinate the UK’s positions on specific initiatives outlined in the CWP as they develop.**

10.15 **We are content to clear the Communication from scrutiny but draw it to the attention of relevant Departmental Select Committees.**

### **Full details of the documents**

Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Commission Work Programme 2017: Delivering a Europe that protects, empowers and defends: (38208), [13668/16](#) + ADDs 1–7, COM(16) 710.

## Background

10.16 This year’s CWP—Delivering a Europe that protects, empowers and defends—consists of seven documents:

- A Communication setting out the principles of the Work Programme and the main proposals under the 10 political priorities;
- Annex 1: A list of the 21 new initiatives which the Commission plans to take forward in 2017;
- Annex 2: A list of the 18 legislative initiatives under REFIT expected to be adopted in 2017;
- Annex 3: A list of the 35 priority pending proposals;
- Annex 4: A list of 19 proposals which the Commission intends to withdraw by April 2017;<sup>27</sup>
- Annex 5: A list of 16 repeals; and
- Annex 6: A Commission Staff Working Document on the Regulatory Fitness and Performance Programme REFIT and the 10 Priorities of the Commission.

10.17 In introducing the CWP, the Commission states that Europe is at a critical juncture. It highlights challenges facing the daily lives of Europeans, including the economy, migration, terrorism and instability and also alludes to the uncertainty caused as a result of the UK referendum. It continues:

“(T)his Commission has set its priorities to focus on the big things, where effective European action can make a concrete difference in addressing the challenges facing Europe’s citizens, our Member States and the Union as a whole. Over the last year we have made solid progress in implementing the strategies we have set out in the Investment Plan for Europe, the Digital Single Market, the Energy Union, the European Agenda on Security, the European Agenda on Migration, the Capital Markets Union, the Action Plan for Fair and Efficient Corporate Taxation, the new Trade Strategy, the Steps towards completing Economic and Monetary Union, the Single Market Strategy, and the Action Plan for the Circular Economy.

“Focussing on the big things, and sharing these priorities with the European Parliament and the Council, we have delivered tangible and quick results in key areas”

10.18 The Commission says that it will pay close attention to the operational side of its work, and in particular step up efforts on the enforcement agenda to support delivery of “real results on the ground”. In addition, the Commission has invited the European Parliament and Council as co-legislators to join a new Interinstitutional Agreement (IIA) on a mandatory transparency register, building on recent work to increase openness and accountability to citizens. More detail on the 10 political priorities is given below.

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<sup>27</sup> The list includes two proposals already withdrawn (cf. no 3 and 11), which were already included in the CWP 2016 and are listed for reasons of transparency.

### ***A new boost for jobs, growth and investment***

10.19 The Commission sets out three initiatives in this priority area under the strapline ‘a Europe that preserves our way of life and empowers our young’. The **Youth Initiative** consists of a package of measures with the aim of improving prospects for the young in education, training and employment, including prioritising youth in the New Skills Agenda, measures to improve apprenticeships, reinforcing the Youth Guarantee and launching the European Solidarity Corps.

10.20 Two other initiatives are also set out under this priority heading:

- The implementation of the **Circular Economy Plan** by improving the economics, quality and uptake of plastics recycling and reuse in the EU, reducing plastic leakage into the environment, proposing legislation on reused water quality and developing a monitoring framework to ensure progress on ambitions; and
- A proposal for **the future financial framework** beyond 2020 guided by the ‘EU-budget-focused-on-results’ initiative and reflecting post-2020 needs and challenges.

### ***A connected digital single market***

10.21 In order to realise the full additional growth potential of a connected **Digital Single Market (DSM)**, the Commission intends to complete the implementation of the DSM Strategy announced in last year’s CWP, including: digital contracts; copyright; geo-blocking; portability; parcel delivery; audio-visual media services; telecommunications; the use of the 700 MHz band for mobile services; and WiFi4EU. The Commission will review progress made towards completing the DSM and identify any necessary further proposals.

### ***A resilient energy union with a forward-looking climate change policy***

10.22 The Commission says it will continue to deliver its **Energy Union Strategy**. A comprehensive package, placing energy efficiency first, will encompass legislative action on energy efficiency, renewable energy including bioenergy sustainability, the design of the electricity market and the governance rules for the Energy Union. The Commission says that implementation of the Paris Agreement and of the international agreement on emissions from aircraft (International Civil Aviation Organisation) are also priorities in this area.

### ***A deeper and fairer internal market with a strengthened industrial base***

10.23 Under the strapline a ‘Europe that makes a strong contribution to jobs and growth and stands up for its industry’, the Commission says:

“The free movement of goods, people, services and capital is the basis of Europe’s economic power. We have the largest single market in the world, and the reforms set out in the Single Market Strategy seek to unlock its full

potential. In synergy with our other strategies, this will create the right conditions for the sustainable competitiveness of the European economy and support innovation, digitisation and the industrial transformation.”

10.24 In addition to the deliverables under the Strategy, already announced (covering SMEs, Intellectual Property Rights and a Services package to tackle barriers in the services market) the Commission will present a **company law initiative** to facilitate the use of digital technologies throughout a company’s lifecycle and also in regard to cross-border mergers and divisions.

10.25 Additional initiatives under this priority include:

- Fairer taxation of companies—the Commission is relaunching the **Common Consolidated Corporate Tax Base** with a common tax base,<sup>28</sup> as well as presenting measures to tackle tax fraud and evasion, including via third countries. The Commission will also bring forward measures to implement the **VAT Action Plan**, to simplify VAT for smaller companies and set the foundations for a modern, more efficient, business-friendly and fraud-proof definitive VAT regime across Europe;
- Implementation of the **Space Strategy for Europe**—focusing on an initiative to ensure reliable, secure and cost-effective satellite communication services for public authorities; and
- Implementation of the **Capital Markets Union Action Plan**—the Commission will present a mid-term review of the Action Plan, identifying remaining obstacles and any additional measures required.

### ***A deeper and fairer economic and monetary union***

10.26 The Commission stands by the five Presidents’ Report on the completion of Economic and Monetary Union (EMU),<sup>29</sup> and in this context the Commission proposes:

- a stability-orientated review of the Stability and Growth Pact;
- a review of the European System of Financial Supervision (ESFS);
- adopting the proposal for unified representation of the euro area in the International Monetary fund (IMF); and
- the completion of Banking Union.

10.27 Further, the Commission will propose a **European Pillar of Social Rights** which it says “will set out a framework of principles to foster a fair playing field in the European social market economy”, including for well-functioning and sustainable welfare systems.

28 European Scrutiny Committee’s Twenty-third Report of Session 2016–17, [HC 71-xxi](#), 9 December 2016.

29 European Commission, 17 February 2016.

### ***Trade: a reasonable and balanced free trade agreement with the U.S.***

10.28 The Commission says the EU remains committed to an open, rules-based trading system and building on the successful network of free trade agreements, will continue negotiations with the US, Japan, Mercosur, Mexico, Tunisia and ASEAN countries, whilst seeking new mandates to open negotiations with Turkey, Australia, New Zealand and Chile. Work will continue in the WTO, including plurilateral agreements, as well as a swift ratification of the Comprehensive Economic and Trade Agreement (CETA) with Canada.

### ***An area of justice and fundamental rights based on mutual trust***

10.29 Given the common concern over the current threats facing Europe, the Commission intends to follow up the EU Security Agenda with actions to pave the way towards a **Security Union** and to strengthen controls at borders. This will include a **European Travel Information and Authorisation System (ETIAS)** so that there is automated checking of visa-exempt third country nationals intending to travel to the Schengen area.

10.30 The Commission will continue to implement the **EU Action Plan** on tackling terrorism financing and are working to boost **Europol** and in particular the resourcing of the **European Counter Terrorism Centre**.

10.31 The **European Data Protection Regulation** will apply as of 2018 and the Commission will ensure that the same high level of protection of personal data extends to the European institutions, bodies, agencies and offices.

### ***Towards a new policy on migration***

10.32 The Commission has accelerated its work on migration. It seeks a swift coordinated response to the refugee crisis and a long-term framework for dealing with refugees. The Commission has already proposed a major package of asylum reform, including:

- reform of the Dublin rules for the Common European Asylum System;
- transformation of the European Asylum Support Office into a fully-fledged EU Agency for Asylum;
- the reinforcement of Eurodac;<sup>30</sup>
- the new resettlement framework; and
- measures for properly managed legal migration.

10.33 The Commission aims to maintain the intensity of its work to:

- bring direct support to refugees and their integration in host communities in Europe and in third countries;
- improve migration management at the most exposed border areas;

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30 Eurodac was established in 2000 and consists of a central database and a communications infrastructure allowing each participating country to search the database for evidence to help determine the Member State responsible for examining an asylum application.

- combat migrant smuggling and trafficking, in particular of unaccompanied minors; and
- ensure the return of irregular migrants.

### *A stronger global actor*

10.34 Through the EU Global Strategy and the revised European Neighbourhood Policy, the Commission says that the EU will continue to deploy all instruments at its disposal to support its partners in economic and political stabilisation, reforms and resilience building.

10.35 The Commission will present a **European Defence Action Plan**, which will explore EU policy support to ensure that the industrial and skills base will be able to deliver the defence capabilities identified in view of current and future security challenges. The Commission’s proposal for the creation of a European Defence Fund is aimed to promote research and innovation to further stimulate the development of key defence capabilities.

10.36 Two further initiatives in this area specifically cover the **EU Strategy for Syria** and a renewed impetus on **EU Partnership with Africa**. The EU Strategy for Syria will set out how Europe can continue to provide humanitarian support and contribute to political transition, stabilisation and reconstruction with a view to rebuilding a peaceful Syrian nation and a pluralistic, tolerant civil society in Syria. Africa will remain one of the EU’s key strategic partners and the Partnership Framework reflects the EU’s commitment to jointly face global challenges with African Partners through investment in sustainable and sound relations with African countries.

### *A union of democratic change*

10.37 The Commission says this is the “most overarching of the 10 priorities this Commission has set itself”. It describes this priority as never more urgent.

10.38 The Commission continues:

“Better regulation, accountability and transparency continue to be the core business model of this Commission and all EU institutions need to apply these principles in a consistent and committed manner if we want to win back the trust of our citizens. The Commission will work closely with the European Parliament and the Council to ensure that the Interinstitutional Agreement on Better Law-Making is fully implemented and applied, and will also engage in constructive negotiations with both institutions on our recent proposal for an mandatory Transparency Register.”

### **The Government’s view**

10.39 In his Explanatory Memorandum of 14 November 2016, the Minister of State in the Department for Exiting the European Union (Mr David Jones) sets out the Government’s initial view on the implication of the key policy initiatives announced in the CWP.

10.40 After stating, in what are now familiar terms, that until the UK exits the EU the Government will continue to negotiate, implement and apply EU legislation, he says that the Government broadly welcomes the CWP 2017. The Government also welcomes the continuation of the REFIT agenda, but notes that the number of proposed withdrawals, repeals, and measures to undergo the REFIT process is smaller than previous years. The Minister comments that this reflects the fact that the Juncker Commission has produced less legislation, bringing forward 23, 23 and 21 new priority dossiers in the 2015, 2016 and 2017 CWPs respectively, compared with an average of around 130 new initiatives per year under President Barroso.

10.41 The Government believes the CWP 2017 has broadly respected the principle of subsidiarity, but will provide more detail in the Explanatory Memoranda which will be submitted as and when the Commission adopts the new proposals outlined in the CWP in the year ahead. The Government's initial views on the key policy areas are set out in the following paragraphs.

### ***A new boost for jobs, growth and investment***

10.42 The Government states that the Youth Initiative is designed to address the widely-accepted problem that EU labour markets include too many people with low skills, or skills mismatches. It says that the initiatives to improve the quality of apprenticeships align well with domestic policy. However, the Government is doubtful of the need for a quality framework for apprentices at EU level and it waits to see the detail of the proposal to increase the mobility opportunities for apprentices, which it says is of potential interest. The Government does not support legislative instruments for either initiative. The Minister states that the Government supports most EU contributions to the modernisation of European Higher Education, “but the EU must avoid competence creep”.

10.43 The Government says it supported the Action Plan on Circular Economy now being implemented by the Commission. However, in relation to the financial framework beyond 2020, the Government states that it “cannot speculate on the timing of EU budget arrangements once the UK has left the EU”.

### ***A connected digital single market***

10.44 The Government indicates it has been pleased with developments in some areas of the DSM strategy. However, in order to ensure that the DSM has an open, dynamic framework which supports business and innovation, and facilitates economic growth, the Government says that more needs to be done to “facilitate swift progress in the implementation of the rest of the strategy”.

### ***A resilient energy union with a forward-looking climate change policy***

10.45 In relation to the Energy Union Strategy the Government is broadly content with the Commission's proposals but “will push to ensure emissions reductions are achieved at lowest cost, that all Members States do their fair share of abatement, and that there is a level playing field between the UK, the EU, and the rest of the world”.

### ***A deeper and fairer internal market with a strengthened industrial base***

10.46 The Government welcomes proposals for improving the use of digital technologies throughout a company’s lifecycle but notes that previous attempts at similar company law initiatives have not been supported by all Member States. Proposals to improve the process for cross border mergers would be supported by the Government.

10.47 Whilst needing to consider the detail on any proposals, the Government welcomes the debate started by the publication of the Commission’s VAT Action Plan. The Government further states that:

“The Commission’s proposals represent a comprehensive and ambitious programme and careful scrutiny of the detail will continue to be important to ensure for example that the focus and prioritisation of the work is right.”

10.48 In relation to the other initiatives under this priority the Government states that the core objectives of the Space Strategy for Europe align very well with the objectives of the UK National Space Strategy. In addition, the Government broadly supports the Capital Markets Union Action Plan.

### ***A deeper and fairer economic and monetary union***

10.49 In relation to the key initiative in this area, the Government recognises that regardless of the UK’s relationship with the EU, it is in the interest of the UK that the euro area is a successful currency area.

10.50 On the European Pillar of Social Rights the Government says:

“Judging from the consultation documents, the Commission wants to increase the performance of Member States’ labour market and welfare systems, and is looking at tools such as introducing common principles and commonly agreed benchmarks. The Government does not believe a one-size-fits-all approach is the most effective way to achieve this and therefore has requested flexibility and regard for the principles of subsidiarity and competence. We believe national governments are best placed to decide on social policies such as these.”

### ***Trade: a reasonable and balanced free trade agreement with the U.S.***

10.51 The Government says it will continue to push for an ambitious EU trade policy building on the conclusion of negotiations on the Comprehensive Economic and Trade Agreement (CETA) with Canada, and that it welcomes the Commission’s trade strategy as showing continued commitment to liberalising trade.

### ***An area of justice and fundamental rights based on mutual trust***

10.52 In relation to this area the Government states that:

“The UK strongly supports mutual recognition of criminal asset freezing and confiscation orders. This helps the UK to cooperate more effectively with our international partners to tackle crime. Our experience since transposing the EU Framework Decisions has been overwhelmingly positive.”

10.53 The Government urges the Commission to make a persuasive, evidence-based case for how the proposed legislative amendments will combat terrorist financing. It also endorses an evidence-based approach for any proposed new legislation around the importation of cultural goods.

10.54 In claiming it is right that the EU holds itself to the same standards as its Member States, the Government welcomes the fact that the Data Protection Package will include proposals to align the EU institutions’ data protection rules with the new data protection framework agreed in March 2016.

### ***Towards a new policy on migration***

10.55 Commenting on the European agenda on Migration, the Minister says:

“The Government agrees with a number of the proposals set out in the 2015 European Agenda on Migration, in particular on increasing the security of the EU external border, setting up the new European Border and Coast Guard Agency and full implementation of the EU-Turkey Statement. The Government supports the proposed reforms to the Common European Asylum System that are intended to help ensure it works for those in genuine need of international protection, whilst preventing potential abuse. The Government welcomes proposals that strengthen the Dublin Regulation but is firmly against attaching the ‘corrective allocation’ mechanism to the recast version of this Regulation. We have also been clear that the UK will not participate in EU resettlement schemes, as we believe this action is better taken at national level. The Government welcomes the new Partnership Framework but it is important that it maintains a comprehensive approach that addresses the root causes of migration, helping displaced people in the region, rather than taking a transactional approach with limited objectives. It must not impede work with other key countries, and must not undermine parallel engagement at regional level via instruments like the Khartoum and Rabat Process and the Valletta Action Plan.”

### ***A stronger global actor***

10.56 The Government notes the Commission’s continued intention to implement its global strategy, noting that:

“While the UK is a member of the EU we will continue to contribute to its work. And when we have left the EU, we will find a way of working with it and other relevant actors to address our shared challenges.”

10.57 Regarding the implementation of the European Defence Action Plan, the Government starts by stating that this “is a particularly sensitive issue”. While committing to engaging on the detail in a constructive spirit the Government adds it will ensure proposals “do not undermine NATO’s key role”.

10.58 The Government awaits detail on the proposed content for the EU Strategy for Syria. However, it continues that the UK “will press for the strategy to focus on supporting the UN-led process seeking a lasting political solution to the conflict and pursuing robust action against those who stand in the way of peace”.

10.59 Finally regarding this priority, the Government “welcomes the proposal for renewed impetus of the EU-Africa partnership, noting the opportunity afforded by the fifth EU-Africa summit scheduled for 2017 and agreement of a new ‘roadmap’ for the partnership”.

### ***A union of democratic change***

10.60 The Government agrees that comitology procedures should be modernised and will scrutinise proposals in detail when they are made. The Government also notes that until exit negotiations are concluded, the UK will continue to transpose EU law and Departments will undertake the practical measures needed to give effect to the law.

### ***Devolved administrations***

10.61 The Explanatory Memorandum sets out the views of the Devolved Administrations in some detail.

10.62 In summary, the **Scottish Government** is supportive of, or has an interest in, a number of initiatives in the CWP that are aligned with the ‘Scotland’s Economic Strategy’ document published in March 2015. The EM continues:

“(T)he Scottish Government firmly believes that EU membership delivers many social, economic and cultural benefits for individuals, businesses and communities across Scotland. Therefore, the Scottish Government intends to continue to play a role as a collaborative partner in supporting the development of EU policies and legislation which deliver results for citizens in Scotland and the rest of the EU.”

10.63 More specifically, the Scottish Government:

- welcomes action supporting investment in young people through the **Youth Initiative**;
- welcomes the mainstreaming of **innovation** across all Union policies;
- supports the continuing progress to deliver a **Digital Single Market**;
- believes continued membership of the **Single Market** is vital to reflect the will of the people of Scotland;
- welcomes the commitment to implement the **Energy Union Strategy**; and

- believes that **cross-border cooperation** is crucial in tackling crime, emerging cross border threats, and migration and addressing the refugee crisis.

10.64 The **Welsh Government** also intends to continue to be a constructive partner of the European Commission and welcomes the focus of the CWP on jobs, growth and investment in skills and innovation.

10.65 The Welsh Government welcomes:

- proposals on the next steps for the **Digital Single Market**;
- the Commission's **sustainable development goals**;
- the renewed focus on the employment and inclusion of **young people**;
- the Commission's commitment to **fair trade**;
- the Commission's intention to play a leading role in the G20's Global Forum on **steel excess capacity**;
- ongoing work on **Free Trade Agreements**;
- continued simplification of the **Common Agricultural Policy**;
- measures to implement the **Circular Economy Action Plan**; and
- the commitment to reduce the impact of **climate change**.

10.66 The **Northern Ireland Executive** has potential interest in:

- the **European Fund for Strategic Investment**;
- the implementation of the **Youth Initiative** and the **New Skills Agenda for Europe**;
- the implementation of the **Circular Economy Action Plan**;
- the **Digital Single Market Strategy**;
- the **Energy Union Strategy**;
- the implementation of the **Capital Markets Union**; and
- continued simplification of the **Common Agricultural Policy**.

10.67 In addition to consulting the Devolved Administrations in the drafting of the EM the Government commits to continuing to work with them to coordinate the UK's positions on specific initiatives outlined in the CWP as they develop.

## Previous Committee Reports

None.

# 11 Modernising EU health and safety policy

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Cleared from scrutiny; further information required
Document details	Communication from the Commission—Modernisation of the EU Occupational Safety and Health Legislation and Policy
Legal base	—
Department	Work and Pensions
Document Number	(38464), 5431/17 + ADDs 1–2, COM(17) 12

## Summary and Committee's conclusions

11.1 The EU has an extensive body of legislation to protect workers from occupational hazards, accidents and diseases, consisting of more than thirty Directives which cover areas as diverse as computer screens, medical supplies on ships and personal protective equipment. Member States must implement these EU laws as a minimum standard, but can choose to legislate domestically for stricter health and safety requirements. A new European Commission evaluation report on the totality of EU law in this area has now concluded that it “meets its ambition to adequately protect workers”, and is “generally effective [and] fit for purpose”.

11.2 However, based on the assessment of the individual pieces of legislation, the Commission has announced that it is preparing a legislative proposal to make relatively small technical amendments to six health and safety Directives which contain obsolete or outdated provisions. It is also working on two draft Directives to introduce and update occupational exposure limits for carcinogens and chemical agents respectively. All three proposals are expected to be published in 2018 (see “Background” for more information).

11.3 The Minister for Disabled People, Health and Work (Penny Mordaunt) submitted an Explanatory Memorandum on the report on 1 February 2017.<sup>31</sup> In it, she welcomes the outcome of the evaluation exercise, as well as the Commission's plans for adjusting existing health and safety Directives.

11.4 However, the Minister expressed her disappointment that the Commission did not go further to streamline EU legislation in this area, in particular by removing additional obsolete provisions and by merging separate pieces of legislation to reduce the total number of Directives. She notes that the Government had explicitly highlighted further opportunities for simplification to the Commission as part of the evaluation process.

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31 [Explanatory Memorandum](#) submitted by the Department for Work and Pensions (1 February 2017).

11.5 From the information we have available to us currently, the legislative changes being prepared by the Commission to update or remove obsolete provisions in EU health and safety law appear to be largely technical in nature. We will of course scrutinise them in more detail when the formal proposals have been tabled. However, in the meantime we have cleared this document from scrutiny.

11.6 We do not consider that the Commission’s evaluation report itself raises any immediate concerns in light of the UK’s exit from the EU. We take note, however, of the Prime Minister’s speech of 17 January 2017, in which she stated that the Government would not only “protect the rights of workers set out in European legislation”, but also “build on them”.<sup>32</sup>

11.7 We therefore ask the Minister to provide details about the specific requests for simplification of EU health and safety Directives that the Government put to the European Commission, but which were not ultimately taken up. After Brexit, the Government should be in a position to make those changes domestically. We would be grateful if the Minister could clarify whether she expects the Great Repeal Bill to make any substantive changes to EU health and safety law as it is converted into domestic law.

## Full details of the documents

Communication from the Commission—Modernisation of the EU Occupational Safety and Health Legislation and Policy: (38464), 5431/17 + ADDs 1–2, COM(17) 12.

## Background

11.8 The EU has an extensive body of legislation to protect workers’ occupational safety and health (OSH). The EU’s competence in this area was introduced in 1986 by the Single European Act,<sup>33</sup> leading to the 1989 adoption of the Occupational Safety and Health Directive (the Framework Directive).<sup>34</sup> It sets out basic obligations for all employers, who must ensure their workers’ health and safety by assessing, mitigating and—where feasible—eliminating risks.

11.9 The Framework Directive also mandated the EU to develop specialised measures on health and safety in a number of specific areas, such as personal protective equipment, work stations and computer screens. As a result, a further 31 health and safety Directives were adopted between 1989 and 2013 (see the Annex to this Report for an overview).<sup>35</sup> Member States are free to adopt stricter rules for the protection of workers than required by EU Directives.<sup>36</sup>

32 Speech by Prime Minister Theresa May, “[The government’s negotiating objectives for exiting the EU](#)” (17 January 2017).

33 See for more information [Article 118A SEA](#), currently [Article 153 TFEU](#). The EU’s legislation on health and safety must come in the form of Directives, not Regulations.

34 [Directive 89/391/EEC](#).

35 In addition to the OSH Directives, there is also EU legislation on safety standards for particular types of equipment such as lifts, chemicals and electromagnetic equipment. The European Agency for Safety and Health at Work provides a [full list on its website](#).

36 Article 153(4) TFEU. The Commission’s evaluation [found](#) that all 28 Member States have established more detailed or stringent requirements than those laid down in the 1989 Framework Directive.

### ***EU Health and Safety Strategy and review of existing legislation***

11.10 In June 2014, the European Commission published its 2014–2020 Health and Safety at Work Strategy.<sup>37</sup> The major challenges it identified were the need to improve implementation of existing health and safety rules (in particular by small businesses), increasing protection from new and emerging occupational risks, and adapting health and safety policy to the EU’s ageing workforce.

11.11 The Strategy did not include any commitments for proposals to simplify or repeal existing legislation, as the Commission was at the time still evaluating the existing body of OSH Directives. In December 2016, the Commission published the outcome of that evaluation. Its overarching conclusion is that current EU health and safety legislation “meets its ambition to adequately protect workers”, is “generally effective” and “fit for purpose”. However, the evaluation also found that:

- Specific elements of existing legislation, which have become outdated or obsolete, should be amended or removed;
- Legislation protecting workers from exposure to carcinogenics and harmful chemicals needs to be updated in view of new scientific data; and
- More efforts are needed to ensure smaller businesses are able to comply with the EU health and safety law.

### ***Updating and simplifying existing legislation***

11.12 The Commission has conceded that there is scope for removing or updating “a number of outdated provisions” in EU health and safety law. The amendments being mooted appear to be largely of a technical nature. The six Directives named by the Commission are:

- The **Workplaces Directive**.<sup>38</sup> The Commission is considering revising the notion of “workplace” to reflect changes in working patterns, such as working from home;
- The **Display Screen Equipment Directive**.<sup>39</sup> The Directive could be amended to remove references to technologies no longer in use;
- The **Occupational Safety and Health Signs Directive**.<sup>40</sup> The Commission wants to remove EU-specific safety signs requirements, and instead refer to the standardised signage developed by the International Standards Organization;
- The **Biological Agents Directive**, which limits workers’ exposure to potentially hazardous infections.<sup>41</sup> An amendment is being considered to update the list of biological agents to which it applies;

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37 See our Report: (36128) 10949/14 COM(14) 332—Ninth Report HC 219-ix (2014–15) [chapter 36](#) (3 September 2014).

38 [Directive 89/654/EEC](#) on the minimum safety and health requirements for the work place.

39 [Directive 90/270/EEC](#) on display screen equipment.

40 [Directive 92/58/EEC](#) on health and safety signs.

41 [Directive 2000/54/EC](#) on exposure to biological agents.

- The **Medical Assistance Directive**, which regulates medical assistance aboard vessels.<sup>42</sup> The list of compulsory medical supplies will be reviewed, especially for larger vessels; and
- The **Personal Protective Equipment Directive**.<sup>43</sup> The Commission is considering proposing an end to the exemption for equipment used by emergency and rescue services.

11.13 On 1 February 2017, the Minister for Disabled People, Health and Work (Penny Mordaunt) submitted an Explanatory Memorandum on the evaluation report and the Commission’s proposed initiatives.<sup>44</sup> In it, she notes that the Government believes more could be done:

“The Commission has missed an opportunity to go further on better regulation by, for example, removing duplicated requirements in the directives (something that was highlighted by the ex-post evaluation) and by reducing their number. The government, through its engagement on the ex-post evaluation, had highlighted opportunities to either consolidate or repeal some of the directives.”

11.14 The Minister also explains that the Government is supportive of efforts to share guidance and best practice between Member States, but that any such initiatives should respect national competences and activities. She concludes by saying that the Government will press for Commission impact assessments for any legislative proposals that flow from the evaluation, as well as preparing its own.

11.15 The Commission does not appear to have given serious consideration to either the removal of duplicate requirements, or a reduction in the total number of Directives. Indeed, while it acknowledges that the possibility of simplification exists for a number of pieces of legislation,<sup>45</sup> it calls for further evaluation to ascertain whether such changes would be helpful. The Commission also notes that streamlining and merging Directives could lead to complex transposition processes in certain Member States whose domestic legislation mirrors the structure of the various EU Directives.<sup>46</sup>

### ***Improving protection from carcinogenics and chemicals***

11.16 Cancer is the leading cause of work-related deaths in the EU. To reduce its prevalence, the Carcinogens and Mutagens Directive prohibits dangerous levels of exposure to carcinogenics in the workplace. In addition, the Chemical Agents Directive<sup>47</sup> lays down minimum requirements for the protection of workers from risks to their health arising from the exposure to chemical agents.

42 [Directive 92/29/EEC](#) on medical treatment on board vessels.

43 [Directive 89/656/EEC](#) on personal protective equipment.

44 [Explanatory Memorandum](#) submitted by the Department for Work and Pensions (1 February 2017).

45 See for example the Commission’s position on the [possible merger](#) of the Carcinogens Directive and the Chemical Agents Directive or the [possible merger](#) of the Mineral-Extracting Industries Directive and the Drilling Directive.

46 SWD(17) 10, “[Ex-post evaluation of the European Union occupational safety and health Directives](#)” (10 January 2017), p. 197.

47 [Directive 98/24/EC](#) on chemical agents.

11.17 In its evaluation report, the Commission confirms that it is preparing a third<sup>48</sup> legislative proposal to amend the Carcinogens and Mutagens Directive. This would establish exposure limits for substances which are currently out of scope.<sup>49</sup> In addition, the Commission is preparing a proposal to amend the Chemical Agents Directive with a view to updating existing exposure and biological limit values, and introducing new ones.

### **Helping SMEs meet their legal obligations**

11.18 The Commission’s evaluation found that micro-enterprises and SMEs continue to struggle to put in place the necessary occupational health and safety measures as required by law. The EU-wide European association of SMEs (UEAPME)<sup>50</sup> had argued that compliance by SMEs should be facilitated through “simplification of existing legislation [and] strengthening the capacity of micro and small enterprises”.<sup>51</sup>

11.19 The Commission recognises the need to make compliance with health and safety legislation simpler and less costly for smaller businesses. However, it is not proposing to make changes to existing EU legislation with respect to SMEs specifically. Instead, it has published a new guidance document to assist SMEs in undertaking health and safety risk assessments,<sup>52</sup> and is encouraging Member States to allow smaller businesses to make greater use of web-based risk assessment tools.

### **Our assessment**

11.20 The evaluation report by the Commission presents a useful overview of the successes and shortcomings in the implementation of EU health and safety law. On the basis of this exercise, the Commission is preparing a number of legislative proposals to update or remove obsolete provisions across a number of Directives. Based on the information we have available to us currently, the changes being considered appear to be largely technical in nature. We will of course scrutinise them in more detail when the formal proposals have been tabled.

11.21 As regards compliance with health and safety law, the evaluation found—again—that many smaller businesses in particular struggle to meet their legal obligations. The Commission had already reached the same conclusion in its 2014 Health and Safety Strategy. The solutions it proposes now amount largely to providing businesses with improved guidance. While this may be helpful, it does not seem to be particularly imaginative; real simplification of the legislative framework is not on the table. However, we are pleased that the Government will focus on ensuring any further guidance is genuinely useful, and does not duplicate what already exists domestically.

48 Two legislative proposals which would set new exposure limits for carcinogenics are already under consideration by the Council and the European Parliament. These proposals are broadly supported by the UK Government, and we have considered them elsewhere (see “Previous Committee Reports”).

49 The Commission is expected to propose exposure limits for formaldehyde, beryllium, cadmium, chromium IV compounds and nickel compounds.

50 The UK is the only Member State without an organisation that is a [full member of UEAPME](#).

51 UEAPME position paper, “[EU Strategic Framework on Health and Safety at Work 2014–2020](#)” (June 2014).

52 SWD(17) 9, “[Health and Safety at Work is Everybody’s Business: A Practical guidance for employers](#)” (10 January 2017).

11.22 We do not consider that the Commission Communication itself raises any immediate concerns in light of the UK’s exit from the EU. We take note, however, of the Prime Minister’s speech of 17 January 2017, in which she stated that the Government would not only “protect the rights of workers set out in European legislation”, but also “build on them”.<sup>53</sup> This was reiterated in the Government’s Brexit White Paper two weeks later, which stated that “continued protection of workers’ rights” would be ensured through the Great Repeal Act.<sup>54</sup>

11.23 In this respect, we note that the Minister’s main criticism of the Commission’s plan of action is that it could have gone further to remove outdated or duplicate rules from EU health and laws.

## Previous Committee Reports

None in respect of this document.

For more information on the EU’s 2014–2020 Health and Safety at Work Strategy, see: (36128) 10949/14 COM(14) 332—Ninth Report HC 219-ix (2014–15) [chapter 36](#) (3 September 2014).

For the Committee’s Reports on the proposals to amend the Carcinogen and Mutagens Directive, see: (37758), 8962/16, COM(2016) 248 Sixth Report HC 71-iv (2016–17) [chapter 6](#) (15 June 2016) and Thirteenth Report HC 71-xi (2016–17) [chapter 6](#) (12 October 2016); and Thirty-First Report HC 71-xxix (2016–17) chapter 9 (8 February 2017).

## Annex: List of health and safety Directives covered by the evaluation

Directive 89/654/EEC on workplace requirements	Directive 92/85/EEC on pregnant workers	Directive 2004/37/EC on carcinogens or mutagens at work
Directive 89/656/EEC on use of personal protective equipment	Directive 92/91/EEC on mineral-extracting industries on drilling	Directive 2006/15/EC on indicative occupational exposure limit values
Directive 90/269/EEC on manual handling of loads	Directive 93/103/EC on work on board fishing vessels	Directive 2006/25/EC on artificial optical radiation
Directive 90/270/EEC on display screen equipment	Directive 94/33/EC on young workers	Directive 2009/104/EC on the use of work equipment
Directive 90/641/Euratom on outside workers in controlled areas (ionizing radiation)	Directive 96/29/Euratom on ionizing radiation	Directive 2009/148/EC on exposure to asbestos at work
Directive 91/322/EEC on indicative limit values	Directive 98/24/EC on risks related to chemical agents at work	Directive 2009/161/EU on indicative occupational exposure limit values

53 Speech by Prime Minister Theresa May, “[The government’s negotiating objectives for exiting the EU](#)” (17 January 2017).

54 Department for Exiting the EU, “[The United Kingdom’s exit from, and new partnership with, the European Union](#)” (2 February 2017), chapter 7.

Directive 91/383/EEC on fixed-duration or temporary employment relationship	Directive 99/92/EC on risks from explosive atmospheres	Directive 2010/32/EU on prevention from sharp injuries in the hospital and healthcare sector
Directive 92/104/EEC on mineral-extracting industries	Directive 2000/39/EC on indicative occupational exposure limit values	Directive 2013/35/EU on electromagnetic fields
Directive 92/29/EEC on medical treatment on board vessels	Directive 2000/54/EC on biological agents at work	Directive 2013/59/Euratom on protection against ionising radiation
Directive 92/57/EEC on temporary or mobile construction sites	Directive 2002/44/EC on vibration	Directive 2004/37/EC on carcinogens or mutagens at work
Directive 92/58/EEC on safety and/or health signs		

## 12 International ocean governance

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Cleared from scrutiny
Document details	Joint Communication—International oceans governance: an agenda for the future of our oceans
Legal base	—
Department	Foreign and Commonwealth Office
Document Number	(38257), 14332/16 + ADD 1, JOIN(16) 49

### Summary and Committee's conclusions

12.1 On 10 November 2016, the European Commission published an EU strategy on international ocean governance, entitled “An agenda for the future of our oceans”.<sup>55</sup> The Minister for Europe (Sir Alan Duncan) provided us with an Explanatory Memorandum on the document, which showed the Government was broadly supportive of the Commission's analysis and most of the high-level policy proposals it put forward.<sup>56</sup> However, we retained it under scrutiny while awaiting further information from the Minister on the implications of the UK's exit from the EU for the Government's position towards the EU's ocean governance strategy.

12.2 The Minister responded to that request for information on 1 February 2017,<sup>57</sup> providing emphatic assurance that the UK will seek to have the “strongest possible” economic and maritime links with Europe. He also writes that the specific issue of ocean governance post-Brexit would be determined by the outcome of the UK-EU negotiations, which, he said, “would determine the arrangements for UK-EU cooperation”. We therefore take it as implicitly acknowledged that the Government will seek to include a mechanism for cooperation on ocean governance issues in the new framework for UK-EU relations after Brexit, whatever form that may take.

**12.3 In light of the Minister's letter, we are now content to clear the document from scrutiny. We will revert to this subject as and when specific policy initiatives linked to the Ocean Governance Strategy are tabled by the Commission. We anticipate that developments in the UK's EU exit negotiations should allow the Government to be more detailed in its Explanatory Memoranda about its planning for the post-Brexit environment.**

### Full details of the documents

Joint Communication—International oceans governance: an agenda for the future of our oceans: (38257), [14332/16](#) + ADD 1, JOIN(16) 49.

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55 The full text of the Strategy is available on the [Commission website](#).

56 [Explanatory Memorandum](#) submitted by the Foreign and Commonwealth Office (22 November 2016).

57 [Letter from Sir Alan Duncan](#) (1 February 2017).

## Background

12.4 On 10 November 2016, the European Commission and the European External Action Service (EEAS) published a joint Communication on international ocean governance, entitled “An agenda for the future of our oceans”. In it, they identify a number of challenges facing the world’s oceans—primarily environmental—and proposes 14 priority actions, including the launch of “Ocean Partnerships” to reinforce bilateral cooperation with non-EU countries, and renewed efforts to promote better fisheries and environmental management of seawaters in developing countries (see our Report of 7 December 2016 for more information).<sup>58</sup>

12.5 The Minister for Europe (Sir Alan Duncan) submitted an Explanatory Memorandum on the Communication on 22 November 2016.<sup>59</sup> In it, he expressed agreement with the Commission’s analysis of the challenges facing the oceanic environment and appeared broadly supportive of most of the priority actions.

12.6 However, the Minister did not place the opportunity to shape the EU’s agenda in this area in the context of the UK’s exit from the EU. We therefore retained the document under scrutiny, and asked him to provide further information on the Government’s views on the type of relationship it would wish to have with the EU on ocean governance after Brexit.

## The Minister’s letter of 1 February 2017

12.7 On 1 February 2017, the Minister for Europe (Sir Alan Duncan) responded to the questions posed by the Committee in December about the UK’s position on the Ocean Governance Strategy in view of Brexit:

“I can assure the Committee that all EU documents and issues are being considered in the Brexit context. (...) The UK is a major maritime power and we will want the strongest possible economic and other maritime and marine links with our European neighbours, as well as our close friends in North America, the Commonwealth, and other important partners around the world.”

12.8 The Minister also acknowledged that the specific issue of ocean governance post-Brexit would depend on the outcome of the UK’s EU exit negotiations, which, he said, “would determine the arrangements for UK-EU cooperation”. He concludes by saying that the Government will “remain actively involved” in scrutinising any concrete proposals or policy initiatives that flow from the Ocean Governance Strategy, to ensure they respect the principles of subsidiarity and proportionality.

## Previous Committee Reports

Twenty-second Report HC 71–xx (2016–17), [chapter 5](#) (7 December 2016).

58 (38257), 14332/16 + ADD 1, JOIN(16) 49—Twenty-second Report HC 71–xx (2016–17), [chapter 5](#) (7 December 2016).

59 [Explanatory Memorandum](#) submitted by the Foreign and Commonwealth Office (22 November 2016).

## 13 EU-Russia restrictive measures

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Cleared from scrutiny (decision reported on 25 January 2017)
Document details	Council Decision (CFSP) 2016/2315 of 19 December 2016 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine
Legal base	Article 29 TEU; unanimity
Department	Foreign and Commonwealth Office
Document Number	(38433), —

### Summary and Committee's conclusions

13.1 On 16 December 2016, the EU extended the imposition of economic sanctions on Russia, in response to the latter's invasion of eastern Ukraine and Crimea in early 2014. These sanctions include an arms embargo, a ban on the supply of equipment and services to Russian deep water, Arctic and shale oil exploration and production projects, and a ban on Russian access to certain EU financial instruments and services (see our previous Report for more information).<sup>60</sup>

13.2 When we cleared the Council Decision from scrutiny on 25 January, the Committee asked the Minister to provide further information on the situation in Ukraine, and the impact of the sanctions on Russia's implementation of a 2015 Minsk Agreements which called for an immediate ceasefire and restoration of Ukrainian sovereign control over its entire territory.

13.3 The Minister has now provided the requested information. With respect to the situation in the areas now under *de facto* Russian control, he writes that the ceasefire agreed in February 2015 continues to be violated on a regular basis. At least 9,733 people have been killed in the conflict, and the state of human rights in Crimea has "deteriorated significantly". Crucially, the Minister writes that Russia "continues to provide the separatists with funding, arms, ammunition and troops that enable the fighting to continue". Humanitarian organisations have very limited access to the conflict areas.

13.4 With regards to the impact of the EU's sanctions, the Minister writes that the sanctions have imposed a high cost on Russia (estimated at 10 per cent of Russia's GDP decline in 2015),<sup>61</sup> as well as limiting its ability to exploit new oil fields and attracting foreign investment. He argues that the cost of the measures have prevented a further escalation of the conflict by keeping the Russian Government at the negotiating table. The Government remains committed to the sanctions while the Minsk Agreements remain unimplemented.

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60 Twenty-Eighth Report HC 71-xxvi (2016–17) [chapter 7](#) (25 January 2017).

61 According to the [OECD](#), Russia's economy shrank by 3.8 per cent in 2015.

**13.5 We thank the Minister for his expeditious and detailed overview of the situation in Ukraine. The information provided serves to emphasise that the EU sanctions on Russia remain appropriate. We ask to be kept informed of any future extensions of the tier II and tier III sanctions on Russia, which must be adopted by unanimity in the Council.<sup>62</sup>**

### Full details of the documents

Council Decision (CFSP) 2016/2315 of 19 December 2016 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine: (38433),—.

### The Minister's letter of 6 February 2017

13.6 On 6 February 2017, the Minister responded to our request for information on the situation in Ukraine. Specifically, we asked for his assessment of the situation on the ground, and on the impact of the EU's sanctions on Russia's compliance with the Minsk Agreements.

13.7 With respect to the Donbass region, the Minister writes that levels of violence have varied over the past 10 months, and the total death toll is likely to have exceeded 10,000:

“Overall the ceasefire continues to be breached on a regular basis, and there have been several serious escalations in fighting. (...) Both sides have returned to using heavy calibre weaponry proscribed under the Minsk Agreement (...). This has led to the deaths of Ukrainian soldiers and several civilians and has left thousands without power, heating or water is in sub-zero temperatures.”

13.8 In Crimea, the Minister writes, human rights conditions have “deteriorated significantly” since the Russians seized power:

“Non-Russian nationals in Crimea continue to face pressure to renounce their Ukrainian citizenship in favour of Russian citizenship or be denied access to basic services such as pensions and medical treatment. (...) In particular, Crimean Tatars are facing on-going human rights abuses, and face regular harassment including arrests, detentions, disappearances, threats to seize property, [and] restrictions on their rights of worship, assembly and expression (...).”

13.9 The Minister is positive about the capacity of the Ukrainian government to implement political and economic reforms in the areas under its control. He highlights as “key achievements” the implementation of unified gas tariffs (removing a “large source of corruption” within Ukraine's energy system) and an e-declarations system which requires all politicians and public officials to declare their assets and income.

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62 The tier II sanctions (travel bans and asset freezes) must be extended by the Council by 15 March 2017 or else they expire. The tier III economic sanctions expire on 31 July 2017 unless extended.

13.10 Finally, with respect to the impact of the EU’s sanctions on Russia, the Minister writes:

“Although the conflict in Eastern Ukraine continues, sanctions have played an important role supporting the Minsk process, including by imparting a significant cost to Russia for their ongoing failure to implement the Minsk Agreements. The sanctions have also had a preventative role, helping to limit further serious escalation of the situation and keeping Russia at the negotiating table. (...) We also assess that sanctions are having a tangible economic impact on Russia. We estimate that 10%<sup>^</sup> of Russia’s GDP decline in 2015 was the result of sanctions. In particular, sanctions have limited foreign investment in Russia (...) [and they] were also a key driver of increased capital flight from Russia.”

### Previous Committee Reports

Twenty-Eighth Report HC 71-xxvi (2016–17) [chapter 7](#) (25 January 2017).

## 14 Cooperation Agreement on Partnership and Development with Afghanistan

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Committee's assessment	Legally important
<a href="#">Committee's decision</a>	Cleared from scrutiny; further information requested
Document details	Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Cooperation Agreement on Partnership and Development between the European Union and its Member States, of the one part, and the Islamic Republic of Afghanistan, of the other part
Legal base	Articles 207 and 209 in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) TFEU; EP consent; unanimity
Department	Foreign and Commonwealth Office
Document Number	(38439), 15093/16, —

### Summary and Committee's conclusions

14.1 This proposal would enable the EU to conclude (ratify) the Cooperation Agreement on Partnership and Development (CAPD) with Afghanistan.

14.2 The CAPD lays out a framework for future cooperative dealings between the EU and Afghanistan and reflects shared interests in the following areas:

- Human rights and gender equality;
- Peace and conflict prevention;
- Counter-proliferation and counter-terrorism;
- Development in good governance and education;
- Trade;
- Rule of law and counter-narcotics; and
- Migration.

14.3 Originally, the CAPD with Afghanistan was to be an “EU-only” agreement without input from Member States. However Member States, including the UK, did not agree on the grounds that it covered matters for which there was unexercised shared competence.<sup>63</sup> As a result the CAPD became a mixed agreement.<sup>64</sup>

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63 Shared competence can be exercised by either the EU or the Member States, the choice is a political one.

64 A mixed agreement is entered into by both the EU and its Member States, which means that both are exercising competence.

14.4 The Committee has already cleared the proposal authorising the EU to sign and trigger provisional application of the CAPD. In doing so it raised no policy issue but did raise the legal issue of the lack of clarity as to the extent to which the EU was exercising competence. In doing so it referred to the Government's position that there was an adequate level of protection against "competence creep" on the basis that (a) the CAPD contained no "concrete legal obligations" and (b) language in the text of that proposal limiting provisional application.

14.5 In his Explanatory Memorandum, the Minister (Sir Alan Duncan) now characterises the CAPD as "primarily composed of general political commitments and aspirations with a focus on development objectives, rather than specific binding technical agreements" and explains that "The CAPD does not commit the UK to greater cooperation, and does not prevent us pursuing our bilateral cooperation".

**14.6 We previously drew the proposal authorising the EU to sign and provisionally apply the CAPD to the attention of the House on the grounds that it fudged the extent to which the EU was exercising competence; an approach which undermines the Government's policy that the EU should normally only exercise exclusive competence in respect of international agreements, leaving Member States to exercise shared competence. The Minister made it clear in respect of that proposal that he intended to take no steps of further clarification. We assume this is the case with this proposal and therefore draw it to the attention of the House for the same reason.**

**14.7 In doing so we remain unconvinced by the justifications used by the Minister in relation to the earlier proposal. First any limitation on the EU's ability to trigger provisional application does not apply to its competence to conclude the Agreement. Conclusion of an agreement is separate and distinct from provisionally applying it. Second we are not persuaded that competence issues can be glossed over because they do not involve concrete legal obligations. In any event it is not at all clear that the CAPD either lacks concrete legal obligations or is primarily aspirational in nature. It is worded in many places in terms that denote legal obligations and those obligations extend to cooperation in important areas.<sup>65</sup> Obligations extending beyond co-operation are imposed in Article 14 (to grant most favoured nation treatment) and in Article 25 (to exchange information on all issues relevant to combating criminal activities).**

**14.8 Given that the CAPD raises no policy issues and the lack of substance that the Government attributes to it we are, however, prepared to clear this document, but shall continue to draw the attention of the House to continued compromises over competence such as this, in view of the Commission's clear intention to limit Member States' involvement in international agreements and the implications for disentangling mixed agreements in the Brexit process.**

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65 Unambiguous language of obligation is found, for example, in provisions requiring cooperation relating to gender equality (Article 5), development co-operation (Article 12) trade cooperation (Article 13) sanitary and phytosanitary matters (Article 15) customs (Article 17) intellectual property rights (Article 23) Combating illicit drugs (Article 26) environment and climate change (Article 43).

## Full details of the documents

Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Cooperation Agreement on Partnership and Development between the European Union and its Member States, of the one part, and the Islamic Republic of Afghanistan, of the other part: (38439), 15093/16.

## The Explanatory memorandum of 26 January 2017

14.9 The Minister sets out the general subject of matter of the CAPD:

“The attached document seeks agreement from the Council to conclude, on behalf of the EU, the EU-Afghanistan Cooperation Agreement on Partnership and Development (CAPD). It is the counterpart to the Council Decision on the signing of the CAPD which was submitted in October 2016.

“The CAPD is a signal of political commitment and a framework for further engagement and cooperation between the EU and Afghanistan. Its articles reflect shared priorities for the relationship: they include human rights and gender equality; peace and conflict prevention; counter-proliferation and counter-terrorism; development, including good governance and education; trade; rule of law and counter-narcotics; and migration.

“Many of the CAPD’s articles on areas for further cooperation are aspirationally worded, and the Agreement does not include detail on implementation; that will be decided once the CAPD is in place, in consultation with Member States throughout. This is likely to happen in the context of determining the EU’s next strategy for Afghanistan, to follow-on from the current strategy which ran to the end of 2016.”

14.10 The policy implications are also described;

“On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

“The CAPD is one of a number of agreements that the EU has sought with third countries. Afghanistan is a developing country in the midst of a prolonged internal conflict, and trade flows with the EU are dominated by development assistance.

“The CAPD reflects this dynamic, and is primarily composed of general political commitments and aspirations, with a focus on development objectives, rather than specific and binding technical agreements.

“The UK’s work in Afghanistan is aimed at building the capacity of the government and preventing Afghanistan from acting as a base for international terrorism. In pursuit of those aims, the Government supports

the CAPD as a demonstration of continuing EU commitment to Afghanistan, and as a reflection of the broad range of our shared interests and objectives. The EU has a significant role to play in the future of Afghanistan, to help develop its governance and rule of law, and to develop the country more widely.

“As the European External Action Service notes in the explanatory memorandum attached to the Council Decision, the High Representative and the Commission proposed in an earlier draft version of the Council Decision that the CAPD be an “EU-only” agreement, without the separate participation of Member States. The UK took the position that the Agreement should be “mixed” and other Member States had similar views. As a result, the CAPD is now a “mixed” agreement—between the EU and its Member States, on the one hand, and Afghanistan, on the other.

“Independent of the EU, the UK’s contribution to Afghanistan is significant, and the bilateral relationship is strong. The CAPD does not commit the UK to greater cooperation, and does not prevent us pursuing our bilateral cooperation.

“The EU, like the UK, is an active participant in the broader process for coordinating donor activity in Afghanistan and monitoring the performance of the government. Any cooperation activity which ultimately flows from the CAPD will be coordinated with other donors through these processes, and will align with the conditionality measures agreed between the wider donor community and the Government of Afghanistan.”

14.11 Finally he explains the financial implications:

“The Cooperation Agreement on Partnership and Development does not commit any funds directly. EU funding in Afghanistan comes from a variety of sources, the most significant being the current Multiannual Indicative Programme (MIP), part of the EU Development Cooperation Instrument (DCI), which covers the period 2014 to 2020 and has a total budget allocation of €1.4 billion [£1.19 billion]. It also receives funding from regional and thematic programmes, including the Instrument for Stability and Peace, for projects covering the likes of human rights, rule of law, assistance for displaced persons, food security and health.

“Once the CAPD is agreed, and once the details on implementation are decided, these are examples of the sources of funding from which the EU will draw.”

## Previous Committee Reports

None, but in respect of the proposal authorising the EU to sign and provisionally apply the CAPD see: Twenty-second Report HC 71-xx (2016–17), [chapter 16](#), (7 December 2017), Seventeenth Report HC 71-xv 92016–17) [chapter 8](#), (2 November 2016).

## 15 EU Solidarity Fund

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Cleared from scrutiny
Document details	(a) Proposed Decision about European Union Solidarity Fund assistance to the UK, Cyprus and Portugal; (b) Draft Amending Budget No. 1/2017 accompanying the European Union Solidarity Fund proposal.
Legal base	(a) Council Regulation (EC) No. 2012/2002, ordinary legislative procedure, QMV; (b) Article 314 TFEU and Article 106a EURATOM, special legislative procedure, QMV
Department	HM Treasury
Document Numbers	(a) (38483), 5681/17, COM(17) 45; (b) (38486), 5682/17, COM(17) 46

### Summary and Committee's conclusions

15.1 The Commission has proposed a Decision to approve awards from the European Union Solidarity Fund for disaster relief to the UK (for the winter 2015–16 flooding), Cyprus (for prolonged drought and two wild fires) and Portugal (for wild fires in Madeira). The Commission has also proposed a Draft Amending Budget to the 2017 Budget, in connection with these awards, with it undertaking to make compensating savings later in the year.

15.2 The Government welcomes the award for the UK, while reminding us of its general advocacy of budgetary restraint and emphasising that these proposals will be budget neutral.

**15.3 While clearing these documents from scrutiny, we draw them to the attention of the House for the information they give in relation to the UK.**

### Full details of the documents

(a) Proposed Decision on the mobilisation of the European Union Solidarity Fund to provide assistance to the United Kingdom, Cyprus and Portugal: (38483), [5681/17](#), COM(17)45; (b) Draft amending budget No 1 to the general budget for 2017 accompanying the proposal to mobilise the European Union Solidarity Fund to provide assistance to the United Kingdom, Cyprus and Portugal: (38486), [5682/17](#), COM(17) 46.

### Background

15.4 The Interinstitutional Agreement on budgetary matters provides the possibility of finance for (“mobilisation of”) the EU Solidarity Fund (EUSF), which releases emergency financial aid following a major disaster in a Member State or candidate country.

15.5 During the course of a financial year the Commission presents to the Council and European Parliament Draft Amending Budgets (DABs) proposing increases or reductions for revenue and expenditure in the current EU General Budget — there are normally about ten DABs each year.

## The documents

15.6 With its proposed Decision, document (a), the Commission suggests approval of applications to the EUSF from the UK, Cyprus and Portugal. It summarises the applications as follows:

### *United Kingdom*

- following flooding in the winter of 2015–16 affecting parts of the UK due to storms Desmond and Eva, the Commission received an application for assistance in February 2016, which was finalised in September 2016;
- the UK submitted a successful bid under the ‘regional disaster’ provision citing €2.4 billion (£2.1 billion) in total direct damage;
- this represented 5.77% of the weighted average of GDP of the relevant NUTS 2 regions, thus exceeding the threshold of 1.5% of regional GDP to qualify as a regional disaster;
- the Commission proposes an award to the UK of €60 million (£51 million), in accordance with the formula of 2.5% of direct damage as accepted by the Council and the European Parliament;

### *Cyprus*

- following drought since October 2015, and two major wild fires in June 2016, in Cyprus the Commission received an application for assistance in September 2016;
- Cyprus submitted a successful bid under the ‘major’ provision citing €181 million (£155 million) in total direct damage;
- this represented 1.78% of Cyprus’s GNI, thus exceeding the threshold of 0.6% of GNI to qualify as a major natural disaster;
- Cyprus requested the payment of an advance, which the Commission approved in accordance with the EUSF Regulation—Commission Decision C(2016) 7572 on 17 November 2016 awarded €729,826 (£624,862) representing 10% of the anticipated financial contribution from the Fund;
- the Commission proposes an award to Cyprus of €7.3 million (£6.3 million), in accordance with the formula of 2.5% of direct damage for the proportion below the threshold and 6% for the proportion above, as accepted by the Council and the European Parliament;

## Portugal

- following wild fires in Madeira in August 2016, the Commission received an application for assistance in September 2016;
- Portugal submitted a successful bid under the ‘regional disaster’ provision citing €157 million (£134 million) in total direct damage;
- since Madeira is an outermost region, its threshold for ‘regional disaster’ is direct damage in excess of 1% of regional GDP;
- Portugal reported direct damage of 3.84% of regional GDP, in excess of the 1% threshold to qualify as a ‘regional disaster’;
- it requested the payment of an advance, which the Commission approved in accordance with the EUSF Regulation—Commission Decision C(16) 7250 on 9 November 2016 awarded €392,500 (£336,050), representing 10% of the anticipated financial contribution from the Fund; and
- the Commission proposes an award to Madeira of €3.9 million (£3.3 million), in accordance with the formula of 2.5% of direct damage as accepted by the Council and the European Parliament.

15.7 The advances for Cyprus and Portugal were paid from the €50 million (£43 million) reserve already budgeted for the EUSF, and the remaining balance for the payment of advances stands at €47 million (£40 million). The Commission’s assessment is that this is sufficient to fund new applications during the rest of the year.

15.8 The total amount of this proposed use of the EUSF is €72 million (£62 million). The Commission has presented a DAB, document (b), alongside its proposals for the UK, Cyprus and Portugal to finance this amount. It proposes to fund this use of the EUSF by amending the 2017 Budget, to increase the budget line “Assistance to Member States in the event of a major natural disaster with serious repercussions on living conditions, the natural environment or the economy” by €72 million (£62 million) in commitment and payment appropriations. The Commission proposes to book this amount to a negative reserve of payment appropriations in another budget line. It says that it is confident that the full amount in payment appropriations can be found from redeployments within the 2017 Budget, but that due to the early stage of budgetary implementation, it is not yet in a position to identify any precise source.

## The Government’s view

15.9 In his Explanatory Memorandum of 10 February 2017 the Chief Secretary to the Treasury (Mr David Gauke) first reiterates the Government’s standard mantra, in the context of the outcome of the EU referendum, that until the UK exits the EU it will continue to negotiate, implement and apply EU legislation. He then says that:

- the Government welcomes the Commission’s decision to award financial assistance to the UK in respect of the damage caused by flooding in winter 2015–16;

- as set out in the written statement to the House by the Parliamentary Under-Secretary of State, Department for Communities and Local Government (Andrew Percy) on the 16 January 2017,<sup>66</sup> the funds awarded will reimburse a small portion of the extensive financial support that has already been given by the Government to the areas of the UK affected by flooding;
- while the Government supports the principle and objectives of the EUSF, it has been consistently clear that it wants to see real budgetary restraint in the EU;
- therefore, it welcomes the Commission’s commitment to finding reallocations to fund this new measure; and
- since the amount needed is being funded from the negative reserve, to be later funded from redeployments within the 2017 Budget, no immediate financial implications arise from this DAB.

### Previous Committee Reports

None.

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66 See <https://hansard.parliament.uk/commons/2017-01-16/debates/17011612000004/WinterFlooding>.

## 16 Europol: agreement with Denmark

Committee’s assessment	Legally and politically important
<a href="#">Committee’s decision</a>	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	Council Implementing Decision amending Decision 2009/935/JHA as regards the list of third States and organisations with which Europol shall conclude agreements
Legal base	Article 26(1)(a) of Council Decision 2009/371/JHA, QMV, consultation of EP
Department	Home Office
Document Number	(38494), 15778/16, —

### Summary and Committee’s conclusions

16.1 Europol is at the forefront of the EU’s response to international crime. Founded as an intergovernmental organisation in 1995 and operational since 1999, Europol became an EU Agency in 2010. It provides analytical and operational support to national law enforcement authorities in all 28 EU Member States, enhancing their capacity to tackle security threats which have a cross-border dimension. A new Regulation updating Europol’s governance structure, objectives and tasks was adopted in May 2016 and will take effect on 1 May 2017. The UK has opted into the Regulation on the grounds that:

“Opting in will maintain operational continuity for UK law enforcement ahead of the UK exiting the EU, ensuring our Liaison Bureau at Europol is maintained, and that law enforcement agencies can continue to access Europol systems and intelligence. This decision is without prejudice to discussions on the UK’s future relationship with Europol when outside the EU.”<sup>67</sup>

16.2 Denmark participates fully in the current Europol Council Decision, adopted in April 2009, but is unable to participate in the new Regulation which is intended to replace it as Denmark has an opt-out of all EU justice and home affairs legislation adopted after the Lisbon Treaty entered into force on 1 December 2009. However, Protocol 22 to the EU Treaties on the Position of Denmark provides that pre-Lisbon EU police cooperation measures which are amended post-Lisbon “shall continue to be binding upon and applicable to Denmark unchanged”.<sup>68</sup> The amendment of a pre-Lisbon measure is generally understood to encompass post-Lisbon measures which repeal or replace the earlier measure. The new Europol Regulation repeals and replaces the 2009 Europol Council Decision and a number of associated measures with effect from 1 May 2017, but only for those Member States participating in the Regulation.

67 See the [letter](#) of 14 November 2016 from the Minister for Policing and the Fire Service (Brandon Lewis) to the Chair of the European Scrutiny Committee.

68 Article 2 of [Protocol No. 22](#) on the Position of Denmark.

16.3 In a referendum held in December 2015, the Danish people voted to retain their opt-out of all post-Lisbon EU justice and home affairs measures and rejected a proposal which would have enabled Denmark, like the UK, to opt in selectively to measures such as the new Europol Regulation. The vote was widely seen as a blow to the Danish Government's efforts to keep Denmark within Europol.

16.4 The proposed Council Implementing Decision is intended to enable Denmark to continue to cooperate with Europol from 1 May when the new Europol Regulation takes effect. It does so by designating Denmark as a third (non-EU) country under the 2009 Europol Council Decision. Europol is required to prioritise the conclusion of cooperation agreements with designated third countries.

16.5 The Minister for Policing and the Fire Service (Brandon Lewis) “welcomes Europol cooperating with Denmark to ensure continued practical law enforcement cooperation”. The document was deposited on 1 February 2017. The Minister's Explanatory Memorandum of 15 February notes that “the process is moving quickly” and anticipates that the proposed Council Implementing Decision will be adopted at the March Justice and Home Affairs Council. His letter, sent a day later, explains that “the matter has moved faster than anticipated” and that the proposal is expected to be agreed on 17 February. He adds that “this is only the first step to allow Denmark to start actual negotiations with Europol towards an Operational Agreement” and that the Government intends to engage with us “as early as possible on the detail of this”. He continues:

“In the circumstances we therefore intend to support this Implementing Decision by voting in favour at tomorrow's Council ahead of the process to agree the Operational Agreement itself. I recognise that the timing of this instrument going to Council so soon is unhelpful in the context of domestic scrutiny arrangements, but hope that the Committee will understand the Government's position in these unusual and time constrained circumstances.”

**16.6 We recognise that the Minister has written to us at the earliest opportunity to explain the Government's reasons for overriding our security reserve. He does not, however, explain why it took the Government so long to deposit the proposed Council Implementing Decision, given that the decision to establish new operational arrangements between Denmark and Europol was announced in December and the proposal itself was published in early January. We ask the Minister to account for the delay which has led to the scrutiny override.**

16.7 The Minister tells us that, “without further action, Denmark would no longer be able to participate in Europol” once the new Europol Regulation takes effect on 1 May 2017. The approach proposed by the Council—to designate Denmark as a third (non-EU) country—is highly unorthodox, not least because the designation is made under the 2009 Europol Council Decision in which Denmark participates fully as a Member State. It is not clear to us why the proposed Council Implementing Decision is necessary, given the wording of Protocol 22 to the EU Treaties on the Position of Denmark and Article 75 of the new Europol Regulation.

16.8 On the former, we understand Article 2 of the Protocol to mean that EU police cooperation measures, such as the 2009 Europol Council Decision, which were adopted before the Lisbon Treaty took effect and are amended post-Lisbon, “shall continue to be binding upon and applicable to Denmark unchanged”. Whilst the new Europol Regulation repeals and replaces, rather than amends, the 2009 Europol Council Decision, precedent suggests that repeal and replace measures are treated in the same way as amending measures under the Protocols to the EU Treaties. The procedures governing the UK’s 2014 block opt-out decision are instructive.<sup>69</sup>

16.9 Moreover, Article 75 of the new Europol Regulation provides that the 2009 Europol Council Decision and associated measures are only repealed and replaced “for the Member States bound by this Regulation”. As Denmark is not bound by the Regulation, we do not see how it can have the effect of repealing and replacing the earlier measures as regards Denmark. We ask the Minister to explain why Denmark could not continue to participate in Europol on the basis of these earlier Council Decisions.

16.10 The decision to designate Denmark as a third country for the purpose of establishing new operational arrangements with Europol has clear implications for the UK’s future relationship with Europol once it leaves the EU. It is disappointing that the Minister does not allude to the Declaration issued by the Presidents of the European Council (Donald Tusk) and European Commission (Jean-Claude Juncker) and the Danish Prime Minister (Lars Løkke Rasmussen) in December which makes clear that the new operational agreements:

“[...] must be Denmark-specific, and not in anyway equal full membership of Europol, i.e. provide access to Europol’s data repositories, or for full participation in Europol’s operational work and database, or give decision-making rights in the governing bodies of Europol. However, it should ensure a sufficient level of operational cooperation including exchange of relevant data, subject to adequate safeguards.

“This arrangement would be conditioned on Denmark’s continued membership of the European Union and of the Schengen area, on Denmark’s obligation to fully implement in Danish law Directive (EU) 2016/680/EU on data protection in police matters by 1 May 2017 and on Denmark’s agreement to the application of the jurisdiction of the Court of Justice of the EU and the competence of the European Data Protection Supervisor.”<sup>70</sup>

16.11 We ask the Minister to comment on the status of this declaration, the specific conditions it sets out and its implications for any future agreement between the UK and Europol once the UK leaves the EU. We also ask him whether he considers that the provisions in the new Europol Regulation on the transfer of personal data to third countries will make it easier or harder for the UK to exchange sensitive law enforcement information with Europol once the UK leaves the EU.

69 For example, Article 10 of Protocol 36 to the EU Treaties uses similar terminology. The reference to the amendment of pre-Lisbon police and criminal justice measures also encompassed their replacement and repeal by post-Lisbon measures.

70 See the European Commission [press release](#) issued on 15 December 2016.

16.12 As the Council Implementing Decision has been adopted, we clear it from scrutiny. We note the Minister’s undertaking to engage with us “as early as possible” on the content of the operational agreement to be concluded with Denmark. We expect him to explain how the agreement differs from the level of cooperation Denmark currently enjoys as a full participant in Europol and how any conditions imposed on Denmark, for example in relation to the jurisdiction of the Court of Justice or Schengen membership, might affect the scope of any new post-Brexit agreement with the UK. We draw this chapter to the attention of the Home Affairs Committee and the Committee on Exiting the European Union.

## Full details of the documents

Council Implementing Decision amending Decision 2009/935/JHA as regards the list of third States and organisations with which Europol shall conclude agreements: (38494), [15778/16](#), —.

## Background

### *Procedures for concluding third country agreements under the 2009 Europol Council Decision*

16.13 The 2009 Europol Council Decision authorises the Council, acting by a qualified majority, to determine the third countries with which Europol shall conclude cooperation agreements.<sup>71</sup> The list is set out in an Annex to a related Council Decision.<sup>72</sup> None of the third countries listed is a member of the European Union but four—Iceland, Norway, Switzerland and Liechtenstein—are associate members of the Schengen free movement area. Any addition to the list must be agreed by a qualified majority of the Council, based on a recommendation made by Europol’s Management Board outlining the operational need to conclude a cooperation agreement.

16.14 Europol may enter into two types of cooperation agreement. Strategic agreements are limited to the exchange of general intelligence as well as strategic and technical information. Operational agreements allow the exchange of personal data, but are conditional on the third country ensuring an adequate level of data protection. The choice of agreement is determined by Europol’s Management Board, based on Europol’s assessment of the adequacy of data protection standards in the third country and the opinion of Europol’s Joint Supervisory Body—a body on which each Member State’s national data protection supervisory body is represented. Negotiations are carried out by the Director of Europol, under the supervision of the Management Board. The agreement must be approved by the Council, acting by a qualified majority.<sup>73</sup>

71 See Articles 23 and 26 of [Council Decision 2009/371/JHA](#) establishing the European Police Office (Europol).

72 See [Council Decision 2009/935/JHA](#) determining the list of third States and organisations with which Europol shall conclude agreements.

73 See Articles 5 and 6 of [Council Decision 2009/934/JHA](#) adopting the implementing rules governing Europol’s relations with partners, including the exchange of personal data and classified information.

### ***Procedures for establishing operational cooperation with third countries under the new Europol Regulation***

16.15 From 1 May 2017, the procedures for establishing operational cooperation with third countries will be based on the new Europol Regulation.<sup>74</sup> The Regulation authorises the transfer of personal data to third countries in the following circumstances:

- The Commission has adopted an “adequacy decision” establishing that the third country ensures an adequate level of data protection; or
- The EU has concluded an international agreement with the third country “adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals”.

16.16 In addition, the Regulation includes a “grandfathering” provision which allows the transfer of personal data to be based on cooperation agreements concluded before 1 May 2017 on the basis of the 2009 Europol Council Decision.

16.17 One of the questions we raised when scrutinising the new Europol Regulation was whether these provisions were likely to make it easier or harder for the UK to exchange sensitive law enforcement information with Europol once it leaves the EU.

### **The proposed Council Implementing Decision**

16.18 The proposal adds Denmark to the list of third countries and organisations with whom Europol shall conclude cooperation agreements. It takes effect on the date of its adoption—expected to be 17 February 2017—and gives Europol the necessary authorisation to carry out an assessment of the adequacy of data protection arrangements in Denmark with a view to initiating negotiations on an operational cooperation agreement.

### **The Minister’s Explanatory Memorandum of 16 February 2017**

16.19 The Minister tells us that Denmark is not able to participate in the new Europol Regulation, adding:

“Consequently, without further action, Denmark would no longer be able to participate in Europol after [1 May 2017].”

He continues:

“The Commission and Denmark have therefore reached a bespoke arrangement, which will allow Denmark to continue to work with Europol but as a third country rather than a Member State. Europol is usually only permitted to reach agreements with non-Member States but it has been agreed exceptionally that Denmark can be treated as such in this context to ensure it retains a relationship with Europol.

“The Danish Parliament has agreed to the arrangement and the procedural steps for it to enter into force are now underway. This Council Implementing

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74 See [Regulation \(EU\) 2016/794](#) on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA.

Decision represents the first procedural step, as it adds Denmark to the list of third countries with which Europol can have an agreement. Once this has taken place, Europol can directly negotiate an agreement with Denmark, which requires final sign-off from the Council. Denmark will then have a pre-existing third country agreement with Europol when the new Regulation comes into force. Such pre-existing agreements will continue to be in force under that Regulation.”

16.20 The Minister sets out in familiar terms the Government’s position on the implications of the UK referendum on membership of the EU for new legislative proposals:

“On 23 June, the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.”

16.21 He notes the outcome of the referendum in Denmark in December 2015 on participation in EU justice and home affairs measures, adding:

“In order for them to continue cooperating with Europol, the Danish Government negotiated and agreed with the Commission for Denmark to be treated as a third country for the purposes of the current measure.

“The Government welcomes Europol cooperating with Denmark to ensure continued practical law enforcement cooperation.”

16.22 The Minister notes that “the process is moving quickly” and that a final agreement needs to be achieved before the new Europol Regulation takes effect on 1 May.

### **The Minister’s letter of 16 February 2017**

16.23 The Minister explains that the proposal will be submitted to the Education, Youth, Culture and Sport Council on 17 February for adoption and acknowledges that the accelerated timetable means that the Council Implementing Decision will not be cleared from scrutiny ahead of Council agreement. He reiterates the Government’s support for “continued practical law enforcement cooperation” between Europol and Denmark and notes that “this is only the first step to allow Denmark to start actual negotiations with Europol towards an Operational Agreement”. He says he will engage with us “as early as possible” on the content agreement, adding:

“The Operational Agreement itself will also require final sign-off from the Council by Qualified Majority voting (QMV). This needs to be achieved before the new Europol Regulation comes into force on 1 May 2017 and this prompted the speeding up of the process.”

### **Previous Committee Reports**

None on this document, but see our earlier Report on the new Europol Regulation: Twenty-first Report HC 71-xix (2016–17), [chapter 1](#) (23 November 2016).

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

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### Department for Business, Energy and Industrial Strategy

(38454)            Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on reform recommendations for regulation in professional services.  
5301/17  
+ ADD 1  
COM(16) 820

### Cabinet Office

(38484)            Report from the Commission to the European Parliament and the Council on the Effectiveness of Directive 89/665/EEC and Directive 92/13/EEC, as Modified by Directive 2007/66/EC, Concerning Review Procedures in the Area of Public Procurement.  
5635/17  
+ ADD 1  
COM(17) 28

### Department for Environment, Food and Rural Affairs

(38465)            Report from the Commission to the European Parliament and the Council Assessing Member States' monitoring programmes under the Marine Strategy Framework Directive.  
5444/17  
+ ADD 1  
COM(17) 3

(38471)            Proposal for a Council Regulation amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 ('Ecotoxic').  
5569/17  
COM(17) 23

(38506)            Proposal for a Council Decision on the conclusion of the agreement to amend the Montreal Protocol on substances that deplete the ozone layer adopted in Kigali.  
5918/17  
+ ADD 1  
COM(17) 51

## Department for International Development

(38460) Court of Auditors Report 30/2016 The effectiveness of EU support to priority sectors in Honduras.

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## Department for Transport

(38521) Proposal for a Council Decision establishing the position to be adopted on behalf of the European Union in the relevant Committees of the United Nations Economic Commission for Europe as regards the proposals for amendments to UN Regulations NOs 3, 4, 6, 7, 13, 19, 23, 27, 28, 38, 39, 43, 45, 48, 50, 69, 70, 73, 75, 77, 79, 83, 87, 91, 98, 99, 101, 104, 107, 109, 110, 112, 113, 118, 119, 123 AND 138, and a proposal to amend Resolution R.E.3 in respect of draft guidelines on Cyber Security and Data Protection.

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## Foreign and Commonwealth Office

(35189) Proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny.

12730/13  
COM(13) 451

(38497) Council Implementing Regulation (EU) 2017/150 of 27 January 2017 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2016/1127.

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(38498) Council Decision (CFSP) 2017/154 of 27 January 2017 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2016/1136.

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## HM Treasury

(38472) Proposal for a Decision of the European Parliament and of the Council on the mobilisation of the European Globalisation Adjustment Fund following an application from the Netherlands — EGF/2016/005 NL/Drenthe Overijssel Retail.

5534/17  
COM(16) 742

(38470) Report from the Commission to the European Parliament and the Council on the joint review of the implementation of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program.

5557/17  
COM(17) 31

- (38495) Court of Auditors Opinion No 1/2017 (pursuant to Article 322, TFEU) concerning the proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013 (EU) 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1305/2013, (EU) No 1306/2013, (EU) No 1307/2013, (EU) No 1308/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, (EU) No 652/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council Revision of the 'Financial Regulation' — Regulation (EU, Euratom) financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L298, 26.10.2012, p.1)
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## Home Office

- (38449) Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EU) No 1214/2011 of the European Parliament and of the Council of 16 November 2011 on the professional cross-border transport of euro cash by road between euro-area Member States pursuant to article 26 of this Regulation.
- 5275/17
- COM(17) 5
- (38458) Proposal for a Council Decision on the application of the provisions of the Schengen acquis in the area of the Schengen Information System in the Republic of Croatia.
- 5258/17
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# Formal Minutes

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**Wednesday 22 February 2017**

Members present:

Sir William Cash, in the Chair

Alan Brown	Chris Stephens
Kate Green	Michael Tomlinson
Craig Mackinlay	Mr Andrew Turner
Mr Jacob Rees-Mogg	David Warburton

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 17 read and agreed to.

*Resolved*, That the Report be the Thirty-second Report of the Committee to the House.

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

[Adjourned till Wednesday 1 March at 1.45pm]

## Standing Order and membership

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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](http://www.parliament.uk).

**Current membership**

- [Sir William Cash MP](#) (*Conservative, Stone*) (Chair)  
[Alan Brown MP](#) (*Scottish National Party, Kilmarnock and Loudoun*)  
[Geraint Davies MP](#) (*Labour/Cooperative, Swansea West*)  
[Steve Double MP](#) (*Conservative, St Austell and Newquay*)  
[Richard Drax MP](#) (*Conservative, South Dorset*)  
[Kate Green MP](#) (*Labour, Stretford and Urmston*)  
[Kate Hoey MP](#) (*Labour, Vauxhall*)  
[Stephen Kinnock MP](#) (*Labour, Aberavon*)  
[Craig Mackinlay MP](#) (*Conservative, South Thanet*)  
[Mr Jacob Rees-Mogg MP](#) (*Conservative, North East Somerset*)  
[Chris Stephens MP](#) (*Scottish National Party, Glasgow South West*)  
[Graham Stringer MP](#) (*Labour, Blackley and Broughton*)  
[Michael Tomlinson MP](#) (*Conservative, Mid Dorset and North Poole*)  
[Mr Andrew Turner MP](#) (*Conservative, Isle of Wight*)  
[David Warburton MP](#) (*Conservative, Somerton and Frome*)  
[Mike Wood MP](#) (*Conservative, Dudley South*)

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

Peter Grant MP (*Scottish National Party, Glenrothes*), Rt Hon Damian Green MP (*Conservative, Ashford*), Nia Griffith MP (*Labour, Llanelli*), Kelvin Hopkins MP (*Labour, Luton North*), Calum Kerr MP (*Scottish National Party, Berwickshire, Roxburgh and Selkirk*), Dr Paul Monaghan MP (*Scottish National Party, Caithness, Sutherland and Easter Ross*), Alec Shelbrooke MP (*Conservative, Elmet and Rothwell*), Kelly Tolhurst MP (*Conservative, Rochester and Strood*), Heather Wheeler MP (*Conservative, South Derbyshire*).

