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European Scrutiny Committee

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Documents considered by the Committee on 19 April 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. The website also contains the Committee's Reports.

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

Staff

The staff of the Committee are Eve Samson (Clerk), Kilian Bourke, Terry Byrne, Alistair Dillon, Leigh Gibson, Nishana Jayawickrama, Foeke Noppert (Clerk Advisers), Arnold Ridout (Counsel for European Legislation), Françoise Spencer (Deputy Counsel for European Legislation), Joanne Dee (Assistant Counsel for European Legislation), Mike Winter (Second Clerk), Sarah Crandall (Senior Committee Assistant), Sue Beeby, Rob Dinsdale and Beatrice Woods (Committee Assistants), Ravi Abhayaratne and Paula Saunderson (Office Support Assistants).

Contacts

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

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Meeting Summary

The Committee 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. The Committee notes that in the current week the following issues and questions have arisen in documents or in correspondence with Minsters:

Migration crisis

Several chapters deal with migration issues, which will remain important after Brexit. The Committee notes the Government may continue financial support post-Brexit for Syrian refugees in Turkey through the EU established Facility for Refugees in Turkey (FRIT).

Summary

Europol agreement with Denmark

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, meaning that it cannot participate in the new Regulation. As a first step towards developing new arrangements for Denmark to continue cooperating with Europol, the Council adopted a Decision in February designating Denmark as a third (non-EU) country, meaning that Europol would be able to negotiate a new cooperation agreement with Denmark. The Council is now considering a draft Agreement establishing the legal framework for future cooperation between Denmark and Europol. Its purpose is to maintain a high level of cooperation "at least equivalent" to that enjoyed by other third countries whilst making clear that it cannot be as good as that enjoyed by EU Member States. In practice, this means that Denmark will not have direct access to Europol's information systems, but will achieve close to real-time access through dedicated Danish-speaking staff based at Europol. This enhanced service comes at a price: acceptance of EU data protection rules, the jurisdiction of the Court of Justice and continued EU and Schengen membership. The Government supports "continued practical law enforcement cooperation" between Denmark and Europol. Whilst recognising that the Agreement with Denmark will "help inform negotiations" on the UK's future relationship with Europol once it leaves the EU, the Government says that the UK will be in a different position and "will not be following any other nation's model". The European Scrutiny Committee acknowledges the political imperative and operational necessity of some form of agreement to enable Denmark to cooperate effectively with Europol from 1 May and accordingly recommends clearing the draft Agreement from scrutiny so that it can be concluded before the end of April. At the same time, the Committee places on record its reservations about the approach taken by the Council and the awkward legal

questions it raises. The Committee puts the Government on notice that it will need to be more forthcoming on the type of bespoke agreement it intends to seek with Europol once Article 50 exit negotiations begin.

Cleared from scrutiny; drawn to the attention of the Home Affairs Committee and the Committee on Exiting the European Union.

A renewed EU Action Plan on Return

Despite increased migratory pressures at the EU's external borders, the rate at which irregular migrants who do not qualify for international protection within the EU are returned to their countries of origin remains stubbornly low—only around 40% of those required to leave actually do so. The EU Return Directive which establishes common standards and procedures for the return of illegally staying third country nationals. The UK does not participate but supports its effective implementation by other Member States. In its latest Communication, the Commission seeks to give further impetus to the measures set out in a 2015 Action Plan on Return by identifying additional actions to assist Member States in strengthening their national return systems, improve coordination and operational delivery and "substantially" increase return rates. The Communication is accompanied by a non-binding Commission Recommendation providing guidance to Member States on how to implement the EU Return Directive more effectively by overcoming legal and practical obstacles to return. Neither document imposes any obligations on the UK, but both are illustrative of the EU's efforts to ensure a more coordinated and "pragmatic" approach to returns and to assuage public concern by drawing a clear distinction between the treatment of individuals in need of international protection and economic migrants. The Government broadly supports the Commission's approach and underlines the UK's active cooperation with the EU and other international partners in sharing expertise and resources on returns. The Government is asked to explain whether more radical options on return put forward by the former Home Secretary (Mrs Theresa May) in October 2015 remain on the table and what progress has been made in discussions with other Member States. The Government is also asked to clarify its policy on the detention of migrant children prior to their removal.

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

Turkey Refugee Facility

The UK is contributing £280 million to the EU's Facility for Refugees in Turkey (FRIT), which funds humanitarian and socio-economic assistance for Syrians stranded in Turkey. The Government has said that the UK may offer to continue making a financial contribution to the Facility post-Brexit.

In 2016 the EU established the Facility for Refugees in Turkey for Syrian refugees who have fled the civil war in their country and are now stranded in Turkey. The Facility has a budget of £2.6 billion, of which £280 million is provided by the UK. The Committee considered the European Commission's first Annual Report on the Facility, which summarises major expenditure so far. However, a framework for monitoring the results of the Facility is not yet operational, which prevented the Committee from reaching firm conclusions on the impact the FRIT is having on the ground.

The Committee also took note of the Government's statement that the UK's Brexit negotiations would also include talks on "UK contributions to the FRIT after we leave the EU". The Committee has asked the Foreign Office to keep it informed of any proposals for continued UK participation in, and contributions to, the Facility post-Brexit.

Cleared from scrutiny; further information requested; drawn to the attention of the Foreign Affairs Committee and the International Development Committee.

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 [(a) Council Implementing Decision (C) and (b) Draft Agreement (C)]

Foreign Affairs Committee: Turkey Refugee Facility [Commission Communication (C)]

Home Affairs Committee: Europol: agreement with Denmark [(a) Council Implementing Decision (C) and (b) Draft Agreement (C)]; EU asylum reform: revision of the Dublin rules and the establishment of an EU Agency for Asylum [(a) Proposed Regulation (NC), and (b) Proposed Regulation (NC)]

International Development Committee: Turkey Refugee Facility [Commission Communication (C)]

1 Money laundering and terrorist financing: cash control

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposed Regulation on controls on cash entering or leaving the EU
Legal base	Articles 33 and 114 TFEU, ordinary legislative procedure, QMV
Department	Revenue and Customs
Document Number	(38431), 15819/16 + ADDs 1–3, COM(16) 825

Summary and Committee's conclusions

1.1 The Commission has proposed a Regulation to replace the 2005 Cash Control Regulation, which complements the Anti-Money Laundering Directive. In January 2017 we retained the proposal under scrutiny pending information about developments on five points the Government had drawn to our attention, about its intentions in regard to UK post-Brexit compliance with Financial Action Task Force recommendations on controls of cash movements and about the practical implications of its purported Justice and Home Affairs opt-in option to aspects of the proposed Regulation.

1.2 **We have now had a Government response covering aspects of our questions. However, we note that:**

- **in relation to information sharing about illicit movements of cash, the Government did not comment about possible impacts on data security;**
- **although it mentioned to us a proposed use of an implementation act it was exploring, the Government did not tell us about the outcome of its consideration of whether the proposed use of delegated acts, particularly in relation to the definition of cash, were proportionate and necessary; and**
- **the Government did not actually answer our question as to UK post-Brexit compliance with Financial Action Task Force recommendations on controls of cash movements.**

1.3 **We ask the Government to now clarify these points for us, as well as keep us informed of further developments in Council consideration of the proposed Regulation.**

1.4 **We note that the Government is seeking a Justice Home Affairs (JHA) legal basis for this measure but even if it does not succeed it still considers, contrary to our view, that the UK opt-in is engaged. We also note that it is minded to exercise the opt-in it considers is available.**

1.5 **Pending the clarifications we now seek, information on further Council consideration of the proposed Regulation and further comment on the Justice and Home Affairs issue, this document remains under scrutiny.**

Full details of the document

Proposed Regulation on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005: (38431), 15819/16 + ADDs 1–3, COM(16) 825.

Background

1.6 The 2005 Cash Control Regulation was adopted to complement the provisions of the Anti-Money Laundering Directive, by setting out controls applied to natural persons entering or leaving the EU who were carrying currency or bearer-negotiable instruments worth €10,000 (£8,560)[1] or more.

1.7 Following a 2015 evaluation of the Cash Control Regulation the Commission proposed a replacement Regulation, in order to bring EU legislation into line with international norms and best practices in the fight against money laundering and the financing of terrorism.

1.8 In January 2017 the Government drew our attention to five aspects of the proposed Regulation on which it would be considering its position during negotiations. It also, despite there being no JHA legal base for the proposal, purported to have an opt-in option.

1.9 We recognised that this proposal was likely to be useful. However, we kept the document under scrutiny pending information from the Government about developments on the five points it had drawn to our attention. We expected this information to be provided well before Council was being asked to agree a General Approach. We asked also to hear from the Government as to the implications of Brexit for the UK's compliance with Financial Action Task Force recommendations on controls of cash movements.

1.10 As for the Government purporting to have a JHA opt-in option, we reminded it of our view that without a JHA legal base there was no such option. Therefore we asked the Government whether it intended to press for a JHA legal base or any textual amendment recognising that the UK opt-in applied. Should the Government fail to secure either of these and still purport not to opt-in, we asked it for an explanation of the legal and practical implications of this.

The Minister's letter of 10 April 2017

1.11 The Financial Secretary to the Treasury (Jane Ellison) first addressed the question of a JHA opt-in, saying that:

- HM Revenue and Customs, the responsible department, had sought advice from both its own and Home Office solicitors on the opt-in implications of the proposed Regulation;

1 €1 = £0.85553 or £1 = €1.16887 as at 4 April 2017.

- their advice was that Article 87 TFEU was engaged by three articles of the proposed Regulation, namely the information collection obligation which would be placed on the UK by Article 6 and the information sharing obligations in Articles 8 and 9 proposed for the UK;
- given the JHA content in Articles 6, 8 and 9 (together with recitals referencing the purpose as the prevention of money laundering and terrorist financing), there was a good argument that the proposal was a partial JHA measure;
- if the Government did not opt in to Articles 6, 8 and 9, in line with its agreed JHA opt-in policy relating to partial JHA measures, the UK would still be bound by those specific provisions in the new Regulation when adopted, unless or until the Government challenged the legal basis of the measure at the Court of Justice; and
- the Government was pressing for a change of legal basis, but if it looked unlikely that it would be able secure this as negotiations progressed, she would update us.

1.12 The Minister continued that:

- the Government considered the proposals to be proportionate and necessary and that the UK should opt in to these articles given the significant security benefits they would provide;
- Article 6 would enable competent authorities to register details of movements of cash amounts below the declaration threshold—this would provide security benefits but was unlikely to significantly increase administrative burdens, given any action to register those details would require indications of criminal activity;
- in Article 8 the new provision would provide for a declaration date to be actively transmitted to Financial Intelligence Units (FIUs) for analysis, which should improve the capability of relevant authorities in tackling criminal activity; and
- on Article 9 the Government supported the principle of sharing declaration information and risk analysis to the competent authorities of all other Member States, given the caveat that this would be done on the basis of a risk analysis by the relevant competent authority.

1.13 Turning to points previously mentioned to us as needing further consideration, the Minister said that:

- with ever evolving methods of funding crime, the Government supported the redefinition of cash;
- along with other Member States, it accepted, however, that the potential introduction of pre-paid cards provided some challenges;
- this was currently being explored further with industry bodies;
- the Government, along with other Member States, broadly supported the change in definition of cash to include freight and postal movements;

- on tackling illicit cash movement, the Government supported the proposal as currently drafted, as it would allow Member States to determine the parameter for when a cash declaration was required, which should stop legitimate operators being unnecessarily impacted; and
- in relation to delegated acts, the Government was seeking further clarification from the Commission on the implementing act proposed in Article 15 that would set out that the Commission should adopt technical rules for the exchange of information under Articles 8 and 9.

1.14 As for the Government's post-Brexit intentions the Minister said that:

- it would continue to play a full and active role in determining how this proposed Regulation would be managed for as long as the UK remained a member of EU;
- while it needed to be mindful of developing plans for post-Brexit customs control and border security, the Government believed that the proposals, as drafted did not pose significant additional issues for exiting the EU compared to the status quo;
- there was, however, a risk that the EU might seek to develop a new IT system to support information exchange; and
- the Government would need to be mindful of the potential costs of this new system as plans developed further, particularly in light of plans to leave the EU.

1.15 Finally, the Minister told us that the Maltese Presidency is moving at a pace to finalise Member State positions and the first round of negotiations had been completed at the Customs Union Group.

Previous Committee Reports

Twenty-eighth Report HC 71-xxvi (2016–17), chapter 4 (25 January 2017).

2 EU asylum reform: revision of the Dublin rules and the establishment of an EU Agency for Asylum

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
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
Legal base	(a) Article 78(2)(e) TFEU, ordinary legislative procedure, QMV (b) Article 78(1) and (2) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(a) (37747), 8715/16, COM(16) 270 (b) (37749), 8742/16, COM(16) 271

Summary and Committee's conclusions

2.1 These proposals form part of a wider asylum reform package put forward by the Commission in 2016 in response to unprecedented pressures at the EU's external borders which have placed a strain on the asylum systems of frontline Member States and cast doubt on the sustainability of the Schengen open borders policy. 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 (£213,882)[2] for each relocated asylum seeker that a Member State refuses to accept.

2 £1 = €1.16887 as at 4 April 2017.

2.2 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".

2.3 The UK participates fully in the existing Dublin rules (set out in the Dublin III Regulation) and in the EASO but the Government has decided not to opt in to the successor arrangements proposed by the Commission in documents (a) and (b). In December, COREPER (the Committee of Member States' Permanent Representatives to the EU) agreed a mandate ("a partial general approach") to begin negotiations with the European Parliament on the proposed EU Asylum Agency Regulation. We asked the Immigration Minister (Mr Robert Goodwill) to outline the main differences between the mandate agreed by COREPER and the Commission's original proposal. We also reminded him that we awaited a response (outstanding since last July) on the following questions:

- whether the UK would continue to be bound by the current Regulation establishing the EASO—although the proposed EU Asylum Agency Regulation would repeal the EASO Regulation, it 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 would be able to co-exist and the extent to which the enhanced mandate and functions of the new Agency could operate alongside EASO's more limited mandate.

2.4 Despite deciding not to opt into the proposed "Dublin IV" Regulation, the Minister has told us 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) for as long as it remains a member of the EU. He has been unwilling to speculate on continued UK participation in Dublin once the UK leaves the EU. We asked him whether he accepted that any agreement on future UK participation in Dublin post-Brexit would be based on whatever text emerges from the current negotiations and could, therefore, include some form of redistributive mechanism. We also asked him how much leverage the Government expected to have to resist changes to the current Dublin system which would it make it more difficult for the UK to participate in Dublin post-Brexit.

2.5 In his response, the Minister confirms that the UK will continue to be bound by the EASO Regulation for as long as it remains a member of the EU and believes that it would be possible for the EASO and the new EU Asylum Agency to operate "side by side", despite some differences in their scope and functions. He is unwilling to speculate on future participation in the Dublin system once the UK leaves the EU but reiterates the Government's opposition to a mandatory redistribution mechanism.

2.6 **As our earlier Reports have made clear, 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 expect to receive regular 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. We also ask the Minister to be particularly attentive to any provisions**

concerning cooperation with third countries and their implications for the UK once it ceases to be an EU Member State. Meanwhile, documents (a) and (b) 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 on the European Union Agency for Asylum and repealing Regulation (EU) No. 439/2010: (37749), 8742/16, COM(16) 271. (b) 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.

Background

2.7 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 16 March 2017

2.8 Turning first to the negotiating mandate agreed in December, the Minister briefly explains how it differs from the Commission's original proposal for an EU Asylum Agency:

> "The Council partial general approach includes: amendments to the tasks of the Agency, such as assisting the Commission in the assessment and designation of safe countries of origin; clarifies the role of the Management Board in the evaluation and monitoring process; and provides a greater role for the Council as opposed to the Commission in cases where there are serious deficiencies in Member States' asylum systems."

2.9 He makes clear that the Government considers that the UK will remain bound by the existing Regulation establishing the EASO as it has not opted in to the successor Regulation which would establish the EU Asylum Agency: "It is Government policy that the UK continues to be bound by an earlier measure where we do not participate in the 'repeal and replace' measure".

2.10 The Minister recognises that there are "some differences" in the scope and functions of the EASO and the proposed new EU Asylum Agency, particularly in relation to the monitoring and evaluation of Member States' asylum systems, but notes that "provisions such as the running of the Management Board and deployment of staff remain largely the same". He continues: "The Government therefore believes that it would be possible to operate the two Regulations side by side."

2.11 The Minister is unwilling to confirm that any future UK participation in the Dublin system once the UK leaves the EU is likely to be based on whatever text emerges from the current negotiations on the proposed Dublin IV Regulation and may, therefore include some form of redistribution mechanism. He observes: "Our future relationship with the EU is a matter for negotiation but the Government has been clear that we do not agree to a mandatory redistribution mechanism as part of a revised Dublin Regulation".

2.12 The Minister is similarly unwilling to indicate how much leverage the UK will have in negotiations on the proposed "Dublin IV" Regulation to resist changes which might make it more difficult for the UK to participate in Dublin post-Brexit. He comments: "While we remain a member of the EU, if the UK does not opt in during the initial three month point, as in the case of the Dublin IV proposal, we are still entitled to a seat at the negotiating table, but without a vote. As above, our future relationship is a matter for negotiation."

Previous Committee Reports

Thirty-second Report HC 71-xxx (2016–17), chapter 7 (22 February 2017); 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) and Sixth Report HC 71-iv (2016–17), chapter 1 (15 June 2016).

3 Business statistics

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposed Regulation about business statistics
Legal base	Article 338(1) TFEU, ordinary legislative procedure, QMV
Department	Office for National Statistics
Document Number	(38597), 7169/17 + ADDs 1–3, COM(17) 114

Summary and Committee's conclusions

3.1 At present the business statistics outputs of the European Statistical Programme are divided into ten separate domains, each with their own legal basis, standards and other requirements. The Commission has proposed a Framework Regulation Integrating Business Statistics (FRIBS), which would repeal the ten legislative bases and establish in their place a common legal framework for the development, production and dissemination of EU business statistics.

3.2 The Government has told us that:

- the Commission expected the proposed Regulation to be adopted in 2017 or 2018;
- subject to the Brexit negotiations, the Government would support the main objectives of the proposed Regulation;
- although the costs of implementation for the UK might be £6.5 million over four years, for as long as the Government was obliged to, or otherwise chose to, produce European business statistics, there would be clear benefits over the current EU statutory framework; and
- the Government had reservations on four matters which it wished to see addressed in negotiation of the proposed Regulation.

3.3 **We note not only that the Government has four reservations about the proposed Regulation, but also that it is unsure as to whether it would wish to continue participating in this statistical exercise after Brexit. Before considering this matter again we wish to hear from the Government about developments in achieving its negotiating objectives in discussion of the proposal and about when it will decide on its post-Brexit stance regarding the proposed statistical system. Meanwhile the document remains under scrutiny.**

Full details of the document

Proposed Regulation on European business statistics amending Regulation (EC) No. 184/2005 and repealing 10 legal acts in the field of business statistics: (38597), 7169/17 + ADDs 1–3, COM(17) 114.

Background

3.4 At present the business statistics outputs of the European Statistical Programme are divided into ten separate domains, each with their own legal basis, standards, classifications, precision requirements, transmission schedules, etc. The statistical outputs are produced in each Member State with the aim of EU harmonisation of national outputs. For some of the domains the topics, variables and modules are specified and for others the requirements for statistical results are specified but there is little in the way of cross-domain integration. This fragmentation means that it is difficult to modernise EU business statistics as a whole to meet changing user demand at the EU level.

3.5 Since 2011, the Commission (Eurostat) and the other members of the European Statistical System (ESS) have been working on a new design for EU business statistics. The proposed Framework Regulation Integrating Business Statistics is the outcome of this work and would provide a single statutory framework for all ten domains of business statistics.

The document

3.6 The proposed Regulation would establish a common legal framework for the development, production and dissemination of EU statistics related to the structure, the economic activities and the performance of businesses, as well as on the international transactions, research and development activities of the EU economy, that is EU business statistics.

3.7 The proposed FRIBS would specify:

- the four subject areas for business statistics—short term business statistics, country-level business statistics, regional business statistics and statistics on international activities;
- the 13 topics included within one or more of the subject areas—business population, international trade in goods, international trade in services, investments, labour inputs, outputs and performance, permits, prices, purchases, research and development inputs, ICT-usage and e-commerce, innovation, and global value chains (the last three being described as dynamic business statistics);
- for each subject area, the periodicity for each topic (annual/monthly etc.);
- for each subject area, the detailed topics included within each of the ten stable topics (that is, all those which are not dynamic);
- how Delegated Acts would specify detailed topics for each topic of dynamic business statistics;
- how the detailed topics might be changed or added to over time using Delegated Acts, subject to safeguards;
- how Implementing Acts would specify the variables, breakdowns by activity and size of business, quality and transmission requirements for each stable detailed topic;
- the elements of the EU network of statistical business registers;

- provisions for the exchange of and access to confidential data for the purpose of the EU network of statistical business registers;
- the questions to be asked for Intrastat (the system for collecting statistics on trade in goods between Member States);
- provisions for the exchange of and access to confidential data for the purpose of international trade in goods import statistics; and
- financing arrangements.

3.8 The proposed FRIBS does not specify the roles of Member States or the Commission in the production and publication of EU business statistics at EU, national, or sub-national levels, nor does it specify any particular statistics to be published. It does envisage voluntary pilot studies in order to prepare cost-benefit analyses of future proposed changes to data requirements. The proposed Regulation incorporates safeguards on the use of Delegated Acts, including on additional burden, in line with the April 2016 Inter-Institutional Agreement on Better Regulation.

3.9 The proposed FRIBS is expected to be implemented from January 2019. It includes provisions for derogations which, if granted through Implementing Acts, would allow Member States more time to adapt to the new requirements and allow some variation in how the common methods would be applied. A derogation of up to three years could be granted, extendable once by another three years.

The Government's view

3.10 In his Explanatory Memorandum of 27 March 2017 the Parliamentary Secretary, Cabinet Office (Chris Skidmore) first repeated the Government's ritual passage that until Brexit negotiations are concluded the UK would remain a full member of the EU and all the rights and obligations of EU membership would remain in force and that during this period the Government would continue to negotiate, implement and apply EU legislation. The Minister continued that:

- the Commission expected the proposed Regulation to be adopted in 2017 or 2018, with adoption of Commission implementing measures shortly afterwards;
- subject to the Brexit negotiations, the Government would support the main objectives of the FRIBS proposal (the modernisation of business statistics and an integrated approach to statistical requirements) but had reservations about implementation of these objectives;
- although the costs of implementing FRIBS would be significant, for as long as the UK was obliged to, or otherwise chose to, produce European business statistics, there would be clear benefits over the current EU statutory framework;
- these would include ESS business registers of better quality, common definitions to be used in all business statistics, an integrated data structure and better management of statistical confidentiality; and
- the current fractured legislative framework for these statistics had not been responsive to user needs and there was a pressing need to enhance quality and efficiency.

3.11 The Minister commented further that:

- the Commission suggested that integration, modernisation and harmonisation of the ten present Regulations would bring significant cost savings to Member States;
- the Office for National Statistics calculated, however, that this proposal would cost it an additional £5 million over the initial four year period;
- these initial costs would arise mainly from the need to ensure the use of harmonised definitions across the whole economy, the inclusion of the kind of activity unit on the business register and the estimation of several new variables;
- in addition, for HMRC additional costs of at least £1 million were to be expected;
- together with a contingency allowance this suggested initial Government costs over four years of £6.5 million; and
- no overall additional burden on businesses or the third sector was anticipated from implementation of the proposed Regulation, but there would be an increase in burden on larger exporters, in relation to the Intrastat provision.

3.12 Turning to the Government's reservations the Minister said that:

- in relation to the provision specifying that EU exports data to be transmitted to other Member States were to be at business entity level (micro-data), it did not agree with the obligatory transmission of individual survey records to other Member States at the proposed level of detail;
- in relation to the nine Intrastat survey variables which were to be included in the export micro-data shared with other Member States, the Government would prefer the flexibility to enable some data to be modelled from alternative, existing data sources to minimise burden impact;
- in addition, there had been no pilot to prove or disprove the usefulness of the country of origin variable to either the importing or exporting Member States—in these uncertain circumstances, the Government considered that including such matters in the basic act was disproportionate;
- all business statistics depended on the European network of statistical business registers, so the stability of these registers was fundamental to the comparability of business statistics over time;
- it followed that the elements of these registers should not be amendable by Delegated Act—the Government considered that the relevant part C of Annex III to the proposed FRIBS should be deleted; and
- the proposed safeguard for Delegated Acts in respect of detailed topics would permit the addition of up to ten detailed topics in any period of five years—in order to avoid increasing the burden on businesses, the safeguard should prevent any addition unless it were balanced by the removal of another detailed topic, in line with the Regulatory Fitness and Performance Programme (REFIT) agenda of the EU (which assesses the adequacy of EU legislation in force).

Previous Committee Reports

None.

4 Funds to help Member States affected by natural disasters

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Proposal for a Regulation amending Regulation (EU) No 1303/2013 as regards specific measures to provide additional assistance to Member States affected by natural disasters
Legal base	Article 177 TFEU, QMV, Ordinary Legislative Procedure
Department	Business, Energy and Industrial Strategy
Document Number	(38330), 15058/16, COM(16) 778

Summary and Committee's conclusions

4.1 Recent earthquakes in Italy have had a devastating effect on the region, causing death, displacement and substantial physical and cultural damage. The Commission proposal would allow the European Regional Development Fund (ERDF) to support reconstruction operations and provide that such operations could be financed fully from the ERDF, without the need for national co-financing. Normally the ERDF co-finances projects alongside national funding, with the proportion of ERDF and national funding varying according to the wealth of a particular region.

4.2 The UK and other Member States have asserted the importance of the principle of national co-financing. In our scrutiny, we have expressed sympathy with the Commission's approach but we agree too that co-financing is an important principle for EU structural funding and there is a risk that this new proposal—however well intended—could start to erode the principle.

4.3 According to the Minister for Small Business, Consumers and Corporate Responsibility (Margot James) a compromise has been reached among Member States establishing an ERDF financing rate of up to 90%. There would be no limit on the proportion of the national ERDF allocation that could be used for disaster recovery, although the funding could only be used in defined circumstances. Given that the compromise is consistent with the principle of co-financing, the Government wishes to support the compromise. The Minister seeks scrutiny clearance in order that the UK is able to vote in favour of the proposed General Approach at Council on 25 April.

4.4 **We remain sympathetic to the Commission's objective of supporting Member States affected by natural disasters. Equally, we welcome the efforts being made to reach a compromise that is consistent with the principle of co-financing. As the approach being taken by the Government is in line with our views, we are content to release the proposal from scrutiny. We trust that this will allow the Government to engage constructively as the negotiations move towards conclusion.**

4.5 **We are mindful that discussions with the European Parliament are yet to begin. While we have released the proposal from scrutiny, we expect the Government to update us on progress.**

Full details of the documents

Proposal for a Regulation amending Regulation (EU) No. 1303/2013 as regards specific measures to provide additional assistance to Member States affected by natural disasters : (38330), 15058/16, COM(16) 778.

Background

4.6 In order to provide additional assistance to Member States affected by natural disasters, the Commission proposed the introduction of a new option ("priority axis") under the European Regional Development Fund with a co-financing rate of up to 100%. Further information was set out in our Report of 11 January 2017.[3] In that Report, we expressed our understanding of the wish to support Member States affected by natural disasters and we noted that the proposal did not require any amendment to the agreed 2014–2020 financial framework.

4.7 In our most recent Report of 15 March 2017,[4] we noted the Commission's defence of its proposal and welcomed the efforts that the Government was making to put forward alternative solutions to achieve a similar objective but without sacrificing the important principle of co-financing. We retained the proposal under scrutiny and looked forward to a further update as negotiations progressed.

Minister's letter of 28 March 2017

4.8 The Minister explains the progress of negotiations and the Government's position in the following terms:

> "The Structural Measures Working Party, comprising Member State representatives and the European Commission, considered an alternative proposal submitted by the UK and other Member States to alter the Commission's 100% ERDF co-financing proposal at its meeting of 16 March 2017. The alternative proposal supported by the UK allowed for a 'top up' of 10% in the co-financing rate (e.g. from 60% to 70%) and a ceiling of 5% of the national ERDF allocation which could be used for disaster recovery purposes, limiting the overall amount used with higher co-financing rates and therefore maintaining a strong national incentive for good governance. The Commission held firm on its proposal of 100% ERDF co-financing, arguing that the counter proposal was overly complex and provided relatively small benefits in terms of the amount of national funding saved compared with standard co-financing rates. The Commission also argued that ERDF projects can already be funded using 100% ERDF co-financing at project level. This is technically correct, but omits the fact that the co-financing rate has to be balanced out across a grouping of projects.

3 Twenty-fifth Report HC 71-xxiii (2016–17), chapter 1 (11 January 2017).
4 Thirty-fifth Report HC 71-xxxiii (2016–17), chapter 2 (15 March 2017).

> "On 22 March the Presidency provided a new compromise proposal. This proposal states that an ERDF co-financing rate of up to 90% should be permitted but does not include the 5% ceiling on the total amount of the national ERDF allocation used for disaster recovery purposes. However, as the proposal is consistent with the principle of co-financing, ensuring that 100% ERDF co-financing would not be permissible, and could only be used in defined circumstances which reduce the chances of a large percentage of national allocations being devoted to these purposes, I am seeking clearance for the UK to vote in favour of this compromise at General Affairs Council on 25 April."

Previous Committee Reports

Thirty-fifth Report HC 71-xxxiii (2016–17), chapter 2 (15 March 2017) and Twenty-fifth Report HC 71-xxiii (2016–17), chapter 1 (11 January 2017).

5 Turkey Refugee Facility

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Foreign Affairs Committee and the International Development Committee
Document details	Communication from the Commission: First Annual Report on the Facility for Refugees in Turkey
Legal base	Articles 8 and 9 of Commission Decision C (2015) 9500 of 24 November 2015
Department	International Development
Document Number	(38577), 6941/17, COM(17) 130

Summary and Committee's conclusions

5.1 Since 2011 the conflict in Syria has led to 5 million of its citizens seeking refuge outside of its borders. Turkey is home to the largest group of Syrian refugees, now totalling 2.8 million.[5] This massive displacement of people also spilled over into Greece, an EU Member State, which in the first three months of 2016 alone registered over 120,000 refugees arriving by sea.[6]

5.2 To tackle the flow of Syrian refugees into Europe, the EU and Turkey agreed a joint action plan in late 2015: in return for Turkey providing a safe haven for the refugees (and re-settling those refugees who had sought to cross into Greece), the EU and its Member States committed to provide financial support to help the country absorb and integrate the displaced Syrians into their new communities. This financial support is provided by the European Commission through the Facility for Refugees in Turkey (FRIT), which became operational in February 2016.[7]

5.3 The €3 billion (£2.6 billion)[8] Facility funds projects to address the "immediate humanitarian and development needs of the refugees and their host communities, national and local authorities in managing and addressing the consequences of the inflow of refugees".[9] €1 billion of this is financed from the general EU budget. The remaining €2 billion is made up of additional funding provided by the Member States, including a €328 million (£280 million) contribution by the UK.[10]

5.4 On 2 March 2017 the European Commission published its first Annual Report on the Turkey Refugee Facility.[11] Overall, the Commission concludes that implementation of the Facility is "progressing well". It notes that the total amount allocated under the Facility for both humanitarian and non-humanitarian assistance has reached €2.2 billion, of which

5 European Commission, "Turkey: Refugee Crisis Factsheet" (January 2017).
6 UNHCR, "UNHCR Weekly Report for Europe" (12 March 2017).
7 European Commission, "EU-Turkey joint action plan" (press release issued 15 October 2015).
8 €1 = £0.85579 as at 4 April 2017.
9 See for more information the legal instrument which established the Facility, Commission Decision C(2015) 9500.
10 The financial envelope for the Facility was decided in February 2016 in Commission Decision C(2016) 855.
11 See COM(17) 130.

€750 million had already been disbursed. The report also explains that a Results Framework to measure the Facility's impact is currently being finalised, and the Commission is due to undertake a full evaluation of the FRIT before it expires at the end of 2019.

5.5 The Minister of State at the Department for International Development (Lord Bates) submitted an Explanatory Memorandum on the Commission report on 21 March.[12] He said that the UK "strongly supports" the FRIT and welcomed the "rapid progress that has been made in disbursement". The Minister concluded by noting that "our contributions to the FRIT after we leave the EU will be a matter for discussion as part of the Exit negotiations".

5.6 **The Commission's first report on the Refugee Facility provides a useful overview of its functioning and major expenditure in the first year of operation. However, in the absence of a functioning results framework it is impossible for the Committee to form a view of the impact the Facility is having on the ground. We would be grateful if the Minister could provide us with more information on the Results Framework as soon as it is adopted, including how and when the outcome of any evaluations of the Facility's impact will be shared with us.**

5.7 **With respect to Brexit, we take note of the Minister's statement that "(UK) contributions to the FRIT after we leave the EU will be a matter for discussion as part of the Exit negotiations". We ask him to keep us updated on any offers the UK may make on continued participation in, and contributions to, the Refugee Facility after Brexit. Should the UK continue its participation in the FRIT after 2019, it is clear that the data produced by the new Results Framework and the outcome of the upcoming Commission evaluation of the Facility will be more pertinent to our future scrutiny work.**

5.8 **Given the significant interest in the Syrian refugee crisis across the House, we also draw these developments to the attention of the Foreign Affairs Committee and the International Development Committee. We now clear the document from scrutiny.**

Full details of the documents

Communication from the Commission: First Annual Report on the Facility for Refugees in Turkey: (38577), 6941/17, COM(17) 130.

Background

5.9 Since 2011 the conflict in Syria has led to 5 million people seeking refuge in neighbouring countries and further afield, primarily in Lebanon, Jordan and Turkey, while another 6 million are internally displaced. Turkey is home to the largest contingent, with its community of Syrian refugees now numbering 2.8 million, of which 10 per cent reside in Government-constructed camps in the south east of the country while the remaining 90 per cent live in urban and rural areas.[13] Turkey also hosts over 200,000 refugees from a variety of other countries, including Pakistan, Afghanistan and Iraq.[14]

12 Explanatory Memorandum submitted by the Department for International Development (21 March 2017).
13 Lebanon and Jordan are host to 1.5 million and 1.3 million Syrian refugees respectively.
14 European Commission, "Turkey: Refugee Crisis Factsheet" (January 2017).

5.10 This massive displacement of people has also spilled over into Greece, an EU Member State, which in the first three months of 2016 alone registered over 120,000 refugees arriving by sea.[15] To stem this flow of irregular migration, the EU and Turkey issued a Joint Action Plan in October 2015.[16] It committed both sides to prevent the refugees from reaching Europe via irregular and often dangerous routes, and required the EU to provide both humanitarian and long-term support to the refugees.

5.11 The detailed implementation of these aims was fleshed out in the EU-Turkey Statement of 18 March 2016, including an agreement that all new irregular migrants crossing from Turkey into Greece from 20 March 2016 would be returned to Turkey.[17] In return for Turkey's cooperation on hosting and re-settling refugees, the EU and its Member States committed to provide €3 billion (£2.6 billion) in financial support to help the country absorb and integrate the displaced Syrians into their new communities.

5.12 On 24 November 2015, the European Commission established the Facility for Refugees in Turkey, which provides financial support to help Turkey to address the "immediate humanitarian and development needs of the refugees and their host communities, national and local authorities in managing and addressing the consequences of the inflow of refugees".[18]

5.13 In February 2016 the FRIT was given a budget of €3 billion until the end of 2019, of which €1 billion is financed from the EU budget and the remaining €2 billion is made up of additional contributions by the Member States.[19] The UK has committed to a bilateral contribution of €328 million (£280 million),[20] to be paid in progressively smaller annual instalments until 2019. The Facility was launched in February 2016. In parallel, the other elements of the Joint Action Plan also became operational—notably the re-settlement in Turkey of "irregular migrants" crossing the Aegean Sea to Greek islands—leading to a 98 per cent drop in irregular crossings from Turkey to Greece.

5.14 The Refugee Facility funds humanitarian assistance, providing refugees in Turkey with basic needs and protection, as well as non-humanitarian assistance aimed at providing them with "longer-term livelihoods, socio-economic and educational perspectives". Funding is disbursed under existing EU financial instruments including the European Neighbourhood Instrument (ENI) and the Instrument for Stability and Peace (ISP). Decisions to fund projects under the Facility are made by the European Commission, which chairs its Steering Committee.[21]

15 UNHCR, "UNHCR Weekly Report for Europe" (12 March 2017).

16 European Commission, "EU-Turkey joint action plan" (press release issued 15 October 2015).

17 See the website of the Council of the EU for more information on the EU-Turkey Statement. On 28 February 2017, the General Court of the EU ruled that the Statement was not a measure adopted by the EU institutions, but rather an agreement between the Member States and Turkey. As such, the implementation of the Statement (including the resettlement of refugees who try to reach Greek islands) is not subject to judicial review at EU-level.

18 Commission Decision C(2015) 9500.

19 Commission Decision C(2016) 855.

20 This contribution of €328 million is in addition to the UK's share of the €1 billion funded from the general EU budget.

21 The Facility's Steering Committee provides "strategic guidance on overall priorities" as well as deciding on the specific amounts of funding to be allocated, and to which projects. The Committee is chaired by the European Commission, and also consists of one representative of EU Member State and Turkey (the latter in an advisory capacity). Funding decisions are taken by the Commission, and while Member States have no formal vote or veto, the Commission must "[seek] to reach consensus whenever possible".

First Annual Report on the Refugee Facility

5.15 On 2 March 2017, the European Commission published its first Annual Report on the Turkey Refugee Facility.[22] Overall, the Commission concludes that implementation of the Facility is "progressing well". The Commission notes that the Steering Committee concluded in January 2017 that, overall, the EU-Turkey Statement "albeit fragile… continued to deliver" and that there had been "good progress in the implementation of the Facility". It continues:

> "By the end of February 2017, the total amount allocated under the Facility to both humanitarian and non-humanitarian assistance had reached €2.2 billion. Out of the total allocated, 39 projects had been contracted for a total of €1.5 billion, or half the Facility envelope. Out of the total contracted, €750 million had been disbursed, which is testimony to the swift and efficient implementation of the Facility."

5.16 The Minister of State at the Department for International Development (Lord Bates) submitted an Explanatory Memorandum on the Commission Report on 21 March.[23] He lists the main contracts funded from the Facility, including the €348 million (£300 million) Emergency Social Safety Net (ESSN) which helps the most vulnerable refugees to cover their basic needs through monthly cash transfers onto electronic debt cards and two €300 million (£256 million) contracts with the Turkish Ministries of Education and of Health, which will fund schools for 500,000 Syrian children, and provide up to two million refugees with access to primary and mental healthcare.

5.17 The Minister also explained that the Commission had extended the deadline for final payments to organisations in receipt of funding from the Facility from 2019 until 2021. The Commission had argued this was necessary to allow for the signing of some longer-term contracts, such as infrastructure works. The Minister emphasised that the extension of the payments to contractors would not affect the UK's contribution and payment schedule.

5.18 With respect to measuring the impact the Facility has had in improving the living conditions of refugees in Turkey, the Commission notes that a draft Results Framework was discussed at the meeting of the Steering Committee in January 2017, with a view to its finalisation in March 2017. It is expected to include an online monitoring platform within the Commission which allows for "data generation, aggregation and analysis, and enable(s) the visualisation of progress on ongoing actions at regular intervals". The Minister explained that this online monitoring platform is expected to be operational by the second half of 2017. With respect to the overall functioning of the Facility, he added:

> "The UK strongly supports the EU-Turkey deal and the FRIT. Contributing to the FRIT aligns well with current UK priorities as it seeks to break the smugglers' business model and reduce pressures for onward migration. (…) We welcome the rapid progress that has been made in disbursement and the success that the deal has had in helping to reduce irregular migration."

22 See COM(17) 130.

23 Explanatory Memorandum submitted by the Department for International Development (21 March 2017).

5.19 The Minister's Memorandum concludes by noting that "our contributions to the (Facility) after we leave the EU will be a matter for discussion as part of the Exit negotiations". The European Commission is due to carry out a "full evaluation" before the Facility expires at the end of 2019. At this stage, no decision has been taken about its possible extension into the next decade.

Our assessment

5.20 The Commission's first annual report on the Refugee Facility provides a useful overview of its functioning and major expenditure in its first full year of operation. However, there is as yet no functioning Results Framework. We have therefore requested the Minister to provide us with more information on the Framework as soon as it is adopted, including how and when the results it generates will be shared with us.

5.21 With respect to Brexit, the Minister noted that "our contributions to the FRIT after we leave the EU will be a matter for discussion as part of the Exit negotiations". This strongly implies that some UK contribution is being considered post-Brexit, but the Minister provides no further detail. We have asked to be kept informed about this.

5.22 The UK's potential continued participation in the FRIT is only one aspect of a much broader debate to be had about UK-EU foreign policy cooperation after Brexit. In her letter formally notifying the European Council of the UK's exit from the EU, the Prime Minister said that the Government would "put forward detailed proposals for deep, broad and dynamic cooperation" on both economic and security matters.[24] We look forward to clarity from the Government on the timing of these proposals, and how they will be made available to Parliament and the public for scrutiny.

Previous Committee Reports

None in respect of the Facility for Refugees in Turkey. For our most recent Report on the EU-Turkey Statement, see: Thirty-third Report HC 71-xxxi (2016–17), chapter 11 (1 March 2017).

24 Prime Minister's letter to Donald Tusk triggering Article 50 (29 March 2017).

6 Vehicle type approval

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny (decision reported on 8 February 2017)
Document details	(a) Commission Regulation on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles; (b) Commission Regulation as regards emissions from light passenger and commercial vehicles
Legal base	(a) Articles 8 and 14(3) of Regulation 715/2007 and Article 39(7) of Directive 2007/46, Regulatory Procedure with Scrutiny; (b) Article 14(3) of Regulation (EC) No. 715/2007 and Article 39(2) of Directive 2007/46/EC, Regulatory Procedure with Scrutiny
Department	Transport
Document Number	(a) (38467), 5365/17 + ADDs 1–8; (b) (38468), 6215/17 + ADD 1, —

Summary and Committee's conclusions

6.1 In February 2017 we cleared from scrutiny two Commission Regulations concerning type approval of light passenger and commercial vehicles, as regards emissions. At the time an official text of one of the Commission Regulations was not yet available. So we asked to have, in due course, the official text and confirmation of its legal base.

6.2 The Government has now met both these requests, for which we are grateful.

Full details of the documents

(a) Commission Regulation supplementing Regulation (EC) No. 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, amending Directive 2007/46/EC of the European Parliament and of the Council, Commission Regulation (EC) No. 692/2008 and Commission Regulation (EU) No. 1230/2012 and repealing Regulation (EC) No. 692/2008: (38467), 5365/17 + ADDs 1–8; (b) Commission Regulation (EU) …/… of XXX amending Commission Regulation (EU) 201/xxx and Directive 2007/46/EC of the European Parliament and of the Council as regards real-driving emissions from light passenger and commercial vehicles (Euro 6): (38468), 6215/17 + ADD 1.

Background

6.3 Strict emissions controls will only work if the testing regime is adequate. Requirements for the emission performance of light passenger and commercial vehicles are set out in EU legislation (made under the wider vehicle type approval 2007 Framework Directive) which sets out the safety and environmental requirements that must be met before a vehicle can

be placed on the market in the EU. These two Commission Regulations are to reinforce or replace the existing requirements in order to eliminate known flexibilities in the current laboratory test, which can be used to help achieve unrealistically positive results and to include a conformity requirement for particle number emissions in the recently introduced real driving emissions (RDE) test. The second Commission Regulation, document (b), is the Commission's third 'package' of RDE legislation.

6.4 Commission Regulations are subject to veto by the European Parliament and/or the Council. Given positive decisions, or absent decisions within three months of the Commission's adoption of the Regulations, they come into force automatically. The deadlines for Council vetoes were in March 2017.

6.5 When we considered these documents, in February 2017, the Government told us of its support for the Commission Regulations. It did not suggest that there might be Council opposition to them—both had been approved by the Member State committees advising the Commission. We were content to clear the documents from scrutiny. However, noting that they in part addressed issues highlighted by the Volkswagen scandal, we drew them to the attention of the House. We asked the Government to confirm the legal basis of document (b) and to provide, given that one was not then yet available, an official text of that Commission Regulation once available.

The Minister's letter of 27 March 2017

6.6 The Minister of State, Department for Transport (Mr John Hayes) has now sent us the official text of the Commission Regulation about RDE.[25] He confirmed that its legal base was Article 14(3) of Regulation (EC) No. 715/2007 and Article 39(2) of Directive 2007/46/EC.

6.7 The Minister also mentioned to us that we would in due course be scrutinising a fourth 'package' of RDE legislation.

Previous Committee Reports

Thirty-first Report HC 71-xxix (2016–17), chapter 21 (8 February 2017).

25 See http://data.consilium.europa.eu/doc/document/ST-6215–2017-INIT/en/pdf and http://data.consilium.europa.eu/doc/document/ST-6215–2017-INIT/en/pdf.

7 Intelligent Transport Systems

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny
Document details	Proposed Decision concerning Intelligent Transport Systems and delegated acts.
Legal base	Article 91 TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(38623), 7580/17, COM(17) 136

Summary and Committee's conclusions

7.1 A 2010 Directive (which aimed to accelerate coordinated and interoperable deployment and use of Intelligent Transport Systems (ITS) across the EU) empowered the Commission to adopt delegated acts in support of the Directive's six priority actions. The Commission has so far adopted four delegated acts and another is under preparation.

7.2 The delegated acts power expires on 27 August 2017 and the Commission has proposed a Decision to extend the power for renewable five year periods. This is in order to allow it to adopt further acts in relation to the remaining priority actions and to revise the existing ones in the light of technological progress or lessons learnt from practical implementation.

7.3 The Government has told us of the UK's close involvement in the development and implementation of Intelligent Transport Systems and of its support for the continued use of delegated acts in this case.

7.4 **Like the Government, we are routinely cautious about the Commission being empowered to adopt delegated acts. However, their use in relation to technical specifications for developing and using Intelligent Transport Systems seems appropriate. Accordingly we clear this document from scrutiny.**

Full details of the documents

Proposed Decision amending Directive 2010/40/EU as regards the period for adopting delegated acts: (38623), 7580/17, COM(17) 136.

Background

7.5 Directive 2010/40/EU set a legal framework to accelerate coordinated and interoperable deployment and use of Intelligent Transport Systems across the EU. It acknowledged the right of each Member State to decide on the deployment of ITS applications and services on its territory. The Directive empowered the Commission to adopt the specifications in support of this framework through delegated acts. The power expires on 27 August 2017.

7.6 The Directive set out four priority areas, which incorporated the following six priority actions for adoption of specifications by delegated acts:

- provision of EU-wide multi-modal travel information services;
- provision of EU-wide real-time traffic information services;
- data and procedures for the provision, where possible, of road safety related minimum universal traffic information free of charge to users;
- harmonised provision for an interoperable EU-wide eCall;[26]
- provision of information services for safe and secure parking places for trucks and commercial vehicles; and
- provision of reservation services for safe and secure parking places for trucks and commercial vehicles.

7.7 The Commission has been assisted by the European ITS Committee (which includes Member State representation), expert working groups and the European ITS Advisory Group comprised of high level representatives of ITS stakeholders, in the implementation of the Directive.

7.8 Four delegated acts relating to the priority actions have been adopted since the Directive came into force. A fifth draft delegated act, which would address provision of EU-wide multi-modal travel information services has been finalised with an expert group. Consultation on this draft began in March 2017 and will conclude on 19 April.

7.9 In December 2016 the Commission published its Communication "A European strategy on Cooperative Intelligent Transport Systems (C-ITS), a milestone towards cooperative, connected and automated mobility" suggesting a legal and technical framework to support the deployment of C-ITS (connected vehicle technology and services).[27] This is the key area for which the Commission intends to use its delegated powers to adopt technical, functional and organisational specifications.

The document

7.10 Several of the Directive's actions have not yet been addressed. Therefore the Commission has proposed a Decision to extend the Commission's power to adopt delegated acts, without changing the scope of the Directive, by five years and tacitly thereafter for further five year periods, unless the European Parliament or the Council opposed such further extension. In addition, the Commission argues that this extension is necessary because specifications that have already been adopted may need to be updated to reflect technological progress or lessons learnt from their implementation in Member States.

26 eCall: is a rapid assistance service for motorists involved in a collision anywhere in the EU. In the case of a crash, an eCall–equipped car automatically calls the nearest emergency centre.

27 (38353) 15203/16: see Twenty-fifth Report HC 71-xxiii (2016–17), chapter 16 (11 January 2017).

The Government's view

7.11 In his Explanatory Memorandum of 31 March 2017 the Parliamentary Under-Secretary of State, Department for Transport (Andrew Jones), first reiterated the Government's ritual mantra that until Brexit negotiations are concluded, the UK would remain a full member of the EU and all the rights and obligations of EU membership would remain in force, that during this period the Government would continue to negotiate, implement and apply EU legislation, and that the outcome of these negotiations would determine what arrangements would apply in relation to EU legislation in future once the UK has left the EU.

7.12 The Minister then commented that:

- the Government was content that the proposed extension of the powers conferred on the Commission to draw up delegated acts was justified in this case, in order to enable the remaining actions to be completed and any necessary updates to be made;
- the UK had played an active part in expert groups to ensure that the delegated acts adopted so far represented the best interests of the UK;
- the forthcoming delegated act addressing the provision of EU-wide multi-modal travel information services would be published as part of the Commission's planned Mobility Package, the first part of which was scheduled to be published at the end of May 2017 and was also expected to include the Commission's planned Roads initiatives;
- the Commission's C-ITS Communication of December 2016 highlighted the need for new delegated acts to be adopted to ensure interoperability; and
- the Government supported this position and was working with Belgium, France and the Netherlands to deliver this interoperability on the national C-ITS pilot on the A2/M2 London to Dover Connected Vehicle Corridor.

Previous Committee Reports

None.

8 Europol: agreement with Denmark

Committee's assessment	Legally and politically important; drawn to the attention of the Home Affairs Committee and the Committee on Exiting the European Union
Committee's decision	(a) Previously cleared from scrutiny
	(b) Cleared from scrutiny
Document details	(a) Council Implementing Decision amending Decision 2009/935/JHA as regards the list of third States and organisations with which Europol shall conclude agreements
	(b) Draft Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and the European Police Office (Europol)
Legal base	(a) Article 26(1)(a) of Council Decision 2009/371/JHA, QMV, consultation of EP
	(b) Article 23(2) of Council Decision 2009/371/JHA, QMV
Department	Home Office
Document Numbers	(a) (38494), 15778/16, —
	(b) (38611), 7078/17, —

Summary and Committee's conclusions

8.1 These documents concern Denmark's future relationship with Europol. Denmark participates fully in the current Europol Council Decision, adopted in April 2009, but is unable to participate in the new Europol Regulation which will take effect on 1 May 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.[28]

8.2 Document (a), a Council Implementing Decision, was adopted in February. It designates Denmark as a third (non-EU) country under the 2009 Europol Council Decision, meaning that Europol is able to conclude a cooperation agreement with Denmark before the new Europol Regulation takes effect. This Regulation will repeal the 2009 Europol Council Decision for those Member States (all bar Denmark) participating in it but includes a provision "grandfathering" (maintaining the legal effects of) agreements concluded with third countries before 1 May 2017.

8.3 The Government voted for the adoption of the Council Implementing Decision before we had an opportunity to consider it, resulting in a scrutiny override. The Minister for Policing and the Fire Service (Brandon Lewis) told us that "without further action, Denmark would no longer be able to participate in Europol after [1 May 2017]" and that:

28 See Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement Cooperation (Europol). The UK has opted into the new Europol Regulation.

> "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."[29]

8.4 We raised a number of questions on the Council Implementing Decision. Our purpose was to clarify the reasons for the delay in depositing the document for scrutiny, to examine legal concerns stemming from the designation of Denmark as a third country under the 2009 Europol Council Decision and to explore the wider implications for the UK since it too would have third country status following Brexit. We asked the Minister how he would expect a bespoke agreement with the UK to differ from that envisaged for Denmark, whether it would be easier or harder for the UK to negotiate such an agreement under the new Europol Regulation and whether the UK had additional leverage which would enable it to negotiate equal or better terms than Denmark. We also made clear to the Minister that his Explanatory Memorandum on the proposed Agreement should explain how the new arrangements differ from the level of cooperation Denmark currently enjoys as a full participant in Europol.

8.5 Document (b) is a draft Agreement on Operational and Strategic Cooperation between Denmark and Europol, accompanied by a letter from the Chair of the Europol Management Board and an Opinion issued by Europol's Joint Supervisory Body on the data protection elements of the Agreement.

8.6 The draft Agreement establishes the legal framework for Denmark's future cooperation with Europol. The recitals to the Agreement make clear that it is intended to "minimise the negative effects" of Denmark's departure from Europol by establishing cooperation at "a level at least equivalent" to that of other third countries that have concluded similar agreements with Europol. The cooperation envisaged precludes direct access to Europol's information systems but, by requiring Europol to assign up to eight Danish-speaking staff to provide a round-the-clock (24/7) service, provides for a level of service designed to ensure close to real-time access.

8.7 There are a number of special factors underpinning the Agreement, notably Denmark's membership of the EU and participation in Schengen. The enhanced service that Denmark will receive through dedicated staff based at Europol is subject to a number of conditions. These include:

- complying with an EU Directive on data processing within the law enforcement sector when exchanging personal data under the Agreement—although the Directive does not apply to Denmark, it forms part of the Schengen rule book which Denmark implements in its domestic law;[30]
- applying the data protection safeguards set out in the new Europol Regulation;
- recognising the role of the European Data Protection Supervisor;

29 See the Minister's Explanatory Memorandum of 15 February 2017 on the Council Implementing Decision.

30 See Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data.

- making an "appropriate" annual contribution to Europol's budget; and
- accepting the jurisdiction of the Court of Justice (CJEU).

8.8 In his Explanatory Memorandum on the draft Agreement, the Minister welcomes "continued practical law enforcement cooperation" between Denmark and Europol and recognises that the Agreement with Denmark "will help inform negotiations" on the UK's future relationship with Europol once it leaves the EU. He adds, however, that the UK is in a different position:

> "The UK will, unlike Denmark, no longer be a member of the EU and we need to consider how we should interact with Europol from outside the bloc. As the Prime Minister has made clear, we will do what is necessary to keep our people safe but we will not be following any other nation's model. The position we build outside the EU will be unique to Britain."[31]

8.9 The Minister is unwilling to speculate on the model of cooperation that the UK will seek with Europol, but says it should reflect the UK's position as "a former Member State that has played a leading role in developing security and law enforcement cooperation".[32]

8.10 **A spate of terrorist attacks on European soil has intensified the need to strengthen security cooperation. The political imperative and operational necessity of some form of agreement to enable Denmark to cooperate effectively with Europol from 1 May is clear. Given these circumstances, we do not consider that it would appropriate to delay the conclusion of the draft Agreement—document (b)—and jeopardise future security cooperation between Denmark and Europol. We therefore clear document (b) from scrutiny so that the Government, should it so wish, can support its conclusion before the end of April. We do so subject to a number of reservations which we wish to place on record.**

The timing of the Agreement

8.11 **The referendum in which the Danish people voted to retain their opt-out of all post-Lisbon EU justice and home affairs measures, including the new Europol Regulation, took place in December 2015. A provisional agreement on Denmark's future cooperation with Europol was reached amongst the key players—the Presidents of the European Council and European Commission and the Danish Prime Minister—in December 2016. Given the time taken to reach a provisional agreement, it is unacceptable that Europol's Joint Supervisory Body, responsible for overseeing Europol's data processing activities, should be given only four working days to assess the content of the draft Agreement and publish its Opinion. That Opinion casts "serious doubts" on the legality of the transitional provisions contained in the draft Agreement and questions the extent to which Denmark is accorded a level of cooperation equivalent to that of other third countries (see below). The Minister's Explanatory Memorandum is silent on both issues.**

31 See the Minister's Explanatory Memorandum of 21 March 2017 on the draft Agreement.

32 See the Minister's letter of 30 March 2017 to the Chair of the European Scrutiny Committee.

Denmark's third country status

8.12 **The Minister accepts that the 2009 Europol Council Decision will continue to apply to Denmark "as a matter of law" but says that it is "practically necessary" for Europol to have a separate third country agreement with Denmark. Asked how Denmark could simultaneously be a Member State under the 2009 Europol Council Decision *and* a third country, the Minister appears to adopt the Commission's view that "as Denmark will become a third country for the purposes of the [new] Europol Regulation, it can be considered to be a third country for the purposes of reaching an agreement under the [2009 Europol] Council Decision". This is Kafkaesque reasoning. As our earlier Report made clear, whilst it may be difficult for the 2009 Europol Council Decision and the new Europol Regulation to co-exist, this is what EU primary law (Denmark's Protocol to the EU Treaties) and secondary law (the Regulation itself) appear to require as a matter of law.**

8.13 **The draft Agreement further compounds the confusion over Denmark's status by providing, on the one hand, that Denmark's cooperation with Europol should be "to a level at least equivalent to that of third countries" with which similar agreements have been concluded, and on the other, that Denmark is to be considered a Member State for the purpose of applying the data protection safeguards set out in the new Europol Regulation—a Regulation in which Denmark is not entitled to participate. As the Opinion of the Joint Supervisory Body makes clear, the effect is to treat Denmark "as any other Member State and not as a third State". Moreover, the draft Agreement allows direct access to Europol's information systems for a six month transitional period—a right which, under Article 20 of the new Europol Regulation, is reserved exclusively to participating Member States. The Joint Supervisory Body questions whether the draft Agreement can, in effect, "set aside" Article 20, albeit for a limited six month period.**

8.14 **We share these concerns and remain to be persuaded that there is a legally robust case for Denmark's cooperation with Europol to be based on a third country agreement.**

Brexit implications

8.15 **The Minister does not tell us what type of bespoke agreement with Europol the Government intends to seek or how it is likely to differ from the draft Agreement with Denmark on the grounds that "it would not be appropriate to speculate on the details of our future participation in specific elements of cooperation before [exit] negotiations begin". Nor is the Minister willing to tell us whether he expects it to be easier or harder to reach a bespoke agreement once the provisions of the new Europol Regulation take effect on 1 May, even though we consider this to be a factual question which would not undermine the Government's negotiating objectives.**

8.16 **We trust that the Minister will overcome his reluctance to engage meaningfully with Parliament on the Government's aspirations for the UK's future relationship with Europol once exit negotiations begin in the coming weeks. Given that the security of its citizens is of paramount concern to the Government, and that its aim in exit negotiations is to "keep our justice and security arrangements at least as strong as they are", we expect the Government to demonstrate transparency and accountability to Parliament during, and not just at the end of, exit negotiations.**[33]

33 Secretary of State for Exiting the European Union (Mr David Davis), *HC Deb*, 10 October 2016, col 55.

Full details of the documents

(a) 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, —; (b) Draft Agreement on Operational and Strategic Cooperation between the Kingdom of Denmark and the European Police Office (Europol): (38611), 7078/17, —.

Background

8.17 Our earlier Reports listed at the end of this chapter describe the special Treaty arrangements governing Denmark's participation in EU justice and home affairs measures and developments leading up to the adoption of document (a)—the Council Implementing Decision. We were not satisfied with the Minister's initial response to the questions we raised and requested further information.

The Minister's letter of 30 March 2017 on document (a)—the Council Implementing Decision

8.18 We questioned the Minister's assertion that "it is not standard procedure" to deposit a document of this nature and asked which provision of our Standing Order he relied on to reach this conclusion. We recognised that there were circumstances in which a more flexible approach to the deposit of Implementing Acts might apply, but added that this clearly was not one of them and that Cabinet Office guidance on parliamentary scrutiny of EU documents made clear that the onus was on the Government to bring to our attention proposed Implementing Acts which were "considered to be sensitive". We suggested there could be little doubt that a proposal designating an EU Member State as a third country to overcome a Treaty prohibition on that Member State's participation in an EU measure qualified as "sensitive".

8.19 The Minister responds:

> "I apologise for any confusion caused by my previous response on the process of depositing Council Implementing Decisions which add a country to the list of third states that Europol can conclude agreements with. I can confirm that the Government's default position will be to deposit these documents in the future. The Committee should also note that a different process will be in place from 1 May 2017 under the new [Europol] Regulation. There will no longer be a list of third countries that Europol can conclude agreements with. Instead, cooperation agreements will follow the process set out in Article 218 TFEU. This will mean that in accordance with the current scrutiny process for handling Article 218 TFEU agreements, we will notify the Committee when a negotiating mandate has been agreed, and we will deposit Council Decisions on signature and conclusion of the agreement."

8.20 We made clear in our earlier Report that we expected the Minister to make good on his undertaking to engage with us "as early as possible" on the content of the proposed agreement between Europol and Denmark so that there would be an opportunity for meaningful scrutiny. We added that he should explain how the agreement differed 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. The Minister considers that he has delivered on his undertaking to engage "as early as possible" by submitting his Explanatory Memorandum on the draft Agreement on 21 March (see below).

8.21 We commented in our earlier Report that there was no question of Denmark participating in the new Europol Regulation but said we were not persuaded that there was a legally robust case for Denmark's cooperation with Europol to be based on a third country agreement when it remained bound (as a Member State) by the 2009 Europol Council Decision. Put simply, we asked how Denmark could simultaneously be a Member State under the 2009 Europol Council Decision and a third country. The Minister responds:

> "The Commission takes the view that as Denmark will become a third country for the purposes of the Europol Regulation, it can be considered to be a third country for the purposes of reaching an agreement under the Council Decision."

8.22 The Minister told us in previous correspondence that it was "hard to see how the Council Decision could exist alongside the Regulation".[34] We suggested that, whatever the practical and operational difficulties, this was what EU primary law (Denmark's Protocol to the EU Treaties) and secondary law (only Member States participating in the new Europol Regulation are bound by the repeal of the 2009 Europol Council Decision) appeared to require. We were particularly surprised by the Minister's seemingly equivocal support for the argument that the 2009 Europol Council Decision had not been repealed for Denmark and asked whether this signified a change in longstanding Government policy that the repeal of EU justice and home affairs only took effect for those Member States participating in the repeal measure. The Minister responds:

> "My comments on the application of the Council Decision for Denmark do not signify a change in Government policy. While I consider that the Council Decision will continue to apply for Denmark as a matter of law, it has been seen as practically necessary for Denmark to have an international agreement with Europol."

8.23 We did not see how the Minister could credibly argue that the UK's situation was "very different" from Denmark's given that future cooperation with Europol would, in both cases, be based on a third country agreement. We reiterated our request for the Minister to comment on the status of 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 to minimise the negative effects of Denmark's departure from Europol and the specific conditions it set out.[35] We asked the Minister:

- how he would expect a bespoke agreement with the UK to differ from that envisaged for Denmark; and
- whether the UK had additional leverage which would enable it to negotiate equal or better terms without having to comply with all the conditions set out in the Declaration.

34 See the Minister's letter of 7 March 2017 to the Chair of the European Scrutiny Committee.
35 See the text of the Declaration issued on 15 December 2016.

8.24 We noted also that the Minister had not explained (in response to an earlier request) whether he considered that the provisions in the new Europol Regulation on the transfer of personal data to third countries were likely to make it easier or harder for the UK to reach an agreement on the exchange of sensitive law enforcement information with Europol once the UK leaves the EU.

8.25 Turning first to the Declaration issued in December, the Minister tells us that it was "a political statement with no binding effects" and that "Denmark's case is very different to that of the UK, so the impact of the Declaration on us will be limited". He continues:

> "Although Denmark's future participation in Europol will be on the basis of a third country agreement, it will still be a member of the EU and of the Schengen area. As I have stated in previous correspondence, the UK will be seeking a model of cooperation with the EU that reflects its position as a former Member State that has played a leading role in developing security and law enforcement cooperation. It would not be appropriate to speculate on the details of our future participation in specific elements of cooperation before negotiations begin. That includes the provisions of the new Europol Regulation and the transfer of data to third countries.
>
> "The fact that the UK has played such a leading role in Europol puts us in a good position but as negotiations have yet to begin we do not know the EU's position or that of the other 27 Member States. Consequently it would not be appropriate to compare the Denmark agreement to a theoretical agreement with the UK."

The draft Agreement on Operational and Strategic Cooperation

8.26 The draft Agreement establishes the legal framework for Denmark's future cooperation with Europol. It provides for the exchange of information, including personal data, and other forms of cooperation within Europol's mandate, in particular the exchange of specialist knowledge, general situation reports, the results of strategic analysis, information on criminal investigation procedures and crime prevention methods, participation in Joint Investigation Teams and training activities as well as the provision of advice and support in individual criminal investigations.

8.27 Many of the provisions of the draft Agreement replicate those found in other third country agreements concluded by Europol. For example, Denmark will be required to establish a national contact point (the Danish National Police) to act as the central point of contact with Europol and there is provision for the secondment of liaison officers from Denmark to Europol and from Europol to Denmark. Crucially Denmark, in common with other third countries, will *not* have direct access to Europol's information systems.

8.28 The draft Agreement nevertheless includes additional provisions which reflect Denmark's special status as a member of the EU and participant in Schengen. They include:

- a requirement for Europol to assign up to eight dedicated Danish-speaking staff (or seconded national experts) to process Danish requests to input, receive, retrieve and cross-check data around the clock (on a 24/7 basis);

- the possibility to exchange information not only through the national contact point but also through other Danish police authorities and law enforcement services;
- an obligation on Europol to notify Denmark "without delay" of any information concerning it;
- regular "high level" meetings between Europol and the competent Danish authorities;
- a right for a representative of Denmark's national contact point to attend meetings of the Heads of Europol National Units; and
- a right for Denmark to continue to participate in the activities of analysis groups with which it was associated before 1 May 2017.

8.29 Denmark will be able to "build on" its existing secure communication line with Europol and may also be invited to attend Europol Management Board meetings as an observer (without a right to vote). These additional benefits are subject to a number of important conditions:

- remaining bound by the 1981 Council of Europe Data Protection Convention;
- from 1 May 2017 applying the EU data protection rules as set out in a 2016 Directive on the processing of personal data for law enforcement purposes, as well as the data protection safeguards set out in Articles 28 to 48 (but excluding Article 45) of the new Europol Regulation;
- recognising the role of the European Data Protection Supervisor;
- accepting the jurisdiction of the Court of Justice; and
- making an annual financial contribution to Europol's budget.

8.30 The Agreement is also conditional on Denmark continuing to remain bound by the Schengen rule book (*acquis*), expressly providing that it will cease to apply in the event that the Schengen rules cease to apply to Denmark. The Agreement will enter into force on 30 April, the day before the new Europol Regulation takes effect. During a six month transitional period, while Europol establishes a dedicated staff to process Danish requests to enter or retrieve information from Europol's information systems, Denmark will continue to have direct access on the terms set out in the 2009 Europol Council Decision.

8.31 The Agreement is for an unlimited duration, but will be reviewed by the Commission no later than October 2020 with a view to deciding whether it should be replaced by an international agreement concluded between the EU (rather than Europol alone) and Denmark under the provisions of the new Europol Regulation dealing with the transfer of personal data to third countries. Such an agreement would be concluded by the Council and require the consent of the European Parliament.

8.32 Europol can only conclude the Agreement with Denmark after it has been approved by the Council. Council approval can only be given after consulting Europol's Management Board and obtaining an Opinion from the independent Joint Supervisory Body which

oversees Europol's data processing activities. In a letter dated 15 March, the Chair of the Europol Management Board reported that all Member States agreed on the need for Denmark to have "an appropriate level of cooperation and information exchange with Europol" but that the new arrangements "should not result in a more advantageous status than that of Member States".

8.33 The Joint Supervisory Body (JSB) was asked to issue its Opinion within four working days. It therefore focuses on "the principal aspects" of the draft agreement and makes the following observations:

- Denmark's status as a member of the EU and of Schengen provides the rationale for enhancing the standard terms found in most third country agreements with Europol;
- conditioning the application of the agreement on Denmark's continued participation in Schengen ensures additional safeguards since "the Schengen *acquis* provides for a robust and active protection of personal data";
- since the "factual application of the agreement" will take place under the legal framework established by the new Europol Regulation, it is "crucial" from a data protection perspective that the agreement "follows the data protection framework of the Europol Regulation"; and
- the device used to achieve this—treating Denmark as a Member State (rather than a third country) for the purpose of applying the data protection safeguards in the new Europol Regulation—"seems to be not in line with the aim […] to ensure cooperation between the Kingdom of Denmark and Europol to a level equivalent to that of third countries with which such agreements have been concluded".

8.34 Notably, the Joint Supervisory Body expresses "serious doubts" about the six month transitional period during which Denmark's national Europol unit, competent authorities and liaison officers will continue to have direct access to Europol's information systems since this appears to contradict Article 20 of the new Europol Regulation which restricts direct access to Member States:

> "Not only is such unlimited access for a third State not allowed, it is also not in line with the intention […] to arrange cooperation with the Kingdom of Denmark to a level equivalent to that of third countries."

8.35 The Joint Supervisory Body concludes by recognising Denmark's "unique situation" and the risk that any delay in concluding an operational agreement with Europol by 1 May 2017 could give rise to "an uncertain data protection situation". It therefore considers that the draft Agreement should be concluded but makes clear that it "cannot change the obligations and responsibilities of Europol, Member States and third States as defined in the Europol Regulation".

The Minister's Explanatory Memorandum of 21 March 2017

8.36 The Minister explains that the Council Implementing Decision—document (a)—added Denmark to the list of third countries with which Europol can negotiate a cooperation agreement under the 2009 Europol Council Decision. He expects the final agreement concluded with Denmark to be "very similar" to the document deposited for scrutiny—document (b)—as it reflects a provisional agreement between Denmark and Europol. He says that without the agreement, Denmark would no longer be able to cooperate with Europol from 1 May 2017. He describes it as "a bespoke arrangement" which "reflects the standard agreements between Europol and third countries". He continues:

> "In addition, Europol will set up a specific interface comprising Danish speaking Europol staff. They will manage Danish requests to input, receive, retrieve and cross check data on a 24/7 basis, and Europol will use them to exchange information with Danish competent authorities. Europol will inform Denmark without delay of information concerning it, and Denmark will be invited to the meetings of the Heads of the Europol National Units and may be invited, as an observer, to the Europol Management Board and its subgroups."

8.37 Turning to the wider implications of the draft Agreement for the UK's future relationship with Europol, the Minister observes:

> "The Government would like to stress that although the agreement on Denmark's participation in Europol will help inform negotiations, the situation for Denmark is different to that of the UK. The UK will, unlike Denmark, no longer be a member of the EU and we need to consider how we should interact with Europol from outside the bloc. As the Prime Minister has made clear, we will do what is necessary to keep our people safe but we will not be following any other nation's model. The position we build outside the EU will be unique to Britain."

8.38 The Minister welcomes practical law enforcement cooperation between Europol and Denmark. He expects the Justice and Home Affairs Council to endorse the draft Agreement in March or April so that it can take effect before 1 May 2017.

Previous Committee Reports

For (a); Thirty-fifth Report HC 71-xxxiii (2016–17), chapter 12 (15 March 2017) and Thirty-second Report HC 71-xxx (2016–17), chapter 16 (22 February 2017).

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

Department for Environment, Food and Rural Affairs

(38605) 7393/17 COM(17) 125	Proposal for a Council Regulation amending Regulation (EU) 2015/2192 on the allocation of the fishing opportunities under the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Islamic Republic of Mauritania.
(38636) 7833/17	Proposal for a Regulation of the European Parliament and the Council laying down management, conservation and control measures applicable in the Convention Area of the South Pacific Regional Fisheries Management Organisation (SPRFMO)

Department for Exiting the European Union

(38580) 6952/17	White Paper on the Future of Europe: Reflections and scenarios for the EU27 by 2025.
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Department for International Development

(38572)	The use of budget support to improve domestic revenue mobilisation in sub-Saharan Africa.
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—	

Department for International Trade

(38627) 7669/17 COM(17) 137	Proposal for a Council Decision establishing the position to be taken on behalf of the European Union within the World Trade Organization on the modification of the frequency of WTO Trade Policy Reviews in paragraph C(ii) of Annex 3 of the WTO Agreement and the rules of procedure of the Trade Policy Review Body.

Department for Transport

(38594)
7119/17
COM(17) 117

Report from the Commission to the European and the Council on the implementation in 2013–2014 of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport and of Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities (28th report from the Commission on the implementation of the social legislation relating to road transport).

Foreign and Commonwealth Office

(38550)
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Council Regulation (EU) 2017/331 of 27 February 2017 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus.

(38551)
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Council Decision (CFSP) 2017/350 of 27 February 2017 amending Decision 2012/642/CFSP concerning restrictive measures against Belarus.

(38612)
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Council Decision (CFSP) 2017/445 of 13 March 2017 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

(38613)
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Council Implementing Regulation (EU) 2017/437 of 13 March 2017 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

(38618)
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—

Council Implementing Regulation (EU) 2017/491 of 21 March 2017 implementing Regulation (EU) No 270/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt.

(38619)
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Council Decision (CFSP) 2017/496 of 21 March 2017 amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt.

(38643)
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+ ADD 1
JOIN(17) 8

Joint Proposal for a Council Decision on the Union's position within the Association Council established by the Association Agreement between the European Union, the European Atomic Energy Community and their Member States, of the one part and the Republic of Moldova, of the other part, with regard to the adoption of the EU-Republic of Moldova Association Agenda.

HM Treasury

(38593)
7173/17
COM(17) 121

Report from the Commission to the European Parliament and the Council Market developments potentially requiring the use of Article 459 CRR.

Home Office

(38604)
7379/17
COM(17) 195

Communication from the Commission to the European Parliament and the Council Evaluation of the implementation of the EU Drugs Strategy 2013–2020 and of the EU Action Plan on Drugs 2013–2016: a continuous need for an EU Action Plan on Drugs 2017–2020.

Office for National Statistics

(38599)
7232/17
COM(17) 123

Report from the Commission to the European Parliament and the Council on the quality of fiscal data reported by Member States in 2016.

Formal Minutes

Wednesday 19 April 2017

Members present:

Sir William Cash, in the Chair

Alan Brown	Chris Stephens
Richard Drax	Michael Tomlinson
Kate Green	Mr Andrew Turner
Mr Jacob Rees-Mogg	

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 9 read and agreed to.

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

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

[Adjourned till Tuesday 25 April at 11.30 am

Standing Order and membership

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

a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and

c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression "European Union document" covers—

i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;

v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

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

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

Current membership

Sir William Cash MP (*Conservative, Stone*) (Chair)

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*).