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Documents considered by the Committee on 23 January 2019

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/.

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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 Ministers:

- EU-UK talks on UK input into EU fisheries decision-making during the post-Brexit implementation period will await Parliamentary adoption of the Withdrawal Agreement

Summary

Fisheries

The Committee discussed letters from the Fisheries Minister on the 2019 quotas and on plans to reduce the discarding of unwanted fish. Most importantly, the Minister has clarified that discussions between the UK and the Commission to establish detailed working arrangements during the post-Brexit implementation period are unlikely to take place until there is certainty that the UK will enter an implementation period. The importance of establishing such arrangements are accentuated by the agreement on quotas for 2019 as the agreement included several review clauses with a view to making changes during the year if necessary. The Committee seeks an update on those reviews, which stocks are affected and whether any changes to the quotas are already likely to be proposed.

Cleared; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee.

UK participation in the EU Agency for Criminal Justice Cooperation (Eurojust): post-adoption opt-in

A Regulation establishing a new legal framework for Eurojust—the EU Agency for Criminal Justice Cooperation—was adopted in November 2018. Shortly afterwards, the Government informed the European Scrutiny Committee that the concerns which prevented the UK from opting into the proposed Regulation in 2013 had been addressed during negotiations and that there would be "operational value" in opting in now (post-adoption). The new Regulation will apply from 12 December 2019. The Committee considered that a decision to opt in at this late stage in the UK's exit negotiations raised substantial policy and legal issues which should be debated and recommended a debate in European Committee B. The debate took place on 14 January and the House has since agreed a Resolution (on 16 January 2019) endorsing the Government's opt-in decision. This final Report on Eurojust considers the key points emerging from the debate.

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

Managing EU migration and security databases

The Government's latest update informs the Committee that a new Regulation revising the functions of eu-LISA—the EU Agency responsible for managing EU border and security information systems, such as the Schengen Information System—has been adopted, along with a related Council Decision which has not been deposited for scrutiny. The European Scrutiny Committee makes clear that Parliament should have an opportunity to examine any proposal which extends UK participation in the Schengen rule book, even if only for the limited purpose of ensuring that the UK is able to continue to play a full role within eu-LISA. The Government is asked to explain why the Council Decision was not deposited for scrutiny, to accept that (notwithstanding non-deposit) its support for the Decision constitutes an override of Parliament's scrutiny reserve, and to clarify how the provisions in the Regulation on third country participation in eu-LISA would apply to and affect the UK post-exit.

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

Documents drawn to the attention of select committees:

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

Business, Energy and Industrial Strategy Committee: Screening of foreign direct investment [Proposed Regulation (C)]; Brexit: EU contingency planning in a 'no deal' scenario (update) [Communications (C)]

Environmental Audit Committee: Port reception facilities for waste from ships [Proposed Directive (C)]

Environment, Food and Rural Affairs Committee: Port reception facilities for waste from ships [Proposed Directive (C)]; Fisheries Discard Plans 2019–21 [Delegated Regulations (C)]; Fisheries catch quotas for 2019 [Proposed Regulation (C)]; Brexit: EU contingency planning in a 'no deal' scenario (update) [Communications (C)]

Exiting the European Union Committee: UK participation in the EU Agency for Criminal Justice Cooperation (Eurojust): post-adoption opt-in [Proposed Regulations (C)]; Brexit: EU contingency planning in a 'no deal' scenario (update) [Communications (C)]

Home Affairs Committee: UK participation in the EU Agency for Criminal Justice Cooperation (Eurojust): post-adoption opt-in [Proposed Regulations (C)]; Managing EU migration and security databases [Proposed Regulation (NC)]; Participation of Iceland, Norway, Switzerland and Liechtenstein in the EU's justice and home affairs IT agency, "eu-LISA" [Proposed Decisions (C)]

International Trade Committee: Screening of foreign direct investment [Proposed Regulation (C)]

Justice Committee: UK participation in the EU Agency for Criminal Justice Cooperation (Eurojust): post-adoption opt-in [Proposed Regulations (C)]; Managing EU migration and security databases [Proposed Regulation (NC)]; Participation of Iceland, Norway, Switzerland and Liechtenstein in the EU's justice and home affairs IT agency, "eu-LISA" [Proposed Decisions (C)]

Northern Ireland Affairs Committee: Brexit: EU contingency planning in a 'no deal' scenario (update) [Communications (C)]

Transport Committee: Port reception facilities for waste from ships [Proposed Directive (C)]; Brexit: EU contingency planning in a 'no deal' scenario (update) [Communications (C)]

Treasury Committee: Brexit: EU contingency planning in a 'no deal' scenario (update) [Communications (C)]

1 Managing EU migration and security databases

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the Justice Committee
Document details	Proposal for a Regulation on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
Legal base	Articles 74, 77(2)(a) and (b), 78(2)(e), 79(2)(c), 82(1)(d), 85(1), 87(2)(a) and 88(2) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(38878), 10820/17, COM(17) 352

Summary and Committee's conclusions

1.1 Since 2012, a new EU Agency—"eu-LISA"—has been responsible for overseeing the operational management of three EU security, border and migration management information systems. The proposed Regulation would give eu-LISA responsibility for managing several new or planned EU information systems (described in the Background section of this chapter) and empower the Agency to take the actions needed to make these systems fully interoperable (this latter task being dependent on the adoption of a further legislative instrument).[1] It would also repeal and replace the 2011 Regulation establishing eu-LISA.

1.2 UK participation in eu-LISA is legally complex, bringing into play the UK's Title V (justice and home affairs) opt-in and Schengen opt-out Protocols. This is because some of the EU information systems which eu-LISA will manage build on parts of the Schengen rule book on border control and visa policy which do not apply to the UK and are not open to UK participation. Others are subject to the UK's Title V (justice and home affairs) opt-in or Schengen opt-out, meaning that the UK can decide whether or not to participate.

1.3 The UK participates fully in eu-LISA and the Government has also decided to participate in the proposed successor Regulation to "maximise our influence over how [eu-LISA] operates the IT systems that we take part in and for which it is responsible".[2] Full UK participation in the revamped eu-LISA is dependent on the Council adopting a further Decision based on Article 4 of the Schengen Protocol—without it, UK participation would be limited to "eu-LISA's management of the systems that we take part in or have

1 See Council document 15119/17, summarised in our Sixteenth Report HC 301–xvi (2017–19), chapter 9 (28 February 2018).

2 See the Written Ministerial Statement issued by the then Home Secretary (Amber Rudd) on 2 November 2017, Hansard 32WS.

opted into".[3] It would not extend to eu-LISA's management of new information systems which are not open to UK participation—the EU Entry/Exit System and European Travel Information and Authorisation System.

1.4 In his letter dated 7 June 2018, the Minister for Policing and the Fire Service (Rt Hon Mr Nick Hurd MP) informed us that the Council had reached a political agreement on the proposed eu-LISA Regulation. The UK abstained from the vote as the Government had not sought scrutiny clearance in time. The Minister explained that discussions on the terms of a new Council Decision to confirm the UK's full participation in eu-LISA were "ongoing" and, in a further letter dated 28 September 2018, anticipated that both instruments (the eu-LISA Regulation and Council Decision) would be formally adopted by the Council at the October Justice and Home Affairs Council.

1.5 In our Report agreed on 20 June 2018, we made clear that a Council Decision extending UK participation in the Schengen rule book, albeit for the limited purpose of enabling the UK to participate fully in eu-LISA, should be deposited for scrutiny and clearance sought ahead of adoption in the usual way. We also asked:

- whether eu-LISA and the information systems it manages were to be included in the internal security treaty which the Government intends to negotiate with the EU; and
- whether Article 38 of the proposed eu-LISA Regulation, which sets out the conditions for third country participation in eu-LISA, would require *full* participation in the Schengen rule book (as is the case for Iceland, Norway, Switzerland and Liechtenstein), or whether third countries that only apply parts of the Schengen rule book (the current UK position) would also be eligible to participate.

1.6 We wrote on 10 October 2018 to remind the Minister that we still awaited a response. In his letter of 15 January 2019, the Minister informs us that the new eu-LISA Regulation was agreed by the Justice and Home Affairs Council on 9 November and formally adopted on 14 November. He continues:

> The UK abstained in the Council vote as the proposal remained under parliamentary scrutiny. I regret that the Home Office was unable to give the Committee time to consider the matter prior to adoption in this instance, however I want to reassure you that this did not undermine the UK's position.

1.7 The Minister also provides a copy of the related Council Decision and tells us that it was adopted in September. He says that the Government intends to seek "continued cooperation through EU data platforms such as SIS II as part of our future relationship" and "would also wish to discuss with the EU an appropriate future relationship between the UK and eu-LISA given its role in managing large scale EU IT systems of this kind".

1.8 The Minister explains that the relevant provisions on third country participation are now contained in Article 42 of the new eu-LISA Regulation (applicable from 11 December 2018) and provide for "the participation of non-EU third countries that have entered into

3 See the letter of 1 December 2017 and the letter of 11 January 2018 from the Minister for Policing and the Fire Service (Mr Nick Hurd) to the Chair of the European Scrutiny Committee.

agreements with the EU in relation to the Schengen *acquis*, Dublin- and Eurodac-related measures". The technical arrangements underpinning their participation would be based on the respective agreements providing for their association with the implementation, application and development of the Schengen rule book and with the Dublin and Eurodac Regulations.

Our Conclusions

1.9 **We wish to place on record our dissatisfaction with the way in which scrutiny of the proposed Regulation and related Council Decision has been handled. We understand that the Report we published in June was not drawn to the attention of the relevant Home Office officials. This does not explain why the Minister did not write to seek scrutiny clearance before the proposed eu-LISA Regulation was agreed by the Justice and Home Affairs Council in November. Nor does it explain why the related Council Decision was not deposited for scrutiny. This oversight is all the more striking because the Council Decision followed a formal request made by the Government to the Council Presidency in July to extend the UK's participation in the Schengen rule book to the extent needed to enable the UK to continue to play a full part in eu-LISA. We note that the Council Decision was formally adopted on 28 September 2018, the same day the Minister wrote to inform us that discussions on the terms of the new Council Decision were underway and undertook to continue to update us as the discussions progressed. We are now in the invidious position of being asked to clear from scrutiny a Regulation that has already been adopted and to examine a Council Decision that was not deposited for scrutiny and that has also been adopted. The Minister's assurance that our inability to consider either proposal prior to adoption "did not undermine the UK's position" exposes a fundamental lack of understanding of the purpose of parliamentary scrutiny.**

1.10 **The Minister's latest letter does not directly address the question we asked in June about the scope of the provisions in the Regulation dealing with third country participation in eu-LISA and their relevance for the UK post-exit. To be clear, we asked whether the relevant provision—Article 42 of the new eu-LISA Regulation—would require *full* participation in the Schengen rule book (including free movement and the removal of internal border controls), or whether third countries that only apply *parts* of the Schengen rule book (the current UK position) would also be eligible to participate. We also asked whether a third country would also have to participate in the EU's Dublin Regulation and Eurodac database to be eligible to participate in eu-LISA. Despite formal agreement having been reached on the new eu-LISA Regulation and related Council Decision, we do not intend to release the former from scrutiny until the Minister addresses these questions and explains:**

- **why the Government failed to deposit the Council Decision for scrutiny;**
- **how the UK voted when the Decision (which requires unanimous approval within the Council) was adopted last September; and**
- **whether he accepts that the Government's failure to deposit the Council Decision should not absolve it of responsibility for overriding scrutiny in this case.**

1.11 **We draw this chapter to the attention of the Home Affairs Committee and the Justice Committee.**

Full details of the documents:

Proposed Regulation on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, and amending Regulation (EC) 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) 1077/2011: (38878), 10820/17, COM(17) 352.

Background

1.12 Our earlier Reports listed at the end of this chapter provide a detailed overview of the proposed Regulation, the purpose of the related Council Decision and the Government's position.

1.13 It is envisaged that eu-LISA would be responsible for the operational management of eight existing or planned EU information systems. Four of these systems build on parts of the Schengen rule book on border control and visa policy which do not apply to the UK and are not open to UK participation. Others are subject to the UK's Title V (justice and home affairs) opt-in or Schengen opt-out, meaning that the UK can decide whether to participate.

1.14 As the following table shows, the UK is not entitled to participate in the Visa Information System (VIS), the border control elements of the Schengen Information System (SIS II), the EU Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS). The UK currently participates in the Dublin Regulation, Eurodac database, the European Criminal Records Information System (ECRIS) and the police cooperation aspects of SIS II. The Government has opted into new proposals to expand the Eurodac database but does not intend to take part in the new redistribution mechanism which is a key element of the Commission's Dublin reform proposals. The Government has also decided to participate in the recently agreed reform of SIS II in so far as it concerns police cooperation, and in a proposal to establish a centralised EU information system—ECRIS-TCN—containing criminal records information on third country national offenders within the EU.

Existing information systems managed by eu-LISA	Schengen or non-Schengen	UK position
Visa Information System—VIS	Schengen	UK excluded
Schengen Information System—SIS II (border control component)	Schengen	UK excluded
Schengen Information System—SIS II (police cooperation)	Schengen	UK participates in existing SIS II and in the recently agreed reform of the police cooperation component of SIS II
Eurodac	Non-Schengen	UK participates in the existing Eurodac database. The UK has opted into the Commission's proposal to expand its scope

New information systems to be managed by eu-LISA	Schengen or non-Schengen	UK position
EU Entry/Exit System—EES	Schengen	UK excluded
European Travel Information and Authorisation System—ETIAS	Schengen	UK excluded
Dublin Regulation	Non-Schengen	UK participates in the current (Dublin III) Regulation. The UK has not opted into the proposed Dublin IV Regulation containing a new automated redistribution mechanism for asylum seekers
European Criminal Records Information System—extension to third country nationals (ECRIS-TCN)	Non-Schengen	UK participates in ECRIS and has opted into a supplementary proposal extending ECRIS to third country national offenders

1.15 The Government has now completed all of the steps needed to ensure full participation in eu-LISA Regulation by:

- opting into those parts of the new eu-LISA Regulation dealing with non-Schengen EU information systems—Eurodac, Dublin and ECRIS-TCN—on the basis of the UK's Title V opt-in Protocol;
- not opting out of those parts of the Regulation dealing with the police cooperation component of SIS II, as provided for in the Schengen Protocol; and
- securing a Council Decision based on Article 4 of the Schengen Protocol authorising the UK to participate in the provisions of the Regulation concerning the operational management of new information systems in which the UK is not entitled to take part—the EES and ETIAS.

Previous Committee Reports

Thirty-second Report HC 301–xxxi (2017–19), chapter 7 (20 June 2018), Twenty-first Report HC 301–xx (2017–19), chapter 8 (21 March 2018), Eleventh Report HC 301–xi (2017–19), chapter 4 (24 January 2018), Seventh Report HC 301–vii (2017–19), chapter 8 (19 December 2017) and First Report HC 301–i (2017–19), chapter 26 (13 November 2017).

2 Fisheries Discard Plans 2019–21

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny (decision reported on 05/12/2018); drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	(a) Commission Delegated Regulation of 18 October 2018 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019–21; (b) Commission Delegated Regulation of 18 October 2018 establishing a discard plan for certain demersal fisheries in North-Western Waters for the period 2019–21
Legal base	(a) Article 11 of Regulation (EU) 2018/973; (b) Articles 15(5), 18(1) and 18(3) of Regulation (EU) No 1380/2013
Department	Environment, Food and Rural Affairs
Document Numbers	(a) (40157), 13413/18, C(2018) 6793; (b) (40158), 13457/18, C(2018) 6789

Summary and Committee's conclusions

2.1 These documents concern the arrangements for implementation of the landing obligation ("discard ban") in the demersal[4] fisheries of the North Sea (North Sea, Norwegian Sea and Kattegat and Skagerrak) and North Western Waters (West of Scotland, Irish Sea, English Channel and Celtic Sea) for 2019–21. The demersal discard ban in both areas applied to all species subject to quota restrictions from 1 January 2019.

2.2 We first considered the documents at our meeting of 5 December 2018 and put a number of questions to the Minister for Agriculture, Fisheries and Food (George Eustice MP).[5] The Minister has responded,[6] addressing each of the queries raised.

Minister's letter: scientific evidence

2.3 In response to our request for confirmation that the Government considers the plans to, in all respects, be in line with scientific evidence and advice, the Minister confirms the UK's commitment to using the best possible scientific evidence and advice to substantiate its approach to sustainable fishing. He acknowledges, though, that there are challenges and gaps in the science underpinning the discard ban.

2.4 He explains that the exemption from the discard ban for "highly survivable" species is granted to species which demonstrate high discard survival rates (the percentage that survive after being released). Estimating discard survival rates is, says the Minister,

4 The demersal fisheries concerned are those targeting largely flatfish (such as sole, plaice and flounder) and whitefish (such as cod, hake, haddock and whiting). Norway lobster (scampi) are also included. Some of the exemptions apply to pelagic fish (such as mackerel) caught as bycatch in the demersal fishery.

5 Forty-seventh Report HC 301–xvvi (2017–19), chapter 6 (5 December 2018).

6 Letter from George Eustice MP to Sir William Cash, dated 11 January 2019.

challenging and is done by either monitoring fish in tanks or attaching electronic tags to released fish. As the number of fish used to derive estimates can be low (typically in the hundreds) and the factors that affect survival are not fully understood, many of the exemptions awarded are conditional on additional evidence being provided to give further confidence that estimates are representative of the full fishery.

2.5 Turning to the highly survivable exemption for skates and rays in the North Sea—regarding which additional evidence must be supplied and assessed by 1 August 2019—the Minister notes that conducting discard survival assessments for all combinations of area, fishing gear and species is not practically viable. Therefore, a proposed exemption was supported with estimates which showed variability in survival between species and fishery, with an average survival estimate of 45%. A review of the evidence stated that, while the estimates provided were robust, more work is needed to fill data gaps and provide a more complete picture of survival across different skate and ray species in different fisheries. Therefore, while the considerable evidence available shows survival levels that justify exemption, given the scope of the exemption, additional evidence will give confidence that it is appropriate for all species and fisheries.

2.6 On North Sea plaice, the similar requirement for more evidence relates only to the beam trawl fishery—which includes electric pulse trawlers. In this case, the evidence is assessed to be robust, and shows a discard survival rate of around 20%. The Minister explains that the justification accepted for this exemption is actually based on the potential for improved survival, rather than existing high survival levels. Therefore, this decision sets a precedent for exempting vessels from the landing obligation on the basis that discard survival levels can be improved.

2.7 Concerning the length of time a species must be able to survive before being returned to the sea in order to be considered highly survivable, the Minister confirms that there is no fixed exposure time against which survival is tested. Consideration for a "high survival" exemption will draw on the survival rates of fish across the range of exposure times experienced in normal fishing practices for the fleet in question.

Minister's letter: UK input

2.8 The Minister says that the UK proposed several exemptions (as set out in his letter), which were subsequently accepted by the regional group and Commission and included in the discard plan for the North Sea.

2.9 The UK also made a number of recommendations for exemptions under the North Western Waters (NWW) Discard Plan. Following detailed discussions between the UK, other Member States and the Commission, certain exemptions which had insufficient scientific evidence about their impact, or were considered to be ineffective, were not included in the final version of the discard plans. Furthermore, based on the UK's suggestions, certain exemptions which were too broad when first drafted, were restricted.

2.10 In terms of any UK suggestions which were rejected, the Minister points to the use of "de minimis" exemptions for undersized haddock and whiting in the Irish Sea.

2.11 The Minister confirms that the UK did not unsuccessfully contest any aspect of the discard plans. He adds that additional evidence will be gathered and reviewed in 2019 to understand the impact of the exemptions in the discard plans and to ascertain whether new joint recommendations need to be proposed in due course.

Minister's letter: Outstanding UK concerns

2.12 Turning to elements of the plans over which the UK has outstanding concerns, the Minister expresses awareness of the challenge of enforcing the full landing obligation from 2019 in a way that will reduce the wasteful practice of discarding, but also minimise the risk of choke.[7] The UK is therefore working with other Member States, the Commission and the Advisory Councils to facilitate the practical implementation of the landing obligation by developing solutions to prevent choke situations in the UK's fisheries in 2019 and beyond.

2.13 The UK Government is committed, says the Minister, to improving compliance to support the continuing reduction of discards and ensure the exemptions outlined in the discard plans are adhered to. Enforcement and surveillance is therefore being adapted for the full landing obligation from 2019 to include:

- more detailed inspection of catches at sea in high risk fisheries;
- ensuring that all catches are correctly recorded after landing and that juvenile fish do not go to direct human consumption;
- using data sources, including scientific data, to evaluate levels of compliance; and
- facilitating compliance through adapted quota management interventions, such as managing pool quotas to balance catch and bycatch and working with Producer Organisations to ensure quota is accessed by fleets facing choke.

2.14 The Government is also exploring ways to further improve at sea monitoring and expect that remote electronic monitoring (REM) will become much more widely used in future. REM will ensure there is effective control and enforcement of vessel activity and will be an important method of data collection that could help fisheries management to be more adaptive and flexible. The UK continues to believe that REM and the use of CCTV is the most effective means of monitoring and enforcing the landing obligation at sea.

Minister's letter: Post-Brexit discard reduction

2.15 The Minister emphasises that the Government remains fully committed to ending the wasteful discarding of fish and wants to continue working with other EU Member States to address this issue. It will be able to do so post-Brexit in a way which reflects the nature of UK waters and UK fisheries. Whilst the UK may continue to use many of the tools in the Common Fisheries Policy (CFP) "toolbox", the UK will also have the opportunity to be creative and adopt new measures that will reduce discarding whilst also preventing choke.

7 The risk that a lack of quota for a bycatch species in a mixed fishery can halt the fishing of commercially important target species.

2.16 As an example, the provision in the Fisheries Bill for a discard prevention charging scheme will give vessels the option to pay a charge to land catch in excess of quota, but will be priced in such a way that it is financially preferable to adopt more sustainable practices and avoidance measures to reduce unwanted bycatch.

2.17 While the UK remains within the CFP, the Minister confirms that the UK is working with Member States and the Commission to review how new measures can be developed to address choke risks which cannot be solved by the existing flexibilities under the CFP toolbox. The Commission, he says, is open to dialogue with Member States who have demonstrated that they have looked at all the available tools in the current CFP regulation and shown that they are insufficient for addressing the risk of choke.

Minister's letter: Link between the plans and the 2019 fishing opportunities Regulation

2.18 The Minister notes that it was agreed during the December 2018 negotiations on fishing opportunities for 2019 that those Member States (including the UK) with a fisheries interest in the NWW region should collaborate to produce discard reduction plans to reduce bycatches of cod and plaice in the Celtic Sea, whiting in the Irish Sea and West of Scotland cod and whiting through selectivity and/or avoidance measures. These plans are to be submitted to the Commission by 30 April 2019. The Minister expects these plans to compliment and potentially build upon the three-year discard plans, but whether these stock specific discard reduction plans will be incorporated into the formal NWW discard plan or sit alongside it has yet to be decided.

Minister's letter: UK engagement during the post-Brexit implementation period

2.19 The Minister confirms that, during the implementation period—lasting at least until 31 December 2020, and potentially until 31 December 2022—current fisheries rules, including any new rules adopted during the implementation period, will continue to apply to the UK.

2.20 A discussion between the UK and the Commission is necessary, says the Minister, to establish the detailed working arrangements during the implementation period. This includes how the UK will input into new fisheries legislation during the implementation period and the role of UK stakeholders and the Government in the relevant Advisory Councils. The UK has requested such a dialogue with the Commission, but these discussions are not likely to take place until there is certainty that the UK will enter an implementation period.

2.21 As soon as further discussions with the Commission have taken place, the Minister will provide an update to the Committee on how the UK will be involved in the fisheries decision-making process during the implementation period. The Minister will also update the Committee on how the UK will continue to engage with stakeholders during and after the implementation period.

2.22 **We welcome the comprehensive response from the Minister, setting out clearly the nature of the scientific evidence underpinning these plans, the deliberations that have taken place, the UK's constructive approach, a revised approach to enforcement and outstanding issues.**

2.23 **On the UK's exit from the EU, the Minister emphasises the Government's continued commitment to the discard ban and provides one example of an alternative tool that might be available to the UK outside the Common Fisheries Policy. He helpfully confirms that the UK remains engaged with the Commission and other Member States in considering innovative policy ideas that are not currently available under the CFP.**

2.24 **We note that discussions with the Commission on detailed working arrangements for UK engagement in EU fisheries decision-making during the implementation period are not likely to take place until there is certainty that the UK will enter an implementation period (i.e. once Parliament has agreed to the Withdrawal Agreement). We welcome the Minister's intention to update us on both how the UK will be involved in the fisheries decision-making process during the implementation period and on how the UK will continue to engage with stakeholders during and after the implementation period. This is a matter that we have raised in our scrutiny of several different fisheries policy files.**

2.25 **We cleared these documents from scrutiny at our meeting of 5 December 2018 and have no outstanding issues. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents:

(a) Commission Delegated Regulation of 18 October 2018 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019–21: (40157), 13413/18, C(2018) 6793; (b) Commission Delegated Regulation of 18 October 2018 establishing a discard plan for certain demersal fisheries in North-Western Waters for the period 2019–21: (40158), 13457/18, C(2018) 6789.

Previous Committee Reports

Forty-seventh Report HC 301–xvvi (2017–19), chapter 6 (5 December 2018).

3 Fisheries catch quotas for 2019

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Proposal for a Council Regulation fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters
Legal base	Article 43(3) TFEU, QMV
Department	Environment, Food and Rural Affairs
Document Number	(40168), 13731/18 + ADDs 1–2, COM(18) 732

Summary and Committee's conclusions

3.1 Catch limits for fishing in EU waters, and for EU vessels fishing in certain other waters, are set in December each year to take effect from 1 January. The annual approach is combined with multi-annual management plans and long-term principles for setting Total Allowable Catches (TACs), which are proposed by the Commission on the basis of international scientific advice from International Council for the Exploration of the Sea (ICES) and they are also subject to the outcome of negotiations with third countries including Norway, Iceland, the Faroe Islands and Greenland.

3.2 The Minister for Agriculture, Fisheries and Food (George Eustice MP) has written[8] to confirm that the Council adopted the 2019 TACs at its meeting of 17–18 December 2018. We considered the proposed TACs at our meeting of 5 December 2018[9] and waived the scrutiny reserve to allow the UK to signal its agreement at Council.

3.3 We noted in our Report of 5 December 2018 that 2019 will be the first year when the landing obligation ("discard ban") will apply to all species subject to catch limits. Unsurprisingly, therefore, the focus of much of the Council—reports the Minister—was on the need to find practical solutions to mitigate the potential for bycatch stocks to choke[10] economically important fisheries in Western Waters. The Minister confirms that a compromise was reached but notes that work will need to continue during 2019, including further improvements to selectivity. Member States committed to produce a bycatch reduction plan at the latest by 30 April 2019 which the UK will be working with industry on over the forthcoming weeks. In addition, the UK made a statement at Council proposing a horizontal review of the implementation of the landing obligation in 2019 in order to improve its operation during the year if needed. Furthermore, the need for urgent reviews of stocks identified as at particularly high risk of causing choke—such as Irish Sea whiting—was agreed.

8 Letter from George Eustice MP to Sir William Cash, dated 14 January 2019.

9 Forty-seventh Report HC 301–xlvi (2017–19), chapter 1 (5 December 2018).

10 "Choke" refers to the risk that a lack of quota for a bycatch species in a mixed fishery can halt the fishing of commercially important target species

3.4 The Minister goes on to update us on the outcomes regarding individual species. A particular feature of the agreement was the adoption of a "pool approach" to TACs for bycatch species. Under this approach, Member States with an allocation contribute a fixed percentage (around 6%) of their TAC to a central pool for quota exchanges, which can be used by those Member States without a TAC allocation. This approach was adopted—alongside higher TACs—for a number of species including: Celtic Sea cod, haddock and plaice; Irish Sea whiting; and West of Scotland whiting and cod. The UK expects that the operation of the pools will be kept under review by the North West Waters High Level Group.

3.5 On North Sea cod, reports the Minister, the high risk of choke posed by direct implementation of the scientific advice (47% TAC cut) was mitigated by moderating the scale of the TAC reduction to 35% while still ensuring that the sustainable stock biomass can reach its Maximum Sustainable Yield (MSY) by 2020. The TAC for cod in the Eastern Channel, which is the same biological stock, was cut by 1% and flexibility to fish 5% of the TAC for North Sea cod in the Eastern Channel was introduced. This will help mitigate the risk of increased abundance of cod in the early weeks of the year from choking economically important year-round fisheries such as those for Eastern Channel sole.

3.6 A similar approach was agreed for North Sea herring, with the scientific recommendation for a 51% cut moderated to 33%. The agreement does not afford increased access to UK waters for Norwegian vessels.

3.7 On sea bass, there were no major changes from the Commission's proposed precautionary approach. Although the UK aimed to achieve a better balance of bass fishing opportunities between recreational and commercial sectors, the outcome remained as proposed, at one fish per angler a day over a seven month season from April to October.

3.8 Other key agreements included:

- a TAC increase of 37% for North Sea hake, which will offset a choke risk to the North Sea mixed demersal fishery;
- a TAC increase of 27% for Western hake;
- a TAC increase of 5% for North Sea ling, along with the possibility to transfer 35% of Western ling TAC to the North Sea—this helps mitigate a risk of choke to the mixed fishery in the North Sea posed by a reported increasing prevalence in catches of ling there;
- a TAC decrease of 24% for Eastern Channel sole—officials will work to mitigate the impact of the cut, particularly on the inshore fleet, and to develop better science about the condition of the sole stock within English waters during 2019;
- a TAC decrease of 22% was applied to North Sea whiting which means this stock will be fished at its MSY in 2019;
- the TAC for North Western Waters (including the Irish Sea) nephrops was set in line with the Commission proposal, but the Commission also agreed to seek further advice from ICES on the application of survivability criteria to the TAC;
- TAC decreases of 31% for North Sea haddock and North Sea nephrops;

- TAC increases of 25% for North Sea anglerfish and 16% for North Sea saithe;
- TAC increases in areas of the North Western Waters for Western Channel sole, megrim, skates and rays and plaice;
- Irish Sea TACs for cod (+16%), haddock (+17%) and herring (-2%) were set in line with the scientific advice; and
- in the West of Scotland the TACs for haddock (+31%) and anglerfish (+25%) were also set in line with the scientific advice and there were also significant increases for saithe (+24%) and nephrops (+24%) though these levels differed from the advice. For mackerel, a reduction of 20% was agreed in line with the "TAC constraint" approaches agreed through coastal state negotiations. This is less than the TAC reduction recommended by scientific advice.

3.9 The Minister reports that the number of stocks fished at their Maximum Sustainable Yield (MSY) has fallen. Of all the quotas which were set using the MSY approach, and for which the UK has an interest, 59% were set in line with MSY for 2019 (29 of 49), compared with 69% (31 of 45) in 2018. This fall in the number of stocks fished at their MSY needs to be seen, says the Minister, in the context of 2019 being the first year of the full implementation of the landing obligation. TACs have been set to reflect the need for the fleet to adjust its practices to avoid unwanted catches of bycatch species from closing economically important mixed fisheries while further discard reduction measures are developed and implemented.

3.10 **The annual setting of fishing opportunities is of profound importance to the UK fishing industry. We look forward to receiving the Department's analysis of the economic impact of the agreed outcome.**

3.11 **It is clear from the Minister's reply that the December 2018 Fisheries Council was a particular challenge for all concerned due to the full implementation of the discard ban from 1 January 2019. We note the decisions made and we note also that an urgent review of specific stocks was agreed. We would welcome an update on those reviews, which stocks are affected and whether any changes to the TACs are likely to be proposed.**

3.12 **In view of the full implementation of the discard ban from 1 January 2019, a great deal of uncertainty is inherent in the fishing opportunities set in December. Indeed, at the UK's own behest, there will be a horizontal review of the implementation of the landing obligation in 2019 in order to improve its operation in year if needed. As the UK is scheduled to leave the European Union at the end of March but would remain subject to the Common Fisheries Policy under the terms of the proposed implementation period, this demonstrates how critical it is for the Minister to secure as strong a voice as possible for the UK during that period. Information on that matter has been promised to us in other correspondence.**

3.13 **We are now content to clear the document from scrutiny. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents:

Proposal for a Council Regulation fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters: (40168), 13731/18 + ADDs 1–2, COM(18) 732.

Previous Committee Reports

Forty-seventh Report HC 301–xlvi (2017–19), chapter 1 (5 December 2018).

4 Brexit: EU contingency planning in a 'no deal' scenario

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Business, Energy and Industrial Strategy Committee, the Environment, Food and Rural Affairs Committee, the Exiting the European Union Committee, the Northern Ireland Affairs Committee, the Transport Committee and the Treasury Committee
Document details	(a) Communication from the European Commission: Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019—a Contingency Action Plan; (b) Communication from the European Commission: Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission's Contingency Action Plan
Legal base	—
Department	Exiting the European Union
Document Number	(a) (40190), 14272/18 + ADD 1, COM(18) 880; (b) (40299), 15775/18, COM(18) 890

Background and Committee's conclusions

4.1 The UK is due to leave the European Union on 29 March 2019. The Government has repeatedly insisted that, in the process of withdrawing from the EU, "no deal would be better than a bad deal". Although a draft Withdrawal Agreement has been finalised, ratification is not assured due to widespread concerns over its substance within Parliament, especially in relation to the Northern Irish 'backstop'. A vote on the Agreement was postponed in December 2018, and a second attempt on 11 January resulted in a resounding defeat for the Government.

4.2 Whether the Agreement is ratified or not, the UK will leave the EU by automatic operation of law on 29 March 2019 when the two-year deadline under Article 50 expires unless the Government secures an extension of the negotiating period (which requires the agreement of every Member State). Without the Withdrawal Agreement in place, the UK would abruptly leave the EU's customs union and internal market overnight on that date. That would immediately place the UK outside the legal and economic structures that have allowed goods to pass between the other EU Member States without physical border controls and inspections since the advent of the Single Market in 1992.

4.3 The EU's Member States have been clear that, whatever the Government's own contingency plans to keep trade flowing, UK goods entering their territory would immediately face the customs, VAT and regulatory controls at the border which are applied to all other 'third country' imports. UK companies would also automatically

lose the right to provide a range of services—including financial, legal and transport services—throughout the Single Market from their home base, with little or no World Trade Organization baseline to fall back on.

4.4 Absent the implementation of specific contingency measures, the Government, Committees of both Houses of Parliament and private sector stakeholders have warned there would be immediate and severe disruption of trade and transport links between the UK and the EU.[11] To mitigate this, both the EU and the UK have been making preparations for a 'no deal' eventuality. However, as we noted in our previous 'No Deal' Report of 18 December 2018, the approach taken by both sides are radically different, with the EU's contingency measures far more limited in nature and scope than the UK's approach.

The EU's Brexit preparations

4.5 Both the European Commission and the UK Government have published a series of 'no deal' notices covering different policy fields, attempting to outline the consequences of such a scenario for businesses and citizens in a range of areas. The Commission started doing so in late 2017, with the Government only following in August 2018.

4.6 As we described in our previous Report on 'no deal',[12] the EU's preparations for the UK's withdrawal can be broadly categorised into 'preparedness' and 'contingency' measures. The former aim to modify EU law as necessary to take into account the UK's withdrawal and would need to be adopted "irrespective of whether the UK's withdrawal is orderly or otherwise". They have included for example the relocation of EU bodies, institutions and infrastructure from the UK to the EU-27; the proposed division of UK and EU tariff rate quotas for the purposes of their respective World Trade Organization schedules; and the transfer of vehicle type approvals granted by the UK under Single Market legislation to one of the remaining Member States.[13]

4.7 The European Commission published a first 'no deal' policy paper in July 2018, which summarised some of the key consequences of failure to ratify a Withdrawal Agreement but did not propose any contingency measures to address them. This was followed by a more expansive Communication in November 2018, the day before the finalised Withdrawal Agreement was published, in which the Commission for the first time set out some of the contingency measures the EU was prepared to take to avoid the very worst of the disruption. These would specifically aim to mitigate the immediate impact of a disorderly UK withdrawal from the EU in March 2019, if the Withdrawal Agreement is not ratified. While it recognises that these preparations would also "be the same with or without a Withdrawal Agreement providing [for] a transition period", much like the preparedness measures referred to above, they are considered contingency measures because they "would need to take place at a much faster pace".

11 See for example, the Department for the Environment, Food & Rural Affairs has noted that all UK exports of animals and animal products would cease in a 'no deal' Brexit unless the EU takes specific measures to remedy this. The Public Accounts Committee warned in November 2018 that "there is a real prospect of major disruption at our ports" because of the sudden introduction of customs and regulatory controls, especially at EU ports preventing hauliers from returning promptly; and the Road Haulage Association said in December 2018 that "parliamentary approval for a deal that includes a transition period is essential to avoid crippling the supply chain".

12 See 'Previous committee reports' hereafter

13 Some take effect on 29 March 2019 even if the Withdrawal Agreement is ratified and the transitional period becomes operational; others will have their date of application deferred until the end of that period, mostly where they relate to the UK's participation in the EU's economic and trading structures during transition.

4.8 At that point, the Commission identified seven priority areas that required "specific attention", including the residency rights of UK nationals in the EU, air transport links, and the provision of certain financial services by UK companies to EU-based customers. However, even in the areas singled out as priorities, the Commission did not necessarily commit to specific new EU legislation to avoid disruption in trade and transport with the UK. It also made very clear the EU's contingency measures would not be in the form of 'mini' or 'side deals' agreed jointly with the UK Government: the Commission's proposals would be adopted unilaterally by the EU and be temporary in nature.

4.9 On 19 December 2018, the European Commission published a third Communication with details on the actual implementation of the EU's "contingency" plans for a 'no deal' Brexit. This provided substantially more detail on the policy measures announced the month before, as well as adding certain new areas where contingency action is now foreseen that was not included in the previous Communication. In particular, the Commission announced that it had decided to publish legislative proposals for 'grace periods' in a number of areas, primarily the provision of specific cross-border services, where UK companies would have more rights to operate within the EU than in a 'no deal' scenario, but fewer than they do at present as part of the Single Market.

4.10 On 17 January 2019, the Department for Exiting the EU submitted an Explanatory Memorandum on the Commission's most recent 'no deal' plans.[14] As summarised by the Government, the most important proposals put forward by the Commission in December 2018 are as follows:

- In the field of **road transport**, the Commission has repeatedly warned that by default Brexit means UK hauliers lose their Single Market rights to transport goods throughout the EU. It has now proposed a nine-month period after March 2019, during which UK haulage firms would retain those rights, and not have to rely on the very small number of so-called European Conference of Ministers of Transport (ECMT) permits available to the UK to carry goods into the EU under an existing pan-European system dating to the 1970s.[15] Instead, UK-issued licences for international carriage would remain recognised by all EU Member States until 31 December 2019 for 'bilateral carriage' (i.e. a journey from the UK to a single destination in the EU and back), subject to unilateral withdrawal if the UK does not guarantee reciprocal treatment and continues applying rules equivalent to EU health & safety and competition laws for the road transport sector;[16]

- With respect to **air traffic**, as we noted in our Report of 18 December 2018, British airlines would have limited rights to land in and depart from EU airports for both passenger and cargo transport services. This, like the road transport measure, is subject to unilateral revocation by the EU if the UK does not confer equivalent rights to air carriers from the EU, as well as "ensuring conditions of fair competition in the field of aviation";

14 Explanatory Memorandum submitted by the Department for Exiting the EU on 17 January 2019 (not yet available online).

15 The ECMT system is explained in more detail on the website of the International Transport Forum.

16 If the Commission determines the UK has deviated from those rules, it can by means of Delegated Act restrict or suspend access to the EU market for UK haulage firms within the 9-month grace period.

- A related proposal on recognition of the UK's **aviation safety measures**, "ensuring continued validity of certificates for certain aeronautical products, parts, appliances and companies" in the EU for nine months, to give UK-based entities in this field the necessary time to obtain new licences from the European Aviation Safety Authority as 'third country' operators; and

- In the field of **financial services**, the Commission has concluded that "only a limited number of contingency measures is necessary" to safeguard financial stability in the EU. These are related only to derivatives trades (like currency or exchange rate swaps): the Member States in December 2018 therefore already pre-emptively extended 'equivalence' status to UK-based central counterparties and central securities depositories for one and two years respectively, enabling them to continue servicing customers in the EU uninterrupted during that period.[17] This is explicitly done to give EU-based counterparties time to put in place "fully viable alternatives" to UK Central counterparty clearing (CCPs) and depositories.[18]

4.11 The contingency measures relating to road and air transport (including aviation safety) are formal legislative proposals for consideration by the Council and the European Parliament, and therefore subject to scrutiny in their own right. We will report our detailed assessment of them to the House in the coming weeks.

Additional technical contingency measures

4.12 In addition to the substantive policy proposals made by the Commission as described above, it has also announced—or already adopted—a number of technical measures to prepare the EU for a UK withdrawal without a transitional period in March 2019.

- Potentially the most important from the UK's perspective is the Commission's confirmation that it intends to formally list the UK as a permitted 'country of origin' for live animals and animal products as of 30 March 2019, provided the Government provides "guarantees that all applicable conditions under [EU] veterinary or sanitary legislation will be fulfilled".[19] This means that there would be no overall EU import ban on such products from Britain as such (which would be the case in absence of a Commission 'listing' for the UK). However, normal veterinary border inspections on individual consignments from the UK as provided for in EU food safety legislation would need to take place at approved Border Inspection Posts at points of entry into the EU. How this would operate at the border with Ireland is unclear.

17 The equivalence decisions were approved by a qualified majority of Member States at a meeting of the European Securities Committee in December 2018. They were not notified to the European Scrutiny Committee by the Treasury before adoption and as such they have not undergone the parliamentary scrutiny process.

18 To further facilitate the transfer of clearing of derivatives to the EU from the UK, the Commission has also tabled two Delegated Regulations to ensure that existing derivatives contracts can be novated from UK-based counterparties to EU-based alternatives without triggering clearing and margining obligations under European Market Infrastructure Regulation (EMIR) from which they would have remained exempt if the UK had not left the EU.

19 The European Commission produced a Questions & Answers document on Brexit on 19 December 2018, which states: "The contingency measures announced in the Commission Communication of 13 November 2018 foresee that the UK will be added to the lists for live animals and animal products, subject to providing guarantees that all applicable conditions under the veterinary or sanitary legislation will be fulfilled. **In a no deal scenario, the listing of the United Kingdom should enter into force on 30 March 2019**" (emphasis added).

- In a 'no deal' scenario, the export of dual-use items—goods which have both civilian and military uses—from the EU to the UK would require individual licenses.[20] To avoid the disruption this would cause, the Commission has proposed adding the UK to the list of countries to which the "Union General Export Authorisation" (EUGEA) applies, meaning no individual export licences would be required;

- With respect to customs controls, the Commission has proposed no waivers or implementation period for the application of the Union Customs Code or the VAT Directive to imports entering the EU from the UK from 30 March. It has however issued a technical preparedness measure, confirming that the same time limits to make customs declarations on goods entering or leaving the EU from or for the UK, Isle of Man and Channel Islands are the same as those other countries at same approximate distance from the EU, including Greenland, Morocco and the Faroe Islands. While this gives companies more time to lodge entry and exit declarations for UK-EU trade after Brexit, it is still an additional administrative burden, the practical application of which at the border between Ireland and Northern Ireland is not apparently planned for (see paragraph 30); and

- The Commission has also tabled a proposal for a Regulation to ensure the continuation of the cross-border regional development programmes involving Ireland and Northern Ireland until their scheduled end in December 2020. Without the proposed amendment, the legal validity of EU expenditure in Northern Ireland under the programme would have become doubtful.[21]

4.13 Other Brexit-related technical measures announced or adopted by the Commission relate to the allowances, auctioning, and the exchange of international credits with effect from 1 January 2019; an "appropriate annual quota allocation" to UK companies for accessing the EU-27 market for emission allowances for fluorinated greenhouse gases; and a proposal to move ground infrastructure for the EU's satellite navigation programme Galileo from the British Overseas Territories (the Falklands and Ascension) to other Member States.

4.14 The Explanatory Memorandum submitted by the Department for Exiting the EU summarises the intended purpose of these measures, but does not provide any substantive analysis of their shortcomings or practical impact for the UK compared to the current situation as an EU Member State. It references Brexit preparedness legislation which has received Royal Assent so far, such as the 2018 Withdrawal Act itself and the Haulage Act (which would provide the UK legal basis for relying on the quota permit system for hauliers carrying goods into the EU referred to in paragraph 10 above).[22] However, the Memorandum does not mention the many Bills which are still before Parliament and

20 EU law places restrictions on the export, transit and brokering of dual-use items so the EU can "contribute to international peace and security and prevent the proliferation of Weapons of Mass Destruction".

21 The Commission proposal requires the EU and UK to agree an arrangement on expenditure controls and audits. In absence of such an agreement, the Commission can suspend payments because of a "serious deficiency in the management and control system" for the funds. In a 'no deal' scenario, the UK will automatically cease to be part of the other 13 EU regional cooperation programmes in which it currently participates.

22 The Explanatory Memorandum submitted by the Government also states that "critical international agreements have also been signed, including a new bilateral Nuclear Cooperation deal with the US (May 18), Australia (August 18) and Canada (November 18)". It does not refer to the many hundreds of other international treaties to which the UK is part by virtue of the EU which have not yet been 'rolled over'.

which may not make it on to the Statute Book on time, including the Fisheries, Agriculture, Financial Services and Trade Bills.[23] In addition, of course, many aspects of the likely disruption to trade and transport would be of a cross-border nature and not within the Government's gift to address unilaterally. We have therefore made our own assessment of the EU's contingency plans in paragraphs 15 to 27 below.

4.15 Based on information provided by the European Commission so far, we have set out a fuller list of the EU's most important Brexit contingency and preparedness measures in the Annex to this chapter. The Commission's latest Communication also notes that "it will continue to monitor the need for additional action".

Limitations to the EU contingency measures

4.16 For various reasons, the EU's approach to a 'no deal' Brexit to limit some of the disruptions to trade and transport resulting from a 'no deal' Brexit offer only partial or marginal relief to businesses and citizens.

4.17 Firstly, with respect to the contingency measures the EU *is* looking to put in place by March 2019, political and legal considerations limit the extent to which they can be relied on to keep trade and transport flowing. This is for a number of reasons:

- To avoid the contingency measures effectively giving the UK Single Market access rights without the concomitant legal obligations to follow EU law, **new restrictions and conditions will apply to UK companies wanting to operate in, or export to, the EU even with the contingency measures in place**. For example, with respect to transport services, airlines and hauliers' operating rights would be strictly limited to bilateral journeys (i.e. from the UK to a single destination in the EU and back), without the possibility of multiple stops or cabotage within the EU. Similarly, while the 'listing' of the UK as a safe country of origin for meat and fisheries products will avoid an automatic ban on export of such products to Europe, they will face potentially lengthy and costly border sanitary inspections that are currently absent;[24]

- Similarly, to ensure that the measures do "not replicate the benefits of membership of the Union, nor the terms of any transition period", the 'grace periods' for air traffic rights, aviation safety certificates, road haulage operations and clearing of derivatives are **time-limited**, expiring between nine months and two years after the UK's withdrawal in a 'no deal' scenario (although it remains open, of course, to the EU to unilaterally extend their application in the future);[25]

- The contingency measures are entirely **unilateral and revocable**. As they are not based on a treaty with the UK, they can be withdrawn at the EU's volition at any point. Indeed, the proposals relating to air traffic rights, recognition of

23 Similarly, according to the Hansard Society, as of 18 January 2019 the Government has only laid 321 of the 600 Statutory Instruments necessary to adjust UK law ahead of 29 March 2019 in the event of a 'no deal' Brexit, and of those only 76 have passed the parliamentary scrutiny process.

24 An additional problem in relation to sanitary and phytosanitary controls on UK exports of meat and plant products to the EU is that the capacity of bordering EU Member States to conduct such checks at current points of entry is often limited, causing bottlenecks.

25 The air traffic and safety grace period would expire in March 2020 and the road haulage grace period on New Year's Eve 2019. The equivalence decisions for clearing services for derivatives and depositories for securities would last until 2020 and 2021, respectively.

aviation safety certifications and haulage permits explicitly give the European Commission the power to restrict or rescind the contingency measures if the UK does not give reciprocal access to EU companies, and continues applying rules equivalent to the EU's in areas like competition, state aid and safety legislation; and

- None of the contingency measures are expected to apply to **Gibraltar**, as it is a British Overseas Territory and not strictly part of the United Kingdom. Any efforts by the UK to change the geographical scope of the measures would be opposed by Spain, which has so far had the support of the other Member States in respect of the position of the Rock in the Brexit negotiations. However, the practical impact of Gibraltar's exclusion appears to be limited, given its small size (for example, there are no scheduled flights between its airport and any EU Member State other than the UK). The Government's Explanatory Memorandum states that the UK "will work closely [with Gibraltar] to ensure robust plans are in place […] so that we are prepared for […] a no deal".

4.18 An overarching caveat to the impact the contingency measures may have in a 'no deal' scenario is that most of the substantive proposals—on road transport, air traffic and aviation safety—are still subject to consideration by Member States in the Council and by the European Parliament. Depending on the applicable EU legislative procedure, these institutions can approve, reject and in some cases amend the draft legislation (for example to modify restrictions on UK companies' market access or impose different expiry dates). As such, there is at present no guarantee that the emergency legislation as put forward by the Commission will take effect precisely as proposed.

Areas not covered by the EU contingency measures

4.19 As we noted in our previous Report on 'no deal', published on 18 December 2019, many areas of likely disruption in March 2019 are not covered by the EU's contingency measures.

4.20 The most prominent example is citizens' rights, with the Commission having decided against proposing EU legislation that would regularise the legal status of UK nationals already resident in the EU-27 in the event of a 'no deal'. While the EU would have had competence to take such a horizontal approach, the Commission instead called on individual Member States to ensure that "all UK nationals legally residing in a Member State on 29 March 2019 will continue to be considered as legal residents of that Member State without interruption".[26] Effectively, this means that those with residence exceeding five years would in principle be eligible for long-term residence status (analogous to the UK's indefinite leave to remain) irrespective of the Member State they live in, while those with less than five years residency "will be subject to Member State rules and decisions taken by them on a unilateral basis".

4.21 This is an aspect of the EU's contingency planning explicitly criticised by the Government in its latest Explanatory Memorandum, which argues the "UK is clear that this [approach] does not offer sufficient protection" and therefore the Government "will

26 There have since been reports that an overarching EU approach could be taken on the basis of draft legislation put forward by the Commission, but there has been no formal proposal and the time left to adopt such measures is limited.

continue to encourage the EU and all its Member States to reciprocate our offer for EU citizens in a no deal in full, ensuring that all our citizens can continue living their lives broadly as they do now in any scenario". The Government has also urged the Commission to drop its opposition to individual Member States entering into negotiations with the UK on a bilateral arrangement on social security coordination, including the provision of healthcare (for example with France and Spain, whose Governments are reimbursed by the UK for healthcare costs incurred by UK pensioners under EU law).[27]

4.22 Secondly, as we described in paragraphs 16 to 18 above, the trade and transport contingency measures put forward by the Commission do not replicate UK companies' current market access rights under Single Market legislation. With respect to trade in goods, the EU is making no provision for waivers for the immediate imposition of customs, regulatory and fiscal controls on UK exports to the EU as they are applied to goods arriving from any other 'third country'. While these border controls may often be cursory documentary checks, they are currently absent altogether.

4.23 The effect of these changes will vary from sector to sector. As the Secretary of State for the Environment repeated recently, for meat and fisheries exports the impact of new border checks at EU ports could be very significant indeed. At present, with the UK in the Single Market, such checks are absent because the UK is part of the EU's food safety and animal health control systems, underpinned by European law and overseen by common institutions like the Food & Veterinary Office of the European Commission and jurisdiction of the Court of Justice. The UK's exit from the Single Market means it leaves those systems, structures and laws on 29 March 2019 in a 'no deal' scenario, and the Commission has insisted from the very start of the Brexit process that sanitary controls would be re-imposed in full on UK food imports from 'day one'.[28] In a 'no deal' scenario therefore, all UK exports of animal and plant products to enter the EU via designated Border Inspection Posts only, and be subject to sanitary and phytosanitary controls (which in some cases requires physical inspections for 50 per cent of consignments, for example for poultry, eggs and honey).[29] Conversely of course, the Government's Fisheries Bill aims to restrict the access of EU fishermen to British waters if the UK leaves the Common Fisheries Policy in March 2019.

4.24 Overall, these newly-imposed customs and regulatory checks are likely to cause significant delays, especially on the cross-Channel routes where turn-around times are at present very quick. This will have a knock-on effect on the capacity for goods and vehicles generally, including those not subject to physical inspections. None of the Commission's contingency measures would reduce this new trade friction, which will impact on the capacity of EU ports to clear incoming traffic from the UK and have a knock-on effect on congestion at British ports. The Department for Transport's recent decision to pay for additional ferry capacity to absorb some of the traffic likely to be displaced from Dover and the Channel Tunnel shows the risk is considered significant, although the extent to which other ports can meaningfully replace the UK's major trade artery at short notice is doubtful.

27 See for more information on the coordination of social security and the implications of Brexit our Report of 23 May 2018. We will be issuing a further Report on this matter in February 2019.

28 See for example the European Commission's June 2017 position paper on "Goods placed on the Market under Union law before the withdrawal date", page 3.

29 See http://apha.defra.gov.uk/documents/bip/manual/bip-manual.pdf, annex f. Live animals are subject to a 100 per cent physical inspection rate when entering the EU.

4.25 As we noted in our previous Report on a 'no deal' Brexit, the UK Government is going considerably further than the EU in taking unilateral steps to avoid disruption if the Withdrawal Agreement is not ratified, particular in the context of importation of goods. In areas like food and pharmaceutical safety, product standards and VAT liability on imports, the Government has said that it will continue to waive the need for border controls on imports from the EU.[30] The Treasury has put in place a unilateral transitional period for EU financial services firms (a 'temporary permissions regime') enabling them to continue operating in the UK for a period of time after they lose their right to do so under the EU Treaties, going far beyond the scope of the equivalence decision proposed by the Commission in relation to clearing of derivatives. The Government appears to have calculated that the European Union would reciprocate until the Commission's Communication of 13 November 2018 put this matter beyond doubt.[31]

4.26 The narrow scope of the EU's emergency measures in its post-Brexit relationship with the UK are also not limited to trade and transport. For the provision for many other types of services, where EU law currently gives UK operators a right to operate across Member State borders—including by setting standards for certain financial and broadcasting services and requiring the mutual recognition of a range of professional qualifications—such firms will in the future need to establish EU-based subsidiaries, or comply with the specificities of each Member States' domestic legislation regulating market access by 'third country' firms.

4.27 Moreover, as we pointed out in our previous report, the Commission has not mentioned any contingency plans in terms of continued structural cooperation with British authorities under the range of justice and home affairs measures in which the UK currently participates. In any event, if it ceases to be bound by EU law on 30 March 2019, British civil and commercial court judgements, arrest warrants and confiscation orders would no longer be automatically recognised by the authorities of the remaining Member States and, most likely, vice versa. In addition, UK law enforcement agencies would lose access overnight to databases like the Schengen Information System (which aids law enforcement and border control cooperation), European Criminal Records Information System (ECRIS) (which holds information on criminal convictions throughout the EU) and Eurodac (fingerprint data for asylum applicants). To what extent existing bilateral agreements between the UK and EU Member States superseded by EU measures can be revived to minimise this impact is questionable, and would in any event result in a patchwork of structures rather than the horizontal mechanisms that are in place at present.

4.28 There is another notable omission from the Commission's contingency plans, which is likely excluded for internal political reasons: the impact of a 'no deal' Brexit

30 See for example the draft Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018, through which the Government has proposed to continue exempting animals and animal products entering from an EU country without the food safety and animal health controls that apply to such imports from other countries. Similarly, the Government will accept the testing and safety approvals of existing medicines carried out in an EU country.

31 For example, the first Secretary of State for Exiting the EU (David Davis) told the Exiting the EU Committee in October 2017 that 'no deal' would in practice most likely mean falling back on "WTO arrangements but [with] a bare-bones deal on […] aviation, data and maybe nuclear". He went on to describe a "complete failure to agree" any deals ahead of 29 March 2019 as "so incredible that it is off the probability scale". His successor (Dominic Raab) went a step further in August 2018, when he said that the Government hoped that the EU would offer mutual recognition of regulatory standards and permissions for UK goods and services in the absence of the Withdrawal Agreement, effectively making them equivalent to those issued within the Single Market.

on the **EU budget**. The UK is one of the largest net contributors to the EU's finances, and a departure without a Withdrawal Agreement means the provisions on the financial settlement would not be applicable.

4.29 While the Government has hinted that it would still pay for a share of outstanding EU expenditure commitments made during the UK's membership, the modalities, timetable and size of such payments would be highly uncertain.[32] That in turn means the European Commission would have to request additional contributions from the remaining Member States, reduce planned EU expenditure in 2019 via a Draft Amending Budget, or both. The Communication of 19 December is silent on how the Commission would approach this problem if the 'no deal' scenario arises. It is similarly silent on what financial support from the EU budget might be available to cushion the impact of an economic shock caused by disruption in trade with the UK, both for particularly exposed countries—like Ireland, the Netherlands and France—but also for specific sectors, such as the fishing industry (which would abruptly lose access to British waters by the end of March).

4.30 Finally, it appears the biggest gap in the European Commission's contingency planning is any public recognition of the problems the EU's approach would cause at the **border between Ireland and Northern Ireland**. It is unclear to what extent the European Commission and other Member States would expect Ireland to conduct border controls on goods entering from Northern Ireland as of 30 March 2019, given the Irish Government has explicitly stated it has not planned for the reintroduction of physical infrastructure at the border.[33] However, given that the EU has insisted so far that the choice is an open border based on alignment with EU goods and customs legislation, or a 'hard' border, there are only a few possible outcomes: Ireland would have to implement the necessary border infrastructure; the UK and EU agree on some form of regulatory and fiscal alignment during fresh negotiations after its formal withdrawal; or Ireland keeps the border open, which—if done without the agreement of the other 26 Member States—could lead to 'third country' controls on exports from Ireland to the continent.

Our conclusions

4.31 **The European Scrutiny Committee has been examining the implications of the UK becoming a 'third country' vis-à-vis the EU since the referendum, focussing not only on the impact of new EU legislation but also on the way in which the existing European acquis would alter the parameters of UK relations with the European Union once it ceases to be bound by such legislation and the jurisdiction of the Union's institutions.**

4.32 **Despite the fact that the senior figures in the Government, not least the Prime Minister herself, have stated repeatedly that "no deal" with the EU would be better than a "bad deal", it has been clear for some time that the necessary preparations to**

32 In evidence to the House of Lords EU Committee on 29 August 2018, the previous Secretary of State for Exiting the EU (Dominic Raab) said there was still a "question around quite what the shape of those financial obligations were" if the UK left with no deal, and that the UK "always pays its dues". Similarly, Chancellor Philip Hammond is reported to have told Cabinet that the EU could have a strong legal case for demanding payments under international law.

33 However, even if no such inspections are carried out at the Irish border, they would still have to take place at sea ports taking in UK exports like Dublin, Dunkirk, Rotterdam and Zeebrugge. While it might technically be possible to avoid the controls by moving goods to Northern Ireland, then into Ireland and onward to other EU Member States, it is not feasible for UK exporters to avoid controls on any meaningful scale by re-routing their trade in this way, given the limited capacity on this trade route across the Irish Sea and from Ireland to the continent.

avoid the disruption of the abrupt departure from the Single Market and Customs Union, to the extent that it could ever be fully avoided, are unlikely to be fully in place. The Government only recently contracted three ferry companies to compensate for "severe congestion" at Dover and the Channel Tunnel leading to a "significant reduction in capacity at ports on the short straits", which without intervention would "cause delivery of critical goods to be delayed and cause significant wider disruption to the UK economy".[34] The National Audit Office has also warned crucial 'no deal' preparations are unlikely to be finalised in time by the Department for Transport, HM Revenue and **Customs, and the Department for Environment, Food** and **Rural Affairs.**

4.33 **The crux of the matter is, however, that many elements of the likely disruption could never be avoided unilaterally by the UK. Where they concern cross-border trade, transport or cooperation, this is by definition not within the gift of the Government.**

4.34 **The European Commission's recent Communications on the EU's preparations for a 'no deal' Brexit are therefore a stark reminder of the consequences, especially at ports, on 30 March. Despite the UK's requests, and in some cases unilateral action, in many areas the EU is planning no contingency measures at all to avoid trade and transport disruption. Instead the UK will abruptly go from 'EU member' to 'third country', without anything resembling the transition period and separation provisions contained in the draft Withdrawal Agreement.[35] The EU has said it intends to impose tariffs, import VAT and excise duty, as well as regulatory controls, at the border from 'day one'. Although to what extent it will force Ireland to do so at the land border remains unclear, the French, Dutch and Belgian Governments have all said they will be required to enforce EU 'third country' rules against UK goods from 30 March 2019 if there is no transition.**

4.35 **Even where the Commission has now proposed specific 'no deal' contingency measures, they are limited in time and scope, often binding the UK to continued adherence to EU rules if it wants to benefit from them at all. Moreover, many of the EU's most important emergency initiatives are yet to clear its legislative processes—for example in the areas of aviation and road transport. There is thus no certainty or stability on the basis of which businesses and citizens can plan trade with, or transport to, the EU in less than three months.**

4.36 **The consequences of 'no deal' for British food and drink exports, particularly meat products, could be especially serious. The EU has not yet listed the UK as a safe 'country of origin' for such products, without which a trade ban would automatically take effect on 30 March (although the Commission has committed to doing so). In any event, these exports will face some of the highest tariffs the EU still maintains, and the imposition of border controls for sanitary checks will reduce the competitiveness of those products further (as well as potentially affecting the viability of some exports where freshness of the goods could be jeopardised by delays at the border).[36]**

34 Department for Transport, Contract Award Notice for shipping operations 2018/S 249–575971 (accessed 4 January 2019).

35 The separation provisions in the Withdrawal Agreement govern for example the grandfathering of mutually-recognised professional qualifications, exchange of information on historic VAT and customs matters, and the recognition of civil and commercial judgements rendered before the UK leaves the EU.

36 On 15 January 2019, the UK's Farming Roundtable said a "no deal Brexit must be avoided at all costs".

4.37 **The Government's continued and persistent failure to provide timely and comprehensive analysis to Parliament of the EU's approach to 'no deal' is extremely worrying. It is an approach that was exemplified by the inadequate sectoral 'impact assessments' published at the behest of the Exiting the EU Committee in late 2017; the lack of any public communication on the implications of 'no deal' until August 2018; and again by the Department's Explanatory Memorandum on the European Commission's previous 'no deal' Communication of 13 November 2018, which was shorn of any substantive analysis of the implications of the EU's 'no deal' preparation as described in that document.[37] The latest Government Memorandum, received on 17 January 2019, constitutes somewhat of an improvement but still glosses over many of the practical realities of the EU's contingency measures being proposed: the clear deterioration in trading arrangements for UK businesses dealing with EU customers or suppliers; the new 'cliff edge' they contingency measures create when they expire or are withdrawn early; and the unilateral demand the UK continue adhering to EU law in the fields of aviation, road transport and competition.**

4.38 **Moreover, the Government's lack of candour about its Brexit preparations and the areas where unilateral action will be insufficient is disappointing. A number of crucial Bills have not received Royal Assent, and many of the Statutory Instruments that need to be made under the 2018 Withdrawal Act are yet to make it onto the Statute Book. It is noteworthy in this respect that even at this late stage, the Government's Explanatory Memorandum can only offer assurances that Departments are working to "make sure that the preparations for exit from, […] the EU are on track". This falls far short of a guarantee that such preparations, where the UK can make them unilaterally, will be completed by the end of March.**

4.39 **The clear difficulty the Government has had in preparing properly for a 'no deal' exit is important not only because it affects how Parliament views the different options open to it as the deadline of 29 March 2019 approaches. The issues identified in the 'no deal' notices issued by both the Government and the European Commission will not disappear the day after the UK leaves the EU. Geographic proximity and the volume of trade flows practically dictate that new treaties will at some stage be needed to give form to the UK's post-Brexit cooperation with the European Union. Our assessment of the Commission's contingency measures, narrow in scope and limited in duration, merely reinforce the point that there would be a vast range of long-term issues that would remain unresolved in a 'no deal' scenario. As we have pointed out in many of our Reports since June 2016, these include arrangements on customs and trade, VAT and excise, cross-border transport, food safety and animal health, 'equivalence' in financial services, data protection, home affairs and security, and of course the Northern Irish border.**

4.40 **We repeat in this regard that the disruption of a 'no deal' Brexit would obviously not fall solely on the UK side. EU businesses would also be affected across a range of economic sectors, and as we have noted the budget of the European Union would face a**

37 When the previous Commission Communication on the EU's 'no deal' preparations was published in mid-November 2018, the Department for Exiting the European Union did not provide an Explanatory Memorandum on the document within the normal timeframe of the parliamentary scrutiny process of EU affairs. It eventually produced one on 19 December 2018, the day of our last meeting before the Christmas recess. We had by that point already taken the unusual step of considering the Commission document and its implications for the UK without a Government Memorandum, and reported our findings to the House on 18 December.

significant shortfall (given that it is unclear how the Government would approach the financial commitments vis-à-vis the budget that it has recognised in the absence of the formalised financial settlement contained in Part Five of the Withdrawal Agreement). As such, both sides would have an interest in returning to the negotiating table sooner rather than later to develop a joint approach to the UK's withdrawal from the EU. We consider it likely that, even in a 'no deal' scenario, the EU reiterate its key demands in the negotiations so far: a legally-agreed way of keeping the Irish border open (whatever actions are or are not taken at the border in the immediate aftermath of 'no deal'), the resolution of the UK's financial obligations to the EU budget for expenditure agreed during its membership, and the status of EU and UK citizens resident in each other's territories.

4.41 **A new complication would be that any new UK-EU agreements negotiated after March 2019, even if they replicate the substance of the Withdrawal Agreement in a given area, would probably need a different legal basis on the EU side. Article 50, which gives the EU an unusually wide exclusive competence to enter into agreements with a *future* non-Member State, would have ceased to have effect. Instead, new agreement(s) would now need to be agreed in accordance with Art 218 TFEU and in line with relevant EU sectoral law and policy. This raises the prospect of some post-exit deals with the UK requiring not only approval by a qualified majority of Member States and the European Parliament (as is the case for the Withdrawal Agreement). Depending on the substance of the new arrangements, they may require unanimity among Member States and—in certain cases—even ratification by the EU's national and regional parliaments.**

4.42 **In view of the outcome of the House of Commons vote on the Withdrawal Agreement on 15 January 2019, we consider the European Commission's Communications on the EU's 'no deal' preparations to be of the highest political importance and therefore report them to the House. We also draw them to the specific attention of the Business, Energy and Industrial Strategy Committee, the Environment, Food and Rural Affairs Committee, Exiting the EU Committee, the Northern Ireland Affairs Committee, the Transport Committee and the Treasury Committee. As the EU's most important individual contingency measures—for road and air transport—have been deposited for scrutiny individually, we are content to clear the Commission Communications from scrutiny. We will report our assessment of the implications of the specific proposals to the House on a case-by-case basis as soon as possible.**

Full details of the documents:

(a) Communication from the European Commission: Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019—a Contingency Action Plan: (40190), 14272/18 + ADD 1, COM(18) 880; (b) Communication from the European Commission: Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission's Contingency Action Plan: (40299), 15775/18, COM(18) 890.

Previous Committee Reports

See: Fortieth Report HC 301–xxxix (2017–19), chapter 10 (17 October 2018) and Forty-eighth Report HC 301 xlvii (2017–19), chapter 4 (12 December 2018).

Annex: Overview of EU Brexit preparedness and contingency measures

4.43 The table below shows an overview of the most important Brexit preparedness and contingency measures proposed by the European Commission. These broadly fall into three categories in terms of legislative procedure:

- The **ordinary legislative procedure for secondary EU law**, where the European Parliament and Council must agree jointly on the legislation;
- **Delegated Acts**, which are proposed by the Commission and enter into force unless they are vetoed by the European Parliament or a qualified majority of Member States; and
- **Implementing Acts**, which are proposed by the Commission and need to be approved by a qualified majority of Member States in a technical committee and with no role for the European Parliament.

Policy area	Description	Entry into force	Decision-making procedure	Status
Energy and climate change	Amending the EU emissions trading system	29 March 2019	Delegated Act	Still subject to veto by the Parliament and Council
	Reporting on the sales fluorinated greenhouse gases	29 March 2019, or at the end of the transition	Implementing Act	Completed. Approved by the Member States in December 2018.
	Adaptation of the EU's energy efficiency targets	29 March 2019, or at the end of the transition	Ordinary legislative procedure	Not yet adopted by the Parliament and Council
	Aviation emissions: responsible Member State	29 March 2019	Implementing Act	Not yet tabled by the Commission

Policy area	Description	Entry into force	Decision-making procedure	Status
Financial services	Central clearing of derivatives	29 March 2019	Implementing Act	Completed. Published in the Official Journal on 19 December 2018
	Depositories for securities	29 March 2019	Implementing Act	Completed. Published in the Official Journal on 19 December 2018
	Novation of derivatives contracts to an EU counterparty	29 March 2019, or at the end of the transition	Delegated Act	Still subject to veto by the Parliament and Council
	Margin requirements for derivatives contracts novated to an EU counterparty	29 March 2019, or at the end of the transition	Delegated Act	Still subject to veto by the Parliament and Council
Home affairs	Waiver of visa requirement for UK nationals after Brexit	29 March 2019, or at the end of the transition	Ordinary legislative procedure	Not yet adopted by the Parliament and Council
Institutional	Relocation of the European Banking Authority	29 March 2019	Ordinary legislative procedure	Completed. Adopted by the Parliament and Council in December 2018
	Relocation of the European Medicines Agency	29 March 2019	Ordinary legislative procedure	Completed. Adopted by the Parliament and Council in December 2018
Ireland	Continued funding for the PEACE programme in Ireland and Northern Ireland	29 March 2019	Ordinary legislative procedure	Not yet adopted by the Parliament and Council
Manufacturing	Transfer of UK vehicle type-approvals to the EU	29 March 2019, or at the end of the transition	Ordinary legislative procedure	Agreed by the Council and Parliament in November 2018

Policy area	Description	Entry into force	Decision-making procedure	Status
Research	Relocation of European Research Infrastructure Consortia headquarters[38]	Unclear	Implementing Act	Not yet tabled by the Commission
Space programme	Relocation of Galileo infrastructure from British Overseas Territories[39]	29 March 2019	Implementing Act	Not yet tabled by the Commission
Statistics	EU balance of payment statistics	29 March 2019, or at the end of the transition	Delegated Act	Still subject to veto by the Parliament and Council
	EU tourism statistics	29 March 2019, or at the end of the transition	Delegated Act	Not yet tabled by the Commission
Trade	Export of dual-use items to the UK	29 March 2019, or at the end of the transition	Ordinary legislative procedure	Not yet adopted by the Parliament and Council
	Time limit for lodging export declarations for goods shipped to the UK	29 March 2019, or at the end of the transition	Delegated Act	Not yet approved by the Parliament and Council
	Division of UK and EU tariff rate quotas at the WTO[40]	29 March 2019, or at the end of the transition	Ordinary legislative procedure	Agreed by the Council and Parliament in December 2018
	Support measures for EU outermost regions	29 March 2019, or at the end of the transition	Implementing Act	Not yet tabled by the Commission
	EU approval of UK accession to the Government Procurement Agreement	29 March 2019, or at the end of the transition	Proposal for a Council Decision	Not yet tabled by the Commission

Transport	Limited air traffic rights for UK airlines	29 March 2019, if there is no Withdrawal Agreement	Ordinary legislative procedure	Not yet adopted by the Parliament and Council
	Limited recognition of UK aviation safety measures	29 March 2019, if there is no Withdrawal Agreement	Ordinary legislative procedure	Not yet adopted by the Parliament and Council
	Temporary continued recognition of UK road haulage licences	29 March 2019, if there is no Withdrawal Agreement	Ordinary legislative procedure	Not yet adopted by the Parliament and Council
	Support for a new shipping route between the continent and Ireland	29 March 2019, or at the end of the transition	Ordinary legislative procedure	Not yet adopted by the Parliament and Council
	Ship safety inspections	29 March 2019, or at the end of the transition	Ordinary legislative procedure	Not yet adopted by the Parliament and Council

38 European Research Infrastructure Consortia (ERICs) are organisations established under EU law to deliver major international science and research collaborations. Their headquarters must be in an EU Member State or an 'associated country'. There are currently 20, of which two—Instruct ERIC on structural biology and the European Social Survey—are based in the UK. It is unclear if the UK could host ERICs for the duration of any post-Brexit transitional period until 31 December 2020. In the event of a 'no deal' the UK would also cease to be a member of ERICs in which it currently participates as there would be no legal agreement to govern its involvement.

39 The Galileo satellite navigation programme has ground infrastructure on the Falkland Islands and Ascension.

40 This preparedness measure also encompasses a number of Commission Implementing Regulations related to tariff rate quotas on agricultural products. These have not been listed separately.

5 Port reception facilities for waste from ships

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Transport Committee, the Environmental Audit Committee and the Environment, Food and Rural Affairs Committee
Document details	Proposal for a Directive of the European Parliament and of the Council on port reception facilities for the delivery of waste from ships, repealing Directive 2000/59/EC and amending Directive 2009/16/EC and Directive 2010/65/EU
Legal base	Article 100(2) TFEU, Ordinary legislative procedure, QMV
Department	Transport
Document Number	(39447), 5454/18 + ADDs 1–4, COM(18) 33

Summary and Committee's conclusions

5.1 As part of its approach to tackling marine litter, the European Commission proposed to overhaul existing legislation on port reception facilities (PRF) to collect waste from ships. This will align the PRF Directive with the latest MARPOL (International Convention for the Prevention of Pollution from Ships) requirements. The transposition date for the Directive is 31 December 2020, which is the final day of the proposed post-Brexit implementation period, unless it is extended as permitted under the Withdrawal Agreement.

5.2 The Committee last considered the proposal at its meeting of 12 September 2018, noting the General Approach agreed at the 7 June Transport Council. The Parliamentary Under Secretary of State (Ms Nusrat Ghani MP) has written[41] to update the Committee on the progress of discussions on the proposal. Negotiations between the Council and European Parliament ended with a provisional agreement[42] on 12 December 2018.

5.3 While the European Parliament was largely content with the Council's General Approach, there were some areas of difference. The Minister notes that the European Parliament's proposed amendments included some positive outcomes for the UK. For example, the introduction of a more flexible arrangement for an indirect fee[43] for garbage and delivery of passively-fished waste, which would allow passively-fished waste to be delivered and paid for outside of the indirect fee system and so align to existing UK practices. Another example is the addition of a cap on the 100% 'indirect fee', ensuring that a maximum amount of waste (determined by the storage capacity of the ship concerned) can be delivered for payment of a fixed fee. Any additional waste delivered would be

41 Letter from Nusrat Ghani MP to Sir William Cash, dated 14 January 2019.

42 Council document 15183/1/18 REV 1, dated 18 December 2018.

43 The Commission proposed that all vessels calling at a port would be charged a flat "indirect" fee to cover indirect administrative costs (such as those relating to the preparation of waste reception and handling plans) and a significant part of the direct operational costs. An additional direct fee may be charged on the basis of the types and quantities of waste actually delivered as well as the nature of the ship.

subject to direct fees. This amendment will help ensure that ports or their users are not disproportionately burdened. These amendments have been integrated into the text, but unwelcome amendments were rejected by the Council in the course of negotiations.

5.4 The Minister reports that the UK also secured an important amendment to allow for exemptions from the general requirement to produce Port Waste Management Plans for small non-commercial ports, such as sailing clubs. This exemption will—says the Minister—reduce the financial and administrative burdens for small non-commercial ports, and recreational craft users. A further amendment was secured to assist the short sea shipping industry (i.e. the maritime transport of goods over short distances), which enabling ports to reduce fees for this sector.

5.5 The Minister confirms that industry stakeholders have not raised any concerns that are out of line with the UK's position. In that light, she invites the Committee to clear the proposal from scrutiny ahead of final adoption of the text.

5.6 **We welcome the comprehensive information provided by the Minister on the final deal and we are pleased to note the movement achieved towards the UK position.**

5.7 **On the long-term implications for this EU legislation for the UK, we recall our previous observations that the UK need only bring into force the requirements of the proposed Directive if the post-Brexit implementation period is extended beyond 31 December 2020. The final agreement sets a deadline of 24 months, which is likely to be Spring 2021. We also previously observed that—following the negotiations—the legislation is largely aligned in any case with the international requirements set by MARPOL (International Convention for the Prevention of Pollution from Ships).**

5.8 **We clear the proposal from scrutiny and have no outstanding concerns. We draw this chapter to the attention of the Transport Committee, the Environmental Audit Committee and the Environment, Food and Rural Committee.**

Full details of the documents:

Proposal for a Directive of the European Parliament and of the Council on port reception facilities for the delivery of waste from ships, repealing Directive 2000/59/EC and amending Directive 2009/16/EC and Directive 2010/65/EU: (39447), 5454/18 + ADDs 1–4, COM(18) 33.

Previous Committee Reports

Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 12 (12 September 2018); Twenty-ninth Report HC 301–xxviii (2017–19), chapter 5 (23 May 2018); Sixteenth Report HC 301–xvi (2017–19), chapter 6 (28 February 2018).

6 Screening of foreign direct investment

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of International Trade Committee, the Business, Energy and Industrial Strategy Committee and the Science and Technology Committee
Document details	Proposal for a Regulation establishing a framework for screening of foreign direct investments into the European Union
Legal base	Article 207(2) TFEU; Ordinary legislative procedure; QMV
Department	International Trade
Document Number	(39017), 12137/17 + ADDs 1–2, COM(17) 487

Summary and Committee's conclusions

6.1 The Commission proposed an EU-wide framework for screening foreign direct investment (FDI)[44] that may impact the EU's security or public order in September 2017, following concerns over increases in acquisitions, particularly by state owned enterprises, of critical/strategic EU assets, technology and know-how.

6.2 The draft Regulation does not require Member States to adopt or maintain a screening mechanism (currently 14 Member States operate one based on national security or public interest grounds) and Member States will retain the power to review and potentially block FDI on security and public order grounds. However, noting that the design, scope and implementation of FDI screening rules vary significantly between Member States, the proposal:

- introduces certain minimum requirements, such as non-discrimination, the protection of confidential information, the right to judicial review of national authorities' decisions and clearly defined procedural rules;
- enables the Commission to issue advisory opinions to Member States where it considers that an investment, whether planned or completed, would be likely to affect national security or public order in one or more Member State, or when an investment could affect a project or programme of interest to the whole EU, such as Horizon 2020 or Galileo; and
- creates a cooperation mechanism, including information-sharing requirements, between Member States and the Commission.

6.3 At its last meeting on 21 November 2018, the Committee:

- noted that the Minister of State for Trade Policy (George Hollingbery MP) retained strong reservations about the proposal and asked to be kept updated

44 FDI covers a broad range of investments which establish or maintain lasting and direct links between investors from third countries and the investment vehicle in the host state. It does not include portfolio investment.

on the outcome of the trilogue negotiations—particularly in relation to the mandatory information sharing requirements, the timelines for Member States and the Commission to request information or comment on new investments, and the proposed review period for completed investments—and whether he intended to support the final text in any Council vote; and

- requested an updated assessment of how the draft Regulation may impact the UK's screening regime and UK investors in the range of scenarios foreseeable after UK withdrawal, namely: during the scheduled transition/implementation period; in the event of a 'no deal' scenario; and post-transition/implementation period. We asked the Minister to provide this analysis **in light of, and by reference to, the UK's** amended FDI screening process of 11 June 2018[45] and the Government's intention to introduce mandatory notification requirements for foreign investments in civil nuclear, energy, telecommunication and transport sectors.[46]

6.4 In his letter of 19 December 2018 and accompanying Annex, the Minister responds to the Committee's questions on the progress of the proposed Regulation and its Brexit implications.

Progress of negotiations and the UK's position

6.5 The Minister states that since his last update in October 2018 "there has been sustained progress through the trilogue negotiations and the final draft Regulation was agreed at a political level between the Council and European Parliament on 20 November [2018]".[47]

6.6 He reiterates that the UK Government helped secure and "retain" amendments to the final compromise text that mitigated several of the UK's concerns, particularly in relation to: "the reaffirmation that only Member States, rather than the Commission, have the ability to screen investments; that national security remains Member States' sole responsibility as provided for in Article 4(2) Treaty on European Union; and the explicit recognition of Member States' right to withhold information they consider contrary to their national security, pursuant to Article 346(1) Treaty on the Functioning of the European Union." However, the Government "found there had been insufficient progress against the UK's priority concerns on mandatory information sharing; the use of 'security and public order', which has no precedent in EU law; and the prescribed screening timeframes". The UK therefore abstained at the vote at Coreper on 5 December 2018, which was passed by qualified majority (with all Member States except Italy voting in favour). The final approval by the Council and European Parliament plenary decision is now expected in the first half of 2019.

45 Amendments to the Enterprise Act 2002, in force as of 11 June 2018 enable the Government to intervene in cases where the target's UK turnover exceeds £1 million (the previous threshold was £70 million) or where the target alone has a 25% share of the supply of any goods or services (the previous requirement was the merger must lead to an increase in the merging parties' share of supply to, or over, 25%) in the following sectors: the development or production of items for military or military and civilian use ('dual use'); the design and maintenance of aspects of computer hardware; and the development and production of quantum technology.

46 Department of Business, Energy and Industrial Strategy news story ' Government upgrades national security investment powers', 24 Jul 2018.

47 Also see Commission Press Release of 20 November 2018.

Brexit implications

During any implementation/transition period in which the UK remains a 'de facto member' and must comply with the obligations of the Regulation

6.7 The Minister maintains that the Regulation is not expected to substantially affect the UK's investment screening regime overall, on the basis that:

- it would affect "only a small number of investment transactions…[that] give rise to the kinds of security risks the UK would consider for screening";
- the Government will retain "full control on the method and process for screening and, most importantly, the final decision on investments", and
- it is likely to be limited to a short period, as he only expects the UK to bound by the Regulation during the implementation/transition period. He notes that the Regulation "shall apply from 18 months of [its] entry into force" (pursuant to Article 17(1) of the draft Regulation), but allows Member States and the Commission to comment on investments up to 15 months after they have been completed (pursuant to Article 7(8)).

6.8 However, the Minister also acknowledges that certain aspects of the Regulation, notably the mandatory information sharing requirements and timeframes for the review process "potentially create the risk of delay and uncertainty in investment authorisation decisions, which may then have a negative impact on individual foreign investors."

6.9 In response to the Committee's question on how any extension to the implementation/transition period or implementation of the Northern Ireland backstop would impact the UK's investment screening regime and UK FDI flows, the Minister states that whilst the UK would "remain subject to the information sharing elements of the Regulation and would be required to take into account comments from Member States and the opinion of the Commission", the Regulation would not be expected to "impact the vast majority of investments into the UK" or "have a dramatic impact on inwards FDI flows into the UK".

6.10 He further notes that the Government would have to ensure that any amendments to, or introduction of a new regime for screening FDI that has national security implications (as set out in its National Security and Investment White Paper of July 2018) is compatible with the Regulation "while [it] applies to the UK".

Post-exit (either in the event of a 'no-deal' scenario or post-transition/implementation period)

6.11 In response to the Committee's request for information on what criteria the Government will use to determine the UK's potential participation in the EU-wide framework post-exit/transition period, the Minister states that:

- the Government will "continue to protect its [the UK's] national security and to voluntarily work with other countries on a case-by-case basis"; and

- the "UK's involvement in the EU-wide cooperation framework on FDI screening will be subject to the outcome of the negotiations for the FEP [Future Economic Partnership]."

Our Conclusions

6.12 **The Committee notes that the Government retains strong reservations about the proposal, as it considers that the mandatory information sharing requirements and timeframes for the review process for both potential and completed investments are likely to create additional burdens and uncertainty for inward investors, and that it abstained at the vote in Coreper endorsing the provisional agreement reached at the end of the trilogue negotiations.**

6.13 **We further note that the Regulation is expected to be adopted and enter into force in the first half of 2019, following formal approval by the Council and plenary vote in the European Parliament. Whilst it would not apply to new potential investments until 18 months after its entry into force (i.e. the second half of 2020), it would allow 'retrospective' review of investments that were completed up to 15 months prior to its full application.**

6.14 **Assuming there is a Withdrawal Agreement, the Minister maintains that the proposed Regulation is unlikely to significantly impact the UK FDI regime or FDI inflows during any transition period or backstop arrangement, on the basis that the Regulation would apply to a small proportion of investments (that would be subject to the review in the UK) and for a limited time. However, the backstop arrangement is not time limited.[48] Furthermore, the Minister acknowledges that the Government would have to ensure that any new FDI screening regime on national security and public order grounds that enters into force "while the Regulation applies to the UK" would need to be compatible with the Regulation. The Government's intention to introduce mandatory notification requirements for foreign investments in civil nuclear, energy, telecommunication and transport sectors (set out in the Government's National Security and Investment White Paper of July 2018) would mean that more transactions in the UK are called in for scrutiny and will be subject to the Regulation's requirements and review timeframes.**

6.15 **Post-exit/transition, the Government is not willing or able to set out what criteria it will use to determine whether the UK will seek to formally participate in the EU-wide screening mechanism as part of the future framework agreement or pursue 'softer' (non-binding/voluntary) cooperation. Until the Government provides further clarity, it is unclear how UK inward and outward investments from/into the EU will be impacted.**

6.16 **Following the Minister's update on the outcome of the trilogues and the UK's position, we now clear the document from scrutiny, but ask the Minister to a) inform us of the outcome of the vote in Council in his next Trade Policy Update to**

48 The implementation/transition period is due to end on 31 December 2020, with a possible extension to December 2022. The backstop arrangement would be applied at the end of the implementation/transition period unless and until a new free trade agreement between the UK and EU supersedes it.

the Committee and b) commit to providing Parliament with further detail on the Government's objectives for potential UK involvement in the EU-wide framework post-exit/transition period.

6.17 **We draw the Minister's update and our conclusions to the attention of the International Trade Committee, the Business, Energy and Industrial Strategy Committee and the Science and Technology Committee.**

Full details of the documents:

Proposal for a Regulation establishing a framework for screening of foreign direct investments into the European Union: (39017), 12137/17 + ADDs 1–2, COM(17) 487.

Background

6.18 Details of the draft Regulation and the Government's position are set out in the Explanatory Memorandum of 5 October 2017 and the Committee's previous Report chapters (listed below).

Previous Committee Reports

Forty-fifth Report HC 301–xliv (2017–19), chapter 8 (21 November 2018); Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 15 (12 September 2018); Third Report HC 301–iii (2017–19), chapter 11 (29 November 2017).

7 UK participation in the EU Agency for Criminal Justice Cooperation (Eurojust): post-adoption opt-in

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Exiting the European Union Committee, Home Affairs Committee and Justice Committee
Document details	(a) Proposal for a Regulation on the European Agency for Criminal Justice Cooperation (Eurojust) (b) Regulation(EU) 2018/1727 on the European Agency for Criminal Justice Cooperation (Eurojust) and replacing and repealing Council Decision 2002/187/JHA
Legal base	(a) Article 85 TFEU, ordinary legislative procedure, QMV (b) Article 4 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice
Department	Home Office
Document Number	(a) (35216), 12566/13, COM(13) 535; (b) (35216),—

Summary and Committee's conclusions

7.1 The UK has participated fully in Eurojust—the EU Agency for Criminal Justice Cooperation—since it was established in 2002. Eurojust operates as a hub, bringing together representatives of national prosecuting authorities to support cooperation between Member States on cross-border criminal investigations and prosecutions, particularly in cases involving multiple jurisdictions. There is also an important international dimension to Eurojust's work.

7.2 The rules governing Eurojust's operation and its core tasks are set out in three Council Decisions, the latest dating back to 2009. The Lisbon Treaty requires Eurojust to be based on a Regulation adopted jointly by the European Parliament and the Council. The Commission proposed a new Regulation in July 2013—document (a). The then Coalition Government decided *not* to opt in as it feared that proposed changes to the powers given to Eurojust's national members would cut across the separation of powers between the police and prosecuting authorities, a fundamental feature of the UK's criminal justice system. It also expressed concern that participation in the proposed Regulation might undermine the UK's decision *not* to take part in the European Public Prosecutors' Office ("EPPO")—a new authority responsible for combating fraud against the EU budget which is to be established from Eurojust.[49] The Government nonetheless anticipated that it might wish to opt into the new Eurojust Regulation once the final text had been agreed. It invited

49 See Article 85 TFEU on Eurojust and Article 86 TFEU on the EPPO.

the House of Commons to agree to a motion stating that the UK should not opt in at the negotiating stage but "should conduct a thorough review of the final agreed text to inform active consideration of opting into the Eurojust Regulation post-adoption, in consultation with Parliament".[50]

7.3 Following the formal adoption of the Eurojust Regulation—document (b)—in November 2018, the Minister for Policing and the Fire Service (Rt Hon Nick Hurd MP) submitted a Supplementary Explanatory Memorandum stating that the concerns which had prevented the UK from opting into the Commission's original proposal in 2013 had been addressed during negotiations and informing us of the Government's intention to seek to opt in. He indicated that a decision to opt in would "maintain operational continuity and minimise disruption for UK law enforcement and prosecution authorities ahead of the EU exiting the EU" whilst also demonstrating "our ongoing commitment to Eurojust and to the continuation of close internal security cooperation" during the post-exit transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement and beyond. Our Report agreed on 12 December 2018 contains further details.

7.4 Given the imminence of the UK's exit from the EU and continued uncertainty as to the terms of the UK's withdrawal, as well as the risk that the UK may leave without a deal, we considered that the House should have the opportunity to question the Minister on the Government's reasons for recommending that the UK opt into the new Eurojust Regulation. We asked the Minister to clarify the Government's understanding of certain transition provisions contained in the draft EU/UK Withdrawal Agreement and how they would affect the operation of the UK's Title V (justice and home affairs) opt-in Protocol during any post-exit transition/implementation period. We suggested that the debate should examine the factors informing the Government's opt-in recommendation, the operational value of participating in Eurojust and the operational risk of failing to do so, future oversight of and accountability to Parliament for Eurojust's activities while the UK continues to participate in the EU agency, and the wider implications of Brexit for the UK's future relationship with Eurojust post-exit.

7.5 In his letter of 11 January 2019, sent shortly before the debate in European Committee B which took place on 14 January, the Minister addresses the questions we raised about the application of the UK's opt-in Protocol during any post-exit transition/implementation period. He anticipates that "the current processes will not change significantly", based on the following analysis:

- Article 127(1) of the draft EU/UK Withdrawal Agreement provides that EU law shall continue to apply to the UK during a post-exit transition/implementation period;
- Article 127(5) provides that Article 4a of the UK's opt-in Protocol shall continue to apply *mutatis mutandis*, meaning that "the wider provisions of the opt-in Protocol, including the ability to opt in post-adoption under Article 4, continue to apply to measures that amend, build on, or replace existing measures in which the UK participates in before exit day";
- although Article 127(4) provides that the UK shall not participate in any enhanced cooperation for which authorisation has been granted after the date on which

50 See Hansard, 29 October 2013 from col. 873

> the Withdrawal Agreement takes effect, post-adoption opt-in decisions taken under Article 4 of the opt-in Protocol are based on the procedures for approving enhanced cooperation (set out in Article 331(1) TFEU) but do not themselves constitute a form of enhanced cooperation; and

- Article 127(4) of the draft EU/UK Withdrawal Agreement would not therefore affect the operation of Article 4 of the opt-in Protocol.

7.6 Based on this analysis (which the Minister expects the European Commission to confirm in writing), he concludes that if the procedure for approving the UK's request to opt into the Eurojust Regulation (which can take four months) has not been completed before the UK leaves the EU, the UK will still be able to opt in under the terms of the draft EU/UK Withdrawal Agreement which provide for a post-exit transition/implementation period.

7.7 The Minister reiterates the "the operational benefits provided by Eurojust in helping law enforcement and prosecution agencies coordinate investigations in cross border organised crime and terrorism and tackling transnational crime that affects all the citizens of the EU" and says that opting in would:

> be in line with our forward leaning approach to cooperation with the EU on JHA [justice and home affairs] matters post-referendum, in line with our clear objective for a deep and ambitious future security partnership that ensures no reduction in our shared capabilities. Indeed, it would help demonstrate our ongoing commitment to Eurojust and to the continuation of close internal security cooperation through the Implementation Period (IP) and beyond.

7.8 The Minister recognises the need for continuing parliamentary scrutiny of justice and home affairs opt-in decisions during any post-exit transition/implementation period, adding:

> Once the detailed working arrangements for the implementation period are agreed with the EU, the Government will engage in further discussions with the scrutiny committees regarding whether the arrangements for the parliamentary scrutiny of JHA opt-in decisions that are currently in place, as in the Code of Practice, will continue to ensure that Parliament remains able to scrutinise any JHA opt-in decisions taken during the implementation period.

7.9 During the debate in European Committee B on 14 January, the Minister underlined the UK's active participation in Eurojust and its operational value in tackling transnational crime and made the following points in response to our earlier Report:

- the UK would only be able to participate in Eurojust during a post-exit transition/implementation period by opting into the new Eurojust Regulation, as "we believe it would be impossible for the EU to have an agency set up under two sets of rules—voting rules, funding mechanisms and so on—one for the UK under old legislation, and one for other Member States under the new Regulation";

- the Government's "primary motive is to seek continuity in the existing arrangements";
- if the UK does not opt in, it would have to revert to "time-consuming and expensive processes of judicial co-operation through bilateral channels";
- the Government's opt-in decision "aligns with the UK's unconditional commitment to European security in the future"—"after the UK exits the EU, it is a priority for the UK both to preserve the capabilities currently offered by Eurojust and to maintain our current level of contribution to the agency "; and
- "if we do not opt in, we would drop out of Eurojust, and we judge that negotiating a new model of co-operation as outsiders trying to gain access would be significantly more difficult than remaining active members of Eurojust. It puts the UK in the strongest possible position for beginning negotiations, and positively signals our intention to continue practical law enforcement co-operation with EU partners after we leave".

7.10 The Minister makes clear that the Government's "explicit objective" is to secure a future security partnership with the EU that "as far as possible, maintains our existing capabilities". He acknowledges that participation on standard third country terms would result in "a reduced capability for the UK and the EU to co-operate in tackling serious cross-border and organised crime":

> We would have a reduced role in operational activity at Eurojust, and there would be limitations to the extent to which Crown Prosecution Service and Crown Office prosecutors could work with and at Eurojust.

7.11 The Government will therefore seek to "move beyond third country status" and secure a "third country plus" agreement which recognises "the weight and the important value" of the UK's contribution to Eurojust and other EU justice and home affairs agencies.:

> We are not a standard third country: we helped to build these platforms, we helped to fund them and we are core to their success.

Our Conclusions

7.12 **We thank the Minister for clarifying in correspondence the Government's understanding of how the UK's Title V (justice and home affairs) opt-in Protocol will apply during any post-exit transition/implementation period. We are content with his explanation, though note that the Government has yet to confirm its understanding of the legal position with the European Commission and the Council. We expect to be informed if their view differs in any material aspects from the Government's position.**

7.13 **Following a Resolution of the House on 16 January 2019 endorsing the Government's opt-in decision, we clear the 2018 Eurojust Regulation and the European Commission's 2013 proposal from scrutiny. We draw this chapter to the attention of the Exiting the European Union Committee, the Home Affairs Committee and the Justice Committee.**

Full details of the documents:

7.14 (a) Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust): (35216), 12566/13, COM(13) 535.

7.15 (b) Regulation (EU) 2018/1727 of the European Parliament and of the Council on the European Agency for Criminal Justice Cooperation (Eurojust) and replacing and repealing Council Decision 2002/187/JHA: (35216),—.

Previous Committee Reports

Fifteenth Report HC 83–xv (2013–14), chapter 2 (11 September 2013), Nineteenth Report HC 83–xviii (2013–14), chapter 7 (23 October 2013), Thirty-fifth Report HC 219–xxxiv (2014–15), chapter 8 (4 March 2015) and Forty-eighth Report HC 301–xlvii (2017–19), chapter 1 (12 December 2018).

8 Participation of Iceland, Norway, Switzerland and Liechtenstein in the EU's justice and home affairs IT agency, "eu-LISA"

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Home Affairs Committee and the Justice Committee
Document details	(a) Proposal for a Council Decision on the signing on behalf of the European Union of the Arrangement with Norway, Iceland, Switzerland and Liechtenstein on participation by those States in the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (b) Proposal for a Council Decision on the conclusion of the Arrangement with Norway, Iceland, Switzerland and Liechtenstein on participation by those States in the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
Legal base	(a) Articles 74, 77(2)(a) and (b), 78(2)(e), 79(2)(c), 82(1)(d), 85(1), 87(2)(a), 88(2) and 218(5) TFEU, QMV (b) Articles 74, 77(2)(a) and (b), 78(2)(e), 79(2)(c), 82(1)(d), 85(1), 87(2)(a), 88(2) and 218(6)(a)(v), EP consent, QMV
Department	Home Office
Document Numbers	(a) (40044), 11805/18 + ADD 1, COM(18) 607; (b) (40045), 11804/18 + ADD 1, COM(18) 606

Summary and Committee's conclusions

8.1 The proposed Council Decisions would authorise the EU to sign and conclude an "Arrangement" with Norway, Iceland, Switzerland and Liechtenstein setting out the terms of their participation in "eu-LISA"—the EU Agency responsible for the operational management of EU asylum, migration and law enforcement information systems. These four countries have already concluded agreements with the EU associating them with the Schengen rule book and are referred to collectively as "Schengen associated countries". They have also concluded agreements associating them with the application of the EU's "Dublin rules" and Eurodac database which establish a mechanism for determining the country responsible for examining an application for international protection.

The 2011 Regulation setting up eu-LISA expressly provides for countries associated with Schengen and Eurodac-related measures to participate in the Agency based on a detailed set of rules which include provisions on financial contributions, staffing and voting rights.[51]

8.2 Under the terms of the Arrangement, the four Schengen associated countries would participate fully in the activities of eu-LISA, be represented on eu-LISA's Management Board and Advisory Groups and have limited voting rights on certain decisions concerning the EU information systems in which they participate. They would be required to make an annual financial contribution to the Agency (based on an agreed funding formula) and to recognise the jurisdiction of the EU Court of Justice on the basis set out in eu-LISA's founding Regulation. The Arrangement is contingent on the Schengen associated countries' continued participation in the Schengen rule book, Dublin rules and Eurodac database. It includes dispute settlement provisions which may lead to the Arrangement being terminated if a Mixed Committee meeting at Ministerial level is unable to resolve the dispute.

8.3 Even though the proposed Council Decisions cite Title V (justice and home affairs) legal bases and concern EU information systems which are subject to the UK's Title V opt-in and Schengen opt-out Protocols, the Commission does not consider that these Protocols apply, meaning that the UK has no choice but to participate in the adoption of the Decisions and will be bound by the Arrangement. This reflects the European Commission's view that, as the UK participates fully in eu-LISA's 2011 founding Regulation, it is under an obligation to give effect to Article 37 of that Regulation which provides for the Schengen associated countries to participate in eu-LISA.

8.4 The Government supports the terms of participation set out in the Arrangement and the formula to be used to calculate each Schengen associated country's financial contribution.[52] In his Explanatory Memorandum of 3 October 2018, the Minister for Policing and the Fire Service (Rt Hon Mr Nick Hurd MP) accepted that UK participation in eu-LISA's 2011 founding Regulation "implicitly acts as consent" to participate in and be bound by the proposed Council Decisions and that the UK's Title V opt-in Protocol was therefore "not engaged". He noted that negotiations were underway on a proposal to repeal and replace eu-LISA's founding Regulation but thought it "likely" that the participation of the Schengen associated countries in eu-LISA would remain effective under the new Regulation (since adopted and operational from 11 December 2018).[53] Shortly after submitting his Explanatory Memorandum, Home Office officials informed us that the Justice and Home Affairs Council on 11/12 October 2018 was expected to adopt the first proposed Council Decision—document (a)—authorising the EU sign the Arrangement.

8.5 In our Report agreed on 24 October 2018, we suggested that the position taken by the Government on the non-application of the UK's Title V (justice and home affairs)

51 See Article 37 of Regulation (EU) No 1077/2011 establishing eu-LISA which provides: "Under the relevant provisions of their association agreements, arrangements shall be made in order to specify, inter alia, the nature and extent of, and the detailed rules for, the participation by countries associated with the implementation, application and development of the Schengen acquis and Eurodac-related measures in the work of the Agency, including provisions on financial contributions, staff and voting rights."

52 As the formula for calculating the annual contribution is mainly based on each participating Schengen associated country's GDP as a proportion of the GDP of all participating countries, it may have the effect of reducing the UK's overall contribution to eu-LISA.

53 Article 42 of the new eu-LISA Regulation provides that participation in eu-LISA shall be open to countries associated with the Schengen rule book and Eurodac-related measures on the same basis as Article 37 of the earlier (2011) Regulation establishing eu-LISA.

opt-in Protocol represented a significant departure from existing policy and established precedent. We drew the Minister's attention to a letter dated 3 November 2011 from the then Home Secretary (Rt Hon Mrs Theresa May MP) in which she set out the Government's policy on the interpretation and application of the Title V opt-in Protocol in the following terms:

> We have […] reviewed the UK position on the issue of exclusive external competence and have decided to depart from the policy we inherited from the previous Government. We consider that the opt-in does apply to all measures containing JHA obligations, even where the EU has exclusive external competence in relation to those obligations based on the adoption of internal JHA rules that bind the UK. This means that if an internal EU rule, to which the UK previously opted in, was subsequently extended to a third country we would consider that the opt-in applies to the extension of that measure and would reserve the right to decide whether or not to participate in the new agreement, even if the EU was exercising exclusive external competence.

8.6 We also drew his attention to similar Council Decisions adopted in 2014 concerning the participation of the Schengen associated countries in the European Asylum Support Office when the Government had maintained (despite the Commission and Council taking a contrary view) that the UK's Title V opt-in Protocol applied and insisted on including a statement to that effect in the Council minutes.

8.7 In his letter of 15 January 2018, the Minister informs us that both Council Decisions were adopted at the October 2018 Justice and Home Affairs Council, with the UK abstaining as neither had been cleared from scrutiny. He reiterates the Government's view that neither Decision engages the UK's Title V opt-in for the following reasons:

- the four Schengen-associated countries are already bound by the 2011 Regulation establishing eu-LISA;
- as the UK also participates in the 2011 eu-LISA Regulation, it is required to give effect to Article 37 which provides: "Under the relevant provisions of their association agreements, arrangements shall be made in order to specify, inter alia, the nature and extent of, and the detailed rules for, the participation by countries associated with the implementation, application and development of the Schengen acquis and Eurodac-related measures in the work of the Agency, including provisions on financial contributions, staff and voting rights";
- the Council Decisions simply implement the obligations set out in Article 37 which are already binding on the UK and the four Schengen associated countries—the UK's Title V opt-in therefore does not apply as, in this case, "internal rules are not subsequently being extended to a third country";
- by contrast, the four Schengen-associated countries were not already bound by the 2010 Regulation establishing the European Asylum Support Office (the EASO Regulation) as it is not a Schengen-building measure;
- Article 49 of the EASO Regulation provides that EASO "shall be open to the participation of Iceland, Liechtenstein, Norway and Switzerland as observers.

> Arrangements shall be made, specifying in particular the nature, extent and manner in which those countries are to participate in the Support Office's work…...";

- whilst the terminology is similar to Article 37 of the 2011 eu-LISA Regulation, the Government considers Article 49 of the EASO Regulation to be "fundamentally different in nature";
- Article 49 gives the EU the option to conclude Arrangements with the four Schengen associated countries to enable them to take part in EASO as observers—the EU and Iceland, Liechtenstein, Norway and Switzerland may agree third country Arrangements but are not bound to do so; and
- the UK's Title V opt-in was engaged at the point at which the EU chose to exercise that option.

8.8 The Minister concludes that the position taken by the Government "is not a deviation from the Government's policy on the application of the JHA opt-in".

8.9 In our earlier Report we also asked:

- whether Article 37 of the 2011 eu-LISA Regulation (or its equivalent—Article 42—in the successor Regulation adopted in November 2018) would provide an appropriate legal base for the UK to participate in eu-LISA once it has left the EU, given that it only applies to third countries associated with the Schengen rule book and Eurodac-related measures; and
- whether the terms of the Arrangement with the four Schengen associated countries (including the funding formula, voting rights and jurisdiction of the EU's Court of Justice) would provide a suitable precedent for the UK as a third country.

8.10 The Minister observes:

> The Article [37 or 42] would not provide an appropriate legal base for the UK to participate in eu-LISA once it has left the EU and become a third country. By way of further explanation, it is the Schengen Association Agreements that provide the legal base for the Schengen Associated States to participate in eu-LISA, with Article 37 having provided for technical arrangements underlying that participation to be agreed.

Our Conclusions

8.11 **As we made clear in our earlier Report, we accept that there are strong grounds for extending participation in eu-LISA to the four non-EU Schengen associated countries and we support the objectives of the proposed Council Decisions. The Minister's letter nonetheless illustrates the ever-more complex nuances in the Government's interpretation and application of the Title V (justice and home affairs) opt-in Protocol.**

8.12 **We do not consider that Article 37 of the 2011 eu-LISA Regulation and Article 49 of the 2010 EASO Regulation are so "fundamentally different in nature" as to justify different treatment in the application of the Title V opt-in Protocol. Whilst**

participation in EASO is optional for the four non-EU Schengen associated countries, Article 49 creates an obligation on the EU to enter into an agreement ("Arrangements shall be made") in the event that these countries wish to participate as observers. Article 37 establishes a similar obligation ("Arrangements shall be made"), the only difference being that it is not dependent on a prior request being made by the four non-EU Schengen associated countries to make such Arrangements because they are already bound to so. Both sets of Arrangements must establish the detailed rules for participation which reflect the different status of these countries as non-EU participants in eu-LISA and in EASO. The Arrangements made under Article 37 are not, as the Minister implies, a simple extension of internal EU rules to the four non-EU Schengen associated countries but require some adaptation. It remains our view that the position taken by the Government on the non-application of the UK's Title V (justice and home affairs) opt-in Protocol to these Council Decisions on participation in eu-LISA is a departure from existing policy and precedent.

8.13 **We are grateful to the Minister for clarifying that neither Article 37 of the 2011 eu-LISA Regulation nor Article 42 of the 2018 successor Regulation would provide an appropriate legal base for the UK to participate in eu-LISA as a third country post-exit. We regret that he does not also clarify whether the terms of the Arrangement with the four non-EU Schengen associated countries (including the funding formula, voting rights and jurisdiction of the EU's Court of Justice) would provide a suitable model for UK participation once it also becomes a third country.**

8.14 **As the Council Decisions have been formally adopted, we clear them from scrutiny. We draw our observations to the attention of the Home Affairs Committee and the Justice Committee.**

Full details of the documents:

(a) Proposal for a Council Decision on the signing on behalf of the European Union of the Arrangement with Norway, Iceland, Switzerland and Liechtenstein on participation by those States in the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice: (40044), 11805/18 + ADD 1, COM(18) 607.

(b) Proposal for a Council Decision on the conclusion of the Arrangement with Norway, Iceland, Switzerland and Liechtenstein on participation by those States in the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice: (40045), 11804/18 + ADD 1, COM(18) 606.

Previous Committee Reports

Forty-first Report HC 301–xl (2017–19), chapter 5 (24 October 2018).

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

Department for Business, Energy and Industrial Strategy

Other

(40180) – –	Report on the annual accounts of the Clean Sky Joint Undertaking for the financial year 2017 together with the Joint Undertaking's reply
(40256) 15110/18 COM(18) 769	Report from the Commission to the European Parliament and the Council on the implementation of Decision No 1608/2003/EC of the European Parliament and of the Council on science and technology statistics.
(40286) 15718/18 + ADD 1 COM(18) 838	Communication from the Commission on guidelines to national regulatory authorities on the transparency and assessment of cross-border parcel tariffs pursuant to Regulation (EU) 2018/644 and Commission Implementing Regulation (EU) 2018/1263.
(40298) 15844/18 + ADD 1 COM(18) 816	Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions European Structural and Investment Funds 2014–2020 2018 Summary report of the programme annual implementation reports covering implementation in 2014–2017.

Department for Environment, Food and Rural Affairs

(40250) — —	Commission Implementing Decision of XXX on amending Commission Implementing Decision (EU) No 2017/1984 determining, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases, as regards reference values for the period from 30 March 2019 to 31 December 2020 for producers or importers established within the United Kingdom, which have lawfully placed on the market hydrofluorocarbons from 1 January 2015, as reported under that Regulation.

Department for Exiting the European Union

(40269)
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Court of Auditors Special report No 34/2018: Office accommodation of EU institutions Some good management practices but also various weaknesses.

Foreign and Commonwealth Office

(40237)
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Council Implementing Regulation (EU) 2019/… of XX January 2019 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

(40324)
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Council Decision (CFSP) 2019/… of [dd/01/2019] amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia

(40325)
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Council Implementing Regulation (EU) 2019/… of [dd/01/2019] implementing Regulation (EU) No.101/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia

(40326)
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Council Decision (CFSP) 2019/… of XX January 2019 amending Decision 2014/145/CFSP concerning restrictive measures directed against actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

(40332)
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–

Council Decision (CFSP) 2019/25 amending and updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2018/1084

(40333)
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Council Implementing Regulation (EU) 2019/24 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2018/1071

HM Revenue and Customs

(40261)
15462/18
COM(18) 846

Communication from the Commission to the European parliament, the Council and the European Economic and Social Committee 2nd Action Plan to fight the illicit tobacco trade 2018–2022.

HM Treasury

(40251) 15360/18 COM(18) 787	Report from the Commission on recent developments as regards euro coins
(40262) 15275/18 COM(18) 814	Communication from the Commission: Towards a swift agreement on a long-term budget for Europe's priorities The European Commission's contribution to the European Council meeting on 13–14 December 2018

Office for National Statistics

(38597) 7169/17 COM(17) 114	Business statistics.
(40288) 15709/18 COM(18) 843	Report from the Commission on the implementation of Regulation (EU) No 1260/2013 on European demographic statistics

Formal Minutes

Wednesday 23 January 2019

Members present:

Sir William Cash, in the Chair

Martyn Day	Kelvin Hopkins
Richard Drax	Darren Jones
Marcus Fysh	Mr David Jones
Kate Hoey	Michael Tomlinson

Scrutiny Report

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.

Summary agreed to.

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

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

[Adjourned till Wednesday 30 January at 1.45pm

Standing Order and membership

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

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

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

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

The expression "European Union document" covers—

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

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

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

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

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

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

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

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

Current membership

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

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

Martyn Day MP (*Scottish National Party, Linlithgow and East Falkirk*)

Steve Double MP (*Conservative, St Austell and Newquay*)

Richard Drax MP (*Conservative, South Dorset*)

Mr Marcus Fysh MP (*Conservative, Yeovil*)

Kate Green MP (*Labour, Stretford and Urmston*)

Kate Hoey MP (*Labour, Vauxhall*)

Kelvin Hopkins MP (*Independent, Luton North*)

Darren Jones MP (*Labour, Bristol North West*)

Mr David Jones MP (*Conservative, Clwyd West*)

Stephen Kinnock MP (*Labour, Aberavon*)

Andrew Lewer MP (*Conservative, Northampton South*)

Michael Tomlinson MP (*Conservative, Mid Dorset and North Poole*)

David Warburton MP (*Conservative, Somerton and Frome*)

Dr Philippa Whitford MP (*Scottish National Party, Central Ayrshire*)