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European Scrutiny Committee

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Documents considered by the Committee on 30 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's 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:

- The UK's continued liabilities, under a no deal scenario, for its financial obligations assumed as a Member State;
- The implications of the Commission's Brexit preparedness proposal for the road haulage sector in the event of a No Deal scenario, which would allow permit-free "bilateral carriage" of goods, but not cross-trade or cabotage; and
- Questions regarding the extent to which dormant UK bilaterals regarding road haulage could be reactivated post-exit and operate in parallel to the Commission's proposed Regulation.

Summary

Brexit: coordination of social security and access to healthcare

On the basis of an update provided by the Department for Work & Pensions, the Committee has published a new report on the implications of Brexit for the access of UK nationals in the EU to social security and local healthcare services. It has also considered the state of play in the negotiations on changes to the relevant EU-level regulations that determine when and how EU workers who exercise free movement rights can access unemployment benefits in their new country of residence, which would continue to apply in the UK for many years to come if Parliament ratifies the Withdrawal Agreement.

Not cleared from scrutiny; further information requested; drawn to the attention of the Health and Social Care Committee and the Work and Pensions Committee

VAT rules for online shopping

The European Scrutiny Committee has published a new report on the implications of Brexit for the UK's approach to Value Added Tax, on the basis of new EU proposals on the VAT treatment of online shopping. It implements a decision taken by EU Finance Ministers in 2017 to allow EU business to account for VAT on sales of goods to consumers in another Member States to account for the VAT due domestically, rather than requiring them to register for VAT in every country where they sell their products.

As the Committee has noted on numerous occasions, the way VAT must be accounted for on goods moving between the UK and the EU more generally will change drastically after Brexit, most likely necessitating new forms of customs controls unless the Government can negotiate an unprecedented new UK-EU VAT Agreement.

Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee, the Northern Ireland Affairs Committee and the Treasury Committee

Import restrictions on cultural goods

The Committee has today cleared from scrutiny a new EU Regulation establishing specific customs procedures for the import of cultural goods like archaeological artefacts and artworks to counter trafficking of such objects by criminal groups.

The Committee notes that the new import procedures will apply to cultural goods exported from the UK (Europe's largest art market) to the EU-27 when it leaves the Single Market and Customs Union, although the precise impact of this is not yet clear as the new customs procedures are untested and won't be implemented until 2023. The EU may also look to add the new Regulation to the Irish Protocol, if the 'backstop' ever takes effect.

Cleared from scrutiny; drawn to the attention of the Digital, Culture, Media and Sport Committee and the Northern Ireland Affairs Committee

Brexit-preparedness—continuation of Northern Ireland-Ireland peace and conciliation programmes

The EU and UK have both committed to the continuation of the EU programmes supporting peace and reconciliation on the island of Ireland and north-south cooperation under the Good Friday Agreement. While the current arrangements would automatically continue under the proposed Withdrawal Agreement, the EU has proposed this measure to ensure that arrangements are in place under a "no deal" Brexit. The Government is supportive. The only concern raised is around language in the proposal around the UK's continued liabilities for its financial obligations assumed as a Member State. While the Government broadly accepts the principle, it considers that the matter of the UK's financial obligations in the event of a no deal should be considered separately and that this particular legislation should focus on the specific arrangements for these programmes. The Committee retained the proposal under scrutiny while clarifying whether the UK managed to negotiate any changes to the text. It waived the scrutiny reserve to allow the Government to signal its support to avoid any disruption to these programmes.

Not cleared; but scrutiny waiver granted; further information requested; drawn to the attention of the Northern Ireland Affairs Committee

Brexit and EU-US data exchange

This is the second annual report on the 2016 data adequacy decision known as Privacy Shield. This Commission implementing decision approved the Privacy Shield Framework as providing adequate legal protection for the transfer of data from the EU to US companies. The framework was developed by the US government and the Commission

in support of EU-US transatlantic commerce. It replaced the "Safe Harbor" adequacy decision after it was invalidated by the CJEU in Schrems. This second review follows up on the recommendations made after the first review and also makes some additional ones.

Privacy Shield is important for UK companies trading with the US. This second review serves as a reminder of what the UK may need to do to obtain and maintain an adequacy decision once it is no longer treated as a Member State by EU law. Particularly in the light of the more pessimistic tone of the response of the European Data Protection Board which has also just been published.

As the US has issued guidance on how data can be exchanged by the US and the UK once EU law no longer applies to the UK, we also ask the Government about the position in respect of other third countries who have an EU adequacy decision. We note recent adoption of the EU-Japan adequacy decision and ask the Government for further clarification of the claim that the decision entails reciprocal recognition by the EU and Japan of each other's levels of data protection. We also request an update on legal challenges to Privacy Shield. Finally, we acknowledge the Government's response which has just been received on related questions about EU-UK data exchange. These were outstanding from our 12 September Report and the ensuing debate in European Committee on 23 October.

As these data-related issues have been the subject of extensive previous scrutiny, we clear this non-legislative document from scrutiny. In any case, we shall be considering these issues and any response to this Report again when we publish a report on the latest Government letter.

Cleared from scrutiny; further information requested; drawn to the attention of the Digital Culture, Media and Sport Committee, the Exiting the EU Committee, the Science and Technology Committee, the Home Affairs Committee

Control of exports of dual-use items

The proposed recast Regulation (document (a)) aims to modernise and strengthen the current Regulation for export controls on dual-use items (i.e. goods, including software and technology, which can have both civil and military applications). This includes measures to help prevent human rights violations associated with certain cyber-surveillance technologies. The Government remains opposed to key aspects of the proposal, including the proposed introduction of an autonomous (EU-specific) list of dual-use cyber-surveillance technologies of concern, which would depart from the established practice to date of deriving control lists from the various multilateral export control regimes. The second proposed Regulation (document (b)) would update the existing dual-use Regulation in a 'no deal' scenario, by including the UK as a permitted destination in the EU's simplified export licence (General Export Authorisation EU001). The Government welcomes this "operational contingency action".

Further to the Committee's previous request for an updated assessment of the expected shape of the UK's post-exit dual-use export control regime in all foreseeable Brexit scenarios, we note that:

- in a no-deal scenario, licences will be required to export dual-use items to the EU and vice versa, but that both the EU and UK intend to implement simplified

licensing schemes (in the form of a new Open General Export Licence for UK operators, and the addition of the UK to the EU's General Export Authorisation EU001) in order to minimise additional burdens for UK/EU operators exporting to the EU/UK;

- during the scheduled transition period (if the Withdrawal Agreement is ratified), the UK would have to apply the recast Regulation if it enters into force during this time. We ask the Minister to set out the expected costs/benefits of its application during the backstop arrangement; and

- post-exit/transition, the Government intends to seek continued cooperation with the EU in certain areas (such as sharing information on denied licences). We ask the Minister to clarify when the Government will complete a cost-benefit assessment on future alignment or divergence from the EU dual-use regime and the extent to which it will inform the UK's negotiating mandate for the future relationship.

Document (a): Not cleared from scrutiny; further information requested; drawn to the attention of the International Trade Committee, the Committees on Arms Export Controls and the Joint Committee on Human Rights. Document (b): Cleared from scrutiny; drawn to the attention of the International Trade Committee, the Committees on Arms Export Controls and the Joint Committee on Human Rights

EU Fund for Aid to the Most Deprived

This EU Fund, established in 2014, provides for the delivery of aid (such as food, clothing and basic consumer goods) and social inclusion projects to those furthest from the labour market and at greatest risk of material deprivation and/or social exclusion. The Commission's report on the implementation of the Fund in 2016 reveals that the UK is the only one of 28 Member States which still does not have an operational programme in place to deliver the aid. The delay means that the UK has lost £600,000 of the UK's total allocation of funding (€3.96 million for the period 2014–20). The Government explains that its original plan to use the fund to support school breakfast clubs in deprived areas foundered because the Commission's eligibility requirements were too onerous. The Home Office took over responsibility for the Fund in September 2018, having made a successful bid for funding to support refugees and victims of modern slavery. It anticipates that the programme and Fund will be operational in the UK by the end of the year. The European Scrutiny Committee notes that the Fund's eligibility requirements and administrative burdens do not appear to have been an obstacle to successful implementation elsewhere in the EU. Whilst not in a position to attribute responsibility for the evident lapse in cross-Government planning and coordination, the Committee draws the European Commission report to the attention of other relevant Select Committees in case they wish to examine the matter further. It intends to hold the report under scrutiny pending further assurance from the Government that the UK's operating programme for the remaining €2.9 million has been completed and approval obtained from the European Commission. The Government is also asked to explain how the UK's exit from the EU—whether with or without a deal—will affect the UK's continued eligibility for the Fund until it expires at the end of 2020.

Not cleared from scrutiny; further information requested; drawn to the attention of the Education Committee, Home Affairs Committee and Work and Pensions Committee

Exchanging information on criminal convictions

The Government confirms that the Council and European Parliament have reached agreement on changes to the European Criminal Records Information System—ECRIS—which enables Member States to exchange information on the previous convictions of EU citizens so that they can be taken into account in criminal proceedings throughout the EU. The changes would make ECRIS a more effective tool for exchanging information on the offending history of non-EU citizens through the creation of a central EU information system (ECRIS-TCN) containing the biographical and fingerprint data of third country nationals convicted in the EU. The UK participates fully in ECRIS and the Government is keen to support the proposed changes when they are brought to the Council for formal adoption. The European Scrutiny clears the proposals from scrutiny whilst making a number of observations about the UK's future relationship with ECRIS in the event of a "deal" or "no deal" exit from the EU. The Committee also requests regular progress reports on negotiations for a post-exit EU/UK internal security treaty.

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

Ending seasonal changes of time

The European Commission has proposed a Directive which would discontinue the twice-yearly clock changes in March and October and require each Member State to decide whether to observe permanent summer time (GMT+1 in the UK) or standard (GMT) time all year round. Neither the proposed Directive nor existing EU law affects the choice of time zone which would remain a Member State competence. The European Scrutiny Committee has expressed concern that the proposal, which cites an internal market legal base, could result in more rather than less variation in time across the EU than under the current arrangements. The Government continues to oppose the proposed Directive. In its latest progress report, the Government explains that the Presidency does not intend to prioritise the proposal, meaning that there is no prospect of it being agreed before the UK's expected exit date from the EU on 29 March. The Government also questions whether the internal market legal base is appropriate. The Committee asks whether other Member States share the Government's legal base concerns and whether an opinion has been sought from the Council Legal Service. It also asks for the Government's view on any changes put forward by the European Parliament.

Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Exiting the European Union Committee

Commission Brexit preparedness proposal: road haulage

The Commission has adopted a time-limited contingency measure which would apply in a No Deal scenario. The Regulation, which is not, strictly speaking, a mini-deal, in that it is an EU27 measure applicable to the Member States rather than a bilateral agreement, would grant UK hauliers the right to provide bilateral carriage haulage services to and from the EU on a time-limited basis (for a nine-month period). While this would be beneficial for the UK, for which reason the Minister (Jesse Norman MP) is supportive of the proposal, UK hauliers would also lose their internal market rights to quota-free cross-trade and cabotage, which the Minister notes would have a negative impact on their efficiency.

The market access provided by the proposal is conditional on the compliance of the Government and UK hauliers with a wide range of conditions (e.g. compliance with EU legal acts including the driver's hours rules and rules established by Member States under the Posting of Workers Directive, and provisions on fair competition and subsidies) designed to ensure that UK hauliers do not have a competitive advantage vis-à-vis their EU counterparts. The Commission would be given a monitoring role to verify compliance with these conditions, and the power to take corrective measures (including the reduction of market access or suspension of the Regulation) through delegated acts. Somewhat counterintuitively, the EU thus proposes to import "level playing field"-type requirements into the operation of the unilateral contingency measures it would employ in the event of a No Deal scenario. However, the Committee noted that the EU (Withdrawal) Act 2018 meant that EU law would be largely retained at the moment of exit, and that it was therefore unlikely that the question of whether the UK complied with these conditions would arise during the period for which the measure would apply.

The Regulation proposes to prevent Member States from agreeing separate bilateral agreements with the UK which would grant UK hauliers any rights additional to those provided for in the Regulation. However, the extent of this restriction is unclear. It could apply very narrowly to the question of bilateral carriage, in which case the UK could negotiate new arrangements with some of the Member States, and existing bilateral agreements would potentially be able to be reactivated: either possibility would further mitigate the impact of a non-negotiated exit. However, it is clear from reports of a disagreement between the Commission and some of the Member States (including France), who wish to be able to conclude more preferential arrangements with the UK, that the Commission intends for these provisions to be more restrictively interpreted. As a consequence of this disagreement the proposal has been removed from the relevant Transport Working Party to the Article 50 workstream, on which the UK is not represented.

Strangely, the Minister, despite having previously raised these bilateral agreements as an issue in relation to a separate road haulage file, did not mention them in his Explanatory Memorandum regarding this proposal. The Committee therefore issued a reprimand to the Minister in its conclusions and requested that he provide detailed additional information on this point.

Not cleared from scrutiny; further information requested; drawn to the attention of the Transport Committee, the Business, Energy and Industrial Strategy Committee and the Exiting the European Union 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: VAT rules for online shopping [Proposed (a)(c) Directive; (b)(d) Regulation (NC)]; Ending seasonal changes of time [Proposed Directive (NC)]; Commission Brexit preparedness proposal: road haulage [Proposed Regulation (NC)]

Committees on Arms Export Controls: Control of Exports of Dual-Use Items [Proposed Regulations (a) (NC); (b) (C)]

Digital, Culture, Media and Sport Committee: EU-US commercial data transfers: second review of Privacy Shield [Report (C)]; VAT rules for online shopping [Proposed (a) (c) Directive; (b)(d) Regulation (NC)]; Import of cultural goods [Proposed Regulation (C)]

Education Committee: EU Fund for Aid to the Most Deprived [Commission Report (NC)]

Environment, Food and Rural Affairs Committee: Fisheries Control [Proposed Regulation (NC)]

Exiting the EU Committee: EU-US commercial data transfers: second review of Privacy Shield [Report (C)]; Exchanging information on criminal convictions [Proposed (a) Directive; (b) Regulation (C)]; Ending seasonal changes of time [Proposed Directive (NC)]; Commission Brexit preparedness proposal: road haulage [Proposed Regulation (NC)]

Health and Social Care Committee: Brexit: coordination of social security and access to healthcare [Proposed Regulation (NC)]

Home Affairs Committee: Stronger EU rules on the return of illegal migrants [Proposed Directive (NC)]; EU-US commercial data transfers: second review of Privacy Shield [Report (C)]; Exchanging information on criminal convictions [Proposed (a) Directive; (b) Regulation (C)]; EU Fund for Aid to the Most Deprived [Commission Report (NC)]

International Trade Committee: Control of Exports of Dual-Use Items [Proposed Regulations (a) (NC); (b) (C)]

Joint Committee on Human Rights: Control of Exports of Dual-Use Items [Proposed Regulations (a) (NC); (b) (C)]

Justice Committee: Exchanging information on criminal convictions [Proposed (a) Directive; (b) Regulation (C)]

Northern Ireland Affairs Committee: Brexit-preparedness—continuation of territorial cooperation programmes [Proposed Regulation (NC); scrutiny waiver granted)]; VAT rules for online shopping [Proposed (a)(c) Directive; (b)(d) Regulation (NC)]; Import of cultural goods [Proposed Regulation (C)]

Science and Technology Committee: EU-US commercial data transfers: second review of Privacy Shield [Report (C)]

Transport Committee: Commission Brexit preparedness proposal: road haulage [Proposed Regulation (NC)]

Treasury Committee: VAT rules for online shopping [Proposed (a)(c) Directive; (b)(d) Regulation (NC)]

Work and Pensions Committee: Brexit: coordination of social security and access to healthcare [Proposed Regulation (NC)]; EU Fund for Aid to the Most Deprived [Commission Report (NC)]

1 Ending seasonal changes of time

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Committee on Exiting the European Union
Document details	Proposal for a Directive discontinuing seasonal changes of time and repealing Directive 2000/84/EC
Legal base	Article 114 TFEU, ordinary legislative procedure, QMV
Department	Business, Energy and Industrial Strategy
Document Number	(40063), 12118/18 + ADD 1, COM(18) 639

Summary and Committee's conclusions

1.1 The proposed Directive would discontinue the twice-yearly clock changes in March and October and require each Member State to decide whether to observe summer time (GMT+1 in the UK) or standard (GMT) time all year round. The European Commission believes that Member States should themselves decide whether their citizens live in permanent summer or winter time, describing it as "a question of subsidiarity".[1] Its proposal would repeal the current EU law which requires Member States to move their clocks forward by an hour on the last Sunday in March and move them back by an hour on the last Sunday in October.[2] Under the proposed new EU law, each Member State would have to decide whether to opt for permanent summer or winter time arrangements, without the possibility of introducing any seasonal variation in subsequent years. The European Commission is keen to secure the formal adoption of the proposed Directive no later than March 2019 so that its provisions take effect in national law by 1 April 2019 (ahead of the next European Parliament elections in May 2019). If the draft EU/UK Withdrawal Agreement is ratified, the UK would be required to implement the Directive during a post-exit transition/implementation and to decide by 27 April 2019 whether to switch permanently to British Summer Time (GMT+1) or to remain on standard (GMT) time.

1.2 In her Explanatory Memorandum of 11 October 2018, the Parliamentary Under-Secretary of State at the Department for Business, Energy and Industrial Strategy (Kelly Tolhurst MP) accepted that the legal base for the proposed Directive—Article 114 TFEU—was appropriate "to advance the harmonisation of the single market" but questioned whether the proposal would achieve this objective or whether the European Commission had demonstrated a strong evidence base to support the ending of seasonal time changes.

1.3 We shared the Government's concern and the House of Commons, acting on our recommendation, issued a Reasoned Opinion on 13 November 2018. The House of Lords and the Danish Parliament each issued a Reasoned Opinion but the threshold needed to

1 See the State of the Union speech made by the European Commission President Jean-Claude Juncker in September 2018.

2 The current rules on summertime arrangements are set out in Council Directive 2000/84/EC.

trigger a formal review of the proposal by the European Commission has not been met. Our earlier Reports (listed at the end of this chapter) provide a detailed overview of the proposed Directive and the reasons why the House of Commons determined that it failed the subsidiarity test.

1.4 As well as voicing our concerns about subsidiarity, we noted that the changes proposed in the Directive risked creating four functional time zones (GMT+3), resulting in greater variation than under the current arrangements.[3] We asked the Minister to explain how a legal base which seeks to approximate laws affecting the functioning of the internal market could be used to create more rather than less divergence and whether the Government had sought advice from the Council Legal Service on the use of Article 114 TFEU to this end.

1.5 Whilst the Government had made clear its determination to work with other Member States to oppose the proposed Directive, we noted that it was uncertain whether this objective would be achieved, meaning that the UK might still be required to implement the Directive, once adopted, during any post-exit transition/implementation period agreed as part of the UK's exit negotiations. We asked the Minister to update us on the progress of negotiations and to ensure that we would have the opportunity to consider any compromise Presidency text before it was brought to the Council or COREPER to agree a General Approach or a negotiating mandate. We also urged the Government to:

- press the Commission for a full Impact Assessment;
- provide further details of the consultation undertaken with the Devolved Administrations and their views on the Commission proposal or any compromise text being considered by the Council; and
- share with us details of the European Parliament's position (once established) and the Government's view on any changes proposed.

1.6 In her letter of 21 January 2019, the Minister informs us that a revised Austrian Presidency text considered by Transport Ministers in December 2018 would push back the date for implementing the proposed Directive by two years to April 2021, making it less likely that it would apply to the UK during any post-exit transition/implementation period. The revised text would also extend from six to 18 months the period for notifying the European Commission of any change in a Member State's time zone, preventing Member States from applying seasonal time changes simply by notifying a change in time zone every six months. Whilst supporting any change which would delay the implementation of the proposed Directive, the Minister reiterates her continued opposition to its content. She says there was no substantial discussion at the Transport Council, but a general recognition that Member States would need more time to formulate a position, with some expressing concern about the potential for new time borders with neighbouring countries.

1.7 The Romanian Presidency (in office since January 2019) does not intend to organise any Council working groups during the first three months of its Presidency. The Minister

3 There are three standard time zones within the EU: Western European or Greenwich Mean Time (GMT) covering the UK, Ireland and Portugal; Central European Time (GMT+1) covering 17 Member States; and Eastern European Time (GMT+2) covering eight Member States. Existing EU law coordinates the dates on which seasonal time changes begin and end, meaning that there is never more than two hours' difference in time across all EU Member States. Depending on the decisions taken by each Member State, the proposed Directive could create further variation (GMT+3) in some parts of the EU.

anticipates that the Presidency may indicate how it intends to proceed at the informal Transport Council on 26–27 March 2019 and undertakes to update us on any progress in negotiations, adding that it is as yet unclear whether the Presidency will seek to secure a General Approach at the Transport Council on 6 June 2019. The Government has written to "several" Member States that either oppose the proposed Directive or have yet to reach a final view and is part of "a like-minded group of Member States" opposing the measure.

1.8 Turning to the legal base for the proposed Directive, the Minister observes that Article 114 TFEU "is a far-reaching power that can be used to harmonise national laws in a wide variety of areas" but adds that it is not unlimited:

> It is not enough simply to show that there are disparities between national laws (or as in this case that some Member States are unsatisfied): it must also be shown that removing those disparities (or changing the means of harmonisation) would improve the functioning of the internal market. This means that the Commission does not have a general power to regulate the internal market, and measures must genuinely have as their object the improvement of the conditions for the establishment and functioning of the internal market. Whilst Article 114 is the correct legal base to bring forward proposals such as these, there are legitimate concerns that these specific proposals do not improve the functioning of the internal market. The Commission has produced insufficient evidence to justify the need [for] the change. Therefore, in the Government's view, the use of Article 114 to advance these proposals is not justified. We have raised these points in Council negotiations.

1.9 The Minister confirms that the Government has written to the Devolved Administrations ("DAs") and that "all three DAs support the UK Government position that the current system of daylight saving should be maintained". She continues:

> The Scottish Government believes that the proposed Directive would create practical difficulties for those making a living in northern and rural areas. They have told us that the proposed Directive would have a particular impact on the farming community and other outdoor workers and could also have a negative effect on Scottish rural business in general. The Welsh Government is concerned about the Directive's potential impact on various aspects of life in Wales including agriculture, energy, health, schools and transport. Officials in the Northern Ireland Executive have similar concerns.

Our Conclusions

1.10 **We thank the Minister for undertaking to provide us with regular progress reports on negotiations. As she will be aware, we have consistently questioned whether an internal market legal base—Article 114 TFEU—can or should be used for a measure which risks creating more rather than less divergence in the operation of rules governing the internal market. In her next update, we ask the Minister to indicate whether other Member States share this concern and whether the opinion of the Council Legal Service has been sought. We also ask her whether any headway has been made in pressing the Commission to publish a full Impact Assessment.**

1.11 **As we stated in our earlier Report agreed last November, we expect to consider any compromise Presidency text before it is brought to the Council or COREPER to agree a General Approach or a negotiating mandate. We would also welcome details of the European Parliament's position once it has been established and the Government's position on any changes it proposes.**

1.12 **Pending further information, the proposed Directive remains under scrutiny. We draw this chapter to the attention of the Business, Energy and Industrial Strategy Committee and the Committee on Exiting the European Union.**

Full details of the documents

Proposal for a Directive discontinuing seasonal changes of time and repealing Directive 2000/84/EC: (40063), 12118/18 + ADD 1, COM(18) 639.

Previous Committee Reports

Forty-sixth Report HC 301–xlv (2017–19), chapter 4 (28 November 2018) and Forty-second Report HC 301–xli (2017–19), chapter 1 (31 October 2018).

2 Brexit-preparedness—continuation of territorial cooperation programmes

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; but scrutiny waiver granted; further information requested; drawn to the attention of the Northern Ireland Affairs Committee
Document details	Proposal for a Regulation of the European Parliament and of the Council in order to allow for the continuation of the territorial cooperation programmes PEACE IV (Ireland-United Kingdom) and United Kingdom-Ireland (Ireland-Northern Ireland-Scotland) in the context of the withdrawal of the United Kingdom from the European Union
Legal base	Article 178 TFEU, QMV, Ordinary legislative procedure
Department	Business, Energy and Industrial Strategy
Document Number	(40297), 15847/18, COM(18) 892

Summary and Committee's conclusions

2.1 EU territorial cooperation programmes promote regional cooperation across borders within the EU. They include the PEACE programme, specifically designed to support cooperation across the Irish border, and the INTERREG (inter-regional cooperation) programmes.

2.2 This proposal aims to ensure, in the event of a "no deal" Brexit scenario, the continuation of two bilateral cooperation programmes involving Ireland, namely the latest iteration of the PEACE Programme (known as "PEACE IV") and the United Kingdom-Ireland INTERREG VA programme (involving Ireland, Northern Ireland and Scotland), without modifying the amounts allocated to them and their financing. These are programmes supporting peace and reconciliation and North-South cooperation under the Good Friday Agreement.

2.3 The proposal will modify the programme regulations to allow the UK to continue to participate if the EU Withdrawal Agreement is not ratified. This is in line with the Joint UK-EU Report[4] of December 2017 in which both the UK and EU promised to honour their commitments to these programmes until the end of 2020.

2.4 The two programmes will continue to be financed from the Union's budget, subject to a contribution from the UK. The recitals of the proposal are clear that the UK "remains liable for its financial obligations assumed as a Member State which relate to these [PEACE and INTERREG VA] legal commitments of the Union". There will also need to be an agreement between the Commission and the UK regarding control and audit.

4 Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union.

2.5 On the financing element, the Parliamentary Under Secretary of State (Lord Henley) notes[5] that the Government has always recognised that the UK has obligations to the EU, and the EU obligations to the UK, that will survive the UK's withdrawal—and that these would need to be resolved in the event of a no deal. This matter would, he says, need to be considered in the round, whereas this Regulation deals with the arrangements required to enable the continuation of specific programmes. Given this, the Minister considers that it would be more appropriate for the Regulation to focus on the specific measures required to enable the continuation of these programmes.

2.6 The Minister notes that it is proposed to continue the current management arrangements under which the PEACE and INTERREG VA programmes are managed by the Joint North-South body, the Special EU Programmes Body (SEUPB). The Department of Finance of Northern Ireland would continue to audit the programmes.

2.7 The Minister emphasises that the proposal represents a special arrangement recognising the sensitivities and shared commitments in relation to these two programmes. It is a mitigating proposal that will come into force the day following exit day but will only apply if the EU Withdrawal Agreement is not ratified. Swift adoption is expected.

2.8 **The Minister draws attention to the proposal's wording about the UK's continued liabilities for its financial obligations assumed as a Member State. He appears to consider that the wording could be interpreted as applying this principle to all of the UK's financial obligations assumed as a Member State rather than purely to those relating to these two programmes. We ask the Minister to clarify whether the Government has sought any changes to the wording and, if so, whether any changes were agreed.**

2.9 **We retain the proposal under scrutiny but, considering the urgency of the proposal and the desirability of continuing these programmes under all Brexit scenarios, we waive the scrutiny reserve to allow the Government to lend its support to the draft Regulation. We draw this chapter to the attention of the Northern Ireland Affairs Committee.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council in order to allow for the continuation of the territorial cooperation programmes PEACE IV (Ireland-United Kingdom) and United Kingdom-Ireland (Ireland-Northern Ireland-Scotland) in the context of the withdrawal of the United Kingdom from the European Union: (40297), 15847/18, COM(18) 892.

Previous Committee Reports

None.

5 Explanatory Memorandum dated 18 January 2019.

3 Fisheries Control

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control
Legal base	Article 43(2) TFEU; Ordinary legislative procedure; QMV
Department	Environment, Food and Rural Affairs
Document Number	(39822), 9317/18 + ADDs 1–3, COM(18) 368

Summary and Committee's conclusions

3.1 The EU's current fisheries control regime dates back to 2009, and thus pre-dates the 2013 reform of the Common Fisheries Policy (CFP). Last summer, the Commission proposed substantial changes, including provisions to align the control regime with aspects of the reformed CFP, such as the landing obligation ("discard ban").

3.2 When we first considered the proposal,[6] at our meeting of 12 September 2018, we sought clarity on the Government's concerns, including about the compatibility of new provisions on sanctions with the law of England and Wales and of Scotland. We also noted that the proposal could have significant implications for the UK post-Brexit as the rules would apply to UK vessels fishing in EU waters and the traceability requirements would apply to imports into the EU.

3.3 The Minister for Agriculture, Fisheries and Food (George Eustice MP) has written[7] in response to our queries and to update us on developments.

3.4 In relation to the potential incompatibility of the sanctions changes with the law of England and Wales and with the law of Scotland, the Minister notes that sanctions for serious infringements are a matter of national competence and can only be determined by a UK court and therefore this should not form part of any proposals by the EU. He adds that this is not a concern that is exclusive to the UK. It has been raised by other EU Member States who also believe it is a matter for national competence and should be excluded from the legislation.

3.5 The Minister clarifies that, post-Brexit, the UK would take a similar approach to that of other third countries, such as Norway and Iceland, in its engagement with the EU on sanctions. The UK Fisheries Administrations would be responsible for UK vessels, both

6 Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 7 (12 September 2018).
7 Letter from George Eustice MP to Sir William Cash MP dated 15 January 2019.

in UK waters and in the waters of other EU Member States. UK Fisheries Administrations would therefore decide how they would manage serious infringements and impose sanctions on their vessels.

3.6 The Minister confirms that stakeholders are supportive of actions to simplify the control system but that:

- the fishing industry has raised concerns about a level playing field and also has concerns regarding the practicality of some of the proposals, such as monitoring of the smaller under-12-metre vessels and privacy issues related to data collection and sharing; and
- the main concern of non-governmental organisations has been the lack of consistency across Member States in implementing the current rules and variance of sanctions across Member States.

3.7 Concerning alternative approaches to those proposed by the Commission, the Minister notes:

- the UK Government is investigating the use of alternative technology solutions to control and enforce UK waters—England has a Tech and Innovation project[8] looking at this area of work;
- in England, responses to the recent public consultation on the introduction of inshore vessel monitoring for the under 12 metre fleet are being reviewed;
- each of the UK's Fishing Administrations has research projects underway that are seeking to improve the data available on fishing activity—they are considering how new technical measures could enhance and strengthen control and enforcement measures;
- the Inshore Fisheries Conservation Authorities are critical to the management of English waters, and currently take measures to control the impact of recreational fishing;
- where data indicate that recreational sea angling may have an impact on failing stocks, the evidence will be considered at UK level to determine whether any further management measures will be required; and
- Fully Documented Fisheries (FDF) schemes are trialling the use of remote electronic monitoring (REM) as a cost-effective measure for monitoring the implementation of the landing obligation. Data from these schemes is also being used for scientific monitoring/data gathering purposes. Future use of REM will continue to progress this multipurpose approach to data collection.

3.8 Turning to the future, the Minister expects that, post-Brexit, most fish and fish products will require a catch certificate for import or export between the UK and EU. In the case of a deal between the UK and the EU, a common rulebook for goods including agri-food would be maintained, with the UK making an upfront choice to commit by treaty to ongoing harmonisation with EU rules on goods, covering only those necessary

8 Innovative Technological Solutions for Sea Fisheries Control and Enforcement, NLA International, 10 May 2018.

to provide for frictionless trade at the border. The Minister is not clear that the revised control rules would form part of that rulebook. Such matters will not, in any event, be clear until the EU and UK have negotiated their future relationship.

3.9 On the negotiation of the draft Regulation, the Minister says that other Member States have raised concerns with regard to the proposals that are similar to those of the UK. These include: concerns over the introduction of measures on recreational fishing (i.e. Spain); that changes to sanctions are a matter of national competence and should not form part of the review (i.e. France and Finland); and changes to continuous engine power testing. The introduction of vessel monitoring to the under 12 metre fleet (i.e. Finland) and any remote electronic monitoring are also not supported by some Member States.

3.10 **The Minister has responded comprehensively to the queries that we raised in our Report of 12 September 2018. We re-iterate our observation that the proposal has significant implications for the UK post-Brexit given that its provisions will largely apply to UK vessels operating in EU waters post-Brexit and as the traceability requirements will apply to seafood imports into the EU from the UK.**

3.11 **We note that there are shared concerns among Member States and we anticipate that agreement is not imminent. We ask that the Minister update us on the progress of negotiations, including on the prospects for agreement before the European Parliament (EP) rises in April 2019 for the next EP election. We draw this report to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents

3.12 Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control : (39822), 9317/18 + ADDs 1–3, COM(18) 368.

Previous Committee Reports

Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 7 (12 September 2018).

4 Commission Brexit preparedness proposal: road haulage

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Transport Committee; the Business, Energy and Industrial Strategy Committee; and the Exiting the European Union Committee
Document details	Proposal for a Regulation of the European Parliament and of the Council on common rules ensuring basic road freight connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union
Legal base	Article 91(1) of the Treaty on the Functioning of the European Union (TFEU); ordinary legislative procedure; QMV
Department	Transport
Document Number	(40307), 15843/18, COM(18) 895

Summary and Committee's conclusions

4.1 On 19 December 2019, as part of the European Union's preparations for a possible non-negotiated withdrawal of the UK from the EU on 29 March 2019, the European Commission published a proposal for a Regulation which, subject to a wide range of level playing field-type conditions, would temporarily (for a period of nine months) mitigate some of the consequences of a non-negotiated EU exit for UK road transport operators.

4.2 By way of background (analysis of the proposed Regulation continues from paragraph 6), in the event of a non-negotiated UK withdrawal from the European Union on March 29 2019, the EU rules governing the carriage of goods by road (principally Regulation (EC) 1072/2009) would cease to apply to the UK on 30 March 2019.[9] UK hauliers' EU Community Licences would become invalid and they would lose the preferential levels of reciprocal market access these licences provide, including the right to provide quota-free bilateral carriage (between the home country and another EU country), the right to provide quote-free cross-trade (carriage between two EU countries from an operator in a third EU country), the right to quota-free transit to and from non-EU Member States, as well as their intra-EU cabotage rights (carriage between two points solely within the territory of another EU Member State, currently up to a maximum of three journeys within seven days of delivery). The mutual recognition of certifications, authorisations and licences applicable to companies, drivers and vehicles in the sector would also cease to apply.

9 Further information about these implications for market access are set out in the Government's guidance on the implications for commercial road haulage if there is no Brexit deal, the Commission's technical notice on the legal implications of this scenario, and chapter 8 in the European Scrutiny Committee's report of 6 June 2018.

4.3 In this scenario, some UK hauliers would have access to European Conference of Ministers of Transport (ECMT) permits which would provide significant levels of substitute market access for these operators. However, as we have previously noted,[10] this scheme primarily seeks to incentivise improvements in road safety and environmental standards, is accordingly only designed to provide for approximately 5–10% of international road haulage in Europe (approximately 1,000 annual permits will be available to UK operators) and would therefore only provide a fraction of the international access which UK industry would require to meet its needs. Because of the limited nature of the ECMT scheme, the Commission's Explanatory Memorandum concludes that the loss by UK and EU operators of their right to provide road freight transport between the United Kingdom and the Member States "would therefore result in serious disruptions including in respect of public order", and concludes that "it is therefore appropriate for the Union to adopt temporary and time limited contingency measures to mitigate such potentially disruptive effects for connectivity."[11]

4.4 Curiously, neither the Commission's nor the Government's Explanatory Memoranda mention the many bilateral agreements which are in place between the Government and individual EU Member States, which have in recent years been superseded by the effects EU Membership, but could in principle be reactivated post-Brexit. The Minister has previously informed the Committee, in relation to a separate proposal, that the Government "expects many bilateral agreements with EU countries [which predate the introduction of the EU road transport acquis, or were agreed with countries which subsequently acceded to the EU] to be reinstated once EU law ceases to apply and intends to seek agreements with other countries where there is not a historical arrangement that can be relied upon".[12] He also suggested that some of these agreements would require permits while others would not, and that the Department would need to take some further steps to bring old bilateral agreements into effect. The Department for Transport's published No Deal guidance for the sector, *Commercial road haulage in the EU if there's no Brexit deal*,[13] also referenced these bilateral agreements, which cautioned that the timing for bringing previous bilateral agreements with individual EU countries back into force and concluding new ones and the number of permits available under them (where this is a requirement) "cannot be guaranteed". It also subsequently published updated guidance published on 19 January 2019 which stated that, in a No Deal scenario, "the UK government is confident it can negotiate new bilateral agreements or reinstate old ones with EU countries to provide haulage access."[14] The Haulage Permits and Trailer Registration Act 2018 puts in place arrangements to allocate permits required for international journeys, whether issued under ECMT or other bilateral arrangements.

4.5 As documented in our recent report on the market pillar of the mobility package,[15] sectoral stakeholders including the FTA and the RHA are concerned at the prospect of the introduction of any permit-based system, because of the reduction in market access

10 Thirtieth Report HC 301–xxix (2017—19), chapter 8 (6 June 2018).
11 Proposal for a Regulation of the European Parliament and of the Council on common rules ensuring basic road freight connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union COM(2018) 895.
12 Forty-Sixth Report HC 301–xlv (2017—2019), chapter 6 (28 November 2018).
13 Department for Transport, Guidance: Commercial road haulage in the EU if there's no Brexit deal (24 September 2018).
14 Department for Transport, Guidance: Requirements for UK commercial drivers driving abroad from 29 March 2019 (19 January 2019).
15 Thirtieth Report HC 301–xxix (2017—2019), chapter 8 (6 June 2018).

this would entail, which would reduce their efficiency, as well as the administrative costs permit schemes entail. The Road Haulage Association (RHA) has estimated[16] that "a simple bilateral permit system will add approximately £53 per movement in and out of the UK for UK operators and about £26 for EU operators", and that such an arrangement would "impact greatly on the costs of services provided and also create impediments for the smooth and effective movement of goods."[17] The Road Haulage Association concluded that this would be the worst possible outcome for the UK and that there were no benefits for either the haulage industry or supply chains arising from the introduction of a system of bilateral permits.

4.6 Returning to the Commission's proposal for a Regulation, the measure would temporarily allow the most basic form of haulage—bilateral carriage, or point-to-point operations, between the UK and the EU and vice-versa—to continue without the need for a quota-based system of permits to operate, while removing UK hauliers' internal market rights relating to providing cross-trade and cabotage services within the EU.[18] UK hauliers would thus retain the ability to deliver goods to and from EU27 countries, but would not be able to undertake carriage of goods from one EU27 country to another, or within any one EU27 country—operations which, at present, improve the efficiency of hauliers by enabling them to, for example, minimise empty loads on return journeys from international destinations. The proposal does not address the wider range of fiscal and regulatory customs controls which would take place at the EU's external borders with which UK exporters would have to comply, and which can be anticipated to impact the operations of hauliers, to the extent that the Government's No Deal guidance[19] advised businesses to consider other modes of transporting goods in the event of a non-negotiated exit.

4.7 The proposed Regulation would enter into force only in case of a non-negotiated withdrawal of the United Kingdom from the European Union and would be effective from 30 March 2019 until 31 December 2019.

4.8 The proposal is not a "mini-deal" (a bilateral sectorial international agreement between the UK and the EU) but a unilateral measure of the EU27 which is directly applicable to the Member States, which specifies the level of access hauliers from a third country (the UK) will be granted to the EU market and the conditions of this access.

4.9 The rights granted to UK operators are conditional on the UK conferring 'equivalent rights' (including, e.g. limiting driving hours) on UK hauliers as Union road haulage operators. UK hauliers would have to continue to comply with seven EU legal acts listed in Article 4 of the proposal, such as the driver's hours rules, the requirement for vehicles to be fitted with tachographs, and rules established by Member States under the Posting of Workers Directive. The Regulation establishes a mechanism (Article 5) whereby the Commission will monitor these conditions to ensure that the rights enjoyed by Union road haulage operators in the United Kingdom are equivalent to those granted to UK road haulage operators. If they are not, the Commission is empowered to adopt the necessary

16 Road Haulage Association, "Brexit—Unimpeded Access for International Road Haulage" (3 February 2017).
17 Road Haulage Association, Evidence to the House of Lords EU Sub-Committee (4 October 2016).
18 'Cross trade' refers to the carriage of goods from one country to another by a haulier from a third country; 'cabotage' refers to the carriage of goods within a country by a haulier from another country.
19 Department for Transport, Guidance: Commercial road haulage in the EU if there's no Brexit deal (24 September 2018).

measures to correct the situation by means of delegated acts, including the limitation to the allowable capacity available to UK road haulage operators or to the number of journeys or to both.

4.10 The Regulation also includes provisions on competition which seek to ensure that Union operators enjoy fair and equal opportunities to compete with UK operators once the UK is no longer bound by Union law (Article 6), which enables the Commission to take similar measures in order to remedy any actions by the UK which are deemed anti-competitive, such as the granting of subsidies, failure to apply competition law, failure to maintain an independent competition authority, application of lower standards than the EU27 or international standards in a wide range of related areas (including protection of workers, the environment, and qualifications), and any form of discrimination against Union road haulage operators. For these purposes, the Regulation provides that the Commission may request information from UK competent authorities and road haulage operators and, if the requested information is not provided within the prescribed period, may proceed to take redressive measures through delegated acts.

4.11 The proposal provides that Member States must not negotiate or enter into any bilateral road freight transport agreements with the United Kingdom on matters falling within the scope of this Regulation (Article 1); however, it also provides, slightly more open-endedly, that they must not "otherwise grant" UK road haulage operators, in connection with road freight transport, "any rights other than those granted in this Regulation" (Article 3).

4.12 The ambiguous drafting of this aspect of the proposal raises a number of competence-related questions which are important to the UK, including:

- whether dormant bilaterals between the UK and individual EU Member States, which would confer access rights to UK hauliers additional to those in the Regulation, would be able to operate alongside the Regulation; and

- whether, alongside the Regulation, EU Member States would be permitted to negotiate new bilaterals with the UK in areas other than bilateral carriage.

4.13 The answers to these questions depend on which aspects of road haulage are covered by the Regulation (which can be interpreted as limiting itself strictly to bilateral carriage, or having a wider scope), as well as the scope of the restriction on the individual Member States from concluding agreements with the UK (which could potentially be interpreted as applying only to new agreements rather than existing ones, and only to bilateral carriage provisions in these agreements, rather than other haulage services).

4.14 Aspects of the Regulation which are of relevance when attempting to answer these questions are outlined below:

- Article 1 (scope) defines the scope of the measure as relating to "the carriage of goods by road between the Union and the United Kingdom of Great Britain and Northern Ireland". The word "between" used in this context would ordinarily mean transport between the two territories (bilateral carriage) as distinct from transport "within" the two territories (cabotage; cross-trade). If the scope of the Regulation as a whole is very strictly interpreted based on Article 1, then it is conceivable that the Member States would be allowed to conclude new bilateral agreements with the UK in parallel to the Regulation. However, the widely

reported disagreement between the Member States and the Commission (see Paragraph 16) strongly suggests that the Commission's view is that the scope is not this limited.

- Article 3.3. (Right to conduct bilateral carriage), which defines the restriction on Member States concluding bilateral arrangements with the UK, is more open-ended, providing that "The Member States shall neither negotiate nor enter into any bilateral agreements or arrangements with the United Kingdom on matters falling within the scope of this Regulation. Without prejudice to existing multilateral agreements, they shall not otherwise grant UK road haulage operators any rights other than those granted in this Regulation". While the title of the article relates to bilateral carriage only, and its first sentence establishes that the restriction on the Member States concluding bilateral agreements with the UK relates to matters "within the scope of the Regulation"—both of which may suggest that Member States could conclude bilateral arrangements with the UK covering traffic rights other than bilateral carriage—the second sentence of the article appears to establish a blanket prohibition on Member States concluding new agreements with the UK which "otherwise grant" UK hauliers with "any rights" additional to those provided for in the Regulation. This element of the Regulation thus appears to expand its scope to services other than bilateral carriage, in a restrictive sense.

- On the more specific question of dormant bilaterals and whether they would be allowed to re-enter into force, the Regulation is silent. However, that the restriction concerns "negotiating", "enter[ing] into", and "grant[ing]"—all words implying action—could be interpreted as indicating that if no action was required for previously agreed arrangements to resume, then allowing this to happen would not be in conflict with the Regulation. However, a number of contrary arguments could be posed. For example, if a dormant bilateral were to re-enter into force, it could be argued that a right would have to be granted (an active step) as any previous rights would have lapsed in the interim. Equally, the term "otherwise grant" ("they shall not otherwise grant UK road haulage operators any rights") is so open-ended that it could be interpreted as extending to the passive action of allowing dormant bilaterals to resume their previous effects. It is also of interest that, although the Article clearly states that it does not apply to "existing multilateral agreements" (i.e. the ECMT permit scheme), it does not make any such reference to existing bilateral agreements: the Commission has clearly decided *not* to clarify that existing bilateral agreements would be exempt from this restriction.

4.15 Although the drafting of the Regulation is thus essentially ambiguous, our preliminary assessment is that the proposal, in its current form, which we anticipate is likely to be revised, is unlikely to prevent existing bilaterals from resuming their effects where additional action is not required from the Member State (although the Commission may well take a different view on this point), but is likely to prevent Member States from concluding new bilaterals with the UK.

4.16 The ambiguity of the drafting on this point is likely to reflect tensions between the Commission and some of the Member States. Recent press reports[20] have confirmed our understanding that a small number of Member States have been pushing back against the Commission's intention to restrict their ability to conclude bilateral agreements with the UK in this sector. France in particular is understood to wish to pursue a bilateral agreement with the UK with regard to road transport. However, the reports do not make it entirely clear what proportion of Member States are of this view, and whether they desire (i) the proposal to offer more generous access to UK hauliers, (ii) to be allowed to pursue new bilateral agreements with the UK in this sector at Member State level, or (iii) existing bilaterals to be allowed to re-enter into force.

4.17 Officials have informed us that, in consequence of these disagreements, the proposal has been removed from the relevant Working Party in the Council of the European Union to a Working Party within the Article 50 work-stream, on which the UK is not represented.

4.18 In the Government's Explanatory Memorandum,[21] the Minister of State at the Department for Transport (Jesse Norman MP) indicates that the Government supports this temporary proposal, reasoning that "while the proposals do not fully replicate the current levels of access, they would, if adopted, ensure a basic level of connectivity until more permanent and wider-reaching arrangements could be concluded". The Minister states that without the proposal "UK hauliers would have to rely on a limited number of European Conference of Ministers of Transport (ECMT) permits alongside any future bilateral agreements in a 'no deal' scenario" and that the proposal will therefore "benefit those UK hauliers who would otherwise have needed an ECMT permit in a 'no-deal' scenario".

4.19 Rather curiously, the Minister, who has previously informed the Committee in correspondence[22] that the Government "expects many bilateral agreements with EU countries to be reinstated once EU law ceases to apply and intends to seek agreements with other countries where there is not a historical arrangement that can be relied upon", joins the Commission in entirely omitting to mention these existing bilateral agreements and the extent to which the Regulation would interfere with their re-entering into force.

4.20 The Minister acknowledges that the proposal "does not cover cabotage rights and does not mention 'cross-trade'", which he states "are often used by UK international haulage operators and this helps make haulage more efficient". He states that the Government estimates that "over 40% of international services by UK hauliers could include a cabotage or cross-trade operation". He adds that a proportion of hauliers could continue to undertake such operations by using ECMT permits, though availability of those permits is limited.

4.21 The Minister observes that the Government's support for this temporary proposal "should not be taken to indicate what the position might be in respect of longer-term provisions."

4.22 The Minister states that the exact timetable for consideration by the Council of Ministers and the European Parliament is not yet known but that the proposal "is likely to be taken forward swiftly". He reports that the first Working Group discussion of

20 FT, 'Brussels at odds with EU member states over no-deal Brexit plans' (25 Jan 2019); 'BBC, Brexit: Push for more generous EU no-deal offer' (25 Jan 2019).

21 Explanatory Memorandum from the Minister (Jesse Norman MP), Department for Transport (16 January 2019).

22 Letter from the Minister to the Chair of the European Scrutiny Committee (14 November 2018).

the proposal took place on 7 January with further discussions taking place throughout January. The Minister states that the Commission hopes that the legislative process will be completed "to allow for adoption of the measure in good time before 29 March, if it is needed".

4.23 **In the event of a non-negotiated withdrawal of the United Kingdom from the European Union ("No Deal"), the Commission's proposed Regulation, which is a unilateral EU legislative measure as opposed to a negotiated international agreement between the UK and the EU, would for a time-limited period—until the end of 2019—permit road haulage operators from the UK to provide the most basic form of haulage services (point-to-point bilateral carriage of goods from the UK to the EU and vice-versa), without the need for permits.**

4.24 **This temporary arrangement would partly mitigate the disruption and additional expense which operators which would incur in this scenario, but would nonetheless represent a substantial deterioration of market access relative to the status quo, with hauliers losing their automatic rights to quota-free cross-trade (carriage of goods between two other EU Member States), transit through the Union both to and from third countries, and cabotage (journeys solely within the territory of another EU Member State). In light of the Minister's assessment that these haulage rights "are often used by UK international haulage operators and this helps make haulage more efficient" and that "over 40% of international services by UK hauliers could include a cabotage or cross-trade operation", it is clear that this reduction in access would have a material impact on UK operators, who would not be able (for example), having transported goods from the UK to Germany, on the return leg of the journey, to transport goods either within Germany, or from Germany to France.**

4.25 **In terms of the mitigating impact of the time-limited measure on UK hauliers, two caveats apply:**

- **The proposal does not address the wider range of fiscal and regulatory controls which would take place at the EU's external borders in the event of a non-negotiated exit, and which the Government's No Deal guidance[23] has acknowledged would potentially affect hauliers.**
- **It is not completely clear whether it would be possible under the draft Regulation for (i) existing bilateral agreements between the UK and EU Member States to resume their former effects, or (ii) for EU Member States to conclude bilateral agreements with the UK regarding haulage rights other than bilateral carriage. Were (i) or (ii) possible, this would have the effect of further mitigating the impact of EU exit during the period for which the Regulation applied (see Paragraphs 29 to 32).**

Level playing field conditions

4.26 **The market access provided by the proposal is conditional on the compliance of the Government and UK hauliers with a wide range of "level playing field" conditions, designed to ensure that UK hauliers do not have a competitive advantage vis-à-vis**

23 Department for Transport, Guidance: Commercial road haulage in the EU if there's no Brexit deal (24 September 2018). See the section on "Borders and traffic management".

their EU counterparts. The Commission would be given a monitoring role to verify compliance with these conditions, and the power to take corrective measures (including the reduction of market access or suspension of the Regulation) through delegated acts. Permission for UK operators to carry goods into the Union under the Regulation would be conditional on the UK conferring "equivalent rights" on UK hauliers as Union road haulage operators, who would have to remain compliant with seven EU legal acts, including the driver's hours rules and rules established by Member States under the Posting of Workers Directive. The Regulation also includes provisions on fair competition which enable the Commission to take measures in order to remedy any actions by the UK which are deemed anti-competitive, such as the granting of subsidies, failure to apply competition law, or the application of lower standards than the EU27 or international standards in a wide range of relevant areas (protection of workers, safety, security, the environment, licensing, qualifications, training and medical controls).

4.27 **Thus—somewhat counterintuitively, given that discussions of the "level playing field" have primarily related to the Withdrawal Agreement—the EU proposes to import level playing field-type requirements into the operation of the unilateral contingency measures it would employ in the event of a No Deal scenario. Nonetheless, we note that the EU (Withdrawal) Act 2018 means that EU law will be retained at the moment of exit, and that it is therefore unlikely that the question of whether the UK complied with these conditions would arise during the nine month period for which the measure would apply.**

The Government's approach to EU hauliers

4.28 **As the proposal is a unilateral measure and not a bilateral agreement, it does not in itself establish how the Government would treat EU hauliers during this period, although the market access which it provides is conditional on the UK reciprocating in terms of market access. The Government's No Deal guidance for the commercial haulage sector is also silent on this point. Assuming that the Government's approach mirrors that which is proposed by the EU, we note that EU operators would also be negatively impacted, although to a somewhat lesser extent, as their ability to undertake bilateral carriage and cross-trade would essentially be unaffected, and they would only lose the right to provide cabotage services within one country as opposed to 27. According to the Government's figures, EU hauliers currently only provide an extremely small proportion of cabotage operations in the UK.**[24]

UK-EU Member State bilaterals

4.29 **As set out in paragraphs 13 to 18 of this report, the Regulation is somewhat ambiguous on a number of points relating to its scope and the scope of the restriction on the ability of Member States to conclude parallel agreements with the UK. Whilst a very strict reading of the Regulation's scope is possible, in which Member States would be permitted to conclude bilateral agreements with the UK in certain areas of road haulage (cabotage; cross-trade), and allow existing bilaterals with the UK**

24 Department for Transport's International Road Freight Statistics for 2014 shows that "foreign HGV cabotage accounts for just one per cent of road freight activity within the UK", meaning that bringing an end to foreign cabotage operations in the UK is likely to have a negligible effect on domestic operators.

to be reactivated and operate alongside it, the drafting also permits a reading that is more restrictive in practice, in which the Member States would be prevented from concluding any new agreements with the UK in the sector and existing bilaterals could not be reactivated.

4.30 **Reports suggest that the Commission's preference for a more restrictive approach to be taken, and that tensions regarding this aspect of the Regulation have led to fragmentation among the Member States and a disagreement with the Commission, in consequence of which the discussions have been removed from the relevant Transport Working Party in the Council to the Article 50 workstream.**

4.31 **The proposal thus represents an interesting precedent, being perhaps the first point in the EU exit process at which the Member States have fragmented and taken issue with the Commission's preference for adopting a unified, Union-level approach to the negotiations. While this development is quite specific to the transport sector, in which the Member States have to-date largely retained their ability to conclude bilateral agreements with third countries, and therefore unlikely to be generalised to, for example, trade in goods, it is nonetheless very much in the UK interest: if the Member States, led by France, succeed in retaining the competence to conclude bilateral road haulage arrangements with the UK in parallel to the Regulation, or even for existing bilaterals to be reactivated in parallel to it, UK hauliers would at a minimum retain a patchwork of additional access rights alongside those provided for in the Regulation.**

4.32 **On this point, we wish to register our disappointment at the Minister's failure, in the Government's Explanatory Memorandum, to raise the status of the UK's existing bilateral agreements with EU Member States in the road haulage sector in the context of the proposal. The status of these bilateral agreements is clearly material to the implications of the proposal for the haulage sector, and the Minister is aware of them, as he has previously informed the Committee that the Government intends for these bilateral agreements to be reactivated (see Paragraph 4). This omission is particularly regrettable given the usually excellent standard of information we receive from the Department for Transport.**

Questions

4.33 **With respect to bilateral agreements, we ask the Minister to:**

- **provide us with an overview of existing UK-EU Member State bilaterals in the area of road haulage, their scope, and the level of action that would be required by both parties to reactivate them (with a particular focus on existing bilaterals with Germany, France, Spain, Italy, and the Netherlands);**
- **provide us with the Government's assessment, in light of the progress of negotiations, as to whether the proposal for a Regulation would permit (i) EU Member States to conclude new bilaterals in the sector with the UK for services other than bilateral carriage, and (ii) permit existing UK bilaterals with Member States to be reactivated;**

- **clarify whether, if UK bilaterals with the Member States were reactivated in parallel to the Regulation, it would be necessary to administer a quota-based system of permits for UK hauliers trading in those Member States for services other than bilateral carriage; and**
- **provide an assessment of the extent to which, if the patchwork of UK bilaterals with individual Member States were able to operate alongside the Regulation, the impact on UK hauliers of the loss of their internal market rights would be reduced.**

4.34 **We also ask the Minister to:**

- **clarify what transit rights the proposal would provide UK hauliers with, compared to at present, and what the implications would be for UK hauliers during this period if they could no longer rely on the transit rights provided by existing bilateral agreements;**
- **provide an assessment of the relative significance of traffic rights and other customs-related formalities to UK hauliers trading internationally with the EU, in the event of a non-negotiated exit; and**
- **clarify what the Government's offer to EU hauliers will be, in the event of a non-negotiated withdrawal.**

4.35 **We request that the Government respond to these questions by 22 February 2019. In the meantime, we retain this document under scrutiny. We draw this report to the attention of the Transport Committee, the Business, Energy and Industrial Strategy Committee, and the Exiting the European Union Committee.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council on common rules ensuring basic road freight connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union: (40307), 15843/18, COM(18) 895.

Previous Committee Reports

None, however previous reports on the "market pillar" of the "first mobility package" have addressed the implications of EU exit for road haulage: Forty-Sixth Report HC 301–xlv (2017—2019), chapter 6 (28 November 2018); Thirtieth Report HC 301–xxix (2017—2019), chapter 8 (6 June 2018).

5 Control of Exports of Dual-Use Items

Committee's assessment	Politically important
Committee's decision	(a) Not cleared from scrutiny; further information requested; drawn to the attention of the International Trade Committee, the Committees on Arms Export Controls and the Joint Committee on Human Rights (b) Cleared from scrutiny; drawn to the attention of the International Trade Committee, the Committees on Arms Export Controls and the Joint Committee on Human Rights
Document details	(a) Proposal for a Regulation setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (b) Proposal for a Regulation amending Council Regulation (EC) No 428/2009 by granting a Union General Export Authorisation for the export of certain dual-use items from the Union to the United Kingdom of Great Britain and Northern Ireland
Legal base	(a) Article 207(2) TFEU; ordinary legislative procedure; QMV (b) Article 207(2) TFEU; ordinary legislative procedure; QMV
Department	International Trade
Document Number	(a) (38114), 12785/16 + ADDs 1–3, COM(16) 616; (b) (40296), 15848/18, COM(18) 891

Summary and Committee's conclusions

Proposal to update the existing dual-use Regulation to reflect technological and other changes (the proposed recast Regulation)

5.1 The first proposal (document (a))—presented by the Commission in September 2016—aims to modernise and strengthen the existing Dual-Use Regulation[25] on the export of dual-use items[26] in light of geo-political developments and technological changes. This includes measures to help prevent human rights violations associated with certain cyber-surveillance technologies, through the proposed introduction of: an autonomous list of EU-specific cyber-surveillance technologies of concern; a complementary, targeted 'catch-all' measure that enables the control of non-listed goods in defined situations where there is evidence that they may be misused; and associated changes to the definition of dual-use items.

25 See Council Regulation (EC) 428/2009 (the Dual-Use Regulation).

26 Dual use items are goods, including software and technology, which have both civil and military applications.

5.2 At its meeting on 31 October 2018, the Committee noted the Government's assessment that the Council remains divided on key aspects of the proposed recast Regulation, including the proposed introduction of an autonomous EU-specific list of dual-use cyber-surveillance technologies of concern, which would depart from the established practice to date of deriving control lists from the various multilateral export control regimes. The Committee asked to be kept updated on negotiations, and to be provided with an updated assessment of the expected shape of the UK's post-Brexit dual-use export control regime, focusing on the administrative and financial costs to UK competent authorities and traders of dual-use items: in the event of 'no-deal' (leaving the EU without an agreement and therefore no transition period); during any transition period; and post-exit/transition period.

5.3 In his letter of 17 December 2018, the Minister for Investment (Graham Stuart MP) provides an update on the progress of negotiations within the Council, noting that the Austrian Presidency were keen to secure agreement of an informal mandate before the end of its Presidency (on 31 December 2018), but that the compromise text was "pulled" from the Committee of Permanent Representatives (COREPER) meetings in early December. The Minister states that the UK, along with several other Member States, could not support the compromise text prepared by the Austrian Presidency on Article 8a and Annex V in relation to the autonomous EU control list of dual-use items and human rights end use control.

Proposal to update the existing dual-use Regulation in the event of a no-deal scenario

5.4 The second proposal (document (b))—put forward by the Commission on 20 December 2018—forms part of the EU's wider preparations for a 'no deal'. It proposes including the UK as a permitted destination in the EU's existing General Export Authorisation (GEA 001), which is a simplified export licence permitting the export of most dual-use items (specified in Annex I of Regulation 428/2009) to specified low risk third countries. It is intended to minimise the burden on EU exporters who export dual-use items to the UK if the UK leaves the EU without an agreement.

5.5 In his Explanatory Memorandum of 16 January 2018, the Minister fully supports the Commission's proposal for including the UK in the EU's GEA 001, stating that it is a "welcome operational contingency action in the event of a no deal scenario". He notes that there is no timetable for its adoption as "it will only be required if the UK leaves without an agreement".

Brexit implications of both proposals

5.6 In his letter of 19 December 2018, the Minister provides an updated assessment of the implications for the UK dual-use export control regime and future cooperation with the EU on dual-use export controls post-exit. His Explanatory Memorandum of 16 January 2019 further expands on planning for the no-deal scenario.

No-deal:

5.7 At its meeting of 31 October 2018, the Committee noted that the UK Government's no deal guidance of 23 August 2018[27] states that UK and EU operators will require a licence to trade dual-use items if the UK leaves the EU without a deal on 29 March 2019, and that existing export licences for dual use goods issued in the UK will no longer be valid for UK companies exporting from the EU27 (and vice versa for EU27 companies exporting from the UK using an EU27-issued licence). We asked the Minister to explain what assessment, if any, the Government had conducted on: the expected costs to the UK authorities of implementing and enforcing new licensing requirements; the expected costs to UK exporters/traders (in particular SMEs) of complying with these new licensing requirements; the expected impact on trade flows; and the risks of UK/EU Member State competent authorities not having sufficient time/resource to effectively enforce them.

5.8 In his correspondence of 17 December 2018 and 16 January 2019, the Minister explains that in a no-deal scenario:

- UK-issued export licences issued for companies exporting from the EU27 (approximately 150–200 out of the total 17000 applications in the UK), and vice versa for EU27 companies exporting from the UK using an EU27-issued licence and (approximately 50 for goods located in the UK but licensed by another Member State) would no longer be valid and exporters "would need to apply for new licences in the country from which the goods were to be exported". However, he considers the relatively small numbers of licences involved means that a) "the cost and resource to the UK and EU competent authorities of dealing with them would be negligible"; b) the expected costs to affected UK exporters "would be limited to their administrative cost incurred in having to apply for a new export licence in the country where the goods are located"; and c) "there would be no significant impact on trade flows";
- the UK "would introduce a light-touch Open General Export Licence to facilitate exports to the EU of those dual-use items that currently move licence-free." He considers the costs to businesses of completing "a simple, one-time, online registration to be able to use this licence…would be minimal"; and
- the proposed addition of the UK to GEA EU001 "will achieve the same effect for those in the EU exporting to the UK".

During any implementation/transition period:

5.9 In response to the Committee's question on the expected financial and administrative costs to the UK authorities and to UK operators of applying the recast Regulation if it is adopted and enters into force during the scheduled transition period, the Minister states "there would be no significant, if any, additional costs beyond the existing running costs if the recast Regulation is adopted during the implementation period" on the basis that it "brings a small number of additional goods under control" and the costs to exporters of applying for an export licence "will not be significant".

27 See Guidance on how export controls would be affected if the UK leaves the EU without an agreement.

Post-exit/transition period:

5.10 In response to the Committee's question on what criteria the Government will use to assess the costs and benefits of UK convergence or divergence from the EU regime (relative to supporting a 'multilateral approach' through the four established export control regimes), the Minister states that:

- both the UK and EU "would be obliged to comply with their international obligations which include implementing controls derived from the four International Export Control Regimes"; and
- the Government's decision to adopt additional national controls (that go beyond those agreed in the international regimes), either for national security reasons or to "follow [the EU's] suit" would be based on a cost-benefit analysis that includes "an assessment of the costs to business and government, the likely effectiveness of the controls in preventing the activity we [the UK Government] were concerned about, and the risks (for example to national security) of not taking action".

5.11 In response to the Committee's question on what indication the EU has given that it would agree to continued cooperation with the UK in the field of export controls after UK exit (including: the sharing of information on denied export licence applications and related consultation procedures; cooperation on annual updates to the control lists (Annexes l and IV of the Dual-Use Regulation); and simplified procedures for exports of controlled items between the EU and the UK (such as reciprocal open general licences and mutual recognition of licences granted before UK exit/end of the scheduled transition period), the Minister simply rehearses his previous statements, namely that:

- "[t]his will be subject to negotiations for the future relationship";
- the Government's overarching objective for export controls post-Brexit is to "maintain the integrity and effectiveness" of the UK's export licensing system by "remaining compliant with relevant international obligations" whilst minimising additional burdens on business; and
- the Government "would welcome continued cooperation with the EU, particularly on denial notifications issued before Brexit and on continued UK access to the EU mechanisms for denied licences and the related consultation procedures".

5.12 **We note that the Government remains opposed to key aspects of the compromise text for the proposed recast Regulation, including the introduction of an EU autonomous list of dual-use items and 'catch all' human rights end clause, and that the Austrian Presidency were not successful in securing an informal mandate in COREPER to start trilogue negotiations before the end of its Presidency. We ask the Minister to update us on the progress of negotiations under the Romanian Presidency.**

5.13 **Further to our request for an updated assessment of the expected shape of the UK's post-Brexit dual-use export control regime in all foreseeable Brexit scenarios, we note that:**

- **in a no-deal scenario, licences will be required to export dual-use items to the EU and vice versa, but that both the EU and UK intend to implement**

simplified licensing schemes (in the form of a new Open General Export Licence for UK operators, and the addition of the UK to the EU's General Export Authorisation EU001) in order to minimise additional burdens for UK/EU operators exporting to the EU/UK;

- **during the scheduled transition period (if the Withdrawal Agreement is ratified), the UK would have to apply the recast Regulation if it enters into force during this time. The Minister asserts that the costs to UK businesses and competent authorities of applying and enforcing the proposed recast Regulation during the transition would "not be significant" as it only "brings a small number of additional goods under control". Yet in previous correspondence with the Committee, the Minister stated that the introduction of an autonomous EU-specific list of dual-use cyber-surveillance technologies of concern would undermine the multilateral approach to export control regimes and put EU/UK exporters at a commercial disadvantage.[28] We ask the Minister to clarify the reasoning behind these seemingly contradictory statements, and to set out the expected costs/benefits of its application during the backstop arrangement (further to the draft Withdrawal Agreement of 14 November 2018); and**

- **post-exit/transition, the Government intends to seek continued cooperation with the EU in certain areas (such as sharing information on denied licences) and conduct a cost-benefit assessment of implementing any additional EU agreed controls that go beyond the UK's obligations under the established international export control regimes. Noting that the degree of future alignment with the EU regime "will be subject to negotiations for the future relationship", we ask the Minister to clarify:**

  - **when the Government is likely to complete an assessment on the costs and benefits of future alignment or divergence from the EU dual-use regime (for example, would this be conducted before negotiations for a future UK-EU trade deal start and/or be required to help determine the UK's negotiating mandate?); and**

  - **how the proposed extension of the EU's delegated authority to amend the list of dual-use items subject to control, which includes updating the new autonomous list of items and amending the destinations or items covered under EU General Export Authorisations may impact future EU-UK cooperation.**

5.14 **We are content to clear document (b) from scrutiny, but retain document (a) under scrutiny pending a further update on the negotiations and its implications for the UK post-exit. We draw the Minister's update and our conclusions to the attention of the International Trade Committee, the Committees on Arms Export Controls and the Joint Committee on Human Rights.**

28 Letter from the Minister to Sir William Cash, dated 17 July 2018.

Full details of the documents

(a) Proposal for a Regulation setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items: (38114), 12785/16 + ADDs 1–3, COM(16) 616; (b) Proposal for a Regulation amending Council Regulation (EC) No 428/2009 by granting a Union General Export Authorisation for the export of certain dual-use items from the Union to the United Kingdom of Great Britain and Northern Ireland: (40296), 15848/18, COM(18) 891.

Background

5.15 The full details of the proposal and the Government's position on it, is set out in the Government's Explanatory Memorandum of 17 October 2016, and the Committee's previous Report chapters listed below.

Previous Committee Reports

(a) Forty-third Report HC 301–xlii (2018–19), chapter 3 (31 October 2018), Twenty-sixth Report HC 71–xxiv (2016–17), chapter 5 (18 January 2017); (b) None.

6 Brexit: coordination of social security and access to healthcare

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Work and Pensions Committee and the Health and Social Care Committee
Document details	Proposal for a Regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems
Legal base	Article 48 TFEU; QMV, ordinary legislative procedure
Department	Work and Pensions
Document Number	(38400), 15642/16 + ADDs 1–8, COM(16) 815

Background and Committee's conclusions

6.1 As part of the free movement of people, the EU's Member States have put in place a system for the coordination of social security benefits.[29] This system determines, for example, which national government is responsible for the payment of benefits for EU residents who move between different Member States. For example, it determines at which point an EU national employed in the UK is entitled to child benefit (and allows the cash to be 'exported' to another EU country if that's where the child lives). It is also the legal framework that currently allows British pensioners in Spain and France to access healthcare free of charge locally, and have the costs reimbursed by the UK Department for Work & Pensions.[30]

6.2 In December 2016, the European Commission tabled a legislative proposal to amend the relevant EU legislation (Regulation 883/2004 and its Implementing Regulation).[31] The purpose of its proposal was to modify when a Member State has to pay unemployment benefit to a mobile EU worker, and how long a person can claim the benefit in one EU country after having moved to another to look for work; to clarify the rules for determining which EU country is responsible for payment of benefits and under what conditions non-contributory benefits can be claimed; and to make smaller changes to the provisions of the Regulation on access to salary-related family benefits and long-term care benefits.

6.3 The Member States in the Council of Ministers established their 'general approach' on the draft legislation following a series of meetings by EU Employment Ministers throughout 2017 and 2018. The UK Government has been broadly supportive of the proposed amendments sought by the Member States to the Commission proposal, which would include the following substantial changes to the current system:

29 The effects of the legislation have also been extended to the four EFTA countries (Iceland, Norway, Liechtenstein and Switzerland), which accept the legislation in its entirety.

30 More concretely, Regulation 883/2004 allows many of the 190,000 British pensioners living in other EU countries to access healthcare locally on the same basis as citizens of that country, and to have the costs of their care reimbursed by the Government using a so-called S1 form issued by the UK. The underlying logic is that the Member State of last employment pays for social security, including access to healthcare, even when they move to another Member State without taking up employment (i.e. pensioners).

31 The implementing legislation is Regulation 987/2009.

- a worker would normally have to have been employed for at least a month in a Member State before they could access local unemployment benefit (like contributory Jobseeker's Allowance in the UK). At present, the qualifying period is a single day of employment.[32] If the duration of employment were less than a month, the previous Member State where the person worked would have to provide the unemployment benefit.[33] This is a less drastic change than the original Commission proposal, which would have required three months of employment in a specific Member State before a worker could claim unemployment benefit in that country;[34]

- individual EU countries would remain free to limit the statutory period during which a worker can 'export' their unemployment benefit while looking for work in another Member State to three months, removing the mandatory extension to six months as proposed by the Commission (although individual Governments would be free to permit 'export' to take place for longer);

- as regards the provision of unemployment benefit to frontier and cross-border workers (where the rules about the Member State which must provide the benefit are complex and subject to reimbursements from the country of employment to the country of residence),[35] the Member States want to make the EU country of most recent employment of a frontier worker responsible for unemployment benefits if the frontier worker has worked there for at least three months.[36] Otherwise, that responsibility would lie with the country of residence, and the reimbursement procedure would be abolished.[37] Frontier workers would also have the ability to export their unemployment benefit to their Member State of residence if necessary; and

- the Council has discarded the Commission's proposed codification of European Court of Justice case law relating to the additional 'right of residence' test to assess unemployed EU nationals' right to receive certain non-contributory

32 More concretely, the current coordination rules require that the Member State where a worker was last employed (and thus made national insurance contributions) is responsible for the payment of unemployment benefit (UB), starting on the very first day of their employment in a particular country. Moreover, social security contributions made in other EU countries have to be taken into account when determining if someone meets the national criteria for entitlement to UB. This means, for example, that social security contributions made in another EU country count towards the contributory Jobseeker's Allowance (JSA) entitlement in the UK, as long as someone had been employed in the UK for at least a day.

33 Member States also want to abolish a reimbursement mechanism between themselves for unemployed workers who live in one EU country while working in another.

34 The Government accepted the one-month qualifying period rather than the longer three-month period, because of the increased administrative burden of the latter since it would involve more onerous checks of a person's employment history to ascertain the Member State required to provide the unemployment benefit.

35 Regulation 883/2004 currently means that in certain cases the country of residence provides the unemployment benefit even though any social security contributions would have been made in the country of employment. To compensate the Member State of residence, the rules provide for a reimbursement of benefits paid for the first three months or five months.

36 The European Commission had proposed to make the Member State of residence responsible for unemployment benefit until a frontier worker had worked in another Member State for at least 12 months.

37 The Government has welcomed the proposed abolition of the reimbursement provisions (which the Government said "were cumbersome to administer and a source of disagreement between the UK and other Member States").

benefits.[38] The practical impact of this decision in the UK is limited, as the Court's case law allows the Government to continue applying the test for as long as the Regulation has effect in the UK.[39]

6.4 The Council's position and the Government's views on the negotiations are discussed in more detail in our previous Reports.[40] However, the Member States' position on the proposed changes to the EU's system of social security coordination is not yet final. Under the ordinary legislative procedure, the European Parliament and the Member States in the Council have to jointly agree on the legal changes to Regulation 883/2004 and can make further amendments before the new legislation is finalised.

6.5 When we last considered the proposal in October 2018, the European Parliament had yet to establish its position on the proposed Regulation.[41] At that stage, we retained our parliamentary scrutiny reserve because of the proposal's political importance in the context of the Brexit process: as set out in more detail in paragraphs 0.9 to 0.13 below, the provisional Withdrawal Agreement on the UK's EU exit foresees the continued application of social security rights derived from the Regulation for British nationals who have exercised their free movement rights to live or work in the EU (and vice versa) on the date the UK actually leaves the Single Market.[42] Crucially, the Government accepted that any future changes to the Regulation—which will be decided without formal UK participation in the EU's legislative process—would also have to be implemented by the Government for those citizens who are within the scope of the Withdrawal Agreement.

Developments since May 2018

6.6 On 11 January 2019, the Minister for Employment (Alok Sharma MP) provided the Committee with a further update on the state of play in the legislative deliberations in Brussels to amend the Social Security Regulation. The Minister explained that the European Parliament's Employment & Social Affairs Committee, which acts as the Parliament's negotiator on matters relating to EU social security legislation, adopted its position on the proposal in November 2018.[43]

6.7 The "main points of difference" between the European Parliament and the Member States are on the chapters concerning applicable legislation (that is to say, which Member State is responsible for the payment of social security entitlements to a specific worker)

38 The "right of residence" test means that to qualify for certain benefits, an unemployed EU national must be actively looking for employment, or be able to financially support themselves and have comprehensive sickness insurance. 80% of non-economically active mobile EU citizens derive either residence rights or entitlements to social security through working family members with whom they reside and so automatically qualify.

39 As confirmed in the letter from Damian Hinds MP to Sir William Cash MP (14 December 2017). The proposed codification was dropped because Member States could not agree on the scope of the codification (and in particular access to which types of benefits could be restricted under the judgement delivered in Commission v United Kingdom). The Court of Justice ruled in 2016 that the right to equal access to non-contributory benefits for mobile EU nationals can be made subject to a "right of residence" test (see previous footnote). As a result, Member States can refuse to grant non-contributory cash benefits to mobile citizens who are economically inactive, and who do not have a legal right of residence under the Free Movement Directive (although which specific non-contributory benefits are caught by this exemption is still a matter of contention).

40 See 'Previous Reports' hereafter.

41 Letter from Sir William Cash MP to Alok Sharma MP, Minister for Employment at the Department for Work & Pensions (17 October 2018).

42 The aim is to ensure that social security entitlements that are available to those UK and EU nationals who exercise their freedom of movement rights prior to that date are retained for them under Regulation 883/2004 after it otherwise ceases to apply to and in the UK.

43 European Parliament document A8–0386/2018.

and access to unemployment benefits, with a "number of mainly minor and cosmetic" differences on the remaining chapters (long-term care allowances, family benefits, and equal treatment on access to benefits for nationals of a Member State and those of another EU country).

- The European Parliament has followed the Commission's suggestion of extending the **minimum period of export of unemployment benefit** (where the benefit is drawn in one EU country, but the recipient is looking for work in another) from three to six months. The Government, as well as other Member States, support capping the statutory minimum at three months;

- Concerning the ability for an EU worker to use national insurance payments made in one Member State to **qualify for unemployment benefits** in another, the Parliament has wanted to retain the current system (which allow individuals to aggregate past contributions in a new Member State of employment, and therefore draw the benefit if they meet the contributions threshold, after a single day of employment). As noted above, the Member States want this qualifying period to be extended to a month;

- As regards to **frontier and cross border workers**, the Government supported the proposal to abolish the reimbursement provisions for unemployment benefit between the Member State of residence and of employment, which "were cumbersome to administer and a source of disagreement between the UK and other Member States". The European Parliament has suggested allowing such workers to choose in which country to claim unemployment benefit. The Government "does not support this" as it would lead to increased claims in those EU countries with "more generous social security systems";[44] and

- The Parliament also proposed amendments to include tighter operational deadlines on the **processing of documents for posted workers** and communicating with other Member States. The UK opposes this "as it would introduce added burden on administrations". Similarly, the Government has objected to a parliamentary amendment that would require employers to notify the competent authority of another Member States *before* it sends its employees to work there, unless they are on a business trip.[45]

6.8 As can be seen, very clear and significant differences persist between the positions of the Council and the European Parliament. The first round of negotiations between the Romanian Presidency of the Council and MEPs on the final substance of the amendments to Regulation 883/2004 took place on 15 January 2019. It is not yet clear when the agreement is likely to be reached, although both institutions are aiming for formal adoption of the legislation before the European elections in May. The Minister notes, however, that "given the complexity and controversial nature of some elements of the file", the negotiations

44 The Minister's letter also notes the proposal would increase the administrative burden of implementing the system, and entail the reintroduction of reimbursement provisions to ensure fair burden-sharing between those Member States who have had the national insurance and taxes of workers and those paying the benefits. One of the objectives of the proposal to amend Regulation 883/2004 was to abolish that reimbursement procedure.

45 Currently, portable documents certifying where a worker is insured can be issued after a worker is sent to another Member State, allowing for flexibility. The Parliament has also proposed the imposition of a fine on the sending Member State in instances of non-notification of a worker being sent to another EU country, and reduces the maximum duration of a posting (a worker being sent to another Member State to carry out work there without its country of national insurance changing) from 24 to 18 months.

"may not conclude before the end of the current European Commission and Parliamentary terms" (although he adds that the UK "will do all it can to ensure that the negotiations progress satisfactorily while it still has a seat at the table").

Social security coordination and access to healthcare under the Withdrawal Agreement

6.9 The proposed changes to Regulation 883/2004 are relevant to the UK despite its planned exit from the EU in March 2019: under the Withdrawal Agreement, the Regulation would continue to have legal force in the UK for some considerable time afterwards, subject to certain qualifications with respect to its personal scope.

6.10 In summary, the Regulation—including the proposed amendments—would continue to apply to EU nationals for whom the UK is the responsible Member State in terms of social security, meaning the UK is the current or last country of employment, and vice versa for UK nationals in the EU. Family members of workers and certain other categories of people who have the necessary links to the UK under the Agreement would also continue to be covered by the Regulation for their lifetime. The aim of this is to ensure that social security entitlements that are available to those UK and EU nationals, who exercise their freedom of movement rights prior to the end of the post-Brexit transitional period, are retained for them under Regulation 883/2004 after it would otherwise cease to apply to the UK. It means, for example, that UK pensioners already resident Spain and France would remain able to access healthcare locally without needing to purchase private health insurance, and have their costs reimbursed by the British Government.

6.11 The social security provisions of the Withdrawal Agreement are 'dynamic', meaning they are drafted to ensure the UK continues to apply the Social Security Coordination Regulation to citizens within the scope as amended and updated by the remaining Member States, even *after* the UK has ceased to be a Member State. That includes the amendments to the Regulation currently being negotiated between the Council and the European Parliament. The Committee, by letter dated 5 September 2018 asked the Government to clarify what legal effect the parts of the amended Regulation that take effect after the end of the transitional period would have. By letter dated 27 September 2018, the Minister explained, with reference to the 19 March version of the proposed Withdrawal Agreement:

- Under Article 31 of the Withdrawal Agreement,[46] the UK will be required to apply any amendments to Regulation 883/2004 to persons in scope even if these are adopted or take effect after the end of the transitional period, i.e. without any formal UK input or vote;[47]

- While Article 31(2) of the Agreement[48] theoretically allows the UK not to apply such amendments if they relate to the inclusion of new types of benefits; the making of a non-exportable cash benefit exportable (or vice versa), or when

46 Our addition. This is now Article 36 (1) of the current 14 November text of the proposed Withdrawal Agreement

47 The Withdrawal Agreement in Article requires the Joint UK-EU Committee to revise the list of social security legislation in the Agreement "as soon as such an act is adopted by the Union".

48 Our addition. This is now Article 36 (2) of the current 14 November text of the proposed Withdrawal Agreement

changes are made the time limits for such 'exportability',[49] disapplication by the UK in such cases could only take place with the EU's consent (and therefore not unilaterally at the UK's discretion).[50]

6.12 As such, if the Withdrawal Agreement is ratified—or a similar arrangement is made after 29 March 2019 as part of a new effort to secure the rights of UK and EU nationals who exercised their free movement rights prior to 'exit day'—the proposed changes to Regulation 883/2004 would continue to be directly-applicable in the UK, with an impact on both citizens within scope of the Agreement and for the administration of the British system of social security. Although the exact implications of this depend on the final text of the Regulation once the negotiations between the Parliament and the Council have concluded, in practice this could mean that the UK would be able to delay having to pay unemployment benefit to EU nationals who move to the UK during the post-Brexit transitional period. It would also change the system of access to unemployment benefits for frontier and cross-border workers, which is particularly relevant for many in Northern Ireland and Ireland.

6.13 Under the Withdrawal Agreement, the Regulation would not apply to UK residents who move to the EU or vice versa after 'exit day',[51] unless such an arrangement was agreed between the UK and the EU or individual Member States as part of the future partnership. The purpose of the Immigration & Social Security Bill and the Healthcare (International Arrangements) Bill is to give the Government the power to fund social security and healthcare arrangements with other countries after Brexit. Given the reciprocity inherent in such mechanisms, it would require agreement with the EU or with specific EU Member States for the current arrangements enjoyed by UK nationals in countries like France and Spain to be continued. The need for reciprocity creates immediate problems in the event of a 'no deal' scenario, as described below.

Social security coordination in a 'no deal' scenario

6.14 As discussed, if the Withdrawal Agreement is ratified, Regulation 883/2004 would continue to apply to many UK and EU nationals indefinitely (provided they exercised their free movement rights before the end of the post-Brexit transitional period). However, in a 'no deal' scenario, the Regulation would immediately cease to apply to UK nationals in the EU and vice versa on 29 March 2019.

6.15 Given that this is an inherently cross-border problem that the UK cannot solve unilaterally, the Committee has repeatedly pressed the Government on the consequences of 'no deal' for both UK nationals in the EU and EU nationals in the UK. The treatment of UK nationals by the 27 remaining Member States for the purposes of accessing social security or healthcare on the same terms as EU nationals would undoubtedly be affected. The precise rights and entitlements they would continue to enjoy (or not, as the case may be) would likely vary by Member State in a 'no deal' scenario. There is no harmonised

49 'Export' of a cash benefit, such as unemployment benefit, means a person can continue to receive it from EU country A even if they move to EU country B.

50 As the pending amending Regulation is yet to be finalised following negotiations between the Council and the European Parliament, the Minister told the Committee that "it is too early to say how amendments that are applied after the end of the Transition Period [...] would fall within the scope of Article 31(2) of the draft Withdrawal Agreement".

51 Exit day would be the day the UK fully leaves the Single Market, i.e. on 29 March 2019 in a 'no deal' scenario or by the end of the post-Brexit transition period if the Withdrawal Agreement is ratified.

EU approach to social security coordination between an EU Member State and a 'third country' (with the exception of the four EFTA countries, which have all implemented Regulation 883/2004 because they have accepted freedom of movement).[52]

6.16 Moreover, in terms of competence of resolving legacy issues on social security issues created by the UK's departure, the European Commission has argued that the EU—rather than individual Member States—has "exclusive competence on social security coordination for the periods completed and for facts and events that occurred before the withdrawal date". Concretely, if correct, this means that EU countries cannot negotiate separately with the UK about new bilateral social security agreements that take into account periods of work undertaken, or social security contributions paid, before 29 March. (By extension, they have competence to conclude such agreements for periods of work from 30 March onwards.)

6.17 The Government has called this "particularly unwelcome", and in a parliamentary answer on 21 January 2019 stated that it has "informally approached other Member States and are prioritising those that are the major pensioner, worker and tourist destinations" for UIK nationals. A formal letter with the UK's "generous offer on reciprocal healthcare" is due to be sent to all EU countries, and the European Commission, shortly.[53] In December 2018, the Government's however said that the Withdrawal Agreement "is the only way the UK Government [can] guarantee the rights" of British people living in the EU. This is an acknowledgement that in a 'no deal' scenario, the social security and healthcare rights of UK nationals elsewhere in the European Union are likely to be disrupted, with entitlements varying depending on the domestic legislation of the Member State of residence.

6.18 With respect to the social security rights of EU nationals in the UK, the Government's own policy paper on the rights of citizens in a 'no deal' scenario noted that EU nationals lawfully resident in the UK on 'exit day' "will be able to continue to access in country benefits and services on broadly the same terms as now". It added, however, that these entitlements "will be subject to any future domestic policy changes which apply to UK nationals". However, under Statutory Instruments laid by the Department for Work & Pensions before Parliament in December 2018 to address the implications of a 'no deal' Brexit on the system of social security coordination with other EU countries, the legal principle of "equal treatment" (between UK and EU nationals) would be removed from Regulation 883/2004 as it applies domestically from April 2019. The Department's Explanatory Memorandum on these draft regulations does not refer to the intended consequences or practical effect of the repeal of the equal treatment principle.

Our conclusions

6.19 **We thank the Minister for Employment for his latest update on the negotiations to amend the EU's Social Security Regulation. If the Withdrawal Agreement is ratified, or a similar deal on citizens' rights is struck separately, the UK would be legally required to continue applying the Regulation to many millions of UK and EU nationals who exercised their free movement rights before the end of the post-Brexit transitional period.**

52 There are EU rules for social security coordination of 'third country' nationals who move between two or more EU Member States.

53 Parliamentary Question 209279 (answered on 21 January 2019).

6.20 **Crucially, the requirement to continue applying the Social Security Regulation under the Withdrawal Agreement also applies to any future changes adopted by the EU without UK involvement. The Government has accepted the EU's proposal that it should have no unilateral discretion to refuse to apply future changes to the Regulation decided by the remaining Member States. The proposals to amend Regulation 883/2004, especially those on access to the UK's social security system by citizens in scope of the Withdrawal Agreement, therefore remain highly politically relevant.**

6.21 **We note in this respect that there is no certainty yet at this stage about the final substance of the amendments to the Regulation, and it appears unlikely they will be adopted before the Government is due to lose its representation and voting rights in the Council of Ministers on 29 March 2019. There remain substantial differences between the European Parliament and the Member States on the necessary changes to Regulation 883/2004, not least with respect to access to unemployment benefits by EU nationals who move to another Member State to work. The proposed Regulation would also make important changes to the treatment of frontier and cross-border workers and their entitlements if they become unemployed, which is particularly important in Northern Ireland and Gibraltar. The Committee will keep this file under review until those differences have been resolved.**

6.22 **In a 'no deal' scenario, UK nationals in the EU would no longer be covered by the harmonised system of Regulation 883/2004. We have warned on a number of occasions that this would disrupt their entitlement to key social security benefits and local healthcare provision, as they went from 'EU citizen' to 'third country national' overnight. The exact implications are likely to vary Member State by Member State, depending on local legislation and any contingency measured adopted unilaterally by the EU or individual countries. As we have noted before, for British people in countries like Ireland, France and Spain this could result in being unable to access, or afford, healthcare in their EU Member State of residence (for example if they become reliant on private health insurance). The implications for their personal lives, as well as for public services in the UK if they see no option but to move back, are likely to be profound.**

6.23 **The Government only acknowledged the scale of the disruption in access to healthcare for UK nationals in the EU on 28 January 2019.[54] That is nearly two years after we first asked the Department for Work & Pensions to confirm the potential implications of Brexit for UK nationals who access healthcare arrangements as long-term residents elsewhere in the EU.[55]**

6.24 **We note in this context that the Government's Social Security and Healthcare Bills are not solutions that would prevent disruption from the UK's abrupt exit from the system created by Regulation 883/2004. They would only provide the statutory basis for the Government to fund new arrangements with the EU and other countries in this area. A continuation of the status quo for UK nationals living in the European**

54 Department of Health and Social Care "Guidance for UK nationals living in the EU/EEA and Switzerland: Healthcare" (28 January 2019).

55 The European Scrutiny Committee first asked the Government to clarify how it would seek to protect the social security and healthcare entitlements of UK nationals in the EU following Brexit in its Report of 8 February 2017 (i.e. before Article 50 had even been triggered).

Union would require an agreement, which by definition in a 'no deal' scenario would not exist. Moreover, neither of the Bills to facilitate the UK's domestic implementation of any such new arrangement has yet received Royal Assent.

6.25 **We also note that the Government has said that EU nationals lawfully resident in the UK on 30 March 2019 would retain their current access to UK social security and healthcare system, but "subject to any future domestic policy changes which [also] apply to UK nationals". It is unclear to us how this commitment to the 'equal treatment' principle would be affected by the draft Statutory Instrument to prepare Regulation 883/2004 for the UK Statute Book in a 'no deal' scenario, which would explicitly remove Article 4 (which currently protects the 'equal treatment' principle when the EU nationals seek to access the UK's system for social security as a matter of European law).**[56]

6.26 **In light of this, we ask the Minister to write to us as soon as possible with further information about:**

- **The results of his discussions with the EU-27 and the European Commission on replacement arrangements for social security and access to healthcare from 30 March 2019 if the Withdrawal Agreement is not ratified;**
- **The extent to which any pre-existing social security agreements with individual EU countries can be revived in a 'no deal' scenario, given the Commission's assertion that the EU has exclusive competence over social security and healthcare arrangements with the UK that relate to periods of work undertaken before its withdrawal from the EU, and to what extent this limits what Member States can agree with the UK bilaterally with respect to UK and EU nationals who would otherwise have been within the scope of the Withdrawal Agreement; and**
- **The intended effect, and practical consequences, of the removal of the 'equal treatment' principle between UK and EU nationals from Regulation 883/2004 as retained in UK law in a 'no deal scenario' under the Statutory Instruments laid in December 2018, and in particular how it affects the commitment made by the Government that same month that EU nationals lawfully resident in the UK on 'exit day' would have the same rights and entitlements as UK nationals.**

6.27 **In anticipation of the Minister's response, and in view of the continued possibility that Regulation 883/2004 may have to be applied in the UK to EU citizens in scope of the Withdrawal Agreement indefinitely, we retain the proposal to amend Regulation 883/2004 under scrutiny. We also draw these developments to the attention of the Work and Pensions Committee and the Health and Social Care Committee.**

Full details of the documents

Proposal for a Regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems: (38400), 15642/16 + ADDs 1–8, COM(16) 815.

56 The Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2018. Schedule 1 would replace Title 1 of Regulation 883/2004 as it applies in the UK in a 'no deal' scenario, and includes the removal of Article 4 on equal treatment.

Previous Committee Reports

Thirty-first Report HC 71–xxix (2016–17), chapter 8 (8 February 2017); First Report HC 301–i (2017–19), chapter 15 (13 November 2017); Fourth Report HC 301–iv (2017–19), chapter 8 (6 December 2017); and Twenty-ninth Report HC 301–xxviii (2017–19), chapter 6 (23 May 2018).

7 VAT rules for online shopping

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee, Digital, Culture, Media and Sport Committee, Northern Ireland Affairs Committee and Treasury Committee
Document details	(a) Proposal for a Council Directive amending Council Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods; (b) Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods; (c) Proposal for a Council Directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers; (d) Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud.
Legal base	(a), (c) and (d) Article 113 TFEU; (b) Article 397 Directive 2006/112/EC. (a)—(d) unanimity.
Department	Treasury
Document Numbers	(a) (40259), 15471/18, COM(18) 819; (b) (40260), 15472/18, COM(18) 821; (c) (40264), 15508/18 + ADDs 1–2, COM(18) 812; (d) (40263), 15509/18, COM(18) 813

Summary and Committee's conclusions

7.1 Under the European Value Added Tax Directive,[57] the rules on treatment of VAT on business-to-consumer sales between EU Member States add up to a complex system. The supply of such goods and services can be taxed in either the Member State of the seller or of the buyer, depending on the nature of the product and, for goods, the value of sales made by the supplier.

7.2 To rationalise the EU's VAT treatment of goods and services bought via the internet, EU Finance Ministers in December 2017 unanimously adopted reforms to the EU's VAT rules as they apply to distance sales of goods and services to consumers, including online shopping. The most substantial elements of the new VAT legislation for e-commerce are

57 Directive 2006/112/EC, as amended.

not due to take effect until January 2021.[58] As set out in more detail in our Report of 22 November 2017 and in 'Background' below, these changes will alter the way in which EU businesses account for VAT on sales of goods and services to customers based in another Member State by:

- nearly eliminating the **intra-EU distance selling threshold**, meaning VAT on cross-border sales of a good to a consumer in another EU country will become payable in the Member State of consumption as soon as a company's cross-border sales to other EU states exceed €10,000 (£8,700);
- expanding the EU's '**Mini One Stop Shop**' (MOSS) for VAT on electronically-supplied services to *all* intra-EU distance sales of goods and services, so that EU businesses can account for the VAT on domestic and cross-border B2C sales to their national tax authority without needing to register for tax purposes in other EU countries.[59] (This does not alter the fact that for the supplies of most types of services to consumers, VAT will still have to be paid in the Member State of the supplier);[60] and
- making **online shopping platforms** like Amazon and eBay liable for collecting VAT on the sales that they facilitate, for goods sold from outside the EU worth €150 (£130) or less.[61]

7.3 In December 2018, the European Commission produced proposals for implementing rules to ensure smooth rollout of these changes for both businesses and EU governments in early 2021. These draft rules set out the technical detail of the functioning of the One Stop Shop VAT accounting mechanism for all cross-border intra-EU sales to consumers; the conditions under which online platforms like Amazon would have to account for VAT on sales to consumers where a good is bought from a non-EU supplier;[62] and a supplementary anti-fraud proposal with new record-keeping obligations on transactions between businesses and consumers that could help tax authorities identify potential VAT evasion on B2C sales.

7.4 The Government has told us that the Commission proposals represent a "major development in the taxation of intra-EU and cross border business", and the Treasury will work to "ensure that the rules meet the balance between being workable for business

58 Some of the changes agreed in December 2017 took effect in January 2021. This included principally new legislation allowing small suppliers of electronic services—like mobile phone apps—to account for VAT on intra-EU sales in their home country as if it were a domestic transaction (for annual sales up to €10,000).

59 Similarly, the One Stop Shop will be extended so that it can be used by third country (non-EU) firms for imports of goods worth €150 (£135) or less to EU-based consumers, provided the company has registered for VAT purposes in an EU Member State (the so-called 'non-Union scheme'.

60 See Article 45 of the VAT Directive for the treatment of business-to-consumer sales of services. An exception to this rule for telecommunications, broadcasting and electronically-supplied services, like web hosting, is set out in Article 58.

61 See Article 14a of Directive 2006/112/EC. The threshold of €150 was chosen because this is the value of a good at which a full customs declaration is necessary when it enters the Customs Union. Shopping platforms would also have to account for VAT on sales of goods of any value from third country businesses to final consumers in the EU where the goods are already located within the Union at the point of purchase (i.e. where they are fulfilling a warehousing arrangement, and the goods do not physically need to be imported from outside the EU at that stage).

62 This means that the online platform becomes responsible for accounting for the VAT on the sale to the consumer, rather than the supplier which actually imports the good from outside the EU for sale via that platform. This new legal responsibility for online marketplaces was introduced by the Member States to make sure they play their part in the "effective and efficient collection of VAT.

and Tax Administrations without too great a burden, and ensuring that revenue is safeguarded".[63] With respect to the proposal to retain and analyse payment transaction data, the Government has expressed concern about its practical implications and, by extension, its efficacy (especially where a consumer uses a payment service provider based outside of the EU).

7.5 Despite these concerns, and the UK's scheduled departure from the EU in March 2019, the proposals remain potentially relevant for British businesses and HM Revenue & Customs. Under the UK's draft Withdrawal Agreement, it would remain bound by EU legislation for the duration of a post-Brexit transitional period which could potentially last until 31 December 2022.[64] These new rules could therefore have to be implemented in the UK, even though the Government is due to lose its veto over them on 29 March 2019.

Our conclusions

7.6 **We thank the Financial Secretary (Rt Hon Mel Stride MP) for the information provided on the European Commission's implementing rules for the EU's VAT treatment of goods and services bought online by consumers.**

7.7 **These proposals are highly complex, but are likely to have a significant impact on both EU and non-EU businesses who sell products to consumers within the European Union. Given the complexity of the proposals, especially in relation to the new VAT responsibilities of online marketplaces, we anticipate changes to the legal texts are likely before they are formally adopted. The Member States themselves have also anticipated that agreeing on the implementing rules may take so long that the entry into force of the changes may have to be delayed from January 2021 to a later date.[65]**

7.8 **The precise impact of the changes to the VAT treatment of business-to-consumer distance sales for UK businesses, and HM Revenue & Customs, are not yet clear. As we noted in our Report of 5 September 2018[66] on changes to the EU's VAT legislation for cross-border business-to-business sales, this is the case virtually all proposed reforms of the EU's VAT system currently under negotiation in Brussels. Such changes are being discussed not only for B2C sales, but also business-to-business transactions, the VAT responsibilities of small businesses, and the flexibility that individual EU countries have to set domestic VAT rates.[67]**

7.9 **If the draft Withdrawal Agreement is eventually ratified despite Parliament's initial vote to reject it, EU law—including VAT legislation—will continue to apply in the UK until at least December 2020 and potentially until the end of 2022. During this transition period, UK businesses will retain access to the current Mini One Stop Shop (as well as its expanded version as and when it becomes operational) by virtue of their UK VAT registration. The Government would be required to transpose changes to the**

63 In particular, an Explanatory Memorandum submitted by HM Treasury on 10 January 2019 notes a number of areas of particular concern, including the extent of the "good faith" clause for online platforms when accounting for VAT on goods imported from outside the EU; and the viability of the rules on when payment is taken to have been made, and how far the proposed necessary information is readily available.

64 The transitional period would initially last until 31 December 2020, but could be extended until 31 December 2022 by mutual agreement between the UK and the EU.

65 Statement by the Council of 5 December 2017.

66 European Scrutiny Committee Report of 5 September 2018.

67 See for more information our Report of 28 March 2018 on Brexit and VAT.

VAT Directive into domestic law, even if those changes were agreed at EU-level after the UK ceases to have the veto over new European tax legislation (which it currently has as a Member State).[68]

7.10 **After the end of the transition, British businesses would cease to be able to use the distance-selling threshold to pay VAT domestically on sales to the EU (although this threshold is any event being reduced to €10,000 of sales by January 2021). In addition, British VAT registered-businesses would automatically cease to be eligible for access to the OSS unless a new legal agreement to that effect had been concluded with the EU. We note in this respect that no non-EU country has direct access to the One Stop Shop at the moment: 'third country' companies have to register for VAT in a Member State (the 'non-Union scheme') and access the One Stop Shop that way. That will also by default be the only option for British businesses wanting to sell to EU consumers and account for VAT via the OSS. However, non-EU firms' usage of the OSS for sales into the EU will be limited to VAT goods worth €150 or less, or electronically-supplied services. The full One Stop Shop accounting simplification mechanism will be available only to EU-based businesses.**

7.11 **The UK's departure from the One Stop Shop system would also affect a large number of non-EU businesses. The European Commission has noted that the UK had been by far the largest amount of OSS users from outside the EU (616, followed by Ireland at 166), representing 60 per cent of all users of the 'non-Union scheme' and 50 per cent of all VAT revenue collected via the MOSS from third country suppliers of electronic services.**[69] **To continue using the system they will need to move their VAT registration to one of the remaining Member States, and we expect many of them have already done so in anticipation of the UK's scheduled withdrawal from the EU in March.**

7.12 **We have used the designation 'British' in relation to the impact of leaving the EU's VAT system for B2C sales on domestic businesses carefully. This is because the position of Northern Irish companies, if the Withdrawal Agreement is ratified, is unclear. The controversial 'backstop' would require Northern Ireland to continue applying EU VAT law "concerning goods". Whether that means they would continue to be eligible for using the OSS for distance sales of goods to EU Member States is unclear, since the One Stop Shop—in its proposed expanded form—is not used just to account for VAT on goods but services as well. This in turn also means we do not know if non-EU businesses—including UK ones—could access the non-Union scheme for the OSS by having a Northern Irish VAT registration. We are seeking clarification from the Minister on this point.**[70]

7.13 **The draft rules for the VAT treatment of distance sales to consumers are accompanied by proposals for a new tool to identify VAT evasion on B2C sales by analysing EU-wide data on payment transactions. We have taken note of the Treasury's concerns about the**

68 Under Article 113 TFEU, EU legislation on indirect taxes like VAT and excise must be adopted by unanimity in the Council. This means every Member State has a right of veto. The European Commission has recently proposed to introduce Qualified Majority voting for EU tax legislation, but that would itself require the unanimous agreement of all Member States and their national parliaments under [Article 47 TEU].

69 Commission Impact Assessment SWD(2016) 379, p. 77.

70 We have raised a similar issue with the Financial Secretary in relation to EU proposals to limit the VAT registration threshold for small businesses at €85,000. It is unclear whether that limit would have force of law in Northern Ireland under the backstop.

implications of the proposal on centralised risk analysis of payments data to identify VAT non-compliance in B2C sales. The Minister has expressed discomfort about the potential impact on "UK tax sovereignty" of this tool, especially if it could eventually lead to one Member State being able to direct the investigations of the tax authority of another EU country.[71] While not wishing to underplay its concerns, we remain far more worried about the risk to the UK's autonomy over its tax system created by the post-Brexit transitional period during which the UK would be required to implement new EU tax legislation over which the Government—uniquely among all the countries to which such laws would apply—would not have had a veto.

7.14 **The potential for the transitional period to be extended until the end of 2022 (if the Withdrawal Agreement is ratified) also creates the risk that HMRC might have to invest resources into a national system plugged into the central EU database for payment transactions for usage for a year or less. Under the Agreement, the UK would be under a legal obligation to implement the new legislation until 31 December 2022 but HMRC would automatically cease to have access to it on 1 January 2023 (unless a new UK-EU legal arrangement would keep such access in place). In such a scenario, the costs of implementing the new anti-VAT evasion system would in all likelihood outweigh any benefits to the UK taxpayer.**

7.15 **If the Withdrawal Agreement is not ratified, the UK's change from 'Member State' to 'third country' vis-à-vis the EU occurs automatically on 30 March 2019. That means the impacts described above—lack of UK access to the One Stop Shop and HMRC's removal from the EU's centralised tax and customs databases—would then happen overnight, without the benefit of the transitional period foreseen in the Withdrawal Agreement. There would also be no agreed mechanism to resolve any VAT-related issues for cross-border sales that took place before 'exit day', where the Agreement does explicitly cater for such situations.[72]**

7.16 **More generally, as we have stated in numerous Reports since the referendum, in a 'no deal' scenario the VAT Directive will in principle require the remaining Member States to check the VAT liability of all goods moving between the UK and the EU.**

7.17 **How the EU and its individual Member States will enforce this in a 'no deal' scenario is unclear. With respect to the border with Ireland, both the Irish Government and the European Commission have recently said they would seek to ensure collection of VAT on goods without the need for border controls[73] (although they are likely to put further pressure on the UK to agree to the 'backstop', or an equivalent mechanism for continued alignment, to minimise the risk of tax evasion). However, serious disruption is still likely to occur at continental ports where VAT, customs and regulatory controls on UK goods will need to take place for the first time since 1992. The French, Belgian and Dutch Governments have all indicated they intend to enforce the legal requirements for VAT controls on 'third country' goods against UK imports, as set out in EU law, from 'day one'.**

71 The Treasury expressed similar concerns with respect to a separate proposal on the EU's TNA tool, which aims to identify VAT fraud in cross-border business-to-business transactions. We cleared that proposal from scrutiny on 23 May 2018.

72 Title III of Part Three of the Withdrawal Agreement deals specifically with 'on-going Value Added Tax and excise duty matters'.

73 For example, EU Chief Brexit Negotiator Michel Barnier said on 23 January 2019: "We will have to find out an operational way to carrying out checks and controls without putting back in place a border [in Ireland]."

7.18 **With respect to imports into the UK, the Government wants to reduce the impact of this by introducing "postponed accounting" for all business-to-business supplies entering the UK (at a potential significant risk to the Exchequer due to the VAT evasion).[74] UK consumers are also likely to experience new barriers to shopping online in an EU country after the UK leaves the Single Market. For example, parcels brought in from the EU will face new VAT and customs checks. UK residents will also no longer benefit from recent EU legislation to counter 'geoblocking', where websites offer consumers from different EU Member States different prices for the same products.)[75]**

7.19 **To avoid VAT-related friction in trade in a 'no deal' scenario, or at the end of any post-Brexit transitional, the Government set out in its July 2018 Chequers White Paper that it wants to remove the need for any VAT border controls on goods moving between the UK and the EU as part of the future economic partnership. (This would not only address one of the causes of delays at UK and EU ports, but also obviate the need for the VAT provisions of the 'backstop' that would keep Northern Ireland tied to substantial parts of EU tax law.) However, the Government has been unable or unwilling to give any indication of how this would work, except to say it would involve 'common processes and procedures' with the EU.[76] We therefore remain concerned that the Chequers proposals imply continued UK adherence to substantial parts of EU VAT law indefinitely, but without Treasury influence over the future direction of those laws (which would be decided by the remaining Member States).**

7.20 **Given the lack of clarity about the future impact of EU VAT legislation on UK tax law, we have decided to retain all four VAT e-commerce proposals under scrutiny in anticipation of further information from the Treasury in due course about the legislative deliberations and their potential impact on the UK tax system post-Brexit. We also ask that the Minister's next update on these proposals clarifies whether Northern Ireland would retain full access to the One Stop Shop under the 'backstop'.**

7.21 **In light of the substance of the Commission proposals, have also drawn these developments to the attention of the Business, Energy and Industrial Strategy, Digital, Culture, Media and Sport, and Treasury Committees. Because of the potential different VAT status of Northern Ireland under the backstop, we also consider the Northern Ireland Affairs Committee may have an interest.**

Full details of the documents

(a) Proposal for a Council Directive amending Council Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods: (40259), 15471/18, COM(18) 819; (b) Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods: (40260), 15472/18, COM(18) 821; (c) Proposal for a Council

74 HM Revenue & Customs, "VAT for businesses if there's no Brexit deal" (accessed 24 January 2019).

75 For more information on the EU's new geoblocking legislation, please refer to our Report of 5 September 2018.

76 In this respect, we recall that EU's existing legislation on VAT on trade in goods between Member States was designed specifically to remove the need for border controls; the VAT provisions of the Irish backstop aim to remove the need for VAT-related border controls between the two parts of the island of Ireland by keeping Northern Ireland tied to EU tax law on goods; and no non-EU country with its own VAT system has negotiated the removal of VAT-related border controls with the EU.

Directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers: (40264), 15508/18 + ADDs 1–2, COM(18) 812; (d) Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud: (40263), 15509/18, COM(18) 813.

Background

7.22 The EU has adopted a complex system of Value Added Tax (VAT) legislation, which has as one of its primary objectives the complete abolition of VAT-related border controls on goods moving between Member States while retaining physical risk-based checks for goods entering the European Union from so-called 'third countries'.[77]

7.23 Under EU law, VAT is a consumption tax and as such is payable in the country where a good or service provided to or used by the final consumer.[78] In practice, this means that the sale of a good from one Member State to another—for example from France to Luxembourg—incurs a VAT charge at the rate applicable in the latter, and under its domestic legislation. For business-to-consumer sales between countries, the onus to account for the VAT in the country of consumption falls on the seller based since individual consumers are not registered for VAT purposes.[79]

7.24 For businesses, especially smaller ones, the need to account for VAT on goods sold to consumers in another country—nowadays principally via the internet—on the basis of that latter country's tax legislation is a significant administrative burden. It acts as a barrier to selling goods to overseas consumers, because it is often difficult or expensive to comply with unfamiliar VAT legislation in another language. To address this problem on an EU-wide basis, and make it easier for EU businesses to sell their goods online to consumers in another Member State as part of the Single Market, an intra-EU distance selling threshold is in force. This allows a business selling goods to a consumer in another Member State to pay VAT domestically at their national rate, as long as their sales do not exceed a certain threshold in value per year to a specific Member State of consumption.[80] This distance selling threshold does not apply to B2C goods supplied by non-EU companies, who must make sure the VAT on their sales is accounted for in the country of consumption.[81]

7.25 For business-to-consumer sales of services like accounting between EU Member States, VAT is typically payable in the country of the supplier so the additional administrative burden related to the tax does not arise.[82] However, this is not the case for electronically-supplied services, like website hosting or providing cloud data storage: since 2015, EU law

77 Individual countries can adopt deferment procedures to allow the VAT to be collected after the goods clear the border, to reduce the administrative burden on traders importing goods. However, this can require up-front financial guarantees to protect the receiving country against the risk of VAT evasion.

78 Directive 2006/112/EC, as amended.

79 For business-to-business sales where the seller and the buyer are in different EU Member States, the buyer has to account for the VAT on their normal VAT return to their national tax authority. See for more information our Report of 5 September 2018 on the EU's VAT system for business-to-business sales.

80 See article 34 of Directive 2006/112/EC. This exemption does not apply to goods imported by consumers from non-EU countries. The distance selling threshold can be set by individual Member States between €35,000 (£30,500) and €100,000 (£87,000), with the UK having chosen £70,000.

81 In practice this requirement is often circumvented, for example by (falsely or truthfully) telling customs authorities that a parcel is worth less than €22. This is the EU's so-called Low Value Consignment Relief (LVCR) threshold, below which goods imported from outside the EU do not accrue a VAT charge. LVCR is being abolished as of 1 January 2021.

82 See the European Commission's website, "Where to tax?" (accessed 23 January 2019).

requires VAT on the provision of such services to be paid in the country of the consumer.[83] To avoid suppliers of such services having to register for VAT in every EU Member State where they have customers, a mechanism known as the Mini One Stop Shop (MOSS) was established.[84] This allows them to pay the VAT for the electronically-supplied service, at the rate applicable in the country of the consumer, via their national tax authority (i.e. without having to register for VAT in another Member State).[85] The revenue is then remitted to the Government of the Member State where the consumer is based.

7.26 The various possibilities for where VAT is accounted for, and ultimately paid, for B2C sales to EU-based consumers under current European legislation is shown in table 1 below.

83 See Council Directive 2008/8/EC.

84 The MOSS has a 'non-Union scheme', which allows a non-EU company to register for VAT in one Member State to use the One Stop Shop throughout the EU. The UK had seen by far the largest amount of users from outside the EU (616, followed by Ireland at 166), representing 60 per cent of all users of the 'non-Union scheme' and 50 per cent of all VAT revenue collected via the MOSS from third country suppliers of electronic services. After Brexit, UK VAT registrations will no longer be eligible for use in the MOSS (Commission Impact Assessment SWD(2016) 379, p. 77.)

85 The European Commission has also recently proposed legislative changes that would allow small businesses from one EU country to benefit from the VAT exemption threshold in another Member State under certain conditions.

Table 1: VAT treatment of B2C sales in the EU under current legislation

Type of sale		VAT accounted for in:	VAT ultimately paid to:
Sales between EU Member States			
B2C sale of a good	For sales to a specific Member State where overall sales to that country have a cumulative annual value below the distance selling threshold (between €35,000 and €100,000)	Member State of the supplier	
	For sales to a Member State once the national distance selling threshold has been exceeded	Member State of consumption	
B2C sale of a service, except electronically-supplied services		Member State of the supplier	
B2C sale of electronically-supplied services		Member State of the supplier, via the MOSS	Member State of consumption
Sales from a non-EU country into the EU			
B2C sale of a good or service, except electronically supplied services		Member State of consumption	
B2C sale of electronically supplied services	Where the non-EU supplier is registered for the MOSS	Member State of MOSS registration	Member State of consumption
	Where the non-EU supplier has no MOSS registration	Member State of consumption	

7.27 The various complexities within this system as shown above led the European Commission to propose a legislative rationalisation of the way in which VAT must be paid on B2C sales within the EU in December 2016.[86] The primary purpose of its proposals

86 See our Report of 22 November 2017 for more information on the rationale behind the latest reforms of VAT on B2C sales within the EU.

was to reduce the extent to which differences in VAT law were hindering the EU's internal market for e-commerce, for both the supply of electronic services and the online sale of goods to consumers.

7.28 In December 2017, EU Finance Ministers unanimously adopted the Commission proposals with a number of significant amendments.[87] The first reforms contained in the legislation took effect on 1 January 2019, in particular by allowing small businesses selling electronically-supplied services to account for VAT on intra-EU sales in their home Member State as if it were a domestic transaction (for annual sales up to €10,000). The aim of this change was to reduce the administrative burden on small companies of having to pay VAT in the Member State of the customer in cases of cross-border sales (a key demand of UK businesses in this sector).[88] Other changes which took effect at the start of this year related to invoicing and record-keeping requirements.

7.29 However, the most substantial elements of the new VAT legislation for e-commerce, which are set out in more detail in our Report of 22 November 2017, are not due to take effect until January 2021. The most important changes are:

- The abolition of the VAT exemption for low-value goods (**Low Value Consignment Relief** or LVCR) imported by consumers from outside the EU, which means import of parcels worth €22 (£15) or less from 'third countries' will no longer be VAT-free;

- A **significant reduction in the existing intra-EU distance selling threshold** below which an EU business can pay VAT domestically on sales of goods to consumers based in other Member States. At present, the threshold applies for supplies made to consumers in each Member State individually, and can be as high as €100,000 (£89,800) for some EU countries.[89] Once the reforms take effect, only VAT on the first €10,000 of B2C sales to all other Member States collectively can be paid in the country where the business is located. For any sales above that threshold, the business would have to pay VAT in the Member State of the customer;

- Reducing the burden on businesses of the near-elimination of the distance selling threshold (which means they will have to pay VAT in other Member States much faster than at present), the **One Stop Shop** (OSS)—the accounting mechanism which allows a trader to pay VAT on cross-border supplies within the EU in their

87 The resulting legislation on VAT for e-commerce is contained in Council Regulation (EU) 2017/2454, Council Directive (EU) 2017/2455 and Council Implementing Regulation (EU) 2017/2459.

88 While businesses would be able to use the MOSS to reduce the burden of having to pay VAT in the Member State of the customer for cross-border sales of electronic services, the Commission noted in its impact assessment that "while the MOSS itself is a significant simplification for business who make cross-border supplies of electronic services", with the cost of roughly €2.200 per business annually being "far less" than the estimated average cost of € 41,000 for direct registration for VAT purposes in another Member State), it is still "disproportionately high" for the smallest businesses. See also Commission Impact Assessment SWD(2016) 379, p. 17.

89 See for more information on each EU country's distance selling threshold the Commission document "VAT thresholds". The thresholds apply to incoming cross-border sales by businesses based in other Member States (e.g. if France has a threshold of €35,000,a UK business—until Brexit—can make supplies to French customers up to that value and pay VAT in the UK. For any sales above that threshold, the business would have to register for and pay VAT in France).

home Member State—will be extended to *all* intra-EU distance sales of goods and services.[90] Under this system, the VAT revenues are then redistributed by the collecting tax authority to the Member State of the consumer;

- Similarly, the **One Stop Shop will be extended so that it can be used by third country (non-EU) firms** for imports of goods worth €150 (£135) or less to EU-based consumers, provided the company has registered for VAT purposes in an EU Member State (the so-called 'non-Union scheme');[91] and

- The legislation makes **online e-commerce platforms** like Amazon and eBay liable for collecting VAT on the distance sales that they facilitate for goods worth €150 or less from third country businesses to final consumers in the EU, and for sales of goods of *any* value from third country businesses to final consumers in the EU where the goods are already located within the Union at the point of purchase (i.e. where they are fulfilling a warehousing arrangement).[92]

7.30 A basic overview of the situation after these changes to the VAT treatment of distance sales to EU-based consumers take effect is shown in table 2 below (compared to the situation described in table 1 above). It presumes businesses will register for the One Stop Shop where they are able to do so, to simplify how they account for VAT on cross-border sales.

7.31 As can be seen, the rules will become simpler for EU business selling within the EU (which, as a rule, will be able to account for all VAT on cross-border sales in their own country via the OSS). However, non-EU suppliers will continue to face a higher administrative burden because their use of the One Stop Shop will be limited to accounting for VAT on electronically-supplied services and goods valued at €150 or less. As set out in paragraphs 56 to 64 below, this will be the default situation for UK businesses that sell to EU-based consumers once European VAT law ceases to apply in the UK.

90 At present, the MOSS can only be used for cross-border sales of electronic services by a business to a consumer based in different EU Member States.

91 The threshold of €150 was chosen because this is the value of a good at which a full customs declaration is necessary when it enters the Customs Union.

92 See Article 14a of Directive 2006/112/EC.

Table 2: VAT treatment of B2C sales in the EU from January 2021

Type of sale		VAT accounted for in:	VAT ultimately paid to:
Sales between EU Member States			
B2C sale of a good	If sales to all other Member States cumulatively have not exceeded the €10,000 distance selling threshold	Member State of the supplier	
	If sales to other Member States have exceeded the €10,000 distance selling threshold	Member State of the supplier, via the OSS[93]	Member State of consumption
B2C sale of a service other than electronically-supplied services		Member State of the supplier	
B2C sale of electronically-supplied services		Member State of the supplier, via the OSS	Member State of consumption
Sales from a non-EU country into the EU			
B2C sale of a good valued at €150 or electronically-supplied service		Member State of OSS registration, via the OSS	Member State of consumption
B2C sale of a good valued at more than €150 or non-electronically supplied services		Member State of consumption	

7.32 The Government had expressed concern about some elements of the proposals earlier on in the legislative process, in particular the near-elimination of the intra-EU distance selling threshold for goods (which means EU businesses will have to account for VAT to the tax authorities of another Member State sooner than is currently the case).[94] However, in October 2017 the Financial Secretary to the Treasury (Rt Hon Mel Stride MP) informed the Committee that the Government was supportive of the proposals as amended by the Member States, given that the VAT accounting mechanism via the One Stop Shop would be extended to reduce the impact this would have on businesses. The Minister confirmed this by letter of 10 January 2018, in which he added that the legislation as adopted "achieved an acceptable balance for the UK". Accordingly, the Chancellor voted to support their adoption at the ECOFIN Council on 5 December 2017.

7.33 When the e-commerce VAT package was adopted in December 2017, the Commission and the Member States both acknowledged that this second tranche of reforms requires further detailed rules, for example in relation to the operation of the One Stop Shop for

93 Businesses do not have to make use of the One Stop Shop. If they do not, they would need to register for VAT in every other EU Member State where they make a sale once they exceed the new €10,000 distance selling threshold.

94 For example, with respect to the changes to distance sales of goods within the EU, the Financial Secretary and his predecessor noted that this proposal could "increase burdens disproportionately for the smallest businesses given the relatively high distance selling thresholds applicable at present". In April 2017, the previous Minister noted that "the case still needs to be made" for the positive impact of reducing the threshold for distance sales of goods, because "there are benefits to the current arrangements, (…) difficulties in moving from the current thresholds, and (…) the differences between goods and services justifies different thresholds". See for the example the Letter from Jane Ellison to Sir William Cash (18 April 2017); the letter from Mel Stride to Lord Boswell (3 July 2017); and the letter from Mel Stride to Lord Boswell (21 July 2017).

all distance sales and the application of EU VAT rules to online marketplaces, to allow tax authorities and businesses to operate effectively in the new legal environment.[95] Proposals for these detailed implementing rules were published by the European Commission in December 2018, and deposited for scrutiny by the Treasury in January this year.

7.34 We have made an assessment of the proposals below, as well as setting out in paragraphs 56 to 64 to what extent the EU's new rules on VAT for online shopping are likely to remain relevant for the UK despite its withdrawal from the European Union in just under two months' time.

The Commission's proposals

7.35 As noted, the European Commission published detailed proposals for the implementing rules for the EU's new VAT system for online shopping in December 2018. Its package of measures consists of four separate pieces of draft legislation, namely:

- A proposal to amend the VAT Directive with detailed new rules for Value Added Tax on distance sales of goods within the EU, including imports from third countries (document A);[96]
- A draft Implementing Regulation as regards the VAT-related obligations of online platforms like Amazon (document B);[97]
- A proposal to amend the VAT Directive in relation to record-keeping obligations for payment services providers to help tax authorities identify cross-border business-to-consumer sales on which VAT may have been evaded;[98] and
- A draft Regulation amending the EU's mechanisms for cross-border cooperation to combat VAT fraud to provide a legal basis for the exchange of data between Member States relating to payments referred to above.[99]

7.36 We have assessed the substance of these four proposals further below, in relation to documents A and B (which relate to the detailed implementing rules for the new VAT system for online shopping within the EU) and documents C and D (which are supplementary proposals related to anti-fraud measures). All four documents are based on Article 113 of the Treaty on the functioning of the European Union, which means they must be agreed unanimously by all Member States and the European Parliament has a consultative role only.[100]

95 See for more information the statement by the Council entered into the minutes of the Council meeting of 5 December 2017.
96 Commission document COM(2018) 819.
97 Commission document COM(2018) 821.
98 Commission document COM(2018) 812.
99 Commission document COM(2018) 813.
100 The Commission is expected to make recommendations later in 2019 for the introduction of some Qualified Majority voting in matters of taxation, but any such changes would need to be approved by all Member States before they could take effect.

Detailed VAT rules for online shopping within the EU

7.37 The purpose of the first two proposals[101] is to amend the VAT Directive[102] and its Implementing Regulation[103] to provide the detailed rules for the extension of the One Stop Shop VAT accounting mechanism to new categories of distance sales, and the new VAT obligations of online marketplaces and sales platforms for goods sold to EU consumers by businesses located outside the Union. We discuss each of these elements in turn below.

Extension of the One Stop Shop to distance sales of goods and non-electronic services

7.38 As noted the 'Mini' One Stop Shop as it exists at present applies only to the cross-border supplies of electronic services by a business to a consumer based in two different EU Member States. It allows the business to account for the VAT on such sales to their national tax authority, but applying the rate of the Member State of the consumer and the revenue is then remitted to the latter. The overall effect is that the business does not have to register for VAT in each Member State where it sells its services.[104]

7.39 From January 2021, the One Stop Shop VAT accounting mechanism is due to be extended to two scenarios for cross-border sales involving a customer in the EU:

- **Intra-EU sales of goods *and* services by a supplier and a consumer based in different Member States**, irrespective of the value of the transaction; and
- **Sales of *goods* valued at €150 less sold directly to an EU-based customer by a supplier based *outside* of the EU** (provided the company has registered for VAT purposes in an EU Member State). As described in paragraphs 43 to 48 below, different rules would apply where such a sale is facilitated via an intermediary like an online marketplace or platform.

7.40 To facilitate the expansion of the One Stop Shop, the detailed implementing rules put forward by the Commission in month would introduce changes to the One Stop Shop in relation to the allocation of identification numbers;[105] corrections to declarations;[106]

101 Commission document COM(2018) 819 and Commission document COM(2018) 821.
102 Council Directive 2006/112/EC.
103 Council Implementing Regulation 282/2011.
104 From 1 January 2019, providers of electronic services to consumers in another EU country can choose to pay VAT domestically at their national rate for the first €10,000 worth of sales.
105 Article 369q of the VAT Directive as amended by the VAT E-Commerce Directive provides that the Member State of identification (i.e. where the business using the One Stop Shop is registered for VAT purposes) has to allocate an identification number to an intermediary acting in the name and on behalf of a business using the OSS for distance sales of goods imported from third territories or third countries. The latest Commission proposal would add a second paragraph to Article 57e of the VAT Implementing Regulation, clarifying that this identification number is an authorisation enabling him to act as intermediary and cannot be used by the intermediary to declare VAT on taxable transactions.
106 For example, the VAT E-commerce Directive allows making corrections to previous One Stop Shop VAT returns, within three years, in a subsequent return (instead of having to resubmit the return of the tax period to which the corrections relate, as is the case in the mini One Stop Shop for supplies of electronic services). The VAT e-commerce Directive does however not specify how corrections to returns relating to tax periods preceding 1 January 2021—i.e. before the new system takes effect—have to be made as of 2021. To limit the impact for businesses of the changeover from one IT system to another, the Commission proposes to keep in place the current system for making corrections to mini One Stop Shop VAT returns relating to the periods from the fourth quarter of 2017 to the fourth quarter of 2020.

a decision by a business to cease using the OSS;[107] and the records to be kept when registered for the scheme.[108] According to an Explanatory Memorandum on the proposals submitted by the Financial Secretary to the Treasury (Mel Stride) on 10 January 2019, these are "broadly extensions of the Mini One Stop Shop (MOSS) existing rules, rather than substantive changes".

7.41 Finally, the Commission has proposed an amendment relating to the declaration and payment of import VAT where the One Stop Shop is *not* used to declare VAT on goods imported by consumers through an online sale from a non-EU country (including the UK after Brexit). The Minister's Explanatory Memorandum notes that this would require payment of any deferred import VAT to be made by the middle of the month following the import, rather than the end of that month (to align the deadlines with those relating payment of customs duties under the Union Customs Code).[109]

VAT obligations of online marketplaces

7.42 The December 2017 VAT e-commerce Directive inserted a new Article 14a into the 2006 VAT Directive, providing that—where a business facilitates, through the use of an "electronic interface" such as an online marketplace, platform or portal—a distance sale of goods valued at €150 or less imported from outside the EU the business "who facilitates the supply shall be deemed to have received and supplied the goods himself". In plain terms, this means that the online platform becomes responsible for accounting for the VAT on the sale to the consumer, rather than the supplier which actually imports the good from outside the EU for sale via that platform. This new legal responsibility for online marketplaces was introduced by the Member States to make sure they play their part in the "effective and efficient collection of VAT".[110]

7.43 In its implementing proposals of December 2018, the Commission is recommending the Member States make a number of technical changes to "clarify the VAT rules" where an online sales platform is involved.

7.44 Firstly, the Commission wants to introduce common definitions of when an electronic interface is legally 'deemed' to facilitate a supply, and therefore is caught by the new provisions to make them liable for VAT. This would be the case for example where the platform sets the terms under which the supply is made, or is involved in the ordering or delivery of the goods.[111] As regards the amount of VAT an online marketplace would have to collect from the final consumer, a specific "good faith" clause would prevent them from

107 Article 57g of the VAT Implementing Regulation provides that where a business voluntarily ceases using the mini One Stop Shop, regardless of whether he continues to supply goods or services which can be eligible for its use, they shall be excluded from the OSS in any Member State for two calendar quarters. This provision is removed "as it is not considered useful by Member States and may create additional burdens for the taxable persons concerned".

108 In particular, under current EU VAT law, the records to be kept by a business using the mini One Stop Shop currently include the name of the customer, where known to the taxable person. As this information is not needed to determine the Member State in which the supply is taxable, and may raise data protection issues, it is no longer included in the records to be kept by taxable persons using the One Stop Shop listed in Article 63c of the VAT Implementing Regulation.

109 The Minister's Explanatory Memorandum notes that this "accelerates payments from the end of the month in cases where the import VAT is paid on receipt by the customer and is collected and accounted for on a monthly basis by the importing agent, for example a Fast Parcel Operator".

110 Letter from Mel Stride to the European Scrutiny Committee (24 October 2017).

111 The platform would not have to account for VAT on any sales made via its system where it only provides a payment processing service or the listing of good.

being held liable for any additional VAT tax authorities believe has been missed (where the platform can demonstrate that they collected the amount of VAT they reasonably believed was due, based on information about the sale as provided by the supplier outside the EU).

7.45 Secondly, for legal and accounting purposes, the proposal would split the sales 'facilitated' by an electronic interface into two: a supply from the original non-EU supplier to the platform, and a second supply from the platform to the consumer. To mitigate against the risk of VAT revenue losses resulting from the supply to the platform[112] and the creation of additional administrative burdens for businesses, the Commission's draft rules would 'zero rate' the supply to the online platform (meaning it would not have to *pay* VAT to the original supplier).[113]

7.46 Like other non-EU businesses, online platforms established outside the EU but facilitating sales of goods to European consumers would also be allowed to use the expanded One Stop Shop (OSS) scheme for payment of VAT on supplies under €150 they facilitate via their platform, provided they are registered for VAT purposes in an EU Member State (see paragraphs 39 to 42 above).[114]

7.47 The Treasury's Explanatory Memorandum in January 2019 sets out the Government's initial position on the substance of the Commission's proposals. In it, the Financial Secretary welcomed the proposals, reiterating that they are needed to "support higher level legislation" (the VAT E-Commerce Directive) "which has already been agreed". He adds:

> "Given that the changes represent a major development in the taxation of intra-EU and cross border business, our objective will be to ensure that the rules meet the balance between being workable for business and Tax Administrations without too great a burden, and ensuring that revenue is safeguarded. The keys to achieving this objective will be the definition of who is deemed liable as the supplier and therefore liable to account for VAT; the extent of the "good faith" clause; the viability of the rules on when payment is taken to have been made, and how far the proposed necessary information is readily available."

New anti-VAT fraud measures

7.48 In parallel to the detailed implementing rules for the new application of EU VAT law to online shopping and the VAT responsibilities of online platforms, the European Commission also tabled two proposals to strengthen the ability of national tax authorities in the EU to address VAT evasion and non-compliance. According to the Explanatory

112 If the platform pays has to pay VAT to the non-EU supplier, it can recoup this from their national tax authority in the EU since VAT is ultimately paid only by the final consumer. If the platform—deliberately or otherwise—then does not account for VAT on the sale to that consumer, revenue could be lost since the refund for the VAT paid by the platform to the original supplier may already have been paid out.

113 To reduce the burden on platforms of checking whether the recipient of the supply is a consumer rather than a business (in which case the importing business, rather than the platform, would be liable for the VAT on an import from a non-EU country), the draft law would create a legal presumption that all transactions caught by the new rules are a business-to-consumer sale via a platform and involving a non-EU supplier, but this could "be rebutted where information is provided to the contrary".

114 Online platforms would also be allowed to use the OSS for domestic supplies (i.e. to a consumer based in the same Member State as the platform), because they may hold stock in different Member States and would therefore have to register for VAT in each EU country.

Memorandum submitted by the Financial Secretary, such fraud is considered a "significant problem" in the e-commerce sector across the EU, with total VAT losses on cross border supplies of goods between Member States alone estimated—by the Commission—at €5 billion (£4.4 billion) a year.

7.49 Concretely, the two legislative proposals would amend the VAT Directive and the related Regulation on administrative cooperation[115] (which provides the legal basis for exchange of information between the EU's national tax authorities on VAT-related issues). They would establish a system requiring payment service providers like banks to retain data on transactions between consumers and businesses in different Member States, or where the business is located outside the EU.[116] This information would be collected in a centralised EU-wide EU database[117] to "enable national tax authorities to be able to identify and tackle online VAT fraud and non-compliance more easily".[118] According to the Commission, the data would enable tax authorities to identify suppliers of business-to-consumer goods and services; verify the number of transactions they are involved in, and their monetary value; and verify the origin of the payments.

7.50 Access to the information in this new database will only be granted to designated national liaison officials in 'Eurofisc' (the EU's network of national tax officials who work to tackle VAT fraud), and requires any information from the database to be verified with other information held by the tax authorities before it can be used further in ensuring compliance or undertaking a fraud investigation. The aim is for the new database to be operational by 1 January 2022, a year after the new rules for VAT on online shopping described in paragraphs 39 to 48 are due to take effect. It is expected it would cost the EU approximately €12 million to set up the new system, with annual running costs of €4.5 million.[119] Member States themselves would be responsible for all the costs of developing national electronic systems to collect and supply the relevant information on payment transactions to the central database.[120]

7.51 The Financial Secretary's Explanatory Memorandum on the new anti-VAT fraud proposals reiterates that the Government "supports changes which will facilitate the effective exchange of information and administrative co-operation to better control and counter VAT fraud". It adds that the new database—should the UK have access to it after Brexit—could "potentially be of help to HMRC" insofar as it as it might enable tax officials to determine the VAT due from online sellers, "which can be difficult to ascertain when the seller is based outside a [EU] Member State".

7.52 However, the Treasury believes there "a number of uncertainties with regard to how the proposal would operate in practice and its efficacy, which will need exploring in further EU level discussions". These include notably the amounts of data to be collected

115 Regulation 904/2010, as amended.

116 Data need only be shared with the tax authorities when the number of relevant transactions to any supplier exceeds 25 payments per quarter, meaning that small volume cross border trade is excluded from the scope of the proposal.

117 This database is to be called the Central Electronic System of Payment Information (CESOP).

118 The Commission proposal uses already agreed definitions from the Payment Services Directive (Directive 2015/2366) and identifies the data that should be captured; as well as the circumstances in which the rules will apply and any assumptions that can be made about the status of the supplier and customer.

119 Until 2020, these costs will be borne by the EU budget via the 2014–2020 Fiscalis Programme, with further EU support likely to be available from the post-2020 Fiscalis Programme currently being established.

120 There are no estimates available for HRMC's costs if it had to form part of the system, although the Commission estimates that tax authorities will face one off costs of €7.5 million and annual costs of €3.9 million.

(for example, whether it could be distilled into useful intelligence) and the way of linking sellers to buyers to give officials confidence that a specific payment recorded relates to a sale on which VAT was due. In addition, the Minister notes that the Commission proposal is silent on how the system can capture data where the payment service provider is based outside of the EU, which might incentivise sellers to use non-EU payment systems and drive up VAT non-compliance. (Similarly, it is unclear how national tax authorities would be able to enforce VAT compliance from sellers operating in third countries outside of the EU.)

7.53 The Government is also wary about the potential implications for "UK tax sovereignty and whether the risk analysis will take account of UK priorities" (and, especially, whether it could eventually result in other Member States being able to direct HM Revenue & Customs to undertake specific investigations). This echoes similar concerns expressed by the Treasury on a related Commission proposal to identify VAT evasion, in relation to business-to-business supplies, as we noted in our Report of 28 March 2018.

Implications of the EU's VAT proposals for the UK

7.54 There are far-reaching consequences for the UK in the context of its withdrawal from the EU with regards to the administration of Value Added Tax, especially in cross-border trade with the EU. In the context of VAT on e-commerce sales by UK suppliers to EU-based consumers specifically, the consequences of becoming a 'third country'—whether in March 2019 or at the end of any post-Brexit transitional period, are also significant. Once the UK is outside the common VAT area:

- British businesses selling goods or services to EU consumers will have to register for VAT in an EU country (and ensure compliance with its local VAT laws) to account tax due on sales there, as the intra-EU thresholds on accounting for the VAT in the UK will cease to apply since it would no longer be a Member State;[121]
- British traders will no longer be able to automatically use the One Stop Shop simplification mechanism from the UK—either in its current or proposed expanded form—as HM Revenue and Customs will no longer be an EU tax administration. UK businesses would have to use the OSS by registering for VAT purposes in one of the remaining Member States, and their use of the One Stop Shop would be more limited in respect of cross-border sales of goods than for EU businesses;[122] and
- Officials from HM Revenue & Customs would no longer be part of the EU's expert groups on VAT fraud, meaning there would be no UK representation on Eurofisc where the Commission proposes that data captured about payment transactions would be exchanged. It is unclear if the UK would have access to this data during any post-Brexit transitional period.

121 As noted, the intra-EU distance selling threshold is in any event being reduced to €10,000 for all sales to other Member States cumulatively from January 2021, from the existing system of thresholds applicable on an individual Member State basis.

122 See for more information Table 2 above, which shows the difference in the functionalities of the expanded One Stop Shop for EU businesses and non-EU businesses respectively.

7.55 As we have noted in several of our Reports since the referendum, the UK's exit from the common VAT area also has significant implications for the flow of trade—especially in goods—between the UK and the EU more generally.

7.56 When EU VAT law ceases to apply here, the UK will be considered a "third country" for the purposes of EU tax legislation. As such, VAT will become an import tax for goods exported from the UK to the EU and vice versa. Under the 2006 VAT Directive the customs authorities of the EU Member States must, in principle, ensure payment of the tax at the border before the goods can be released for free circulation in the EU.[123] Not carrying out documentary—and possibly physical controls—on imports of goods[124] to ascertain their VAT liability would create a significant risk of large-scale tax evasion, as VAT could remain unpaid and lead to missing trader fraud.[125]

7.57 Within the EU, VAT-related controls on goods moving between Member States were abolished with the advent of the Single Market in 1992. This led to the removal of physical customs posts on intra-EU frontiers, including at the Irish border and at UK ports connecting it to the continent. To ensure collection of VAT on goods entering from another Member State in the absence of border controls, all EU countries submit data on intra-EU purchases and supplies by their businesses into the VAT Information Exchange System or VIES (allowing tax authorities to match incoming and out-going goods, and check the VAT liability.) VIES is based on the EU's legal framework for VAT and closely connected to the operation of the whole common system of Value Added Tax. As a result, no non-EU country has access to the database.

7.58 The UK will cease to be part of this intricate intra-EU system when it leaves the European Union. At that point, the EU's legal requirement for VAT controls on trade with the 'third countries' like the UK would, in the absence of new solutions, inevitably add friction to trade at ports like Dover and Calais where none currently exists. To address this abrupt change in the tax treatment of goods moving between the UK and the EU after Brexit, and in particular the need for re-imposed border controls in absence of other solutions, the draft Withdrawal Agreement, if ratified, would cover VAT-related issues in three ways:

- During the post-Brexit transitional period, which could last until December 2022 if the Withdrawal Agreement is ratified, the UK would stay bound by all EU VAT legislation—including any changes adopted by the remaining Member States after formal withdrawal, but which take effect during the transition. (In this scenario, the UK would be bound to apply EU tax legislation over which it had no substantive say, but which it could have vetoed as a Member State.);

123 Although individual EU countries can defer payment, this is subject to certain administrative requirements and financial guarantees to minimise the risk of tax evasion.

124 VAT controls are also carried out by customs authorities on goods being exported: VAT is payable in the country of consumption, entitling businesses to a refund of VAT paid on their supplies when they export a good to another country. In absence of border controls, businesses could claim VAT refunds on goods that had not actually been exported.

125 Missing trader VAT fraud takes place when a company buys goods from another country without paying the VAT due on import. When selling the goods domestically, the company receives the entire amount of VAT, which it pockets rather than transferring it to the national Treasury. Carousel fraud takes this a step further: the same goods are bought and resold by the fraudster several times via middlemen, and each time the amount of collected VAT increases and the company either disappears or becomes insolvent before the tax authority can collect the accumulated VAT.

- After the end of the transition, the UK and the EU would resolve any VAT-related issues related to trade that occurred before the transitional period ended using existing EU structures and systems, like the VAT Information Exchange System; and

- Under the Irish 'backstop', Northern Ireland would have to continue applying EU VAT legislation as it relates to goods indefinitely to avoid the need for VAT-related controls on trade between Northern Ireland and Ireland. The precise scope of this requirement is unclear and would need to be agreed on the UK-EU Joint Committee;

7.59 The Government's ambition, as set out in the July 2018 Chequers White Paper, is to overcome the need for any VAT-related border controls on goods moving between the UK and the EU as part of the future economic partnership. This would not only address one of the causes of delays at UK and EU ports, but also at a stroke obviate the need for the VAT provisions of the 'backstop' that would keep Northern Ireland tied to substantial parts of EU VAT law. However, the devil is in the practical detail. The Government has repeatedly refused to give any indication of how it intends to persuade the EU to agree to the removal of VAT controls at the border without the UK following European tax legislation on goods. We consider it important in this regard that:

- The EU's existing legislation on VAT on trade in goods between Member States was designed specifically to remove the need for border controls, implying that achieving the same objective without any harmonised VAT legislation is likely to be difficult;

- The VAT provisions of the Irish backstop aim to remove the need for VAT-related border controls between the two parts of the island of Ireland by keeping Northern Ireland tied to EU tax law on goods; and

- No non-EU country comparable to the UK has negotiated the removal of VAT-related border controls with the EU.[126]

7.60 The negotiation of an arrangement which removes the need for VAT controls on goods in trade with the EU is unprecedented and will not therefore most likely not be straightforward. It will be even more challenging for the Treasury to secure such an arrangement, without binding the UK to continued adherence substantial parts of EU tax legislation as it evolves in the future, without the input and veto rights that the remaining EU Member States would have over changes to that system.

7.61 If the Withdrawal Agreement is not ratified, the mitigations referred to in paragraph 59 above would not take effect, and the UK would abruptly leave the common VAT area on 29 March 2019. The impact of this on cross-border trade at UK and EU ports, combined with the re-imposition of other customs and regulatory controls, is likely to be extremely disruptive. How VAT-related controls would be carried out on either side of the Irish border is unclear (and both the Irish Government and the European Commission have recently indicated that, at the land border, checks could be avoided even in a 'no deal'

126 While Monaco is in the common VAT area, this is due to a treaty with France requiring it to observe French—and therefore EU-VAT legislation. VAT-related border controls exist on trade between the EU and the European Economic Area and Switzerland.

scenario).[127] While the Government's objective to secure frictionless trade with the EU would still hold, it is impossible to judge at this stage how and when negotiations might start on a new UK-EU VAT arrangement.

7.62 Given the significance of the draft EU rules for VAT on online shopping, both while the UK continues to apply European tax law and in the context of any future negotiations for a new UK-EU VAT arrangement, we have retained the proposals under scrutiny for the time being.

Previous Committee Reports

None. These are new proposals for legislation. However, the Committee previously considered the initial reforms of the EU's VAT rules for online shopping on several occasions.

See (38341), 14820/16 + ADDs 1–2, COM(16) 757: Twenty-sixth Report HC 71–xxiv (2016–17), chapter 7 (18 January 2017); Fortieth Report HC 71–xxxvii (2016–17), chapter 17 (25 April 2017); Second Report HC 301–ii (2017–19), chapter 19 (22 November 2017); and Eleventh Report HC 301–xi (2017–19), chapter 12 (24 January 2018).

127 For example, EU Chief Brexit Negotiator Michel Barnier said on 23 January 2019: "We will have to find out an operational way to carrying out checks and controls without putting back in place a border [in Ireland]."

8 Stronger EU rules on the return of illegal migrants

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Directive on common standards and procedures in Member States for returning illegally staying third country nationals (recast)
Legal base	Article 79(2)(c) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(40059), 12099/18 + ADD 1, COM(18) 634

Summary and Committee's conclusions

8.1 The European Commission's proposal for a Directive responds to a request made by EU leaders in June 2018 to "significantly step up the effective return of irregular migrants".[128] The rate of returns across the EU—that is, the proportion of return decisions leading to the effective removal of illegally staying third country nationals—has fallen from 45.8% in 2016 to 36.6% in 2017.[129] The proposed Directive sets out "targeted changes" to the 2008 EU Return Directive (in force since December 2010) which would make it quicker and easier for Member States to detain and remove failed asylum seekers and illegally staying third country nationals and prevent their re-entry into the EU. The main changes are described in our earlier Report agreed on14 November 2018.

8.2 The UK does not participate in the 2008 Return Directive. The Government nonetheless shares the European Commission's assessment that discrepancies in the way that it has been interpreted and applied by Member States have hindered effective returns. In her Explanatory Memorandum of 9 October 2018, the Immigration Minister (Rt Hon Caroline Nokes MP) indicated that the changes proposed would improve consistency and strengthen return processes in Member States lacking an effective return capability. She confirmed that the UK's Title V opt-in Protocol applied to the proposed Directive and set out the factors which would inform the Government's opt-in decision, highlighting in particular the importance that the Government attaches to maintaining the UK's "sovereignty over returns procedures and management of UK borders".[130]

8.3 Whilst we considered that the Government was unlikely to opt into the proposed Directive, we asked the Minister to explain:

- how the EU return process compared with the UK's own return procedures and whether any substantial changes to domestic law would be needed if the UK were to opt in;

128 See the Conclusions of the European Council agreed on 28 June 2018.
129 See p.2 of the Commission's explanatory memorandum accompanying the proposed Directive.
130 See para 12 of the Minister's Explanatory Memorandum.

- how the UK return rate for 2016 and 2017 compared with the EU return rate; and
- what assessment the Commission had made of the likely impact of the proposed changes on the EU return rate.

8.4 We noted also that, post-exit (or at the end of any post-exit transition period), UK nationals found to be staying illegally in an EU Member State would be subject to the amended EU return procedures (and therefore more vulnerable to detention) unless the UK negotiated a future relationship agreement with the EU giving UK nationals a special status equivalent to that of an EU citizen. We requested a more detailed assessment of the safeguards and remedies that would be available to UK citizens subject to a return procedure governed by the proposed Directive.

8.5 In her letter of 16 January 2019, the Minister explains that the UK chose not to participate in the 2008 EU Return Directive and developed its own return procedures geared to the UK's needs:

> The proposed Directive maintains key differences to UK procedures including on detention time limits. The proposed Directive's fixed time limits may hinder effective returns and the UK would require primary legislation in order to implement this aspect of the Directive. On balance, although the provisions of the proposal may improve effectiveness of returns in other Member States, implementation of the Directive in this area does not reflect the UK position.

8.6 The Minister confirms that the deadline for opting into the proposed Directive will expire on 16 January 2019. She does not anticipate that a decision not to opt in would have any bearing on the UK's future relationship discussions with the EU, adding that "our position and policy on returns is well known to other Member States and the Commission".

8.7 Whilst recognising that statistical comparisons should be treated with caution—the Minister notes that "Germany vastly outnumbers the UK on asylum claims, particularly after 2015, making direct comparisons difficult"—she says that the UK's return rate "compares favourably to other Member States":

> The UK has been within the top two Member States throughout, and until the 2015 Migrant Crisis, we carried out the highest number of returns in the EU. In 2016 and 2017, the UK's total returns (Voluntary and Enforced) were second only to Germany.

8.8 The Minister shares the European Commission's expectation that clarifying existing EU rules to ensure consistency and maximise their effectiveness may help to reverse the recent downward trend in returns across the EU. She reiterates the Government's aspiration to secure "an effective reciprocal partnership with the EU on illegal migration matters, including practical cooperation" post-exit, highlighting the commitment in the Political Declaration accompanying the draft EU/UK Withdrawal Agreement to "continue cooperation to tackle illegal migration through operational cooperation dialogue, cooperation in third countries and in international fora", adding that specific details will be subject to negotiation.

Our Conclusions

8.9 **We ask the Minister to confirm our understanding that the Government has decided *not* to opt into the proposed Directive. We also ask her to provide the assessment we requested in our earlier Report of the adequacy of the safeguards and remedies that would be available to UK nationals (once they cease to be EU citizens post-exit) if subject to a return procedure governed by the proposed Directive.**

8.10 **Pending further information and confirmation of the Government's opt-in decision, the proposed Directive remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents

Proposal for a Directive on common standards and procedures in Member States for returning illegally staying third country nationals (recast): (40059), 12099/18 + ADD 1, COM(18) 634.

Previous Committee Reports

Forty-fourth Report HC 301–xliii (2017–19), chapter 12 (14 November 2018).

9 EU Fund for Aid to the Most Deprived

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Education Committee, the Home Affairs Committee and the Work and Pensions Committee
Document details	Commission Report: *Summary of the annual implementation reports for the operational programmes co-financed by the Fund for European Aid to the Most Deprived in 2016*
Legal base	—
Department	Home Office
Document Number	(40204), 14699/18 + ADD 1, COM(18) 742

Summary and Committee's conclusions

9.1 In 2014, the EU established the Fund for European Aid to the Most Deprived ("the Fund").[131] It replaced an EU Food Distribution Programme, in place since 1987, which used surplus public intervention stocks of agricultural products to provide food aid to the most deprived. As the range and quantity of products was limited, the Programme was phased out at the end of 2013. The European Commission put forward its proposal for a new Fund towards the end of 2012, at a time when many Member States were struggling to provide the social investment needed to prevent further social fracture in the aftermath of the economic and financial crisis.[132] The Commission estimated that nearly one quarter (116 million) of Europeans were at risk of poverty or social exclusion and around 40 million were experiencing severe material deprivation. The purpose of the new Fund was to support Member States in meeting the poverty reduction target agreed by EU leaders in June 2010 which aimed to "lift at least 20 million people out of the risk of poverty and social exclusion" by the end of 2020.[133] The Fund was intended to complement Member States' national poverty eradication and social inclusion policies by providing an additional source of targeted funding to alleviate "forms of extreme poverty with the greatest social exclusion impact, such as homelessness, child poverty and food distribution".[134]

9.2 As originally conceived by the European Commission, the Fund would have supported national schemes for the distribution of food products and basic consumer goods (such as clothing, toiletries, school equipment), through partner organisations selected by each Member State. During negotiations, the scope of support was expanded to include a wider range of "support activities contributing to the social inclusion of the most deprived persons".[135] A total budget of €3.4 billion was agreed for the period 2014–20, to be distributed in annual instalments, with each Member State's allocation being deducted from their allocation of EU Structural and Investment Funds. The Commission

131 See Regulation (EU) No 223/2014 on the Fund for European Aid to the Most Deprived.
132 See the Commission's explanatory memorandum accompanying the proposed Regulation and the Committee's earlier Reports listed at the end of this chapter.
133 See the Conclusions agreed by the European Council on 17 June 2010.
134 See recital (7) and Article 3 of Regulation (EU) No 223/2014.
135 See Article 4 of Regulation (EU) No 223/2014.

saw a need for a specific, ringfenced Fund, as those most likely to qualify for assistance were too far from the labour market to benefit from the social inclusion and active labour market measures supported by the European Social Fund (one of the EU's Structural and Investment Funds).

9.3 The UK opposed the creation of the Fund. The then Coalition Government maintained that Member States were best placed to identify and meet the needs of deprived people within their own communities, that the Fund would be costly to administer, and that it should not take resources from the European Social Fund. The UK also argued that participation should be voluntary, as had been the case for the earlier EU Food Distribution Programme in which the UK had chosen not to take part. Both Houses shared the Government's concern that the European Commission had failed to establish a need for action at EU rather than at national or local level and issued Reasoned Opinions.[136] Our earlier Reports listed at the end of this chapter provide a detailed overview of the proposed Fund, the Reasoned Opinion agreed by the House of Commons in December 2012, the Government's position and the outcome of negotiations.

9.4 The final text of the Regulation establishing the Fund made clear that participation was mandatory, specified that Member States would each receive a *minimum* amount of €3.5 million for the period 2014–20, and required them to submit an operational programme within six months setting out how they intended to use the funding.[137] The then Minister for Employment (Rt Hon Esther McVey MP) informed our predecessor Committee that the UK had voted against the Regulation and intended only to take the minimum amount of €3.5 million to mitigate the impact of the Fund on the UK's allocation of Structural and Investment Funds.[138] Asked how the Government intended to use the UK's allocation of funding, the Minister responded that it would provide additional support for school breakfast clubs.[139] A Written Ministerial Statement issued by the then Minister for Schools (Mr David Laws) in December 2014 explained:

> The Government plan to use the UK share of the fund for European aid to the most deprived to provide additional support for school breakfast clubs in England. Under the plans, which will be led by the Department for Education, this money would be allocated to schools with particularly high rates of disadvantage, as measured by free school meal eligibility.
>
> We believe that breakfast clubs effectively target help to many of the most deprived children—providing nutritious meals in some of the poorest areas, supporting academic attainment, promoting healthy eating habits at a young age and saving families money. This funding would be in addition to existing support provided by the Government—we have already committed just over £1 million over two years to support an expansion of breakfast clubs in poor areas.

136 See our Twenty-second Report HC 86–xxii (2012–13), chapter 3 and Annex (5 December 2012).

137 For the purposes of comparison, the UK was one of six Member States (Denmark, Cyprus, Luxembourg, Malta and the Netherlands) that opted for the minimum allocation of €3.5 million. Italy has the largest allocation (€595 million), followed by Spain (€499.9 million), France (€443 million), Poland (€420 million) and Romania (€391.3 million).

138 See the Minister's letter of 12 December 2013 to the Chair of the European Scrutiny Committee.

139 See the Minister's letter of 9 February 2015 to the Chair of the European Scrutiny Committee.

> The UK's allocation is worth €3.96 million (or £3.1 million) over seven years from 2014 to 2020 and can be used to deliver one or more of the following: food aid for the most deprived people; consumer goods for homeless people; consumer goods for children; and non-labour market social inclusion activities for the most deprived. Scotland, Wales and Northern Ireland decided not to participate, due to the small sums involved and the administrative effort required. The allocation has been deducted from the UK's structural fund allocation—European Social Fund and European Regional Development Fund.
>
> This use of the fund for European aid to the most deprived is subject to final agreement with the European Commission and will be managed in accordance with the fund's stringent eligibility, accounting and evidence requirements.[140]

9.5 This Commission report, published in November 2018, provides an overview of Member States' implementation of the Fund in 2016 (the second full year of the Fund's operation). It is based on implementation reports submitted by 27 of the 28 Member States, the exception being the UK. According to the Commission, "implementation of the Fund in the UK has not started yet". The reports indicate that around 16 million people benefited from the Fund in 2016, with most (96%) receiving food support, bringing the total beneficiaries between 2014 and 2016 to around 38 million (none in the UK). The Commission concludes that the Fund has made a modest but valuable contribution towards reducing poverty and combating social exclusion.

9.6 In her Explanatory Memorandum of 23 January 2019, the Minister for Crime, Safeguarding and Vulnerability (Victoria Atkins MP) tells us that the UK failed to claim the initial tranche—£600,000—of the UK's allocation under the Fund by the end of 2018 (as required under the EU's "de-commitment rules") and that it has been deducted from the UK's total share, leaving £2.9 million to support social inclusion activities for the most deprived rather than the £3.5 million originally ringfenced for the UK. The reasons she gives are:

- the eligibility rules for the Fund—extensive audit and procurement requirements and administrative costs—"caused barriers to deliver the breakfast clubs in a school environment";
- following a decision taken by the Secretary of State for Education at the end of 2016, the Government informed the European Commission that it would not be using the Fund for the purpose originally envisaged;
- in ensuing cross-Government discussions, the Home Office Modern Slavery Unit and Resettlement, Asylum Support and Integration Directorate submitted a joint bid to the lead Department (Work and Pensions) responsible for administering the Fund in June 2018;
- in September 2018, the Home Office was notified that its bid had succeeded and that it would be the managing authority for the Fund;

140 Hansard, 18 December 2014, col. 122WS

- the reasons for this decision were communicated in a letter from the Minister of State for Employment to the Chancellor of the Duchy of Lancaster; and
- the Home Office was informed that the UK would lose £600,000 of the UK's Fund allocation if it was not claimed by the end of 2018.

9.7 The Minister continues:

> It was not feasible to set up the necessary governance infrastructure and secure the agreement of the European Commission in the short time available, and therefore, that sum of money was deducted as of 31 December 2018, meaning that an estimated £2.9m remains.

9.8 The Home Office intends to use the Fund to support vulnerable 16–24-year olds who have entered the UK through a resettlement scheme, been granted refugee status through the in-country asylum process, or who have been identified as potential victims of modern slavery. The Minister explains why the Home Office has chosen to focus on this group:

> The Home Office has applied the learnings from the Child Trafficking Protection Fund (CTPF) and the Independent Child Trafficking Advocates (ICTAs) assessment which confirmed that the cut off age for young people receiving tailored support is 18. At the age of 18 young people are more engaged with the services available as this is the point that many must make important decisions. We know that those aged 16–24 are the core age groups where there is a lack of tailored services available for those who have experienced trauma. Targeting this age group allows us to test what works well from being supported as a child, transitioning to a young adult, when many statutory services fall away when a child reaches the age of 18.
>
> This target group may have missed essential years of education and struggle to access appropriate training. They may also have experienced significant trauma and mental health problems limiting their ability to access services to aid social inclusion and integration.
>
> Working with businesses and academic institutions we want to help develop vocational and academic skills, develop trauma-informed life-coaching and befriending services providing psycho-social support building self-esteem and confidence. The aim of the programme will be to build resilience and to contribute towards reducing the risk of re-trafficking, improving life skills contributing to their social inclusion and integration.

9.9 The Home Office is undertaking the necessary steps to be formally designated as the Managing Authority for the Fund in the UK and is developing a service level agreement with the Government Internal Audit Agency to undertake the necessary audit arrangements. It is also consulting "a wide range of external stakeholders" to promote cooperation between local authorities and civil society organisations and determine how the Fund should be used. A first Monitoring Committee to take forward this work met on 10 January 2019 to draw up a specification which will "allow providers scope to propose innovative solutions and form new partnerships" as part of a transparent process. The aim

will be to complete the Operating Programme and submit it to the European Commission "provisionally by the end of March 2019, with the programme of works scheduled to begin in July 2019 following adoption".

9.10 The Minister anticipates that the programme and Fund will be operational "by the end of the year".

Our Conclusions

9.11 **We are grateful to the Minister for setting out the chronology of events. The stark facts are that Government inaction has resulted in the loss of £600,000 which should have been used to mitigate the corrosive impact of severe material deprivation and/or social exclusion on some of the most vulnerable in society and that, five years on from the establishment of the Fund for Aid to the Most Deprived in 2014, the UK still does not have an operational programme in place. Whilst the sum involved is insufficient on its own to make a substantial contribution towards poverty reduction, it is intended to complement national efforts by targeting some of the hardest to reach under other social assistance programmes.**

9.12 **As the Minister points out in her Explanatory Memorandum on the European Commission's latest implementation report, the then Minister for Employment at the Department for Work and Pensions (Rt Hon Damian Hinds MP) informed our Committee in September 2017 that the UK was at risk of losing some of the UK's allocation of EU funding if the Government failed to find an alternative route to commit the funds, after abandoning its original proposal for school breakfast clubs. He did not indicate that this risk was likely to materialise.141 Nor, as far as we are aware, would this loss of funding have come to light were it not for the Commission report.**

9.13 **As the Home Office's bid to take over the administration of the Fund in the UK was only confirmed in September 2018, we can see how the Department may have struggled to set up the necessary governance infrastructure and secure the Commission's approval in the short time remaining until the end of 2018. We are not in a position to attribute responsibility for the evident lapse in cross-Government planning and coordination to ensure effective delivery of the Fund but make two observations. First, all Member States bar the UK were able to deliver aid supported by the Fund by the end of 2017, and most were able to do so in 2016. The eligibility requirements and administrative burdens which the Minister cites as an obstacle to delivery in the UK do not appear to have presented an insurmountable hurdle elsewhere in the EU, even though the UK might be expected to have greater administrative capacity than some other EU Member States. Second, the Government rightly insists on sound financial management when administering EU funding programmes and has extensive experience of administering the European Social Fund (the nearest equivalent to the Fund for European Aid to the Most Deprived). It would be surprising if the eligibility and administrative requirements for this Fund were any more onerous than those which the Government routinely manages in other areas of funding.**

9.14 **We draw this chapter to the attention of the Education Committee, the Home Affairs Committee and the Work and Pensions Committee in case they wish to**

141 See the then Minister for Employment's Explanatory Memorandum of 11 September 2017.

examine the matter further. Before clearing the Commission report from scrutiny, we await confirmation from the Minister that the UK's operating programme for the remaining €2.9 million has been completed and approval obtained from the European Commission. We also ask her to explain how the UK's exit from the EU—whether with or without a deal—will affect the UK's eligibility for the Fund which runs until the end of 2020.

Full details of the documents

Commission Report: *Summary of the annual implementation reports for the operational programmes co-financed by the Fund for European Aid to the Most Deprived in 2016*: (40204), 14699/18 + ADD 1, COM(18) 742.

Previous Committee Reports

None on the Commission report, but see our earlier Reports on the Regulation establishing the Fund for European Aid to the Most Deprived: Twenty-second Report HC 86–xxii (2012–13), chapter 3 (5 December 2012), Fourteenth Report HC 83–xiv (2013–14), chapter 10 (11 September 2013), Twentieth Report HC 83–xix (2013–14), chapter 3 (30 October 2013), Twenty-ninth Report HC 83–xxvi (2013–14), chapter 8 (8 January 2014), Ninth Report HC 219–ix (2014–15), chapter 12 (3 September 2014) and Thirty-fourth Report HC 219–xxxiii (2014–15), chapter 3 (25 February 2015).

10 Import of cultural goods

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Digital, Culture, Media & Sport Committee and Northern Ireland Affairs Committee
Document details	Proposal for a Regulation of the European Parliament and of the Council on the import of cultural goods
Legal base	Article 207 TFEU; ordinary legislative procedure; QMV
Department	Culture, Media and Sport
Document Number	(38915), 11272/17 + ADDs 1–3, COM(17) 375

Background and Committee's conclusions

10.1 While the EU has legislation in place to prevent the unlawful export of cultural goods from a Member State to a non-EU country, there is not currently any EU-level initiative to regulate the import of illicitly-traded antiquities and other works of art into the Union other than specific restrictions on objects from Syria and Iraq entering the EU.[142] In July 2017 the European Commission therefore proposed a comprehensive new customs regime for cultural goods coming into the EU's Customs Union, to tackle trafficking of artefacts and artworks and—by extension—limit the revenue criminal and terrorist organisations could secure from illicit sales.[143]

10.2 Under the proposal, a range of different categories of cultural goods would be subject to one of two types of additional customs controls on entry into the EU:

- Cultural artefacts considered most at risk—mostly archaeological artefacts, but also ancient books and incunabula[144]—would require an **import licence**, to be issued by the customs authorities of the relevant EU Member State on the basis of documentary evidence of the lawful export of the good supplied by the importer; and
- For imports of many other types of pre-modern cultural goods, like sculptures, paintings and coins, there would be a less onerous self-certification system known as the "**importer statement**", under which the importer would have to affirm the legal exportation of the good before they could enter the EU for free circulation.

142 The EU is the second largest market for cultural goods such as art works, antiquities and manuscripts in the world, estimated to be worth $22 billion (£17 billion) annually, of which the UK accounts for over sixty per cent. The share of this market taken up by cultural goods illicitly removed from their country of origin is unknown. However, UNESCO concluded in 2011 that trafficking in cultural objects was "one of the most persistent illegal trades in the world", and the financial value of these trade flows is estimated to reach many billions of dollars each year.

143 The European Commission has noted that the so-called Islamic State makes money in two ways from antiquities: through selling looted artefacts and taxing traffickers moving items through ISIL-held territory.

144 Incunabula are early printed books, especially those created before 1501 (the traditional end date for the first age of the printed press in Europe).

10.3 Following the publication of the European Commission's original proposal in summer 2017, the Government expressed concerns about the effectiveness of the proposed regime in preventing illicit trade in cultural goods. It also noted there was a lack of data to link trafficked artefacts to terrorist financing, which was one of the main reasons put forward to support new EU legislation. The then-Minister of Culture (John Glen MP) also noted that the UK, as the world's second-largest market for works of art, would be impacted by the proposal more than any other EU country (should it take effect while the UK is still required to apply EU law, as discussed further below).

10.4 In February 2018 the new Minister for Cultural Heritage (Michael Ellis MP) provided a first update on the negotiations on the Regulation between the EU's Member States. The Minister's letter indicated that the Government still believed the proposal as drafted could introduce "significant administrative burdens without demonstrating a significant contribution to addressing its stated objectives", especially in relation to the "importer statement" regime for the majority of goods in scope of the Regulation.[145] With respect to the implications of Brexit for UK-EU trade in artworks after the UK leaves the Customs Union and the Single Market, the Minister simply reiterated the Government's ambition of negotiating a complex new "customs arrangement" with the EU which made trade as frictionless as possible; avoided a "hard border" between Ireland and Northern Ireland; and allowed the UK to establish an independent international trade policy. How those three objectives were to be reconciled, and how the requirement for Ireland to carry out—in due course—the new customs checks on cultural goods entering across the border with the UK without requiring physical infrastructure, was unclear.

The Member States' position on the proposal

10.5 In November 2018, the EU Member States' Ministers for Culture adopted a joint position on the proposal that sought to make a number of significant amendments for negotiation with the European Parliament.[146] These included a significant reduction in the range of cultural goods for which either an import licence or an importer statements would be necessary,[147] limit the powers of the European Commission to amend the scope of the Regulation at a later stage by means of Delegated Acts, and reinforce the 'country

145 In particular, at that stage in the negotiations (February 2018) the Government was concerned that there was no "empirical data" to link the sale of archaeological artefacts to terrorist groups; that the self-certification regime for cultural goods deemed at lower risk of trafficking could facilitate rather than hinder illicit trade in such goods; and that the British Art Market Federation (BAMF) had expressed "strong concern" that the proposal could "create an unfortunate perception that the UK is a more complicated place for art sales and potentially hinder our global competitiveness".

146 Council document 13736/18. The proposal is subject to the ordinary legislative procedure and as such the Regulation must be approved jointly by the Council and the European Parliament.

147 For goods subject to the import licence requirement (broadly speaking, archaeological items and ancient books), the Member States want to waive that requirement for artefacts originally created or discovered within a territory which is now part of the EU's Customs Union; rare books and incunabula if they have an estimated value of less than €10,000; and cultural goods originating in the EU which were temporarily exported for "conservation, exhibition, digitisation and public performance purposes", or goods which are being temporarily imported into the EU such purposes. With respect to the self-certification system for other cultural goods (the importer statement), the Member States want to exclude goods valued at less than €10,000, and remove the requirement altogether for old postage stamps, archival material not otherwise covered, articles of furniture and musical instruments.

of origin' principle to establish lawful export from a third country into the EU.[148] The Council of Ministers also insisted on the establishment of a centralised EU-wide IT system that could be used to store and exchange information on cultural goods presented for import in any Member State.

10.6 A majority of Member States also argued for an amendment containing a general prohibition on bringing cultural goods of any age or value into the EU's Customs Union if they have been unlawfully exported from the country where they were created or discovered. According to information we received from the Government at the time, this would be a "statement of the principle"—requiring customs authorities to act if there is any indication that a cultural good is being trafficked—and that it will not in itself "require any new procedures for border and customs authorities or for importers".[149]

10.7 The Minister also told us that the Council's revised legal text constituted a "significant improvement on the original proposal" and "addresses many of the concerns [the UK] have been articulating to our EU partners over the last year". However, it was clear that the UK remained sceptical about the need for the new Regulation—also taking into account its potential effects on trade in works of cultural goods between the UK, as a major country of sale for artworks, and other countries.[150]

The European Parliament's position on the proposal

10.8 The European Parliament adopted its position on the Cultural Goods Regulation during its plenary session of 25 October 2018.[151]

10.9 MEPs wanted a wider scope for the new customs requiring (i.e. covering more types of goods than thought prudent by the Member States), as well as more flexibility for the European Commission to amend the scope of the Regulation in the future by means of Delegated Acts. In particular, they had argued for amendments allowing the Commission to identify goods from 'source countries' of particular concern as requiring an import licence. The Parliament also wanted the new legislation to apply to goods in customs transit (i.e. those destined for a non-EU country but being transported through the EU) where there are "reasonable grounds" that they are being trafficked. Moreover, MEPs wanted to enable national customs authorities to refuse an import licence for a cultural good if a similar request, without additional evidence, had already been rejected by another Member State.

148 Under the original Commission proposal, an import licence or importer statement would be valid on the basis that the good was exported lawfully from a country other than the "source" country, provided the former is party to the 1970 UNESCO Convention on Cultural Property. Under the amended Council version, lawful export from the country of origin must always underpin an import licence or importer statement, unless the country of origin cannot reliably be determined; the goods left that country before April 1972, when the UNESCO Convention took effect; or the country of origin itself is not a signatory to the UNESCO Convention. In those cases, lawful export can be proven on the basis of an export licence from another country, but only if the cultural good had been located therefore at least the last five years.

149 Letter from Michael Ellis to Sir William Cash (1 November 2018).

150 The Department for Culture also had two specific areas of concern: a proposal for a "potentially unworkable" system where a self-certified importer statement might need to be converted ex-post to an import licence for goods sold at art fair remained in the Customs Union, and the wide scope of the importer statement requirement in terms of goods covered.

151 European Parliament document P8_TA-PROV(2018)0418.

Developments since November 2018

10.10 Negotiations between the Member States, represented by Austria, and the European Parliament on the final text of the Regulation began in late 2018 to resolve these areas of disagreement. A provisional deal on the final substance of the Cultural Goods Regulation was struck just before the Christmas recess, of which the Minister informed us in January 2019.[152]

10.11 Under the finalised legislation, which must still be formally adopted, an import licence would required to bring the following cultural goods into the EU if they are over 250 years old:[153]

- products of archaeological excavations, "including regular or clandestine, or of archaeological discoveries on land or underwater"; and
- elements of artistic or historical monuments or archaeological sites which have been "dismembered".

10.12 The aforementioned proposal by the European Parliament to expand the potential scope of the import licence requirement to other types of cultural goods and to artefacts from particular "source" countries was not accepted by the Member States.[154] The less-onerous importer statement—which would allow an importer to self-certify to the lawful export of the good from the country of origin—would still be required for many other types of cultural goods, including rare flora and fauna, antiquities like coins and statues, paintings over 200 years old and ancient books[155] (the UK's opposition to the wide scope of this requirement notwithstanding).[156]

10.13 The finalised Regulation would normally require the application for an import licence or importer statement to attest to the lawful export from the country of *origin* of the cultural artefact. However, the legislation will allow such a licence to be issued, or importer statement to be made, on the basis of lawful export from the last country where the good was *located*, if it was kept there for five years or more (and provided the country of origin cannot be reliably established or the good left that country before 24 April 1972, the date the 1970 UNESCO Convention on Cultural Property took effect).[157] Individual EU countries may require goods covered by the Regulation have to be presented to specific customs offices only, for example to ensure they are assessed at offices where experts are available to inspect the goods or assess the accompanying documentation.

10.14 There are also certain exemptions from the new customs procedures for cultural goods, for example where they imported temporarily for exhibition or commercial art

152 Letter from Michael Ellis to Sir William Cash (24 January 2019) (not yet available online).

153 The goods to which the import licence requirement will apply, including applicable age thresholds for the goods, is set out in Part B of the Annex to the Regulation. The customs authorities of the EU Member State of import would have to decide whether to issue an import licence within 90 days.

154 Under the rejected proposal, such a listing would be made by the European Commission by means of Delegated Acts. It would identify that particular type of cultural good, or any such goods originating in a particular source country, are at "particular risk" of being trafficked and therefore require an import licence.

155 Ancient books and incunabula were subject to an import licence requirement in the original Commission proposal.

156 The goods to which the importer statement requirement will apply, including applicable age thresholds for the goods, is set out in Part C of the Annex.

157 The UK accepted the UNESCO Convention in 2002. The only EU Member States which have not accepted or ratified the Convention are Ireland, Latvia and Malta.

fairs, or where the good is in possession of a public authority for safekeeping until their eventual return to the country of origin.[158] Goods created or discovered within what is now the customs territory of the European Union, even if they are now located outside of it, are also exempt from the Regulation. The agreement reached between the Council and the Parliament maintains a convoluted regime for cultural goods that are imported for display at a commercial art fairs. If they would normally require an import licence, these would instead require an importer statement. However, if they are then sold to a buyer within the Customs Union, they would need to retrospectively be issued with a licence anyway. The Government still believes this approach "does not meet the policy intention and may be unworkable".

10.15 In practical terms, the implementation of the Cultural Goods Regulation will be supported by a new centralised IT system in which all import licence requests and decisions, as well as importer statements, are stored and exchanged between the EU's Member States. Rather than the six years asked for by the Council, the European Commission will be given four years from the date the legislation is published in the Official Journal to have this system up and running (i.e. by 2023). The import licence and importer statement requirements will only take effect when the IT database is operational. The new legislation applies exclusively to goods being brought into the EU from outside it: given the complete absence of intra-EU customs controls, the new requirements would not apply to cultural goods being moved between Member States.

10.16 The Minister's letter informing us of the final deal on the Regulation makes clear the Government continues to question the usefulness of the new customs procedures to reduce trafficking of cultural goods. He describes it as "the best outcome that can be achieved in the circumstances", which we take to mean the UK's impending withdrawal from the EU and therefore its representation in its legislative processes. The Minister also refers to the position of many MEPs who "support greater regulation of the art market and the trade in cultural goods", but whose proposals have not been included in the final Regulation (see paragraph 10.9 above). Because of this, the Government intends to vote in favour of the legislation to avoid "sustain[ing] the mistaken and unfair view in some quarters that the UK is more interested in protecting the art market than in tackling the illicit trade in cultural objects".

Our conclusions

10.17 **The European Scrutiny Committee considered the proposed import regime for cultural goods in three times between November 2017 and November 2018. We shared the Government's concerns about the need for the new customs procedures being discussed, and the potential impact on the UK's art market both in- and outside the European Union.**

10.18 **In the context of the wider Brexit negotiations, we also noted in November 2018 that the draft Withdrawal Agreement would establish a post-Brexit transitional period lasting until December 2020. If the Agreement were ratified by Parliament,**

158 The agreement reached between the Council and the Parliament maintains a convoluted system for goods which are imported for display at a commercial affair. If they would normally require an import licence, they would require an importer statement. If, following their sale, they remain in the Customs Union, they would need an import licence. The Government still believes this approach "does not meet the policy intention and may be unworkable".

the UK would during this period have to continue applying EU law (including, should it have taken effect, the new Cultural Goods Regulation). It is now clear that the new legislation will not take effect until 2023 at the earliest, which is beyond even the possible extended transitional period until December 2022 that the revised Withdrawal Agreement published in November 2018 foresees.

10.19 **However, the fact that the Regulation will not apply until after any post-Brexit transitional period would have ended does not mean it will not have an effect on the UK. When it leaves the Customs Union and Single Market, customs controls will be re-introduced on goods being moved between the UK and the EU. That includes the new import system for cultural goods when it takes effect in a number of years. It is likely to act as a further barrier to trade between the two, especially given the UK's pre-eminent position as Europe's largest art market.**

10.20 **The UK imported between £2.8 billion and £4.1 billion worth of art in the last three years, while exports during that same period ranged between £4.7 billion and £6 billion.159 Trade with the EU-27 is significant for the UK market, accounting for some 15 to 20 per cent of art sales.160 It is unclear what proportion of these would fall within the scope of the new Cultural Goods Regulation, and in particular the import licence requirement for the most at-risk goods. The eventual impact of the legislation on the overall flow of trade in art works between the UK and the EU might be difficult to isolate, as such trade will also be affected by other factors that are absent while we are an EU Member State, like the imposition of tariffs and import VAT.**

10.21 **The new Regulation may also have a more direct impact in Northern Ireland. Under the Withdrawal Agreement, should it be ratified, the Irish Protocol (the 'backstop') would see Northern Ireland continuing to apply a wide range of European customs and regulatory legislation beyond the end of the transition period. The purported aim is be to remove the need for any goods controls on the land border. Northern Ireland would cease to be bound by this EU legislation only when new legal arrangement between the EU and the UK as a whole superseded them by removing the need for border controls by other means.**

10.22 **The Cultural Goods Regulation, not having been formally adopted yet, is not included in the list of EU laws that would continue to apply in Northern Ireland the backstop. However, once it takes effect, Ireland—as an EU Member State—will be legally required to impose the necessary customs controls on cultural goods entering from outside the EU. That would include across the land border with the UK. If it did not check goods entering the EU via Northern Ireland, importers could hypothetically circumvent the system by importing a cultural good into the UK and then transporting it into Ireland without any additional border controls.**

10.23 **The Irish Protocol can be amended to include "a new [EU] act that […] neither amends nor replaces" EU legislation that already applies to Northern Ireland but**

159 The British Art Market Federation (BAMF), "The British Art Market 2017" (September 2017).

160 The BAMF has said: "While the US was the most important trading partner by value, for some of the major auction houses, consignments from EU member states accounted for up to 25% of their UK sales on average, while up to 20% of their exports were destined to EU buyers. In the dealer sector also, the main dealer associations reported that on average between 10% and 22% of dealers' purchases for subsequent sale were made in the EU, and EU purchasers accounted for 15%—20% of all their sales."

nonetheless "falls within the scope of [the] Protocol".161 Given the backstop effectively keeps Northern Ireland in the Customs Union, this is likely to be the case for the Cultural Goods Regulation (since it supplements the application of customs controls at the external border of the Customs Union for specific types of goods). However, under the Withdrawal Agreement, the inclusion of new EU legislation in the Protocol must be approved by the UK. In December 2018, the Government said it would "seek the agreement of the Northern Ireland Assembly" before approving any such decision.162 It is unclear if 'seek' in this context equates to 'require' or not, but we can only presume the Government's ambiguous wording is deliberate.

10.24 **If the backstop were to take effect, we consider it likely the EU would seek the UK's approval to add the Cultural Goods Regulation to the Irish 'backstop'. This means it would have to be applied to cultural goods entering Northern Ireland from non-EU territories, creating an additional customs barrier between Northern Ireland and Great Britain. If the UK were to refuse its inclusion in the Protocol, the EU would be entitled to take "appropriate remedial measures". It is not clear what those could be in this context.**

10.25 **Overall therefore, while the legislative process on the Cultural Goods Regulation is nearing its end in Brussels, the full impact of the legislation on the UK after Brexit is still far from clear. However, in light of the imminent adoption of the Regulation by the Council and the European Parliament, we now clear the proposal from scrutiny while noting the Government's lukewarm support for the new legislation.**

10.26 **We draw these developments to the attention of the Digital, Culture, Media & Sport Committee and, in the context of the Regulation's possible inclusion in the Irish backstop, the Northern Ireland Affairs Committee.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council on the import of cultural goods: (38915), 11272/17 + ADDs 1–3, COM(17) 375.

Previous Committee Reports

See (38915), 11272/17 + ADDs 1–3, COM(17) 375: Second Report HC 301–iii (2017–19), chapter 3 (29 November 2017); Sixteenth Report HC 301–xvi (2017–19), chapter 4 (28 February 2018); and Forty-fourth Report HC 301–xliii (2017–19), chapter 3 (14 November 2018).

161 Article 15(5) of the Protocol on Ireland/Northern Ireland.

162 HM Government, "UK Government commitments to Northern Ireland and its integral place in the United Kingdom" (9 January 2019).

11 EU-US commercial data transfers: second review of Privacy Shield

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Exiting the EU Committee, the Science and Technology Committee, the Home Affairs Committee and the Digital, Culture, Media and Sport Committee
Document details	Report from the Commission to the European Parliament and the Council on the second annual review of the functioning of the EU-US Privacy Shield
Legal base	—
Department	Digital, Culture, Media and Sport
Document Number	(40304), 15836/18 + ADD 1, COM(18) 860

Summary and Committee's conclusions

11.1 The ability to continue to share commercial data with the EU after Brexit will be crucial to the UK's future trading relationship with the EU. Personal data can only be shared by data processors and controllers in the EU with third countries who provide equivalent levels of data protection. This is usually established by a Commission implementing act called an "adequacy decision". The necessary implementing powers for the Commission are provided by the EU parent legislation, the General Data Protection Regulation.[163] It is also a matter of concern that after Brexit the UK can share data with countries who already have an EU adequacy decision.

11.2 On 12 February 2016, the EU and US came to political agreement on a framework for EU-US personal data transfers for commercial purposes, known as Privacy Shield. On 12 July, the Commission adopted a partial adequacy decision which approved that framework as providing an adequate level of protection for transfers of EU data to the US. This followed the invalidation of the previous adequacy decision, relating to the Safe Harbor framework in the *Schrems*[164] case for incompatibility with the DPD and Articles 7 and 8 of the Charter of Fundamental Rights (right to a private and family life and right to protection of personal data).

11.3 The proposed Commission Implementing Decision for the approval of the Privacy Shield was itself deposited at the request of the previous Committee who scrutinised it closely. A summary of the content of Privacy Shield is provided at paragraphs 6.12–6.14 of our Report of 29 November 2017.[165]

163 Article 45(3) of Regulation 2016/679 states that the implementing act shall be adopted in accordance with the examination procedure referred to in Article 93(2) of the Regulation.

164 Maximillian Schrems v Data Protection Commissioner, C-362/14.

165 Third Report HC 301–iii (2017–19), chapter 6 (29 November 2017).

11.4 It is a requirement of the Privacy Shield adequacy decision itself that it must be annually reviewed by the Commission.[166] The first annual review was published on 18 October 2017. The report overall showed that Privacy Shield continued to ensure an adequate level of data protection for personal data transfers for commercial purposes from the EU to the participating companies in the US. But the following recommendations were made:

- companies should not publicly announce that they are Privacy Shield-certified until the Department of Commerce (DoC) has finalised the certification;
- the DoC should actively scan for companies falsely claiming to be "Privacy Shield" certified;
- the DoC should carry out compliance checks on a regular basis;
- the DoC and EU Data Protection Authorities (DPAs) should work together to develop guidance on the legal interpretation of certain concepts in the Privacy Shield;
- the DoC and DPAs should strengthen their public awareness-raising efforts;
- US Congress might consider incorporating in the Foreign Intelligence Surveillance Act (FISA) those protections for non-Americans which were only outlined in Presidential Policy Directive 28 (PPD-28);
- that the US administration should swiftly appoint a permanent Privacy Shield Ombudsperson, as well as finish appointing members to the Privacy and Civil Liberties Oversight Board (PCLOB);
- that PCLOB's report on the implementation of PPD-28 be published; and
- that the US authorities provide timely and comprehensive information about any development that could raise questions about the functioning of the Privacy Shield.

11.5 The current document is the second annual review of the Privacy Shield decision. The corresponding report was published on 19 December 2018. It followed discussions which took place in mid-October 2018, between Commission officials and representatives of all relevant US government departments. These included the Federal Trade Commission (FTC), the Office of the Director of National Intelligence, the Department of Justice and the State Department. The two sides' representatives considered a study on automated decision-making commissioned by the Commission as well as on input from stakeholders, including companies and privacy NGOs. Representatives of the EU's DPAs also participated in the review.

11.6 Overall, the second review concludes that the US continues to ensure an adequate level of protection for personal data transferred under the Privacy Shield Framework from the EU to participating companies in the US. Steps taken by US authorities to implement the recommendations made by the Commission in last year's report had improved the functioning of the framework, though the Commission does expect them to nominate

166 This is because Article 45(3) of the GDPR states that "the implementing act"[constituting the adequacy decision] "shall provide for a mechanism for a periodic review, at least every four years, which shall take into account all relevant developments in the third country or international organisation".

a permanent Ombudsman by 28 February 2019.[167] The Commission considers that the Ombudsman is an important mechanism that ensures complaints concerning access to personal data by US authorities are addressed.

11.7 In addition, the report notes that:

- The EU and the US both need to address global challenges to personal data protection, such as the Facebook/Cambridge Analytica case, through effective enforcement action by EU DPAs and the US FTC.
- The DoC has further strengthened the certification process and introduced new oversight procedures.
- The FTC is increasing its efforts to monitor compliance, for example by issuing administrative subpoenas to request information from certain Privacy Shield participants.
- The most significant US legislative development since the first review was the reauthorisation of Section 702 of FISA in early 2018. Though this failed to meet the Commission's previous recommendation that Presidential Policy Directive 28 should be incorporated in FISA, it did not restrict any of the existing statutory safeguards, nor expand the powers of US Intelligence Community to target the data of non-US persons under Section 702. Instead it introduced some limited additional privacy safeguards such as transparency.
- Two other US legal developments were noted for enhancing personal data protection relating to processing for law enforcement purposes:
- in the case of Carpenter v United States (2018), the US Supreme Court held that a search warrant is in principle required for law enforcement authorities to access cell site location records; and
- the Deputy Attorney General issued a memorandum on a more restrictive policy on applications for non-disclosure orders under the US Stored Communications Act.
- In October 2018 the US Senate confirmed the nominations of the Chairman of the PCLOB as well appointing other missing members.
- In line with the Commission's previous recommendation, the PCLOB's report on Presidential Policy Directive 28 was also published in October and confirmed that Presidential Policy Directive 28 is fully applied across the Intelligence Community.
- At the time of the present report, the Ombudsperson mechanism had not received any complaints, though one was in the process of being submitted.

11.8 The report also concludes that the steps taken to implement the Commission's recommendations following the first annual review have improved several aspects of the

167 The failure to make a permanent appointment was due to a corresponding failure to appoint an Under-Secretary in the State Department which is responsible for the Ombudsman function.

practical functioning of the framework. However, some of these steps have been taken only recently and the relevant processes are still ongoing and need to be closely monitored. Apart from those already mentioned, these include:

- the effectiveness of the mechanisms introduced by the DoC to monitor compliance by certified companies with the Privacy Shield Principles and to detect false claims of participation;
- the use of administrative subpoenas by the FTC to detect substantive violations of the Privacy Shield; and
- the development of interpretative guidance jointly by the DoC, the FTC and EU DPAs; and the effective handling and resolution of complaints by the Ombudsperson.

11.9 The Minister for Digital and the Creative Industries (Margot James MP) in her Explanatory Memorandum[168] welcomes the outcome of the second joint annual review and the continuation of the EU-US Privacy Shield framework. She adds that the Government considers that Privacy Shield decision continues to provide the most efficient way of transferring data between the EU and the US and is essential for UK businesses.

11.10 Turning to Brexit, the Minister notes that the US Government has recently published guidance[169] as to how personal data can continue to be exchanged between the UK and US under Privacy Shield Framework:

- in a "no deal" scenario and after a transition/implementation period; and
- during a transition/implementation period.

11.11 On the next steps the Minister says:

> The Commission's report will be sent to the European Parliament, the Council, the European Data Protection Board and to the US authorities. The European Commission expects the US Government to identify a nominee to fill the Ombudsperson position on a permanent basis by 28 February 2019 at the latest. If this does not happen by that date, the Commission will consider taking appropriate measures, in accordance with the General Data Protection Regulation.

Our conclusions

11.12 **We thank the Minister for her Explanatory Memorandum.**

11.13 **This report is important, not only as a review of an adequacy decision to enable data sharing between the EU and a significant third country but because of its relevance to Brexit. It is a reminder of what the UK will need to do to secure and maintain an adequacy decision. We note, for example, that the Commission has warned the US authorities that appropriate measures will be taken under the General Data Protection**

168 Date 18 January 2019.

169 The link is to the Brexit FAQs page on the US Government's Privacy Shield Framework website: https://privacyshield.gov/welcome.

Regulation if an Ombudsman is not appointed by 28 February. We ask the Minister to confirm that one of these possible measures could be the revocation by the Commission of the Privacy Shield adequacy decision.

11.14 **It is reassuring that the US Government has provided an indication of how UK-US transatlantic data flows will continue after 29 March 2019. In summary, we note that this guidance indicates that from a US perspective:**

- **"in a no deal scenario" and after the transition/implementation period, a Privacy Shield participant must update its public commitment to comply with the Privacy Shield specifically to include data received from the UK in reliance on Privacy, in line with model language provided; and**
- **during a transition/implementation period, given that EU law including data protection law would continue to apply to the UK, no additional action is required.**

We ask the Government what guidance other countries with EU adequacy decisions have issued as to how they will share data with the UK after Brexit.

11.15 **Related to this question above, we note that the Commission has now adopted a data adequacy decision for the exchange of EU data with Japan.170 We ask the Government for clarification of the meaning of this extract from the Commission's FAQs on the decision and what implications it has, if any, for a future EU-UK data adequacy decision:**

> **For the first time, the EU and a third country agreed on a reciprocal recognition of the adequate level of protection. European companies will thus benefit from unhindered data transfers from and to Japan as well as from privileged access to its 127 million consumers' market. In this way, these adequacy findings will complement and enhance the benefits of the Economic Partnership Agreement which will become effective as of 1 February 2019.**

11.16 **We further note that the European Data Protection Board171 (EDPB) have just published their own report[172] on the second review of the Privacy Shield adequacy decision. The relevant press release says that concerns remain since the first review of the EDPB:**

> **[These include] concerns already expressed by the EDPB's predecessor WP29 on the lack of concrete assurances that indiscriminate collection and access of personal data for national security purposes are excluded. Also, based on the information provided so far, the EDPB cannot currently consider that the Ombudsperson is vested with sufficient powers to remedy non-compliance. In addition, the Board points out that checks regarding compliance with the substance of the Privacy Shield's principles are not sufficiently strong. Moreover, the EDPB has some additional concerns with regard to the necessary checks to comply with**

170 See this Commission Press Release of 23 January 2019.

171 The EDPB is composed of representatives of the national data protection authorities, and the European Data Protection Supervisor (EDPS).

172 EU—U.S. Privacy Shield—Second Annual Joint Review, adopted on 22 January 2019

the onward transfer requirements, the scope of meaning of HR Data and the recertification process, as well as to a list of remaining issues raised after the first joint review which are still pending.

Does the Government consider that any of EDPB's, particularly in relation to data processing for national security purposes, could pose a problem for an EU-UK adequacy decision?

11.17 **We would be grateful for an update on any of the legal challenges to Privacy Shield which have been made or any preliminary reference questioning how it is to apply. We are aware of Digital Rights Ireland (Case T-670/16), La Quadrature du Net and Others v Commission, Case (T-738/16) and Data Protection Commissioner v Facebook Ireland Limited, Maximillian Schrems (C-311/18). As part of an update, it would be helpful if the Government could confirm in which of the legal challenges the UK has intervened and whether the General Court has ruled the Digital Rights Ireland challenge to be inadmissible due to the standing of the body bringing the challenge.**

11.18 **We have already asked the Government extensive questions during our scrutiny of a range of data-related EU documents about how the UK will share data with the EU after Brexit, particularly in the event of "no deal". We thank the Government for their response of 24 January to our letter of 14 November which we have just received, together with a detailed annex. This provides outstanding responses to questions in our Report of 12 September which framed a following debate in European Standing Committee B on 23 October. The debate was based on two EU documents: the Commission's Communication[173] on Exchanging and Protecting Data in a Globalised World and EU proposal for provisions on cross-border data flows and protection of personal data and privacy.[174] We shall be exploring those responses in a further Report chapter in due course.**

11.19 **On that basis, we do not seek to rehearse that ground in this Report. Instead we simply draw to the House's attention again the issue of how the UK will share data with the EU, particularly in the context of "no deal". In the light of all that extensive prior scrutiny, we are content to clear this non-legislative document. But we draw it and our chapter to the attention of the Exiting the EU Committee, the Science and Technology Committee, the Home Affairs Committee and the Digital, Culture, Media and Sport Committee.**

Full details of the documents

Report from the Commission to the European Parliament and the Council on the second annual review of the functioning of the EU-US Privacy Shield: (40304), 15836/18 + ADD 1, COM(18) 860.

173 (38493), 5191/17, COM (2017) 7 final.

174 (40020),—.

Previous Committee Reports

None; but see (39148), 13524/17: Fourteenth Report, HC 301–xiv (2017–19), chapter 12 (21 February 2018) and Third Report HC 301–iii (2017–19), chapter 6 (29 November 2017); see also (38493), 5191/17: (Thirty-eighth Report, HC 301–xxxvii (2017–19), chapter 1 (12 September 2018).

12 Comitology—adapting remaining legal acts to Lisbon procedures

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	(a) Proposal for a Regulation of the European Parliament and the Council adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 TFEU; (b) Proposal for a Regulation of the European Parliament and the Council adapting a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny to Article 290 TFEU
Legal base	(a) Articles 33, 43(2), 53(1), 62, 62(2), 91, 100(2), 114, 153(2)(b), 168(4)(a), 168(4)(b), 172, 192(1), 207, 214(3) and 338(1) TFEU; ordinary legislative procedure; QMV (b) Article 82(1) TFEU; ordinary legislative procedure, QMV
Department	Exiting the European Union
Document Numbers	(a) (38475), 5623/17 + ADD 1, COM(16) 799; (b) (38481), 5705/17 + ADD 1, COM(16) 798

Summary and Committee's conclusions

12.1 EU subordinate legislation can be made by the Commission, in accordance with the powers conferred by parent Directives, Regulations or Decisions. Before Lisbon, such legislation was made in committees, a process known as "comitology". Much of it was aligned to Lisbon legislative procedures as either delegated acts (Article 290 TFEU) or implementing legislation (Article 291 TFEU) by the 2011 Comitology Regulation. Broadly-speaking, since Lisbon the Commission must consult a committee consisting of expert representatives of Member States on proposed implementing acts. In the case of delegated acts, the Council can veto the entry into force of an act or revoke the delegation to the Commission (as can the European Parliament). This requires a qualified majority vote by Member States in the Council. Collectively, implementing and delegated acts are sometimes referred to as EU "tertiary" legislation.

12.2 However, some measures remain unaligned with Lisbon procedures and are still subject to old "regulatory procedure with scrutiny" procedure (RPS). The original text of these proposals aimed to align three such measures in the JHA field (civil judicial cooperation measures) and 165 in non-JHA fields to Lisbon procedure. As such, the proposals are mainly technical in nature. Their substance and effect are not being altered.

12.3 The last time the Committee reported on these proposals, we granted a scrutiny waiver for a proposed partial General Approach (excluding 26 out of a total of 168 legal acts).[175] Of the 26, 24 legal acts were removed from the non-JHA Regulation and two from the JHA Regulation.

12.4 Following the agreement of the partial General Approach, the Minister of State for Exiting the EU (Lord Callanan) now provides an update in his letter of 22 January 2019. Before doing so, he reiterates that:

- the proposals are only intended to align existing tertiary legislation to the new post-Lisbon tertiary legislation methodology; and
- these technical changes are simply being made as part of a wider effort to streamline legislation which the Government supports.

12.5 He then outlines progress:

- There have been further three Friends of Presidency (FoP) meetings since his last letter on the proposal.
- During these meetings, a full General Approach and opening trilogues was discussed.
- On 26 October and 23 November, two FoP meetings took place to discuss six acts in total. Five of the acts, three from the non-JHA area and a further two in the JHA area, were not covered in the partial General Approach. The FoP meetings also reviewed one act that was covered in the partial General Approach, in light of a new Commission proposal in May 2018.
- Following the FoP meetings, the Presidency proposed a full General Approach on 12 December which was approved at Council on 20 December by qualified majority vote.
- The UK abstained on this vote as there was not enough time to obtain scrutiny clearance from this Committee.[176]

12.6 The Minister then describes the substance of the new General Approach which:

- removes four acts from the proposals following new Commission proposals to replace these pre-Lisbon directives and regulations which will automatically use post-Lisbon procedures: Act 98 (Motor Vehicle Directive), Act 126 (Road Infrastructure Directive) and two JHA Acts, 1 (Cooperation Between Courts Regulation) and Act 3 (Extrajudicial Documents Regulation); and
- amends two acts: Acts 29 and 30 (Natural Gas Directives).

12.7 Following the agreement of the General Approach, the Minister reports that the Commission has proposed in trilogues that the institutions should align such acts it can before the EP elections in May 2019. The EP's agreement to this will be conditional on the remaining acts not being withdrawn. The Government supports this approach.

175 Though we were originally told by the Government that this figure was 28.

176 This was after consultation between Committee staff and Government officials.

12.8 With the EP election deadline in mind, the Presidency is seeking to adopt the proposals in February 2019. Therefore the Minister now requests scrutiny clearance to enable the UK to support their final adoption.

12.9 **We thank the Minister for his letter. On the basis that the Government supports the outcome of trilogues, we are content now to clear these technical proposals from scrutiny. We take this opportunity however to ask for an update on a more substantive proposal affecting how implementing acts are made: the proposed Regulation amending the 2011 Comitology Regulation which governs the making of implementing acts.[177] The last time the Government wrote to us with an update was on 28 June 2017.**

Full details of the documents

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

Previous Committee Reports

Twentieth Report HC 301– xix (2017–19), chapter 2 (14 March 2018); Thirty-second Report, HC 71–xxx (2016–17), chapter 2 (22 February 2017).

177 See the Report of the previous Committee: Fortieth Report HC 71–xxxvii (2016–17), chapter 14, 25 April 2017

13 Transparency of EU food safety risk assessment

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council on the transparency and sustainability of the EU risk assessment in the food chain amending Regulation (EC) No 178/2002 [on general food law], Directive 2001/18/EC [on the deliberate release into the environment of GMOs], Regulation (EC) No 1829/2003 [on GM food and feed], Regulation (EC) No 1831/2003 [on feed additives], Regulation (EC) No 2065/2003 [on smoke flavourings], Regulation (EC) No 1935/2004 [on food contact materials], Regulation (EC) No 1331/2008 [on the common authorisation procedure for food additives, food enzymes and food flavourings], Regulation (EC) No 1107/2009 [on plant protection products] and Regulation (EU) No 2015/2283 [on novel foods]
Legal base	Articles 43, 114 and 168(4)(b) TFEU, QMV, Ordinary legislative procedure
Department	Food Standards Agency
Document Number	(39676), 8518/18 + ADD 1, COM(18) 179

Summary and Committee's conclusions

13.1 To address concerns about the transparency of the EU's food safety risk assessment process and the effectiveness of risk communication, the Commission proposed a number of improvements to the General Food Law (GFL) Regulation[178] and consequential amendments to a series of sectoral laws relating to specific types of food.

13.2 We last considered the proposal at our meeting of 12 December 2018. The Parliamentary Under Secretary of State (Steve Brine MP) has since written[179] to update us on the progress of negotiations and to request that the Committee consider clearing the document from scrutiny.

13.3 The Minister informs the Committee that the Council agreed a General Approach on 18 December, but we understand that the UK registered an abstention due to the scrutiny reserve.

178 Regulation No 178/2002.

179 Letter from Steve Brine MP to Sir William Cash MP, dated 18 January 2019 (received 21 January 2019).

13.4 On the content of the General Approach, the Minister explains that it amends the Commission proposal in a number of ways which alleviate many of the concerns raised by the UK. Notably:

- it removes the requirement for Member states to nominate experts and reverts to a centralised call for experts managed by the European Food Safety Authority (EFSA) and based on merit similar to the existing procedure—this, says the Minister, will minimise the risk of increased political involvement in risk assessment; and

- it adds additional elements to be considered as confidential data in order to provide further protections to commercially sensitive data and also provides for an internal appeal process with regards to decisions made on confidentiality. The Minister believes that this will go some way to providing further flexibility to businesses and providing balance between transparency and commercial interests.

13.5 On the question of an impact assessment, the Minister says that the Commission has provided further details on the proposed increases to the budget for EFSA and how this has been calculated. The impact of this for the UK remains subject to negotiations on our future relationship. Some representatives of the food industry have concerns that early release of data will give more time for competitors to develop rival products and so provide less return on investment for companies researching innovative products. However, it is not possible to quantify these impacts.

13.6 As the Government expects the proposal to return quickly to Council after the Coreper (Committee of Member State Permanent Representatives to the EU) meeting on 16 January, the Minister invites the Committee to consider clearing the proposal from scrutiny.

13.7 **We note that a General Approach was agreed by Council in December. While we understand that the UK abstained, the Minister ought to have set this out—including the reasons for abstention—in his letter. We ask him to confirm the stance taken by the UK when he next writes.**

13.8 **Given the positive outcome of negotiations in Council, we are content to clear this proposal from scrutiny. We note, though, that negotiations with the European Parliament are ongoing and so we request a final update once those discussions have concluded, but before the text is formally agreed.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council on the transparency and sustainability of the EU risk assessment in the food chain amending Regulation (EC) No 178/2002 [on general food law], Directive 2001/18/EC [on the deliberate release into the environment of GMOs], Regulation (EC) No 1829/2003 [on GM food and feed], Regulation (EC) No 1831/2003 [on feed additives], Regulation (EC) No 2065/2003 [on smoke flavourings], Regulation (EC) No 1935/2004 [on food contact materials], Regulation (EC) No 1331/2008 [on the common authorisation procedure for

food additives, food enzymes and food flavourings], Regulation (EC) No 1107/2009 [on plant protection products] and Regulation (EU) No 2015/2283 [on novel foods]: (39676), 8518/18 + ADD 1, COM(18) 179.

Previous Committee Reports

Forty-eighth Report HC 301–xlvii (2017–19), chapter 5 (12 December 2019); Thirty-first Report HC 301–xxx (2017–19), chapter 3 (13 June 2018).

14 Exchanging information on criminal convictions

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Committee on Exiting the European Union, the Home Affairs Committee and the Justice Committee
Document details	(a) Proposal for a Directive amending Council Framework Decision 2009/315/JHA as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS) and replacing Council Decision 2009/316/JHA (b) Proposal for a Regulation establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN) and amending Regulation No 1077/2011
Legal base	(Both) Article 82(1)(d) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(a) (37463), 5438/16 + ADDS 1–2, COM(16) 7; (b) (38886), 10940/17 + ADD 1, COM(17) 344

Summary and Committee's conclusions

14.1 The European Criminal Records Information System—ECRIS—enables Member States to exchange information on the previous convictions of EU citizens, ensuring that they cannot escape their criminal past by offending in a different Member State. In early 2016, the Commission proposed a Directive—document (a)—to improve the operation of ECRIS and make it a more effective tool for exchanging information on third country national offenders convicted of a criminal offence in the EU. It was supplemented in 2017 by a proposed Regulation—document (b)—which would establish a centralised EU information system containing biographical information, fingerprints and facial images of third country national offenders. This central system—ECRIS-TCN—would enable a Member State to discover whether any relevant criminal records information is held elsewhere in the EU and to obtain access to that information by submitting a request to the relevant Member State(s) through the decentralised ECRIS system. The UK has participated fully in ECRIS since it became operational in April 2012. As ECRIS is an EU criminal law measure, participation in the proposed changes is subject to the UK's Title V (justice and home affairs) opt-in. The Government has opted into both proposals.

14.2 The Justice and Home Affairs Council agreed a general approach on the ECRIS package in December 2017. The Minister for Policing and the Fire Service (Rt Hon Mr Nick Hurd MP) described the outcome of negotiations as "broadly acceptable" but the UK abstained during the vote as both proposals remained under scrutiny.[180] Despite the efforts made by the then Bulgarian Presidency to complete trilogue negotiations between the Council, European Parliament (EP) and Commission, no agreement was reached by the end of its term (30 June 2018). The Minister's letter of 24 July 2018 outlined the main sticking points. These were the criminal threshold for taking and loading fingerprints into the central ECRIS-TCN system and the inclusion of criminal record information on individuals who are nationals of an EU Member State *and* a third country ("dual EU/TCN nationals"). The European Parliament considered that treating these dual nationals differently from EU citizens by providing for the inclusion of their fingerprints in ECRIS-TCN in certain circumstances would be discriminatory. His subsequent letter of 18 October 2018 explained that the Austrian Presidency was continuing to seek a compromise with a view to reaching an agreement at the December 2018 Justice and Home Affairs Council. He also reiterated the Government's aim to negotiate "a new, comprehensive and legally binding agreement on internal security, which preserves mutually important operational capabilities".

14.3 We asked the Minister to report back to us on any compromise texts agreed with the European Parliament in good time for us to consider clearing them from scrutiny ahead of formal approval by the Council. We also asked him to explain how much discussion has taken place with the EU on the scope and content of a future EU/UK internal security agreement and how much detail he expected to be included in the political declaration on the future relationship accompanying the draft EU/UK Withdrawal Agreement.[181]

14.4 In his letter of 11 December 2018, the Minister reported that the European Parliament and Council were unable to agree a compromise text at their trilogue meeting on 6 December, adding:

> Member States had offered to concede the lower threshold for fingerprints in order to ensure dual nationals were included in the ECRIS-TCN system. However, the EP's counter proposal—that the threshold for taking fingerprints of *all* TCNs is required only where it is permissible under a Member State's national law—is one which Member States have rejected given it significantly undermines the effectiveness of the system. As fingerprints are the primary form of identification, the UK supports a high ambition for fingerprints in the ECRIS-TCN proposal and will continue to do so.

14.5 Since a majority of Member States strongly opposed the solution proposed by the European Parliament, the Minister told us that the Presidency would "return to trilogues with the mandate to hold firm on fingerprints and continue to seek an agreement on the outstanding issues". He considered it "unlikely" that a compromise would be attainable before the Austrian Presidency's term in office ended on 31 December 2018.

180 See the Minister's letter of 1 December 2017 to the Chair of the European Scrutiny Committee.

181 Letter of 14 November 2018 from the Chair of the European Scrutiny Committee to the Minister for Policing and the Fire Service (Rt Hon Mr Nick Hurd).

14.6 Turning to the prospects for a future internal security agreement with the EU, the Minister drew our attention to the draft Political Declaration accompanying the draft EU/UK Withdrawal Agreement which "contains the outline terms of a comprehensive future security relationship, with close reciprocal law enforcement and judicial cooperation", adding that "this will include data-sharing arrangement for the exchange of criminal records".

14.7 A Council press release issued on the same day as the Minister's letter indicated, however, that the Council and European Parliament negotiators were able to reach a provisional agreement on a compromise text, subject to formal approval by both institutions. According to the press release:

> The agreement of the two institutions foresees in particular that dual EU/TCN nationals will be included in the centralised database. This will avoid a dual national having the possibility of "hiding" information on convictions by being both in the centralised database and in the database of his/her EU Member State. Fingerprints of those dual nationals will be included in the system to the extent they have been collected in accordance with national law.

14.8 In his latest letter of 21 January 2019, the Minister confirms that the Austrian Presidency, contrary to expectations, was able to reach an agreement with the European Parliament on 11 December 2018. The compromise text of the proposed Regulation ensures that the fingerprints of dual EU/TCN nationals will be included in the central ECRIS system—ECRIS-TCN—but only where the taking of fingerprints is permissible under the national law of the relevant Member State.[182] Unlike other third country nationals who are not also EU citizens, there will be no minimum EU-wide threshold criminal threshold for taking the fingerprints of dual EU/TCN nationals.

14.9 The Committee of Member States' permanent representatives to the EU (COREPER) has endorsed the compromise agreed on the proposed Directive and on the proposed Regulation. The Minister considers that both texts adequately address the Government's concerns and asks us to clear the proposals from scrutiny so that the UK can vote for them when they are brought to the Council for formal adoption.

Our Conclusions

14.10 **We note that the European Commission has made a declaration expressing regret that the lower threshold for including within ECRIS-TCN the fingerprints of dual EU/TCN nationals—third country nationals who are also EU citizens—will make the ECRIS-TCN system less effective. We nonetheless accept that the compromise reached with the European Parliament is likely to be the best that can realistically be achieved, short of prolonging the negotiations and delaying the introduction of the new ECRIS-TCN information system. We therefore agree to clear the proposed Regulation and the proposed Directive from scrutiny ahead of their formal adoption by the Council. In doing so, we make the following observations which we draw to the attention of the Exiting the European Union Committee, the Home Affairs Committee and the Justice Committee:**

182 See Articles 2 and 5(1)(b)(i) of the compromise text.

- **the position remains that there is no provision for a non-EU third country to participate in ECRIS, nor is there provision to access information held in the new ECRIS-TCN information system;**
- **a third country may ask Eurojust to check (via ECRIS-TCN) whether one or more Member States hold criminal record information on a third country national, but only for the purpose of criminal proceedings, not for the wider purposes (such as employment vetting) envisaged in Article 7(1) of the ECRIS-TCN Regulation;**
- **if Eurojust establishes that one or more Member States do hold criminal record information on a third country national, it may only identify the relevant Member State/s if each one consents;**
- **it will be for the European Commission to determine when ECRIS-TCN becomes operational, meaning that the potential benefits for the UK remain uncertain even if a post-exit transition/implementation period is agreed as part of the UK's exit negotiations;**
- **the** draft Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 **laid by the Government on 15 January 2019 make clear that the UK will cease to participate in ECRIS (and ECRIS-TCN) on exit day in the event of a "no deal" exit from the EU;**
- **the** Political Declaration accompanying the draft EU/UK Withdrawal Agreement **calls for "further arrangements appropriate to the United Kingdom's future status for data exchange", including the exchange of criminal records information, with a view to delivering capabilities that "approximate" existing EU mechanisms; and**
- **the Political Declaration also makes clear that the UK's future status as "a non-Schengen third country that does not provide for the free movement of persons" will be a material consideration in determining the nature and scope of the UK's future partnership with the EU in the field of police and criminal justice cooperation.**

14.11 **We remind the Minister of the Government's assessment (in its** Framework for the UK-EU Security Partnership **published in May 2018) that there are "no viable existing third country alternatives" to ECRIS and that there would be "a clear mutual loss of operational law enforcement and criminal justice capability" and "substantial security consequences" if the UK were no longer able to participate in ECRIS and other elements of the EU's internal security toolkit. We ask him to provide regular progress reports on negotiations for a post-exit EU/UK internal security treaty which include details of the prospects for securing a suitable arrangement on UK access to or participation in ECRIS and ECRIS-TCN.**

Full details of the documents

(a) Proposal for a Directive amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA: (37463), 5438/16 + ADDs 1–2, COM(16) 7.

(b) Proposal for a Regulation establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN) and amending Regulation No 1077/2011: (38886), 10940/17 + ADD 1, COM(17) 344.

Background

14.12 Our earlier Reports listed at the end of this chapter provide an overview of ECRIS and ECRIS-TCN, the changes proposed by the European Commission, and the Government's position.

Previous Committee Reports

Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 20 (12 September 2018); Thirty-first Report HC 301–xxx (2017–19), chapter 6 (13 June 2018), Eleventh Report HC 301–xi (2017–19), chapter 3 (24 January 2018); Seventh Report HC 301–vii (2017–19), chapter 7 (19 December 2017) and First Report HC 301–i (2017–19), chapter 22 (13 November 2017). On document (a) only, see our Twenty-second Report HC 71–xx (2016–17), chapter 8 (7 December 2016), Fourteenth Report HC 71–xii (2016–17), chapter 4 (19 October 2016), Fourth Report HC 71–iii (2016–17), chapter 6 (8 June 2016) and Twenty-fourth Report HC 342–xxiii (2015–16), chapter 10 (24 February 2016).

15 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

(40285) 15721/18 COM(18) 842 — Report from the Commission to the European Parliament and the Council Report on the functioning of the European carbon market.

(40309) 15670/18 SWD(18) 492 — Commission Staff Working Document: Counterfeit and Piracy Watch List

Department for Digital, Culture, Media and Sport

(40320) — European Framework for Action on Cultural Heritage.

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HM Treasury

(40233) 15092/18 + ADD 1 COM(18) 771 — Communication from the Commission Investment Plan for Europe: stock-taking and next steps.

(40265) 15503/18 + ADD 1 COM(18) 832 — Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Joint Committee established in accordance with Article 41(1) of the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax.

(40275) 15598/18 COM(18) 815 — Report from the Commission pursuant to Article 4 of Decision No 562/2014/EU of the European Parliament and the Council on the capital increase of the European Investment Fund

(40295) 15689/18 COM(18) 844 — Report from the Commission to the European Parliament and the Council on overview and assessment of the statistics and information on the automatic exchanges in the field of direct taxation.

Formal Minutes

Wednesday 30 January 2019

Members present:

Sir William Cash, in the Chair

Martyn Day	Mr David Jones
Geraint Davies	Stephen Kinnock
Richard Drax	Andrew Lewer
Marcus Fysh	Michael Tomlinson
Kelvin Hopkins	Dr Philippa Whitford

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 15 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 6 February 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*)