



House of Commons  
European Scrutiny Committee

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**Fifty-fifth Report of  
Session 2017–19**

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Documents considered by the Committee on 13 February 2019

*Report, together with formal minutes*

*Ordered by the House of Commons  
to be printed 13 February 2019*

## Notes

### Numbering of documents

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

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

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

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

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

### Abbreviations used in the headnotes and footnotes

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

### Euros

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

### Further information

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

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

### Staff

The staff of the Committee are Jessica Mulley (Clerk), Kilian Bourke, Alistair Dillon, Leigh Gibson, Foeke Noppert, Sibel Taner and George Wilson (Clerk Advisers), Arnold Ridout (Counsel for European Legislation), Joanne Dee and Emily Unwin (Deputy Counsels for European Legislation), Jeanne Delebarre (Second Clerk), Daniel Moeller (Senior Committee Assistant), Sue Beeby, Nat Ireton and Beatrice Woods (Committee Assistants), Ravi Abhayaratne and Paula Saunderson (Office Support Assistants).

### Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is (020) 7219 3292/5467. The Committee's email address is [escom@parliament.uk](mailto:escom@parliament.uk).



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## Meeting Summary

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

### Brexit-related issues

The Committee is now looking at documents in the light of the UK'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:

- Fisheries in a no-deal scenario

### Summary

#### ***Brexit-preparedness: Fisheries***

The Commission proposes that the agreement reached in December for fishing quotas covering the whole of 2019 be respected in the event of a no deal. UK vessels would be granted access to EU waters accordingly as long as EU vessels were granted access to UK waters. To cover a scenario where the UK did not respect the agreement in full or in part, the Commission has also proposed an amendment to the European Maritime Fisheries Fund so that EU vessels may be compensated for lost opportunities. While the Minister had previously said that the UK would respect the 2019 quotas even in the event of no deal, the UK position is now less clear. A potentially revised position is still subject to cross-Government clearance. The Committee therefore requests clarity on the Government position. If the Government has decided not to respect the agreed 2019 quotas, the Committee invites the Government to address the following issues:

- the reason for this change in policy position;
- any risk that doubt over EU access to UK waters and vice versa could create an incentive for the industry to focus their 2019 fishing effort in the first three months of the year;
- confirmation that the UK would negotiate any changes to the 2019 arrangements with the interests of all of those involved in the seafood industry in mind, including the whole catching and fish processing sectors, considering the importance not only of fishing opportunities but of trade;
- confirmation that the UK will approach any necessary negotiations on fishing opportunities for the remainder of 2019 in full respect of its international legal obligations and commitments to environmental sustainability; and
- whether the UK will commit to compensating UK industry for any lost fishing opportunities in the event of a no deal and reduced access to EU waters.

*Not cleared; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee*

### **Connecting the European Travel Information and Authorisation System with other EU security and information systems**

The European Commission has proposed two Regulations which would make technical changes to various EU security and migration information systems so that they can be cross-checked against the new European Travel Information and Authorisation System (“ETIAS”). This system, expected to be operational after 2021, would require all visa-free third country nationals wishing to travel to the Schengen area to make an online application for travel authorisation ahead of their journey. The Government has confirmed that UK nationals will be required to obtain a travel authorisation for journeys to the Schengen free movement area once the UK has left the EU and ETIAS is up and running. Although the ETIAS, and some of the information systems it will access, form part of the Schengen rule book in which the UK does not participate, the European Scrutiny Committee is actively following the evolution of ETIAS and other related EU information systems because they will hold the personal data of many UK nationals after Brexit when they cease to be EU citizens. The Government acknowledges that some may be at greater risk of being refused entry as a result of these more extensive checks. The Committee underlines the need for robust data protection safeguards and accessible and effective redress mechanisms for those whose personal data are held in EU information systems. It also asks the Government whether there would be any operational benefit to the UK in participating in the proposed Regulation amending the EU information systems in which the UK currently takes part—the policing element of the Schengen Information System (SIS II) and a new database containing criminal records information on the offending history of third country nationals in the EU (ECRIS-TCN)—given the imminence of Brexit.

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

### **Introducing Qualified Majority Voting for EU tax policy**

The Committee has considered in detail a recent proposal by the European Commission to abolish EU countries’ veto over EU tax policy and legislation and make decisions in that area by Qualified Majority Voting (QMV) instead.

It notes that the proposals are unlikely to garner the necessary support among the remaining Member States after Brexit, but that—in the event that QMV is introduced for EU tax policy—there could be significant implications for the UK both during the post-Brexit transition and in the longer term, given the close economic links between the UK and the EU-27 and the tax provisions of the controversial “backstop” for Northern Ireland.

*Cleared from scrutiny; drawn to the attention of the Committee on Exiting the EU, the Northern Ireland Affairs Committee and Treasury Committee*

### **EU sanctions on the Salisbury perpetrators**

The Committee has published a report on a decision by EU Foreign Affairs Ministers to invoke a new Europe-wide sanctions regime against the Russian perpetrators of the

March 2018 chemical attack in Salisbury. The report also looks at the implications of the UK's withdrawal from the EU for its cooperation on foreign policy sanctions when it is no longer represented in the EU institutions.

*Cleared from scrutiny; drawn to the attention of the Defence Committee, the Foreign Affairs Committee and the International Development Committee*

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

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

**Business, Energy and Industrial Strategy Committee:** The UK's accession to the WTO Government Procurement Agreement in view of its withdrawal from the EU [Proposed Decision (NC)]

**Defence Committee:** EU sanctions regime for chemical attacks [Proposed (a) Decision; (b) Regulation (C)]

**Environmental Audit Committee:** EU framework on endocrine disruptors [Commission Communication (C)]

**Environment, Food and Rural Affairs Committee:** Brexit-preparedness: Fisheries [Proposed Regulations (NC)]

**Committee on Exiting the EU:** EU tax policy: from national veto to Qualified Majority Voting [Communication (C)]; The UK's accession to the WTO Government Procurement Agreement in view of its withdrawal from the EU [Proposed Decision (NC)]

**Foreign Affairs Committee:** EU sanctions regime for chemical attacks [Proposed (a) Decision; (b) Regulation (C)]; The UK's accession to the WTO Government Procurement Agreement in view of its withdrawal from the EU [Proposed Decision (NC)]

**Home Affairs Committee:** Connecting the European Travel Information and Authorisation System (ETIAS) with other EU security and migration information systems [Proposed Regulations (NC)]; Strengthening the European Union Agency for Asylum [Proposed Regulation (C)]

**International Development Committee:** EU sanctions regime for chemical attacks [Proposed (a) Decision; (b) Regulation (C)]

**International Trade Committee:** The UK's accession to the WTO Government Procurement Agreement in view of its withdrawal from the EU [Proposed Decision (NC)]

**Northern Ireland Affairs Committee:** EU tax policy: from national veto to Qualified Majority Voting [Communication (C)]

**Treasury Committee:** EU tax policy: from national veto to Qualified Majority Voting [Communication (C)]; Pan-European Personal Pension Product (PEPP) [Proposed Regulation (C)]

**Work and Pensions Committee:** Pan-European Personal Pension Product (PEPP) [Proposed Regulation (C)]

# 1 Consumer Protection

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	(b) Not cleared from scrutiny; scrutiny waiver granted; further information requested (c) Not cleared from scrutiny; further information awaited; (a) Cleared
Document details	(a) Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: A New Deal for Consumers; (b) Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules; (c) Proposal for a Directive Of The European Parliament And Of The Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC
Legal base	(a) —; (b) (c) Article 114 TFEU, with reference to Article 169
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (39619), 7875/18, COM(18) 183; (b) (39618), 7876/18 + ADDs 4, COM(18) 185; (c) (39617), 7877/18 184 + ADDs 5, COM(18)

## Summary and Committee's conclusions

1.1 In July 2018, the European Commission proposed two legislative measures, collectively referred to as “a New Deal for Consumers”, to improve enforcement of EU consumer protection rules and consumers’ awareness of their rights. The Minister (Kelly Tolhurst MP) has now written to the Committee to request that it grants her a waiver to participate at the forthcoming Competitiveness Council on 18 February 2019.

1.2 The Minister seeks a waiver specifically in relation to Directive (7876/18) (the “Omnibus Directive”) which would amend the four main consumer Directives<sup>1</sup> so as to effect the following changes to the consumer protection acquis:

- Member States’ authorities would be empowered to impose fines for breaches of consumer law under each of the four cross-cutting Directives, with a minimum ‘floor’ level of four percent of a trader’s annual turnover;

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<sup>1</sup> The Consumer Rights Directive (CRD), the Unfair Contract Terms Directive (UCTD), the Unfair Commercial Practices Directive (UCPD) and the Price Indications Directive (PID).

- Online marketplaces would be required to inform consumers about: how offers presented to them when using the online marketplace have been ranked; whether the contract would be concluded with a trader or not; and whether EU consumer law applies to their transaction;
- The consumer’s right of withdrawal from distance sales would be made less burdensome for business, by removing the requirements for the trader to accept the consumer’s withdrawal from the contract when they have used the good more than is necessary to establish its characteristics, and for the trader to reimburse the consumer before they have had receipt of the returned good;
- The application of the CRD would be extended to digital services for which a consumer has paid using their personal data, so that consumers would have the same right to pre-contractual information and to cancel the contract within a 14-day right-of-withdrawal period;
- The practice of marketing of a product in one country on the basis that it is identical to the same product marketed in other Member States, where those products differ (‘dual quality’) significantly, would be defined as a misleading commercial practice.

1.3 In the Government’s initial report on the proposal,<sup>2</sup> the (then) Minister, Andrew Griffiths MP, did not raise any substantial concerns about the proposal, emphasised that the Member States’ retained significant levels of discretion under it, and noted that the package addressed many of the same themes the Government was consulting on in its Green Paper on ‘Modernising Consumer Markets’. The Minister did, however, indicate that he intended to monitor the proportionality for business of the proposed transparency requirements for online marketplaces, as well as whether the proposed removal of certain obligations on traders in relation to the customer’s right of withdrawal was fair on consumers. Regarding EU exit, the Minister noted only that “the way consumer protections apply across the border with the EU in future is a matter for negotiations” and that it is not in either party’s interest “for rogue traders to target citizens based in the UK or EU.”

1.4 In its first report on the proposal,<sup>3</sup> the Committee requested, when the shape of any prospective General Approach became clearer, further updates regarding the transparency requirements for online marketplaces as well as the removal of certain obligations on traders in relation to the customer’s right of withdrawal.

1.5 The Committee also asked the Government for the following information regarding EU exit:

- whether any EU arrangements with a country outside the EEA, and not including Switzerland, currently provide a level of reciprocal consumer protection that the Government would consider to be adequate within the scope of the future economic partnership;

2 Explanatory Memorandum from the Minister, Department for Business, Energy and Industrial Strategy ([4 May 2018](#)).

3 Thirty-sixth Report HC 301–xxxv (2017—2019) chapter 1 ([18 July 2018](#)).

- whether any current EU agreements with third countries, other than the EEA and Switzerland, provide for a high level of participation in the intra-EU legal cooperation mechanisms and infrastructure such as RAPEX, the EU Rapid Alert System for dangerous non-food products, and the European Consumer Centre Network; and
- how the Government envisages that consumer protection arrangements within the future UK-EU economic partnership would differ from, for example, the provisions of the EU-Ukraine Association Agreement (see particularly Chapter 20 and Annex XXXIX)?

1.6 In the Government’s initial response to the Committee’s report on 26 September 2018,<sup>4</sup> the Minister’s successor (Kelly Tolhurst MP) did not address these questions in detail, instead observing at a general level that cross-border consumer protection is relatively new in the international landscape and that “there are few trade deals at present which offer a robust framework for cross-border protection”. The Minister noted that cross border consumer protection could be formalised either through stand-alone agreements/memorandums of understanding (e.g. New Zealand-Australia) or through free trade agreements (e.g. Australia-USA), or a combination of both, and that how UK-EU consumer protection works in practice in future will depend on the shape of the future economic partnership. On 8 January 2019 the Government also published a technical notice<sup>5</sup> providing guidance on consumer rights and protection after Brexit, including in the event of a No Deal.

1.7 In the Minister’s latest update on 31 January 2019,<sup>6</sup> she informs the Committee that the Romanian Presidency has scheduled working groups throughout January regarding the Omnibus Directive (document B) and is aiming to have a General Approach cleared at a Competitiveness Council on 18 February.

1.8 The Minister states that the Government would only be in a position to vote in favour of a General Approach if three UK objectives are satisfied.

1.9 Setting out the first of these conditions, the Minister states that the Government does not support the proposed changes to the EU right of withdrawal, which currently allows consumers to cancel a distance (including online) or off-premises contract within 14 days without having to give a reason. The proposal would modify this by removing the obligation for the trader to accept the right of withdrawal when a consumer has ‘handled’ a good more than necessary, and also by removing the obligation for the trader to reimburse the consumer before they have received the returned goods and have had a chance to inspect them (e.g. for overuse). The Minister expresses the view that these amendments “unfairly shift the burden on to the consumer” and specifies a variety of ways in which this is the case. However, she is confident that this negotiating objective will be achieved, as the Presidency has deleted this element of the proposal from its most recent compromise text, and the European Parliament has also expressed a desire to maintain the existing right of withdrawal.

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4 Letter to the Chair of the European Scrutiny Committee ([26 September 2018](#)).

5 Department for Business, Energy and Industrial Strategy, Guidance: consumer rights and protection after Brexit ([8 January 2019](#)).

6 Letter to the Chair of the European Scrutiny Committee ([31 January 2019](#)).

1.10 The second condition of UK support identified by the Minister relates to ensuring that the revised Directive does not interfere with the UK's existing rules on 'secondary ticketing'. The Government has already legislated to make online marketplaces liable for providing material information to consumers buying tickets that are re-sold online through the marketplace ('secondary ticketing'), and the Minister is concerned that the maximum harmonisation approach which is proposed for the requirements on online marketplaces might require the UK to scale back or remove its existing rule on the information required from marketplaces about tickets re-sold online. The Minister states that she is seeking an amendment to the draft Directive to address this concern, and that the Government has support from France and Finland, but that other Member States have not been supportive and "the European Commission has been reluctant to consider changing the level of harmonisation of this provision or consider alternative drafting solutions". The Minister notes that the Presidency has not taken the UK's concerns into account and that it is therefore unclear whether the Government will be able to achieve any concessions on this point.

1.11 The third condition of UK support is that the changes to the rules on penalties (see paragraph 2) should, as is currently the case in the proposed Directive, be clearly set at a level of "minimum harmonisation", meaning that fines would be capped at a minimum of 4% of annual turnover, but with discretion for Member States to go beyond this, and that courts should have the flexibility to consider other relevant factors when deciding whether to impose a penalty in addition to those specified in the Directive—i.e. the list of criteria specified in the Directive should remain non-exhaustive. The Minister is "reasonably confident" that this negotiating objective can be achieved, on the grounds that there has been a strong push from Member States to make it clear that the list of criteria to be considered is only indicative, and because, although the European Parliament appears to be in favour of capping fines at 4% of annual turnover, this position has so far not been shared by Member States and the European Commission.

1.12 The Minister also notes that the most recent compromise text introduced by the Romanian Presidency extends the transposition deadline from 18 to 24 months, which would fall outside the (initial) Implementation Period provided for in the Withdrawal Agreement, meaning that the UK would be unlikely to have to implement it.

**1.13 We thank the Minister for her thorough pre-Council briefing. We have taken note that the Romanian Presidency intends to reach a General Approach regarding the Omnibus Directive (document B) at Competitiveness Council on 18 February 2019. The Minister indicates that the UK will only support the General Approach if three conditions are met: (i) if the proposed amendments to the EU right of withdrawal, which would reduce the obligations on traders and slightly reduce the levels of protection currently afforded to consumers, are removed; (ii) if the maximum harmonisation approach which is proposed for online marketplaces, which might require the UK to remove its rules regarding online secondary ticketing marketplaces, is modified; and (iii) if the provisions in the Directive regarding penalties continue to operate according to a minimum harmonisation approach, permitting Member States to impose higher fines and allowing their courts to consider additional relevant factors when deciding whether to impose a penalty.**

1.14 We also take note that the most recent Presidency text extends the transposition deadline from 18 to 24 months, which would fall outside the (initial) Implementation Period provided for in the Withdrawal Agreement, meaning that the UK would be unlikely to have to implement it unless the Implementation Period were extended.

1.15 On EU exit, in the event of a negotiated exit, the Minister confirms that UK consumers would continue to automatically benefit from EU consumer protections and dispute resolution mechanisms during the implementation period. When the implementation period ends, although the Minister emphasises that the UK is committed to maintaining strong reciprocal protections, she acknowledges that the extent to which this objective is successfully translated into practice depends on the outcome of the future relationship negotiations. Although the Minister indicates that the Government seeks to ensure a high level of reciprocal consumer protection in the future relationship, she observes that cross-border consumer protection is “relatively new in the international landscape” and that “there are few trade deals at present which offer a robust framework for cross-border protection”.

1.16 In the event of a No Deal exit, the EU (Withdrawal) Act 2018 and relevant secondary legislation will preserve in domestic law those effects of the EU consumer protection acquis which are not cross-border in character, meaning that UK consumers will continue to enjoy current protections when purchasing goods on the domestic market, but there is significantly less clarity about how consumers will be affected when engaging in cross-border purchases with businesses in the EU.

1.17 The Government’s No Deal technical notice regarding consumer protection<sup>7</sup> essentially states that, in this scenario, consumers purchasing goods/services from a business in a Member State should check the terms of the contract. This passage of the notice is remarkably vague and equivocal, stating that when consumers buy from a business based in the EU, they “may” be covered by the consumer protections in the country where the business is based, how those protections apply to UK consumers “may change”, as countries “may have brought in consumer protections in slightly different ways or offer different protections to EU based consumers and non-EU based consumers.” We find the sheer vagueness of this guidance unhelpful and ask the Government to provide greater clarity by answering the following questions:

- To what extent do Member States have discretion in transposing EU consumer protection law into domestic law to not require businesses to extend these protections to consumers based in third countries? Please provide us with the Government’s legal analysis of this point, including a range of examples.
- To what extent have EU countries, in practice, as the Government states in its guidance, “brought in consumer protections in ... different ways” and “offered different consumer protections to EU-based consumers and non-EU based consumers”? Please also provide us with some relevant examples, as well as an overview of the extent to which the Government has sought to arrive at a comprehensive overview of this issue.
- To what extent do the Member States have discretion to apply the EU right of withdrawal differently to consumers in third countries, and to what extent they have done so in practice?

<sup>7</sup> Department for Business, Energy and Industrial Strategy, Guidance: consumer rights and protection after Brexit (8 January 2019).

- Are there any other factors which may mitigate these concerns? For example, may some businesses, irrespective of the legal changes brought about by the UK exiting the EU, choose to continue to offer the same protections to UK consumers purchasing goods from them?

1.18 We also ask the Minister to respond to the questions from our previous report which have not specifically been addressed. These were:

- Do any existing EU arrangements for countries other than the EEA/Switzerland provide a level of reciprocal consumer protection that the Government would consider to be adequate within the scope of the future economic partnership (if so, please provide details of these arrangements)?
- How far do the consumer protections provisions of the EU-Ukraine Association Agreement (see particularly Chapter 20 and Annex XXXIX) go in terms of facilitating reciprocal consumer protection between the two territories?
- Whether any current EU agreements with third countries, other than the EEA/Switzerland, provide for a high level of participation in the intra-EU legal cooperation mechanisms and infrastructure that facilitate the protection of European consumers (e.g. RAPEX, the EU Rapid Alert System for dangerous non-food products; the European Consumer Centre Network, an EU-wide network of advice centres for consumers shopping across borders; cooperation facilitated by the Consumer Protection Cooperation Regulation).

1.19 We grant the Government a scrutiny waiver to participate at the relevant Council at which the Member States seek to conclude a General Approach, which is expected to be the 18 February 2019, subject to the compromise text being sufficiently aligned with the Government's position. We request that the Government provide a thorough response to the above questions by 13 March 2019. In the meantime, we retain this document under scrutiny.

### Full details of the documents

(a) Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: A New Deal for Consumers: (39619), 7875/18, COM(18) 183; (b) Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules: (39618), 7876/18 + ADDs 1–4, COM(18) 185; (c) Proposal for a Directive Of The European Parliament And Of The Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC: (39617), 7877/18 + ADDs 1–5, COM(18) 184.

### Previous Committee Reports

Thirty-sixth Report HC 301–xxxv (2017–2019) [chapter 1](#) (18 July 2018).

## 2 The UK's accession to the WTO Government Procurement Agreement in view of its withdrawal from the EU

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Committee's assessment	Politically important
<u>Committee's decision</u>	Not cleared from scrutiny; further information requested; but scrutiny waiver granted; drawn to the attention of the Committee on Exiting the EU Committee, the International Trade Committee, the Business, Energy and Industrial Strategy Committee and the Foreign Affairs Committee
Document details	Proposal for a Council Decision on the position to be taken on behalf of the EU in the Committee on Government Procurement concerning the accession of the UK to the Agreement on Government Procurement in the context of its withdrawal from the EU
Legal base	Articles 207(4) and 218(9) TFEU; QMV
Department	Cabinet Office
Document Number	(40370), OTNYR

### Summary and Committee's conclusions

2.1 The Government Procurement Agreement (GPA) is a plurilateral agreement within the framework of the World Trade Organisation (WTO), which mutually opens government procurement markets among its 19 parties (covering 47 WTO members, including the EU, the United States, Japan and Canada). GPA-covered government purchases of goods and services is estimated to be worth over £1.3 trillion per annum.

2.2 The UK has been participating in the GPA, as a member of the EU, for over 20 years. If the UK is to continue to access the markets covered by the GPA following its withdrawal from the EU, it must accede to the agreement in its own right. The UK submitted its final access offer to the GPA parties on 2 October 2018, which is intended to replicate its existing GPA schedule of commitments as an EU member state as far as possible. The final offer was accepted in principle by the GPA parties on 27 November 2018 and the decision of the Government Procurement (GPA Committee)<sup>8</sup> is expected to be adopted on 27 February 2019.

2.3 The proposed Council Decision establishes the position that the Commission will take, on behalf of the EU, within the GPA Committee. It considers that the UK's final offer replicates the existing EU schedule of commitments in terms of coverage, with minor technical adaptations, and provides the EU with the highest level of market access offered

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8 The GPA Committee administers the implementation of the GPA. It is composed of representatives from each of the GPA parties and WTO members and intergovernmental organisations with observer status, and all decisions are taken by consensus. The EU is represented by the Commission.

to the GPA parties.<sup>9</sup> The Commission proposes approving the UK's accession to the GPA, subject to the following conditions (to take account of multiple Brexit scenarios) being included in the GPA Committee decision:

- in the absence of a Withdrawal Agreement (a no deal scenario), Article 2 states that the timescales for the UK to deposit its instrument of accession should be: (a) not earlier than thirty days before the date on which the United Kingdom ceases to be a Member State of the Union; and (b) within six months of the date of the decision of the GPA Committee, unless the period for submission of the instrument is extended by that Committee; and
- in the event of a negotiated withdrawal (deal scenario), recital 8 states that the EU will notify GPA Parties that the UK should be treated as a Member State for the purposes of the GPA for the duration of the transition period and that the UK must re-apply to accede to the GPA at the end of any transition period.

2.4 In his Explanatory Memorandum of 8 February 2019, the Minister for Implementation at the Cabinet Office (Oliver Dowden MP) “supports the proposal that the Council accepts the UK's offer”.

2.5 **The Committee notes the importance of the UK's continued participation in the GPA after Brexit, as an independent member, without which:**

- **UK businesses would lose guaranteed access to GPA covered procurement opportunities totalling approximately £1.3 trillion per year, of which “UK wins” are estimated to be worth £1 billion to £1.4 billion per year;**
- **UK subsidiaries and suppliers based in other GPA jurisdictions would not be protected against discriminatory treatment by procuring governments; and**
- **UK consumers and procuring bodies would no longer benefit from increased choice and value for money due to competition from third country GPA parties' suppliers.**

2.6 **We grant the Minister a scrutiny waiver for the UK to be able to vote in favour of the proposal at the Council on 18 February 2019, subject to a) being kept updated on the outcome of the Council vote and the decision taken by the GPA Committee, including the impacts on the expected timetable for accession (particularly if other GPA parties object or the votes/decisions are delayed) and the post-exit implications for UK suppliers in all foreseeable Brexit scenarios and b) receiving the outstanding information below within ten working days.**

### ***No-deal: impact of any gap in the UK's GPA membership***

2.7 **We note that the GPA will come into force thirty days after the UK deposits its instrument of accession to the GPA with the Director-General of the WTO. This means that the UK's instrument of accession must be submitted 30 days before the UK exits on 29 March 2019 to avoid any disruption in the event of no deal. As the**

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9 The Commission's Explanatory Memorandum on the proposed Council Decision states that “...the Union [EU] will provide reciprocal treatment and adapt its schedule where necessary, in order to provide United Kingdom's goods, services, suppliers and service providers access to the procurements covered by the Union [EU] schedule.”

GPA Committee decision is not expected to be taken before the 27 February 2019 and Parliamentary scrutiny of the proposed agreement will be in accordance with the Constitutional Reform and Governance Act 2010 prior to ratification, there will be a gap (of at least several weeks) in GPA membership in the event of no deal.

2.8 We note that the Government intends to mitigate any “short gap in GPA membership” by “an amendment in the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019, which was laid before Parliament on 13 December 2019, guarantees continued access, rights and remedies for suppliers from GPA countries for a time limited period from EU exit”. The Government hopes that “[t]his will facilitate UK suppliers being offered reciprocal rights to participate in procurements abroad”. However, there is no guarantee that third parties would reciprocate, resulting in third country GPA suppliers having access to UK procurement markets but UK businesses being shut out of GPA-covered markets. We ask the Government to share its assessment of how UK stakeholders would be impacted by asymmetric access to procurement markets in a no deal scenario.

***Negotiated withdrawal: whether the UK will secure the benefits of the GPA for the duration of the transition period***

2.9 We note the Government’s position that the continuity of the effects of existing EU international agreements, including the GPA, during any implementation/transition period (negotiated withdrawal) is provided by the UK’s agreement with the EU that they will notify treaty partners that the UK is to be treated as a Member States for the purpose of these existing EU agreements.

2.10 Pursuant to Article 129 of the draft Withdrawal Agreement of 14 November 2018, the Commission wrote to third countries and international organisations, informing them that, for the duration of the transition/implementation period, EU law (including international agreements) will continue to apply to the UK, but did not request acknowledgement/agreement from the third country/international organisation. While it is clear that the UK will continue to be bound by the terms of the EU’s existing international agreements for the duration of the transition/implementation period, it is not clear whether the UK will benefit from the rights. We ask you to set out the Government’s position on whether third countries and international organisations need to agree to the UK continuing to benefit from the terms of the GPA for the duration of the transition/implementation period.

***Assessment of UK suppliers’ access to procurement markets post-exit/transition period (relative to the status quo)***

2.11 Membership of the WTO GPA opens up procurement above certain value thresholds. However, it is not clear from your Explanatory Memorandum how UK suppliers’ access to EU procurement markets will change as a result of the UK becoming a member of the GPA. We seek further clarification on this point.

2.12 Furthermore, EU membership not only gives the UK access to public procurement markets in other EU Member States, but also to other third countries with which the EU has free trade agreements (FTAs) that cover procurement. For example, UK businesses benefit from increased access in procurement markets in countries such as Canada and South Korea through EU FTAs. We ask the Minister to explain:

- how access to these EU FTA procurement markets will be impacted in the event of no deal. For example, will the ‘replacement’ treaties grant UK businesses the same level of access to these markets and be ratified in time or will there be gaps in coverage; and
- whether, in the event of a negotiated withdrawal, the UK is guaranteed to continue to secure the benefits of these agreements (as outlined above in paragraph 2.10)?

2.13 Finally, we ask the Minister to explain how the backstop (if it is applied at the end of any transition period, in accordance with the draft Withdrawal Agreement) would impact the UK’s accession to the GPA.

2.14 In the meantime, we draw the proposal and our conclusions to the Committee on Exiting the EU Committee, the International Trade Committee, the Business, Energy and Industrial Strategy Committee and the Foreign Affairs Committee.

## Full details of the documents

Proposal for a Council Decision on the position to be taken on behalf of the EU in the Committee on Government Procurement concerning the accession of the UK to the Agreement on Government Procurement in the context of its withdrawal from the EU: (40370), OTNYR.

## Background

### *The GPA: parties and coverage*

2.15 The GPA is a WTO plurilateral agreement whose signatories agree to mutually open up their public procurement markets. The GPA covers:

- the procedural rules, which determine how the parties conduct their relevant procurement—these are common to all parties; and
- the coverage, in terms of the different market sectors and the procuring bodies and organisations within each country that will be subject to the GPA—this is unique for each signatory and is agreed through a series of bilateral agreements between GPA parties.

2.16 The original GPA agreement was negotiated in 1994 and came into force in 1996. Following prolonged renegotiation, a revised and updated GPA was adopted in 2012 and entered into force in April 2014. There are currently 19 parties (comprising 47 WTO members) to the GPA, including the 28 EU Member States, the United States, Japan, Canada, South Korea, Taiwan and Hong Kong, which have opened procurement activities worth an estimated £1.3 trillion annually to international competition.

2.17 The Commission negotiates on behalf of the EU as a whole; individual EU Member States are not separately represented. All EU Member States have substantially the same coverage with respect to each of the other GPA parties. EU Member States meet their GPA obligations through compliance with the European procurement directives.

### ***The process of UK accession to the GPA***

2.18 The UK launched its GPA negotiations in June 2018 by submitting to GPA parties an initial market access offer and replies to a checklist on its national government procurement system.

2.19 At a meeting of the GPA Committee on 27 November 2018, parties to the GPA approved in principle the UK's final market access offer to take part in the GPA, in its own right, following its departure from the EU. Parties to the GPA are now deliberating on the language of a decision to be put for formal acceptance by the GPA Committee in February 2019.

### **Previous Committee Reports**

None.

## 3 Brexit-preparedness: Fisheries

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Not cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	(a) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/2403 as regards fishing authorisations for Union fishing vessels in United Kingdom waters and fishing operations of United Kingdom fishing vessels in Union waters; (b) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 508/2014 as regards certain rules relating to the European Maritime and Fisheries Fund by reason of the withdrawal of the United Kingdom from the Union
Legal base	(a) Article 43(2) TFEU, ordinary legislative procedure, QMV (b) Articles 42 and 43(2) TFEU, ordinary legislative procedure, QMV
Department	Environment, Food and Rural Affairs
Document Numbers	(a) (40337), 5678/19, COM(19) 49; (b) (40338), 5668/19, COM(19) 48

### Summary and Committee's conclusions

3.1 Given the continued uncertainty over UK ratification of the Brexit Withdrawal Agreement, the European Commission has published two proposals designed to mitigate the impact on the EU fisheries sector of a “no deal” Brexit scenario.

3.2 EU fishing vessels have equal access to EU waters and resources subject to the rules of the Common Fisheries Policy (CFP).<sup>10</sup> In the absence of a withdrawal agreement, the CFP will no longer apply to the UK as from the withdrawal date, and UK waters will no longer be part of EU waters. The default position would therefore be that EU vessels would not be able to fish in UK waters and vice versa. Even under that scenario, though, both the EU and the UK would be required under international law<sup>11</sup> to cooperate on the management of shared stocks.

3.3 The Commission considers that, to guarantee the sustainability of fisheries and in light of the importance of fisheries for the economic livelihood of many communities, it is important to maintain the possibility of arrangements for continued reciprocal fishing

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10 Regulation 1380/2013.

11 United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Fish Stocks Agreement (UNFSA).

access by EU and UK vessels to each other's waters. The vessels of eight Member States<sup>12</sup> fish in UK waters, from which they land an average of 14% of their catch—ranging from 50% for the Belgian fleet to 1% for the Spanish fleet.

3.4 One proposal (document (a)) ensures that the EU is in a position to grant UK vessels access to EU waters until the end of 2019, on the condition that EU vessels are also granted reciprocal access to UK waters. This amendment to the EU Regulation on the sustainable management of external fishing fleets (SMEFF Regulation)<sup>13</sup> is based on the agreement of 17 and 18 December 2018 on the fishing opportunities for 2019<sup>14</sup> and on the earlier agreement covering deep-sea stocks.<sup>15</sup> While the SMEFF Regulation already sets arrangements for the granting of fishing authorisations to third country vessels and vice versa, the Commission proposes a simplified procedure given the number of EU vessels that fish in UK waters. It is concerned that reliance on existing arrangements could lead to considerable delays and administrative burden.

3.5 The Commission also proposes that Member States be able to exchange quotas with the UK bilaterally. This is in line with current arrangements under the CFP allowing Member States to exchange quota between themselves, although the Commission proposes that it would carry out any quota exchange negotiated between the UK and a Member State. Approximately 1000 quota exchanges take place annually between the UK and Member States.

3.6 The other proposal (document (b)) would allow fishermen and operators from EU Member States to receive compensation under the European Maritime and Fisheries Fund (EMFF)<sup>16</sup> for the temporary cessation of fishing activities. This would help off-set some of the impact of a sudden closure of UK waters to EU fishing vessels in a no-deal scenario.

3.7 The Minister for Agriculture, Fisheries and Food (George Eustice MP) says in his [Explanatory Memorandum](#) (EM) that any future access to fish in EU waters and other arrangements with the EU will be a matter for negotiation and considers that nothing in the fishing access proposal (document (a)) pre-empts a negotiated agreement. The EMFF proposal (document (b)) will not have any direct implications on the UK, says the Minister, as the amendment will not apply to Member States until after Brexit.

3.8 In his earlier [EM](#)<sup>17</sup> on the Commission's proposals for 2019 fishing opportunities, the Minister had confirmed that the 2019 fishing opportunities would apply for the whole year regardless of exit scenarios. This position was cast into some doubt by a [letter](#)<sup>18</sup> from the Secretary of State (Rt Hon. Michael Gove MP) to the House of Lords EU Committee indicating that cross-Government agreement was being sought for an approach to quota allocations in the event of no deal.

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12 Belgium, Denmark, France, Germany, Ireland, Spain, Sweden and the Netherlands.

13 Regulation (EU) No 2017/2403.

14 Regulation (EU) 2019/124.

15 Regulation (EU) 2018/2025.

16 Regulation (EU) No 508/2014.

17 Paragraph 11, Explanatory Memorandum dated 26 November 2018 on Council document 13731/18 (Proposal for a Council Regulation fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters).

18 Letter from Rt Hon. Michael Gove MP to Lord Teverson, dated 15 January 2019.

3.9 The Minister told us in November 2018 that the Government would respect the agreed fishing opportunities for the whole of 2019 irrespective of the outcome of Brexit discussions. The Secretary of State subsequently cast doubt on that position in mid-January, noting that cross-Government agreement was being sought for an approach to quota allocations in the event of no deal. We ask that the Government set out clearly its approach to quota allocations in the event of no deal and an explanation as to any change of position since November when the Minister indicated that the 2019 fishing opportunities would be respected under all scenarios.

3.10 In the event that the UK chooses not to respect in full the agreement on 2019 fishing opportunities, we ask that the Minister address the following issues:

- recognition that this represents a change in policy position and the reason for it;
- any risk that doubt over EU access to UK waters and vice versa could create an incentive for the industry to focus their 2019 fishing effort in the first three months of the year;
- confirmation that the UK would negotiate any changes to the 2019 arrangements with the interests of all of those involved in the seafood industry in mind, including the whole catching and fish processing sectors, bearing in mind the importance not only of fishing opportunities but of trade; and
- confirmation that the UK will approach any necessary negotiations on fishing opportunities for the remainder of 2019 in full respect of its international legal obligations and commitments to environmental sustainability.

3.11 Regarding the proposed amendment to the European Maritime and Fisheries Fund, we ask that the Minister set out any similar commitment by the UK to compensate UK industry for any lost fishing opportunities in the event of a no deal and reduced access to EU waters.

3.12 It is the Minister's view that the fishing access proposal (document(a)) is a framework that would apply not only to a situation in which the UK respects the 2019 quotas as agreed in full but also to a situation in which the UK declined to respect those quotas but pushed successfully for the UK and EU to negotiate a revised arrangement. Our interpretation is that the proposed framework is designed expressly for a situation based on the 2019 quotas as agreed in December 2018. This appears clear from the revised Article 38b, where "fishing operations by United Kingdom vessels" are defined in accordance with the conditions set out in the Regulations governing the 2019 quotas. On the other hand, we accept that there may be some flexibility in the seventh Recital, which grants fishing authorisations to UK vessels in EU waters "if and to the extent that" the UK continues to provide authorisations to EU vessels in UK waters "to make use of fishing opportunities allocated to them in accordance with the relevant fishing opportunity Regulations." We ask the Minister if this Recital is the basis for the Government's interpretation that the framework would apply to any negotiated agreement between the UK and the EU and to clarify whether the Commission shares this interpretation.

**3.13 The arrangements set out in the fishing access proposal (document (a)) include the continued transfer and exchange of quotas between the UK and Member States. The Commission states that there are 1000 such exchanges annually between the UK and other EU Member States. We ask the Government to confirm whether it agrees with this figure and, if so, what the overall volumes of such exchanges are, the species and areas involved and how many may already have been arranged for the 2019 quota year. We would also welcome the Government’s assessment of the potential implication of centralising this procedure through the Commission, unlike the current management of such exchanges bilaterally with the other Member States.**

**3.14 Finally, the proposal does not cover fishing opportunities allocated to the UK (as an EU Member State) in third country waters. We ask the Minister to confirm that, in a no deal scenario, separate arrangements would be needed with each of those third countries on UK fishing opportunities in their waters and vice versa. We also ask the Minister to confirm what stage any such discussions have reached.**

**3.15 In view of the outstanding matters, the proposal remains under scrutiny. We ask for a response to our queries by 27 February 2019. This chapter is drawn to the attention of the Environment, Food and Rural Affairs Committee.**

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

(a) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/2403 as regards fishing authorisations for Union fishing vessels in United Kingdom waters and fishing operations of United Kingdom fishing vessels in Union waters: (40337), [5678/19](#), COM(19) 49;

(b) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 508/2014 as regards certain rules relating to the European Maritime and Fisheries Fund by reason of the withdrawal of the United Kingdom from the Union: (40338), [5668/19](#), COM(19) 48.

### **Previous Committee Reports**

None.

## 4 EU tax policy: from national veto to Qualified Majority Voting

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Committee's assessment	Legally and politically important
<u>Committee's decision</u>	Not cleared from scrutiny; further information requested; drawn to the attention of the Committee on Exiting the EU, the Treasury Committee and the Northern Ireland Affairs Committee
Document details	Communication from the Commission: Towards a more efficient and democratic decision making in EU tax policy
Legal base	—
Department	HM Treasury
Document Number	(40334), 5472/19, COM(19) 8

### Background and Committee's conclusions

4.1 The EU has an extensive body of law relating to taxation, especially on indirect taxes like [Value Added Tax](#) and [excise duty](#). It is also legislated—or tried to—in areas like [energy taxation](#), [financial transaction taxes](#) and [corporate taxation](#). Following the entry into force of the Lisbon Treaty in 2009, tax policy is one of the few areas of EU competence where the unanimity requirement still applies for the adoption of new policy measures, given its political sensitivity.<sup>19</sup> This means that many proposals by the European Commission to introduce or amend EU tax laws are vetoed in the Council of Ministers and never make it onto the statute book.

4.2 In addition to having withdrawn a number of tax proposals that were vetoed by Member States,<sup>20</sup> the Commission has also recently tabled draft EU legislation in the area of taxation that are currently, by default, subject to the unanimity requirement.<sup>21</sup> To facilitate adoption of such measures, and potentially allow for the revival of earlier failed efforts, in January 2019 the Commission [asked](#) the Member States to consider relinquishing their national veto over the adoption of new EU taxation policies. To do this, it has suggested using the so-called '*passerelle*' clause in Article 48 of the EU Treaty, which would allow the applicable procedure to be changed from unanimity to Qualified Majority Voting (QMV) without the need for a formal amendment to the Treaties.

4.3 The Commission has suggested rolling out QMV to different sections of EU tax policy gradually, using the *passerelle*, in four stages:

- i) The first stage would see the introduction of Qualified Majority voting for EU measures which focus **on addressing tax fraud, evasion and avoidance**,

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19 It follows that all EU tax law approved since UK accession to the EEC in 1973 was agreed to by the UK Government.

20 Recent examples of Commission proposals on tax that were withdrawn since they failed to meet the unanimity threshold are the proposed revision of the Energy Taxation Directive ([COM\(2011\) 169](#)), raising the minimum excise duty thresholds in all Member States ([COM \(2006\) 486](#)), and the proposed introduction of a standardised EU-wide VAT return for businesses ([COM\(2013\) 721](#)).

21 See for example our recent Report on EU proposals for far-reaching [VAT reform](#).

**and facilitating compliance.**<sup>22</sup> This would also introduce QMV for the conclusion of tax-related agreements between the EU and ‘third countries’, like the UK after Brexit;

- ii) As a second step, QMV rules would be introduced for **tax policy measures that aim to achieve public policy objectives** in areas like the environment, public health or transport, for example to implement the ‘polluter pays’ or ‘user pays’ principles;<sup>23</sup>
- iii) In the third stage, the national veto would be relinquished for EU measures in the field of **indirect taxation (VAT and excise)**; and
- iv) Finally, QMV would be applied to **all remaining EU tax policy measures**, “including areas such as the Common Corporate Tax Base, Financial Transaction Tax and taxation of the digital economy”.

4.4 Use of Article 48 TEU does not allow the EU expand its competence in the field of taxation: it would give it power to adopt any tax rules or legislation that it could not, theoretically, already put into law at present. The change would only affect the procedural requirements for such policies to be agreed. Even this, however, is much easier said than done. The decision to introduce Qualified Majority Voting rules for EU tax law using the *passerelle* for any of the four areas identified by the Commission would be subject to a triple lock because it can be vetoed by:

- Any Member State Government in the European Council;
- Any Member State’s national parliament; and
- The European Parliament.<sup>24</sup>

4.5 The Financial Secretary to the Treasury (Rt Hon. Mel Stride MP) submitted an [Explanatory Memorandum](#) on the Commission document on 5 February 2019. In it, the Minister explained the Government “is not convinced” by the Commission’s recommendation to introduce QMV for the adoption of EU tax policies, primarily because “unanimous decision making and Member States’ right to veto proposals protects national sovereignty over tax policy and their ability to design their domestic tax regime as they see fit”. He added that, in view of the UK’s decision to withdraw from the EU, the decision on whether to invoke the *passerelle* is primarily for the remaining Member States. (The Government is also of the view that “the EU-27 are unlikely to reach agreement quickly, if at all, on a way forward, given that the decision to move from unanimity to QMV must itself be taken unanimously”.)

4.6 The likely political opposition to the Commission’s suggestions at Member State level notwithstanding, its policy paper in itself does not constitute a legal proposal to make the changes to the EU’s voting rules it recommends. That would require a formal decision by the European Council at a later stage, for which no proposal will be prepared until the

22 This would affect, for example, any future changes to [EU Regulation 904/2010](#) on administrative cooperation in the field of VAT.

23 For environmental tax measures, the *passerelle* in Article 192 TFEU could be used. See for more information the ‘Background’ section of this chapter.

24 The *passerelle* in Article 192 TFEU to introduce QMV for tax-related environmental measures is not subject to a veto by national parliaments or the European Parliaments. It only requires unanimous agreement of Member State Governments in the Council.

notion of introducing Qualified Majority Voting rules for some areas of EU tax policy (even if not of the same scope as suggested by the Commission) has received the political endorsement of the EU’s Heads of State and Government. It is unclear when Member States might formally discuss whether to take the Commission’s recommendations on EU tax policy forward. However, on 12 February 2019, a “considerable number” of EU Finance Ministers [said](#) their Governments would prefer to keep unanimous decision-making for EU tax measures.<sup>25</sup>

## Our conclusions

**4.7 The passerelle clauses in the Lisbon Treaty, allowing the Member States to agree to an abolition of their right of veto over certain EU policies without the need for a formal Treaty amendment, have always been controversial.**

**4.8 The European Commission’s recent suggestion to make use of the passerelle option to remove Member States’ national veto over EU tax policy—one of the few remaining areas of unanimity decision-making in the Council of Ministers—would allow for reforms with potentially far-reaching impacts on national tax systems to be adopted more rapidly and despite Member State opposition. This could lead to the potential revival of earlier failed Commission efforts like the EU-wide standardised VAT return, higher mandatory rates of excise duty on alcohol, and the reform of the Energy Taxation Directive. It is also unclear to us how the distinction between the different steps identified by the Commission to gradually expand the QMV rules for EU tax policy would be demarcated in a legally water-tight way. The different areas where Qualified Majority voting applied, and where unanimity remained the norm, would have to be set out clearly in law so that it was indisputable which voting rules were applicable for any given Commission proposal to change EU tax policy.**

**4.9 The Commission’s proposals are also clearly linked to the UK’s withdrawal from the European Union. It is inconceivable that a British Government of any political stripe would have consented to be stripped of its veto powers over EU tax legislation while the UK remained a Member State. Indeed, under section 6 of the European Union Act 2011, a Government could not legally have allowed the use of any of a passerelle clause to introduce QMV for EU taxation policy, except if it secured approval for such a decision by both Act of Parliament and by referendum.<sup>26</sup>**

**4.10 With the UK’s withdrawal from the EU scheduled for 29 March 2019, this particular British obstacle to removal of the veto right for each Member State over EU tax policy will not exist for much longer.<sup>27</sup> However, as the Minister rightly notes, that does not mean the Commission’s recommendations will be accepted by the remaining Member**

25 [Outcome of the ECOFIN Council](#) of 12 February 2019, p. 5–6.

26 Articles 113 and 115 TFEU, which are the overarching legal basis for EU taxation policy, were specifically listed in Schedule 1 of the 2011 Act. This means that the UK Government could only approve use of the passerelle to introduce Qualified Majority Voting under those articles after securing support both through an Act of Parliament and through a referendum. The same applies to use of the passerelle to remove national veto for environmental measures of a fiscal nature under Article 192(2) TFEU.

27 In addition, the European Union Act 2011 was repealed by means of regulations under the European Union (Withdrawal) Act 2018 in July 2018. Therefore, the UK Government is technically free to consent to the use of the passerelles—while the UK remains a Member State—without the need for parliamentary and public approval.

States. Given that any of the EU-27, and indeed any of the EU's national parliaments,<sup>28</sup> can veto use of the Article 48 TEU passerelle, we consider it unlikely there will be any rapid decisions to move away from each Member States' veto rights over EU tax law (or to introduce more powers for the European Parliament in this area).<sup>29</sup> We welcome the outcome of the meeting of EU Finance Ministers of 12 February 2019 in this regard, which made clear unanimous support for the use of the passerelle does not currently exist.

4.11 However, in light of the UK's imminent withdrawal from the EU, the eventual use of the passerelle cannot be ruled out if the other Member States can be persuaded of its merit. We consider that the introduction of QMV for some or all areas of EU tax policy would be potentially significant for the UK, even as a non-Member State.

4.12 First, the draft Withdrawal Agreement on EU exit the Government has negotiated provides for a post-Brexit transition. During this period, which could last until 31 December 2022, the UK would remain bound by all EU legislation which takes effect during that period (even if it was adopted after the UK had already ceased to have voting rights in the Council). There is therefore a possibility, however remote, that the remaining Member States could agree to adopt some forms of EU tax legislation by QMV during the transition period. Removal of the national veto could substantially alter the substance of European tax policy to which the UK would be subject until the end of the transitional period, especially since a large number of proposals—especially relating to VAT<sup>30</sup> and corporate taxation—are currently being drafted in Brussels. These could be caught by the new voting rules if the passerelle is used, and potentially adopted where under current circumstances one of the remaining Member State would have exercised its veto.

4.13 Moreover, under the controversial Irish backstop, Northern Ireland would remain bound by substantial sections of the EU's legislation relating to Value Added Tax and excise duty.<sup>31</sup> Under the Commission proposals, any future changes to these laws would be decided by QMV by 2025, potentially affecting how future changes to substantial part of the tax system of Northern Ireland are decided at EU-level. We also note in this respect that the Government has failed to produce any convincing proposals for the 'alternative arrangements' to supersede the VAT and excise-related elements of the backstop with a UK-wide agreement with the EU which does not rely on continued adherence to parts of the relevant EU Directives.<sup>32</sup>

28 Use of the passerelle procedure set out in Article 192(2) TFEU—to introduce Qualified Majority voting for tax policies linked to environmental objectives—is not subject to vetoes by national or the European parliaments. However, it still gives every Member State government a veto over its use, because its activation requires unanimity in the Council.

29 The UK's withdrawal from the EU will also affect the position of the remaining Member States when considering whether to accept any move from unanimity to Qualified Majority voting. After the UK's weighted voting rights in the Council are removed, France and Germany will [move closer](#) to representing the 35 per cent of the EU's population required to block new legislation under QMV rules (although they would still need two more Member States to vote against as well, as a blocking minority requires at least four EU countries). The removal of the national veto over EU tax legislation would therefore, in practice, represent a more significant loss of direct influence in the Council for the smaller Member States than it would for the largest.

30 See for more information our [Report on VAT and the implications of Brexit](#) (March 2018).

31 The Protocol on Ireland/Northern Ireland provides in article 9 that "provisions of Union law [on VAT and excise] concerning goods shall apply to and in the United Kingdom in respect of Northern Ireland".

32 Principally, the VAT Directive (Directive 2006/112/EC) and the Excise Duty Directive (Directive 2008/118/EC).

4.14 As a result, under the draft Withdrawal Agreement EU taxation law—whether adopted by unanimity or, as the Commission wants, by Qualified Majority—could have a direct impact in all or parts of the United Kingdom for many years to come. However, our concerns specifically about the implications of the taxation passerelle for the UK during the transition and under the backstop are, at this stage, only hypothetical. We note the Minister’s view<sup>33</sup> that use of Article 48(7) TEU to introduce Qualified Majority rules for EU tax legislation is unlikely to be done in such haste as to affect the passing of new laws in the near future.<sup>34</sup> Moreover, the Withdrawal Agreement has not been ratified, and as such it is not yet known whether the transitional period and the backstop will actually take effect.

4.15 Beyond the implications of EU tax law during the transitional period and under the backstop, the UK will retain an interest in any developments in the EU’s tax policy after its withdrawal from the EU for the long term. Given Britain’s close economic links with Europe, the way in which the EU approaches matters like corporate taxation, financial transaction taxes<sup>35</sup> or Value Added Tax could offer opportunities for, and pose risks to, the British economy. Those implications, and how the UK might respond in its domestic tax system, will need to be assessed on a case-by-case basis as such changes are debated at EU-level.

4.16 Taxation is also explicitly identified as an area of cooperation after Brexit in the [Political Declaration on the future UK-EU economic partnership](#) accompanying the draft Withdrawal Agreement.<sup>36</sup> As noted, the Government has said in particular that it wants to agree a new common approach with the EU to VAT and excise duty on cross-border movements of goods, to remove the need for any fiscal controls at the border when the UK leaves the Customs Union and Single Market and supersede the relevant elements of the Northern Ireland backstop. The introduction of QMV rules would affect the necessary majority in the Council to conclude any such tax-related agreements negotiated with the UK Government (which, at present, could be vetoed by any Member State).

4.17 For the various reasons described above, any use of the passerelle could affect what EU tax law the UK may have to implement during the putative post-Brexit transitional period or beyond, especially in Northern Ireland under the backstop. Equally, it would impact on tax cooperation agreements the Government may wish to strike with the EU in the longer-term to combat tax fraud and evasion with a cross-border aspect. We therefore consider the Commission’s recommendations to be of major political

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33 The Ministers’ Explanatory Memorandum explains that the Government expects no impact of the specific recommendation to introduce QMV for the UK because “the EU-27 are unlikely to reach agreement quickly, if at all, on a way forward, given that the decision to move from unanimity to QMV must itself be taken unanimously”.

34 This does not address our wider concern, as we have set out in a number of recent Reports, that the remaining Member States, by unanimity, could still adopt changes to EU tax law that will need to be applied directly in the UK if the transitional period does take effect.

35 We note with respect to the Financial Transactions Tax that this is currently subject to an [enhanced cooperation procedure](#) in which only 10 Member States participate. They would not meet the threshold for a Qualified Majority, and as such the FTT could not be adopted for the EU as a whole after use of the passerelle unless more Member States support the proposal.

36 The [Political Declaration](#) calls for “administrative cooperation [...] for the recovery of claims related to taxes and duties” on UK-EU trade, as well as provisions on “open and fair competition” which cover “relevant tax matters”. The Treasury’s Explanatory Memorandum states: “In potentially allowing the EU to reach agreement on tax policy more quickly, [the introduction of QMV] may have an indirect impact on the UK in terms of the initiatives the EU is able to pursue in its own tax agenda”.

**importance. This Committee is of the view that EU tax policy—while the UK is a Member State or remains bound by EU tax legislation—should remain subject to unanimity in the Council in all cases. We therefore expect the Government to exercise its veto over use of Article 48(7) TEU for as long as it retains its right to do so.**

**4.18 We have also decided to retain the Commission document under scrutiny in anticipation of further information from the Treasury in due course about either:**

- **the definitive rejection of the Commission’s proposals by one or more of the remaining Member States, blocking the adoption of the necessary legal acts that would be needed to introduce QMV in EU tax policy-making; or**
- **the roadmap for—and scope of—the eventual introduction of QMV for taxation measures by means of a Decision of the European Council, if the Commission proposals are accepted in some form by the EU-27.**

**4.19 We also draw our conclusions to the attention of the Treasury Committee and the Committee on Exiting the EU and, given the specific implications for Northern Ireland under the backstop, the Northern Ireland Affairs Committee.**

## **Full details of the documents**

Communication from the Commission: Towards a more efficient and democratic decision making in EU tax policy: (40334), 5472/19, COM(2019) 8.

## **Background**

4.20 Following the entry into force of the Lisbon Treaty in 2009, tax is one of the few areas of EU economic policy where the unanimity requirement still applies, given its political sensitivity. As a result, EU tax legislation—for example in areas like VAT, excise duty, corporate taxation and energy taxes—can only be adopted with the unanimous agreement of all EU Member States. (The European Parliament also only plays a consultative role in the making of EU taxation legislation.)

4.21 These procedural requirements mean that decision-making on European tax policy is often slow, and not infrequently results in the Commission having to withdraw proposals for which no unanimity is ever likely to be found. Recent examples of this include the proposed [revision of the Energy Taxation Directive](#), raising the [minimum duty on alcohol](#) in all Member States, and the proposed introduction of a [standardised EU-wide VAT return](#) for businesses. It has also required the Commission to re-think its proposal for a [Common Consolidated Corporate Tax Base](#) for multinationals in the EU.

4.22 As a result of this, the European Commission has long argued that the inflexibility inherent in the unanimity requirement has acted as a block on coherent and flexible EU decision-making when tax policy is discussed in the Council of Ministers. However, the Lisbon Treaty contains provisions that allow Qualified Majority (QMV) to be introduced for draft EU legislation still subject to the unanimity requirement—including those taxation—without the need for another formal Treaty amendment (which would entail a full national ratification process by national parliaments). The relevant so-called ‘passerelle’ clauses that could be applied to introduce QMV rules for EU tax policy are:

- [Article 48\(7\) of the Treaty on European Union](#), the general ‘passerelle clause’ which enables QMV to be made applicable to any area of EU decision-making still subject to the unanimity rule;<sup>37</sup> and
- [Article 192\(2\) of the Treaty on the Functioning of the European Union](#), which allows the Member States to introduce QMV<sup>38</sup> for environmental measures “primarily of a fiscal nature”.

4.23 Combined, these two Articles allow the Member States to unanimously adopt a legal decision extending the use of QMV to the adoption of EU measures in the area of tax policy. In practice, this means the necessary majority in the Council would be reduced from unanimity to a qualified majority representing 55 per cent of Member States<sup>39</sup> and 65 per cent of the EU’s total population. This would primarily affect legal acts to amend the EU’s VAT and Excise Directives, but also the conclusion of international agreements with non-EU countries on tax matters (and other acts by the Member States that relate to taxation, such as Council conclusions) where currently each Member State has a veto.<sup>40</sup>

4.24 The use of the two different passerelle clauses that could be used to introduce QMV voting for tax legislation are different, as shown in the table below. In summary, it would be easier to invoke Article 192 TFEU for tax-related environmental measures because—as a policy-specific passerelle—would not be subject to a veto by the EU’s national parliaments or the European Parliament.

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37 The Article 48 TEU passerelle covers any area where the EU Treaties require decisions to be taken by unanimity, except those “with military implications or those in the area of defence”. As shown in the Annex to this chapter, several policy area-specific passerelle clauses also exist for employment, foreign policy and family law policy. There is no passerelle clause specific to EU tax legislation.

38 Under Article 192(2) TFEU, any move to QMV also requires the introduction of full co-decision powers for the European Parliament under the ordinary legislative procedure. For decisions under Article 48(7) TEU, that is optional at the discretion of the Member States.

39 While the UK remains a Member State, this means QMV requires 16 Member States to vote in favour. After Brexit, this will drop to 15.

40 Article 116 TFEU allows the Council to act by QMV to eliminate distortions of competition due to different tax rules if the distortion could not be removed by unanimity. However, this Article has never been used.

**Table 1: Passerelle clauses proposed by the Commission to introduce QMV voting for EU tax policy**

Passerelle	Scope	Level of support needed among Member States <sup>41</sup>	Veto for national parliaments	Veto for the European Parliament
<a href="#">Article 192(2) TFEU</a>	Introduce QMV for environmental measures “of a fiscal nature”, such as energy taxation, as well as co-decision powers for the European Parliament.	Unanimity	No	No
<a href="#">Article 48(7)</a>	Introduce QMV to all other EU tax policy, with or without co-decision powers for the European Parliament.	Unanimity	Yes	Yes

### *The European Commission’s recommendations*

4.25 In January 2019, the Commission published a [policy paper](#) recommending that the passerelle clauses described above should be invoked to introduce QMV for new EU tax legislation.<sup>42</sup> The Commission argues that unanimous decision-making on tax policy, which gives each Member State the ability to veto any tax legislation, “slows down decision-making and discourages Member States from seeking to reach a compromise”, as they can block any proposal indefinitely. The Commission further suggest that unanimity in tax policy is used as a bargaining chip to extract concessions on other areas of policy, or between unrelated tax policy proposals.

4.26 In its new paper, the Commission proposes to make the shift from unanimity to QMV for EU tax measures in four stages:

- (1) The first stage would see the introduction of Qualified Majority voting for measures “which do not impact directly on Member States’ taxing rights” but which focus **on addressing tax fraud, evasion and avoidance and facilitating compliance**. This would remove the national veto for changes to the Regulations and Directives that establish administrative cooperation between the EU’s tax authorities, and for harmonised reporting requirements for businesses (like the [proposed standardised VAT return](#) that was rejected by Member States).<sup>43</sup> This would also introduce QMV for the conclusion of tax-related agreements between the EU and ‘third countries’, like the UK after Brexit;

41 In a strict legal sense, a decision taken under Article 192(2) would be taken by the Council and under Article 48(7) by the European Council.

42 Commission document [COM\(19\) 8](#). The Commission previously issued a similar policy paper on introducing QMV for certain areas of EU foreign policy. Further papers are to be published in spring 2019 in relation to energy and climate policy (March 2019) and employment law (April 2019).

43 See for more information the European Scrutiny Committee’s [Report of 25 February 2015](#).

- (2) As a second step, Qualified Majority rules would be introduced for **tax policy measures that aim to achieve public policy objectives** in areas like the environment, public health or transport (by incentivising or discouraging consumer and business behaviour, implementing the ‘polluter pays’ or ‘user pays’ principles via EU-wide tax legislation). For environmental tax measures of this kind, the *passerelle* in Article 192 TFEU could be used;
- (3) In the third stage, the national veto would be relinquished for EU measures in the field of **indirect taxation (VAT and excise)**; and
- (4) Finally, QMV would be applied to **all remaining EU tax policy measures**, “including areas such as the Common Corporate Tax Base, Financial Transaction Tax and taxation of the digital economy”.

4.27 The Commission has not, at this stage, issued formal proposals to give effect to its recommendations. Instead, it has asked the Member States to discuss—and endorse—its proposed course of action, focussing on a swift decision to introduce QMV for the areas of tax policy described under steps 1 and 2 above as soon as possible, with steps 3 and 4 completed by the end of 2025.

### **The UK Government’s position**

4.28 The Financial Secretary to the Treasury (Rt Hon. Mel Stride MP) submitted an [Explanatory Memorandum](#) on the Commission’s policy paper on 5 February 2019. This notes that the Government “is not convinced” by the Commission’s recommendation:

Since 2015 the EU has agreed several tax policy measures and therefore we disagree that unanimous decision-making hampers the progress of EU tax policy proposals. Furthermore, we think that the unanimous decision making and Member States’ right to veto proposals protects national sovereignty over tax policy and their ability to design their domestic tax regime as they see fit.

4.29 Many other Member States will share these concerns. The UK will also retain an interest in any developments in the EU’s tax policy after its withdrawal from the EU. Firstly, EU tax law will continue to apply during the post-Brexit transitional period (if the Withdrawal Agreement is ratified). In the longer term, taxation is also identified as an area of cooperation after Brexit in the [Political Declaration](#) on the future UK-EU economic partnership accompanying the draft Withdrawal Agreement.<sup>44</sup>

4.30 Nevertheless, the Minister notes that the applicable voting rules in the Council are “largely a political discussion for the EU27 Member States to have following elections to the European Parliament and the appointment of a new College of Commissioners” in late 2019. The Explanatory Memorandum also explains that the Government expects no impact of the specific recommendation to introduce QMV for the UK because “the EU-27 are unlikely to reach agreement quickly, if at all, on a way forward, given that the

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44 The [Political Declaration](#) calls for “administrative cooperation [...] for the recovery of claims related to taxes and duties” on UK-EU trade, as well as provisions on “open and fair competition” which cover “relevant tax matters”. The Treasury’s Explanatory Memorandum states: “in potentially allowing the EU to reach agreement on tax policy more quickly, it may have an indirect impact on the UK in terms of the initiatives the EU is able to pursue in its own tax agenda”.

decision to move from unanimity to QMV must itself be taken unanimously”. Therefore, any EU tax legislation that would be decided under the new voting rules would take effect beyond the end of the proposed post-Brexit transitional period (which could last until 31 December 2022).

4.31 We have set out our assessment of the potential implications of the use of the EU Treaty passerelle for tax policy in paragraphs 7 to 19 above.

### **Previous Committee Reports**

None. We considered a similar recommendation by the European Commission to introduce QMV in certain areas of EU foreign policy in October 2018. See: (40085), 12425/18, COM(2018) 647: Fortieth Report HC 301–xxxix (2017–19), [chapter 13](#) (17 October 2018).

## 5 Connecting the European Travel Information and Authorisation System (ETIAS) with other EU security and migration information systems

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
Document details	<p>(a) Proposal for a Regulation establishing the conditions for accessing other EU information systems and amending Regulation (EU) 2018/1862 and Regulation (EU)—(the Schengen Information System and the European Criminal Records Information System—ECRIS-TCN)</p> <p>(b) Proposal for a Regulation establishing the conditions for accessing other EU information systems for ETIAS purposes and amending Regulation (EU) 2018/1240, Regulation (EC) No 767/2008, Regulation (EU) 2017/2226 and Regulation (EU) 2018/1861 (ETIAS, Visa Information System, EU Entry/Exit System, Schengen Information System)</p>
Legal base	<p>(a) Articles 82(1)(d) and 87(2)(a) TFEU, ordinary legislative procedure, QMV</p> <p>(b) Article 77(2)(a), (b) and (d) TFEU, ordinary legislative procedure, QMV</p>
Department	Home Office
Document Numbers	(a) (40318), 5071/19, COM(19) 3; (b) (40317), 5072/19, COM(19) 4

### Summary and Committee's conclusions

5.1 In September 2018, the EU adopted a [Regulation](#) establishing the legal framework for a new European Travel Information and Authorisation System (“the ETIAS Regulation”) which is expected to be operational after 2021. The Regulation will require all visa-exempt third country nationals—those who are not EU citizens and do not need a visa for short stays in the Schengen area—to apply online for a travel authorisation before their journey. The personal information they provide when making their application will be stored in the ETIAS Central System and cross-checked against information held in other EU security and migration information systems, Europol data and Interpol databases.<sup>45</sup> The purpose of these checks is to identify individuals whose presence in an EU Member State would pose “a security, illegal immigration or high epidemic risk”.<sup>46</sup>

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45 The relevant Interpol databases are the Stolen and Lost Travel Document database (“SLTD”) and the Travel Documents Associated with Notices database (“TDAWN”).

46 See Article 1 of Regulation (EU) 2018/1240.

5.2 The automated checks required under the ETIAS Regulation can only be carried out if the ETIAS Central System is able to communicate with other EU information systems. The proposed Regulations would amend the ETIAS Regulation and the Regulations establishing the EU Entry/Exit System (“EES”), the Visa Information System (“VIS”), the Schengen Information System (“SIS II”) and the European Criminal Records and Information System (ECRIS-TCN) to make all these systems interoperable.<sup>47</sup> The proposals also set out the conditions under which the ETIAS Central System can access, search and cross-check data held in these other information systems.

5.3 Two Regulations are needed to reflect the fact that most of the EU information systems which the ETIAS Central System will consult are only open to countries participating in the Schengen free movement area and therefore exclude the UK. The European Commission nonetheless envisages that the Regulations will “work seamlessly together to enable the comprehensive operation and use of the [ETIAS] system”.<sup>48</sup>

5.4 The [first proposed Regulation](#) would amend the EU information systems in which the UK does participate—the police component of the Schengen Information System and ECRIS-TCN, a new database to determine which Member State/s hold criminal record information on third country nationals convicted of an offence within the EU. As the first, SIS II, is a Schengen measure and the second, ECRIS-TCN, is not, two Protocols relevant to the UK apply. Under the Schengen Protocol, the UK will be bound by those parts of the proposal relating to SIS II *unless the UK decides to opt out*. Under the Title V (justice and home affairs) opt-in Protocol, the UK will only be bound by those parts of the proposal relating to ECRIS-TCN *if the UK decides to opt in*. The Government has three months in which to make a decision.<sup>49</sup>

5.5 The [second proposed Regulation](#) would amend four EU information systems in which the UK does not participate—ETIAS itself, the external borders component of the Schengen Information System, the EU Entry/Exit System and the Visa Information System. As these information systems build on parts of the Schengen rule book on border control and visas in which the UK has chosen not to take part, the UK is not entitled to participate in (and will not be bound by) the proposed Regulation. The proposal also provides for the conclusion of a cooperation agreement with Interpol on ETIAS access to the relevant Interpol databases and the necessary safeguards for protecting personal data.

5.6 In her [Explanatory Memorandum of 29 January 2019](#), the Immigration Minister (Rt Hon. Caroline Nokes MP) states that the proposed Regulations make a number of technical changes to enable the ETIAS Central System to query relevant data held in other EU information systems. In the case of ECRIS-TCN, the ETIAS Central System would only be able to access data records which have been “flagged” to indicate that a third country national offender has been convicted of a terrorist or other serious criminal offence.

5.7 The Minister expresses the Government’s support for the proposed Regulations:

They enhance efforts to improve the security of the external Schengen border of the EU by supplementing the amount of information available

47 Further changes will need to be made at a later stage to enable ETIAS to be interoperable with the EU’s Eurodac information system (a proposal to amend the current Eurodac Regulation remains under negotiation).

48 See p.4 of the Commission’s explanatory memorandum accompanying the proposed Regulations.

49 The three-month opt-in and opt-out period runs from the date on which the last language version of each proposal has been published.

to ETIAS, which will allow for the EU to revoke a grant of admission to a third country national if a relevant alert is identified from EU information systems.

5.8 She says the Government will undertake “a full analysis of the advantages and disadvantages” of participating in the first proposed Regulation—document (a)—with particular regard to:

- the operational benefits for the UK;
- the fact that the UK does not participate in the ETIAS Regulation; and
- the potential impact on UK nationals once the UK has left the EU and UK nationals are required to seek ETIAS approval to travel to the UK.

5.9 The Minister draws our attention to the EU’s [Notice](#) on travelling between the EU and the UK following withdrawal of the UK from the EU (published on 13 November 2018) which makes clear that the UK will become a third country once it leaves the EU and that UK nationals will accordingly be treated as third country nationals. As part of its preparations for Brexit, the European Commission has proposed a Regulation which would allow UK nationals to travel to the EU and wider Schengen area without a visa. They would nonetheless be required to obtain an EU travel authorisation under the ETIAS system.<sup>50</sup> Whilst the European Commission has been working towards 2021 as the date on which ETIAS would become operational, the Minister indicates that it may be later (around 2023).

5.10 The Minister acknowledges that the proposed Regulations may well result in some UK nationals being refused a travel authorisation to enter the Schengen area post-exit but considers that UK nationals with relevant criminal convictions in ECRIS-TCN or alerts in the Schengen Information System “should be subject to the rules of entry into the EU”. She adds that the UK’s future relationship with the various EU information systems covered by the proposed Regulations “is yet to be determined and will be considered as part of future negotiations during the planned implementation period” following the UK’s exit.

5.11 The Minister refers us to the Government’s December 2018 [White Paper, \*The UK’s future skills-based immigration system\*](#), which envisages the introduction of an Electronic Travel Authorisation scheme applicable to visitors to the UK, including EU citizens.<sup>51</sup>

## Our Conclusions

**5.12 The Minister confirms that UK nationals will cease to be EU citizens once the UK leaves the EU and will be required to obtain a travel authorisation to travel to the Schengen free movement area when the new ETIAS system becomes operational. Whilst the process should be relatively straight-forward for most, the Minister acknowledges that some may be at greater risk of being refused entry as a result of more extensive checks against other EU security and migration databases.**

50 See the Commission’s [proposed Regulation](#) (COM(18) 745) which remains under negotiation.

51 Command Paper 9722 published on 19 December 2018.

**5.13 We ask the Minister to explain what operational benefits participation in the first proposed Regulation—document (a)—would bring the UK, given that the UK does not participate in the ETIAS Regulation. We also ask whether a decision *not* to participate would in any way prejudice the UK’s participation in the Schengen Information System and ECRIS-TCN during any post-exit transition/implementation period or damage the UK’s prospects for securing access to these information systems under a future EU/UK security agreement.**

**5.14 We continue to remind the Government that a large quantity of UK nationals’ personal data will be collected and held on EU information systems post-exit once they cease to be EU citizens. We reiterate the need for robust data protection safeguards and accessible and effective redress mechanisms and expect the Government to monitor carefully and act on any reported breaches.**

**5.15 Pending further information and confirmation of the three-month deadline for deciding whether to participate in the first proposed Regulation—document (a)—both proposals remain under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.**

### Full details of the documents

(a) Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for accessing other EU information systems and amending Regulation (EU) 2018/1862 and Regulation (EU) yyyy/xxx: (40318), [5071/19](#), COM(19) 3.

(b) Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for accessing other EU information systems for ETIAS purposes and amending Regulation (EU) 2018/1240, Regulation (EC) No 767/2008, Regulation (EU) 2017/2226 and Regulation (EU) 2018/1861: (40317), [5072/19](#), COM(19) 4.

### Previous Committee Reports

None. Our earlier Reports on the proposed ETIAS Regulation (and consequential changes to the Europol Regulation) are relevant: Twenty-fifth Report HC 71–xxiii (2016–17), [chapter 12](#) (11 January 2017), Thirty-first Report HC 71–xxix (2016–17), [chapter 12](#) (8 February 2017), Thirty-fifth Report HC 71–xxxiii (2016–17), [chapter 7](#) (15 March 2017), Fortieth Report HC 71–xxxvii (2106–17), [chapter 18](#) (25 April 2017), First Report HC 301–i (2017–19), [chapter 23](#) (21 November 2017) and Fifty-fourth Report HC 301–liii (2017–19), chapter x (6 February 2019).

## 6 EU framework on endocrine disruptors

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Cleared from scrutiny (decision reported on 19/12/2018); further information requested; drawn to the attention of the Environmental Audit Committee
Document details	Commission Communication—Towards a European Union framework on endocrine disruptors
Legal base	—
Department	Environment, Food and Rural Affairs
Document Number	(40172), 14204/18, COM(18) 734

### Summary and Committee's conclusions

6.1 Endocrine disruptors (EDs) are chemicals that have the potential to harm people or wildlife by affecting endocrine (hormone) systems. Exposure to EDs can occur from different sources, such as residues of pesticides or consumer products used or present in daily life. Recognising the need for the EU to step up its efforts, the Commission tabled a new strategy late last year.

6.2 We considered the strategy at our meeting of 19 December and noted particularly that the EU's approach was likely to have ongoing relevance to the UK post-Brexit. In her [response](#),<sup>52</sup> the Parliamentary Under Secretary of State for the Environment (Dr Thérèse Coffey MP) acknowledges that the EU's approach will clearly have significant implications for the UK in the future. She notes that—as set out in the political declaration on the future relationship between the UK and the EU—the UK and the EU have agreed on a free trade area for goods, including chemicals. Given the uncertainty over the nature of the future relationship, however, she is unable to indicate how the UK will engage with the EU on this matter post-Brexit.

6.3 While the UK remains in the EU, it will continue to highlight its view on the issues. A discussion is scheduled for the March Environment Council.

6.4 The Minister reiterates the Government's support for the Commission's proposals on research and the need to take consistent action across sectors to protect people and wildlife. The Government's concern is that this effort may not be proportionate. This, says the Minister, could result in chemicals being banned or restricted where this brings little or no real benefit. It could also, she says, result in the distortion of priorities by diverting resources into assessing chemicals with insignificant endocrine disruptor properties at the expense of work on chemicals that carry more serious hazards of other types. She notes that potential solutions to the identified problem require action on a wide range of fronts affecting the chemicals industry and a multitude of downstream industries with potentially major economic consequences.

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52 Letter from Dr Thérèse Coffey MP to Sir William Cash MP, dated 30 January 2019 (received 31 January 2019).

6.5 We consider this to be a helpful case study of an emerging policy area regarding which it is inevitable that there will need to be a high degree of cooperation between the UK and the EU in the future should there be a desire to maintain strong trade links. As the Minister highlights, policy solutions could have significant economic consequences.

6.6 While we accept the Minister’s contention that the Government cannot set out at this stage how it intends to engage with the EU on this matter post-Brexit, it is nevertheless valuable to log the matter as an area which will require ongoing dialogue under most scenarios.

6.7 We note that there will be a discussion at the Environment Council on 5 March. Given the potential consequences of EU policy in this area for the UK, we would welcome a report back to us after that meeting. If possible, it would be helpful if the Minister could extrapolate any potential implications for the UK arising from the Council discussion.

6.8 The document has already been cleared from scrutiny. We draw this chapter to the attention of the Environmental Audit Committee in view of that Committee’s ongoing work into chemicals regulation post-Brexit.

### Full details of the documents

Commission Communication—Towards a European Union framework on endocrine disruptors: (40172), [14204/18](#), COM(18) 734.

### Previous Committee Reports

Forty-ninth Report HC 301–xlvi (2017–19), [chapter 8](#) (19 December 2018).

## 7 Commission measures on Real Driving Emissions and the World Light-Duty Vehicle Test Procedure

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Cleared from scrutiny; further information requested
Document details	Commission Regulation (EU) .../... of XXX amending Directive 2007/46/EC, Commission Regulation (EC) No 692/2008 and Commission Regulation (EU) 2017/1151 for the purpose of improving the emission type approval tests and procedures for light passengers and commercial vehicles, including those for in-service conformity and real-driving emissions and introducing devices for monitoring the consumption of fuel and electric energy
Legal base	Article 15 of Regulation (EC) 715/2007;—
Department	Transport
Document Number	(40093), 11057/18 + ADD 1

### Summary and Committee's conclusions

7.1 [The proposal under scrutiny](#) concerns amendments to EU rules covering [the Real Driving Emissions \(RDE\) test](#) and the [World Light-Duty Vehicle Test Procedure \(WLTP\)](#). The Union's RDE system sets out rules and requirements for assessing the in-service emissions compliance of cars and vans. That for WLTP provides for the assessment of tail-pipe emissions from light-duty vehicles (cars and vans). Both RDE and WLTP are part of the Union's wider vehicle type approval framework and, therefore, must be satisfied in order for vehicles to be placed on the EU market.

7.2 Updates have been made to RDE and WLTP at various points over the last decade in response to new scientific evidence and calls for action to curb emissions and tighten laboratory and real-world testing (especially in light of the 'Dieselgate' scandal). In terms of implementation, RDE and WLTP are—and have been—given effect to by successive amendments to [Regulation \(EC\) 715/2007](#).

7.3 Rather unusually (and for reasons that will be explained below), the proposal under consideration was [adopted by the Commission on 5 November 2018 and has been applicable since 1 January 2019](#). As such, rather than being prospective, the changes detailed in the file under scrutiny have already been agreed. For RDE, these relate mainly to ensuring that vehicles comply with driving emissions requirements whilst in-service (known as 'in-service conformity testing'). This is to be achieved by requiring that a certain proportion of such tests—5%—are conducted by type approval authorities (as opposed to solely by manufacturers). Changes have also been made to improve RDE test and result processing procedures.

7.4 With regard to the main changes made to WLTP, ‘type 1’ tests—those conducted under laboratory conditions—have been amended to more accurately assess and correct CO<sub>2</sub>/fuel consumption results to account for permitted test tolerance variations. The type 1 test is best known as that where a vehicle is driven according to a well-defined drive cycle with acceleration, breaking, steady speed and stationary phases. Changes have also been made to make the information required to undertake such testing more readily available (with the intention of improving replicability and thus scope for independent verification).

7.5 Parliamentary Under Secretary of State at the Department for Transport (Jesse Norman MP), [wrote to the Committee by way of Explanatory Memorandum on 10 October 2018](#). With regard to the policy implications of the changes made to RDE and WLTP, the Minister does not raise any particular concerns and states that the Government supports the Commission’s proposals.

### *Minister’s supplementary letter (reasons for delay)*

7.6 [The Minister also wrote on 10 October 2018](#) explaining why the proposal and Explanatory Memorandum were not made available to the Committee prior to its adoption. As the Minister recognises, in accordance with longstanding practice, comitology measures are automatically deposited by Departments.

7.7 The Minister explains that the proposal was not made available to the Committee due to a technical problem with the delegates portal—which is used by the Council Secretariat to transmit files to Member States—that meant officials were not aware that it had been deposited. A further oversight on the behalf of the Department for Exiting the European Union—who are responsible for sifting EU documents and advising Departments as to which should be deposited—added to this confusion.

7.8 The Minister apologises for this state of affairs and recognises that it is far from ideal. As the scrutiny process could not be completed, the Minister informs the Committee that the UK abstained at Council and laid a minute statement welcoming the proposal but recording the reason for its abstention. The proposal received a favourable opinion from the ‘Technical Committee—Motor Vehicles’ on 3 May 2018. As per the voting result in the Comitology Register, UK experts abstained.

**7.9 We thank the Minister for his Explanatory Memorandum of 10 October 2018 along with his letter of the same date. We are disappointed that the proposal could not be made available to the Committee for scrutiny and trust that this will not happen again in the future. As the proposal has been adopted and the Government is happy with its form, we clear the file from scrutiny.**

**7.10 We note the Minister’s statement that due to the proposal having not completed domestic scrutiny, the UK abstained at Council. We request further information on the Council meeting at which UK officials abstained and clarification of the process through which the proposal was adopted.**

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

Commission Regulation (EU) .../... of XXX amending Directive 2007/46/EC, Commission Regulation (EC) No 692/2008 and Commission Regulation (EU) 2017/1151 for the purpose

of improving the emission type approval tests and procedures for light passengers and commercial vehicles, including those for in-service conformity and real-driving emissions and introducing devices for monitoring the consumption of fuel and electric energy: (40093), 11057/18 + ADD 1.

### **Previous Committee Reports**

None.

## 8 EU sanctions regime for chemical attacks

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Committee’s assessment	Politically important
<a href="#">Committee’s decision</a>	Cleared from scrutiny; drawn to the attention of the Defence Committee, Foreign Affairs Committee and International Development Committee
Document details	(a) Council Decision (CFSP) 2019/86 of 21 January 2019 amending Decision (CFSP) 2018/1544 concerning restrictive measures against the proliferation and use of chemical weapons; (b) Council Implementing Regulation (EU) 2019/84 of 21 January 2019 concerning restrictive measures against the proliferation and use of chemical weapons
Legal base	(a) Article 29 TEU; unanimity; (b) Article 12 of Regulation 2018/1542; QMV
Department	Foreign and Commonwealth Office
Document Numbers	(a) (40356), —; (b) (40357),—

### Background and Committee’s conclusions

8.1 In recent years, there have been several attacks—both targeted and indiscriminate—involving chemical weapons usage which is prohibited by international law under the Chemical Weapons Convention. These included the [assassination of North Korea’s Kim Jong-nam in Malaysia in February 2017](#); [repeated use of chemical weapons in Syria, including in the city of Douma in April 2018](#); and, closest to home, the Russian [Novichok nerve agent attack in Salisbury in March last year](#) that killed Dawn Sturgess and left four others severely injured.

8.2 In response to this, the European Council—the meeting of the EU’s Heads of State and Government—in June 2018 [called](#) for “a new EU regime of restrictive measures to address the use and proliferation of chemical weapons” to be adopted “as soon as possible”. The UK has been reported as one of the driving forces behind the European Council’s call for action.<sup>53</sup>

8.3 The [overarching legal framework](#) to enable the EU to impose such sanctions was adopted by the Foreign Affairs Council in October 2018, as we [reported to the House](#) at the time. Agreed under the provisions of the Common Foreign & Security Policy, the new sanctions regime could be used to impose “asset freezes and travel bans [...] to those involved in or responsible for the use and proliferation of chemical weapons”.<sup>54</sup> At the time, the Foreign & Commonwealth Office informed us of the UK’s strong support for the EEAS proposal as an “important signal of the UK’s and its EU partners’ continued

53 The Government is reportedly also pushing the EU to implement similar horizontal sanctions frameworks to target the perpetrators of human rights abuses and cyber-attacks.

54 It complements existing EU sanctions under the Common Foreign & Security Policy (CFSP) that already apply against countries including [Russia, Syria and North Korea](#), but allow people to be sanctioned regardless of their nationality (the sole criterion being that those listed must be involved in some manner in the use of chemical weapons).

commitment to upholding global norms, supporting the existing international architecture (particularly the effective implementation of the Chemical Weapons Convention), and deterring the use and proliferation of chemical weapons”.

8.4 The new framework did not initially list any specific persons or entities: article 4 of the draft Council Decision provides that the Member States “acting by unanimity [will] establish and amend the list”. At the Foreign Affairs Council on 21 January 2019, the new framework was [invoked against specific people and organisations](#) for the first time. Asset freezes and travel bans were imposed on:

- The two Russian officials who physically transported the “military-grade” Novichok agent to Salisbury in March 2018 (Anatoliy Chepiga and Alexander Mishkin), as well as the Head and Deputy Head of the GRU (the Main Directorate of the General Staff of the Russian Armed Forces) which are held responsible for organising the attack.
- Five Syrian officials directly involved in the activities of the Scientific Studies and Research Centre (SSRC), the organisation behind the development and production of Damascus’ chemical weapons.<sup>55</sup>

8.5 The sanctions are initially in force until October 2019, after which they could be extended by a further unanimous Decision of the remaining EU countries (as the UK is expected to have ceased being a Member State by then). If they are not extended, the sanctions would expire automatically. Those listed are able to seek annulment of the sanctions applied to them before the General Court of the European Union.

8.6 The Minister for Europe (Rt Hon. Sir Alan Duncan MP) submitted an [Explanatory Memorandum](#) on the new listings on 4 February 2019. (To prevent the risk of asset flights by those targeted, for example by withdrawing funds from European banks, the measures were deposited for parliamentary scrutiny after their adoption by Foreign Affairs Ministers.) In the Memorandum, the Minister calls the recent attacks a “direct challenge to the global norm against the development, production, use and proliferation of chemical weapons and the international architecture that supports it”. The Government therefore supported the specific listings agreed by the Foreign Affairs Council, saying “the imposition of these sanctions demonstrates that the use, production, development or proliferation of chemical weapons, anywhere, by anyone, under any circumstances, is unacceptable and represents decisive action to deter their future use”.

## Our conclusions

**8.7 We thank the Minister for the information he has provided on the first listings under the EU’s new chemical sanctions regime, including against people involved in the Salisbury attack last year. We note the Government’s support for the listings, and draw them to the attention of the House.**

**8.8 The UK’s withdrawal from the EU also gives rise to broader considerations about how the Government will coordinate the UK’s sanctions policy with the twenty-seven other Member States of the European Union after Brexit. Sanctions, which the Foreign**

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55 The SSRC has also been listed under the chemicals sanctions framework, but as it was already listed under the EU’s specific sanctions regime for Syria this has no practical effect as its assets in the EU were already frozen.

Office currently coordinates with key European partners via the highly structured environment of the EU’s institutions, are amplified in their effect when adopted and enforced at EU-level. As the House of Lords EU Committee noted in December last year, the UK “currently plays a leading role in developing EU sanctions policy, is most active in proposing individuals and entities to be listed, and is home to the largest international financial centre of the bloc” (making asset freezes more effective when they include London). However, this new domestic agility will come at a cost; if the UK imposes foreign policy sanctions that the EU-27 do not, this is likely to reduce their overall effectiveness.<sup>56</sup>

8.9 If the Withdrawal Agreement is ratified, the UK would be under a legal obligation to continue applying the EU’s foreign policy sanctions—including those now imposed on the perpetrators of the Salisbury attack—until they expire, or until the end of the post-Brexit transitional period (which could potentially last until 31 December 2022).<sup>57</sup> However, it would not have representation or voting rights in the Foreign Affairs Council or any of its preparatory bodies (as those rights are reserved for EU Member States only). In the event of a ‘no deal’ Brexit, day-to-day foreign policy cooperation—coordinated, for example, via the weekly meeting of the EU’s Political & Security Committee or the attendance of the Foreign Secretary at the monthly meetings of the Foreign Affairs Council—would be immediately disrupted in March 2019. Either way, the impact of the UK’s withdrawal on the Common Foreign & Security Policy, including the imposition, renewal or repeal of foreign policy sanctions by the EU, may take some time to become apparent.

8.10 We have already seen that the other Member States are likely to significantly increase the budget of the European Defence Agency, with the UK having been able to veto this only until the end of March.<sup>58</sup> Another significant test will be the informal European Council in May 2019, where the remaining Member States are due to discuss a recommendation by the European Commission to abandon their national veto in favour of Qualified Majority Voting (QMV) for certain EU foreign policy measures (including sanctions, like those now imposed on the Salisbury attackers).<sup>59</sup> Where the UK would previously have rejected any change to QMV rules in this area, it will now fall to the other Member States to decide whether to exercise such a veto. The impact the lack of UK representation in the EU’s institutions will have on the eventual decision to either extend the sanctions against the Salisbury attackers, or to allow them to expire, will only become clear when their expiry date in October 2019 comes closer.<sup>60</sup>

8.11 In light of the above, the Committee will continue to monitor the discussions on the UK’s future relationship with the EU closely, including any new institutional architecture and the implications for the autonomy of UK foreign policy after

56 The House of Lords’ European Union Committee concluded in December 2017 that “while informal engagement with the EU on sanctions [...] can be very valuable, it is no substitute for the influence that can be exercised through formal inclusion in EU meetings”.

57 Under Article 129(6) of the draft Withdrawal Agreement, the UK would be permitted to refuse to apply an EU foreign policy measure during the transitional period “for vital and stated reasons of national policy”.

58 See our [Report of 9 January 2019](#) on the 2019 EU budget.

59 See for more information our [Report of 17 October 2018](#).

60 Because a renewal of the restrictive measures can be vetoed by any Member State, the listing process is likely to remain politically charged given the complex relationship that many European countries have with Russia.

**Brexit. We draw the listing of the Russian and Syrian persons under the EUs sanctions regime to the attention of the Defence, Foreign Affairs and International Development Committees.**

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

(a) Council Decision (CFSP) 2019/86 of 21 January 2019 amending Decision (CFSP) 2018/1544 concerning restrictive measures against the proliferation and use of chemical weapons: (40356), —; (b) Council Implementing Regulation (EU) 2019/84 of 21 January 2019 concerning restrictive measures against the proliferation and use of chemical weapons: (40357), —.

### **Previous Committee Reports**

See (40097): Forty-first Report HC 301–xl (2017–19), [chapter 11](#) (24 October 2018).

## 9 Pan-European Personal Pension Product (PEPP)

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Committee’s assessment	Politically important
<a href="#">Committee’s decision</a>	Cleared from scrutiny; drawn to the attention of the Treasury and Work and Pensions Committees
Document details	Proposal for a Regulation on a pan-European Personal Pension Product (PEPP)
Legal base	Article 114 TFEU; ordinary legislative procedure; QMV
Department	Treasury
Document Number	(38875), 10654/17 + ADDs 1–2, COM(17) 343

### Summary and Committee’s conclusions

9.1 In summer 2017, the European Commission [proposed a new legal framework](#) for a pan-European Personal Pension Product (PEPP) with the aim of providing consumers across the EU with a “simple, safe and cost-efficient” retirement product that can be sold from providers based anywhere in the Single Market. The [proposed PEPP Regulation](#) does not replace or harmonise existing national personal pension schemes, and would enable—but not require—providers to voluntarily create a personal pension product that meets the requirements set out in the Regulation. In effect, this creates a separate regulatory regime for PEPPs that will exist in parallel to any existing domestic regulations applicable to other personal pension products.

9.2 The product could be sold at a distance from any EU country to a consumer in any Member State, with supervision provided by the regulator of the country where the provider is established. A key feature of the PEPP is meant to be its cross-border portability: the product would be portable throughout its lifecycle, so that consumers could keep saving into—or draw from—the product even if they move between Member States. The mechanism behind the portability service envisages the provider opening a new “compartment” within the individual PEPP account, which corresponds to domestic legal and taxation requirements for the PEPP in the new Member State of residence. However, the Regulation as proposed did not contain any rules on the taxation of the product, given the varying approach to tax on retirement incomes across the European Union.<sup>61</sup> Under the Commission proposal, individual PEPP products would need to be authorised for sale centrally by the European Insurance & Occupational Pensions Authority (EIOPA).

9.3 The then-Economic Secretary to the Treasury (Rt Hon. Stephen Barclay MP)—currently Secretary of State for Exiting the EU—submitted an [Explanatory Memorandum](#) on the proposed Regulation in July 2017, setting out the Government’s position. His main conclusions were that there was “very little evidence of demand for a PEPP” in the UK,

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<sup>61</sup> Instead of proposing binding rules on the taxation of PEPPs, the European Commission issued a non-binding recommendation calling on Member States to apply the most favourable tax treatment available to the PEPP. EU tax policies require unanimity among all Member States to be agreed, although the European Commission has recently proposed introducing Qualified Majority Voting for EU tax legislation (as discussed elsewhere in this Report).

with providers unlikely to offer the product and little demand from British consumers. In addition, he saw “clear difficulties that need to be overcome of determining the tax status of such a product”, as well as “potential risks around regulatory arbitrage”.

9.4 In June 2018, the new Economic Secretary (John Glen MP) provided a [further update](#) on the state of play in the negotiations on the proposal among EU Member States. This noted that discussions had focussed on which type of firms could offer PEPPs,<sup>62</sup> the rejection of any binding EU rules on the tax treatment of the new pension product (which remains a national competence); transferring responsibility for authorising individual PEPP products from EIOPA to Member States’ national regulators; and giving the financial regulators of a ‘host’ Member State<sup>63</sup> would be able to ban a provider from another Member State.

9.5 The European Scrutiny Committee considered the proposal in [November 2017](#) and [July 2018](#). In our Reports, we expressed scepticism about the added value of the PEPP product offer for the UK, given its well-developed domestic market for private pensions, and echoed concerns by the Financial Services Consumer Panel that the introduction of a parallel regulatory regime for PEPPs was “unlikely to bring clarity to a market that many consumers already find confusing and complex”. We also took the view that the divergent approaches to tax of pension products between EU countries was likely to decrease the product’s attractiveness as a portable product.<sup>64</sup> Despite the UK’s decision to leave the EU, we retained the proposal under scrutiny given that the new Regulation could apply to the UK under the terms of the proposed post-Brexit transitional arrangement.<sup>65</sup>

### **Developments since July 2018**

9.6 The Romanian Presidency of the Council and the European Parliament reached an informal agreement on the text of the PEPP Regulation on 13 December 2018. The Economic Secretary to the Treasury (John Glen MP) informed us of the substance of that agreement by letter of 11 February 2019, after the legal text had been finalised.

9.7 According to the Minister, the key areas of the proposal discussed during the ‘trilogues’ between Member States and MEPs were decided as follows:

- **The supervision of individual pension products under the Regulation:** under the final text, national regulators—the Financial Conduct Authority in the UK—will be responsible for the initial authorisation and supervision of PEPPs. In addition, the authorities of one Member State will be able to ban a provider from another EU country—despite the ‘passport’—if it considers this necessary for consumer protection reasons;

62 A number of countries, including the Netherlands, opposed the possibility of allowing workplace pension schemes to offer the new private pension product. As a compromise, providers of workplace pension schemes would only be able to offer PEPPs if authorised to do so by domestic law. In addition, even in Member States where IORPs will be allowed to offer the new product, they cannot independently cover biometric risk but have to use an insurer to do so (since workplace schemes are based on mutualisation of risk, with no variation in contributions to or payments from the scheme based on an individual worker’s health or life expectancy).

63 I.e. an EU country where a provider from another Member State markets PEPPs.

64 In particular, it cannot be ruled out that contributions could be subject to double taxation when a pension pot is transferred between Member States.

65 The draft Withdrawal Agreement contains a transitional arrangement, scheduled to last until 31 December 2020, during which the UK would remain subject to EU law as if it had remained a Member State.

- **EIOPA will have limited product intervention powers:** under the Regulation, it can temporarily ban or limit the sale of a specific PEPP product to “address a significant PEPP saver concern”. The exact rules for the exercise of those powers will be set out in a forthcoming Delegated Act, modelled on the Authority’s powers for retail investment products;<sup>66</sup>
- **A cap on costs and fees:** Member States have agreed to the European Parliament’s demand for a cap on the costs and fees that a provider can charge for the basic PEPP product (i.e. a PEPP with the default investment option), limited to 1 per cent of invested assets. The cap on fees will be fleshed out in a Delegated Act in the future and reviewed every two years;
- **The tax treatment of PEPPs:** while MEPs pushed for preferential tax treatment for those saving into a PEPP to be laid down in the Regulation, the Member States—with the UK’s support—argued that taxation policy remains a national competence which cannot be agreed at EU-level by Qualified Majority (the voting rule for the PEPP Regulation). The final text therefore refers only to “possible [tax] incentives” that Member States can decide at their own discretion;
- **Compulsory annuitisation:** Parliament had suggested that income drawn from a PEPP in the decumulation stage should always be in the form of an annuity, guaranteeing an income for life. This was not accepted by the Member States (and, indeed, would go against the grain of the [UK’s 2014 pension reforms](#)); and
- **The provision of financial advice:** Parliament secured the inclusion of a mandatory advice requirement, which means the provider or distributor of a PEPP will need to furnish the prospective customer with advice (including a personalised recommendation) “setting out why a particular option would best meet a saver’s needs” prior to the conclusion of the PEPP contract.<sup>67</sup>

9.8 The final Regulation is due to be adopted by the Council of Ministers and the European Parliament in February or March 2019. It is then expected take effect by spring 2021.

### *The Government’s position on the final Regulation*

9.9 In his letter of 11 February 2019, the Economic Secretary noted that—if the UK’s draft Withdrawal Agreement to govern its exit from the EU is ratified—the UK would enter a post-Brexit transitional period during which (new) EU law would continue to apply. As a result, he says, “it is expected that the PEPP regulation will enter into force during this [transition] period”.<sup>68</sup>

9.10 The Minister’s letter underlines as negotiating successes the fact that national regulators—not EIOPA—will be competent to authorise and supervise PEPPs; no binding rules on the tax treatment of the new product have been included in the Regulation; and compulsory annuitisation of income accumulated through a PEPP was rejected. The

66 See article 16 of [Regulation 286/2014](#) on key information documents for packaged retail and insurance-based investment products (PRIIPs). Delegated Acts are adopted by the Commission after being advised by EIOPA, but can be vetoed by the European Parliament or a Qualified Majority of Member States.

67 Under the new Regulation, the PEPP provider will also be required to provide personalised pension benefit projections based on the earliest point at which the saver may enter the decumulation phase.

68 The Regulation also contains a provision for a transition period of three years before savers could hold sub-accounts in more than one Member State.

Minister appears less enthusiastic about the advice requirement—noting that in the UK there are “currently no mandatory advice requirements except when seeking to transfer a defined benefit pension valued at over £30,000”—and the rigid cap on costs and fees of 1 per cent of invested assets. Overall however, the Government is supportive of the final text of the PEPP legislation and the Minister has asked for the file to be cleared from scrutiny so the UK can vote in favour of its adoption at a forthcoming meeting of the Council.

9.11 If the PEPP Regulation applies to the UK, British pension providers would be able to market PEPPs throughout the European Union (until the UK leaves the Single Market at the end of the aforementioned post-Brexit transition). Similarly, providers from elsewhere in the EU would be able to market it to British savers throughout that time. Beyond the end of that period, or if there is no transition because the Withdrawal Agreement is not ratified, those market access rights would lapse in both directions.<sup>69</sup> In any event, the Government does not anticipate “great demand” for pan-European personal pension products—and therefore “no [...] negative impact on the UK market or consumers”—given the UK’s well-developed market for retirement products, and the requirement for financial advice to be provided before purchase of a PEPP (which does not apply to other types of personal pension products, other than transfers out of ‘defined benefit’ schemes).

## Our conclusions

9.12 **We thank the Minister for his final update on the Regulation to establish the legal framework for a pan-EU personal pension product, which insurers will be able to offer from 2021 if they so wish. We accept the Treasury’s assurances about the lack of any anticipated negative impact of the potential provision of PEPPs on the UK market by EU-based providers during the putative post-Brexit transitional period, when the Regulation would continue to apply here. In this respect, we remain particularly pleased that national regulators—including the Financial Conduct Authority—can curtail the ‘passporting’ rights of providers to market PEPPs on a cross-border basis from other EU countries where necessary to protect savers.**

9.13 **We do note that certain aspects of the PEPP Regulation—notably the product intervention powers of the European Insurance & Occupational Pensions Authority and the details of the cap on costs and fees—are to be set out in more detailed through Delegated Acts. The UK will not have a vote over those Acts—which can be blocked by a qualified majority in the Council of Ministers—if it is no longer a Member State by the time they are put forward by the European Commission. For the duration of transition, they would nevertheless have force of law in the UK.**

9.14 **The direct impact of Delegated Acts under the PEPP Regulation is likely to be limited, given the probable lack of appetite for the product on the UK market. However, it is merely one facet of the much larger accountability issue created by the proposed transition period. During that time, the UK would be subject to EU legislation debated and approved without the Government having voting or representation rights in EU bodies. Continued scrutiny of new EU policy by Parliament would therefore remain an important principle for the duration of any transitional period, to ensure the constraints imposed on the UK’s legislative autonomy by new European legislation during that period can be taken into account.**

69 We consider it unlikely the Treasury would legislate, at that the end of the transition, to give EU-based providers a unilateral right to continue marketing PEPPs in the UK.

**9.15 We are content to now clear the proposed PEPP Regulation from scrutiny, in view of its imminent adoption by the Council. We draw these developments to the attention of the Work and Pensions and Treasury Committees.**

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

Proposal for a Regulation on a pan-European Personal Pension Product (PEPP): (38875), [10654/17](#) + ADDs 1–2, COM(17) 343.

### **Previous Committee Reports**

See (38875), 10654/17, COM(17) 343: Third Report HC 301–iii (2017–19), [chapter 12](#) (29 November 2017) and Thirty-fifth Report HC301–xxxiv (2017–19), [chapter 3](#) (11 July 2018).

## 10 Strengthening the European Union Agency for Asylum

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Committee’s assessment	Legally and politically important
<a href="#">Committee’s decision</a>	Cleared from scrutiny; drawn to the attention of the Home Affairs Committee
Document details	Amended proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010
Legal base	Article 78(1) and (2) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(40064), 12112/18, COM(18) 633

### Summary and Committee’s conclusions

10.1 The European Commission put forward a package of asylum reforms in 2016 in response to the migration and refugee crisis, including a proposed Regulation to transform the existing European Asylum Support Office (“EASO”) into a fully-fledged EU Agency for Asylum with stronger powers to monitor the application of EU asylum rules and provide operational and technical assistance to Member States. The Government decided *not* to opt in, expressing concern that the proposal would give the new Agency “a significant degree of oversight over national asylum systems” and stating that the functioning of the UK’s asylum system was “a sovereign matter”.<sup>70</sup> The Council and the European Parliament reached a [provisional agreement](#) on the proposed Regulation in June 2017, but it can only be formally adopted once all the other elements of the Commission’s asylum reform package have been agreed. Negotiations on the central element of that package—the reform of the Dublin rules determining the Member State responsible for examining an application for international protection made in the EU—remain deadlocked, with Member States unable to agree a new “solidarity” mechanism to share responsibility for asylum seekers more equitably.

10.2 The Commission’s latest [proposed Regulation](#) is part of a wider effort to break the deadlock in negotiations by identifying a range of support measures to relieve pressure on Member States facing disproportionate migratory flows and “strike the right balance between solidarity and responsibility”.<sup>71</sup> It would amend the Commission’s 2016 proposal to increase the operational and technical support that the Agency can provide to Member States so that they are able to apply EU asylum rules more effectively and facilitate the return of individuals who do not qualify for international protection. It would also

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70 See the [letter](#) of 16 December 2016 from the then Immigration Minister (Robert Goodwill) to the Chair of the European Scrutiny Committee.

71 See the European Commission’s [fact sheet](#): *How the future asylum reform will provide solidarity and address secondary movements* and p.2 of the Commission’s explanatory memorandum accompanying the proposed Regulation.

strengthen cooperation with other EU agencies, notably the European Border and Coast Guard Agency. Our [earlier Report](#) (agreed on 31 October 2018) sets out the main changes proposed by the Commission and the additional funding that the Agency would need.

10.3 In her [Explanatory Memorandum of 9 October 2018](#), the Immigration Minister (Rt Hon. Caroline Nokes MP) told us that the UK’s Title V opt-in Protocol applied to the Commission’s latest proposal in the same way that it applied to its earlier Regulation, proposed in 2016 and not yet formally adopted by the Council and European Parliament, and set out the factors which would inform the Government’s opt-in decision. She made clear that “the UK Government should retain sovereignty over the management of UK borders” and that monitoring by the Agency or intervention in asylum procedures in the UK would be “unacceptable”.

10.4 As the Government had decided *not* to opt into the Commission’s original (2016) proposal for a Regulation establishing the European Union Agency for Asylum, and the amendments proposed by the Commission would further strengthen the Agency’s powers, we considered that there was little prospect of the Government reversing its earlier decision and opting in. We also questioned whether the Government would be entitled to do so since the proposed Regulation seeks neither to amend nor replace the recital in the earlier (2016) proposal stating that the UK’s Title V opt-in Protocol applies. As the Government decided not to opt in then, we doubted whether the UK would be able to have another bite at the same cherry by asserting the right to revisit its earlier opt-in decision.

10.5 In her [letter dated 26 November 2018](#), the Minister explained why the Government considered that a further opt-in decision was required. She accepted that “any decision to opt in to the current amended proposal would bind the UK to participate in the entire adopted measure”, effectively overturning the Government’s earlier decision not to opt into the 2016 proposal.

10.6 In [our Report agreed on 5 December 2018](#), we asked the Minister whether the Commission and the Council agreed with her analysis of the application of the Title V opt-in Protocol to the proposed amending Regulation and sought confirmation that the Government had secured the addition of a recital to make the position clear. We also asked her to inform us of the Government’s opt-in decision at the earliest opportunity.

10.7 The Minister’s [letter of 6 February 2019](#) says that the Council (and implicitly) the Commission do not share the Government’s view that the Title V opt-in Protocol applies as “they consider that the amended proposal belongs to the original proposal”. The Government nonetheless continues to believe that the Protocol does apply and has decided *not* to opt in, adding:

The opt-in recital in the text of any adopted measure will reflect the UK’s position not to opt into the measure.

10.8 We noted in our earlier Report that the [Political Declaration setting out the Framework for the Future Relationship between the EU and the UK](#) accompanying the draft EU/UK Withdrawal Agreement includes a commitment to “cooperate to tackle illegal migration, including its drivers and its consequences, whilst recognising the need to protect the most vulnerable”, but makes no reference to continued cooperation on asylum and other forms

of international protection post-exit. We asked the Minister to explain the reasons for this omission and the “options for future cooperation” that she had indicated were under consideration.

10.9 The Minister reiterates the Government’s commitment to securing “a close and effective partnership with the EU on asylum matters, including practical cooperation” post-exit. She continues:

The United Kingdom is leaving the EU, not Europe, therefore we are considering a full range of options to ensure that effective cooperation continues. All options for future cooperation are currently being considered including working with the EUAA throughout the Implementation Period in the event that the EUAA Regulation is formally adopted and the new Agency comes into existence. The UK Government is also currently considering all aspects of current cooperation with EASO and considering whether cooperation in specific areas would be beneficial and legally possible. This will of course be subject to future negotiations.

## Our Conclusions

10.10 **The way in which the Title V opt-in Protocol is interpreted and applied by the Government and by the EU institutions is an important element in our scrutiny of EU justice and home affairs proposals. We ask the Minister to ensure that any difference in approach is brought swiftly to our attention. We recognise that the difference is of no practical consequence in this case as all parties agree that the UK will not participate in or be bound by the Regulation establishing the European Union Agency for Asylum once it is formally adopted. There may, however, be circumstances in which a different approach would have different consequences and we expect the Government to be open in acknowledging this.**

10.11 **As the Government has decided not to opt into the amending Regulation, we are content to clear it from scrutiny. The earlier (2016) proposal to establish the EU Agency for Asylum (Council document 8742/16) remains under scrutiny pending further progress on the EU asylum reform package. We look forward to receiving further updates if there any developments in negotiations. We draw this chapter to the attention of the Home Affairs Committee.**

## Full details of the documents

Amended proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010: (40064), [12112/18](#), COM(18) 633.

## Background

10.12 Our earlier Reports listed at the end of this chapter provide a detailed overview of the Commission’s 2016 proposal which would repeal the 2010 Regulation establishing the European Asylum Support Office and create in its place the European Agency for Asylum—a centre of expertise with a stronger mandate to facilitate the implementation of

the Common European Asylum System and improve its overall functioning so that there is greater convergence in the way the rules are applied and the outcomes they produce. The main tasks of the Agency would be to:

- enhance practical cooperation and the exchange of information on asylum matters;
- provide country of origin information;
- develop operational standards and guidelines to ensure the effective implementation of EU asylum laws;
- monitor and assess how Member States implement the Common European Asylum System; and
- provide operational and technical assistance to Member States.

### Previous Committee Reports

Forty-seventh Report HC 301–xlvi (2017–19), [chapter 3](#) (5 December 2018) and Forty-third Report HC 301–xlii (2017–19), [chapter 8](#) (31 October 2018). The following Reports on the Commission’s original (2016) proposal on the European Union Agency for Asylum are also relevant: Seventh Report HC 71–v (2016–17), [chapter 1](#) (6 July 2016), Twenty-fifth Report HC 71–xxiii (2016–17), [chapter 7](#) (11 January 2017), Thirty-second Report HC 71–xxx (2016–17), [chapter 7](#) (22 February 2017), Thirty-ninth Report HC 71–xxxvi (2016–17), [chapter 2](#) (19 April 2017).

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

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## Department for Business, Energy and Industrial Strategy

(40330) Proposal for a Council Decision on the renewal of the Agreement  
5542/19 on cooperation in science and technology between the European  
Community and the Government of the Russian Federation.  
COM(19) 7

## Department for Environment, Food and Rural Affairs

(40341) Proposal for a Council Decision on the position to be taken on behalf of  
5679/19 the European Union at the 14th Conference of the Parties to the Basel  
Convention on the Control of Transboundary Movements of Hazardous  
Wastes and their Disposal with regard to certain amendments of  
COM(19) 11 Annexes II, VIII and IX thereto.

## Food Standards Agency

(40328) Court of Auditors Special Report no.2: Chemical hazards in our food: EU  
— food safety policy protects us but faces challenges.  
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## Foreign and Commonwealth Office

(40358) Council Decision XXXX Amending and Extending Decision 2014/219/  
— CFSP on the European Union CSDP Mission in Mali (Eucap Sahel Mali).  
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## Home Office

(40272) Report from the Commission to the European Parliament, the  
15600/18 Council and the European Economic and Social Committee on the  
implementation of Directive 2014/54/EU of the European Parliament  
and of the Council of 16 April 2014 on measures facilitating the exercise  
COM(18) 789 of rights conferred on workers in the context of freedom of movement  
for workers.

(40289) Communication from the Commission to the European Parliament, the European Council and the Council Seventeenth Progress Report towards an effective and genuine Security Union.

15686/18

+ ADD 1

COM (18) 895

(40302) Report from the Commission to the European Parliament and the Council Second Report under the Visa Suspension Mechanism.

15838/18

+ ADD 1

COM(18) 856

(40303) Communication from the Commission to the European Parliament and the Council State of play and way forward as regards the situation of non-reciprocity in the area of visa policy.

15837/18

Com (18) 855

(40319) Proposal for a Council Decision on the position to be taken, on behalf of the European Union, in the sixty-second session of the Commission on Narcotic Drugs on the scheduling of substances under the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971.

5063/19

+ ADD 1

COM(18) 862

## Department for Transport

(40353) Proposal for a Council Decision on the position to be taken on behalf of the European Union at the 14th General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) as regards the election of the Secretary General of OTIF for the period from 8 April 2019 to 31 December 2021.

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COM(19) 56

# Formal Minutes

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**Wednesday 13 February 2019**

Members present:

Sir William Cash, in the Chair

Martyn Day	Stephen Kinnock
Richard Drax	Andrew Lewer
Kelvin Hopkins	Michael Tomlinson
Darren Jones	Dr Philippa Whitford
Mr David Jones	

## **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 11 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 27 February at 1.45pm]

## Standing Order and membership

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

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

The expression “European Union document” covers—

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

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

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

**Current membership**

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

[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*)