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European Scrutiny Committee

Fifty-sixth Report of Session 2017–19

Documents considered by the Committee on 27 February 2019

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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.

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Meeting Summary

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

Brexit-related issues

The Committee is now looking at documents in the light of the UK's decision to withdraw from the EU. Issues are explored in greater detail in report chapters and, where appropriate, in the summaries below. The Committee notes that in the current week the following issues and questions have arisen in documents or in correspondence with Ministers:

- UK Government concern over reference to the UK's continued liabilities for its financial obligations assumed as a Member State.

Summary

Proposed Directive on Whistleblowing

The proposed Directive aims to harmonise national laws to a minimum standard on whistleblowing in relation to breaches of EU law. It seeks to improve on the current piecemeal approach to whistleblowing at EU level by introducing a horizontal approach across most EU policy areas. The proposal follows in the wake of recent scandals disclosed by whistleblowers like Cambridge Analytica. Historically, the UK has led the EU in terms of the legal protection it affords to whistleblowers (see the Public Interest Disclosure Act 1998 and Employment Rights Act 1996). But the Government has not been supportive of the proposal due to the potential costs and burdens for business of internal reporting procedures. This is one of the main differences between the current UK and proposed EU legal frameworks. As currently drafted, an adopted Directive would not have to be transposed before 15 May 2021. This means that the UK would not have to implement it, either in the case of "no-deal" or a negotiated exit where transition is not extended beyond 31 December 2020.

Our chapter reports on the Government's latest letter. This provides an update on the text agreed in Committee of Permanent Representatives in the European Union (COREPER) which is expected to be put to a formal vote in Council on 7–8 March as a General Approach. However, we do not grant a scrutiny waiver for that General Approach. This is for various reasons. We are mindful that the proposal could have to be implemented by the UK if a transition period is extended: the maximum extension being 31 December 2022. We also note the Government's continuing and significant concerns about the proportionality of the obligations on UK small businesses to set up internal reporting systems and regarding the hierarchy of reporting. Finally, there remains doubts about the legal integrity of the proposal arising from the use of multiple legal bases and potentially different legislative procedures. We request instead legal analysis from the Government on this issue. We also flag our disappointment that, in any case, the vote in Council may be no more than a rubberstamping of the COREPER text.

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

Brexit-preparedness: PEACE Programme

The EU has agreed, with the support of the UK, that cross-border projects supporting peace and reconciliation on the island of Ireland should remain in place in a no-deal Brexit scenario. While supportive of the legislation, the UK formally registered concern about a reference in the text to the UK's continued liabilities for its financial obligations assumed as a Member State. The Committee considered it helpful that the UK highlighted its concern in order that agreement to this Regulation does not prejudice future discussions on the UK's financial liabilities.

Cleared; drawn to the attention of the Northern Ireland Affairs Committee

Drinking Water Directive

A compromise is in sight on the Commission's proposal to revise the EU's Drinking Water Directive. The proposal has already been the subject of debate in the House as, on the recommendation of the Committee, it adopted a Reasoned Opinion on the proposal last summer, expressing concern that the provisions on access to water breached the principle of subsidiarity (i.e. that the objectives of the measures are better achieved by action at the national, regional or local level rather than the EU level). While the Minister was initially resistant to the Committee's concern about subsidiarity, the Committee was pleased to note from the Minister's most recent letter that this is an area that has been picked up by the UK and others in negotiations, coalescing around text that affords greater flexibility at the local level. The Committee had also noted that the Commission was proposing some chemical parameters at a more stringent level than recommended by the World Health Organisation. Of these, the main outstanding concern is around lead. To comply with the proposed levels would require substantial investment in UK water infrastructure at significant cost. The Committee granted a scrutiny waiver to allow the Government to agree to a General Approach at the 5 March Environment Council. Potentially challenging negotiations with the European Parliament would then follow.

On Brexit, it is possible that the UK would need to comply with this legislation under the terms of any future relationship enshrining the principle of environmental non-regression. That principle is already included in the Backstop and so ought to feature in the future relationship.

Not cleared; but scrutiny waiver granted; further information requested; drawn to the attention of the Environmental Audit Committee and the Environment, Food and Rural Affairs Committee

Commission 'no deal' preparedness: air connectivity

The Commission's proposal is a unilateral measure that would apply in the event of a 'no-deal' Brexit. It would provide for the continuation of basic air services between the EU and UK for a limited period of time (up until an air transport agreement with the UK enters into force or 30 March 2020, whichever is sooner). It is not indented to replicate current arrangements or to maintain the status quo (as prevails whilst the UK is an EU Member State).

As a Union initiative for the soon to be EU-27, the intended effect of the proposal—to ensure basic EU/UK air connectivity in the event of a no-deal Brexit—would be dependent upon UK reciprocity and similar domestic provision being made (whether

by legislation or administrative methods). In summary, if adopted, the proposal would differ from current arrangements in that it would: grant first, second, third and fourth freedom air traffic rights to UK air carriers (thus preventing UK carriers from operating services between two Member States or within a single Member State); restrict the use of 'operational flexibility devices' such as code sharing arrangements; and freeze the capacity that UK air carriers are allowed to offer in the Union at pre-Brexit levels (i.e. the number of flights that can be undertaken). The proposal would also require UK carriers to continue to comply with Union airline ownership rules. The Committee suggest retaining the proposal under scrutiny pending satisfactory answers to the questions we have asked of the Government on the substance of the proposal and, importantly, whether it would reciprocate the rights—and meet the obligations—stemming from the Regulation and, if it would, how these would be given effect to domestically. Given the political sensitivity of the proposal and the interest of multiple stakeholders in its form, we expect that it will be subject to further changes before adoption. It would, therefore, be wise to continue to closely scrutinise its progress.

Not cleared from scrutiny; further information requested

Connected vehicles: future communication standards

The Commission's proposal would set universal standards and specifications for future communications technologies to be utilised by 'cooperative intelligent transport systems' (C-ITS). By way of analogy, the proposal covers the 'language' that, for example, cars and road-side infrastructure will use to 'talk' to each other in the future. With the mass deployment of autonomous and connected vehicles expected within the next decade, the proposal is of significant legal and political importance. As its terms would have to be met by communication service providers and vehicle and infrastructure manufacturers, it would also have significant indirect financial implications. The proposal has caused significant disquiet amongst stakeholders. This stems, in particular, from the Commission's decision to approve a form of Wi-Fi-based communications technology—along with a 3G/4G standard—whilst excluding LTE-V2X and 5G. Given the potentially wide-ranging implications of the proposal, the Commission's explanatory memorandum justifying regulatory action is worryingly deficient in a number of areas. In summary, it fails to: provide a full justification of the need for legislation; reconcile its choice of Wi-Fi over LTE-V2X and 5G against previous commitments to technology neutrality and open competition; is not clear in its understanding of interoperability or the implications that this would have for future standards; and is incomplete in its analysis and suggestions for the protection of user privacy and the security of C-ITS applications. The Government Minister responsible for the proposal echoes some of these concerns in his explanatory memorandum. Further questions arise, however, in light of the Government's recent approach towards 'amending' like acts to account for deficiencies arising from the UK's withdrawal from the EU (i.e. the process of incorporating EU law into 'domestic' law under the EU (Withdrawal) Act 2010). As such, it is uncertain how, if approved, the Government would give effect to the delegated act or, indeed, whether this would be done in full or only partially. Against these concerns, the Committee recommends that the proposal is retained under scrutiny and a request for a response to our report made under an expediated timeframe. This is to account for the Commission's plans for the adoption of the proposal by the summer.

Not cleared from scrutiny; further information requested

UK participation in the Schengen rule book

In 2018, the European Commission proposed a Regulation setting out changes to the EU's current network of Immigration Liaison Officers (established in 2004) to ensure that it contributes more effectively to the EU's migration policy priorities in third (non-EU) countries. The UK participates in the existing network but is entitled to opt out of the proposed Regulation as it is a Schengen-building measure. The European Scrutiny Committee last considered the proposal in September 2018 and asked the Minister to inform it as soon as possible of the Government's decision. Since then, the European Commission has proposed a Council Decision which indicates that the UK has decided to opt out of the proposed Regulation. This decision means that the Council is required to determine whether the UK can continue to participate in other elements of the Schengen rule book, applying the criteria set out in the Schengen Protocol annexed to the EU Treaties. The Immigration Minister (Rt Hon. Caroline Nokes MP) belatedly confirms that the Government has decided to opt out of the proposed Regulation and is content with the Commission's assessment that this decision should not have any wider implications for the UK's participation in the Schengen rule book. She anticipates that both proposals will be endorsed by Member States' Ambassadors to the EU (COREPER) on 20 February and formally adopted by the Council shortly afterwards. The European Scrutiny Committee expresses frustration that it was not informed sooner of the Government's decision to opt out of the proposed Regulation and notes that this failure puts the Government in breach of its own Code of Practice on parliamentary scrutiny of EU justice and home affairs opt-in and Schengen opt-out decisions. Whilst making clear its dissatisfaction with the Government's handling of the proposals, the Committee considers that the European Commission has applied the criteria in the Schengen Protocol properly and in a way which is beneficial for the UK.

Cleared from scrutiny; drawn to the attention of the Home Affairs Committee and Justice Committee.

Interoperable EU information systems for security, border control and migration management

The European Commission has proposed two Regulations containing the technical detail needed to make EU security, border and migration information systems interoperable so that information on cross-border security threats and irregular migration can be shared more rapidly. The UK is only entitled to participate in the proposed Regulation covering the EU information systems in which the UK takes part (the Schengen Information System, the Eurodac asylum database and a new information system containing the criminal records of third country nationals convicted of a criminal offence within the EU). The other proposed Regulation concerns Schengen-related information systems from which the UK is excluded. Although the new interoperability framework is unlikely to be up and running until around 2023, after the expiry of the transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement, the Government has decided to participate in the first proposed Regulation. The Committee's scrutiny has focussed on third country access to data obtained through the interoperability framework (and the underlying EU information systems) as well as the impact of the proposals on British citizens whose personal data, post-exit/transition, will be held on many of the EU's information systems. The Government informs the Committee that trilogue negotiations

have concluded and that it has not succeeded in securing more favourable terms on third country access. The Government also considers that some of the provisions (for example, on police access to data) have been watered down, diminishing the operational benefits of the interoperability framework. It therefore intends to abstain when the Regulations are brought to the Council for a vote on their adoption. The Committee granted a scrutiny waiver in December 2018 but, in the event, the proposals were not voted on at the Justice and Home Affairs Council. As there is no further prospect of any changes being made, and the Government intends to abstain when the proposed Regulations are brought to Council in March or April, the Committee is now clearing them from scrutiny.

Cleared from scrutiny; drawn to the attention of the Home Affairs Committee and Justice Committee.

Tightening EU rules on explosives precursors

The European Commission has proposed changes to EU rules on explosives precursors—chemical substances used in home-made explosives—to keep pace with the evolving security threat whilst also maintaining "a level playing field" for legitimate trade. The proposed Regulation would further restrict access to these substances by ordinary members of the public, tighten up the licensing regime, and strengthen point of sale checks on "professional users" who need the substances for their trade or profession. The Government broadly welcomes the changes but has expressed concern that some of the tighter restrictions could affect "a small number of members of the public who would be prevented in some cases from being able to participate in their hobbies" (mainly drag car racing and pyrotechnics). In its latest update, the Government indicates that it has been partially successful in securing changes to mitigate the impact of the proposal on "hobbyists" but has been unable to make any headway on chlorates/perchlorates used in pyrotechnics. The Government nonetheless considers that the compromise text provisionally agreed by the Council and European Parliament represents a positive outcome for the UK and would like to support it when brought to the Council for formal adoption ahead of the May 2019 European Parliament elections. The European Scrutiny Committee agrees to clear the proposed Regulation from scrutiny now that trilogue negotiations have concluded and the final text secures the Government's main negotiating priorities.

Cleared from scrutiny; drawn to the attention of the Home Affairs 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: Unfair trading practices in the food supply chain [Proposed Directive (NC)]; Whistleblowing and breaches of EU law [Proposed Directive (NC)]

Environmental Audit Committee: Drinking Water Directive [Proposed Directive (NC; scrutiny waiver granted)]

Environment, Food and Rural Affairs Committee: Unfair trading practices in the food supply chain [Proposed Directive (NC)]; Drinking Water Directive [Proposed Directive (NC; scrutiny waiver granted)]

Exiting the EU Committee: Negotiating mandates for EU-US trade talks [Proposed Decisions (NC)]

Foreign Affairs Committee: Negotiating mandates for EU-US trade talks [Proposed Decisions (NC)]

Home Affairs Committee: UK participation in the Schengen rule book [Proposed (a) Regulation; (b) Decision (C)]; Interoperable EU information systems for security, border control and migration management [Proposed Regulations (C)]; Tightening EU rules on explosives precursors [Proposed Regulation (C)]

International Trade Committee: Negotiating mandates for EU-US trade talks [Proposed Decisions (NC)]

Justice Committee: Interoperable EU information systems for security, border control and migration management [Proposed Regulations (C)]

Northern Ireland Affairs Committee: Brexit-preparedness—continuation of territorial cooperation programmes [Proposed Regulation (C)]

Transport Committee: Connected vehicles: future communication standards [Commission Delegated Regulation (NC)]; Commission 'no deal' preparedness: air connectivity [Proposed Regulation (NC)]

1 Whistleblowing and breaches of EU law

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Directive of the European Parliament and the Council on the protection of persons reporting on breaches of Union law
Legal base	Articles 16, 33, 43, 50, 53(1), 62, 91, 100, 103, 109, 114, 168, 169, 192, 207 and 325(4) TFEU and Article 31 of the Euratom Treaty; ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39695), 8713/18 + ADDs 1–3, COM (18) 218

Summary and Committee's conclusions

1.1 "Whistleblowing" is commonly understood to be the act of speaking out and disclosing serious wrongdoing, usually by employees. EU law on whistleblowing already applies in some areas such as financial services, transport safety and environmental protection. The Cambridge Analytica,[1] Lux Leaks,[2] Dieselgate[3] and Paradise/Panama Papers[4] scandals have all highlighted the importance but also the vulnerability of whistleblowers. In their wake, the Commission is proposing this Directive (document (a)) to strengthen and extend protection for whistleblowers across the EU who report breaches of a wide range of EU legislation. As this is a minimum harmonisation proposal, it is open to Member States to legislate for higher levels of protection. We set out a full account of the proposal and the Government's view of it in our last Report of 20 June.[5]

1.2 Irrespective of when the proposal may be adopted, the deadline for implementing the Directive once adopted is currently drafted to be 15 May 2021. This means that as things

1 Facebook and data analytics firm Cambridge Analytica have been accused of harvesting and using personal data to influence the outcome of the US 2016 presidential election and the UK's referendum on EU exit. See the oral evidence session, Christopher Wylie, 28 March 2018 held as part of the DCMS Committee's inquiry into "Fake News".

2 See BBC website, 'Luxleaks whistleblower Antoine Deltour has conviction quashed' 11 January 2018. In 2014 two whistleblower employees leaked confidential information concerning PricewaterhouseCoopers dealings with multinational companies in relation to tax rulings in Luxembourg between 2002 and 2010. They were originally both convicted by the Luxembourg courts, but one had his conviction overturned in January 2018.

3 See BBC website, 'Volkswagen: The scandal explained' 10 December 2015. The German car manufacturer Volkswagen has since admitted cheating diesel emissions tests in the US.

4 A House of Common Debate Briefing paper explains that Paradise papers consisted of "material …leaked from two offshore service providers and 19 tax havens' company registries" and reported by some of the UK press "reiterating public concerns as to the scale of tax avoidance and evasion, and the ability of offshore jurisdictions to facilitate these activities". This followed the publication in the previous year of the 'Panama Papers'—a leak of financial records from Mossack Fonseca, a law firm that had provided advice on establishing offshore companies to a wide variety of politicians, celebrities and wealthy people.

5 Thirty-second Report HC 301–xxxi (2017–19), chapter 1 (20 June 2018).

currently stand the UK would not have to implement the proposal,[6] either in the case of "no-deal" or of a negotiated exit where the implementation period is not extended beyond 31 December 2020. However, we considered last time that the UK may either have to align with the proposal as part of the core labour or competition provisions of an EU-UK free trade/other agreement or may choose to do so as part of the Prime Minister's commitment to build on workers' rights after the UK's exit from the EU.

1.3 Historically, the UK has led the EU in terms of the legal protection it affords to whistleblowers (see the Public Interest Disclosure Act 1998[7] and the Employment Rights Act 1996). However, the Government has not supported the proposal. As indicated in its Explanatory Memorandum in June, the Government considers that a non-legislative measure should have first been attempted by the Commission. It highlights the cost and burden on business of setting up internal reporting procedures (the main difference between the proposal and the current UK legal framework). We considered these concerns engaged the proportionality of the proposal rather than raising any questions about subsidiarity.

1.4 We last reported on 16 January on the Government's letter of 21 December and its awaited responses to Committee questions. The Government did not indicate any substantial progress in Council negotiations, despite the European Parliament (EP) having agreed its position. In addition to keeping us updated on developments in the negotiations and any progress towards the adoption in Council of a General Approach, we asked the Government for further information about:

- the possible pace of future negotiations as this could have implications for the UK having to implement the proposal in the event of negotiated exit and an extended implementation period; and
- availability for legal aid in the UK for whistleblowers.

1.5 We had previously asked during our scrutiny of the proposal to be kept informed of any developments in discussions in the Council concerning the proposal relying on multiple legal bases.[8]

1.6 We also noted the Government's comments about the Privacy International case concerning the interpretation of the national security exemption provided in Article 4(2) TEU. We had already asked for an update on the progress of this case in a different chapter of the same weekly Report on the e-Privacy Regulation.

1.7 By way of general update, the Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility (Kelly Tolhurst MP) in her letter of 11 February now informs us that:

- the proposed Directive has progressed rapidly through working party negotiations, scheduled in the latter part of 2018 to progress the text and commence trilogues with EP;

6 Nor continue it as retained EU law under the EU Withdrawal Act 2018.
7 But the Public Interest Disclosure Act 1998 is now over twenty years old.
8 See our Thirty-second Report HC 301–xxxi (2017–19), chapter 1 (20 June 2018).

- on 25 January Committee of Permanent Representatives in the European Union (COREPER) granted a mandate for the Council to proceed with trilogues with the European Parliament (EP). The Government abstained from this vote; and
- a formal vote for a General Approach at the Justice and Home Affairs Council meeting of 7–8 March 2019 is anticipated though not fully confirmed.

1.8 In view of the March Council, the Minister asks us to consider granting a scrutiny waiver or clearance. Connected with this, she says that the Government will continue to press for amendments to the proposal during trilogues.

1.9 Turning to concerns we have previously raised, the Minister confirms that:

- on the question of multiple legal bases possibly entailing different legislative procedures, Government has expressed the view that the Directive needs to be legally sound but has not had a chance to consider all views expressed in the recent and rapid negotiations; and
- only discrimination claims of a whistleblower would fall within the scope of legal aid in the UK, unless criteria for exceptional case funding were met.

1.10 The Minister then sets out the Government's position on proposed General Approach text. She prefaces her comments by reiterating that after twenty years of whistleblower protection in the UK, the Government still considers that any action at EU level should be proportionate and accommodate the existing different practices and systems at national level.

1.11 She first criticises the hierarchical approach that the proposal takes to reporting of wrongdoing. She explains that:

- the Government favours an approach which gives whistleblowers the freedom to choose whether to report wrongdoing internally (to their employer) or report to an external regulator;
- however, the current proposal would assert a hierarchy, generally requiring a whistleblower to first report internally;
- the current text requires whistleblowers to assess their individual situation and determine whether reporting externally to a competent authority would qualify them for protection;
- the Government believes this may deter whistleblowers and prevent evidence of wrongdoing being provided to enforcement bodies at an early stage;
- businesses and public authorities should be afforded the flexibility to establish internal reporting systems which suit the specific environments in which they operate; and
- Furthermore, the Government opposes prescriptive requirements upon businesses and public bodies relating to both policies and functions to support whistleblowers.

- The Government still considers that the Commission has failed to provide sufficient evidence to justify why such requirements should be set at the EU rather than national level.[9]

- The proposed legislative action should consider differences in Member State practice, including employment protections and rights for other categories of individuals. This is particularly the case for requirement to impose penalties for specific types of retaliatory action taken against wide categories of individuals, including shareholders and volunteers.

1.12 **We thank the Minister for her letter. We note that while the Government technically observed the spirit of our scrutiny resolution reserve in COREPER when the UK representative abstained on 25 January, it is regrettable that there was insufficient time for us to be briefed in advance of that meeting. We are unclear though why the UK representative did not vote against the proposal in that forum, in view of the Government's ongoing concerns.**

1.13 **As the Minister notes, we have asked previously about the use of multiple legal bases for the proposal. She reports that Member States are concerned about what this means for the use of different legislative procedures. We further note that she says that "the rapid pace of negotiations has prevented a full consideration by the Government of all the different views expressed during recent negotiations". In general terms, we understand from** press reports[10] **that there has been a Council Legal Service opinion about the multiple legal bases (as proposed originally and additional legal bases proposed during negotiations) and the potential incompatibility of respective legislative procedures. We have also read the** legal opinion[11] **of the EP's Legal Affairs Committee (JURI). We recognise that the Government does not, as a matter of confidentiality, comment on Council Legal Service Opinions. But we do ask the Minister to provide a more detailed account of the Government's own view of the different legal issues arising from multiple legal bases on which the proposal might rely, as it changes during the negotiations.**

1.14 **We do not grant the Government a scrutiny waiver for 7–8 March Council This is because it would be inconsistent with the Government's ongoing concerns about the proportionality of the proposed General Approach text or our need for further information about the legal integrity of the text arising from the use of multiple legal bases. We have to bear in mind that this proposal could impact on the UK in a "deal" scenario where the transition/implementation period is extended beyond 31 December 20. We also do not consider it likely that since the General Approach vote effectively will be rubberstamping a text already agreed in COREPER that a scrutiny waiver could facilitate Government efforts to obtain any favourable developments in that text. Following the Council meeting in March, we ask the Government to report on the outcome and on any progress made during trilogues.**

9 We refer to the conclusions in our Report of in which we disagreed with the Minister that there were subsidiarity concerns in respect of this proposal.

10 "Whistleblowers could lose out in EU tax shakeup", Politico 20 December 2018.

11 EP's Legal Affairs Committee's opinion on the legal basis for the proposal for a directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law

1.15 **In connection with the request in paragraph 1.14, specifically we would like to know what improvements, if any, the Government is successful in influencing during trilogues. We understand that there may be some common ground between the Government's position and the** EP position.[12] **This in particularly in relation to the EP's amendments on the threshold for small businesses to put in place internal reporting channels and procedures for whistleblowers (amendments to Article 4)**[13] **and on a two-tier reporting system like that already existing in the UK (of employers and competent authorities (amendments to Article 13).**[14] **We ask the Government to confirm whether our understanding is correct.**

1.16 **We retain this document under scrutiny but draw it and the chapter to the attention of the Business Energy and Industrial Strategy Committee.**

Full details of the document

Proposal for a Directive of the European Parliament and the Council on the protection of persons reporting on breaches of Union law: (39695), 8713/18 + ADDs 1–3, COM(18) 218.

Previous Committee Reports

Fifty-first Report HC 301–l (2017–19) chapter 2 (16 January 2019); Thirty-second Report HC 301–xxxi (2017–19), chapter 1 (20 June 2018).

12 Report by the EP's Committee on Legal Affairs, 27 November 2018.

13 The EP JURI Committee has proposed a new paragraph 3.3. to the original text of Article 4 of the proposed Directive. This would provide derogations from the Article 4 requirement to set up internal reporting channels and procedures. It provides:
"3a. By way of derogation from points (a) and (b) of paragraph 3, Member States may exclude from the legal entities in the private sector referred to in paragraph 1 the following private legal entities:
(a) private legal entities with fewer than 250 employees;
(b) private legal entities with an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million".

14 The amendment would extend whistleblower protection to those who have reported internally OR externally OR both, assuming all other conditions for protection have been satisfied. In other words, the hierarchy of reporting currently set out in Article 13 of the Commission's original text would not apply.

2 Drinking Water Directive

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; but scrutiny waiver granted; further information requested; drawn to the attention of the Environmental Audit Committee and the Environment, Food and Rural Affairs Committee
Document details	Proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast)
Legal base	Article 192(1) TFEU, QMV, Ordinary legislative procedure
Department	Environment, Food and Rural Affairs
Document Number	(39487), 5846/18 + ADDs 1–5, COM(17) 753

Summary and Committee's conclusions

2.1 The EU's "Drinking Water Directive"[15] is designed to ensure that drinking water across the EU is wholesome and clean. While it has been relatively well implemented, its approach to monitoring water quality at the point of consumption uses parameters determined over 20 years ago. Following a review, the European Commission proposed to revise the Directive in order to improve the quality of drinking water, modernise the approach to monitoring water quality and provide both greater access to water and information to citizens.

2.2 When we first considered the proposal, we were concerned that some of its provisions strayed too far into areas best managed at a national or local level. We therefore agreed to issue a Reasoned Opinion, considering that the provisions on access to water breach the principle of subsidiarity—i.e. action should only be taken at the EU level where it cannot be sufficiently achieved by Member States at national, regional or local levels and there is greater benefit to taking action at the EU level. More information was set out in our Report from that meeting, The Reasoned Opinion was debated on 26 March[16] and agreed by the House on 28 March.[17]

2.3 We last reported this document to the House at our meeting of 20 June 2018, when we asked about reported concerns among other Member States about the provision to ensure access to drinking water for "vulnerable and marginalised groups". We also sought information about discussions on the proposal at the 25 June 2018 Environment Council.

2.4 In response to our Report, the Parliamentary Under Secretary of State for the Environment (Dr Thérèse Coffey MP) confirmed[18] that there were concerns among Member States about the proposals on access to water, including the definitions of "vulnerable and marginalised groups". Discussions were continuing following the Environment Council. As regards other areas of discussion, the Minister reported that concerns about the

15 Council Directive 98/83/EC.
16 European Committee A, 26 March 2018.
17 Votes and Proceedings, 28 March 2018.
18 Letter from Dr Thérèse Coffey MP to Sir William Cash MP dated 10 July 2018.

Commission's approach to water quality and the access to justice provisions were shared by other Member States. The Austrian Presidency in the second half of 2018 was looking to draw up a compromise text.

2.5 The Minister has written[19] again to update the Committee, noting that Ministers are likely to be invited to agree to a General Approach at the Environment Council on 5 March 2019. She asks that the Committee consider clearing the proposal from scrutiny or granting a scrutiny waiver. She explains that, since adoption of the European Parliament's (EP's) position on 22 October 2018, pressure had mounted on the Council to agree a position. The Minister summarises the approach to the issues raised by the Committee, as set out below.

2.6 The provisions on access to justice (Article 16) have been deleted and so there are no further issues of duplication.

2.7 Concerning the chemical parameters to be monitored in drinking water, the Government's position is that parameters should be included if they have been shown through scientific evidence to have health concerns. The UK has also been pushing for some changes to allow the exclusion of parameters from monitoring based on risk assessment that shows they do not pose a threat. While the Government agrees with the majority of parametric limits being suggested, there are some substances where the limits suggested are more stringent than current World Health Organisation (WHO) recommendations. The UK's main outstanding concern is to ensure that the parametric value for lead matches the WHO recommendation (10µg/l,[20] but with countries putting in place an action plan to achieve concentrations as low as reasonably practicable). The proposed EU limit would be 5µg/l, which would require the removal in the UK of a significant amount of existing lead piping in older properties, costing "billions of pounds" for the water industry and consumers.

2.8 On access to water, the Government shares concerns with a number of Member States that the provisions do not respect the principle of subsidiarity. The UK would accept changes allowing national discretion to decide how to improve access to water at a local level. The Minister believes that the UK's ambition set out in the 25 Year Environment Plan to increase access to water refill stations already meets the spirit of the Directive's objective in this regard.

2.9 Another priority for the UK, says the Minister, is to ensure that standards for materials and substances in contact with drinking water are maintained or improved. The UK and eight other Member States have put forward a proposal for achieving a harmonised approach to standards as opposed to the current situation where there is different national legislation in place, and the Government is working towards this proposal being adopted by the Council.

2.10 The Minister does not set out any of the substance of the EP's position. In summary, the EP agreed that the Directive should promote universal access to clean water for all but that the requirements should respect different national circumstances. The EP maintained most of the parameters set by the Commission. The maximum limits for certain pollutants,

19 Letter from Dr Thérèse Coffey MP to Sir William Cash MP dated 19 February 2019.

20 Micrograms per litre.

such as lead, would be tightened, and new caps introduced for some endocrine disruptors.[21] By the end of 2022, Member States would be required to adopt national targets to reduce water leakage levels of water suppliers.

2.11 **The Minister's letter does not set these negotiations in the context of the UK's withdrawal from the EU. That is no doubt due to the fact that any future UK alignment with this legislation will be subject to the outcome of exit negotiations, particularly concerning the principle of environmental non-regression.**

2.12 **Our core concern when we first considered this proposal related to the provisions on access to water. We are pleased to note that the UK and other Member States have pushed back on the provisions of the text in this respect, coalescing around language that would afford greater flexibility at the local level.**

2.13 **The potential implications of adopting chemical parameters more stringent than recommended by the World Health Organisation are concerning. We note the Minister's assessment that the proposed halving of the lead parameter could have severe financial consequences for the UK water industry and consumers.**

2.14 **The Minister references the European Parliament position but not does comment on its substance. We note that there is agreement that the provisions on access to water should ensure flexibility at the local level, but that the EP proposed to strengthen some of the parameters, including lead, and to add new substances (such as endocrine disruptors).**

2.15 **Given that—once Council agreement has been reached—a compromise will need to be sought with the EP before the Directive can be adopted, we do not clear the proposal from scrutiny. We do, however, waive the scrutiny reserve in order to allow the Government to support the General Approach in Council should the Government judge that to be in the UK's national interest. We ask the Minister to update us following the Council, including information on the potential implications for the UK on the assumption that the UK will be required to implement the terms of the Directive in the future, at least in part. This chapter is drawn to the attention of the Environmental Audit Committee and the Environment, Food and Rural Affairs Committee.**

Full details of the documents

Proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast) : (39487), 5846/18 + ADDs 1–5, COM(17) 753.

Previous Committee Reports

Thirty-second Report HC 301–xxxi (2017–19), chapter 2 (20 June 2018); Eighteenth Report HC 301–xviii (2017–19), chapter 1 (7 March 2018).

21 Chemicals that have the potential to harm people or wildlife by affecting endocrine (hormone) systems.

3 Unfair trading practices in the food supply chain

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee and the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain
Legal base	Article 43(2) TFEU, QMV, Ordinary legislative procedure
Department	Environment, Food and Rural Affairs
Document Number	(39625), 7809/18 + ADDs 1–3, COM(18) 173

Summary and Committee's conclusions

3.1 With the aim of improving farmers' and other small and medium sized enterprises' (SMEs) position in the food supply chain, the EU has agreed new legislation on unfair trading practices (UTPs), which are business-to-business practices that deviate from good commercial conduct and are contrary to good faith and fair dealing.

3.2 At our meeting of 16 January 2019, we noted that the UK will be obliged to make provision for this legislation under all Brexit scenarios. At one extreme, the UK would be obliged to apply the legislation under any post-Brexit implementation period extended until at least late 2021. Even if there is no deal concluded between the UK and the EU, the terms of the Directive would apply to relationships between EU suppliers and third country (including the UK) buyers and so UK authorities would need to make provision for such circumstances.

3.3 We noted with concern the continued uncertainties about the impact of the Directive on the UK and the potential enforcement challenges. While retaining the document under scrutiny, we waived the scrutiny reserve in order that the Minister could support the Directive should such support be considered to be in the national interest.

3.4 The Parliamentary Under Secretary of State for Food and Animal Welfare (David Rutley MP) has written[22] to update the Committee on progress. He explains that other Member States are almost unanimously supportive of the compromise text agreed in December, with no further changes expected. The Directive is scheduled to be submitted to the European Parliament for approval in the plenary session beginning Monday 11 March, with formal Council adoption likely at the 18 March Agriculture and Fisheries Council.

22 Letter from David Rutley MP to Sir William Cash MP, dated 7 February 2019.

3.5 The Minister has little more to say on plans for implementation. He notes that this will be tightly bound with the work undertaken to explore enforcement strategies for domestic powers contained in the Agriculture Bill. He promises to write to the Committee again once this work has developed.

3.6 In a separate letter[23] to the House of Lords EU Committee, the Minister sets out more detail. He notes that there are an estimated 188,483 actors in the UK food supply chain. While it is not possible to estimate how many relationships within the food supply chain could be covered if the UK were to implement the Directive, it is reasonable to assert that the coverage would be greater than the status quo—the Groceries Supply Code of Practice (GSCOP) regulates the relationships between the UK's 12 largest retailers and approximately 10,000 of their direct suppliers.

3.7 The Minister adds that any duplication between the Directive and the GSCOP would only affect the twelve retailers currently regulated under the GSCOP. He explains that, whilst the prohibitions contained in the GSCOP and the Directive are broadly similar, there are some notable differences. The GSCOP, for example, contains an obligation for a buyer to pay for goods on time, meaning the payment period terms agreed to in the contract must be abided by. The Directive adopts a different approach and introduces a statutory 30-day deadline for payment for perishable goods and 60-day deadline for non-perishable goods. The Directive also includes a series of UTPs that are only permissible if agreed in clear terms in a contract, and this list of UTPs includes activities that UK retailers and their suppliers may engage in, such as returning unsold produce which can be used for further processing.

3.8 **We note that other Member States are almost unanimously supportive of the compromise text and so it is likely to be agreed when considered formally by the European Parliament and Council. The UK's consistent position has been to abstain on this file and so, while the Minister does not set out how the UK intends to vote at Council, we assume that the abstention policy will continue. We would encourage the Minister to table a formal explanation of vote at Council to make the UK's position clear. We ask him to write to us either before or after the Council confirming and explaining the UK position and providing a copy of any formal explanation of vote.**

3.9 **We remain very concerned about the continued uncertainties surrounding the impact of this Directive on the UK and so we look forward to the Minister's letter on UK plans for implementation and enforcement.**

3.10 **Given the continued uncertainties, we will retain the document under scrutiny. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee and the Business, Energy and Industrial Strategy Committee.**

Full details of the documents

Proposal for a Directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain: (39625), 7809/18 + ADDs 1–3, COM(18) 173.

23 Letter from David Rutley MP to Lord Boswell, dated 7 February 2019.

Previous Committee Reports

Fifty-first Report HC 301–l (2017–19), chapter 4 (16 January 2019); Forty-eighth Report HC 301–xlvii (2017–19), chapter 3 (12 December 2018); Thirty-ninth Report HC 301–xxxviii (2017–19), chapter 3 (10 October 2018); Thirty-third Report HC 301–xxxii (2017–19), chapter 4 (27 June 2018); Twenty-eighth Report HC 301–xxvii (2017–19), chapter 1 (16 May 2018).

4 Third mobility package: Proposal for a Regulation on the labelling of tyres

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; but scrutiny waiver granted for a General Approach to be sought in the Energy Council of 4 March 2019
Document details	Proposal for a Regulation of the European Parliament and of the Council on the labelling of tyres with respect to fuel efficiency and other essential parameters and repealing Regulation (EC) No 1222/2009
Legal base	Articles 114 and 194 TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39740), 9185/18 + ADDs 1–5, COM(18) 296

Summary and Committee's conclusions

4.1 The proposal under scrutiny would repeal and replace Regulation (EC) No 1222/2009 on the labelling of vehicle tyres (The Tyre Labelling Regulation or TLR). The proposal would maintain and reinforce most of the TLR's existing provisions as well as introducing new tyre labelling requirements—including on safety and noise reduction—with the aim of improving the EU's current scheme to ensure cleaner, safer and quieter vehicles.

4.2 A further objective is to improve the accuracy, relevancy and ease with which consumers can compare tyres. The proposal falls under the 'clean mobility' heading of the Commission's 'third mobility package' of legislative initiatives and non-binding actions (which is focussed on ensuring Europe's future mobility system is "safe, clean and efficient for all EU citizens"). Legally, the proposal would mandate and harmonise how EU standards on tyre labelling are displayed to consumers in Europe.

4.3 A full background to the proposal—including the Committee's initial assessment of its legal and political importance—can be found in our Fortieth Report to the House of 17 October 2018. The proposal was retained under scrutiny pending satisfactory answers from the Government to the questions asked—and requests for further information made—by the Committee By way of response, Minister of State at the Department for Transport (Jesse Norman MP), wrote to the Committee on 23 November 2018. This letter has since been supplemented by correspondence dated 19 February 2019 requesting clearance of the proposal from scrutiny ahead of a General Approach expected to be sought by the Romanian Presidency in the Energy Council of 4 March 2019.

Minister's letter of 23 November 2018

4.4 The Minister's letter addresses three substantive points raised by the Committee in its first Report on the proposal.

4.5 First, the Committee asked for the Government's views on the Commission's plans to add an Article 194(2) TFEU legal basis to the Tyre Labelling Regulation. The Government supports the addition of an energy legal base to the TLR on the grounds that an objective of the Regulation is to "improve the effectiveness of the tyre labelling scheme so as to ensure cleaner, safer and quieter vehicles and to maximise the scheme's contribution to the decarbonisation of the transport sector". This objective is said to be closely aligned with that of Article 194 to promote energy efficiency and energy saving.

4.6 Second, the Committee was interested to hear the Government's thoughts on plans to extend the scope of an existing delegation of power to the Commission in order for it to be used to adopt acts covering changes to the content and format of tyre labelling. The Minister is satisfied that the redrawn delegation is clear in its aims, content and scope, however, states that the Government will continue to engage with the Commission and Member States over the detail of the delegation as—of 23 November—negotiations on the proposal are at an early stage.

4.7 Finally, the Committee raised concerns with the omission from the Commission's proposal of a requirement for third-party verification of label testing. The Minister appears broadly happy with the Commission's plans to ensure conformity with the Regulation by requiring tyre manufacturers to submit label declarations through type approval processes and retaining the oversight of market surveillance authorities. He does, however, caution that industry groups do have concerns—although these are not specified—and commits to continue consultations with affected parties.

Minister's letter of 19 February 2019

4.8 The Minister wrote to the Committee on 19 February 2019 requesting clearance of the proposal from scrutiny in order for the Government to support a General Approach likely to be sought by the Romanian Presidency in the Energy Council of 4 March 2019.

4.9 In his letter, the Minister provides an update on the progress of negotiations. On the Commission's proposal to extend the existing delegation of power under the TLR to cover changes to the content and format of tyre labelling, the Minister informs the Committee that, following working group negotiations, the introduction of mileage and abrasion parameters from the scope of the delegation have been removed. This is because Member States are said to have been concerned that suitable testing methods do not currently exist. As a compromise, the draft Regulation now provides for the Commission to assess the introduction of these parameters once suitable testing methods have become available.

4.10 The Minister also provides further information on the Commission's proposal to rescale tyre performance parameters. He acknowledges that the future development and improvement of tyres is likely to lead to a need for the rescaling of label parameters, however, raises concerns that the Commission has not provided evidence to support the conclusion that this point has been reached. This concern is said to have been made by Member States during working group negotiations and as a consequence the new parameter proposals have been dropped (so that the original performance markers provided for by the TLR would be retained).

4.11 The Minister states that the Government is broadly content with the proposal and believes that the Romanian Presidency will be able to achieve a General Approach on its form at the March Energy Council.

4.12 **We thank the Minister for his letters of 23 November 2018 and 19 February 2019. We are grateful for the comprehensive way in which he has addresses our questions and requests for further information.**

4.13 **As we wish to follow the development of the proposal up to adoption, we do not believe clearing the file from scrutiny is appropriate at this time. We are, however, satisfied that the Government has outlined its position on the proposal and its voting intentions for the March Energy Council. As such, we grant a scrutiny waiver for the Government to vote in favour of the General Approach likely to be sought by the Romanian Presidency.**

4.14 **We request an update on the progress of the file within six weeks of the March Council.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council on the labelling of tyres with respect to fuel efficiency and other essential parameters and repealing Regulation (EC) No 1222/2009: (39740), 9185/18 + ADDs 1–5, COM(18) 296.

Previous Committee Report

Fortieth report HC 301–xxxix (2017–19) chapter 7 (23 October 2018).

5 Commission 'no deal' preparedness: air connectivity

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Transport Committee
Document details	Proposal for a Regulation of the European Parliament and of the Council on common rules ensuring basic air connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union
Legal base	Article 100(2) TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(40306), 15788/18, COM(18) 893

Summary and Committee's conclusions

5.1 The proposal under scrutiny is a unilateral Union measure that would apply in the event of a 'no-deal' Brexit (where the EU and UK have not concluded a Withdrawal Agreement under Article 50 TEU). The proposal would provide for the continuation of basic air services between the EU and UK for a limited period of time (up until an air transport agreement with the UK enters into force or 30 March 2020, whichever is sooner). It is not indented to replicate current arrangements or to maintain the *status quo* (as prevails whilst the UK is an EU Member State). As a Union initiative for the EU-27, the intended effect of the proposal—to ensure basic EU/UK air connectivity in the event of a no-deal Brexit—would be dependent upon UK reciprocity and the Government making similar domestic provision (whether by legislation or administrative methods).

5.2 The proposal forms part of the Commission's no-deal Brexit preparations as outlined in its Communication of 13 November 2018 'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan'.[24] Other measures outlined in this action plan—such as those on aviation safety, railway safety and connectivity, and Erasmus—are subject to separate scrutiny.

5.3 In terms of its rationale, the proposal is viewed by the Commission as necessary as—in the event of a no-deal Brexit—Regulation (EC) No 1008/2008 (on common rules for the operation of air services) would no longer apply to the UK.[25] As a consequence, no legal basis would exist for the provision of air services between Member States and the UK by respective air carriers.[26] This would mean that certain carriers, by reason of holding an operating licence issued by a UK authority or their principle place of business being

24 European Commission, 'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan' (November 2018).

25 Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (recast).

26 There is a question as to the legal status of existing bilateral air service agreement reached between the UK and EU Member States. This is discussed at paragraph 13.

located in the UK or being majority owned or effectively controlled by the UK or UK nationals, would cease to meet the conditions laid down in Regulation (EC) No 1008/2008 to qualify as Union carriers.

5.4 The absence of a framework for EU/UK air services would result in serious disruption for businesses and passengers and, furthermore, considerable economic harm for service providers and those dependent upon air transport (whether directly or further along supply and operating chains).

5.5 Since publication at the end of December 2018, the Commission's proposal has been subject to intense trilogue negotiations and, as a consequence, a number of material changes have been made to the substance of the draft Regulation. At the time of writing, a provisional agreement on the proposal has been reached between the Romanian Presidency and the European Parliament.[27] Where relevant, this is considered below.

5.6 With regard to the main effects of the proposal, the Union would grant first, second, third and fourth freedom air traffic rights to UK air carriers. By way of explanation: first freedom rights provide the right to fly over a country without landing; second freedom rights the right to refuel or undertake maintenance in a foreign country without embarking or disembarking passengers or cargo; third freedom rights the right to fly from one's own country to another; and fourth freedom rights the right to fly from another country to one's own. In spite the Union's offer of first and second freedom rights, these are provided for at international level by the Convention on International Civil Aviation of 1944 (also known as the 'Chicago Convention'). The latter two rights (third and fourth), are included in all basic air services agreements.

5.7 As a 'barebones' offer, this is, perhaps, to be expected, however, the omission of fifth, six and, especially, seventh freedom rights has led to disquiet amongst industry groups. This is because in the event of a no-deal Brexit (and providing that the Union's proposal was adopted and reciprocated by the UK), it would not be possible to fly between two third countries (non-Member States) and stop in the EU or for UK-based airlines to fly between two Member States (cross trade) or within one Member State (cabotage). In order to provide equivalent sixth and seventh freedom rights, some airlines—such as easyJet—have chosen to seek operating licences in the EU-27.[28]

5.8 The proposal would also freeze the capacity that UK air carriers could offer in the Union at pre-Brexit levels. Both the International Air Transport Association and Airport Council International Europe (ACI Europe) have warned that freezing capacity would have a major negative effect on growth.[29] They estimate that if the same approach was adopted by the UK (*vis-à-vis* the EU), it would result in the loss of 93,000 new flights and nearly 20 million passengers. Officials at the Department for Transport (DfT) have informed Committee staff that they understand the Presidency/European Parliament compromise text does not cap direct passenger flights between the UK and EU.

27 This agreement has been publicised by the Council and its preliminary form has been communicated to Committee staff by officials at the Department for Transport. On the provisional agreement see Council of the EU, 'Basic air connectivity in the event of no-deal Brexit –provisional agreement with the Parliament' (February 2019).

28 The Guardian, 'EasyJet to set up Austrian HQ to operate EU flights after Brexit' (14 July 2017).

29 AINonline, 'Lawmakers Rebuff Bid To Cap UK Fights to Europe Post-Brexit' (18 February 2019).

5.9 Also worthy of note is that the proposal does not provide for the use of operational flexibility devices, for example, cooperative marketing agreements, leasing of aircraft, change of gauge or co-terminalisation. Of these devices, the loss of cooperative marketing arrangements—such as code sharing—has the potential to cause the most disruption for UK- and EU-based air service providers.[30] This was recognised by the European Parliament's Transport and Tourism Committee when it considered the Commission's proposal in January 2019 and, as such, the Committee recommended its inclusion.[31] The provisional agreement reached between the Romanian Presidency and the European Parliament is said to allow for code sharing under certain conditions.

5.10 As the proposal would cover a non-Member State, it lays down 'level playing field' rules to ensure that the UK continues to provide sufficiently high standards in the area of air transport as regards fair competition (including the regulation of cartels), abuse of dominant position and mergers, the prohibition of unjustified subsidies, the protection of workers, the protection of the environment, and safety and security. By way of enforcement, Article 5 of the draft Regulation charges the Commission with monitoring the conditions of competition between the EU and UK and empowers it to adopt implementing acts to give effect to any corrective action deemed necessary.

5.11 It remains unclear, however, what exactly constitutes 'competition law' for the purposes of the proposal. The definition provided for in Article 2(6) of the draft Regulation references a number of general principles—such as abuse of dominant position—but does not specify any particular legislation or code. Given its specificity, it is surprising that Regulation (EC) No 868/2004—on protecting EU airlines competing against third country carriers—is not cited.[32]

5.12 Explicit provision is made in the proposal to prevent Member States from negotiating or entering into *any* bilateral air service agreements (ASAs) with the UK on matters falling under the scope of the Regulation. Article 3 is also clear that Member States must not otherwise grant UK carriers—in connection with air transport—any rights other than those provided for by the Regulation. From a UK perspective, a question arises as the status of existing bilateral ASAs with Member States and, by extension, whether these may be revised by Member States under the proposal.

5.13 On the first point, in response to an informal request for further information, officials at the DfT informed Committee staff that, in the past, the UK has concluded 25 ASAs with EU Member States.[33] All of these aside from that agreed with Spain—and terminated in

30 Code sharing is a practice whereby two or more airlines publish and market a flight under their own airline designator and flight number as part of their published timetable or schedule. Codeshares allow flights to be operated into and out of the EU by air service providers based in a third country as if they were an EU carrier.

31 European Parliament Transport and Tourism Committee, 'Report on the proposal for a regulation of the European Parliament and of the Council on common rules ensuring basic air connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union' (February 2019).

32 Regulation (EC) No 868/2004 of the European Parliament and of the Council of 21 April 2004 concerning protection against subsidisation and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community.

33 These include Austria (agreed in 1977), Belgium (1953), Bulgaria (1970), Croatia (1996), the Czech Republic (1998), Denmark (1979), Estonia (1993), Finland (1965), France (1946), Germany (1955), Greece (1945), Hungary (1960), Ireland (1946), Italy (1976), Latvia (1993), Lithuania (1992), Malta (1967), the Netherlands (1946), Poland (1960), Portugal (1945), Romania (1995), Slovenia (1994) and Sweden (1979).

2004—are considered to be extant and, therefore, would have effect once EU law ceases to apply to the UK. We were informed, however, that all of these agreements would require "significant adjustments to make them workable and fit for purpose".

5.14 This view is supported by correspondence—supplementary to her Explanatory Memorandum on the proposal—from Under Secretary of State at the Department for Transport, Baroness Sugg. The Minister states that in the event that the Commission's proposal is not adopted—or until such a time as it takes effect—the Government will seek temporary bilateral ASAs with Member States. This response implies that new ASAs with Member States would be sought and that those currently in existence would not be revised.

5.15 In an apparent response to concerns regarding competence (as ASAs are usually mixed agreements), the compromise text reached between the Romania Presidency and the European Parliament is said to clarify that Member States are able to negotiate bilateral agreements or arrangements with the UK after the Regulation expires.

5.16 On the last major issue the proposal covers (ownership rights), the Commission originally suggested that in order to fall within the scope of the Regulation, UK carriers would have to continue to abide by EU ownership rules. This would mean that in order to provide services in the EU, UK carriers would either have to be majority owned or controlled by EU-based entities (as of 29 March 2019 (EU exit day), UK shareholders will cease to count as EU investors). easyJet and Ryanair have both stated that they are considering changing their shareholding structures to ensure that they remain EU-owned for the purposes of Union rules.[34] On the other hand, International Airlines Group (IAG) has previously argued that its cross-shareholding structure of British Airlines and Iberia is compliant with EU law and thus would not require amendment.[35]

5.17 Given the dynamics of this issue (in that it has potential ramifications for operators considered to be based in the EU-27 such as Iberia), the Presidency/European Parliament compromise text would give carriers holding an operator's licence issued by a Member State—and considered in breach of EU ownership rules—six months from the date of application of the Regulation to ensure compliance.

5.18 Under Secretary of State at the Department for Transport (Baroness Sugg), wrote to the Committee on the proposal under scrutiny by way of Explanatory Memorandum on 14 January 2019. The Minister expresses the Government's desire to see a viable Regulation that is adopted in good time. On the substance of the proposal, the Minister alludes to many of the issues covered in this Report. She mentions, in particular, industry concerns regarding proposed capacity limits, the suggested exclusion—or restriction of—code sharing, and Union plans for the filing and approval of operational authorisations. The Minister does not, however, address whether the Government would reciprocate the rights—and meet the obligations—stemming from the Commission's proposal and, if it would, how these would be given effect to domestically.

5.19 As discussed above, the Minister also wrote to the Committee on 21 February 2019. In her letter, the Minister provides an update on the progress of negotiations and outlines a rough timeline for the adoption of the proposal. At Coreper on 15 February the Presidency

34 ch-aviation, 'EU to grant UK airlines 7 months to adjust after Brexit' (February 2019).

35 Same as above

obtained a mandate to open discussions with the European Parliament. The subsequent provisional agreement reached between the Romanian Presidency and the European Parliament is yet to be formally communicated in full. The Minister expects the proposal to be put to the European Parliament in plenary for approval in the week beginning 11 March and to the Council of Ministers for adoption as soon as possible afterwards.

5.20 **We thank the Minister for her Explanatory Memorandum and her letter of 21 February 2019. Given the political importance of the proposal and the speed with which it is progressing, we are grateful for the engagement of her Department with our informal enquiries and the additional information on the progress of negotiations she provided in her most recent correspondence.**

5.21 **On the substance of the proposal, we seek the Government's view of the 'level playing field' rules provided for under the draft Regulation, in particular, the competition law provisions that the UK would likely have to comply with. By way of example, we would be interested to know whether the Government considers Article 2(6) of the draft Regulation to be sufficiently precise to include EU competition legislation such as Regulation (EC) No 868/2004 (on protecting EU airlines competing against third country carriers).**

5.22 **Regarding the Government's domestic preparations for the continuation of air services between the UK and EU in the event of a no-deal Brexit, we seek answers to the following questions:**

- **If the proposal under scrutiny is adopted, would the Government reciprocate the rights and—meet the obligations—stemming from the Regulation and, if it would, how would these be given effect to domestically (e.g. by way of legislation or administrative methods); and**
- **If the proposal is not adopted—and the Government pursues bilateral ASAs with EU Member States—would these be new agreements or would they be updates to the 25 extant agreements currently in existence.**

5.23 **As negotiations on the proposal are moving quickly, we request a response to our questions by 13 March 2019. We would also be grateful for an update on the current state of play of those parts of the proposal relating to: cooperative marketing arrangements, in particular, code sharing; ownership rights; and the filing and approval of operational authorisations.**

5.24 **We retain the proposal under scrutiny and draw it to the attention of the Transport Committee.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council on common rules ensuring basic air connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union: (40306), 15788/18, COM(18) 893.

Previous Committee Reports

None.

6 Connected vehicles: future communication standards

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Transport Committee
Document details	Commission Delegated Regulation (EU) /... of XXX supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the deployment of and operation use of cooperative intelligent transport systems.
Legal base	Articles 6 and 7 of Directive 2010/40/EU (the Intelligent Transport Systems Directive); —
Department	Transport
Document Number	(40329), Unnumbered

Summary and Committee's conclusions

6.1 The proposal under scrutiny would supplement—by way of delegated act—Directive 2010/40/EU (the Intelligent Transport Systems Directive (also known as the 'ITS Directive')).[36]

6.2 The ITS Directive is described by the Commission as providing a legal and policy framework for the accelerated deployment of intelligent transport solutions across Europe. The Directive focuses, in particular, on intelligent transport systems for road. The ITS Directive defines intelligent transport systems as:

> … advanced applications which without embodying intelligence as such aim to provide innovative services relating to different modes of transport and traffic management and enabled various users to be better informed and make safe, more coordinated and 'smarter' use of transport networks.[37]

6.3 At the level of the end user, intelligent transport systems are currently deployed across developed economies in various forms. Examples include the EU's 'eCall' initiative (which requires new cars to be fitted with approved products that automatically contact emergency services—via voice and data cellular connection—in the event of a serious accident),[38] automatic road enforcement technologies (e.g. red-light cameras), variable speed limit and dynamic traffic light systems, and vehicle and infrastructure collision avoidance technologies.

36 Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport.

37 Recital 3 to the ITS Directive.

38 See European Commission, 'The interoperable EU-wide eCall'. (accessed 15 February 2019).

6.4 The proposed delegated act would provide a legal basis for the deployment of 'cooperative' intelligent transport systems in Europe. Cooperative intelligent transport systems (or C-ITS) enable vehicles to interact directly with each other and surrounding road infrastructure. To date, C-ITS has seen fruition in applications that warn motorists of oncoming traffic at right turns, alert pedestrians to approaching cars and provide drivers with real-time information of accidents on route to their destination. These technologies—and others—fall into four main C-ITS categories: 'vehicle-to-vehicle' (V2V), 'vehicle-to-infrastructure' (V2I), 'infrastructure-to-infrastructure' (I2I) and 'vehicle-to-everything' (V2X).

6.5 According to the Commission, the benefits of C-ITS span a range of areas and include improved road safety, reduced congestion and greater transport efficiency. The Commission argues that in order to reap the full benefits of C-ITS—and to avoid potential negative effects—regulation is needed. The delegated act under consideration would introduce legal requirements at EU-level covering C-ITS interoperability (to ensure everybody—cars and infrastructure—is able to 'talk' to everybody) and compatibility (to ensure everybody remains able to talk to everybody). Without action, the Commission suggest that the deployment of C-ITS would "remain fragmented, uncoordinated and incapable of ensuring the geographical continuity of C-ITS services throughout the EU and its external borders".[39]

6.6 The envisaged delegated act is focussed on so-called 'day-1' services (those to be deployed in the short term that are focussed on road safety and traffic efficiency). The legal framework provided by the proposal would set: standards and specifications for communication technologies employed in new C-ITS applications (i.e. V2V, V2I, I2I and V2X); security and privacy criteria; and introduce conformity assessment procedures (which would have to be followed for C-ITS products to be placed on the market).

6.7 The communication standards and specifications proposed for C-ITS applications have received a significant amount of attention from stakeholders. By way of analogy, this part of the proposal covers the 'language' that, for example, cars and road-side infrastructure would use to 'talk' to each other. The Commission has suggested that for short-range communications—those used for time-critical services—a standard known as ITS-G5 should be used. ITS-G5 is best understood as a Wi-Fi-based technology (which is commonly used for the transmission of wireless internet for home and commercial purposes). For longer-range communications—specifically for less time-critical V2I services—the Commission is proposing to designate cellular 3G and 4G technologies (those used by mobile telephones to make calls and transmit data).

6.8 This choice—of Wi-Fi for one set of communications and 3G/4G for another—has caused considerable disquiet amongst industry groups, specifically, those representing cellular network service providers and equipment manufacturers.[40] This is because the Commission's proposal omits to include LTE-V2X—a cellular-based short-range communications technology—and 5G (the latest generation of cellular mobile communications technologies). Although only recently new to market and not yet commercially available, 5G is capable of being used for both short-range and long-range

39 Section 2.2 of the explanatory memorandum accompanying the Commission's proposal.

40 By way of example, see 5GAA, 'Executive Summary of 5GAA Board Feedback on the C-ITS Delegated Regulation' (January 2019).

C-ITS applications. The Commission justifies the omission of LTE-V2X and 5G on the basis that neither have reached sufficient levels of maturity and commercialisation to warrant inclusion.

6.9 With this in mind, a review clause is provided at Article 33 of the proposal to facilitate the inclusion and approval of new technologies such as LTE-V2X. Industry groups, however, have expressed concerns that the envisaged review process would be slow and subject to the politics of stakeholder participants.[41] It is worth noting that participation in the CIT-S 'Experts Group'—who would have an influence on such decisions—is restricted to representatives who fall within the scope of the draft Regulation, in effect, excluding LTE-V2X and 5G interest groups.

6.10 The Commission's approach to selecting communication standards/specifications has been questioned by cellular service providers/equipment suppliers and car manufacturers. They point to the Commission's commitment—made prior to the publication of the draft delegated act—to technology neutrality, open competition and ensuring a future-proof approach towards the development of C-ITS.[42] In its present form, the Commission's proposal freezes-out LTE-V2X and 5G in favour of a mix of ITS-G5 and 3G/4G technology. Stakeholders argue that LTE-V2X is market-ready and, moreover, provides a bridge to the adoption of next generation, 5G-based, technologies.[43]

6.11 Concerns have also been raised that the Commission's interoperability requirements would require LTE-V2X and 5G-based technologies to be compatible with those utilising ITS-G5.[44] As currently drafted, a 'mutual' interoperability obligation is not placed on ITS-G5. In other words, ITS-G5 applications will not have to ensure compatibility with LTE-V2X or 5G. A well-supported view forwarded by the 5GAA automobile alliance—a cross-industry organisation representing automotive, technology and telecommunications companies—is that such an approach would result in technology and industry lock-in; stifling competition.[45] Without a full impact assessment, which the Commission has not provided, it is difficult to test this and other opinions fully.

6.12 From a legal perspective, the understanding of 'interoperability' advanced by the Commission is somewhat limited; especially when considered in light of its definition in the ITS Directive. In accordance with Article 4(2) of the Directive, interoperability is defined as "… the capacity of systems and… underlying business processes to exchange data and to share information and knowledge". This definition is not restricted to communication technologies and, as such, can be viewed as extending to other situations, however, the Commission's explanatory memorandum focuses almost exclusively on the perceived difficulties of reconciling ITS-G5 with LTE-V2X and 5G. A prime example is the definition of interoperability forwarded in section 3.3 as "the need to ensure that everybody is able to talk to everybody". Against the ITS Directive definition, interoperability would include scenarios where, for example, some users have enabled C-ITS and others have not. Such incomplete uptake would not be due to competing communication protocols

41 ibid pp 3.
42 See, for example, PSA Groupe, 'Groupe PSA feedback on C-ITS Consultation' (February 2019) pp 1.
43 See 5GAA (n 5) pp 3.
44 By way of example, see Vodafone, 'Vodafone's response to the European Commission consultation on specifications for the provision of cooperative intelligent transport systems (C-ITS)' (February 2019) pp 9.
45 See (n 5) pp 2.

but rather a choice on the behalf of some road users not to participate. This consideration and, moreover, whether the Commission wishes to mandate the use of C-ITS for enabled vehicles/applications, is not addressed.

6.13 Some of these concerns, specifically, on the selection of communications technologies and the operation of the proposed Article 33 review clause, are recognised in the Government's Explanatory Memorandum of 29 January 2019.

6.14 The Commission's proposal is also unclear on the approach that will be adopted toward the protection of C-ITS users' privacy. In its fundamental rights analysis, the Commission refers to the Article 29 working party established under the Data Protection Directive and their opinion of October 2017 (on the lawful processing of personal data in the filed C-ITS). In its opinion, the Article 29 working party suggested that "in any of the selected legal bases, the default setting of all installed C-ITS functionality must be switched off".[46] This is not mentioned in the explanatory memorandum nor is provision made in the draft delegated act requiring vehicle-based C-ITS equipment to be disabled by default. On a linked point, Recital 29 of the draft act notes that the European Data Protection Supervisor has been consulted but fails to provide the date on which they issued an opinion (which it appears they have not).

6.15 Further substantive questions also remain as to the security and homologation arrangements proposed under the act. With regard to security, the delegated Regulation puts in place measures to ensure the authenticity and integrity of messages exchanged between C-ITS stations (e.g. vehicles and road-side infrastructure). Under Chapter V of the proposal, the Commission is to assume a number of security-related responsibilities—such as managing the authorisation of security certificates—until such a time as a dedicated entity can be established. No further information is provided on the timeframe or process for the creation of such bodies. The same is also true of the body that will be responsible for homologation—or approval—of C-ITS stations (as per Recital 15 to the Regulation).

6.16 Minister of State at the Department for Transport (Jesse Norman MP), wrote to the Committee—on the proposal under scrutiny—by way of Explanatory Memorandum on 29 January 2019. This was after Committee staff requested officials at the Department for Transport ensured it was deposited. The Minister appears to be broadly supportive of the proposal, however, no explicit endorsement is provided. In terms of the potential implications of the proposal for UK transport law and policy, the Minister provides a somewhat limited assessment. He does state, however, that due to the limited rollout of C-ITS on the UK's strategic road network work, the immediate financial implications of ensuring conformity with the Regulation are limited. This may be the case but the future deployment of C-ITS will have significant financial implications for Government agencies such as Highways England. The potential costs of the proposal should, therefore, not be underestimated.

6.17 With regard to the UK's pending withdrawal from the EU, the Minister states that:

> If [the] proposed Delegated Regulation does not, or may not, apply to the UK, the implications are that UK C-ITS deployments may not comply with

46 Article 29 Data Protection Working, 'Opinion 03/2017 on Processing personal data in the context Cooperative Intelligent Transport System (C-ITS)' (October 2017) pp 13.

> its requirements and therefore may not be interoperable with the European deployments. This could slow down the deployment of C-ITS in the UK if no action was taken.

This appears to point towards the possibility of the UK 'mirroring'—or at least providing for—C-ITS standards and specifications set by the EU irrespective of whether the draft Withdrawal Agreement is ratified. Given the short timeframe proposed for the adoption of the act (and its application date of 31 December 2019), if the draft Withdrawal Agreement is ratified, the Regulation will be binding on the UK.[47]

6.18 It is not clear, however, how the act would be given effect to. This is because the Government has laid a statutory instrument (SI) under Section 8(1) of the EU (Withdrawal) Act 2018 (EUWA) to revoke all Decisions, Implementing Decisions and Delegated Regulations made under the ITS Directive.[48] The Explanatory Memorandum to the Intelligent Transport Systems (EU Exit) Regulations 2018 justifies this revocation on the basis that the obligations these acts give rise to can "continue to be met by administrative measures".[49] As highlighted by the Secondary Legislation Scrutiny Committee such measures are yet to be developed.[50] Consequently, the Committee recommended that the SI be subject to the affirmative resolution procedure.[51]

6.19 It is unclear why the Government would choose to revoke these acts only to give effect to them via alternative means. Furthermore, uncertainly exists as to whether they will be given effect to in their entirety—as they are currently—or whether only parts will be retained. This situation could have major implications for businesses and individuals. One of the guiding principles of the EUWA was to provide legal certainty; something the Government's SI potentially undermines. A question therefore arises as to how, if agreed, and the UK enters into a transitionary period with the EU, the proposal will be given effect to domestically.

6.20 **We thank the Minister for his Explanatory Memorandum of 29 January 2019. The Committee seeks the Government's views and opinions on a number of issues relating to the substance of the proposal and, in light of recent domestic legislative developments, its plans, if adopted, for implementation.**

6.21 **The Committee seeks the Government's view on whether the proposed Directive is necessary. The Commission has explained that without legal regulation of C-ITS—in order to set standards and specifications—deployments would "remain fragmented, uncoordinated and incapable of ensuring the geographical continuity of C-ITS services throughout the EU and its external borders". On the other hand, stakeholders such as PSA Groupe have argued that given the rapid development of C-ITS and, in particular, that of associated communications technologies, regulation should be considered carefully.**

47 The Regulation will not be subject to the exemptions to the applicability of EU law provided for in Article 127(6) of the draft Withdrawal Agreement.

48 The Intelligent Transport Systems (EU Exit) Regulations 2018.

49 Explanatory Memorandum to The Intelligent Transport Systems (EU Exit) Regulations 2018.

50 Secondary Legislation Scrutiny Committee, Ninth Report of Session 2017–19, Proposed Negative Statutory Instruments under the European Union (Withdrawal) Act 2018, HL Paper 251, para 4.

51 Ibid.

6.22 **On a linked point, if regulation is deemed necessary, we seek the Government's views on the legal act suggested. There are clear limits inherent in the use of delegated acts, including, but not limited to, the short timeframe for adoption, the restricted involvement of Member States and, by extension, the ability of stakeholders to make representations to lawmakers. At first blush, this process does not appear appropriate for a measure that would set the standards against which road transport will be required to operate in the future.**

6.23 **On the substance of the proposal, we ask the Government to outline its position on the following issues:**

- **the Commission's choice to omit LTE-V2X and 5G from scope of the proposal in favour of ITS-G5 and 3G/4G. We are interested, in particular, to hear the Government's views on alternative proposals to include LTE-V2X as a bridge towards the future adoption of 5G;**
- **concerns that the proposed interoperability requirements would require LTE-V2X and 5G-based technologies to be compatible with those utilising ITS-G5. As currently drafted, the proposal does not place a 'mutual' interoperability obligation on ITS-G5. In other words, ITS-G5 applications will not have to ensure compatibility with LTE-V2X or 5G;**
- **the Commission's understanding of interoperability and whether this should be more clearly restricted to cover communications technologies or, alternatively, further effort made to cover other scenarios, for example, where some vehicles have C-ITS enabled—whether by default or user choice—and others do not; and**
- **the Commission's fundamental rights assessment and the lack of consideration or, indeed, provision for, the opinion of the Article 29 working party—established under the Data Protection Directive—of October 2017 on the lawful processing of personal data in the filed C-ITS.**

6.24 **We recognise the concerns raised by the Government regarding the lack of clarity in the Commission's security and homologation proposals, in particular, relating to the timeframe and processes suggested for establishing responsible bodies. We therefore request that the Government keep the Committee updated regarding developments in both of these areas.**

6.25 **Turning to recent legislative developments, we seek clarity on the Government's plans, if adopted, for the implementation of the proposal. This is in light of its intention to revoke all existing legislative acts made under the ITS Directive—via section 8(1) of the EU (Withdrawal) Act 2018—and to give each effect via "administrative measures". We ask, therefore, whether, in the event of the draft Withdrawal Agreement being ratified, the proposed Regulation will be given effect to by way of the ITS Directive. If this is not the Government's plan, we request further information on how the proposal will be given effect to. We are interested, in particular, in the "administrative measures" that would be utilised and whether the Regulation would be given effect to in full and, if it not, which parts would be omitted and why.**

6.26 **We note the Minister's mention of the national C-ITS pilot—the A2/M2 London to Dover Connected Vehicle Corridor—in his Explanatory Memorandum. We request a summary of those parts of the UK's strategic road network that currently support—whether at trial stage or otherwise—C-ITS technology and, furthermore, any future plans for its deployment.**

6.27 **Pending satisfactory answers to the questions raised above and our requests for further information being adequately met, we retain the proposal under scrutiny. Given the suggested timeframe for the adoption of the proposed act, we request a response to our enquiries by 20 March 2019.**

6.28 **We draw this report to the attention of the Transport Committee.**

Full details of the documents

Commission Delegated Regulation (EU) /... of XXX supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the deployment of and operation use of cooperative intelligent transport systems: (40329), Unnumbered.

Previous Committee Reports

None.

7 Negotiating mandates for EU-US trade talks

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Exiting the EU, Foreign Affairs and International Trade Committees
Document details	(a) Recommendation for a Council Decision authorising the opening of negotiations of an agreement with the US on the elimination of tariffs for industrial goods (b) Recommendation for a Council Decision authorising the opening of negotiations of an agreement with the US on conformity assessment
Legal base	(a) Articles 207(3), 207(4), 218(3) and 218(4) TFEU, QMV (b) Articles 207(3), 207(4), 218(3) and 218(4) TFEU, QMV
Department	International Trade
Document Numbers	(a) (40336), 5459/19 + ADD 1, COM(19) 16; (b) (40335), 5461/19 + ADD 1, COM(19) 15

Summary and Committee's conclusions

7.1 The EU and US jointly account for around half of global GDP and a third of global trade flows.[52] Whilst negotiations for an ambitious EU-US trade and investment deal (known as the 'Transatlantic Trade and Investment Partnership' or 'TTIP') stalled in 2016, Commission President Juncker and US President Trump agreed to launch a new phase in EU-US trade relations on 25 July 2018. The EU-US Joint Statement identifies five areas of potential further engagement:

- reciprocal liberalisation of trade in (non-auto) industrial goods;
- exploration of trade facilitating actions in a number of identified sectors (services, chemicals, pharmaceuticals, medical devices and soybeans);
- closer cooperation on standards;
- strategic cooperation on energy issues, including recognition of the goal of increasing EU imports of liquefied natural gas (LNG) from the US as a contribution towards improved energy supply diversification; and
- WTO reform and cooperation to address global challenges of unfair trading practices, including intellectual property theft, forced technology transfer, industrial subsidies, distortions created by state owned enterprises and overcapacity.

52 See: http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/.

7.2 These new, more targeted trade discussions must be considered in the context of escalating trade tensions between these two major trading blocs since 1 June 2018, following the US's imposition of Section 232[53] additional steel and aluminium duties of 25% and 10% on EU imports. While the US claims that these measures are necessary to protect US national security, the EU is treating them as commercial safeguard measures (intended to protect US industry from foreign competition for commercial reasons) and has responded by adopting countermeasures on certain US imports, applying provisional safeguard measures to address the diversion of steel into the EU from other countries and filing a complaint before the World Trade Organisation. The US has also threatened Section 232 measures on cars and car part from the EU. In their Joint Statement, both sides agreed to "refrain from any measures that would go against the spirit of their agreement while work on this joint agenda is ongoing".

7.3 On 18 January 2019, the Commission published two draft negotiating mandates covering a) the elimination of tariffs for industrial goods; and b) conformity assessment between the EU and US. These proposals therefore relate to two of the five areas for engagement identified in the Joint Statement and require the approval by a qualified majority of EU Member States in the Council before talks can begin.

Proposed mandate on the elimination of tariffs on industrial tariffs

7.4 Industrial goods are defined as all goods other than those included in Annex 1 of the WTO Agreement on Agriculture.

7.5 The negotiating mandate also includes the objective to "reconcile the EU and US's approaches to rules of origin" (which determine how much of the value of a product must be created locally for trade preferences to apply).

7.6 As outlined in the Commission's report on the progress of trade talks with the US of 30 January 2019[54] and its explanatory memorandum accompanying the proposed mandate, the Commission states that:

- it will suspend negotiations and adopt countermeasures if the US imposes new Section 232 measures, as it considers that any additional tariffs or quotas on EU cars and car parts imposed by the US would "effectively block further progress on key elements" of the envisaged work programme;
- it reserves the right to suspend negotiations if the US adopts trade restrictions against EU exports on the basis of Section 301[55] of the Trade Act of 1974 or under any other similar US law; and
- the conclusion of negotiations on the elimination of industrial tariffs is dependent on the US lifting the additional duties imposed on EU steel and aluminium imports.

53 Section 232 of the Trade Expansion Act of 1962 "authorises the President of the United States, through tariffs or other means, to adjust the imports of goods or materials from other countries if it deems the quantity or circumstances surrounding those imports to threaten national security."

54 Interim Report on the work of the Executive Working Group dated 30 January 2019.

55 This Section refers to the US Trade Representative's (USTR) right to apply measures against "foreign acts, policies, and practices that the USTR determines either (1) violates, or is inconsistent with, a trade agreement; or (2) is unjustifiable and burdens or restricts U.S. commerce. The measure sets procedures and timetables for actions based on the type of trade barrier(s) addressed".

7.7 The Commission's economic analysis of 19 February 2019 estimates that a targeted EU-US agreement eliminating remaining tariffs on industrial goods would increase EU exports to the US by 8% and US exports to the EU by 9% by 2033, corresponding to additional gains of €27 billion and €26 billion in EU and US exports respectively.[56]

Proposed mandate on conformity assessment

7.8 Conformity assessment covers procedures such as testing, inspection and certification and other legislative requirements that need to be met in different markets/countries before a product can be put on sale. Different approaches to conformity assessment can result in lengthy and complex administrative processes and additional costs for businesses.

7.9 This proposed mandate focuses on reciprocal commitments on conformity assessments in sectors where obstacles are currently experienced (including machinery, and electrical and electronic) and sectors for which the importing party requires third party conformity assessment.

The Government's position

7.10 In his Explanatory Memorandum of 4 February 2019, the Minister of State for Trade Policy (George Hollingbery MP) states that the proposed mandates "are consistent with the UK's objectives in trade policy and with relevant wider policy goals" and that the Government will "continue to monitor the progress of negotiations closely". He further notes that the UK would be "bound" by either agreement that enters into force during an implementation/transition period, but not in the case of a no-deal exit, which would enable the UK "to independently negotiate and implement an agreement with the US".

7.11 The Minister also states that the Government has not prepared a UK impact assessment of either of the proposed negotiating mandates, but "remains committed to giving a wide range of stakeholders the opportunity to engage and contribute to [its] future trade policy and to producing impact assessments, as appropriate".

7.12 **We note that the Government is strongly supportive of these bilateral trade discussions as a means to finding a constructive resolution to rising EU-US trade tensions.**

7.13 **However, whilst the Minister maintains that "the mandates are consistent with UK interests", he provides very little detail on their expected coverage/scope, the expected timetable for their adoption, and their Brexit implications.**

Scope of the mandates

7.14 **We ask the Minister to clarify whether the products listed below are a) (likely to be) in or out of scope of the EU's proposed negotiating mandate on industrial tariffs and b) whether he supports their inclusion (or exclusion) and why:**

- **cars and cars parts, given that: the Joint Statement refers to the removal of tariffs for "non-auto industrial goods"; the Commission's Explanatory**

56 'Economic analysis confirms significant gains from EU-US industrial tariff agreement', European Commission press release, 19 February 2019.

Memorandum states that "the EU is ready to take into account potential US sensitivities for certain automotive parts"; and the European Parliament International Trade Committee's (INTA) narrowly endorsed the mandate (by 21 votes to 17, with one abstention, subject to car tariffs being included, and agriculture being excluded);[57] and

- **fish and fish products, given that these are excluded from Annex 1 of the WTO Agriculture Agreement.**

7.15 **It is also not clear how or why "the mandate [on conformity assessment] ensures a high level of protection is fully preserved". We ask the Minister to share his analysis in this regard.**

Expected timetable for the negotiations

7.16 **Whilst the Minister notes the urgency of these trade talks, there appear to be growing divergences in the EU's and US's positions. The Commission rejects the inclusion of agriculture (or other areas that might be sensitive for either side), referring to the Joint Statement in which both sides agreed to cover the removal of tariffs, non-tariff barriers and subsidies for "non-auto industrial goods". However, the negotiating objectives of USTR of January 2019 explicitly include agriculture in the tariff talks, calling into question whether the talks will get off the ground and/or whether this a tactic by the US to allow it to impose Section 232 measures on EU cars and car part imports. What is the Government's analysis of the reasons for the US's inclusion of agriculture and how this is likely to impact the negotiations?**

Brexit implications

No deal

7.17 **The Minister states that the UK would be able "to independently negotiate and implement an agreement with the US" in the case of a no-deal scenario. However, the UK's trade negotiations with each trading bloc cannot be considered in isolation as the outcomes for the future economic partnership between the UK and EU will impact any UK-US deal and vice versa. We ask the Minister to clarify whether the Government would seek to negotiate similar standalone agreements on industrial tariffs and conformity assessment with the US or incorporate them into any wider UK-US trade deal in the event of no deal.**

Withdrawal Agreement/negotiated withdrawal

7.18 **If the agreements enter into force during any transition period (in the case of a negotiated withdrawal), the UK will continue to be bound by the terms of the EU's international agreements for the duration of the transition/implementation period. However, it is not clear whether the UK will benefit from the rights. We ask the Minister to set out the Government's position on whether the US would need to agree to the UK continuing to benefit from the terms of the agreements for the duration of the transition/implementation period.**

57 European Parliament Press Release dated 19 February 2019.

7.19 **We also ask the Minister to explain whether the UK would seek continuity of the effects of these agreements post-transition/implementation period.**

7.20 **Finally, we note that the Commission recently submitted an economic analysis to the Council and European Parliament on the benefits to EU consumers and producers of eliminating all remaining tariffs between the EU and US across various sectors. If there is a negotiated withdrawal, will the Government conduct a UK-specific impact assessment to consider the full impacts of the agreements on different stakeholders, sectors and regions in the UK during the transition period (and beyond, if the Government intends to replicate them post-transition period)?**

7.21 **We ask the Minister to respond to the above questions within ten working days. In the meantime, we retain the documents under scrutiny and draw our conclusions to the Exiting the EU Committee, International Trade Committee and Foreign Affairs Committee.**

Full details of the documents

(a) Recommendation for a Council Decision authorising the opening of negotiations of an agreement with the US on the elimination of tariffs for industrial goods: (40336), 5459/19 + ADD 1, COM(19) 16; (b) Recommendation for a Council Decision authorising the opening of negotiations of an agreement with the US on conformity assessment: (40335), 5461/19 + ADD 1, COM(19) 15.

Previous Committee Reports

None.

8 Common Rules for EU Internal Gas Market

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/73/EC concerning common rules for the internal gas market
Legal base	Article 194(2) TFEU; Ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39220), 14204/17 + ADD 1, COM(17) 660

Summary and Committee's conclusions

8.1 The Commission proposed to extend its rules on the internal gas market to cover pipelines from third countries. Otherwise, such pipelines are subject to an array of differing national rules, including different rules between those EU countries through which a pipeline passes. In its original Explanatory Memorandum, the Government was supportive, noting that the proposal would be helpful to the UK post-Brexit as it would provide a ready framework for a regulatory regime applicable to both existing and future gas connectors which will enable the efficient flow of gas between the UK and EU to continue.

8.2 The backdrop to the proposal is the supply of gas from Russia to the EU through the planned "Nord Stream 2" pipeline from Russia to Germany under the Baltic Sea. This builds on the existing Nord Stream pipeline and gas routes into the EU through Ukraine. An important EU gas market rule is that ownership of gas transmission infrastructure must be separate from that of the gas supplier, a rule which could be challenging for the Russian gas operator, Gazprom. The new legislation does, however, allow derogations for existing gas pipelines and exemptions for new ones.

8.3 We last considered the proposal at our meeting of 12 September, reiterating our interest in the legal issues identified in the course of negotiations.[58] These concerned:

- the potential application of EU internal energy market rules not only to EU Member State territorial waters (0–12 nautical miles) but also to offshore waters in the Exclusive Economic Zone (EEZ) of a Member State (12–200 nautical miles); and
- the EU's competence to conclude new agreements with third countries.

58 Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 3 (12 September 2018).

8.4 The Minister of State for Climate Change and Industry (Rt Hon. Claire Perry MP) has written twice to update the Committee. In her most recent letter, of 19 February 2019, she explains that agreement was reached between the European Parliament and Council on 12 February and that Council approval is expected on 4 March. This followed an earlier letter[59] prepared before conclusion of the negotiations.

8.5 In summary, the institutions agreed that:

- EU rules need only be applied in the territory and territorial seas of Member States and so need not be applied to offshore waters in the EEZ of a Member State;
- the EU will have exclusive competence to negotiate agreements on new EU gas lines with non-EU countries, but that:
  - the Commission may authorise a Member State to open negotiations with a non-EU country, unless it considers this to be in conflict with EU law or detrimental to competition or security of supply;
  - before signing any such agreement, the member state shall notify the text of the agreement to the Commission and receive its approval before signing; and
  - a Member State must consult other affected Member States on any proposed exemptions from EU gas market rules for third country pipelines. The Commission has the right to veto the regulatory authority's decision if the stringent conditions attached to exemptions are not met.

8.6 **We note that an agreement satisfactory to all sides has been reached and we recall the Government's view that the legislation is of benefit to the UK as it withdraws from the EU. We clear the document from scrutiny and require no further information.**

Full details of the documents

Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/73/EC concerning common rules for the internal gas market : (39220), 14204/17 + ADD 1, COM(17) 660.

Previous Committee Reports

Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 3 (12 September 2018); Seventh Report HC 301–vii (2017–19), chapter 4 (19 December 2017).

59 Letter from the Rt Hon. Claire Perry MP to Sir William Cash MP dated 14 February 2019.

9 Brexit-preparedness—continuation of territorial cooperation programmes

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Northern Ireland Affairs Committee
Document details	Proposal for a Regulation of the European Parliament and of the Council in order to allow for the continuation of the territorial cooperation programmes PEACE IV (Ireland-United Kingdom) and United Kingdom-Ireland (Ireland-Northern Ireland-Scotland) in the context of the withdrawal of the United Kingdom from the European Union
Legal base	Article 178 TFEU, ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(40297), 15847/18, COM(18) 892

Summary and Committee's conclusions

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

9.2 The Commission proposed that, in the event of a "no deal" Brexit scenario, two specific programmes supporting peace and reconciliation and North-South cooperation under the Good Friday Agreement should continue. These are: the latest iteration of the PEACE Programme (known as "PEACE IV"); and the United Kingdom-Ireland INTERREG VA programme (involving Ireland, Northern Ireland and Scotland).

9.3 We first considered the proposal at our meeting of 30 January 2019, noting the Government's support in view of the joint UK-EU commitment to these programmes until the end of 2020. We waived the proposal from scrutiny, asking the Government to clarify if it had sought any changes to the wording as regards financial liabilities and, if so, whether any changes were agreed.[60]

9.4 The Parliamentary Under Secretary of State (Rt Hon. Lord Henley) explains[61] that the proposal was discussed among Member State Ambassadors (in "COREPER II") on 30 January. The UK signalled the UK's broadly support for the proposal and voted in favour after reading a statement to achieve the following objectives:

- to reaffirm the UK's continued commitment and funding for the PEACE and Interreg VA programmes to sustain vital work on reconciliation and a shared future in Northern Ireland;

60 Fifty-third Report HC 301–lii (2017–19), chapter 2 (30 January 2019).

61 Letter from the Rt Hon. Lord Henley PC to Sir William Cash MP dated 7 February 2019.

- to outline objections to the specific wording within the Regulation "The United Kingdom remains liable for its financial obligations assumed as a Member State which relate to these legal commitments of the Union" (Recital 7);
- to declare that support for the PEACE and Interreg VA programmes is entirely without prejudice to any position that the UK may subsequently take in bilateral discussions between the UK and the Union; and
- to reaffirm the UK's commitment to a future PEACE PLUS programme in the next Multi-annual Financial Framework (2021–27).

9.5 The Minister adds that all Member States supported the proposal without amendments and no further negotiation is expected between the European Council and European Parliament (EP). Adoption in the EP is expected in early March, with formal Council adoption to follow that. The Minister asks that the Committee consider either clearing the proposal from scrutiny or granting a scrutiny waiver. UK support, he says, will demonstrate the UK's commitment to these programmes in any Brexit scenario as well as the UK's support for peace and reconciliation on the island of Ireland.

9.6 **We note that the text of the Regulation has been agreed as proposed by the Commission and that the UK is supportive, but formally expressed its concern about the Recital regarding the UK's continued liabilities for its financial obligations assumed as a Member State. We consider it helpful that the UK has highlighted its concern in order that agreement to this Regulation does not prejudice future discussions on the UK's financial liabilities.**

9.7 **While the scrutiny waiver previously granted remains in place, we now clear this document from scrutiny and require no further information. We draw this chapter to the attention of the Northern Ireland Affairs Committee.**

Full details of the documents

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

Previous Committee Reports

Fifty-third Report HC 301–lii (2017–19), chapter 2 (30 January 2019).

10 Australia's accession to the WTO Government Procurement Agreement

Committee's assessment	Politically important
Committee's decision	(a) (b) Cleared from scrutiny
Document details	(a) Proposal for a Council Decision establishing the position to be taken on behalf of the European Union within the Committee on Government Procurement on the accession of Australia to the Agreement on Government Procurement; (b) Communication: Making Public Procurement work in and for Europe
Legal base	(a) Article 207 (4) TFEU, in conjunction with Article 218(9) TFEU; QMV; (b) —
Department	(a) (b) Cabinet Office
Document Number	(40054), 11926/18 + ADD 1, COM(18) 622; (39116), 13286/17, COM(17) 572

Summary and Committee's conclusions

10.1 In September 2018 the European Commission proposed a Council Decision to approve Australia's accession to the WTO Agreement on Government Procurement (GPA), following over two years of negotiations.

10.2 In a letter to the Committee on 26 September 2018,[62] which the Committee has previously considered, the Minister for Implementation at the Cabinet Office (Oliver Dowden MP) informed the Committee that due to the EU Presidency's tight timetabling to consider the Commission's proposal for a Council Decision and the fact that Parliament was in recess, it would not be possible to secure the Committee's clearance on this proposal before the decision on 9 October.

10.3 The Minister therefore informed the Committee that the Government intended to override the scrutiny reserve in order to support the proposal, as there was a risk that failure to do so would be perceived as obstructive, and the Government did not wish to appear to be delaying the accession of another country when the UK was itself seeking to accede within a tight timetable. The Committee considered this ministerial correspondence at its meeting on 10 October.

10.4 In the Minister's separate Explanatory Memorandum on the proposal,[63] the Minister indicated that Australia's final offer was acceptable, with Australia agreeing to open up its public and utilities procurement markets to the signatories of the GPA, and vice-versa. The Government's impact assessment notes that the major identifiable economic benefit may be "new opportunities for UK businesses to win public contracts in Australia which

62 Letter from the Minister to the Chair of the European Scrutiny Committee (26 September 2018).
63 Explanatory Memorandum from the Government (26 September 2018).

have, prior to Australia's accession to the GPA, not been as open to UK (and other EU) suppliers" and that "the total potential additional direct business for UK firms might be £151.8—£155.2 million per year".[64] On this basis, the Government supported the proposal.

10.5 However, the Minister also noted in his letter that Australia's coverage was "not complete", and that the EU had therefore introduced certain specific restrictions from the access to the Union procurement market with respect to Australia as the EU has done in the past for the Parties to the Agreement which offer only partial coverage. The principal restriction proposed was a reservation regarding SMEs similar to that proposed by Australia. However, the Minister added that "the small, limited number and nature of the exclusions from Australia's coverage offer [were] not significant in the context of the extensive market access commitment made in the final offer".[65]

10.6 Given that the Decision has now been adopted, and that Committee is conducting its scrutiny of the implications of EU exit for public procurement through the proposed Decision on the UK's accession to the WTO GPA,[66] it is appropriate to clear the proposal for a Decision (document (a)) as well as document b: a Communication on public procurement dating from 2017, which had been held under scrutiny in the absence of more substantive procurement files through which to the implications of Brexit for the sector could be explored.

10.7 **We have taken note of the Government's vote in support of Australia's access to the WTO Government Procurement Agreement. We accept the Minister's explanation that, due to the tight timings in the Council, and the fact that the Committee was not meeting in the week prior to the Decision being taken, it was not possible to secure clearance or a waiver in sufficient time, as well as his assessment that the UK's failure to support this decision would potentially have been perceived as obstructive and have negatively impeded the UK's own efforts to accede to the GPA. On this basis the Minister concluded that it was in the UK's interest to, exceptionally, override the scrutiny reserve, and wrote to inform the Committee of his intention to do so.**

10.8 **As the Decision was subsequently adopted, in line with the Government position, and our scrutiny of the implications of EU exit for public procurement is now taking place in relation to the UK's own application to accede to the WTO GPA, we now clear this document (a), along with a separate non-legislative Communication on improving public procurement within Europe (document (b)), from scrutiny.**

10.9 **Nonetheless, we have chosen to report on the proposal in order to place this override of the scrutiny reserve on the record and to emphasise our intention to continue to monitor carefully the importance of the issue of public procurement in the context of EU exit.**

Full details of the documents

(a) Proposal for a Council Decision establishing the position to be taken on behalf of the European Union within the Committee on Government Procurement on the accession of Australia to the Agreement on Government Procurement: (40054), 11926/18 + ADD

64 Impact Assessment (27 September 2018).
65 Letter from the Minister to the Chair of the European Scrutiny Committee (26 September 2018).
66 See Fifty-fifth Report HC 301–liv (2017–19), chapter 2 (13 February 2019).

1, COM(18) 622; (b) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Making Public Procurement work in and for Europe: (39116), 13286/17, COM(17) 572.

Previous Committee Reports

None.

11 Interoperable EU information systems for security, border control and migration management

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Home Affairs Committee and the Justice Committee
Document details	(a) Proposal for a Regulation establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration) (b) Proposal for a Regulation establishing a framework for interoperability between EU information systems (borders and visas)
Legal base	(a) Articles 16(2), 74, 78(2)(e), 79(2)(c), 82(1)(d), 85(1), 87(2)(a) and 88(2) TFEU, ordinary legislative procedure, QMV (b) Articles 16(2), 74, 77(2)(a), (b), (d) and (e) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(a) (39366), 15729/17 + ADDs 1–3, COM(17) 794 (b) (39368), 15119/17 + ADDs 1–3, COM(17) 793

Summary and Committee's conclusions

11.1 These Regulations, proposed in December 2017, are intended to close the information gaps and "blind spots" which hinder effective cross-border security cooperation by making existing and planned new EU information systems in the field of migration, border control and security interoperable so that information on cross-border security threats and irregular migration can be shared more rapidly. The Government has decided to participate in the first proposed Regulation on the interoperability of EU asylum and law enforcement information systems,[67] document (a), which covers two existing EU information systems in which the UK takes part (the Eurodac asylum database and the police cooperation parts of the Schengen Information System—"SIS II") and one new EU information system on which negotiations have recently concluded (the European Criminal Records Information System for Third Country Nationals—ECRIS-TCN).

11.2 The second proposed Regulation on the interoperability of EU border control and visa information systems, document (b), covers existing or proposed new EU information systems in which the UK is unable to participate as they are based on parts of the Schengen rule book dealing with border control and visas which do not apply to the UK. These

67 See the letter of 30 May 2018 from the Minister for Policing and the Fire Service (Rt Hon. Nick Hurd) informing the Chair of the European Scrutiny Committee of the Government's decision.

are the border control provisions of SIS II, the Visa Information System (VIS), the EU Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS).

11.3 The proposed Regulations would establish a framework for interoperability based on four key elements:

- a **European search portal** which would operate as a "one-stop shop", enabling authorised users to carry out a simultaneous search of multiple EU information systems (as well as relevant Interpol systems and Europol data) using both biographical and biometric data;
- a **shared biometric matching service** which would use biometric data (fingerprints and facial images) to discover links between information on the same person held in different EU information systems;[68]
- a **common identity repository** which would contain biographical and biometric information on third country nationals whose data are recorded in Eurodac, VIS and (in the future) the EES, ETIAS and ECRIS-TCN, providing a quick and efficient means of checking identity; and
- a **multiple identity detector** which would check whether identity data exist in different EU systems and help combat identity fraud.

11.4 Our earlier Reports listed at the end of this chapter provide a detailed overview of the proposed Regulations, the concerns we have raised and the Government's position.

11.5 The Commission anticipates that it may take until the end of 2023 to develop and test all the technical components needed to make EU border, migration and security information systems interoperable.[69] The new interoperability framework is therefore unlikely to be up and running before the end of the transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement. The Government nonetheless supports the aims of the proposed Regulations which it says should "prevent incorrect or fragmented data amongst JHA [justice and home affairs] databases and improve their efficiency and usage by law enforcement". It considers that the UK's participation in document (a) should "maximise the benefits to the UK from access to these databases", even though it is not yet clear whether the UK will retain access to EU databases post-exit.[70]

11.6 The Council agreed a general approach on the proposed Regulations in June 2018 (the UK abstained), paving the way for trilogue negotiations with the European Parliament. Responding to our concern that the provisions in the proposed Regulations on cooperation with third (non-EU) countries were highly restrictive,[71] the Minister for Policing and the

68 This service would not apply to the European Travel Information and Authorisation System—ETIAS—as it will not contain biometric data.

69 See the timeframe set out on p.96 of the Commission's legislative financial statement attached to document (a).

70 See the Written Ministerial Statement issued by the Minister for Policing and the Fire Service (Mr Nick Hurd) on 5 June 2018.

71 Article 48 of the original Commission proposals provides: "Personal data stored in or accessed by the interoperability components shall not be transferred or made available to any third country, to any international organisation or to any private party [...]".

Fire Service (Rt Hon. Nick Hurd MP) told us that the UK had repeatedly raised this issue in negotiations and advocated the inclusion of provisions similar to those contained in the Eurojust Regulation on the sharing of "operational personal data".[72]

11.7 In his letter of 28 November 2018, the Minister conceded that the trilogue process was unlikely to deliver the changes sought by the Government, noting that there was "no appetite to lift the absolute bar on sharing with third countries" and that "any ongoing access to the interoperability components or the underlying systems [would] form part of our negotiations for our future relationship". Whilst indicating that there would be "no specific operational impact" if the UK were unable to access the interoperability system, he recognised that loss of access to the underlying EU information systems in the event of a "no deal" exit would harm security cooperation between the EU and the UK "in terms of the quality and quantity of information sharing" and reduce data flows in both directions.

11.8 A Council press release issued on 5 February 2019 announced that the Council and European Parliament had reached a provisional agreement on both proposed Regulations. The European Commission has greeted the compromise deal as delivering on "a quintessential piece of our security infrastructure", providing frontline police and border guards with the tools they need to protect EU citizens. According to the European Commissioner for the Security Union (Sir Julian King), the new interoperability framework "is not about creating one big database or collecting more data but using existing information in a smarter and more targeted way to help law enforcement do their job, all while fully respecting fundamental rights".[73]

11.9 In his letter of 12 February 2019, the Minister says that the trilogue negotiations have resulted in an erosion of the operational benefits originally envisaged by the High Level Expert Group set up in 2016 to advise the European Commission on the interoperability and interconnection of information systems and data management for border management and security.[74] He highlights police access as a particular concern:

> This was a key part of the value of the system to the UK. The trilogue negotiations have added additional conditionality and restrictions on how and when police use the system to identify individuals and for investigative purposes. For example, in the Council text, the cascade system was to be removed, allowing police to quickly and efficiently check Eurodac in the course of their investigations. This system has been retained in the text resulting from trilogue negotiations.[75]

11.10 The Minister nonetheless accepts that the interoperability framework that has emerged from the trilogue process will retain some of the "core functionality" originally envisaged by the High Level Expert Group and the European Commission:

> It will still link together data in ECRIS-TCN, Eurodac and SIS II. It will also provide a single search portal to check these systems and some Europol databases. It should provide asylum officials [with] a greater dataset when checking the identity of asylum seekers.

72 See the Minister's letter of 28 August 2018 and letter of 18 October 2018 to the Chair of the European Scrutiny Committee.

73 See the press release issued by the European Commission on 5 February 2019 and fact sheet.

74 The High Level Experts' final report was published in May 2017.

75 The cascade system means that police authorities would first have to exhaust other means of establishing identity before being able to query information held in Eurodac.

11.11 He anticipates that both Regulations will be formally adopted during the current legislative term, ahead of the European Parliament elections in May, and sets out the next steps:

> I understand that the Presidency will seek political agreement on both texts first at COREPER on 13th February followed by Council approval at the JHA [Justice and Home Affairs] Council in March or April depending on the time needed for lawyer linguist revisions. In parallel the EP's LIBE [Civil Liberties] committee will vote on either the 18th or 19th of February, and the plenary vote will likely be scheduled for April with adoption as soon as possible thereafter. I understand that most other Member States will also support this text.

11.12 Whilst acknowledging the political imperative for the swift adoption of both Regulations, the Minister underlines the importance of the legislation being effective. As the final compromise texts do not meet the Government's expectations and, he suggests, will be of "significantly less value to Member States than the original ambitions", the UK will abstain when the Regulations are brought to a vote in Council. The Government intends to make a statement setting out its aspiration for "further work to regain some of the ambition in future legislation in this area".

Our Conclusions

11.13 **We note the Government's concern that the compromise reached by the Council and the European Parliament would erode some of the operational benefits which interoperable information systems are intended to bring, not least speed of access to data held in some of these systems, and its intention to place on record its disappointment at the lack of ambition in the final agreed texts. We understand the Government's reasons for deciding to abstain when the Regulation in which it has chosen to participate—document (a)—is brought to the Council for a vote.**

11.14 **As there is no prospect of securing further changes, we clear both Regulations from scrutiny. In doing so, we note that no ground has been given to the UK in its efforts to secure more favourable provisions on third country access to personal data obtained through the new interoperability framework. As we have indicated in our earlier Reports, this does not bode well for future EU/UK security cooperation if the UK leaves the EU without a withdrawal agreement or if there is a gap between any post-exit transition period ending and a new agreement on data sharing in the criminal justice and law enforcement field taking effect. We draw this chapter to the attention of the Home Affairs Committee and the Justice Committee.**

Full details of the documents

(a) Proposal for a Regulation establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration): (39366), 15729/17 + ADDs 1–3, COM(17) 794; (b) Proposal for a Regulation establishing a framework for interoperability between EU information systems (borders and visas)

and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399 and Regulation (EU) 2017/2226: (39368), 15119/17 + ADDs 1–3, COM(17) 793.

Background

11.15 The proposed Regulations encompass six centralised EU information systems, of which three (Eurodac, SIS II and VIS) are already operational and three are under development (the EES, ETIAS and ECRIS-TCN). With the exception of SIS II, the remaining five information systems are "exclusively focussed on third country nationals", meaning that post-exit, they will include the data of British citizens.[76] A new EU Agency—eu-LISA—was set up in 2012 to oversee the operational management of large scale justice and home affairs information systems and will be responsible for making the systems interoperable.[77] Each system has its own founding instrument which contains detailed rules on the information that can be stored in each database, the purposes for which it may be used, and data protection requirements. Currently, the systems cannot communicate with one another through the exchange of data or sharing of information unless their founding instruments allow them to do so.

11.16 The table shows which of the existing or recently agreed EU information systems are open to UK participation.

Information system	Schengen or non-Schengen	UK position
Visa Information System "VIS"	Schengen	UK excluded
Schengen Information System "SIS II "(border control component)	Schengen	UK excluded
Schengen Information System "SIS II" (police cooperation)	Schengen	UK participates
EU Entry/Exit System "EES"	Schengen	UK excluded
European Travel Information and Authorisation System "ETIAS"	Schengen	UK excluded
Eurodac	Non-Schengen	UK participates
European Criminal Records and Information System—extension to third country nationals "ECRIS-TCN"	Non-Schengen	UK participates

76 See p.5 of the Commission's explanatory memorandum on document (a).

77 See Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, as amended by Regulation (EU) No 603/2013 establishing Eurodac..

Previous Committee Reports

Forty-seventh Report HC 301–xlvi (2017–19), chapter 2 (5 December 2018), Forty-fourth Report HC 301–xliii (2017–19), chapter 9 (14 November 2018), Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 22 (12 September 2018), Thirty-fifth Report HC 301–xxxiv (2017–19), chapter 5 (11 July 2019) and Sixteenth Report HC 301–xvi (2017–19), chapter 9 (28 February 2018).

12 Tightening EU rules on explosives precursors

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Regulation on the marketing and use of explosives precursors
Legal base	Article 114 TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(39653), 8342/18 + ADDs 1–3, COM(18) 209

Summary and Committee's conclusions

12.1 The proposed Regulation would tighten controls on "explosives precursors"—chemical substances that have a legitimate purpose but can also can be used in home-made explosives—to keep pace with the evolving security threat. The aim is to strike a balance between freedom of movement within the internal market and public safety and security. The changes proposed would further restrict access to explosives precursors and clarify the rights and obligations of those involved in the supply chain. It would distinguish between ordinary members of the public, who would require a licence to purchase restricted explosives precursors above a specified concentration limit, "professional users" who need the substances for their own trade, business or profession, and "economic operators" who trade in them. Professional users would not require a licence but would have to explain the purpose for which restricted explosives precursors were to be used. This information would be available to national law enforcement and inspection authorities. Our earlier Report agreed on 23 May 2018 provides further details of the proposed changes.

12.2 In his Explanatory Memorandum of 14 May 2018, the Minister for Security and Economic Crime (Rt Hon. Ben Wallace MP) indicated that the Government broadly welcomed the changes proposed by the European Commission but expressed concern that an expansion in the number of restricted substances that could only be supplied to a licence-holding member of the public and the introduction of maximum concentration limits for certain restricted substances might have "a significant impact on a small number of members of the public who would be prevented in some cases from being able to participate in their hobbies".

12.3 The Government's Impact Assessment revealed that the main benefits of the proposed Regulation would be "the reduced risk of the misuse of explosives precursors and the enhanced likelihood of detection and deterrence, increasing the security of the UK public", whilst the main costs would be "social rather than financial, due to the relatively small number of people directly impacted". The greatest impact and most significant social cost would fall on a relatively small number of "hobbyists" as further restrictions on nitromethane (used in drag car racing) and on various chlorates/perchlorates (used in pyrotechnics), as well as the lack of viable alternative chemicals, would mean that they

would no longer be able to pursue their hobbies. The Government therefore intended to "actively seek amendments" to maintain the UK's ability to issue individual users with licences for these substances if supplied in a concentration exceeding a maximum limit value.[78]

12.4 In his letter of 23 October 2018, the Minister told us that changes made to the proposed Regulation during negotiations within the Council included "a combined definition for professional users and farmers in order to demonstrate an on-going professional status and requirement for the chemicals for business or professional purposes". Checks throughout the supply chain and at point of sale had also been strengthened:

> The amendments also now propose that an economic operator shall request the name, address and proof of identity of the prospective customer. This is in addition to requesting the trade, business or profession and the intended use of the chemical from the prospective customer, making the process more robust.

12.5 We shared the Government's concern that some of the proposed restrictions on explosives precursors would have a disproportionate impact on a small number of members of the public who pose little or no risk to public safety and security. We noted the Government's intention to seek amendments that would enable the UK to continue licensing these chemical substances where appropriate and the possibility that the proposed Regulation might be brought to the Council for a vote before the end of the Austrian Presidency (December 2018). Given that the degree of support for the changes sought by the Government, and the outcome of negotiations within the Council, remained uncertain, we were unwilling to clear the proposed Regulation from scrutiny but granted a scrutiny waiver so that the Government had the flexibility to support the proposed Regulation if it was able to secure the changes it sought. We asked the Minister to report back to us on the outcome of the Council meeting.

12.6 In his letter of 5 February 2019, the Minister tells us that the proposed Regulation was considered at a meeting of Member States' ambassadors to the EU (COREPER) on 12 December 2018 and a mandate agreed to begin negotiations with the European Parliament on a final compromise text. The UK voted to support the negotiating mandate as it addressed "almost all our key priorities". He explains that the Government was partially successful in securing the changes it sought to make the proposed Regulation more proportionate for UK citizens. Nitromethane at a higher concentration than originally envisaged in the Commission's proposal would be available to those holding a licence, and the Government would continue to press for a similar outcome on chlorates/perchlorates.

12.7 Home Office officials have since informed us that trilogue negotiations concluded on 4 February 2019. Despite the Government's efforts, the provisional text agreed does not permit the licensing of chlorates/perchlorates at the higher weight concentration sought by the UK. The Government nonetheless considers the final text to be "very positive" for the UK. COREPER approved the compromise text on 14 February 2019 (with the UK abstaining as the proposed Regulation remains under scrutiny) and the Council is expected formally to adopt the Regulation ahead of European Parliament elections in

78 See the Minister's letter of 23 October 2018 to the Chair of the European Scrutiny Committee.

May 2019. As the Regulation will apply 18 months after its formal adoption and entry into force, it may well form part of EU law applicable in the UK during any post-exit transition/implementation period agreed in negotiations on the UK's withdrawal from the EU.

Our Conclusions

12.8 **We recognise that the Government has secured most of its negotiating objectives and accept the Minister's assurance that the impact of the restrictions on chlorates/perchlorates will be small when compared with the wider security benefits of tighter controls on explosives precursors. We are now content to clear the proposed Regulation from scrutiny. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents

Proposal for a Regulation on the marketing and use of explosives precursors, amending Annex XVII to Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013 on the marketing and use of explosives precursors: (39653), 8342/18 + ADDs 1–3, COM(18).

Previous Committee Reports

Forty-fourth Report HC 301–xliii (2017–19), chapter 10 (14 November 2018) and Twenty-ninth Report HC 301–xxviii (2017–19), chapter 8 (23 May 2018).

13 UK participation in the Schengen rule book

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Home Affairs Committee
Document details	(a) Proposal for a Regulation on the creation of a European network of immigration liaison officers (recast) (b) Proposal for a Council Decision concerning the notification of the United Kingdom of its wish no longer to take part in some of the provisions of the Schengen *acquis* which are contained in Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers network
Legal base	(a) Articles 74 and 79(2) TFEU, ordinary legislative procedure, QMV (b) Article 5(3) of Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union, QMV
Department	Home Office
Document Number	(a) (39717) 9036/18 + ADDs 1–2, COM(18) 303 (b) (40354), 5939/19, COM(19) 23

Summary and Committee's conclusions

13.1 EU Member States currently deploy around 500 Immigration Liaison Officers ("ILOs") to 105 third (non-EU) countries.[79] Since 2004, these ILOs have operated as part of local or regional networks, with meetings convened and coordinated by the Member State holding (or acting as) the Presidency of the EU Council.[80] In recent years, their numbers have been supplemented by European Migration Liaison Officers ("EMLOs") deployed by the Commission in 13 priority countries and by officers from the EU's European Border and Coast Guard Agency (formerly Frontex).[81]

13.2 The European Commission considers that the networks established in 2004 do not ensure "optimal utilisation" of the "operational expertise, first-hand knowledge and contacts in third countries" obtained by ILOs.[82] Its proposal for a Regulation—document (a)—would expand the networks to include EMLOs deployed by the Commission and EU Agencies, improve the exchange of information and ensure that the networks contribute more effectively to the EU's migration policy priorities through the creation of a new Steering Board on which each Member State, the Commission, the European Border and

79 17 EU Member States, plus Switzerland and Norway, deploy ILOs.

80 See Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers network, as amended by Regulation (EU) 493/2011.

81 EMLOs are deployed in Ethiopia, Jordan, Lebanon, Mali, Morocco, Niger, Nigeria, Pakistan, Senegal, Serbia, Sudan, Tunisia and Turkey.

82 See pp 2–5 of the Commission's explanatory memorandum accompanying the proposed Regulation.

Coast Guard Agency, Europol and the EU Asylum Agency would be represented. The Steering Board would provide strategic direction for the networks, oversee their work and identify deployment gaps. It would also be responsible for ensuring that ILOs upload and exchange information through a secure web-based information exchange platform.[83]

13.3 Although the UK does not participate in the Schengen free movement area or apply Schengen rules on external border controls, it does take part in some Schengen measures concerning illegal immigration, including the 2004 Regulation establishing the existing ILO network which the proposed Regulation would repeal and replace. Under the Schengen Protocol annexed to the EU Treaties, the UK will be bound by the proposed Regulation unless the Government decides to opt out. The Government had until 1 October 2018 to notify the Council (the date on which the three-month deadline for opting out expired).[84]

13.4 In her Explanatory Memorandum of 5 June, the Immigration Minister (Rt Hon. Caroline Nokes MP) described the proposed Regulation as "a bid by the Commission to provide an over-arching structure" to task and manage the activities of Member States' ILOs more systematically and highlighted the creation of a Steering Board as "the key new element". Whilst noting that the aims of the revamped ILO network were "aligned with UK migration priorities", she indicated that the impact of the proposed changes "on a Member State's ability to task their own staff effectively, without oversight of the Commission, and to develop bilateral relationships with third countries" would be a key issue for the Government.

13.5 In our Report agreed on 12 September 2018, we asked the Government to inform us as soon as possible of the Government's decision on participation in the proposed Regulation and to explain what consequences a decision to opt out would have for continued UK participation in local and regional ILO networks until exit day. We did so because Article 5(3) of the Schengen Protocol (annexed to the EU Treaties) requires the Council to determine whether a decision to opt out from the proposed Regulation would seriously affect the practical operability of the Schengen rule book ("acquis") and, if it concludes that it would, to disapply parts of the Schengen rule book in which the UK currently participates. We await the Minister's response. Meanwhile, a Council press release issued on 14 November 2018 announced that COREPER (the body on which Member States' Ambassadors to the EU are represented) had agreed a mandate to begin negotiations with the European Parliament on a final compromise text.

13.6 The proposed Council Decision—document (b)—indicates that the UK has decided *not* to opt into the proposed Regulation and notified the Council Presidency of its decision on 1 October 2018. Based on Article 5(3) of the Schengen Protocol, the purpose of the proposal is to clarify the consequences of that decision for the UK's ongoing participation in other elements of the Schengen rule book. The analysis, set out in the recitals to the proposed Decision, describes the proposed Regulation (and the 2004 Regulation which it would repeal and replace) as:

> […] a self-standing measure within the Schengen *acquis*, which is not interacting operationally with other legal instruments that are part of the Schengen *acquis*.[85]

83 The information would include relevant documents, reports and analytical products in the area of immigration as well as factual information on the host third countries or regions.

84 The three-month opt-out period starts to run from the date on which the last language version of the proposed Regulation is published.

85 See recital (5).

13.7 The UK's decision not to participate in the proposed Regulation would not therefore affect "the practical operability" of the other elements of the Schengen rule book in which the UK participates or undermine the overall coherence of the Schengen rules. The proposed Council Decision makes clear that the 2004 Regulation establishing an immigration liaison officers network (and any subsequent amendments to it) would cease to apply to the UK from the date on which the proposed successor Regulation enters into force. Similarly, corresponding provisions relating to the 2004 Regulation in two other Council Decisions setting out the parts of the Schengen rule book in which the UK participates would also cease to apply.[86] The UK's participation in other elements of the Schengen rule book would not be affected.

13.8 In her Explanatory Memorandum of 11 February 2019 on the proposed Council Decision, the Immigration Minister (Rt Hon. Caroline Nokes MP) confirms that the Government notified the Council Presidency and the European Commission of its decision to opt out of the proposed Regulation on 1 October 2018, adding:

> This decision reflected the Government's view that the UK had seen little benefit from the EU ILO Network. Furthermore, our ability to continue to work bilaterally with ILO networks from the EU and non-EU states would not be impacted by non-participation. We would seek to attend EU meetings on an observer basis, as provided for in [the] recast Regulation and continue to participate in existing networks developed across the globe which already have EU and non-EU participants. It also reflected the UK decision to leave the EU on 29 March 2019.

13.9 The Minister is content that the European Commission has correctly applied the criteria set out in Article 5(3) of the Schengen Protocol and that its proposal for a Council Decision will have no impact on the UK's wider participation in the Schengen rule book. She anticipates that the Presidency will invite COREPER to agree the proposed Regulation and Council Decision on 20 February, with formal adoption by the Council following shortly afterwards, and asks us to clear the proposals from scrutiny.

Our Conclusions

13.10 **As far as we are aware, this is the first occasion on which the mechanism in Article 5(3) of the Schengen Protocol has been used, following a decision by the Government to opt out of a proposal which builds on parts of the Schengen rule book in which the UK has (previously) chosen to participate. We consider that the European Commission has properly applied the criteria set out in Article 5(3) of the Schengen Protocol and agree with its conclusion that the UK's decision to opt out of the proposed Regulation should not affect its participation in other elements of the Schengen rule book. We note the Commission's view that this is a "very exceptional case". We are content to clear the proposed Council Decision from scrutiny.**

13.11 **We also clear the proposed Regulation from scrutiny, albeit with some reluctance. We remind the Minister that the Government's Code of Practice on Parliamentary scrutiny of EU justice and home affairs measures applies to Schengen opt-out decisions. The Code states clearly that the Scrutiny Committees in both Houses must be informed of the Government's opt-out decision as soon as the Presidency has**

86 Article 8(2) of Council Decision 2000/365/EC and point 6 of Annex 1 to Council Decision 2004/926/EC.

been notified (in this case, 1 October 2018) and a Written Ministerial Statement issued explaining why the Government considered the decision to be in the national interest. The Minister has complied with neither of these undertakings. We expect her to do so while the UK remains a member of the European Union and during any post-exit transition/implementation period in which EU law continues to apply to the UK. We draw this chapter to the attention of the Home Affairs Committee.

Full details of the documents

(a) Proposal for a Regulation on the creation of a European network of immigration liaison officers (recast): (39717), 9036/18 + ADDs 1–2, COM(18) 303.

(b) Proposal for a Council Decision concerning the notification of the United Kingdom of its wish no longer to take part in some of the provisions of the Schengen *acquis* which are contained in Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers network: (40354), 5939/19, COM(19) 23.

Background

13.12 Schengen began as an intergovernmental agreement between five of the six Member States that founded the European Economic Community (the precursor to the European Union). Its purpose was to remove checks on people and goods at their common (internal) borders. Schengen cooperation was brought within the EU's legal framework by the 1997 Treaty of Amsterdam. A Protocol to the EU Treaties incorporated the Schengen rule book, giving it the status of EU law, but also included special provisions to reflect the UK's position (also shared by Ireland) as an EU Member State that does not participate in the Schengen free movement area. Article 4 of the Schengen Protocol allows the UK (and Ireland) to request to take part in some or all of the Schengen rule book. A Council Decision based on this Article (Council Decision 2000/365/EC) was adopted in 2000 and lists the provisions of Schengen in which the UK has chosen to participate. Article 8(2) of the 2000 Council Decision makes clear that the UK will be "deemed" to participate in any new proposals which build on these provisions (so-called "Schengen-building" measures). A further Council Decision adopted in 2004 (Council Decision 2004/926/EC) established 1 January 2005 as the date on which the Schengen measures applicable to the UK would take effect. The measures included the 2004 Regulation creating an immigration liaison officers network.

13.13 The 2007 Lisbon Treaty amended the Schengen Protocol by establishing a mechanism to enable the UK to opt out of new Schengen-building measures which would otherwise be deemed to apply under Article 8(2) of the 2000 Council Decision. The mechanism is based on the following procedures:

- the UK has three months from publication of a Schengen-building proposal to decide whether it wishes to opt out;
- it must notify the Council in writing of its opt-out decision; and
- the Council is required to decide, by qualified majority, whether the UK can continue to participate in those elements of the Schengen rule book covered by the 2000 and 2004 Council Decisions.

13.14 In reaching a decision, the Council must "seek to retain the widest possible measure of participation of the Member State concerned without seriously affecting the practical operability of the various parts of the Schengen acquis, while respecting their coherence".

Previous Committee Reports

None on document (b). We have published two earlier Reports on document (a): Thirty-fourth Report HC 301–xxxiii (2017–19), chapter 9 (4 July 2018) and Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 24 (12 September 2019).

14 Workplace safety: amendments to the Carcinogens and Mutagens Directive

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Proposal to amend Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Phase 3)
Legal base	Article 153(2) TFEU; ordinary legislative procedure; QMV
Department	Health and Safety Executive
Document Number	(39612), 7733/18 + ADDs 1 —3, COM(18) 171

Summary and Committee's conclusions

14.1 Cancer is the leading cause of work-related deaths in the EU. In the UK, around 3,500 people die each year from occupational cancer caused by exposure to carcinogenic substances. To reduce these numbers, the EU has legislated to prevent dangerous levels of workplace exposure to carcinogenic substances in the form of the Carcinogens and Mutagens Directive (CMD). Since May 2016, the Commission has published three separate sets of amendments to the CMD to further restrict the use of certain carcinogenic substances in the light new scientific advice (respectively, labelled Phases I to III).

14.2 On 5 April 2018, the Commission published a proposal for a third phase of amendments to the CMD (that under consideration). The phase 3 amendments set-out occupational exposure limit values (OELVs) for five substances: cadmium, beryllium, arsenic acid, formaldehyde and MOCA.[87] These amendments would also set a skin notation for MOCA,[88] a notation for skin sensitisation to formaldehyde, and a notation for both skin and respiratory sensitisation to beryllium.

14.3 Minister of State at the Department for Work and Pensions (Sarah Newton MP), submitted an Explanatory Memorandum on the Phase III proposal on 24 April 2018. She "broadly [welcomed]" the new exposure limits, noting that current UK legislation already requires employers to consider "all routes of exposure to carcinogens to be considered, including skin" and ensure any exposure to carcinogenic substances is "controlled to as low a level as is reasonably practicable".

14.4 The proposed EU-wide exposure limits are lower than those provided for domestically (except for MOCA where the UK's domestic workplace exposure limit is lower than that suggested by the Commission). A full assessment of the legal and political importance of the proposal—including the initial questions we asked of the Government—can be found in our first Report to the House of 9 May 2018.

87 MOCA is an anacronym for 4,4'-Methylene-bis(2-chloroaniline). MOCA is listed as a 'substance of very high concern' by the European Chemicals Agency.

88 A notation for 'skin sensitisation' is made where exposure to a substance can cause an adverse skin reaction.

14.5 The proposal has been considered on two separate occasions by the Committee—this report being the third—and is expected to go to Council for adoption at the beginning of March 2019. As such, Minister of State for Disabled People, Health and Work (Sarah Newton MP), wrote to the Committee on 12 February requesting that the proposal be cleared from scrutiny in order to allow the Government to vote in favour of its adoption. The Minister also wrote to the Committee on 21 January 2019 summarising the General Approach reached at the December (2018) EPSCO Council. Taken in date order, the Minister's correspondence provides helpful background information on the final form of the proposal (and how this was reached).

Minister's letter of 21 January 2019

14.6 In her letter of 21 January, the Minister updated the Committee on the outcome of the December EPSCO Council and the success—or otherwise—of the Government's attempts to secure its negotiating objectives.

14.7 As highlighted in our last report to the House, the Government wished to support the General Approach sought at the December Council providing that it included an extended transitionary period before the proposed exposure limit on Formaldehyde would apply. This transitionary period was included in the agreed General Approach and has remained in the text of the amendment during trilogue negotiations.

14.8 The Government was also keen—along with France, Finland, Italy, Lithuania, The Netherlands and Slovakia—to make provision for a revised exposure limit for Cadmium combined with processes for the biological monitoring of workers. The Government published a joint statement—along with these Member States—recording its regret that this suggestion was not included in the final General Approach. The Minister kindly appended this statement to her letter of 21 January.

14.9 In response to the Committee's previous questions concerning the introduction of an exposure limit for Beryllium, the Minister explains her reservations about such action. This centres around the technical feasibility of the proposed limit and the current lack of appropriate exposure measurement technologies. These concerns are said to have been raised by other Member States but not acted upon. As a consequence, the General Approach included a 5-year transitionary period—in addition to a 2-year implementation period—to give industry time to make appropriate adjustments.

14.10 The Minister also informs the Committee of developments in the European Parliament's proposals to bring cytotoxic and other hazardous drugs within the scope of the CMD. The Minister states that the Government's position remains that it does not believe that the inclusion of such drugs is necessary.

Minister's letter of 12 February 2019

14.11 The Minister now seeks clearance of the proposal from scrutiny—by way of correspondence dated 12 February—in order for the Government to support its adoption at Council. It is expected that this will be before the end of March. The final text of the Phase 3 amendment is similar in substance to the General Approach reached at the December EPSCO Council.

14.12 The Minister provides a brief summary of the final form of the amendment in relation to the UK's negotiating priorities. On Formaldehyde, an interim exposure limit of 0.05ppm would apply from the date of transposition of the amendment with a lower limit of 0.03ppm applicable from 2024. With regard to Cadmium, an interim limit of 0.004 mg/m3 would apply from the date of transposition with a lower limit of 0.001 mg/m3 applicable from 2028. At the behest of the Government and France, voluntary biomonitoring will be would be possible whilst the Commission undertakes further studies. For Beryllium, an interim limit of 0.0006 mg/m3 would apply from the date of transposition with a lower limit of 0.0002 mg/m3 applicable from 2026.

14.13 The Minister informs the Committee that during trilogue negotiations the Commission agreed to undertake a study to assess the need to amend the CMD to include cytotoxic and other hazardous drugs or to propose a more appropriate legal instrument and to present, if deemed necessary, a legislative proposal. The Minister explains that whilst she does not believe that such action is warranted, the Government is not opposed to the Commission undertaking research to assess if additional legal controls are necessary and, if deemed so, how they could be best achieved.

14.14 **We thank the Minister for her correspondence of 21 January and 12 February 2019. As the Minister has made plain the Government's plans to support the adoption of the proposal and has fully explained how the final text relates to its negotiating priorities, we are content to clear it from scrutiny.**

14.15 **We request an update on the outcome of the Council at which the proposal is put for adoption as soon as is reasonably practicable.**

Full details of the documents

Proposal to amend Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Phase 3): (39612), 7733/18 + ADDs 1–3, COM(18) 171.

Previous Committee Reports

Twenty-seventh report HC 301–xxvi (2017–19) chapter 6 (15 May 2018); and Forty-sixth report HC 301–xlv (2017–19) chapter 17 (28 November 2018)

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

Department for Digital, Culture, Media and Sport

(40268) 15431/18 JOIN(18) 36	Joint communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions action plan against disinformation

Department for Environment, Food and Rural Affairs

(40367) 6169/19 COM(19) 54	Proposal for a Council decision on the position to be taken on behalf of the European Union at the Conference of the Parties as regards amendments of Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade
(40368) 6168/19 COM(19) 52	Proposal for a Council decision on the position to be taken on behalf of the European Union at the ninth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants as regards the proposals for amendments of Annexes A and B

Department for International Development

(40282) — —	Court of Auditors Special Report no: 35: Transparency of EU funds implemented by NGOs: more effort needed
(40331) — —	Annual report of the Court of Auditors on the activities funded by the 8th, 9th, 10th and 11th European Development Funds (EDFs) concerning the financial year 2017, together with the Commission's replies

Department for Transport

(40359) 5936/19 COM(19) 72	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Council of the International Civil Aviation Organization, in respect of the Adoption of Amendment 17 to Annex 13.

Foreign and Commonwealth Office

(40342) 5723/19 SWD(19) 9	Joint Staff Working Document Annual Report Sahel Regional Action Plan 2017/2018.
(40396) — —	Council Decision (CFSP) 2019/… amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
(40397) — —	Council Implementing Regulation (EU) 2019/…implementing Regulation (EU) No.269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine
(40400) — —	Council Decision on the EU Special Representative for Human Rights

HM Treasury

(40345) 5959/19 COM(19) 36	COMMISSION OPINION on the request for amendments to Protocol No 5 on the Statute of the European Investment Bank, presented by the European Investment Bank on 11 October 2018

Ministry of Justice

(40300) 15855/18 COM(18) 858	Report from the Commission to the European Parliament and the Council on the Implementation of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.
(40301) 15854/18 COM(18) 857	Report from the Commission to the European Parliament and the Council on the Implementation of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

Office for National Statistics

(40344) 5959/19 COM(19) 36	Report from the Commission on the implementation of Regulation 577/98 on a labour force sample survey

Formal Minutes

Wednesday 27 February 2019

Members present:

Sir William Cash, in the Chair

Martyn Day	Andrew Lewer
Marcus Fysh	Michael Tomlinson
Kelvin Hopkins	Dr Philippa Whitford
Stephen Kinnock	

Scrutiny Report

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 15 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 6 March at 1.45pm

Standing Order and membership

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

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

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

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

The expression "European Union document" covers—

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

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

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

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

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

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

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

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

Current membership

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

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

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

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

Richard Drax MP (*Conservative, South Dorset*)

Mr Marcus Fysh MP (*Conservative, Yeovil*)

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

Kate Hoey MP (*Labour, Vauxhall*)

Kelvin Hopkins MP (*Independent, Luton North*)

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

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

Stephen Kinnock MP (*Labour, Aberavon*)

Andrew Lewer MP (*Conservative, Northampton South*)

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

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

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