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European Scrutiny Committee

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Documents considered by the Committee on 13 March 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

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Contents

Meeting Summary

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

Brexit-related issues

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

- The Committee asks the Government to explain whether and how the UK might seek to engage with the proposed new European Labour Authority as a third country after leaving the EU under the various outcomes envisaged in the draft EU/UK Withdrawal Agreement.
- The Committee welcomes the European Commission's proposal to ensure that UK nationals will not need a visa for short stays within the Schengen area once the UK has left the EU, provided the UK offers reciprocal visa-free entry for nationals of EU Member States, but shares the Government's concern at the inclusion of inaccurate and inappropriate references to the status of Gibraltar as "a colony of the British Crown".
- The Committee welcomes the European Commission's proposal to enable individuals taking part in an Erasmus-funded activity already underway on exit day to complete their learning and receive any academic or other credits earned during their stay abroad but seeks further information on the Government's longer-term plans for cooperation with the EU on student exchanges and other forms of learning mobility.
- Post-Brexit reporting obligations agreed under an environmental Statutory Instrument.

Summary

Negotiating mandates for EU-US trade talks

The Commission published two draft negotiating mandates on a) the elimination of tariffs on industrial goods and b) facilitating conformity assessment between the EU and US on 18 January 2019. 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 (notably in relation to the US imposition of additional steel and aluminium duties on EU imports and the threat of 25% tariffs on cars and car parts from the EU) and reflect the EU-US Joint Statement of 25 July 2018.

At its meeting on 27 February 2019, we noted that the Minister considers the mandates "are in the UK's interests" and that the agreements would not apply to the UK in the case

of no deal but would apply if adopted during any negotiated transition period. However, we considered that the Minister provided insufficient detail on the expected coverage of the mandates and their Brexit implications. In response to our questions, the Minister:

- confirms that the scope of the mandate on industrial goods includes: cars and car parts (but allows for US sensitivities in relation to pick-up trucks to be taken into account); fish and fish parts and forestry products; and new provisions taking into account "sensitivities around energy-intensive products" and the Paris Agreement on Climate Change. The Government supports or has no objections to these changes;
- states that the Government will prepare an impact assessment if the agreements come into force during any transition period; and
- avoids being drawn into the specific questions of whether the UK would seek to replicate or transition the agreements in a future UK-US deal.

Given the uncertainty around the timetabling of the vote in the Council and possible further changes to the proposed texts in the interim, we grant the Minister a time-limited scrutiny waiver (until 29 March 2019) to support the mandates, on the condition that: a) the scope of the mandates does not deviate significantly from the information shared by the Minister and b) the Minister continues to keep us updated on the negotiations and the outcome of any vote in the Council.

Not cleared from scrutiny; further information requested; but scrutiny waiver granted until 29 March 2019; drawn to the attention of the Committee on Exiting the European Union, the Foreign Affairs Committee and the International Trade Committee

European Labour Authority

The European Commission has proposed a Regulation establishing a new European Labour Authority (ELA) to take over various existing EU-level functions related to the free movement of labour, such as coordination of social security and cooperation to tackle undeclared work. The impetus for the creation of the ELA stems from the growth in labour mobility within the EU, prompting concerns that individuals and businesses may be ill-informed about their rights and obligations under existing EU laws and national authorities may lack the mechanisms needed to underpin effective cross-border cooperation. The broad objective of the ELA would be to ensure fair labour mobility within the internal market but it would have no direct regulatory or enforcement powers, nor would it be able to direct national authorities. Instead, it would play a supporting and coordinating role. The Government is satisfied that the ELA would not encroach on areas in which Member States are competent to act or interfere with national employment and social laws and is keen to vote in favour of the proposed Regulation when it is brought to the Council for formal adoption. The European Scrutiny Committee agrees to grant a scrutiny waiver but asks the Government for further information on the possibilities for UK engagement with the ELA post-exit under the various outcomes envisaged in the draft EU/UK Withdrawal Agreement.

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

Visa exemption for UK nationals travelling to the EU after Brexit

The European Commission has proposed changes to the EU Visa Regulation to include the UK in the list of third countries whose nationals would not require an entry visa for short stays within the Schengen area once the UK has left the EU and any post-exit transition/implementation period has ended. As the proposal forms part of the Schengen rule book in which the UK does not participate, the UK will have no vote when it is brought to the Council for formal adoption. The Government reiterates its intention to maintain reciprocal arrangements enabling citizens to travel freely between the EU and the UK, without a visa, for tourism and temporary business activity but describes as "unacceptable" language agreed by Member States' Ambassadors to the EU (COREPER) describing Gibraltar as "a colony of the British Crown". The European Scrutiny Committee supports the Government's efforts to seek replacement wording. As, however, the UK has no vote, and it is clearly in the UK's interest to ensure visa-free access to the Schengen area for its nationals and British overseas citizens, the Committee agrees to clear the proposed Regulation from scrutiny whilst asking to be informed of the outcome of negotiations and of any Council Minute Statement made by the UK.

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

Brexit preparedness: UK participation in Erasmus in the event of a 'no deal' exit

The proposed Regulation, one in a series of contingency measures put forward by the Commission to prepare for a "no deal" Brexit, would ensure that individuals (and the institutions sending and hosting them) who are taking part in an Erasmus-funded activity can complete their learning and receive any academic or other credits earned during their stay abroad, provided the activities being funded have started "at the latest" by exit day. The Government is keen to avoid disruption for those participating in Erasmus activities at the time of the UK's exit from the EU and recognises that the proposed Regulation would provide certainty, but notes it is not as extensive as the guarantee the Government has given to underwrite the funding of Erasmus until the end of 2020. The proposal is expected to be put forward for adoption at the General Affairs Council on 19 March. As it would provide reassurance for Erasmus participants studying or working abroad if there is a no deal exit, the European Scrutiny Committee agrees to grant a scrutiny waiver to enable the Government to support its adoption but requests further information on the Government's longer-terms plans for cooperation with the EU on student exchanges and other forms of learning mobility.

Not cleared from scrutiny; scrutiny waiver granted; further information requested; drawn to the attention of the Education Committee

Fisheries technical measures

This proposed overhaul of EU fisheries technical measures such as fishing gear restrictions has finally been agreed, including a ban on the controversial practice of electric pulse fishing from 2021. Now that the ban has been agreed, the Committee clears the proposal from scrutiny. We note that, under all Brexit scenarios other than "no-deal", the UK

would be required to apply the legislation. In a no-deal scenario, the UK might choose to replicate some or all of the legislation and UK vessels fishing in EU waters would need to apply these EU rules.

Cleared from scrutiny; drawn to the attention of the Environment, Food and Rural Affairs Committee

Genetic Resources: Access and Benefit Sharing

The Nagoya Protocol is an international agreement designed both to improve access to genetic resources and to ensure that the benefits derived from such resources are shared with the originating country. While widely supported, practical implementation is challenging and can be extremely burdensome for users. We seek clarification about the efforts being made by the Government to support implementation, looking forward also to the post-Brexit environment when the Government will need to offer some of the support currently provided by the European Commission. On Brexit, the Minister appears to be unaware about a continuing domestic reporting obligation agreed under one of the Brexit Statutory Instruments. The Committee is disturbed by this and so asks for detail about the agreed obligations.

Cleared from scrutiny; further information requested

Re-use of Public Sector Information

The Commission's revision of the framework applicable to the re-use of public information recasts the existing regime in the aim of increasing current levels of re-use and adapting the status quo to the digital economy. The Minister from the Department for Digital, Culture, Media and Sport (Margot James MP) informs us that "the UK has achieved the substance of the negotiating objectives outlined in my previous letter", including the Government's primary objective of seeking a further temporary derogation for Public Sector Bodies (PSBs) from the requirements relating to high value datasets. These changes mean that the Committee's previously expressed concerns about the potential impact on the Met Office and the Ordnance Survey have been completely addressed, as the UK will have a 2 year derogation from the application of any implementing acts on high value datasets, which will in turn not be able to be adopted until the 2 year period for implementing the Directive has elapsed—taking the timescales for UK compliance far beyond those of UK membership of the EU, even if the transition period were to be extended to the maximum extent permitted. On this basis, the Minister concluded that "the compromise text is acceptable to the UK" and requested clearance to support its adoption if the UK is still in Council at the time when the vote takes place. The Committee cleared the file from scrutiny.

Cleared from scrutiny

Request for UK contributions to the EU budget in a 'no deal' scenario

The Committee has considered the European Commission's request for the UK to continue contributing to the EU budget in 2019 even in a 'no deal' Brexit scenario, to avoid a shortfall in the EU's finances this year roughly equal to the UK's estimated £6 billion net contribution. In return for the multi-billion-pound payments, UK entities would remain

eligible to receive—and bid for—EU funding in 2019. Although Cabinet Ministers have repeatedly indicated that the Government believes the UK's legacy financial obligations vis-à-vis the EU would last beyond the UK's withdrawal even if there is no exit agreement, the Treasury's Explanatory Memorandum on the proposal provides no indication of the Government's position on the EU's offer. The Committee has therefore retained the Commission proposal under scrutiny and has written to the Chancellor of the Exchequer to clarify the UK's position as soon as possible.

Not cleared from scrutiny; further information requested; drawn to the attention of the Committee on Exiting the European Union, the Public Accounts Committee and the Treasury Committee

Commission Brexit preparedness: the Channel Tunnel

The Commission's proposal would extend the validity of certain safety certificates covering the 'Channel Tunnel Fixed Link' for 3 months in the event of a 'no-deal' Brexit (where the draft Withdrawal Agreement is not ratified either by the EU or the UK). As an initiative of the EU-27, the intended effect of the proposal—to ensure the continued operation of the Channel Tunnel—would be dependent upon the UK maintaining 'identical' safety standards and procedures to those provided for by EU law. The Minister with charge over the proposal wrote to the Committee on 7 March 2019—a week after he submitted an Explanatory Memorandum on the proposal—with further information on the progress of working group negotiations and requesting clearance of the file from scrutiny or a waiver ahead of adoption on 18 or 19 March. The Minister notes changes to the scope of the draft Regulation to include rail safety certificates, train driver licences and operator licences and amendments to its territorial application to include the island of Ireland (as well as the UK/France). These changes are not explained in any detail nor is an assessment made of their potential implications for UK transport law and policy. As a consequence, the Committee does not believe it appropriate to clear the proposal from scrutiny or grant a waiver. On the substance of the proposal, the draft Regulation currently provides for authorisations to be revoked if EU standards are not complied with. This provision suffers from a number of deficiencies, including: the lack of a time limit for the delivery of information and documents to national safety authorities; a clear procedure for the revocation of authorisations; and the absence of checks on the Commission's role. We ask the Government to clarify its understanding of this provision. This is especially important in light of the potential implications it could have for private businesses (i.e. Eurotunnel). The Committee also seeks further information on any meetings the Government has had with Eurotunnel—the main stakeholder affected by the proposal—and on the amendments that would be required to the current system for safety authorisations after the suggested 3 month extension.

Not cleared from scrutiny; further information requested; request for a waiver or clearance ahead of adoption rejected; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Transport 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: Joint Undertaking for ITER (Fusion for Energy) [Proposed Decision (C)]; European Labour Authority [Proposed Regulation (NC; scrutiny waiver granted)]; Commission Brexit preparedness: the Channel Tunnel [Proposed Regulation (NC)]

Committee on Exiting the EU: Brexit: UK contributions to the EU budget in 2019 in a 'no deal' scenario [Proposed Regulation (NC)]; Visa exemption for UK nationals travelling to the EU after Brexit [Proposed Regulation (C)]; Negotiating mandates for EU-US trade talks [Proposed Decisions (NC; scrutiny waiver granted)]

Education Committee: Brexit preparedness: UK participation in Erasmus in the event of a 'no deal' exit [Proposed Regulation (NC; scrutiny waiver granted)]

Environment, Food and Rural Affairs Committee: Fisheries Conservation: Technical Measures [Proposed Regulation (C)]; Brexit-preparedness: Fisheries [Proposed Regulations (NC)]

Foreign Affairs Committee: Visa exemption for UK nationals travelling to the EU after Brexit [Proposed Regulation (C)]; Negotiating mandates for EU-US trade talks [Proposed Decisions (NC; scrutiny waiver granted)]

Home Affairs Committee: Visa exemption for UK nationals travelling to the EU after Brexit [Proposed Regulation (C)]

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

Justice Committee: Visa exemption for UK nationals travelling to the EU after Brexit [Proposed Regulation (C)]

Public Accounts Committee: Brexit: UK contributions to the EU budget in 2019 in a 'no deal' scenario [Proposed Regulation (NC)]

Transport Committee: Commission Brexit preparedness: the Channel Tunnel [Proposed Regulation (NC)]

Treasury Committee: Brexit: UK contributions to the EU budget in 2019 in a 'no deal' scenario [Proposed Regulation (NC)]

Work and Pensions Committee: European Labour Authority [Proposed Regulation (NC; scrutiny waiver granted)]

1 European Labour Authority

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; scrutiny waiver granted; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Work and Pensions Committee
Document details	Proposal for a Regulation establishing a European Labour Authority
Legal base	Articles 46, 48, 53(1), 62 and 91(1) TFEU, ordinary legislative procedure, QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39563), 7203/18 + ADDs 1–3, COM(18) 131

Summary and Committee's conclusions

1.1 The European Pillar of Social Rights establishes a framework for fair and well-functioning labour markets and welfare systems based on a set of rights and principles endorsed by the EU institutions in November 2017.[1] In March 2018, the European Commission brought forward a proposed Regulation to establish a European Labour Authority ("ELA"). The impetus for its creation stems from the growth in labour mobility within the EU, prompting concerns that individuals and businesses may be ill-informed about their rights and obligations under existing EU laws and national authorities may lack the mechanisms needed to underpin effective cross-border cooperation. The broad objective of the ELA would be to ensure fair labour mobility within the internal market but it would have no direct regulatory or enforcement powers, nor would it be able to direct national authorities. Instead, it would play a supporting and coordinating role by:

- operating as a source of information for individuals and employers on their rights and obligations and on opportunities for cross-border labour mobility;
- facilitating cooperation and the exchange of information between EU Member States to ensure compliance with relevant EU employment and social legislation affecting the free movement of labour, including the coordination of inspections of business sites if national authorities agree that concerted or joint action would be useful;
- carrying out analyses of cross-border labour flows and assessing risks, such as labour market imbalances or obstacles to mobility;
- supporting consistent application and enforcement of relevant EU laws through capacity building within Member States;
- mediating in any disputes between Member States, for example to determine which one is responsible for payment of a benefit; and
- facilitating cooperation and dialogue to resolve large-scale labour market disruptions affecting more than one Member State, such as a major company restructuring, closure or relocation.

1 See the European Commission's fact sheet and its website on the European Pillar of Social Rights.

1.2 The ELA would replace various technical advisory bodies that already exist at EU-level to promote fair labour mobility, including the European Coordination Office of EURES,[2] the Technical Committee on the Free Movement of Workers,[3] the European Platform on tackling undeclared work[4] and the Committee of Experts on Posting of Workers.[5] It would also take over certain functions of the Administrative Commission for the Coordination of Social Security Systems, a body of Member State representatives which plays an important role in overseeing the application of complex EU rules on the coordination of national social security systems.

1.3 The creation of a European Labour Authority was identified as one of the European Commission's priorities for ensuring "a deeper and fairer internal market" in President Jean-Claude Juncker's 2017 State of the Union speech. Our earlier Report agreed on 25 April 2018 provides a more detailed overview of the proposed Regulation.

1.4 In his Explanatory Memorandum of 5 April 2018, the Minister for Small Business, Consumers and Corporate Responsibility (Andrew Griffiths MP) told us that the proposed Regulation would introduce "a few minor obligations" (for example, a requirement to provide the ELA with written reasons if a national labour market enforcement body does not wish to take part in an inspection coordinated by the ELA) but would not otherwise impose new obligations on Member States, individuals or employers, nor would it impinge on national decision making, legislation, or enforcement activities which would remain a Member State competence. He recognised that the ELA would not be operational before exit day—expected to be 29 March 2019—and that the UK's longer-term relationship with the ELA post-exit would depend on the arrangements yet to be agreed for the UK's future economic partnership with the EU.

1.5 The Government's Checklist examining the potential impact of the proposed Regulation on the UK noted that it would largely be up to each Member State's national enforcement body to determine the level of engagement with the ELA, meaning that they could choose to engage "only when it was net beneficial to their objectives", providing "a cost-benefit safeguard". After leaving the EU, it would still be possible for the UK to participate in the ELA as a third country with observer status in the Authority's Management Board. There could be "a mutual benefit in the UK Government continuing to work with the ELA" as "once the UK leaves the EU there is likely to continue to be a substantial number of EU citizens working and living in the UK, and a substantial number of UK citizens living in the EU":

> For instance, the ELA will, amongst other things, replace the Technical Commission, the Audit Board, and the Conciliation Board of the Administrative Commission for the Coordination of Social Security

2 EURES (the European Employment Services) provides information on labour mobility to workers, jobseekers and businesses in the European Economic Area and Switzerland. It includes job placement schemes run by national governments, such as the Department for Work and Pensions' 'Universal Jobmatch' scheme.

3 The Technical Committee, which is composed of six members for each Member State, assists the European Commission in the examination of the application of EU law on free movement of workers.

4 The European Platform tackling undeclared work aims to enhance cooperation between EU countries in fighting undeclared work (UDW).

5 The Posted Workers Committee consists of EU-level trade unions and employers' organisations, as well as Government representatives of the Member States of the EEA. It provides support to Member States in identifying and exchanging experience and good practice, promoting the exchange of relevant information, and examining any questions and difficulties which might arise in the practical application of the posting of workers legislation, as well as its enforcement in practice.

> Systems, whose work includes overseeing payments between Member States for reciprocal healthcare. The UK could continue to participate in these areas, depending on final withdrawal arrangements from the EU.

1.6 In our earlier Report we noted that if the draft EU/UK Withdrawal Agreement were to be ratified and enter into force, it would ensure the lifelong protection of the social security rights of UK and EU nationals who have exercised their right to freedom of movement before the end of a post-exit transition/implementation period. This alone suggested that the Government would retain an interest in the work of the Administrative Commission on Social Security and therefore in any social security-related tasks taken over by the ELA. We noted also the uncertainty as to the nature of any long-term post-exit working relationship between the relevant UK authorities and the ELA, not least because the proposed Regulation appeared to limit formal cooperation to third countries applying EU laws on labour mobility and social security coordination (such as the non-EU members of the European Economic Area). We underlined our interest in the proposed Regulation and asked the Minister to update us on the progress of negotiations.

1.7 Whilst informing us that negotiations were making good progress, the Government told us that the UK and a number of other Member States had questioned whether the ELA should absorb some of the functions of the Administrative Commission for the Coordination of Social Security Systems.[6] By December 2018, sufficient progress had been made for the Government to agree to a General Approach at the Employment, Social Policy, Health and Consumer Affairs Council, even though there was insufficient time for us to consider clearing the proposed Regulation from scrutiny or granting a scrutiny waiver. The Government supported the compromise proposed by the Presidency as it made clear that the ELA's mediation role in cross-border disputes would not extend to EU rules on social security coordination.[7]

1.8 In her letter of 8 February 2019, the Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Kelly Tolhurst MP) indicated that substantial progress had been made in trilogue negotiations with the European Parliament and that the Government was keen to support a compromise text which was in line with the Council General Approach, adding:

> Our strong preference would be to keep social security coordination outside the scope of the ELA mediation process; however, we may be able to support inclusion so long as the integrity and role of the social security Administrative Commission is protected.

1.9 The Minister reiterated that the proposed Regulation "would not impose additional legislative obligations on Member States nor impact national competencies" and expressed the Government's support for its overall aims.

1.10 In her latest letter of 19 February 2019, the Minister asks us to release the proposed Regulation from scrutiny as she expects it to be brought to the Council for formal adoption in March. Whilst it now appears that social security coordination will be within the scope of the ELA's mediation function, she explains that the compromise text negotiated with

6 See the letter of 31 August 2018 from the Minister for Small Business, Consumers and Corporate Responsibility (Kelly Tolhurst MP) to the Chair of the European Scrutiny Committee.

7 See the letter of 3 December 2018 from the Minister for Small Business, Consumers and Corporate Responsibility (Kelly Tolhurst MP) to the Chair of the European Scrutiny Committee.

the European Parliament "provides more detail on the relationship between the ELA and the Administrative Commission, and will preserve the current *acquis* and ensure proper scrutiny by the Administrative Commission of ELA opinions on social security disputes". On this basis, she is keen to support the adoption of the proposed Regulation.

Our Conclusions

1.11 **The Minister assures us that the proposed Regulation "does not impact Member State competence or national legislation" and considers that the European Labour Authority will "add value" by supporting Member States in resolving issues stemming from cross-border labour mobility and increasing cooperation between the UK's three labour inspectorates—the Employment Agency Standards Inspectorate, HMRC's National Minimum Wage enforcement team, and the Gangmasters Labour Abuse Authority—and their counterparts in other Member States.[8] As the European Labour Authority will operate primarily as a coordinating body without any direct regulatory or enforcement powers of its own, we are content to grant a scrutiny waiver so that the Government can support the adoption of the proposed Regulation at a forthcoming Council meeting.**

1.12 **We nonetheless ask the Minister to report back to us promptly on the outcome of the Council, including any changes to the provisions on third country cooperation with the European Labour Authority, to explain how the UK voted, and to provide a copy of the final text agreed. Before clearing the proposed Regulation from scrutiny, we would welcome a clearer steer from the Government on the possibilities for UK engagement with the European Labour Authority post-exit. We ask the Minister to clarify the scope of the provisions on cooperation with third countries (as set out in Article 43 of the Council General Approach or any successor text included in the final compromise text) and their application to the UK post-exit, given that cooperation with and participation in the European Labour Authority appear to be limited to third countries applying "relevant Union law on labour mobility and social security coordination".**

1.13 **We also ask her to explain:**

- **whether the commitment made in Part Two of the draft EU/UK Withdrawal Agreement to protect the rights of mobile EU citizens acquired before exit day or the end of any post-exit transition/implementation period would bring the UK within the scope of the provisions on cooperation with third countries set out in Article 43 of the Council General Approach;**
- **whether the commitment made in the draft EU/UK Withdrawal Agreement to non-regression of labour and social standards contained in the Protocol on Ireland/Northern Ireland means that the UK would be bound to apply "relevant Union law on labour mobility and social security coordination" for the duration of the so-called "backstop", should it take effect at the end of a post-exit transition/implementation period; and**

8 See the letter of 3 December 2018 from the Minister for Small Business, Consumers and Corporate Responsibility (Kelly Tolhurst MP) to the Chair of the European Scrutiny Committee.

- **whether the commitments made to Parliament in its Command Paper published on 6 March 2019, *Protecting and Enhancing Worker Rights after the UK Withdrawal from the European Union* to consult Parliament on any diminution in pre-exit EU workers' rights (by means of "a statement of non-regression") or on any new EU laws enhancing workers' rights (by means of "a statement of non-divergence") would bring the UK within the scope of the provisions in the proposed Regulation on cooperation with third countries (Article 43 of the Council General Approach) to the extent that UK domestic law remains aligned with EU laws on workers' rights post-exit.**[9]

1.14 **We draw this chapter to the attention of the Business, Energy and Industrial Strategy Committee and the Work and Pensions Committee.**

Full details of the documents

Proposal for a Regulation establishing a European Labour Authority: (39563), 7203/18 + ADDs 1–3, COM(18) 131.

Previous Committee Reports

Twenty-fifth Report HC 301–xxiv (2017–19), chapter 1 (25 April 2018).

9 See CP66, published on 6 March 2019.

2 Brexit-preparedness: Fisheries

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
Document details	(a) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/2403 as regards fishing authorisations for Union fishing vessels in United Kingdom waters and fishing operations of United Kingdom fishing vessels in Union waters; (b) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 508/2014 as regards certain rules relating to the European Maritime and Fisheries Fund by reason of the withdrawal of the United Kingdom from the Union
Legal base	(a) Article 43(2) TFEU, ordinary legislative procedure, QMV (b) Articles 42 and 43(2) TFEU, ordinary legislative procedure, QMV
Department	Environment, Food and Rural Affairs
Document Numbers	(a) (40337), 5678/19, COM(19) 49; (b) (40338), 5668/19, COM(19) 48

Summary and Committee's conclusions

2.1 Given the continued uncertainty over UK ratification of the Brexit Withdrawal Agreement, the European Commission published two proposals designed to mitigate the impact on the EU fisheries sector of a "no deal" Brexit scenario. The first proposal (document (a)) aims to ensure that the EU is in a position to grant UK vessels access to EU waters until the end of 2019, on the condition that EU vessels are also granted reciprocal access to UK waters. The second proposal (document (b)) would allow fishermen and operators from EU Member States to receive compensation under the European Maritime and Fisheries Fund (EMFF) for the temporary cessation of fishing activities. This would help off-set some of the impact of a sudden closure of UK waters to EU fishing vessels in a no-deal scenario.

2.2 We considered the proposals at our meetings of 13 February and 6 March 2019, raising a series of questions. The Minister for Agriculture, Fisheries and Food (Rt Hon. Robert Goodwill MP) has responded.[10]

2.3 On the key question of the Government's position on quota allocation in the event of a no-deal, the Minister retains the approach of not making any commitment at this stage to respecting the status quo for the whole of 2019 in the event of a no-deal Brexit.

10 Letter from Rt Hon. Robert Goodwill MP to Sir William Cash MP, dated 11 March 2019 (received 12 March).

2.4 The Minister is equally unclear as to whether the procedures under the Constitutional Reform and Governance Act 2010 would be applicable to any EU-UK fisheries agreement for 2019 or indeed to any fisheries agreements between the UK and other states, such as Norway and the Faroe Islands. Concerning EU processes, the Minister contends that fisheries agreements with third countries are a matter of Council competence only and therefore do not require European Parliament ratification. Consequently, there would be no concern about failure to reach an agreement in time for the EP's final plenary session (18 April 2019) before its election in May.

2.5 Finally, the Minister notes that the proposal is likely to be voted on in Council on 18 March and that the UK will abstain as the proposals would not apply to the UK directly.

2.6 **We note this latest information from the Government and recognise the ongoing uncertainties regarding the nature of the future fisheries relationship with both the EU and other coastal states.**

2.7 **On a technical point, we note the Government's contention that fisheries agreements with third countries are a matter of Council competence only and therefore do not require European Parliament ratification. That is true for signature but Council Decisions for the conclusion of such agreements do require the consent of the European Parliament. Such an approach would not, of course, exclude provisional application of an agreement. It would be helpful if the Minster would clarify the Government's understanding of the European Parliament's involvement.**

2.8 **Bearing in mind the Government's intention to abstain in Council, we retain the proposal under scrutiny and ask that the Minister write to us with an updated position on the matters raised in our last Report within ten working days. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents

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

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

Previous Committee Reports

Fifty-seventh Report HC 301–lvi (2017–19), chapter 5 (6 March 2019); Fifty-fifth Report HC 301–liv (2017–19), chapter 3 (13 February 2019).

3 Brexit preparedness: UK participation in Erasmus in the event of a 'no deal' exit

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; scrutiny waiver granted; further information requested; drawn to the attention of the Education Committee
Document details	Proposal for a Regulation laying down provisions for the continuation of ongoing learning mobility activities under the Erasmus+ programme in the context of the UK's withdrawal from the European Union
Legal base	Articles 165(4) and 166(4) TFEU, ordinary legislative procedure, QMV
Department	Education
Document Number	(40351), 5892/19, COM(19) 65

Summary and Committee's conclusions

3.1 The proposed Regulation is one in a series of contingency measures put forward by the European Commission to prepare for the UK leaving the EU without having ratified the draft Withdrawal Agreement setting out the terms of the UK's departure. Its purpose is to ensure that certain activities funded by the EU's Erasmus+ programme which are underway on exit day are not brought to an abrupt end if the UK leaves the EU without a deal. The current Erasmus+ programme for education, training, youth and sport runs from 2014–20 and provides EU funding for three types of action:

- learning mobility;
- cooperation on innovation and the exchange of good practice; and
- support for policy reform.

3.2 The proposed Regulation would only apply to the learning mobility activities set out in Articles 7 and 13 of the 2013 Erasmus+ Regulation. These enable participants (primarily students, trainees, teaching staff and young people involved in volunteer or youth work) to pursue their education and learning in another Member State or participating country. In an earlier Report[11] on the European Commission's proposal for a successor Erasmus programme for the years 2021–27, we noted the popularity of the Erasmus+ programme amongst stakeholders, principally the higher education sector, and the UK's active engagement:

> Each year, Erasmus funds around 16,000 UK-based students to undertake a study trip or work placement abroad and around 2,200 higher education

11 See our Thirty-seventh Report HC 301–xxxvi chapter 13 (5 September 2018).

staff to work or train in another Member State or participating country. Providing for these exchanges accounts for roughly 60% of the total Erasmus budget.[12] The UK also benefits from inward student and staff mobility from the 32 countries that participate in Erasmus.[13] Around 30,000 European students a year attend higher education institutions in the UK through the scheme. It has been estimated that around two thirds of all UK outbound higher education mobility—which lasts for a least one academic term—is undertaken through Erasmus. During the 2016 Erasmus 'call', UK students and UK-based projects received mobility grants totalling €47.5 million.[14]

3.3 The European Commission estimates that there will be around 14,000 Europeans from other EU Member States studying, training, teaching, volunteering or participating in youth exchanges in the UK at the time of the UK's withdrawal from the EU and around 7,000 individuals from the UK involved in Erasmus activities in the remaining 27 EU Member States.[15] The proposed Regulation would guarantee funding for these participants (and the institutions sending and hosting them) so that they can complete their learning and receive any academic or other credits earned during their stay, provided the activities being funded have started "at the latest" by exit day. To this end, the UK would continue to be treated as a Member State under the 2013 Erasmus+ Regulation and would be bound to comply with the "controls and audits" of expenditure that it prescribes but would cease to take part in the committee established to assist the European Commission in implementing the programme. Any impediment to the application of EU controls and audits (which involve continued supervision by the European Commission and audits and controls by the EU Court of Auditors and by OLAF, the EU's anti-fraud agency) would constitute "a serious deficiency".

3.4 The European Commission has made clear that the proposed Regulation is a contingency measure, "temporary in nature and limited in scope", describing it as "an immediate solution to the most immediate problem".[16] It is only intended to safeguard the position of those who are already abroad on an Erasmus-funded project on the day the UK leaves the EU, for which provision has already been made in the EU budget. The Commission has proposed a separate contingency measure which would enable the UK to participate in the current Erasmus+ and other EU programmes for the remainder of 2019, but its participation would be contingent (amongst other things) on the UK making a formal commitment (in writing) to continue paying into the 2019 EU budget and applying EU controls and audits of expenditure.[17]

3.5 The Minister for Universities, Science, Research and Innovation (Chris Skidmore MP) explains in his Explanatory Memorandum of 18 February 2019 that the draft EU/UK Withdrawal Agreement, if ratified, would allow UK participation in the Erasmus+ programme to continue "for the lifetime of projects financed by the current MFF"

12 Education Committee, Ninth Report of Session 2016–17, Exiting the EU: challenges and opportunities for higher education, HC 683, para 53.

13 All 28 Member States of the EU participate in Erasmus along with six non-Member States (Norway, Iceland, Liechtenstein, Turkey, North Macedonia and Serbia).

14 *The Erasmus Programme*, Briefing Paper Number 8326, House of Commons Library, June 2018.

15 See p.1 of the Commission's explanatory memorandum accompanying the proposed Regulation.

16 See the press release issued by the European Commission on 30 January 2019 and its fact sheet on the impact of Brexit on the Erasmus+ programme.

17 See chapter 6 of this Report on Council document 5933/19, a proposed Regulation on measures concerning the implementation and financing of the general budget of the Union in 2019 in relation to the UK's withdrawal from the EU.

[Multiannual Financial Framework] ending in December 2020. UK-based organisations and individuals would be eligible to bid for funding, participate in and lead consortia for the duration of the current Erasmus+ programme. The proposed Regulation would only take effect if the UK leaves the EU without ratifying the Withdrawal Agreement and would only ensure the continuation of learning mobility actions which are "ongoing at the time of the UK's withdrawal from the EU and started before the exit date". It would not cover calls or bids for funding in 2019 or 2020. The Minister nonetheless welcomes the proposal as it would provide certainty and "avoid the disruption to the studies of UK participants in the EU and EU participants in the UK".

3.6 The Minister says its is unclear whether the proposed Regulation would extend to mobility projects under the European Solidarity Corps (a pool of young people who volunteer to take part in projects of community benefit). He notes also that the proposal overlaps with, but is narrower in scope than, the funding guarantee made by the Government which will apply to all elements of the Erasmus+ programme and the European Solidarity Corps. This Government guarantee will cover the payment of awards to UK organisations that submitted a successful bid for funding to the European Commission before the UK's exit from the EU, even if the grant agreements are only signed post-exit.[18] The Government will underwrite the funding for the entire lifetime of the projects. The guarantee will not extend to funding committed to partners and participants in other Member States. Where, for example, a UK organisation is the lead member of a partnership involving other Member States, any funding it distributes to non-UK associated beneficiaries will not be covered by the guarantee. For the guarantee to be effective, the Government recognises that it will need to reach an agreement with the EU on the UK's continued participation in Erasmus+ or engage directly with individual Member States in which partner organisations are based.

3.7 The Minister notes that the Scottish and Welsh Governments have both underlined their support for continued UK participation in Erasmus+ and in any successor programme. He indicates that the Government will seek to clarify the scope of the proposed Regulation and any financial implications. He anticipates that a Statutory Instrument will be necessary to give domestic legal effect to the Regulation in the UK post-exit.

3.8 We understand that the proposed Regulation was discussed and agreed at a meeting of EU Ambassadors to the EU (COREPER) on 20 February 2019 and is included in the provisional list of EU legislative acts to be formally adopted by the General Affairs Committee on 19 March 2019.

Our Conclusions

3.9 **We support the broad purpose of the proposed Regulation which is to ensure that there is no disruption for those studying, training, teaching or volunteering abroad on an Erasmus-funded activity in the event of a "no deal" exit from the EU. We are concerned, nonetheless, that there may be uncertainty as to the activities which would fall within the scope of this proposal and those which would be covered by a separate Brexit contingency proposal concerning the UK's contribution to the 2019 EU budget. This uncertainty stems, in part, from differences in the wording contained in Article 1 of the proposed Regulation, which refers to learning mobility activities "which have**

18 See the guidance issued by the Government on 29 January 2019: *Erasmus+ in the UK and the European Solidarity Corps (ESC) if there's no Brexit deal.*

started at the latest on the date on which the [EU] Treaties cease to apply to and in the UK", and in recital (3) which states that the proposal will "allow for the continuation of legal commitments already undertaken with regard to ongoing learning mobility activities involving the UK". We ask the Minister whether the proposed Regulation would apply only to those already abroad at the time of a "no deal" exit or whether it would also encompass activities for which funding has been agreed by exit day but which have not yet begun. Put another way, when would learning mobility activities "start" for the purposes of the proposed Regulation?

3.10 **The proposed Regulation would require the UK to apply EU rules on the control and audit of expenditure "for the entire period of the learning mobility activities and the related follow-up". A failure to do so would be considered a "serious deficiency" on the part of the UK. We ask the Minister whether he accepts that the UK should continue to be bound by these rules in the event of a no deal exit, how long they are likely to apply, and what consequence there would be for UK beneficiaries of Erasmus+ funding if the European Commission were to determine that there was a serious deficiency in the UK's application of the rules.**

3.11 **The Minister recognises that the proposed Regulation would partially overlap with the Government's own guarantee for Erasmus+ funding. We understand that expenditure covered by the proposed Regulation is already provided for in the EU budget, whereas expenditure under the guarantee would have to be funded by the Exchequer. As the scope of the proposed Regulation is narrower than the Government's guarantee, we ask the Minister what assessment he has made of the funding gap or shortfall that it would need to fill under the terms of its guarantee.**

3.12 **The Minister indicates that a Statutory Instrument is likely to be needed to give effect to the proposed Regulation and provide for continued participation in the Erasmus+ programme after the UK's exit from the EU. We ask him whether the 2013 Regulation establishing the Erasmus+ programme has been (or is soon to be) revoked with effect from exit day and whether the Statutory Instrument he envisages would be necessary both to give effect to the proposed Regulation and to implement the Government's guarantee.**

3.13 **As the Minister raises no substantial concerns and accepts that the proposed Regulation would provide certainty for current participants in Erasmus+ programmes, we agree to grant a scrutiny waiver so that the UK is able to support its adoption if it is brought forward for adoption at the General Affairs Council on 19 March. We ask the Minister to report back to us on the outcome of the Council, explain how the UK voted and provide the outstanding information we have requested. We draw this chapter to the attention of the Education Select Committee.**

Full details of the documents

Proposal for a Regulation laying down provisions for the continuation of ongoing learning mobility activities under the Erasmus+ programme in the context of the withdrawal of the United Kingdom of Great Britain and Northern Ireland ("United Kingdom") from the European Union: (40351), 5892/19, COM(19) 65.

Previous Committee Reports

None, but see our earlier Reports on the proposed Regulation establishing a successor Erasmus programme for the years 2021–27: Thirty-seventh Report HC 301–xxxvi chapter 13 (5 September 2018) and Forty-fourth Report HC 301–xliii (2017–19), chapter 7 (14 November 2018).

4 Commission Brexit preparedness: the Channel Tunnel

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Transport Committee; **request for clearance or a scrutiny waiver ahead of adoption rejected**
Document details	Proposal for a Regulation of the European Parliament and of the Council on certain aspects of railway safety and connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union.
Legal base	Article 91(1) TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(40383), 6340/19, COM(19) 88

Summary and Committee's conclusions

4.1 The proposal under scrutiny would extend the validity of certain safety certificates covering the 'Channel Tunnel Fixed Link' for 3 months in the event of a 'no-deal' Brexit (where the draft Withdrawal Agreement is not ratified either by the EU or the UK). As a Union initiative, the intended effect of the proposal—to ensure the continued operation of the Channel Tunnel—would be dependent upon the UK maintaining safety standards and procedures 'identical' to those provided for by EU law.

4.2 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'.[19] Other measures outlined in this action plan—such as those on aviation safety, aviation connectivity, and Erasmus—are subject to separate scrutiny.

4.3 The proposal relates, specifically, to the extension of safety authorisations granted under Article 11 of Directive 2004/49/EC to 'infrastructure managers'.[20] The requirements attached by Article 11 to safety authorisations are drawn loosely and do not prescribe fixed criteria to be enforced by 'National Safety Authorities' rather they serve more as guidance against which national procedures and practice are set (leaving Member States discretion when implementing their own safety management systems). By way of example,

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

20 Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licencing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (the Railway Safety Directive); Railway infrastructure managers are responsible for the management of infrastructure control and safety systems. This can cover track, catenary, stations and power supply. The current infrastructure manager for the Channel Tunnel is Eurotunnel

in accordance with Annex III to the Directive (as referenced by Article 11), basic elements of an infrastructure manager's safety system should include: a safety policy; qualitative and quantitative targets for the enhancement and maintenance of safety; and procedures for giving effect to new 'technical specifications for interoperability' (also known as TSIs). With the entry into force of the 'Fourth Railway Package' and the newly enhanced role of the EU Agency for Railways (especially in the process of granting approvals and authorisations), this situation is likely to change in the future; with the Union taking a more direct role in the regulation of infrastructure control and safety systems.

4.4 On the operation of Article 11 of the Directive, authorisations are usually issued by domestic national safety authorities, however, as a rail link connecting two Member States, specific provision is made in Union law for cross-border rail infrastructure like the Channel Tunnel. Under the Directive, a safety authority is defined either as "the national body entrusted with the tasks regarding railway safety" or, as is required for the Channel Tunnel, "any binational body entrusted by Member States with these tasks in order to ensure a unified safety regime for specialised cross-border infrastructures".[21] As part of their preparations for the tunnel entering into service, UK and French authorities established the Channel Tunnel 'Intergovernmental Commission' (IGC) as a binational body with the power to grant safety authorisations covering the fixed link.

4.5 If the UK leaves the EU on 29 March 2019 in a non-negotiated exit, the Commission has stated that, for the purposes of Directive 2004/49/EC, it will be treated as a third-country (a non-Member State).[22] In legal terms, this would have the effect of rescinding the IGC's position as a binational safety body under Union law and, as a consequence, would raise questions concerning the validity of the safety certificates it has issued.

4.6 The Commission's proposal seeks to avoid this situation and to provide time for alternative arrangements to be made. As EU law does not prevent Member States from entering into agreements or contractual relationships with third countries covering cross-border rail safety, it is likely that the current IGC-system would be retained with only minor, technical changes having to be made to its founding legal text to reflect the UK's new status as a third country.[23]

4.7 Parliamentary Under-Secretary of State at the Department for Transport (Andrew Jones MP), wrote to the Committee on the proposal under scrutiny by way of Explanatory Memorandum on 28 February 2019.[24]

4.8 The Minister provides helpful background to the proposal and a detailed history of the genesis of the IGC and the unique governance structure of the fixed link. The Minister does not, however, *directly* address whether the UK supports or opposes the Commission's proposal and it is not clear whether it intends to reciprocate and maintain identical safety standards and procedures to those provided for by EU law. Statements such as the Government "… welcomes the additional time provided by this Regulation" and "it… is therefore keen to ensure that the benefits of this [the IGC] unified safety

21 Article 3(g) of the Railway Safety Directive
22 See the Commission's explanatory memorandum to the proposal under scrutiny
23 The IGC was established under the Treaty of Canterbury
24 Department for Transport, 'Explanatory Memorandum on Proposal for a Regulation of the European Parliament and of the Council on certain aspects of railway safety and connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union' (28 February 2019)

regime are maintained as far as possible" imply support, at minimum, for a transitionary arrangement (but it cannot be stated with certainty that this apparent endorsement extends to the proposal under scrutiny).

4.9 As with other Commission Brexit preparedness proposals considered by the Department for Transport, the Minister's Explanatory Memorandum fails to adequately address the potential implications of the draft Regulation for UK transport law and policy. Large parts of the Explanatory Memorandum are descriptive. On the substance of the proposal, the Minister is silent on issues relating to the Commission's plans for its enforcement.

4.10 The Commission's explanatory memorandum provides that the measures envisaged by the draft Regulation:

> … are conditional on safety standards *identical* with the EU requirements being applied to infrastructure on the UK territory, which are used for the purposes of ensuring cross-border rail connectivity [author's own emphasis added]

The conferral of this benefit on the UK—i.e. extending the validity of safety authorisations granted under Article 11 of Directive 2004/49/EC—is subject to specific enforcement provisions. These are addressed to the UK as, unlike France (and in the event of a no-deal Brexit), it will not be bound by Union law. In this regard, the draft Regulation provides the Commission with the power to withdraw the benefit of extension conferred on holders of authorisations "where it is not ensured that safety standards identical with the Union requirements are applied to any relevant infrastructure".[25]

4.11 This power is to be given effect to by way of implementing acts. This approach to enforcement is, in and of itself, not that unusual; it is, conceivably, the only way of ensuring compliance with Union law by a third country save for a bilateral (between France and the UK) or multilateral (the EU-27 and UK) agreement being reached (the former of which is to be pursued during the 3-month extension provided for by the draft Regulation). What is unusual, however, is that the procedure to be followed for revoking an authorisation is not clearly specified. More worryingly still, this issue is not highlighted in the Minister's Explanatory Memorandum on the proposal.

4.12 As per Article 4 of the draft Regulation, an obligation would be placed on authorisation holders to deliver 'relevant' information and documents to national safety authorities—within a time limit set by that authority—in order for an assessment to be made as to whether or not identical safety standards are being maintained. Before an authorisation is revoked, the Commission shall "in due time" inform the relevant national safety authority, that of the UK and the authorisation holder. It appears from a close reading of Article 4, that the national safety authority would be the IGC and, as the sole infrastructure manager on the fixed link, the authorisation holder would be Eurotunnel. This assessment is complicated somewhat by subparagraph 2 which reads that "[the] holders of authorisations referred to in Article 1(2), and, as appropriate, the authority issuing them when different from the National Safety Authority… shall cooperate…". The reference to a 'different' authority appears to open up the possibility that the draft Regulation could apply beyond the IGC (more than likely to French and British competent authorities).

25 See Recital (8) to the draft Regulation.

4.13 It is deeply concerning that—should the Regulation be invoked—a private enterprise—in Eurotunnel—could be subject to an opaque procedure that has the potential to severely restrict its operating ability. Article 4 does not set: time limits for the delivery of information and documents (which appears to be at the discretion of national authorities); a clear procedure for the revocation of authorisations (specifying information, representation and appeal rights); or checks on the Commission's role. If the national safety authority to which the draft Regulation applies is the IGC, the practical implications of these concerns are somewhat limited (the IGC is an Anglo-French body which has worked effectively and cooperatively since its inception). With the best of intentions, however, unclearly drafted law is susceptible to exploitation (whether intentional or not). It is worth noting that in his Explanatory Memorandum, the Minister states that his Department have "engaged with relevant parties" on the draft Regulation but he does not provide any information to suggest that he has discussed these issues with Eurotunnel.

4.14 The Minister wrote to the Committee on 7 March 2019 with an update on the progress of the proposal.[26] He states that the Government wishes to support the draft Regulation when it is put to the Council of Ministers for adoption on 18 or 19 March. As such, he requests that the proposal is either cleared from scrutiny or a waiver granted.

4.15 On the substance of the proposal, the Minister notes that two "particularly significant improvements" have been made to the draft Regulation during working group negotiations. The first concerns an extension in the scope of the Regulation to include rail safety certificates, train driver licences and operator licences. The Committee is unable to assess the significance of these changes as no further information is provided. Second, the proposal has been amended to include rail services and cross-border infrastructure on the island of Island. These changes are said to be "positive" and cover border-crossing sections up to Dundalk (Ireland). Again, the specifics of these changes and their relation to the draft Regulation (as a whole) are not outlined. Given the concerns raised above regarding the enforcement of the Regulation, extending its scope to cover Ireland/Northern Ireland creates further uncertainty. This is notwithstanding the unique legal status of the IGC and the Commission's initial characterisation of the proposal as *lex specialis* (versus infrastructure control and safety management by two national safety authorities on the Ireland/Northern Ireland border).

4.16 The Minister also states that changes have been made to the proposal that would extend the validity of safety certificates covering the fixed link for 9 months in the event of a no-deal Brexit (versus the 3-month period originally suggested).

4.17 **We thank the Minister for this Explanatory Memorandum and letter of 7 March 2019. We note the speed with which the proposal has progressed to adoption and are grateful for the information that his officials have shared with the Committee.**

4.18 **In light of the UK's withdrawal from the EU, the geographical location of the Channel Tunnel Fixed Link—set between the UK as a soon to be third country and France as an EU Member State—will serve as a meeting point for future UK standards and those of the EU. The proposal under scrutiny raises questions regarding the relationship between these two systems that is likely to be played out in a number of other areas after EU exit: either to accept EU standards and maintain a broadly similar relationship with the continent to that which prevailed whilst the UK was a**

26 Letter from Andrew Jones MP to Sir William Cash MP, 7 March 2019

Member State or, alternatively, to mark a clean break from the Union and regulate independently. With regards to the safety of rail infrastructure, however, this appears to be a false choice and highlights how EU law will—irrespective of the form of exit—continue to play an important role in the UK.

4.19 **By way of explanation, France will continue to be bound by EU railway safety laws which—with the coming into force of the Forth Railway Package and the enhanced role of the EU Agency for Railways—is only likely to become more prescriptive and leave less discretion to Member States. For the fixed link, failure to match standards set by the EU—and given effect to by France—would undermine the success of the IGC (which has been based, amongst other considerations, on a unified approach to assessing infrastructure manager's safety systems). In this regard, it is telling that the draft Regulation would require 'identical' safety standards to be maintained in the interim. As far as amendments to the Treaty of Canterbury are concerned, it is likely that the Union's proposal will serve as a starting point for future negotiations on the procedures and practices applicable to the fixed link. It is also worth noting that the IGC recently signed a Memorandum of Understanding with the EU Agency for Railways on cooperation in preparation for the implementation of the 'technical pillar' (covering safety) of the Fourth Railway Package.**[27]

4.20 **The socioeconomic consequences of not providing for the continued functioning of the IGC cannot be overstated: domestic passenger and commercial freight services would be halted indefinitely.**

4.21 **On a linked point, services operating on the fixed link do not stop at Dover/Folkstone rather they run to London St Pancras International (this part of the UK's strategic rail network is known as 'High Speed 1' or 'HS1'). This section of track is administered by Eurotunnel with oversight by the IGC. The completion of 'High Speed 2' (HS2) will see services run from St Pancras as far north as Leeds by the start of the 2030s. Given that HS2 has been designed as a continuation of HS1, it would be inconceivable for it to operate in accordance with different safety standards (the consequence of this would be an interruption of services at St Pancras). As such, based purely on practical considerations, the prospect of EU safety standards applying beyond the physical infrastructure of the fixed link is almost inevitable.**

4.22 **The Minister has requested that the proposal is cleared from scrutiny or a waiver granted so that the Government can support its adoption at Council on either 18 or 19 March. Given the clear political importance of the proposal, the Committee declines to clear the file from scrutiny. In light of the Minister's letter of 7 March 2019, we do not believe it appropriate to grant a scrutiny waiver. The Minister has informed us of significant changes to the scope of the proposal—to include rail safety certificates, train driver licences and operator licences—and of plans for its application to the island of Ireland. These changes are not explained in any detail nor is an assessment made of their potential implications for UK transport law and policy. This is deeply unsatisfactory and the Committee is disappointed that the Minister has not done more to facilitate our scrutiny of the proposal and, as consequence, to enable the**

27 Channel Tunnel Intergovernmental Commission and European Union Agency for Railways, 'Memorandum of Understanding between the Channel Tunnel Intergovernmental Commission and European Union Agency for Railways concerning cooperation in preparation for implementation of the technical pillar of the 4th Railway Package' (5 October 2015)

Government to participate in what are clearly very important negotiations. As such, we request further information on these changes along with an assessment of their legal and policy implications.

4.23 **On the substance of the proposal, we seek the Government's view of Article 4 of the draft Regulation (on the revocation of safety authorisations), in particular, the lack of: time limits for the delivery of information and documents to national safety authorities; a clear procedure for the revocation of authorisations; and the absence of checks on the Commission's role. In light of the Minister's letter of 7 March, this issue would take on added importance if the proposal is extended to include the island of Ireland.**

4.24 **We are also interested to know whether the Government has met with Eurotunnel to discuss the Commission's plans for UK compliance with the proposal and the revocation of authorisations. Ensuring certainty for business is of the utmost importance and must be prioritised in negotiations. For the proposal under scrutiny, this is especially true; Eurotunnel could be subject to a new infrastructure safety management regime in a little over 2 weeks that it appears is yet to be fully fleshed out at EU-level.**

4.25 **With regards to the Treaty of Canterbury, we seek further information on the potential amendments that would be required to ensure identical safety standards and procedures to those provided for by EU law can be maintained.**

4.26 **We seek a response to these questions and requests for further information by 27 March 2019 and full report on the Council at which the proposal is put for adoption including how the Government voted.**

4.27 **We draw this Report to the attention of the Transport Committee and the Business, Energy and Industrial Strategy Committee.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council on certain aspects of railway safety and connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union: (40383), 6340/19, COM(19) 88.

Previous Committee Reports

None.

5 Negotiating mandates for EU-US trade talks

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; but scrutiny waiver granted until 29 March 2019; drawn to the attention of the Committee on Exiting the EU, the Foreign Affairs Committee and the International Trade Committee
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

5.1 On 25 July 2018, Commission President Juncker and US President Trump agreed to launch a new phase in EU-US trade relations, identifying five areas of potential further engagement in their Joint Statement, including: reciprocal liberalisation of trade in (non-auto) industrial goods; and closer cooperation on standards.

5.2 These new, more targeted[28] 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 additional steel and aluminium duties of 25% and 10% on EU imports[29] and threat of Section 232 measures on EU imports of cars and car parts in July 2018. The US Department of Commerce submitted the results of its investigation into the effect of imports of cars and car parts on the national security of the US on 17 February 2019; President Trump has 90 days to decide what, if any, action to

28 Negotiations for an ambitious EU-US trade and investment deal, known as the 'Transatlantic Trade and Investment Partnership (TTIP) stalled in 2016.

29 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." While the US claims that Section 232 measures on EU steel and aluminium imports 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.

take to restrict imports. At the Informal Trade Foreign Affairs Council on 21–22 February 2019, Trade Commissioner Malmström said that she did not know the contents of the US 232 report into cars and reiterated that €20 billion (£17.2 billion) of EU "rebalancing measures" had been prepared.[30]

5.3 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 (see our previous Report chapter for further information).[31] These proposals require the approval by a qualified majority of EU Member States in the Council before talks can begin. However, given the political sensitivities, it is expected that the Commission will seek unanimous approval of the mandates.

5.4 At its meeting on 27 February 2019, the Committee noted the Government's assessment that the mandates "are in the UK's interests" and that the agreements (once negotiated) would not apply to the UK in the case of no deal, but would apply if adopted during any negotiated transition period. However, it requested further information on the expected coverage/scope of the mandates, the expected timetable for their adoption, and their Brexit implications, including whether the UK would seek to replicate these agreements post-exit/transition. In his letter dated 4 March 2018 (received on 6 March 2018), the Minister of State for Trade Policy (George Hollingbery MP) responds to the Committee's outstanding queries.

Scope of the mandates

5.5 In response to the Committee's request for clarification on the scope of the EU's proposed negotiating mandate for an industrial goods agreement, including whether cars and car parts and fish and fish products are included and whether the Minister supports their inclusion (or exclusion) and why, the Minister:

- confirms that fish and fish products and forestry products are in scope of these negotiations as these products are not included in Annex 1 the WTO Agreement on Agriculture (which covers basic agricultural products and the products derived from them, as well as all processed agricultural products, including wines, spirits and tobacco products, fibres, and raw animal skins);

- states that cars/autos and car/auto parts are within scope of the agreement, but the Commission's Explanatory Memorandum "allows for potential US sensitivities around pick-up trucks to be taken into consideration in the negotiations", meaning that pick-up trucks may be excluded from a final agreement, pending the outcome of negotiations. The Minister stresses that "the proposal has moved forward" from the initial Joint Statement and subsequent Interim Report of January 2019 and the Government fully supports the Commission's view "that auto goods….by definition need to be included in an agreement", but there is "flexibility on US sensitivities in this area [pick-up trucks]"; and

30 Written Statement dated 4 March 2019 on the Informal Trade Foreign Affairs Council.
31 Fifty-sixth Report HC 301–lv (2017–19), chapter 7 (27 February 2019).

- notes that the mandate now includes additional provisions "…to take into account sensitivities around energy-intensive products" and "…for a Sustainability Impact Assessment (SIA) to take place, taking into account the Paris Agreement on Climate Change", which he considers "present no issues for the UK".

5.6 In response to the Committee's question on why the Minister considers that the mandate on conformity assessment "ensures a high level of protection is fully preserved", the Minister states:

> The EU has been clear throughout discussions with the US that EU-US negotiations are not a route for lowering standards. The Commission has emphasised that all regulatory cooperation activities undertaken in the context of the Executive Working Group established following the July agreement should respect a number of guiding principles, including that domestic law and regulatory procedures will need to be fully respected and levels of protection should be at least maintained, and improved where possible.

Expected timetable for the negotiations

5.7 At its meeting on 27 February 2019, the Committee noted growing divergences in the EU's and US's positions, with the Commission rejecting the inclusion of agriculture (or other areas that might be sensitive for either side), drawing on the Joint Statement in which both sides agreed to cover the removal of tariffs, non-tariff barriers and subsidies for "non-auto industrial goods", and the Office of the US Trade Representative (USTR) explicitly including agriculture in its negotiating objectives of January 2019.

5.8 In response to the Committee's request for the Government's analysis of the reasons for the US's inclusion of agriculture and how this is likely to impact the negotiations, the Minister:

- notes that a majority of EU Member States "made clear their desire to move quickly to adopt these mandates" at the Informal Trade Foreign Affairs Council in February 2019 "as a means of deescalating trade tensions between the EU and US", with only France expressing reservations;
- expects a vote on the mandates "to take place soon after the European Parliament has voted on its resolution on the mandates during the week commencing 11th March" and confirms that the UK will vote in favour;
- explains that the US "includes objectives on agriculture in their negotiating objectives for all trade agreements as standard", as this "is set out in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015"; and
- considers it "too soon to say what impact this divergence will have on EU-US negotiations".

Brexit implications

In the event of no deal

5.9 In response to the Committee's request for clarification on 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, the Minister:

- reiterates that the US is the UK's largest trading partner outside the EU (with trade currently worth £180 billion per year) and single biggest source of inward investment into the UK;
- states that in both a deal and no-deal scenario, the UK will be prioritising negotiating a full and comprehensive free trade agreement (FTA) with the US; and
- considers it "is too soon to say exactly what would be covered in a future UK-US deal", but stresses the Government's commitment "to mutually beneficial economic arrangements with the US that benefit UK consumers and companies".

In the event of a Withdrawal Agreement/negotiated withdrawal

5.10 The Committee previously noted that 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, but it is not clear whether the UK will benefit from the rights.

5.11 In response to the Committee's request for 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, the Minister states that "arrangements would be put in place with partner countries so that the UK is treated as an EU member state both in terms of rights and obligations for the purposes of international agreements, including trade agreements" and that "this approach provides a clear mechanism to achieve continuity of our existing free trade agreements from exit day and throughout an implementation period".

5.12 The Minister is not able to set out whether the UK would seek continuity of the effects of these agreements post-transition/implementation period on the basis that it is unclear a) "whether an EU-US agreement will be concluded during an implementation period and therefore whether the UK will be bound by and benefit from said agreement"; and b) "whether this agreement would be in scope of the [UK's] trade agreement continuity programme". He reiterates the Government's commitment "to ensuring continuity and minimising disruption for businesses" post-transition/implementation period and to publishing Scoping Assessments prior to launching negotiations on all new FTAs, which would apply to a future UK-US FTA.

5.13 The Minister does not comment on the USTR releasing its negotiating objectives for a future US-UK trade deal, which is considered to have "taken an aggressive posture towards the U.K. on post-Brexit trade talks".[32]

5.14 In response to the Committee's question on whether the Government will 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) if there is a negotiated withdrawal, the Minister states that if the agreement enters into force during an Implementation Period the Government "will conduct an Impact Assessment in line with common practice".

5.15 **We note that the Minister continues to stress the political expediency of the UK supporting these mandates, on the basis that they are "in the UK interests" and are a key means of diffusing escalating trade tensions between the EU and US.**

5.16 **Given the clear political and economic importance of these mandates and their implications for post-Brexit UK-US trade relations, we consider that the Minister should have provided more information in his original Explanatory Memorandum on the details of the mandates and whether the Government would seek to transition/replicate them post-exit (in either a no deal or negotiated withdrawal scenario). It is only following a series of questions by this Committee that the Minister has confirmed/explained that:**

- **The mandate on industrial goods:**
  - **includes fish and fish products as well as forestry products, which the Government supports;**
  - **includes cars and car parts, but "allows for potential US sensitivities around pick-up trucks to be taken into consideration in the negotiations", meaning that pick-up trucks may be excluded from the final agreement, pending the outcome of negotiations, which the Government supports;**
  - **includes new, additional provisions which take into account "sensitivities around energy-intensive products" and commits the Commission to publishing a Sustainability Impact Assessment on the agreements this year, which takes into account the Paris Agreement on Climate Change; the Government does not appear to have actively sought these changes, but considers that the "changes present no issues for the UK".**
  - **Cooperation activities covered in the mandate on conformity assessment "are not a route for lowering standards", but should maintain (and where possible improve) regulatory standards; in his next update to the Committee, we ask the Minister to clarify whether the UK Government has actively supported this objective in Council discussions.**

5.17 **We further note that whilst USTR has set clear objectives for a post-Brexit trade deal with the UK and the Minister is clear that negotiating a FTA with the US is a**

32 'US takes tough line with UK on post-Brexit trade talks', Financial Times, 1 March 2019.

priority for the UK in both a no deal and negotiated withdrawal scenario, the Minister is not willing or able to comment on whether the UK would seek to transition or replicate the potential EU-US agreements post-exit/transition period.

5.18 **Given the uncertainties around the timing of any vote in the Council and whether further changes to the text of the proposed mandates will be made in the interim, we retain the documents under scrutiny. However, we grant the Minister a time-limited scrutiny waiver (until 29 March 2019) to be able to support the mandates if they are presented for adoption in the Council shortly after the European Parliament's (non-binding) resolution during the week commencing 11 March 2019, on the condition that:**

- **the scope of the mandates does not significantly deviate from the information shared by the Minister; and**
- **the Minister continues to keep us updated on the negotiations and the outcome of any vote in the Council, including different Member States' positions.**

5.19 **Finally, we remind the Minister of the importance of keeping us updated on any potential EU countermeasures to potential US S232 measures on cars and car parts imports from the EU and to deposit any relevant documents for scrutiny.**

5.20 **In the meantime, we draw the Minister's update and our conclusions to the Committee on Exiting the EU, the International Trade Committee and the 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

Fifty-sixth Report HC 301–lv (2017–19), chapter 7 (27 February 2019).

6 Brexit: UK contributions to the EU budget in 2019 in a 'no deal' scenario

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Committee on Exiting the EU, the Public Accounts Committee and the Treasury Committee
Document details	Proposal for a Council Regulation on measures concerning the EU budget for 2019 in relation to the withdrawal of the UK
Legal base	Article 352 TFEU and Article 203 EURATOM; special legislative procedure; unanimity
Department	HM Treasury
Document Number	(40348), 5933/19, COM(19) 64

Background and Committee's conclusions

6.1 The EU budget amounts to roughly 1 per cent of its Member States collective Gross National Income each year, with individual EU countries contributing to meet expenditure demands proportionate to their economic size. As a result, the UK is currently a substantial net contributor to the EU budget. According to figures[33] released by the Treasury in March 2018, in 2017 the UK made a gross contribution of £18.6 billion, or a net public sector contribution of £8.9 billion. This last figure takes into account the UK rebate—which was £6.5 billion that year—and EU funds that are managed domestically by the UK public sector before being disbursed, such as agricultural subsidies and structural funds (£4.1 billion). However, it excludes EU funding received by UK-based private sector recipients directly from the European Commission, such as research grants to universities.[34]

6.2 The legal obligation for the Treasury to make payments into the EU budget will exist for as long as the UK is an EU Member State.[35] That means its withdrawal from the European Union, scheduled to take place on 29 March 2019,[36] will automatically remove the 'EU obligation' to make payments into the EU budget under the Treaties. However,

33 HM Treasury, 'European Union Finances 2017: statement on the 2017 EU Budget and measures to counter fraud and financial mismanagement'

34 The European Commission's figures, which take into account all flows of EU funding to the UK—both to the public and private sector- give a net contribution for 2016 of £7.84 billion compared to the Treasury's figure of £9.63 billion, indicating there was €1.79 billion of EU funding flowing directly to private sector UK entities that year.

35 At present, the Treasury makes the UK's payments into the EU budget under section 2(4) of the European Communities Act 1972, which allows it to use the Consolidated Fund to "meet any EU obligation to make payments to the EU" as well as "any other expenses incurred under or by virtue of the [EU] Treaties". However, some level of parliamentary oversight was retained as the EU's long-term funding settlements—the Multiannual Financial Framework—and the legislation establishing how it is funded by the Member States—the Own Resources Decision—had to be approved by Act of Parliament before the Government could consent to their adoption at EU-level.

36 The UK's EU membership could be extended under Article 50 TEU by common agreement between the UK and all 27 remaining Member States.

it has been clear from the very start of the Brexit negotiations that the EU wanted the UK to pay for a share of financial commitments undertaken by the Union with Britain as a Member State. The European Commission issued a position paper to that effect in June 2017,[37] and in her Florence speech in September 2017 the Prime Minister affirmed the UK's position that none of the remaining Member States would have to make higher contributions to the EU budget as a direct result of the UK's departure.[38]

6.3 To reflect these positions, the draft Withdrawal Agreement on the UK's exit from the EU, published in November 2018, contains an elaborate financial settlement under which the UK would:

- make contributions to the EU budget in 2019 and 2020 as if it were still a Member State, including the application of the UK rebate to reduce the UK's overall net contribution in line with its receipts from the EU budget;
- pay a share of EU budgetary commitments which were made under the 2014–2020 Multiannual Financial Framework (approved by the UK Parliament in 2015), but which are not yet paid at the end of the current MFF period on 31 December 2020;[39] and
- contribute to other outstanding EU financial commitments, including the cost of pensions of EU civil servants accrued before 31 December 2020 and any crystallised contingent liabilities that were decided before the UK formally ceased to be a Member State.

6.4 The total cost to the UK taxpayer of the financial settlement in the Withdrawal Agreement has been provisionally estimated by the Treasury at £39 billion.[40] However, to make the overall settlement legally binding from the moment the UK's membership of the EU ceases (whether 29 March or following any extension of the Article 50 negotiating period),[41] the Withdrawal Agreement must be ratified by both sides. At present, it is unclear that the necessary majority for this exists in the House of Commons.

6.5 In a 'no deal' scenario, i.e. where the Agreement is not ratified before the UK ceases to be an EU Member State, there is no clear legal basis for further UK payments into the EU budget. Indeed, the Treasury has already introduced legislation to remove EU budgetary law from the UK statute book in a 'no deal' scenario.[42] The Government has also established an EU funding guarantee, which will provide financing from the Treasury

37 This was in fact the first Brexit position paper issued by the European Commission after the Government notified the EU of its withdrawal on 29 March 2017.

38 In her Florence speech, the Prime Minister said: "I do not want our partners to fear that they will need to pay more or receive less over the remainder of the current budget plan as a result of our decision to leave. The UK will honour commitments we have made during the period of our membership."

39 The EU budget is often implemented by means of so-called 'differentiated' expenditure. This means that payments to which the EU legally commits itself, like research funding or investment in transport infrastructure, is agreed in one financial year but not actually disbursed—partially or wholly—until a later year. The difference between commitments made and actually paid out is known as the *'Reste à liquider'* or RAL.

40 The final settlement is likely to cost more than this. See for more information: National Audit Office, "Exiting the EU: the financial settlement" (20 April 2018).

41 An extension of the Article 50 negotiating period would also extend the UK's full membership of the EU, meaning it would remain under a legal obligation to make payments into the EU budget for that period.

42 See the European Union Budget and Economic And Monetary Policy (EU Exit) Regulations 2019. It was sifted for negative procedure by the European Statutory Instruments Committee on 12 February 2019.

to ensure that "UK organisations […] will continue to receive funding over a project's lifetime if they successfully bid into EU-funded programmes before the end of 2020" if the Withdrawal Agreement is not ratified.[43]

6.6 For the EU, an immediate cessation of the British contribution would be a significant disruption, given the UK is one of the largest net contributors. Under the Treaties, the EU's revenue and expenditure must be matched: it cannot run a deficit.[44] Therefore, without British payments EU expenditure would have to be reduced, or other Member States would have to pay more to make up the shortfall (or a combination of both).

6.7 In late January 2019, the European Commission therefore issued an emergency legislative proposal in the form of a Council Regulation that effectively invites the UK to continue making payments for the remainder of 2019 even as a non-Member State.[45] The essence of the proposed Regulation is that, rather than amending the 2019 EU budget to reduce planned expenditure to take into account the potential lack of a UK contribution from April onwards, the Treasury has been asked to make its planned gross contribution for all of 2019—set at €17.4 billion (£14.9 billion)—even if the Withdrawal Agreement is not ratified.[46] The Government would need to signify its agreement to this arrangement by 18 April, unless the Article 50 period—and therefore the UK's EU membership—were extended beyond 29 March.[47]

6.8 Given the exceptional circumstances that have led the Commission to make this proposal, the legal basis for the draft Regulation is Article 352 of the Treaty on the Functioning of the European Union. This is a fall-back mechanism that allows the EU to take exceptional measures for which no explicit legal basis is provided elsewhere in the Treaties. Because of this, the proposal requires unanimous agreement of the Member States in the Council, and the consent of the European Parliament. As a consequence, the UK Government also needs to vote in favour of—or abstain on—the Regulation for it to be adopted while the UK is still a Member State.[48] The proposal, like the Withdrawal Agreement, would only take effect from the date the Treaties cease to apply to the UK, whether on 29 March 2019 or following any possible extension of the Brexit negotiation period under Article 50 of the EU Treaty. (During any such extension, the UK would remain a full Member State including the obligation to make payments to the EU budget.)

UK eligibility to receive EU funding

6.9 Although the Commission proposal, if accepted by the UK, would notably prevent acrimonious negotiations with Member States about increasing their contributions to the

43 See the Government's guarantee for EU-funded programmes if there's no Brexit deal (accessed 7 March 2019).

44 Under Article 310 TFEU, "The revenue and expenditure shown in the [EU] budget shall be in balance."

45 The European Commission published three policy papers covering the implications of a 'no deal' Brexit scenario In the second half of 2018, and how the EU intends to prepare for them. These papers, notably, did not cover the budgetary implications of a disorderly Brexit. See for more information our Report of 23 January 2019.

46 The proposed Regulation would take effect when the UK has ceased to be an EU Member State, and as such could obviously not be binding on the Government. Instead, the Treasury would voluntarily have to accept the proposal to make the payments. The proposal requires the Government to make a written commitment to that effect by 18 April 2019, although that deadline could be extended by the Commission.

47 The Commission has asked for the power to delay the deadline for the UK's notification by Delegated Act.

48 As noted, if the proposal is adopted prior to the cessation of the UK's EU membership, the Government would retain its veto right over the Regulation (although the proposal has no direct impact on the UK unless the Government subsequently voluntarily chooses to accept the budgetary offer in any event). Prior to the repeal of the European Union Act 2011 in July 2018, the Government would have been unable to let the proposal be adopted without parliamentary agreement.

EU by keeping the UK's payments in place, its offer is, however, not *entirely* one-sided. In return for UK contributions to the EU budget for the remainder of 2019 even as a non-Member State, the Commission has proposed that:

- the UK Government, as well as public and private sector entities, would remain eligible to receive EU funding until 31 December 2019 for "legal commitments entered into before the withdrawal date"[49] if they would otherwise have become ineligible for such funding when the UK ceases to be a Member State (i.e. when there is no legal avenue for the funding in question to be provided to the UK as a 'third country') (**article 2**); and
- the UK Government, public and private entities would be able to bid for new funding from EU programmes before the end of 2019 as if the UK were still a Member State (**article 4**).[50]

6.10 Continued flows of EU funding to the UK in 2019 as if it were still a Member State would be conditional on payments being made in a timely way, and the UK accepting the "controls and audits" which apply to EU spending programmes (including oversight by the European Commission, the European Court of Auditors and the EU's anti-fraud body OLAF). The EU could suspend payments to UK recipients if the Government did not make the agreed payments or if "significant deficiencies" were observed in the way the funding was implemented (especially in areas of 'shared management', like Structural Funds, where EU funding is allocated to a public authority which then disburses it to the final recipients). The exceptions to this would be the provision of EU funding for UK students on an Erasmus exchange programme on 'exit day',[51] and the continuation of the EU's cross-border cooperation programmes involving Northern Ireland. For those funding commitments, the Commission has proposed separate 'no deal' contingency measures that are not directly dependent on the Government's agreement to pay into the 2019 EU budget, although they are built on an expectation that it will.[52]

6.11 For other EU funding programmes, the precise scope of what UK entities could receive in return for the Treasury making the full payments for the 2019 financial year is unclear. Under article 2 of the proposed Regulation, UK persons or entities "shall continue to be eligible [for EU funding] *in 2019*" (emphasis added). That appears to mean that any payments due from 1 January 2020 would not be covered, even though much of EU funding awarded in 2019—for example for research projects or regional development—may not be due for disbursement until 2020 or later. That would limit the benefit the UK would derive from its continued eligibility. Moreover, UK entities would be barred from EU funding related to programmes with a 'security' component, including notably the European Defence Industrial Development Programme and the Galileo satellite navigation programme. Similarly, the UK would only qualify for investment by the European Investment Bank as a 'third country', which translates into a far smaller share of

49 The withdrawal date is 29 March 2019, unless the Article 50 period is extended by common accord between the UK and the remaining Member States.

50 Under separate contingency proposals made by the Commission, there would be different treatment of UK participation the Erasmus+ student exchange programme and EU-funded cross-border cooperation programmes involving Ireland and Northern Ireland.

51 The contingency proposal relating to UK participation in Erasmus+ in a 'no deal' scenario is the subject of a separate chapter in this Report. The original Commission proposal is available here.

52 For example, the proposed Regulation continuing EU funding for cross-border cooperation programmes involving Northern Ireland contains a recital stating: "The United Kingdom remains liable for its financial obligations assumed as a Member State which relate to these legal commitments of the Union".

investment.[53] It is also unclear if the Commission proposal means UK farming subsidies in 2019 would be paid from the budget for the Common Agricultural Policy, under the terms set out in the relevant EU Regulations.

6.12 As noted, in terms of the financial cost of this arrangement, Article 2 of the draft Regulation stipulates that the UK's payments in return for continued eligibility for EU funding in 2019 would be based on the UK's share of the EU's planned budget for this year. In December 2018, this was set at €148.2 billion in payment appropriations. The gross UK contribution for 2019 would be €17.4 billion (£14.9 billion).[54] That figure includes the estimated rebate the UK would have received in 2019, presumably added by the Commission as a political sweetener (although inclusion of the rebate to reduce the UK's overall contributions even as a non-Member State is now reportedly the subject of acrimonious negotiations in the Council).[55] The actual *net* contribution the Treasury would to the EU until the end of 2019 would be less than this, after EU funding flowing back to the UK over the year as a whole is also taken into account. According to a report in the Daily Telegraph on 25 February 2019, the estimated net UK contribution for 2019 under the proposal would amount to roughly €7 billion (£6 billion).[56]

Implications for EU-based recipients of EU funding collaborating with UK partners

6.13 A separate element of the Commission proposal aims to protect funding streams to recipients of EU funding in one of the remaining 27 Member States, whose successful application for financial support was predicated in some way on cooperation with UK institutions (**article 6**).

6.14 For example, many types of EU research funding are granted only to consortia of researchers representing at least three EU Member States.[57] Following the UK's withdrawal, and absent ratification of the Withdrawal Agreement, a consortium which currently meets this requirement by virtue of a British participating institution could abruptly cease to be eligible for EU funding on 30 March 2019, once the UK no longer count towards the minimum number of participating EU countries. To avoid an abrupt cessation of funding for the EU-based recipients in such cases, the Commission's proposal would keep their eligibility to receive funding in place until the end of 2019. This element of the proposal would take effect irrespective of whether the UK continues to make payments. However, UK-based entities would have to be paid by the UK Government

53 Article 16 of the EIB Statutes require it to "grant finance [...] for investments to be carried out in the territories of Member States", except where—exceptionally—it decides to make an investment outside the EU. It is unclear under what terms the European Investment Bank would return the UK's current paid-in capital, which amounts to €3.5 billion (£3 billion).

54 The UK's share, post-abatement, is usually around 12 per cent of all contributions to the EU budget. The exact amount is contained in the column 'Total own resources' for the UK in Table 7 of this document setting out the EU budget for 2019.

55 *Financial Times*, "Germany and France battle over UK's EU budget rebate" (28 February 2019).

56 This is the amount the UK would have been expected to pay had it remained a Member State or if it ratifies the Withdrawal Agreement.

57 See for example Article 9 of the Rules for Participation in Horizon 2020, the EU's Framework Programme for Research from 2014 to 2020. Participants can also be drawn from non-EU countries formally 'associated' with the Programme, which the UK would not in a 'no deal' Brexit.

because British participants would only continue to receive funding from the EU directly if the UK Government accepts the conditions for payments into the EU budget for the remainder of 2019.[58]

The Government's position on the Commission proposal

6.15 The Chief Secretary to the Treasury (Rt Hon. Elizabeth Truss MP) submitted an Explanatory Memorandum on the European Commission proposal for continued UK contributions on 4 March 2019, over a month after the Commission document was first published. The Memorandum summarises the thrust of the proposal—namely continued UK contributions in return for continued UK eligibility to receive EU funding in 2019—but does not put a figure on the likely cost to the British taxpayer. As has been stated publicly by various Ministers in the past,[59] the Chief Secretary also reiterates that "the UK has [financial] obligations to the EU, and the EU […] to the UK, that will survive the UK's withdrawal and that these would need to be resolved".

6.16 Put differently, the Government is of the view that the UK would somehow have to make contributions to the EU budget beyond 29 March 2019 even in a 'no deal' scenario. Maintaining the Government's usual studied ambiguity about its Brexit preparations, the Chief Secretary's Explanatory Memorandum declines to specify how the Government's position compares to the EU's proposal for continued contributions in 2019. The Treasury has not said what it considers the size of the UK's financial obligations to be in the event of a "no deal" Brexit; how it would want to agree the modalities of payment with the EU; or what conditions it would attach to what would undoubtably be a significant transfer of UK taxpayers' money. The Memorandum notes vaguely that the Treasury "is currently analysing the Commission proposal", but adds that the proposal "is without prejudice to negotiating an agreement with the UK on a [comprehensive] financial settlement" (i.e. one that would cover financial obligations between the UK and the EU beyond just the 2019 financial year, like the settlement contained in the Withdrawal Agreement).

6.17 Although the Chief Secretary says the Commission proposal is still being analysed, on 25 February 2019 the *Daily Telegraph* reported[60] that the Cabinet had signed off on a draft Statutory Instrument enabling the Treasury to continue making payments to the EU in a 'no deal' scenario. Such a legal instrument would be necessary because the Government's current statutory authority to make payments to the EU out of the Consolidated Fund under the European Communities Act 1972 would have fallen away, and without being replaced by new powers under an Act of Parliament to implement the

58 However, if the European Commission made a formal determination that the Treasury had not made payments or if audits and controls had revealed problems with the implementation of EU funding in the UK, the relevant accounting officer would have to take this into account when deciding whether the project as a whole was at risk of "possible serious deficiency" (which, under the Financial Regulation, could lead to a suspension of payments).

59 For example, in evidence to the House of Lords EU Committee on 29 August 2018, the then-Secretary of State for Exiting the EU (Rt Hon Dominic Raab MP) said there was still a "question around quite what the shape of [the UK's] financial obligations were" if the Withdrawal Agreement was not ratified, adding that the UK "always pays its dues On 6 February 2019, the Government again told Parliament that "even if the UK leaves without a deal, the Government have always been clear that the UK has obligations to the EU […] that will survive its withdrawal, and that these obligations would need to be resolved".

60 Daily Telegraph, "Government planning to pay billions to Brussels—even in event of no-deal Brexit" (25 February 2019).

Withdrawal Agreement.[61] The press reported that the Statutory Instrument for payments in a 'no deal' scenario would be made under the European Union (Withdrawal) Act 2018, potentially even under the negative—rather than affirmative—procedure.

6.18 However, as noted, it is unclear if this means the Government accepts the thrust of the Commission proposal in terms of its mix of obligations, conditions and rights (also taking into account the fact that the remaining Member States can make changes to the amount requested and the conditions attached, and therefore no definitive offer from the EU to the UK about the 2019 budget can be made until all the EU's national governments are happy with the proposed Regulation setting out what is being asked of the UK Government). The Chief Secretary has informed us that the formal EU Regulation establishing the legal framework for continued UK contributions in a 'no deal' scenario is due to be adopted by the remaining Member States in the Council on 8 April 2019, giving the UK ten days to respond to the offer (unless its EU membership is extended under Article 50 to provide more time for ratification of the Withdrawal Agreement).

Our conclusions

6.19 **As expected, the European Commission has made a request for the UK to continue paying into the EU budget for the whole of 2019, even if it leaves the EU without a Withdrawal Agreement in March. In return for a gross contribution of nearly £15 billion, British public and private sector entities would have continued eligibility to receive previously agreed EU funding until 31 December 2019, and bid for new funding for the rest of the year. That would, for example, temporarily prolong the UK's access to European regional development and structural funds while the Government decides on the shape of the new 'Shared Prosperity Fund' to replace it domestically. Clearly however, the Commission is mainly attempting to prevent a significant shortfall in the EU budget in 2019 or having to engage in tortuous negotiations between the remaining Member States about increasing their contributions to cover what would have been the UK's payments.**

6.20 **As the House of Lords EU Committee pointed out in its now well-known report on the UK's financial commitments to the EU after Brexit, under a 'no deal' scenario the "UK would be subject to no enforceable obligation to make any [EU] financial contribution at all".[62] Moreover, in a strict financial sense, it is unclear what benefit the UK would derive directly from accepting the Commission's proposal given it is a net contributor to the EU budget. Unilaterally covering EU funding commitments for UK recipients from April 2019 would be cheaper for the Treasury than continuing to cover a share of the EU budget.**

6.21 **However, it is clear that any continued UK payments into the EU budget for the rest of 2019 even in a 'no deal' scenario would depend on wider political considerations, rather than the strict financial cost to the Treasury and the UK taxpayer. In particular:**

- **in a 'no deal' eventuality, the Government and the EU would still need to return to the negotiating table to resolve many issues in the bilateral relationship that**

61 *Same as above.*

62 However, this report noted as well that any agreement on post-Brexit "future market access on favourable terms […] is likely to prove impossible to do so without also reaching agreement on the issue of the budget". See: House of Lords European Union Committee, Brexit and the EU budget, 15th Report of Session 2016–17 (4 March 2017).

would otherwise have been covered by the Withdrawal Agreement, including talks to address the serious disruption to trade and transport likely to occur in such a scenario. As is clear from the text of the proposal itself, the EU will make any such negotiations dependent on the resolution of the financial settlement in line with the principles agreed by both sides in the Withdrawal Agreement;[63] and

- **it has also been suggested that an immediate cessation of payments to the EU in respect of financial commitments undertaken with the UK's agreement when it was still a Member State could have wider implications for its perceived reliability as a negotiating partner, and have an impact on the country's sovereign credit rating.**

6.22 **Indeed, no doubt conscious of these potential ramifications, various former and present Cabinet Ministers have indicated that the Government could pay towards the financial settlement even in the absence of a formal Withdrawal Agreement. The Chief Secretary has reiterated this position in her latest Explanatory Memorandum. So far, however, those statements have been couched in oblique or ambiguous terms, and without putting a detailed figure on the likely cost to the UK taxpayer or the conditions for such a transfer. Accepting the general aim of the Commission proposal, which the press has reported is the Government's position, would render void the argument that one of the benefits of a 'no deal' scenario would be the retention of the full amount of the estimated £39 billion Brexit financial settlement.**

6.23 **There are likely to be long-term financial implications if the Government accepts the EU's offer, that go beyond the current financial year. It is clearly the EU's intention, and obviously in its own interest, to extract the full amount it considers is due from the UK as set out in the financial settlement contained in the Withdrawal Agreement. It is likely to use other political pressure points in the wider economic negotiations with the Government to seek to achieve this. The Commission proposal therefore clearly opens the door to further similar arrangements for continued UK payments to the EU beyond 2019, for example to guarantee previously agreed EU funding to UK recipients where payments fall due in 2020 or later. This means the gross €17.4 billion 'no deal' contribution in 2019 could rise substantially further in the coming years, even though the Treasury will no longer be involved in the establishment of the annual EU budget.**

6.24 **We have also taken note of press reports that the continued inclusion of the UK rebate—to decrease the size of the UK's contribution even as a non-Member State—is not yet set in stone. According to the *Financial Times*, the continued application of the rebate in the 'no deal' proposal is the subject of tense debate among the remaining Member States.[64] The discussions have centred on the fact that according to the European Commission, the system underpinning how the UK rebate is paid for by the other Member States—which provides a secondary rebate to the largest net contributors, to limit in turn how much they pay towards the UK discount—would**

63 That the EU would in any event return to the matter of what it sees as the UK's outstanding financial commitments as part of any emergency discussions in the aftermath of a 'no deal' Brexit is clear from the text of the proposal itself, which states that it is predicated on the assumption that the ad hoc solution would be required only "until an agreement is eventually reached" on the overall financial settlement between the UK and the EU.

64 *Financial Times*, "Germany and France battle over UK's EU budget rebate" (28 February 2019).

automatically fall away at the UK's withdrawal from the Union.[65] That means that, even though the UK would keep its rebate under the 'no deal' offer, these countries would pay more for the 2019 EU budget, while those Member States who do not have a "rebate on the rebate"—like France—would pay less. The draft Regulation as proposed by the Commission does not contain any provisions to keep the current system for financing the rebate in place if the UK agrees to pay.

6.25 **According to the Minister, these points of disagreement notwithstanding, the Member States are due to reach formal agreement on the 'no deal' budgetary offer to the UK in early April (with the UK's response due by 18 April 2019, unless the Article 50 period is extended).[66] We have not seen any revised version of the Council Regulation following the negotiations. As such, the finalised EU offer made in April could be different from the original Commission proposal, and conceivably demand a different sum from the UK taxpayer, for example by stripping out or reducing the applicable rebate. Given that the abatement would have continued to apply in full to UK budget contributions for 2019 and 2020 under the Withdrawal Agreement, that would be a perverse outcome for the UK public purse.**

6.26 **Irrespective of the final shape of the EU's offer, there is clearly a large cost to the Exchequer if the Government accepts the Commission's basic proposition of continued payments to the EU budget in 2019 even in a 'no deal' scenario. The Government's position is therefore of major political importance to Parliament and the wider public. It is extremely disappointing that the Treasury was unable to use its Explanatory Memorandum, submitted more than a month after the Commission published the draft Regulation, to provide us with its concrete position on the 'no deal' financial settlement for 2019.**

6.27 **In light of the lack of this clarity about the Government's view of the proposal, given its view there will be 'surviving' UK financial commitments to the EU in a 'no deal' eventuality, we wrote to the Chancellor of the Exchequer on 7 March 2019. In this letter, we requested more information on the Government's approach to securing parliamentary scrutiny and approval of any UK legal act permitting the Treasury to make payments to the EU if its current authorisation to do so under the European Communities Act 1972 lapses at the point of EU exit, without ratification of the draft Withdrawal Agreement having occurred (and therefore in absence of a standing service provision in place under an Act implementing that Agreement, which would have allowed the Government to meet its obligations under the overall financial settlement described in paragraph 3 above).**

6.28 **We are awaiting the Chancellor's response, which we will report to the House in due course. Should it become clear that the Government has indeed prepared legislation to continue payments to the EU in a 'no deal' scenario, further substantive questions will need to be answered by the Treasury without a delay. In particular, we will continue to press the Government on the following issues:**

65 See article 5 of the Own Resources Decision (Decision 2014/335), which sets out how the UK rebate is paid for by the other Member States. It reduces the contribution to the UK rebate for Germany, the Netherlands, Austria and Sweden.

66 If there is no extension of the Article 50 period and the Regulation is adopted on 8 April 2019, the UK will no longer be represented in the Council of Ministers when formal adoption takes place.

- **Whether the Government is minded to accept the offer set out by the remaining Member States in the Council Regulation described in this Report, and if so confirm that it would make UK payments conditional on the continued application of the rebate;**
- **What the total net cost of this mechanism for payments is likely to be for the British taxpayer, and the Treasury's assessment of the impact of its limited nature (in scope and in time) for the ability of UK entities to successfully secure *new* EU funding in 2019 to reduce the UK's net contribution;**
- **What the acceptance of continued EU's "controls and audits" over how EU funding in the UK was managed and spent would mean in practice, for example in relation to the powers of the Commission or OLAF to conduct inspections in the UK as a non-Member State, and what—if any—differences there would be in practice in this respect compared to the current situation as a Member State;**
- **Clarify whether, if UK entities are granted EU funding under the 2019 Council Regulation which is due for payment in 2020 or later, the Government would need to reach a *further* agreement with the EU on UK contributions to the 2020 EU budget as well, to ensure they are honoured in full by the European Commission;**
- **If so, confirm that if the UK accepts the 2019 budgetary mechanism but does *not* make contributions to the EU budget in 2020, any new EU financing agreements signed by UK entities in 2019 after exit day would be covered under the Government's existing EU funding guarantee; and**
- **Explain what the Commission proposal means for the UK's ability to set its own agricultural policy in a 'no deal' scenario, since the UK's continued payments would continue to finance the European Agricultural Guarantee Fund in 2019 (even though tariffs and regulatory controls would apply to UK farm exports to the EU if there is no Withdrawal Agreement in place).**

6.29 **We note that it remains an option for the Government to reject the EU's offer and cease making payments to the EU as of 29 March. As we have discussed above, that would have wider political ramifications for the future UK-EU relationship and would also seem to contradict earlier Government statements about the nature of the UK's existing financial obligations to the EU. If, however, the Government does *not* accept the proposal to make continued payments into the EU budget for 2019, it is unclear what contingency measures the Commission will take to ensure the EU's expenditure is matched by its revenue for the rest of the year. It would still have the option of amending the EU budget, making politically painful cuts, or begin difficult negotiations with the remaining 27 Member States about increasing their national contributions.**

6.30 **Given the obvious potential for this EU proposal to have significant financial implications for the UK, depending on the Government's position on the Commission's offer, we retain it under scrutiny pending the requested clarifications from the Chancellor and, where appropriate, further information from the Treasury about the legislative process leading up to the formal adoption of the Council Regulation.**

6.31 **We also draw the proposal to the attention of the Committee on Exiting the EU, the Public Accounts Committee and the Treasury Committee.**

Full details of the documents

Proposal for a Council Regulation on measures concerning the EU budget for 2019 in relation to the withdrawal of the UK: (40348), 5933/19, COM(19) 64.

Previous Committee Reports

None. This is a new legislative proposal. The Committee last considered the substance of the EU's 2019 budget in its Report of 9 January 2019.

7 Intellectual property rights for medicinal products

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 469/2009 concerning the supplementary protection certificate for medicinal products
Legal base	Article 114 TFEU, Ordinary legislative procedure, QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39792), 9485/18 + ADDs 1–4, COM(18) 317

Summary and Committee's conclusions

7.1 In order to allow time for investment in new medicines to be recouped, medicines can be protected by patents, which are valid for a maximum of 20 years. Having been granted a patent, though, they must be authorised by regulatory authorities before being placed on the market. As this can take a number of years, the effective patent term is reduced. Supplementary Protection Certificates (SPCs) form part of intellectual property (IP) rights and can provide an additional period of protection on expiry of a patent for a further period of five years. After that, generic manufacturers can enter the market, making cheaper products available to public health systems.

7.2 The Commission has proposed to amend EU law to allow a generic version of a product protected by an SPC in the EU to be manufactured for export to third countries where no SPC or patent protection exists. This is known as an "export waiver".

7.3 At our meeting of 19 December 2018, we requested an update on the discussions once they had recommenced under the Romanian Presidency of the EU.[67] The Minister of State for Universities, Science, Research and Innovation (Chris Skidmore MP) has since written on several occasions to update the Committee, reflecting the speed of developments.

7.4 In his letter[68] of 4 February 2019 he clarified that the two areas of particular concern to the UK were addressed in the mandate[69] for negotiations with the European Parliament (EP). First—in line with the UK's preference—the mandate made no provision for generics manufacturers to stockpile products for export ahead of the expiration of an SPC. Second, the mandate minimised the impact of the export waiver on already granted SPCs. After a transition period of three years, the waiver would apply to those SPCs already granted but which had not entered into effect when the Regulation enters into force.[70]

67 Forty-ninth Report HC 301–xlviii (2017–19), chapter 1 (19 December 2018).
68 Letter from Chris Skidmore MP to Sir William Cash MP, dated 4 February 2019.
69 Council document 5411/19.
70 An SPC only enters into effect after the expiry of the associated patent. Nevertheless, an SPC may be applied for, and granted, many years before the date of expiry of the associated patent.

7.5 Following a letter of 13 February in which he reiterated the Government's position, the Minister has written[71] again to summarise the outcome of negotiations with the EP. Unlike the Council mandate, the compromise[72] included the stockpiling of SPC-protected medicines in the EU ready for entry into EU markets on day 1 of SPC expiry. Production may commence no earlier than six months before SPC expiry. Under the compromise, the waiver would apply immediately to SPCs applied for after the Regulation comes into force and would also apply to earlier applications and already-granted SPCs after a transitional period of three years, providing they have not yet entered into effect when the Regulation comes into force.

7.6 In line with the Government's earlier concerns regarding stockpiling and the impact of the export waiver on already-granted SPCs, the Government is minded to vote against the proposed Regulation when the text comes to Council for a final vote in due course. The Minister considers that the compromise text is not balanced or proportionate, and that the provisions allowing for stockpiling in particular have not been fully assessed.

7.7 **We recall the Government's original assessment that the proposed export waiver was likely to result in a small net gain to the UK. We ask the Minister for a revised assessment in the light of the changes made to the legislation.**

7.8 **We clear the proposal from scrutiny in advance of the final vote and Council and ask that the Minister reply to us after that vote confirming the outcome, providing a copy of any formal explanation of vote tabled by the UK and providing the information requested above.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 469/2009 concerning the supplementary protection certificate for medicinal products: (39792), 9485/18 + ADDs 1–4, COM(18) 317.

Previous Committee Reports

Forty-ninth Report HC 301–xlviii (2017–19), chapter 1 (19 December 2018); Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 1 (5 September 2018).

71 Letter from Chris Skidmore MP to Sir William Cash MP, dated 6 March 2019.

72 Council document 6638/19.

8 Joint Undertaking for ITER (Fusion for Energy)

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Council Decision amending Decision 2007/198/ Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it
Legal base	Articles 47 and 48 (third and fourth paragraphs) Euratom Treaty; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39881), 9868/18 + ADDs 1–2, COM(18) 445

Summary and Committee's conclusions

8.1 Launched in 2005 and now involving seven global partners (Euratom,[73] US, Russia, Japan, China, South Korea and India), ITER (International Thermonuclear Experimental Reactor) is a project to build and operate an experimental facility to demonstrate the scientific viability of fusion as a future sustainable energy source.

8.2 Each partner to the agreement is required to provide its contribution to ITER through an agency. For the EU and Euratom, this obligation is delivered by the Fusion for Energy (F4E) Joint Undertaking, the current members of which are: the EU Member States; Euratom (represented by the European Commission); and Switzerland.[74] The Commission proposed an extension of financing under the next Multi-Annual Financial Framework (MFF) for the period 2021–27 so that the EU can meet its commitments under the ITER agreement.

8.3 The Minister for Universities, Science, Research and Innovation (Chris Skidmore MP) explains[75] that, following examination of the proposal, most Member States (including the UK) are content. Minor issues addressed include:

- a request to bracket the budgetary aspects of the text, including the total financial envelope and the proportion of this contributing to EU climate goals; and
- a request for a provision to underline F4E's obligation to continue its reporting and review duties in line with existing processes.

73 The European Atomic Energy Community, comprising all members of the EU as well as Switzerland which participates in some of the research activities, including ITER.

74 Switzerland participates in ITER through an association to the Euratom Research and Training Programme.

75 Letter from Chris Skidmore MP to Sir William Cash MP dated 28 February 2019 (received 6 March 2019).

8.4 The Minister notes that the budgetary and climate objective elements of future MFF proposals are being covered by separate horizontal negotiations on the future MFF. The proposed bracketing is therefore non-contentious and can be supported by the UK, as can the second issue mentioned above.

8.5 He goes on to explain that the passage of this Decision is necessary to form the legal and financial base of the EU's future contribution to ITER. The Government remains committed to seeking association to the Euratom Research and Training programme, including F4E, after EU Exit. The articles in the text governing third country participation have not been amended by this Decision, and therefore these activities remain open to future UK participation as a third country.

8.6 Overall, says the Minister, he is content to support the compromise text and so the UK intends to vote in favour when the file is considered by COREPER[76] in mid-March. He asks that the Committee consider granting a scrutiny waiver or clearing the document from scrutiny in advance of COREPER. A UK abstention may, he considers, be interpreted as a lack of support for the ITER project or future participation in F4E. It is expected that a Partial General Approach will be put to a Council in May, by which point—says the Minister—the UK will have left the EU.

8.7 **As the text neither precludes, nor requires, future UK association to the Euratom Research and Training programme, including F4E, we are content to clear the proposed Decision from scrutiny. We note that the budgetary elements are being dealt with in separate horizontal negotiations on the future multi-annual financial framework.**

8.8 **We clear the document from scrutiny and require no further information. We draw this chapter to the attention of the Business, Energy and Industrial Strategy Committee.**

Full details of the documents

Proposal for a Council Decision amending Decision 2007/198/Euratom establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it: (39881), 9868/18 + ADDs 1–2, COM(18) 445.

Previous Committee Reports

Forty-fourth Report HC 301–xliii (2017–19), chapter 2 (14 November 2018); Fortieth Report HC 301–xxxix (2017–19), chapter 2 (17 October 2018); Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 5 (5 September 2018).

76 The Committee of (Member State) Permanent Representatives to the European Union.

9 Re-use of public sector information

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny
Document details	(a) Proposal for a Directive on the re-use of public sector information (recast); (b) Commission Staff Working Document Evaluation of Directive 96/9/EC on the legal protection of databases
Legal base	(a) Article 114 TFEU; Ordinary legislative procedure; QMV (b)—
Department	Digital, Culture, Media and Sport
Document Numbers	(a) (39675), 8531/18 + ADDs 1–5, COM(18) 234 final; (b) (39673), 8466/18, SWD(18) 146

Summary and Committee's conclusions

9.1 On 22 January 2019 the European Parliament and the Council reached a political agreement on a modified version of this proposal to revise the regulatory regime concerning the re-use of public sector information, which would seek to increase levels of re-use and adapt the rules to the digital economy.

9.2 As set out in greater detail in the Committee's report on 10 October 2018,[77] the proposal for a Directive would increase the re-use of public sector data through a range of measures including:

- introducing a requirement to encourage public sector bodies to make dynamic data available as early as possible through application programming interfaces [APIs], which would override current restrictions for high value datasets in particular areas which would be specified in subsequent delegated acts;
- weakening the PSI regime in relation to public undertakings in the utilities, public services and transport sectors, which would no longer be subject to the provisions on requests for re-use and the complaints mechanism being disapplied, and would gain the freedom to set re-use charges above marginal cost; and
- introducing an obligation for Member States to develop policies for open access to research data resulting from publicly funded research.

9.3 In the Government's Explanatory Memorandum on the proposal,[78] the Minister for Digital and the Creative Industries at the Department for Digital, Culture, Media and Sport (Margot James MP) noted that the provisions which could require high value datasets

77 Thirty-ninth Report HC 301–xxxviii (2017–19), chapter 2 (10 October 2018).

78 Explanatory Memorandum from the Minister to the Chair of the European Scrutiny Committee (5 June 2018).

to be provided free of charge could render some organisations "unviable", and also that the removal of the right currently available for makers of a database would potentially undermine the ability of bodies such as Ordnance Survey to protect their funding models.

9.4 In the Committee's first report on the proposal,[79] it expressed concerns in relation to the following aspects of the proposal which would constrain the extent to which UK-based organisations were permitted to charge for re-use of their information:

- Removing the second charging exception: The Commission proposed to delete the broadly designed "second exception" which currently permits charging for re-use where under current accounting rules this revenue is necessary to fund the cost of collecting and disseminating the information at stake. This exception is not widely used in the UK but could impact research bodies in government. In effect, with the removal of this exception, only organisations whose ability to perform their public tasks fundamentally depends on their being able to recoup costs to perform their public tasks, such as trading funds or government-owned companies, and libraries, museums and archives, would be permitted to charge for re-use.

- High value public sector databases: The Commission proposed to bring forward a delegated act which would designate certain high value public sector databases which would have to be made available free of charge at a date in the future. In addition to deleting the second funding exception (see previous paragraph) this would effectively override the first charging exception where the whole business model of the public-sector organisation entity is commercial for those particular datasets. As noted by the Minister, organisations such as the Met Office and the Ordnance Survey could be adversely affected by this provision.

- Database protections: The Commission proposed to clarify that the provision in the databases Directive (1996/9), which grants creators of databases a *sui generis* right for a period of 15 years to charge to license the use of the database, cannot be used to prevent the re-use of public sector information. However, although the Commission's explanation of this aspect of the proposal stated that it "does not alter the protection given by Article 7 to public sector bodies that are makers of databases", Article 3 stated that these bodies cannot exercise the right "in order to prevent or restrict the re-use of data contained in the databases"—a wording so broad that it could be interpreted as effectively abolishing the first charging exception also. To compound these concerns, the Committee noted that Commission officials had declined to provide UK officials with further clarification of this aspect of the proposal.

9.5 In its conclusions, the Committee expressed particular reservations about the lack of clarity regarding both the scope of the future delegated act covering high-value datasets, as well as the scope of the "clarification" of the interaction of the sui-generis database right with the re-use of public sector information rules. It concluded that the proposal could "have the effect of abolishing the first [charging] exception as well as the second, without this having been clearly thought through and without the impacts having been clearly considered". It retained the proposal under scrutiny and sought further information from the Government on these issues.

79 Thirty-ninth Report HC 301–xxxviii (2017–19), chapter 2 (10 October 2018).

9.6 On 19 December 2018 the Minister updated the Committee to the effect that the negotiations on the Directive had progressed rapidly and that the Austrian Presidency was granted a mandate to enter into informal trilogues at the Committee of (Member State) Permanent Representatives to the European Union (COREPER) meeting on 7 November 2018.[80] The Minister observed that the Council compromise text addressed the Government's concerns about there being any conflict between the *sui generis* right and the Database Directive, and replaced the proposal that the Commission designate high value datasets via a delegated act with a requirement to use an implementing act instead, and also included a temporary derogation for up to two years from the adoption of any implementing act (which could only occur after the implementing date), thus greatly reducing the likelihood of these provisions ever applying to the UK/UK stakeholders in the context of EU exit, even in the event of there being a prolonged transition/implementation period.

9.7 On 28 February 2019 the Minister provided the Committee with a further update,[81] stating that trilogue negotiations between the Council and the Parliament had concluded with agreement on a compromise text on 22 January, which was subsequently endorsed by COREPER on 6 February.

9.8 The Minister states that she is pleased to be able to inform the Committee that "the UK has achieved the substance of the negotiating objectives outlined in my previous letter". She elaborates: "Most significantly, we have achieved the primary objective of seeking a further temporary derogation for Public Sector Bodies (PSBs) who would be greatly affected by this Directive, if the UK had to transpose the Directive in full."

9.9 The chief points she makes are that:

- The deadline for the transposition of the Regulation is expected to be March or April 2021, meaning that the UK will not have to implement it unless the Implementation Period provided for in the Withdrawal Agreement is extended for over a year; regarding high-value datasets, Commission implementing acts on these datasets could only come into force after the transposition of the Directive itself, and there is a two-year derogation for implementation by Public Sector Bodies thus designated, meaning that there is very little prospect of the UK having to implement these provisions, even if the implementation period is extended by the maximum 24 months.
- The risk of PSBs having their database rights removed through a conflict with the Database Directive has been averted.
- This article brings public undertakings in transport within the scope of the Directive, and the derogation in relation to implementing acts regarding high value datasets do not apply to these undertakings; however, the UK government is not a large-scale commissioner of public undertakings, and officials have been engaging with officials from the devolved administrations and local authorities to ensure that they are properly sighted on the potential effect this proposal may have.

80 Letter from the Minister to the Chair of the European Scrutiny Committee (19 December 2018).
81 Letter from the Minister to the Chair of the European Scrutiny Committee (28 February 2019).

- The second charging exception is removed as originally proposed, but this is of limited concern as the Minister states that "this exception is not widely used in the UK." DCMS officials directed us to officials at the National Archives who have clarified that, following extensive engagement across Whitehall, their current understanding is that no Crown bodies are currently using this charging exception, and that they are not aware of any local authorities that are using this exception to generate revenue.

9.10 The Minister states that she considers that the compromise text is "acceptable to the United Kingdom", and as that it is "possible the UK may be present for the vote" as it may take place in either March or April. She therefore requests that the Committee grant scrutiny clearance to support the proposal.

9.11 The Commission has also published an Evaluation of Directive (EC) 96/9 on the legal protection of databases (the Databases Directive). This Directive protects databases by copyright if they are original, and also provides protection for non-original databases such as compilations of legal cases and laws, listings of advertisements or databases of scientific publications if the investment in obtaining, verifying and presenting the data was substantial (the *sui generis* right). The Commission finds that the Directive retains its efficiency, relevance and coherence, and suggests maintaining the status quo, as opposed to reopening the Directive, while monitoring developments to ensure that it does not unduly interfere with the development of the data economy.

9.12 In the context of EU exit, the Commission's Notice to Stakeholders[82] on copyright issues states that the *sui generis* database right only applies to nationals of an EU Member State, people with their habitual residence in the EU, and companies formed in accordance with the law of an EU Member State and having their registered office, central administration or principal place of business within the EU. As such, the Commission concludes that UK nationals and companies formed in accordance with the law of the UK "will no longer be entitled to maintain or obtain a *sui generis* database right in respect of databases in the EU" and vice-versa. The Government's equivalent notice on a No Deal reaches the same conclusion.[83] The Government's Regulatory Policy Committee also found that if no agreement is reached with the EU on continued recognition of the *sui generis* database right between the EU and UK—and the Commission's technical notice assumes that, as with other elements of the Single Market, this is the automatic outcome of EU exit—UK database-creators will lose the protections afforded by the Directive and their ability to commercialise and protect their databases in the EEA will be negatively affected.[84]

9.13 **We thank the Minister for her comprehensive update on the outcome of trilogue negotiations regarding the revisions to the EU framework governing the re-use of public sector information. The Minister concludes that "the UK has achieved the substance of the negotiating objectives outlined in my previous letter", including "[the Government's] primary objective of seeking a further temporary derogation for**

82 European Commission, Notice to stakeholders: Withdrawal of the United Kingdom and EU rules In the field of Copyright (28 March 2018).

83 HM Government, Guidance: Copyright if there's no deal (24 September 2018, last updated 9 January 2019).

84 Regulatory Policy Committee: The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018—sui generis database right (16 October 2018).

Public Sector Bodies (PSBs)". The Minister's assessment is that "the compromise text is acceptable to the UK" and she requests clearance so that she can support adoption if the UK is still in Council at that time when the vote takes place.

9.14 **The Committee's chief concern was the Commission's proposal to bring forward a list of high value datasets, designated in a delegated act, which would override the first and second charging exceptions for Public Sector Bodies and Public Undertakings covered by this act, which had the potential to seriously impact the business models of the Met Office and the Ordnance Survey. In response, the Minister has clarified that the Government has secured changes to the proposal which mean that the Commission will have to use implementing acts instead of delegated acts for any such proposals, meaning that they will be subject to a much higher level of scrutiny than was originally proposed; that these implementing acts cannot be introduced until mid-2021, and are therefore unlikely to apply to the UK unless the implementation/transition period is extended; and that Member States would be empowered to grant Public Sector Bodies (including the Met Office and the Ordnance Survey) derogations of up to two years from the adoption of any implementing act before they had to comply with the measure, meaning that there is no possibility of them applying to UK Public Sector Bodies, even if the Withdrawal Agreement is ratified and the Implementation Period extended to the maximum period provided for. We consider this concern to be substantially addressed from a UK perspective, in the context of EU exit.**

9.15 **While the implementing acts regarding high-value datasets could potentially apply briefly to UK-based Public Undertakings (as distinct from Public Sector Bodies) towards the end of a transition period that was extended for the maximum permissible duration, we note that the UK government is not a large-scale commissioner of public undertakings, and that officials have been engaging with officials from the devolved administrations and local authorities to ensure that they are properly sighted on the potential effect this proposal may have, and that engagement with the devolved administrations has so far yielded no specific concerns. Officials are of the view that the type of data involved for Public Undertakings in the mobility category would be timetables and possibly real-time disruption data; however, officials indicate that this is largely in line with existing UK powers and practice.**

9.16 **Although the second charging exception, which currently permits charging for re-use where under current accounting rules this revenue is necessary to fund the cost of collecting and disseminating the information at stake, is removed, the Government has concluded that this is of limited concern as "this exception is not widely used in the UK". DCMS officials directed us to officials at the National Archives who have clarified that, following extensive engagement across Whitehall, their current understanding is that no Crown bodies are currently using this charging exception, and that they are not aware of any local authorities that are using this exception to generate revenue.**

9.17 **The Committee's concerns about the risk of Public Sector Bodies having their database rights removed through a conflict with the Database Directive has been addressed through clarificatory text, which establishes that the provisions of the Database Directive, particularly the *sui generis* right, are not affected by the draft Directive. In the context of EU exit, however, we note that both the Government and the European Commission have stated that when the UK leaves the EU UK database creators will not retain this right in the EU (and vice-versa). The Government states in**

its No Deal guidance on copyright that "UK owners may [therefore] want to consider relying on other forms of protection (e.g. restrictive licensing agreements or copyright where applicable) for their databases", although the extent to which these arrangements can provide an effective substitute is unclear. The Government's Regulatory Policy Committee has concluded that "The loss of this protection would have a negative impact on database creators in the UK, whose ability to commercialise their databases in the EEA, or to prevent EEA-based competitors exploiting their databases, would be weakened". In the event of a negotiated withdrawal from the European Union, we note that these rights would continue to apply during any transition period, and could in principle be reproduced in a Future Arrangements Agreement.

9.18 **We conclude that the compromise text which has been agreed by the negotiators is substantially more targeted and proportionate than the original proposal, gives the Member States greater control over the use of any High Value Datasets the Commission wishes to designate in the future, and will have little impact on the UK in particular in the context of EU exit, even in the event of the Withdrawal Agreement being ratified and there being an extended implementation period.**

9.19 **The Evaluation of Directive 96/9/EC (document b) is a non-legislative document and of limited importance. However, in the context of EU exit, we note the assessment of the Regulatory Policy Committee that:**

> **"If no agreement is reached with the EU on continued recognition of the *sui generis* database right between the EU and UK, EEA member states will be under no obligation to protect databases produced by those in the UK post-exit. It is considered likely that member states would, therefore, cease to offer this protection. The loss of this protection would have a negative impact on database creators in the UK, whose ability to commercialise their databases in the EEA, or to prevent EEA-based competitors exploiting their databases, would be weakened.**

9.20 **On this basis we are content to clear these documents from scrutiny.**

Full details of the documents

(a) Proposal for a Directive on the re-use of public sector information (recast): (39675), 8531/18 + ADDs 1–5, COM(18) 234 final; (b) Commission Staff Working Document Evaluation of Directive 96/9/EC on the legal protection of databases: (39673), 8466/18, SWD(18) 146.

Previous Committee Reports

Thirty-ninth Report HC 301–xxxviii (2017–19), chapter 2 (10 October 2018).

10 Fisheries Conservation: Technical Measures

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Proposal for a Regulation of the European Parliament and of the Council on the conservation of fishery resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No.1967/2006, (EC) No.1098/2007, (EC) No.1224/2009 and Regulations (EU) No.1343/2011 and (EU) No.1380/2013 of the European Parliament and of the Council, and repealing Council Regulations (EC) No.894/97, (EC) No.850/98, (EC) No.2549/2000, (EC) No.254/2002, (EC) No.812/2004 and (EC) No.2187/2005
Legal base	Article 43(2) TFEU, QMV, Ordinary legislative procedure
Department	Environment, Food and Rural Affairs
Document Number	(37598), 6993/16 + ADDs 1–3, COM(16) 134

Summary and Committee's conclusions

10.1 The conservation provisions of the Common Fisheries Policy (CFP) include so-called technical measures which, among other things: regulate the design and operation of fishing gear; establish minimum fish landing sizes; seek to mitigate the impact of fishing activity on sensitive species and habitats; and limit catches in certain areas and/or at certain times to protect spawning and juvenile fish. They are seen as playing a key role in achieving the objectives of the CFP and related environmental policies.

10.2 To date, technical measures have been decided centrally. Recognising that such an approach was inconsistent with the desirability of a more local approach to fisheries management, the EU reformed the CFP in 2013 to introduce a more regional approach to decisions, so that the Member States involved in a particular fishery could decide the necessary measures among themselves.

10.3 The Commission's proposal—tabled in 2016—sought to apply the principle of regionalisation to technical measures and, more generally, to simplify what had become a complex array of requirements spread across various pieces of legislation. A set of common rules is proposed for all areas, but with a regionalised approach under which baseline standards would serve as default minimum standards whilst bespoke regionalised measures are agreed among relevant Member States. The measures would apply to EU vessels and to third country vessels fishing in EU waters. Third countries are not involved in the regional decision-making process.

10.4 The Parliamentary Under-Secretary of State for the Environment (Dr Thérèse Coffey MP) has written[85] to explain the conclusion of negotiations and request that the Committee consider clearing the document from scrutiny in advance of formal adoption.

10.5 The key sticking point—as we noted in our Report of 12 September—has been restrictions on electric pulse trawling.[86] A ban on the use of electric pulse fishing gear from 1 July 2021 has been agreed, preceded by a phase-out period to allow the sector using the gear to adapt. During that period, no more than 5% of the beam trawler fleet per Member State may use the electric pulse trawl and there are various technical restrictions relating to voltage.

10.6 Restrictions were also agreed—with immediate effect—on scientific research involving electric pulse gear. Any scientific studies (whether involving electric pulse gear or not) must be time-limited and pre-notified to the Commission if more than six commercial vessels are to be used. The Commission may seek scientific advice to confirm that the intended level of involvement is justified. In the case of research involving electric pulse gear, vessels conducting scientific research must follow a specific scientific protocol as part of a scientific research plan that has been reviewed or validated by either international or EU scientists, as well as a system for monitoring, control and evaluation.

10.7 As the agreement means that there will be far fewer vessels engaging in electric pulse trawling, and bearing in mind that this will culminate in a ban, the Minister reports that the UK has been able to support the deal. In the event of a no-deal Brexit, or after any implementation period included in a deal, the UK does not intend to authorise the use of electric pulse gear by foreign vessels in UK waters.

10.8 The Minister re-caps the overall content of the file as follows:

- technical measures related to how, where and when fishermen may fish, as well as determining the type of gear for directed fishing and dealing with accidental catches;
- regionalisation of technical measures decisions to address regional fisheries issues;
- provisions for the protection of the marine ecosystem and marine habitats;
- addressing unwanted catches of juvenile fish, by-catches of mammals like whales, dolphins and porpoises, and marine seabirds; and
- a phase-out period culminating in a ban on the use of electric pulse fishing gear from 1 July 2021.

10.9 Formal adoption of the proposal is likely to proceed quickly, with a European Parliament vote in either the week beginning 11 March or 25 March and Council adoption at any imminent subsequent Council.

85 Letter from Dr Thérèse Coffey MP to Sir William Cash MP dated 4 March 2019.

86 The use, during beam trawling, of electric pulse (rather than the more traditional chains) to disturb flatfish on the seabed. This makes the muscles of the fish contract, whereupon the fish detach from the seabed and land in the net. It is a method used particularly by parts of the Dutch fleet.

10.10 While the Minister does not comment on entry into force, the Regulation is due to enter into force on the 20th following that of its publication in the Official Journal of the European Union. That will most likely be by the end of May, and probably earlier. Under all Brexit scenarios other than "no-deal", the UK would be required to apply the legislation. In a no-deal scenario, the UK might choose to replicate some or all of the legislation and UK vessels fishing in EU waters would need to apply these EU rules.

10.11 **We note that our key concern—the practice of electric pulse trawling—has been addressed satisfactorily in the course of negotiations. The extent to which the UK will need to apply this legislation is yet to be determined. We are content to clear the proposal from scrutiny and require no further information. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council on the conservation of fishery resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No.1967/2006, (EC) No.1098/2007, (EC) No.1224/2009 and Regulations (EU) No.1343/2011 and (EU) No.1380/2013 of the European Parliament and of the Council, and repealing Council Regulations (EC) No.894/97, (EC) No.850/98, (EC) No.2549/2000, (EC) No.254/2002, (EC) No.812/2004 and (EC) No.2187/2005: (37598), 6993/16 + ADDs 1–3, COM(16) 134.

Previous Committee Reports

Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 6 (12 September 2018); Thirty-fifth Report HC 71–xxxiii (2016–17), chapter 4 (15 March 2017); Thirtieth Report HC 342–xxix (2015–16), chapter 5 (27 April 2016).

11 Genetic Resources: Access and Benefit-Sharing

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Report from the Commission on the Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union
Legal base	—
Department	Environment, Food and Rural Affairs
Document Number	(40350), 5925/19 + ADD 1, COM(19) 13

Summary and Committee's conclusions

11.1 Countries around the world have recognised the importance of maintaining access to, and sharing the benefits of, genetic resources. These are all living organisms (plants, animals and microbes) that carry genetic material potentially useful to humans. Commercial applications include crop protection, drug development, the production of specialised chemicals and industrial processing. Non-commercially, academic and public research institutes use them to increase knowledge or understanding of the natural world, with activities ranging from taxonomic research to ecosystem analysis.

11.2 Global biodiversity is protected by the Convention on Biological Diversity (CBD), which recognises that any benefits arising from the use of genetic resources should be shared with the country providing those resources. This is the concept of "access and benefit sharing" (ABS). In 2010, 92 signatories agreed the "Nagoya Protocol"[87] establishing a clear, legally-binding framework determining how researchers and companies can obtain access to the genetic resources of a country and to the traditional knowledge associated with these resources. It also explained how the benefits arising from the use of these genetic resources and associated traditional knowledge will be shared.

11.3 In its document, the Commission reports on implementation of the EU ABS Regulation,[88] which brought EU law into line with the Nagoya Protocol. It concludes that some Member States were relatively late to take measures to set up the institutional and administrative framework necessary to implement the Regulation and that the implementation and enforcement of the Regulation across Member States was slow and uneven during the first three years. It remains work in progress.

87 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

88 Regulation (EU) No 511/2014.

11.4 The document identifies the following required actions:

- Commission and Member States to address stakeholder concerns regarding the administrative and financial burden of implementing the EU ABS Regulation and lack of understanding associated with the added value deriving from the Regulation;
- continued work on the guidance accompanying the EU ABS Regulation to help clarify interpretations in the Regulation and for defining the boundaries of scope in application of the Regulation (such as guidance on what is understood by "utilisation"); and
- reinforce the technical capacity and resources dedicated to implementation across Member States.

11.5 In her Explanatory Memorandum,[89] the Parliamentary Under-Secretary of State for the Environment (Dr Thérèse Coffey MP) indicates that the challenges and next steps identified are already being addressed by the Government in its programme of awareness-raising and capacity-building.

11.6 On the UK's exit from the EU, the Minister notes that a Statutory Instrument (SI)[90] has been made, making technical changes to the legislation so that it functions in UK law post-Brexit. In particular, says the Minister, the reporting obligations have been changed. Currently, the UK reports on Nagoya Protocol implementation to the CBD Conference of the Parties and to the European Commission on implementation of the EU ABS Regulation. Post-Brexit, says the Minister, it will be required only to report to the international body.

11.7 **In fact, we note that the Government retains a reporting requirement on the implementation of the Regulation, but it is an open-ended obligation. The SI is not clear to whom or to what the Government should report. Nevertheless, it is disturbing that the Minister appears unaware of this reporting duty assumed by her Secretary of State. We ask her to confirm that she is aware of the reporting obligation and why she appeared to dismiss it in the Explanatory Memorandum. We also ask that she set out the expected process for the domestic report, in terms of recipients and feedback.**

11.8 **The legal architecture around the Nagoya Protocol is complex, requiring legislation in all participating countries. Clearly, the CBD has a role in coordinating implementation but, ultimately, users are responsible for ensuring compliance with applicable legislation. What support, if any, does the Government offer UK users to navigate these requirements?**

11.9 **The Commission identifies a number of areas for further work and the Minister notes that the UK is already acting upon them. We would welcome information on the specific action being taken by the Government.**

11.10 **An area specifically highlighted by the Commission is the drafting of guidance on sector-specific needs in relation to the notion of utilisation. While progress has been made, notes the Commission, discussions are ongoing. We would welcome the**

89 Explanatory Memorandum dated 13 February 2019.
90 The Nagoya Protocol (Compliance) (Amendment) (EU Exit) Regulations 2018.

Government's analysis of: a) the efforts made by the Commission in supporting this aspect of implementation; and b) how well-equipped the Government is to take over those efforts from the Commission once the UK has exited the EU.

11.11 **Related to issues regarding the administrative burden of the initiative is the possibility for associations of users to submit an application[91] to the Commission to have a combination of procedures, tools or mechanisms recognised as best practice with a view to a reduction in compliance checks. The Commission is currently responsible for assessing such applications, although none have yet been agreed. We ask for the following information from the Minister:**

- **which UK body will assume responsibility for assessment of applications for best practice recognition post-Brexit; and**
- **whether, post-Brexit, the UK will pursue domestically any outstanding best practice applications made to the Commission but not yet authorised.**

11.12 **We clear this non-legislative document from scrutiny and ask for a response to our queries within ten working days. We draw it to the attention of the House as politically important because of the uncertainties around reporting requirements and the outstanding matters relating to implementation.**

Full details of the documents

Report from the Commission on the Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union: (40350), 5925/19 + ADD 1, COM(19) 13.

Previous Committee Reports

None.

91 Such as the Code of Conduct and Best Practices of the Consortium of European Taxonomic Facilities (CETAF).

12 Visa exemption for UK nationals travelling to the EU after Brexit

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Committee on Exiting the European Union, the Foreign Affairs Committee, the Home Affairs Committee and the Justice Committee
Document details	Proposal for a Regulation amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the EU
Legal base	Article 77(2)(a) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(40192), 14329/18, COM(18) 745

Summary and Committee's conclusions

12.1 The proposed Regulation is one in a series of measures put forward by the European Commission to prepare for the UK's withdrawal from the EU. It would amend the recently updated EU Visa Regulation to include the UK in the list of third countries whose nationals do not need to obtain an entry visa for short-stays (visits which do not exceed 90 days in any 180-day period) within the Schengen area.[92] The proposed Regulation would enter into force on 30 March 2019—exit day—but only take effect when EU law ceases to apply to the UK. This could be any date between 30 March 2019 (if the UK leaves without an exit deal) and 1 January 2023 (if the draft EU/UK Withdrawal Agreement is ratified and the post-exit transition/implementation period extended to its maximum). The European Commission makes clear that the visa exemption for UK nationals is conditional on the UK allowing reciprocal visa-free entry post-exit for the nationals of the remaining 27 EU Member States.

12.2 The UK is not entitled to take part in, or vote on the adoption of, any changes to the EU Visa Regulation as it forms part of the Schengen rule book which does not apply to the UK. In her Explanatory Memorandum of 30 November 2018, the Immigration Minister (Rt Hon. Caroline Nokes MP) referred us to the Government's July 2018 White Paper, *The Future Relationship Between the United Kingdom and the European Union*, which envisages reciprocal arrangements to enable citizens to travel freely between the EU and the UK, without a visa, for tourism and temporary business activity. She noted that the Political Declaration on the Framework for the Future Relationship accompanying the draft EU/UK Withdrawal Agreement also commits the EU and the UK to "aim to provide, through their domestic laws, for visa-free travel" for short-term visits. The proposed Regulation is

92 Regulation (EU) 2018/1806.

consistent with this objective. In her letter of 22 January 2019, the Minister confirmed that "there is no requirement to make any changes to the Immigration Rules to formalise our commitment to grant EU nationals visa-free access to the UK".

12.3 When we last considered the proposed Regulation in February, we drew attention to a Council press release stating that COREPER (the body on which Member States' ambassadors to the EU are represented) had agreed a mandate to open negotiations with the European Parliament which made clear that "visa exemption is granted on condition of reciprocity". We noted also that the European Parliament proposed to include a new recital further underlining the expectation that the UK would grant full visa-free entry to the nationals of *all* EU Member States, without any differentiation, and calling on the European Commission to "monitor the respect of the principle of reciprocity on a continuous basis". We asked the Minister to provide us with a copy of the negotiating mandate agreed by COREPER and sought her view on the European Parliament's proposed amendment. We requested an assurance that Parliament would be informed of, and consulted on, any proposal to change the visa status of EU citizens in the future, given the important implications this would have for the visa status of UK nationals travelling to the Schengen area under the EU's reciprocity rules.

12.4 We expressed concern at press reports that Spain had secured an amendment to the proposed Regulation to include a new footnote reference to Gibraltar as "a colony of the British Crown" and that a similar footnote might be included in all future EU legislation concerning the UK post-exit.[93] We invited the Minister to comment on the significance of these new references to the status of Gibraltar.

12.5 In her letter of 6 March 2019, the Minister explains that Parliament will be informed of any change in the visa status of nationals of EU Member States post-exit as the imposition of a visa regime would necessitate a change to the UK's Immigration Rules. The Government would have to lay before Parliament a Statement of Changes for 40 days. If either House were to object, the Home Secretary would need to bring back an amended set of rules within 40 days and re-lay them in Parliament for a further 40 days.

12.6 The Minister raises no objection to the European Parliament's proposed amendment as it simply reiterates the principle of reciprocity enshrined in the EU Visa Regulation and so would not change the material effect of the proposed Regulation. She reiterates the Government's intention to treat all EU Member States equally and confirms that EU citizens will not need short-stay visas post-exit.

12.7 The Minister provides a copy of the negotiating mandate agreed by COREPER in February.[94] The text includes a new recital stating that "Gibraltar is not part of the United Kingdom" and should therefore be listed along with other British Overseas Territories in a separate part of the EU Visa Regulation. Article 1 of the proposed Regulation, as amended, would include Gibraltar in the list of British Overseas Territories Citizens with a footnote stating:

> Gibraltar is a colony of the British Crown. There is a controversy between Spain and the United Kingdom concerning the sovereignty over Gibraltar, a territory for which a solution has to be reached in light of the relevant resolutions and decisions of the General Assembly of the United Nations.

93 See the Financial Times, 1 February 2019, *Gibraltar to be designated 'Crown colony' in EU law for no-deal Brexit.*
94 Council document 5960/19 issued on 1 February 2019.

12.8 Whilst the Minister welcomes the certainty that the proposed Regulation will provide on the visa-free status of British nationals, including those in Gibraltar, following the UK's exit from the EU, she considers the language on Gibraltar to be "unacceptable", highlighting in particular the reference to Gibraltar as a "colony" and to a "controversy" over Gibraltar's sovereignty. She continues:

> The UK is certain of its sovereignty over the whole of Gibraltar and the current wording does not reflect the modern and mature relationship between the UK and Gibraltar, freely determined by the people of Gibraltar in a 2006 referendum.
>
> The Government believes it would be more appropriate to use language adapted from the draft Withdrawal Agreement's Gibraltar Protocol, which both the UK and EU (including Spain) have agreed to, such as: "This is without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to sovereignty and jurisdiction" and recommends this wording replace all the wording currently in the draft footnote. We have laid a Minute Statement and made an intervention expressing our concern, and we continue to explain our position on the language on Gibraltar with EU counterparts.

12.9 The Minister says that several "political trilogues" have taken place with the European Parliament (the most recent on 27 February) but no agreement has yet been reached. The European Parliament nonetheless is aiming to secure approval of a compromise agreement by the end of March.

Our Conclusions

12.10 **We share the Government's concern that the proposed Regulation guaranteeing UK nationals and British citizens visa-free access for short-stay visits to the Schengen area post-exit should not be used as a vehicle to score points in a bilateral, diplomatic dispute between the UK and Spain concerning sovereignty and jurisdiction over Gibraltar. We deeply regret the inclusion of inaccurate and inappropriate references to the status of Gibraltar. We note that the Minister will continue to make the case for more neutral language as reflected in the Protocol on Gibraltar which forms part of the draft EU/UK Withdrawal Agreement. If the Government is unable to secure changes, then we expect it to make a further Minute Statement setting out the UK's position when the proposed Regulation is brought to the Council for formal adoption.**

12.11 **As the proposed Regulation forms part of the Schengen rule book in which the UK does not participate and the UK will not, therefore, have a vote on its adoption, we agree to clear it from scrutiny. We ask the Minister to inform us of the outcome of negotiations and to provide a copy of the agreed text and any Council Minute Statement made by the UK. We draw this chapter to the attention of the Committee on Exiting the European Union, the Foreign Affairs Committee, the Home Affairs Committee and the Justice Committee.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the EU: (40192), 14329/18, COM(18) 745.

Background

12.12 The inclusion of a third country in the visa-required or visa-exempt list annexed to the EU Visa Regulation must be based on a case-by-case assessment of various criteria, notably:

- the risk of illegal immigration;
- public policy and security;
- economic benefit from tourism and foreign trade;
- external relations considerations, such as respect for human rights and the implications for regional coherence; and
- reciprocity.

12.13 The Regulation contains a suspension mechanism enabling the EU to review and suspend visa-free travel in the event of a "substantial and sudden increase" in the number of illegal immigrants or asylum applicants from a visa-exempt third country. It also contains a reciprocity mechanism to ensure that the EU can respond swiftly if a visa-exempt third country imposes a visa requirement on the nationals of any EU Member State.

12.14 The changes proposed in the amending Regulation would include the UK in the list of visa-exempt third countries in recognition of the UK's geographical proximity to the EU, close trading links, high volume of travel and shared commitment to human rights, democracy and the rule of law.[95]

Previous Committee Reports

Forty-fifth Report HC 301–xliii (2017–19), chapter 5 (6 February 2019) and Forty-eighth Report HC 301–xlvii (2017–19), chapter 6 (12 December 2018).

95 See the European Commission's explanatory memorandum accompanying the proposed Regulation.

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

Cabinet Office

(40398) 5124/19	Council Decision (EU) 2019/292 of 12 February 2019 on the authorisation to release EU classified information to third States and international organisations.

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Department for Business, Energy and Industrial Strategy

Other

(40364) 6232/19 COM(19) 17	Report from the Commission to the Council and the European Parliament Competition Enforcement in the Pharmaceutical Sector (2009–2017) European competition authorities working together for affordable and innovative medicines.
(40390) 6477/19 + ADD 1 COM(18) 74	Proposal for a Council Decision on the position to be taken on behalf of the European Union within the EU-Ukraine Association Council amending Annex XXVII to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part

Department for Environment, Food and Rural Affairs

(40394) 6496/19 COM(19) 47	Report from the Commission to the European Parliament and the Council on the Implementation of Regulation (EC) No 1921/2006 of the European Parliament and of the Council of 18 December 2006 on the submission of statistical data on landings of fishery products in Member States.
(40399) 6620/19 COM(19) 85	Report from the Commission to the European parliament and the Council on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species.

Foreign and Commonwealth Office

(40408) Council Implementing Regulation implementing Regulation (EU) No 208/2014 concerning restrictive measures in view of the situation in Ukraine

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(40409) Council Decision amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine

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(40412) Commission Implementing Regulation (EU) 2019/283 of 18 February 2019 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe

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(40413) Council Regulation (EU) 2019/278 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe

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(40414) Council Decision (CFSP) 2019/284 of 18 February 2019 amending Decision 2011/101/CFSP concerning restrictive measures against Zimbabwe

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HM Treasury

(40259) VAT rules for online shopping.

15471/18

COM(18) 819

(40260) VAT rules for online shopping.

15472/18

COM(18) 821

Formal Minutes

Wednesday 13 March 2019

Members present:

Sir William Cash, in the Chair

Martyn Day	Mr David Jones
Marcus Fysh	Andrew Lewer
Kelvin Hopkins	Michael Tomlinson
Darren Jones	Dr Philippa Whitford

Scrutiny Report

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

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

Paragraphs 1.1 to 13 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 20 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*)