



House of Commons  
European Scrutiny Committee

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**Sixtieth Report of  
Session 2017–19**

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Documents considered by the Committee on 20 March 2019

*Report, together with formal minutes*

*Ordered by the House of Commons  
to be printed 20 March 2019*

## Notes

### Numbering of documents

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

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

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

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

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

### Abbreviations used in the headnotes and footnotes

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

### Euros

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

### Further information

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

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

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## Meeting Summary

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

### Brexit-related issues

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

- The Member States have succeeded in somewhat softening the Commission's 'no deal' Brexit proposal for road haulage, although the market access provided in it will be progressively phased out during its operation and expire after nine months.

### Summary

#### *Commission Brexit preparedness proposal: road haulage*

Trilogue negotiations have concluded on this Brexit preparedness Regulation, which has been substantially improved from a UK perspective. The proposal is a unilateral EU measure which would temporarily, for a period of nine months, grant UK hauliers (and now coach and bus service operators) some preferential access to the EU market exit. Although the market access provided represents a reduction on the status quo and would deteriorate further over the course of the Regulation's operation, it is considerably better than the Commission's original proposal, and also preferable to the default of operating on the basis of a dated patchwork of bilateral agreements which would provide much lower levels of market access and mostly require the operation of a quota-based system of permits (something the sector is strongly against).

Despite resistance from the Commission and the European Parliament, the Member States have insisted on softening the measure in a number of respects: limited cabotage and cross-trade rights are granted to UK operators, although these will be reduced over the course of the Regulation's operation to a single trip in seven days (and then none, when it ceases to apply); the Member States will be allowed to negotiate national-level bilaterals with the UK which would relate to the period following the expiry of the Regulation, which will help to ensure that, when the Regulation expires, a functional bilateral framework for UK-EU haulage is in place; the Regulation is extended to cover coach and bus transport, although cabotage and cross-trade are excluded (except in the Irish border counties, for an initial period). Gibraltar has been excluded from the scope of the final text. The proposed Regulation requires the UK to offer its operators EU-equivalent rights and grant EU operators equivalent market access: if not, the EU reserves the right to suspend UK access.

While the Minister (Jesse Norman MP) welcomes the proposal, which is clearly beneficial from a UK perspective, he indicates that the Government will abstain in the forthcoming vote in the Council on 18/19 March due to the exclusion of Gibraltar from its scope. The Committee retained the proposal under scrutiny and sought further information about a number of issues.

*Not cleared from scrutiny; further information requested; drawn to the attention of the Committee on Exiting the European Union and the Transport Committee.*

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

The UK has been participating in the Government Procurement Agreement (GPA), as a member of the EU, for over 20 years. It must accede to the GPA in its own right, following its withdrawal from the EU. The proposed Council Decision set out the position that the Commission intended to take, on behalf of the EU, within the GPA Committee on 27 February 2018. It proposed approving the UK's accession to the GPA, subject to certain conditions, including setting out the process in the event of a no deal withdrawal.

At its meeting on 13 February 2019, the Committee noted the importance of the UK's continued participation in the GPA after Brexit, as an independent member, without which UK businesses would lose guaranteed access to GPA covered procurement opportunities (worth an estimated £1.3 trillion per annum, of which UK 'wins' are in the region of £1–1.4 billion), UK subsidiaries and suppliers based in other GPA jurisdictions would not be protected against discriminatory treatment by procuring governments, and UK consumers and procuring bodies would no longer benefit from increased choice and value for money due to competition from third country GPA parties' suppliers. It granted a scrutiny waiver to allow the Minister for Implementation at the Cabinet Office (Oliver Dowden MP) to vote in favour of the proposed Council Decision at the Council on 18 February 2019, subject to being kept updated on the outcome of the Council vote and decision taken by the GPA Committee and receiving further information on the expected timetable for ratification and entry into force of the agreement, the implications for UK businesses if there is gap in UK membership (in the event of no deal), further analysis on UK access to procurement markets (both EU and non-EU) after Brexit, and the implications of the backstop for UK accession.

In his update of 4 March 2019, the Minister informs us that the Council Decision was adopted via written procedure and that the EU, along with the 18 other GPA parties, agreed to the UK acceding in its own right at the GPA Committee meeting on 27 February 2019. The Government intends to deposit the instrument of accession with the WTO by exit day and there will be a period of 30 days before it takes effect. It states that it will be issuing guidance for suppliers on the impact of a short gap in the UK's GPA participation in the event of no deal on 29 March 2019.

The Committee now clears the proposed Council Decision from scrutiny, but seeks further information on: UK suppliers' access to GPA jurisdictions if the UK leaves the EU without a deal on 29 March 2019 and the Government's guidance on the potential impact of a gap in GPA coverage, given its late timing (so close to exit day) and the absence of a formal impact assessment; and the status of the replication/rollover of existing EU agreements with third countries that contain procurement provisions.

*Cleared from scrutiny (scrutiny waiver previously granted); further information requested; drawn to the attention of the Exiting the EU Committee, International Trade Committee, Business, Energy and Industrial Strategy Committee and Foreign Affairs Committee.*

### **Managing EU migration and security databases**

The EU has recently agreed changes to the EU Agency responsible for overseeing the operational management of EU security, border and migration management information systems (“eu-LISA”). One of its new tasks will be to make these information systems interoperable so that police and border control authorities are better equipped to detect threats to the EU’s internal security or a risk of illegal migration. The Government acknowledges and apologises for errors in its handling of scrutiny. It says that a further agreement with the EU will be needed to enable the UK to participate in eu-LISA as a third country post-exit. Whilst this agreement would need to include provisions associating the UK with the Schengen rule book and with “Dublin- and Eurodac-related measures” on asylum, the Government does not consider that the UK would be required to apply all of these measures—“a varying degree of participation” would be possible, though it remains unclear how great a variation there could be or how great a risk there is that a “pick and mix” approach could be dismissed by the EU as cherry-picking. The European Scrutiny Committee recognises, in any event, that UK participation in eu-LISA is likely to be a second-order question, dependent on the UK first securing an agreement to take part in information systems managed by eu-LISA. The Committee asks the Government to provide updates on any progress made in future negotiations on a new post-exit internal security treaty with the EU.

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

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

The European Commission has proposed technical changes to various EU security and migration information systems so that they can be cross-checked against the recently agreed European Travel Information and Authorisation System (“ETIAS”). This system, expected to be operational after 2021, would require all visa-free third country nationals (including UK nationals post-exit) wishing to visit the Schengen area for a short stay of less than three months to make an online application for travel authorisation ahead of their journey. The UK does not participate in the ETIAS and it seems unlikely that the Government would wish to participate in these technical changes which are a result of its creation, given its assessment that there would be “no obvious operational benefits” for the UK and that the UK’s non-participation would not be prejudicial to negotiations on a future EU/UK security agreement. The European Scrutiny Committee nonetheless continues to hold the proposals under scrutiny pending confirmation of the Government’s position on opting in.

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

### **Second mobility package: emission performance standards**

The Commission's latest car and van emissions proposal would recast two existing Regulations and introduce more stringent performance standards and a more robust, EU-level, monitoring process. Minister of State at the Department for Transport (Jesse Norman MP), writes—26 February 2019—requesting clearance of the proposal from scrutiny ahead of its adoption at Council. In his letter, the Minister details the changes that have been made to the proposal during Trilogue negotiations. These include, amongst other considerations, the introduction of more stringent emission performance standards for cars and vans, and targets for the uptake of Zero and Low Emission Vehicles. The Minister is content with these amendments and states that they meet the objectives the Government set when entering into negotiations on the proposal. This having been said, unusually, the Minister does not state whether the Government will endorse adoption or abstain. Given his previous statements on the proposal and his desire for Member States to show greater ambition, in particular, with regard to CO<sub>2</sub> emission reduction levels, this is particularly odd. In light of this confusion, the Committee grants a scrutiny waiver should the Government wish to support adoption. Owing to the high political profile of the proposal—and our desire to undertake a full assessment of its final form—we retain it under scrutiny.

*Not cleared from scrutiny; further information requested; scrutiny waiver granted for adoption at the end of March 2019*

### **Third mobility package: revision of the Road Safety Infrastructure Management Directive**

The Commission's proposal would make minor changes to the Road Infrastructure Safety Management Directive which, as amended during Trilogue negotiations, including: the requirement for Member States to undertake mandatory transparency and follow-up of infrastructure safety management procedures (by targeted 'road safety inspections' or remedial action); the introduction of a 'network-wide road assessment'; and the requirement for Member States to consider vulnerable road users in all road safety procedures. The Minister with charge over the proposal (Jesse Norman MP), wrote to the Committee on 12 March 2019 requesting clearance of the proposal from scrutiny ahead of adoption at the end of the month (the Minister was unable to provide an exact date). We retain the file under scrutiny and grant a 'conditional' waiver on the basis that the Government's position on two main issues relating to the substance of the proposal is unclear. These relate to: the scope of the proposal (and confusion as to whether it would leave Member States unqualified discretion to set the roads falling under the Directive); and the ability of the Commission to set performance standards for road markings and road signs (for use by autonomous vehicles).

*Not cleared from scrutiny; further information requested; but a conditional scrutiny waiver granted in order the Government to support adoption at the end of March 2019*

### **Working Conditions Directive**

The proposal under scrutiny would, primarily, serve to update the Written Statements Directive (which requires new employees to be informed in writing of their conditions of employment). It does, however, also seek to introduce new employment rights. These include: creating a statutory definition of 'worker' for the first time at EU-level; limiting

probationary periods; restricting the use of exclusivity clauses that prevent parallel work; and giving workers more certainty about the hours they are expected to work. Since the publication of the proposal, some of these rights have been significantly modified. By way of example, on the definition of worker, an amendment to the text of the Directive by the Austrian Presidency—at the behest of the UK and a number of other Member States—now allows for national determination as to who the Directive applies to. In correspondence from Minister for Small Business, Consumers & Corporate Responsibility—Kelly Tolhurst MP—dated 14 February 2019, clearance of the proposal from scrutiny was requested. This request was rejected on the grounds that the Committee was not clear on the changes that were expected to the final text of the proposal, the Government’s view of these changes and, furthermore, how they would relate, specifically, to its domestic legislative agenda (i.e. in line with the ‘Good Work’ plan of December 2018). The Minister now writes—14 March 2019—with further information and a request for a waiver to be granted or the proposal cleared from scrutiny in order for the Government to support its adoption. The Minister’s letter clearly sets out the Government’s position(s) on key aspects of the proposal and how these related to the UK’s own employment law framework. On this basis, we grant the requested scrutiny waiver.

*Not cleared from scrutiny; further information requested; scrutiny waiver granted ahead of adoption; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Work and Pensions 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:** Working Conditions Directive [Proposed Directive (NC; scrutiny waiver granted)]; The UK’s accession to the WTO Government Procurement Agreement in view of its withdrawal from the EU [Proposed Decision (C)]

**Committee on Exiting the EU:** The UK’s accession to the WTO Government Procurement Agreement in view of its withdrawal from the EU [Proposed Decision (C)]; Commission Brexit preparedness proposal: road haulage [Proposed Regulation (NC)]

**Foreign Affairs Committee:** The UK’s accession to the WTO Government Procurement Agreement in view of its withdrawal from the EU [Proposed Decision (C)]

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

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

**Justice Committee:** Managing EU migration and security databases [Proposed Regulation (C)]

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

**Work and Pensions Committee:** Working Conditions Directive [Proposed Directive (NC; scrutiny waiver granted)]

# 1 Working Conditions Directive

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Committee's assessment	Legally and politically important
<a href="#">Committee's decision</a>	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Work and Pensions Committee; <b>scrutiny waiver granted ahead of adoption</b>
Document details	Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions
Legal base	Article 153(1)(b) and Article 153(2)(b) TFEU; ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39396), 16018/17 + ADDs 1–2, COM(17) 797

## Summary and Committee's conclusions

1.1 The [proposal under scrutiny](#) was introduced in late December 2017 in the wake of the endorsement of the [European Pillar of Social Rights](#) by the EU's institutions. The proposal is the first attempt at Union-level to legislate in the area of employment and collective labour law in close to a decade. The Directive has been drafted against the principles of the Pillar of Social Rights, in particular, Principle 5 on 'Secure and adaptable employment' and Principle 7 on 'Information about employment conditions and protection in case of dismissals'. Aside from the legal novelty of the proposal, politically, it forms part of the Commission's drive for a more 'social Europe' (under the guidance of President Jean-Claude Juncker).

1.2 The proposal would, primarily, serve to update the Written Statements Directive (which requires new employees to be informed in writing about their conditions of employment).<sup>1</sup> It does, however, also seek to introduce new substantive employment rights. In no particular order, these cover: creating a statutory definition of 'worker' for the first time at EU-level; limiting probationary periods; restricting the use of exclusivity clauses that prevent parallel work; and giving workers more certainty about the hours they are expected to work.

1.3 The [proposal was considered by the Committee for a third time on 6 March 2019](#) ahead of its adoption at Council. In correspondence from the Minister for Small Business, Consumers and Corporate Responsibility—Kelly Tolhurst MP—dated 14 February 2019,<sup>2</sup> clearance of the proposal from scrutiny was requested. This request was rejected on the grounds that the Committee was not clear on the changes that were expected to the final text of the proposal, the Government's view of these changes and, furthermore, how they would relate, specifically, to its domestic legislative agenda (i.e. in line with the 'Good

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1 [Council Directive of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship \(91/533/EEC\)](#).

2 [Letter from Kelly Tolhurst MP to Sir William Cash MP, 14 February 2019](#).

Work’ plan of December 2018).<sup>3</sup> The Minister now writes—14 March 2019—with further information and a request for a waiver to be granted or the proposal cleared from scrutiny in order for the Government to support its adoption.<sup>4</sup>

### **Minister’s letter of 14 March 2019**

1.4 In her letter of 14 March, the Minister notes her regret that the Committee did not consider that it had sufficient information to be able to take a decision on whether to waive or lift scrutiny on the proposal on 6 March. The Minister reassures the Committee that the Government takes its scrutiny responsibilities seriously and, towards this end, provides detailed responses to the questions asked and the requests for further information made in its third consideration of the proposal.

1.5 On the key provisions of the proposal, the Minister provides the following information (which is set against the text of the provisional agreement reached between the Romanian Presidency and the European Parliament):

- definition of a worker: is framed to allow Member States discretion to define ‘worker’ with reference to the jurisprudence of the Court of Justice of the European Union (CJEU). This is a change to the proposal as originally introduced by the Commission. The Minister states that the Government supports this amendment and that, legally, domestic courts having regard to CJEU case law in their judgements is a part of EU membership and participation in the Union’s legal order and, therefore, changes very little;
- right to an enhanced written statement of terms of employment: would provide a right to non-essential information to be provided to workers within one month of the first working day. Domestic law currently requires such information to be provided within two months. The Government is supportive of this change and accepted a similar recommendation for a right to an enhanced written statement for workers made in the Taylor Review of modern working practices;
- probationary periods: would be limited to six months unless an extension can be justified by the nature of the employment or it is in the interests of the worker. This limit is to be reduced for fixed term contracts to ensure that probationary periods are proportionate. The Minister notes that should the UK be required to implement the Directive, changes in this regard would have to be made to domestic legislation;
- employment in parallel: this right—intended to tackle the phenomenon of ‘underemployment’—has been amended versus the proposal as originally introduced. At the request of the UK and other Member States, parallel employment would be permitted in a number of situations, however, these are not specified by the Minister;
- minimum predictability of work: this provision—in concert with others—would prevent a worker from suffering detriment were they to choose not to undertake a work assignment outside of the reference period and/or the minimum advance

<sup>3</sup> HM Government, ‘[The Good Work Plan](#)’ (December 2018).

<sup>4</sup> [Letter from Kelly Tolhurst MP to Sir William Cash MP](#), 14 March 2019.

notice period established in the written statement. The Government supports this change which the Minister says is complemented by domestic legislation limiting exclusivity clauses for zero-hour contracts;

- transition to another form of employment: under UK law, Section 80F of the Employment Rights Act 1996 provides qualified employees with the right to make a statutory request for a contract variation. The EU proposal would extend this right to all workers falling under the purview of the Directive. The Government is said to be in support of this change; and
- training: which would, in effect, establish that mandatory training is provided free of charge and that time spent on training is considered working time. The Minister notes that this change is consistent with UK law.

1.6 On the Government's plans for the implementation of the Directive, the Minister notes that the deadline for transposition is likely to fall beyond the end of the implementation period (as provided for under the draft Withdrawal Agreement). The Government has, however, committed to bring forward legislation that would place a duty on Government to report to Parliament on changes to EU law covering workers' rights.<sup>5</sup> This commitment would take the form of a statutory consultation with workers' and employers' representatives followed by a report to Parliament (seemly on whether action to give effect to new or amended workers' rights is suggested). The Minister confirms that the proposed Directive would be subject to this procedure. It is not clear from the Government's Command Paper whether a report on EU workers' rights would have to be put to Parliament once EU legislation is published in the Official Journal of the European Union or whether the Government would have discretion as to when such a report is made, for example, up to or beyond the deadline for Member States to ensure that the legal act in question is given effect to.

**1.7 We thank the Minister for her letter of 14 March 2019 and the comprehensive way in which she has addressed our questions and requests for further information. We welcome the Minister's stated commitment to scrutiny and look forward to future engagement with her and her Department.**

**1.8 On the basis that the Committee is satisfied that its enquiries have been addressed, we are content to grant a scrutiny waiver in order for the Government to support adoption at Council in March. Given the clear political importance of the proposal—and in light on the Government's recent commitments on workers rights in the context of the UK's withdrawal from the EU—we retain it under scrutiny.**

**1.9 We request by the end of April 2019, a full report on the outcome of the Council at which the proposal is put for adoption detailing how the Government voted and any changes to the text of the Directive versus the compromise agreement reached between the Romanian Presidency and European Parliament.**

**1.10 We request further information on the Government's plans to report to Parliament on changes to EU law covering workers' rights after the UK's withdrawal from the EU. In this regard, we seek clarity on whether the Government will begin consultations with stakeholders and start the reporting process once an EU legal instrument has been**

<sup>5</sup> HM Government, ['Protecting and Enhancing Worker Rights after the UK Withdrawal from the European Union'](#), Cm66, 6 March 2019.

published in the Official Journal or, alternatively, whether it would have discretion as to when such a report is made, for example, up to or beyond the deadline for Member States to ensure that the legal act in question is given effect to.

1.11 We draw this report 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 Directive of the European Parliament and of the Council on transparent and predictable working conditions: (39396), 16018/17 + ADDs 1–2, COM(17) 797.

### Previous Committee Reports

Twelfth Report HC 301–xii (2017–19), [chapter 5](#) (31 January 2018); Thirty-first Report HC 301–xxx (2017–19), [chapter 2](#) (13 June 2018); and Fifty-seventh Report HC 301–lvi (2017–19), [chapter 2](#) (6 March 2019)

## 2 Second mobility package: emissions performance standards

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Not cleared from scrutiny; further information requested; <b>scrutiny waiver granted for adoption at the end of March 2019</b>
Document details	Proposal for a Regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars and for new light commercial vehicles as part of the Union's integrated approach to reduce CO <sub>2</sub> emissions from light-duty vehicles and amending Regulation (EC) No 715/2007 (recast)
Legal base	Article 192(1) TFEU, ordinary legislative procedure, QMV
Department	Transport
Document Number	(39203), 14217/17 + ADDs 1–4, COM(17) 676

### Summary and Committee's conclusions

2.1 The [proposal under scrutiny](#) would recast two existing Regulations on emission performance standards for new passenger cars and new light commercial vehicles. The main focus of these revisions is the introduction of more stringent emission performance standards and, in light of the 'dieseldate' scandal, the creation of a robust, EU-level, monitoring process (headed by the Commission). In keeping with the rationale for the [second mobility package](#), these changes are sought to support driving a transition from conventional combustion engine vehicles to cleaner technologies.

2.2 As introduced, the specifics of these proposed revisions include:

- from 2025, setting new targets that would require new passenger cars and new light commercial vehicles (LCVs) to have reduced their CO<sub>2</sub> emissions by 15% compared to 2021 and 30% by 2030;
- crediting manufactures—by way of reducing their CO<sub>2</sub> emission targets by up to 5%—if more than 15% of their overall sales are of low or zero emission vehicles (ZLEV) by 2025 and 30% by 2030;
- maintaining the excess emissions premium currently levied on manufacturers that exceed their CO<sub>2</sub> targets;
- allowing small volume manufacturers—those selling fewer than 10,000 cars and 20,000 vans—to apply for a derogation from the standards set by the Regulation. Very small manufacturers—producing fewer than 1,000 vehicles—would be considered out of scope. From 2025, manufactures producing between 10,000–300,000 vehicles would have their derogations removed;

- providing manufacturers who utilise technological innovations, and are unable to demonstrate their CO<sub>2</sub> reducing benefits under test conditions, up to a 7g CO<sub>2</sub>/km reduction in their emission targets;
- empowering the Commission to monitor, assess and publish the real-world CO<sub>2</sub> emission values of vehicles; and
- introducing a requirement for the Commission to review the effectiveness of the proposed Regulation by the end of 2024.

2.3 The Minister of State at the Department for Transport (Jesse Norman MP), wrote to the Committee on 30 August 2018 requesting a scrutiny waiver in order for the Government to support a General Approach likely to be sought on the proposal at the October 2018 Environment Council.<sup>6</sup> The Committee granted this waiver—in its second consideration of the proposal—and asked the Minister for further information on the specific emission performance targets that the Government would be willing to support (i.e. values greater or lower than the Commission’s proposed reductions of 15% compared to 2021 and 30% by 2030).

2.4 In response to our questions and requests for further information, the Minister wrote to the Committee on 13 November 2018.<sup>7</sup>

### ***Minister’s letter of 13 November 2018***

2.5 In his letter of 13 November, the Minister explained that a General Approach was reached on the proposal after 14 hours of negotiations. The Presidency’s compromise text provided for a CO<sub>2</sub> reduction target for new passenger cars and LCVs of 35%—versus 2021 levels—by 2030; a ZLEV benchmark for cars of 35% by 2030; and strengthened reporting requirements for manufacturers. The Minister also informed the Committee that the Government was successful in ensuring that the time limit for niche derogations—from which some (small) UK manufacturers currently benefit—was extended until 2030.

2.6 On the Committee’s request for further information on the performance targets that the Government would be willing to support, the Minister explained that the Government had no specific targets in-mind going into negotiations but rather it planned to support values that were ambitious and in line with its own domestic policies (namely the Department for Transport’s ‘Road to Zero’ strategy).<sup>8</sup> The Minister did note, however, that the Government would have been unhappy if the more conservative values proposed by the Commission were endorsed by Member States without amendment.

2.7 The Minister now writes—26 February 2019—requesting clearance of the proposal from scrutiny ahead of its adoption at Council.<sup>9</sup>

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6 [Letter from Jesse Norman MP to Sir William Cash MP](#), 30 August 2018.

7 [Letter from Jesse Norman MP to Sir William Cash MP](#), 13 November 2018.

8 Department for Transport, ‘[The Road to Zero: Next steps towards cleaner road transport and delivering our Industrial Strategy](#)’ (July 2018).

9 [Letter from Jesse Norman MP to Sir William Cash MP](#), 26 February 2019.

### ***Minister's letter of 26 February 2019***

2.8 The Minister informs the Committee that after five rounds of negotiations, a preliminary agreement was reached on the proposal between the Romanian Presidency and the European Parliament on 17 December 2018.

2.9 In accordance with this agreement, the proposal has been amended as follows:

- from 2025, targets would be set requiring new passenger cars and LCVs to have reduced their CO<sub>2</sub> emissions by 15% compared to 2021 levels and 31% for cars and 37.5% for LCVs by 2030;
- incentivisation benchmarks for ZLEVs—with tailpipe emissions <50g CO<sub>2</sub>/km—would be set at 15% for both cars and vans by 2025, increasing to 30% for vans and 35% for cars by 2030;<sup>10</sup>
- for manufactures producing between 10,000–300,000 vehicles, the ‘niche volume’ derogation under the Regulation would be retained until 2028; and
- minor, technical, changes have been made to provide more stringent methods for monitoring and assessing real-world CO<sub>2</sub> emissions.

2.10 The Minister is content with these amendments and states that they meet the objectives the Government set when entering into negotiations, namely to:

- i) support higher ambitions regarding CO<sub>2</sub> reduction targets;
- ii) promote zero emission vehicle production; and
- iii) promote measures that maximise the advantages to UK industry from the global shift to clean economic growth.

2.11 On the domestic implementation of the Regulation, the Minister provides a detailed explanation citing the potential implications of the UK's withdrawal from the EU for the Government's plans. The short of this is that if the UK enters into a transitional period (as provided for under the draft Withdrawal Agreement), the Government will be required to ensure that the Regulation has domestic effect (this is as the Regulation would have a coming into force date of 1 January 2020 (roughly 12 months before the planned end of the transitional period on 31 December 2020)). On the other hand, if the UK exits the EU without a negotiated agreement, the Government's plans remain unclear. This is somewhat surprising given the Minister's support for the proposal and his calls throughout the progress of negotiations for greater ambition to be shown by Member States.

**2.12 We thank the Minister for his letter of 26 February 2019 and acknowledge his request for clearance of the proposal from scrutiny ahead of adoption. The Minister does not, however, state whether the Government will endorse adoption or abstain. Given his previous statements on the proposal and his desire for Member States to show greater ambition during negotiations, in particular, with regard to CO<sub>2</sub> emission reduction levels, we find this odd. In light of this confusion, we grant a scrutiny waiver**

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<sup>10</sup> In this regard, minor, technical, changes have also been suggested that would affect compliance efforts by manufacturers.

should the Government wish to support adoption. Owing to the high political profile proposal—and our desire to complete a full assessment of its final form once it is adopted—we retain it under scrutiny.

2.13 We request a report on the outcome of the Council at which the proposal is put for adoption—including how the Government voted—by the end of April 2019.

### Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars and for new light commercial vehicles as part of the Union’s integrated approach to reduce CO2 emissions from light-duty vehicles and amending Regulation (EC) No 715/2007 (recast): (39203), [14217/17](#) + ADDs 1–4, COM(17) 676.

### Previous Committee Reports

Twenty-first Report HC 301–xx (2017–19), [chapter 4](#) (21 March 2018); and Thirty-eighth Report HC 301–xxxvii (2017–19), [chapter 10](#) (12 September 2018).

### 3 Third mobility package: revision of the Road Infrastructure Safety Management Directive

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Committee's assessment	Politically important
<u>Committee's decision</u>	Not cleared from scrutiny; further information requested; but a conditional scrutiny waiver granted in order for the Government to support adoption at the end of March 2019
Document details	Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/96/EC on road infrastructure safety management
Legal base	Article 91(1)(c) TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39722), 9040/18 + ADDs 1–4, COM(18) 274

#### Summary and Committee's conclusions

3.1 The Road Infrastructure Safety Management Directive (RISM)—Directive 2008/96/EC—was adopted in November 2008.<sup>11</sup> The Directive seeks to ensure that road safety—and its improvement—is considered during the planning, design and operation of road infrastructure. In light of stalled progress in reducing the number of fatalities on EU roads in recent years, the Commission has suggested amending the Directive to clarify existing—and provide for additional—road safety management procedures. These are related, in particular, to road safety impact assessments, road safety audits, road safety inspections and network-wide road safety assessments.

3.2 A full background to the proposal—including detail on the Commission's justification(s) for proposing to amend RISM and the Government's initial legal and political assessment of the proposal—can be found in our [Thirty-seventh Report of Session 2017–19 to the House](#). Since this Report, the Committee has considered the proposal on a further occasion (granting a scrutiny waiver in order for the Government to support a General Approach sought in the Transport Council of 3 December 2018).<sup>12</sup>

3.3 Minister of State at the Department for Transport (Jesse Norman MP), wrote to the Committee on 12 March 2019 requesting clearance of the proposal from scrutiny ahead of it being put before the Council of Ministers for adoption in late March.<sup>13</sup> The Minister's responses to the Committee's questions and requests for further information provide an overview of the current form of the draft Directive.

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11 [Directive 2008/96/EC](#) of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management.

12 European Scrutiny Committee, Forty-sixth report HC 301–xvi (2017–19), [chapter 9](#) (28 November 2018).

13 Letter from Jesse Norman MP to Sir William Cash MP, 12 March 2019.

3.4 A [provisional agreement on the proposal](#) was reached between the Romanian Presidency and the European Parliament on 27 February 2019. As per the final text of the proposal, the Directive would apply to roads that form part of the trans-European transport network (TEN-T) and to other “motorways and primary roads outside of the core network”. Ahead of a General Approach being reached on the proposal, the Minister informed the Committee that—at the suggestion of Member States—the Directive had been amended to allow for national discretion to define what constitutes a ‘primary road network’. This compromise is, however, qualified in the final text of the Directive and according to new Article 1(2)(a) “Member States may exempt from the scope of this directive [sic] primary roads which have a low risk for safety, based on duly justified grounds connected to traffic volume and accident statistics”.

3.5 If given effect to, new Article 1(2)(a) would allow Member States to remove roads from the purview of the Directive only when it can be proven that they do not present a measurable safety risk. This is not the same as Member States having *carte blanche* to decide which primary roads fall within the scope of the Directive. Along with this amendment, a requirement has also been included for Member States to inform the Commission after 24 months following the entry into force of the Directive of those roads excluded from or falling within its scope.

3.6 It is also worth noting that in our last chapter on the proposal,<sup>14</sup> we raised a linked concern that the inclusion of the wording ‘non-built-up roads’ under Article 1(3) could mean that the Directive would cover roads that do not form part of the UK’s strategic road network. The Minister states that Article 1(3) has been removed from the proposal and that, interestingly (in light of the discussion above), the “Directive *should not* capture roads not currently covered by the SRN [strategic road network]” [our emphasis]. It could be inferred from this seemingly innocuous qualification that—in line with our understanding of new Article 1(2)(a)—the delineation between roads falling within the scope of the Directive and the discretion afforded to Member States to exclude certain roads is not absolutely clear.

3.7 The main substantive changes to the RISM Directive that have been maintained in the final text of the proposal include:

- mandatory transparency and follow-up of infrastructure safety management procedures (by targeted ‘road safety inspections’ or remedial action);
- the introduction of a ‘network-wide road assessment’; and
- the requirement to consider vulnerable road users in all road safety procedures.

3.8 As highlighted by the Minister in his latest letter, the majority of these changes have been watered down versus the Commission’s original proposal. By way of example, when undertaking a ‘network-wide road assessment’, Member States would no longer have to include the indicative elements laid out in Annex III in their own assessments but would rather undertake to “take these into account”. The Minister states that the Government is happy with these changes and other technical amendments as they “balance the burden on Member States with improving safety for road users”.

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14 See European Scrutiny Committee, Forty-sixth report HC 301–xvi (2017–19), [chapter 9](#) (28 November 2018).

3.9 In our second consideration of the proposal,<sup>15</sup> we requested that the Government keep us up-to-date on any new suggestions to set general road performance requirements for road markings and road signs (the ability for the Commission to set such standards was removed from the draft Directive at the request of Member States during Working Group negotiations). The Minister informs us that replacement text has been agreed that would mandate the creation of a Member State expert group to establish standards—taking advice from the UNECE—that may be needed to make road markings and road signs readable by autonomous vehicles.<sup>16</sup>

3.10 This expert group is, indeed, to be established according to the text of the Presidency’s provisional agreement, however, the ability for the Commission to set standards in this area remains. Article 6(c)(3) provides that:

...the Commission may establish by means of implementing acts common specifications, relating to Member States’ common procedures... with regard to the effective readability and detectability of road signs and markings for human drivers and automated driver assistance systems.

In his [Explanatory Memorandum on the proposal](#), the Minister raised concerns about such standards being set at EU-level and cited, in particular, uncertainties surrounding the desirability of regulating for nascent vehicle technologies, the potential implications of this for the aesthetics of UK roadsides and how such plans would fit with the Department for Transport’s drive to reduce unnecessary road markings and signage. As far as the Committee is aware, these concerns remain and help to explain the inclusion in correspondence from the Minister of this issue and his positive assessment of its apparent modification (to remove the standard-setting role to be played by the Commission).

**3.11 We thank the Minister for his letter of 12 March 2019 and the responses he has provided to our questions and requests for further information. We are disappointed that this response is more than 2 months later than requested. As we are sure the Minister appreciates, the Committee is currently considering a significant number of Brexit-related documents (across all Whitehall Ministries and Departments). The deadlines that the Committee sets when it makes such requests are for the purposes of planning and prioritising its workload. In the present case, receiving a request for clearance to be considered a week before (possible) adoption is unacceptable. Moreover, as the request under consideration attests, it prevents the possibility for further correspondence to clarify any points raised by the Committee that would restrict the ability of the Government to support the adoption of EU legislation.**

**3.12 We note the Minister’s request for the proposal to be cleared from scrutiny ahead of its adoption at the end of this month. The information that the Minister has provided the Committee with in support of this request is somewhat at odds with our understanding of the current form of the proposal, in particular, with regard to the scope of the draft Directive and the ability of the Commission to set future performance standards for road markings and road signs.**

15 *ibid.*

16 By way of background, UNECE is the United Nations Economic Commission for Europe; a regional Commission of the UN that sets vehicle standards with a view to promoting pan-European economic integration.

3.13 Taking these two points in turn, the Minister informs the Committee that the proposal would allow for Member States to define what constitutes a ‘primary road network’, however, in accordance with the provisional agreement on the proposal reached between the Romanian Presidency and the European Parliament on 27 February 2019, a new Article 1(2)(a) would allow Member States to remove roads from the purview of the Directive only when it can be proven that they do not present a measurable safety risk. Contrary to the Minister’s correspondence on the proposal, this is not the same as Member States having unqualified discretion to decide which primary roads fall within the scope of the Directive (all primary roads would fall under the Directive unless Member States can justify their exclusion of safety grounds).

3.14 On a linked point, there also appears to be some confusion regarding the role of the Commission in setting future performance standards for road markings and roads signs. In correspondence dated 8 November 2018 (and as referred to in further correspondence on 26 November), the Minister informed the Committee that this power had been removed and replaced with a proposal to establish an expert group charged with considering standards that may be needed to make road markings and road signs readable by autonomous vehicles. Again, as per the most recent Presidency compromise text, the proposed standard-setting role of the Commission has been retained.

3.15 Owing to the apparent confusion in these two areas, we do not believe it appropriate to clear the proposal from scrutiny.

3.16 Taking into account the Minister’s previous representations on the scope of the proposal and the role of the Commission in setting performance standards, we grant a scrutiny waiver ahead of adoption, however, this is made conditional on the final text of the Directive not:

- i) interfering with the discretion of Member States to define which parts of their road networks fall within its scope (this must not be qualified on the grounds of safety or against any other criteria); and
- ii) providing the Commission with the ability to set future performance standards for road markings and road signs (by implementing act).

3.17 We request clarification on the above points, along with a report on the outcome of the Council at which the proposal is put for adoption—including how the Government voted with a full explanation—by the end of April 2019.

3.18 In order to facilitate our scrutiny, we request a copy of the final text of the Directive as adopted at Council.

3.19 In light of the UK’s withdrawal from the EU, we note the potential of the proposal to influence future domestic standards on road signs and markings. We wish to highlight, in particular, that in the event that the Government does not give effect to the proposal (as it is likely to fall outside of the proposed transitional period provided for under the draft Withdrawal Agreement), it will at least have an indirect influence on domestic regulation in this area. This is because—as currently drafted—the Directive would allow the Commission to set EU-wide performance standards for road signs and markings. As with all technologies, those for autonomous vehicles will

**be designed against the most commonly accepted standards (i.e. those of the EU-27), it is inconceivable that such standards would not be ‘mirrored’ by the UK; divergence could severely restrict their effectiveness or deployment on UK roads.**

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

3.20 (39722), 9040/18 + ADDs 1–4, COM(18) 274.

### **Previous Committee Report**

Thirty-seventh Report HC 301–xxxvi (2017–19) [chapter 10](#) (11 September 2018); and Forty-sixth Report HC 301–xlv (2017–19), [chapter 9](#) (28 November 2018).

## 4 Commission Brexit preparedness proposal: road haulage

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

### Summary and Committee's conclusions

4.1 Trilogue negotiations between the European Parliament and the Council have concluded with the provisional agreement of a compromise text for a Regulation governing road haulage arrangements between the UK and the EU, which would apply in the case of a non-negotiated Brexit. From a British perspective, the Member States have improved the Commission's original proposal in multiple respects: the compromise text provides UK hauliers with rights to perform limited cabotage and cross-trade operations within the territory of the Union, although these rights will gradually reduce over the course of the nine month period of the proposed Regulation's operation; extends it to cover travel by bus and coach, although not cabotage or cross-trade; and makes explicit allowance for the Member States to negotiate bilateral agreements at national level with the UK for the period following the expiration of the regulation.

4.2 The Committee produced a detailed summary of the Commission's initial draft proposal in its report on 30 January 2019.<sup>17</sup> The proposal would for a period of nine months have partially mitigated some of the consequences of a non-negotiated EU exit for UK road transport operators, by granting UK operators the right to conduct unlimited bilateral carriage between the UK and the EU. However, UK hauliers would have lost in their entirety their current Single Market rights to engage in permit-free cross-trade and cabotage operations within the EU. The Member States would also have been prohibited from negotiating separate bilateral agreements with the UK, although the precise scope of this restriction was not clearly framed.

4.3 In the Government's Explanatory Memorandum,<sup>18</sup> the Minister of State at the Department for Transport (Jesse Norman MP) indicated that the Government supported this temporary proposal, on the basis that "while the proposals do not fully replicate the

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17 Fifty-third Report HC 301–lii (2017–19), [chapter 4](#) (30 January 2019).

18 Explanatory Memorandum from the Minister (Jesse Norman MP), Department for Transport ([16 January 2019](#)).

current levels of access, they would, if adopted, ensure a basic level of connectivity until more permanent and wider-reaching arrangements could be concluded”. The Committee concluded that this temporary arrangement would partly mitigate the disruption and additional expense which operators would incur in a no deal scenario, but would nonetheless represent a substantial deterioration of market access relative to the status quo, with (according to the Minister) “over 40% of international services by UK hauliers” being negatively affected.

4.4 A number of issues arose in relation to bilateral agreements between the UK and Member States in the road haulage sector. The Committee expressed particular interest in the extent to which Member States would be able to conclude parallel bilateral agreements with the UK, and concluded that the Commission’s text was ambiguous and permitted conflicting interpretations. It noted that there were tensions between the Commission and the Council, with some of the Member States, notably including France, wishing to retain the ability to conclude separate bilaterals with the UK. It also took issue with the Minister’s failure to address the status of the UK’s existing bilateral agreements with the EU. The Committee declined to clear the proposal from scrutiny and requested further information on these and a number of other points.

4.5 On 12 March 2019 the Minister provided the Committee with an update regarding the progress of negotiations and responses to its questions. In his letter,<sup>19</sup> the Minister confirms that due to the Member States raising “questions focusing on external competence [it] was decided to take further discussions at 27 through the Council’s Article 50 structures”—meaning that the UK was temporarily excluded from the negotiations.

4.6 The Minister states that, after the Member States requested a number of changes to the Commission’s proposal, the text progressed very rapidly, with the Presidency obtaining a mandate from the Committee of Permanent Representatives (COREPER) on 15 February to enter trilogue negotiations with the European Parliament, the European Parliament adopting its position in Plenary on 13 February (enabling trilogue discussions to begin), and two trilogue meetings taking place on 18 and 21 February, at which a provisional agreement was reached. He states that the Government has retained its Parliamentary reserve throughout.

4.7 The Minister reports the following changes to the Commission’s proposal in the provisional agreement:

- The scope of the measure is expanded to cover “regular” (scheduled) and “special regular” passenger transport services (cross-border services taking specific passengers to school or work) until the Interbus Agreement, which currently provides only for “occasional” services (holidays and tours), is expanded to cover the same services. However, ‘grand cabotage’ (cabotage and cross-trade) is excluded from the passenger transport provisions, meaning that UK operators reliant on these provisions will experience some reduction in market access, even when the Interbus Agreement is expanded. An exception to the exclusion of grand cabotage from passenger transport is made for services operating in Irish border counties, until 30 September 2019, “to enable alternatives to be put in place”. As with road haulage, the Regulation requires that EU coach and bus service operators should be granted equivalent access and that UK operators

19 Letter from the Minister to the Chair of the European Scrutiny Committee ([12 March 2019](#)).

should retain EU-equivalent rights. If not, the Commission can take corrective measures, such as reducing the access allowed to UK operators, through delegated acts.

- UK hauliers are granted limited rights to undertake cross-trade and cabotage within the territory of the EU. Instead of the current arrangements under which UK hauliers can undertake unlimited cross-trade and three cabotage operations in seven days following the unloading of goods in another EU Member State, the EU will initially permit a combined total of two trips comprising either cross-trade or cabotage within seven days, for the first four months of the Regulation's operation; for the remainder of the Regulation's operation, this will reduce to a single such trip within any seven day period following unloading. The Minister states that "this was the most contentious issue during trilogue discussions, and the European Parliament would have preferred to remove haulage cabotage from the measure".

The Regulation's recitals also assert that "the right to carry out transport operations within the territory of a Member State or between Member States is a fundamental achievement of the EU internal market" and that following EU exit these rights will "no longer be allowed for United Kingdom road haulage operators which are not established in the Union", and that the proposal is a "temporary phasing out measure" which is merely intended to help "prevent disruptions to traffic flows".

- The restriction on Member States' negotiating bilateral arrangements with the UK is substantially weakened so that the restriction applies only to the negotiation of arrangements which would apply during the period of the Regulation's validity. This means that the Member States will in principle be able to negotiate bilateral arrangements with the UK which would enter into force immediately following the termination of this temporary arrangement, although the extent to which they can conclude these arrangements thereafter will depend on whether the EU as a whole negotiates a successor arrangement with the UK and the scope of that arrangement. The text also emphasises that the competence conferred on the Union in the act will be exercised by the Member States when the Regulation ceases to apply.
- It is clarified that any references to the United Kingdom in the proposed Regulation do not include Gibraltar, and that Gibraltar is therefore excluded from the Regulation's effects.

4.8 Separately, the Minister notes that the Government has secured an additional allocation of European Conference of Ministers of Transport (ECMT) permits, without specifying how many. He observes that, if the proposed Regulation is adopted in time to come into effect on 29 March in the event of a non-negotiated exit, then the ECMT permits will not be needed for the significant majority of UK haulage business to, from and within the EU while the Regulation is applicable. However, he states that the increased allocation of permits will be helpful even in the event that the proposed Regulation is adopted, as hauliers may wish to use permits to perform slightly more cross-trade operations than the proposal allows, or for transit across the EU to a third country.

4.9 Officials have clarified that the provisional agreement, which was adopted by the European Parliament on 13 March, will be put to a Council of Ministers meeting for final adoption on 18/19 March.

4.10 Although the Minister indicates that the Government welcomes the proposal and that it considers the amendments that have been made to the text during negotiations to be helpful, he notes that the Government did not support the Coreper mandate because of the exclusion of Gibraltar from its scope and intends to abstain in the vote in the Council on the same basis.

4.11 The Minister has also responded to the Committee's questions, although some of these questions have been superseded by the changes to the proposal.

4.12 In response to the Committee's questions regarding the extent to which EU Member States would be permitted to, respectively, (i) negotiate and conclude new bilaterals with the UK for services other than bilateral carriage, and (ii) allow existing UK bilaterals with Member States to be reactivated while the Regulation remained in operation, the Minister states that, as cabotage and cross-trade are now included in the revised proposal, separate bilateral arrangements will not be necessary to allow these journeys to take place after 29 March; nonetheless, it is clear from the Regulation that it will not be possible for the Member States to conclude separate, bilateral agreements with the UK during the period of the Regulation's operation which provide more generous cabotage/cross-trade arrangements. The Minister adds that the text removes any restriction on the Member States negotiating bilateral agreements with the UK covering the period after the Regulation comes to an end, i.e. after 31 December 2019, including during the period of the Regulation.

4.13 The Committee asked DfT officials to provide a list of existing UK bilaterals with EU Member States, which they promptly did:<sup>20</sup> the table is available [here](#), and the accompanying briefing shows that, of the 26 road transport agreements with EU Member States, 5 have terminated, and 16 of them date from the Sixties and Seventies (for example, one is with West Germany). In his letter, the Minister states that it is the Government's assessment that, in the absence of an EU-wide measure, the majority of these agreements will revive in full when EU law no longer applies to the UK because they have never been terminated, but that they may require some amendments; in the Minister's assessment this can be done by an exchange of notes between the Parties. The Government intends to negotiate new arrangements for agreements that are no longer in force.

4.14 By the Government's own assessment, 15 of the existing bilaterals would require the operation of permits. In this regard, we note the Road Haulage Association (RHA)'s estimate that "a simple bilateral permit system will add approximately £53 per movement in and out of the UK for UK operators and about £26 for EU operators",<sup>21</sup> and that such an arrangement would "impact greatly on the costs of services provided and also create impediments for the smooth and effective movement of goods".<sup>22</sup> The Road Haulage Association concluded that this would be the worst possible outcome for the UK and that there were no benefits for either the haulage industry or supply chains arising from the introduction of a system of bilateral permits.

20 DfT, Road Transport Bilateral agreements overview ([31 January 2019](#)).

21 Road Haulage Association, "Brexit—Unimpeded Access for International Road Haulage" ([3 February 2017](#)).

22 Road Haulage Association, Evidence to the House of Lords EU Sub-Committee ([4 October 2016](#)).

4.15 In terms of their scope, the Minister states that international bilateral road haulage agreements typically cover journeys:

- between any point in the territory of one Contracting Party and any point in the territory of the other Contracting Party;
- transit across the territory of the other Contracting Party; and
- between any point in the territory of the other Contracting Party, and any point in the territory of a third country.

4.16 These bilateral agreements thus do not include cabotage, and the extent to which they provide for cross-trade is not made particularly clear.

4.17 In response to the Committee’s request that the Government provide an assessment of the relative significance of traffic rights and other customs-related formalities to UK hauliers trading internationally with the EU in a no deal scenario, the Minister states that traffic rights are the more fundamental issue for UK international hauliers, as without these rights, “a UK haulier would not be able to operate in the EU at all, even if arrangements were agreed to avoid any customs formalities”. However, the Minister concedes that “any customs formalities would add costs and possibly delays which would be felt by both the haulier and the customers of any consignments”. The Government’s recently published guidance, *Transport goods out of the UK by road if the UK leaves the EU without a deal: checklist for hauliers*,<sup>23</sup> provides an overview of the extensive range of requirements with which UK hauliers will have to comply with in the absence of a deal, covering driver documents, vehicle documents, documentation for importing and exporting goods, and customs and transit documents.

4.18 In response to the Committee’s request that the Government clarify what its offer to EU hauliers will be, in the event of a non-negotiated withdrawal, the Minister states that “we are offering reciprocal market access in a no deal scenario” and that, to confirm this, the Government laid a Statutory Instrument (SI) before Parliament on 6th February which, “as a starting point, continues all current EU hauliers’ rights to operate in the UK beyond 29 March”. However, the Minister notes that the Government will keep the arrangements for access to the UK market under review in the context of negotiations with the EU and/or Member States regarding our longer-term relationship on haulage issues.

**4.19 We have taken note of the Minister’s update concerning the compromise text that has been agreed by the European Parliament and the Council, currently scheduled for adoption by the Council on 18/19 March 2019.**

**4.20 Despite resistance during negotiations from the European Parliament and Commission, the Member States have succeeded in amending the proposal so that UK (and, by extension, EU) hauliers will temporarily retain, alongside the permit-free bilateral carriage provided for in the original proposal, some additional access rights relating to cross-trade and cabotage. For the first four months of the Regulation’s operation operators will be permitted to perform a total of two cabotage/cross-trade operations (combined) during any seven-day period following unloading, falling to**

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23 HM Government, Guidance: Transport goods out of the UK by road if the UK leaves the EU without a deal: checklist for hauliers ([13 March 2019](#)).

a single such operation thereafter, with these rights dissolving on 31 December 2019. The Regulation thus progressively “phases out” these preferential market access arrangements.

4.21 In consequence, although the text effects a substantial reduction of UK operators’ market access vis-à-vis the status quo, it nonetheless represents a significant improvement on the Commission’s original draft, and is clearly highly advantageous when compared to the legal default of operating within a quota-based system of permits at the moment of exit, which would have significant negative implications for UK hauliers in terms of their costs, market access, and efficiency (although we note that operating in such a system remains the legal default when the Regulation ceases to be operative, in the event of a ‘no deal’ exit).

4.22 The Member States have also rejected the Commission’s attempt to restrict their ability to negotiate bilateral agreements with the UK in relation to the period when the Regulation will cease to be applicable. This is another positive development for the UK and should ensure that functional bilateral road transport agreements can be put in place with the Member States by the time that the Regulation expires, in the event of a ‘no deal’ exit.

4.23 Other notable features of the revised text are that:

- The Regulation has been widened to cover coach and bus service operators, including those services which will be covered when the expanded Interbus Agreement enters into force; however, as with Interbus, cabotage and cross-trade are excluded, meaning that UK operators will no longer be permitted to pick up and drop off the same passengers within the EU. The Government is silent about the practical implications of this for operators. An exception is made for cabotage and cross-trade services operating in Irish border counties, until 30 September 2019, to “enable alternatives to be put in place”.
- Gibraltar is excluded from the scope of the Regulation’s provisions, meaning that in a no deal scenario, unless they have been allocated an ECMT permit, a UK haulier will not have a legal basis to enter Gibraltar via Spain and vice-versa, and Gibraltar-based hauliers will not have the rights the Regulation provides to perform bilateral carriage, cross-trade and cabotage operations with the EU27.

4.24 The Minister indicates that the Government has maintained its Parliamentary reserve throughout the process and intends to abstain on the vote to adopt the proposal in the Council, due to the exclusion of Gibraltar from its scope.

### ***Other Brexit issues***

4.25 We thank the Minister for providing us with a list of existing UK bilateral road haulage agreements with EU Member States as requested, however this [table](#) clearly shows why the Government did not share information regarding these agreements in the first place: they do not appear to offer UK operators any cabotage rights (although officials have subsequently suggested that some such rights can be granted on an exceptional basis), fifteen of them require permits, five of them have lapsed, there are

no agreements with a number of Member States, and many of them date from several decades ago, including one with West Germany. This threadbare patchwork of bilateral agreements clearly does not provide a basis for efficient, liberalised international road haulage services between the UK and the EU, in the event that there is no deal.

4.26 In terms of the UK's offer to the EU, the Minister clarifies that the Government is offering EU hauliers "reciprocal market access in a no deal scenario", but that it will keep this under review, which suggests that it ultimately intends to mirror the EU offer.

4.27 Despite the Regulation's detailed provisions for a no deal scenario, there remains little clarity (given the time-limited nature of the proposal) regarding the long-term nature of future UK-EU haulage arrangements. We make the following observations as regards these future arrangements:

- whereas the UK's request will be to retain permit-free bilateral carriage with as much in the way of additional access rights (cross-trade and cabotage) as can be negotiated, the present Regulation discouragingly asserts that intra-EU haulage (i.e. cabotage and cross-trade) are a "fundamental achievement of the Internal Market" and will "no longer be allowed for United Kingdom road haulage operators which are not established in the Union" when the Regulation ceases to apply;
- nonetheless, some encouragement may be derived from the fact that the Member States rejected the Commission's initial draft Regulation as too strict, and insisted on the inclusion of some rights relating to cabotage and cross-trade: this suggests that the loss of this access to the UK market is a significant concern for at least some Member States;
- in a no deal scenario, even if the EU27/some Member States wished to negotiate preferential arrangements with the UK following the expiry of the Regulation, their ability to do so would be constrained by WTO Most Favoured Nation rules, which would require the Union/Member State to offer the same terms to other WTO members; that Turkish road transport operators do not currently have liberalised access to the EU market makes the prospect of a standalone bilateral with the UK liberalising road transport unlikely; and
- if the UK wishes for its hauliers to retain permit-free access to the EU market and any additional intra-EU access rights, this therefore appears most readily achievable in the context of a wider trade agreement, which would exempt the UK and the EU from the MFN principle.

## Questions

4.28 We ask the Minister to respond to the following questions in his next update to the Committee:

- Which specific UK operators in the passenger transport sector will be impacted by the loss of cross-trade/cabotage rights and how significant will this impact be, based on your engagement with them?
- We regret that the Government has not elaborated further on the implications of the exclusion of Gibraltar from the Regulation's scope. We request that you elaborate on the operational implications of this exclusion for the different types of haulier which provide services to and from Gibraltar, as well as passenger transport operators, if no additional arrangement is agreed, how the Government anticipates that this issue will be resolved, and whether the Government is confident that mitigating arrangements will be in place if there is a non-negotiated exit.
- Why is cabotage for passenger transport in the Irish border counties only permitted until September 2019, rather than December 2019 (when the Regulation ceases to apply)?
- Given that the Regulation states that cabotage and cross-trade are features of the Single Market that will not be available to the UK post-exit, what type of future arrangements in the road haulage sector does the Government now consider to be realistically achievable in the context of a non-negotiated exit from the EU (within the constraints of WTO rules), and a negotiated exit, respectively?
- We note that the Regulation states that cabotage and cross-trade will “no longer be allowed for United Kingdom road haulage operators which are not established in the Union”. In a non-negotiated exit, to what extent would it be possible under current UK and EU rules, for UK operators to be established in the Union and to retain full access to the UK market by retaining some form of commercial presence in the UK? Would this result in these operators paying their primary tax contributions in the EU rather than in the UK? Has there been a trend for UK operators to change their place of establishment to the EU (if so, please quantify)?
- To what extent do the UK's existing road transport bilaterals with EU Member States make any provision at all for cabotage and cross-trade? We ask the Government to provide this information in the form of a further/revised table, with an accompanying detailed explanation explaining the precise scope of any such access, consulting our clerks on the level of information that is required.

4.29 We ask for a response to these questions by 24 April 2019. In the meantime we retain this document under scrutiny. We draw this report to the attention of the Committee on Exiting the European Union and the Transport Committee.

## Full details of the documents

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

## Previous Committee Reports

Fifty-third Report HC 301–lii (2017–19), [chapter 4](#) (30 January 2019). See also previous reports on the “market pillar” of the “first mobility package”: Forty-Sixth Report HC 301–xlv (2017–19), [chapter 6](#) (28 November 2018); Thirtieth Report HC 301–xxix (2017–19), [chapter 8](#) (6 June 2018).

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

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Committee’s assessment	Politically important
<u>Committee’s decision</u>	Cleared from scrutiny; further information requested; scrutiny waiver previously granted; drawn to the attention of the Committee on Exiting the EU, International Trade Committee, Business, Energy and Industrial Strategy Committee and Foreign Affairs Committee
Document details	Proposal for a Council Decision on the position to be taken on behalf of the EU in the Committee on Government Procurement concerning the accession of the UK to the Agreement on Government Procurement in the context of its withdrawal from the EU
Legal base	Articles 207(4) and 218(9) TFEU; QMV
Department	Cabinet Office
Document Number	(40370), OTNYR

### Summary and Committee’s conclusions

5.1 The Government Procurement Agreement (GPA)<sup>24</sup> is a plurilateral WTO agreement under which the Parties open their public procurement markets to each other. The UK has been participating in the GPA, as a member of the EU, for over 20 years.

5.2 GPA-covered government purchases of goods and services are estimated to be worth over £1.3 trillion per annum, with UK businesses “winning” an estimated £1 billion to £1.4 billion per year. In order for the UK to continue to access the markets covered by the GPA following its withdrawal from the EU, the UK must accede to the agreement in its own right.

5.3 The proposed Council Decision set out the position that the Commission intended to take, on behalf of the EU, within the GPA Committee on 27 February 2018. It proposed approving the UK’s accession to the GPA, subject to certain conditions, including setting out the process in the event of a no deal withdrawal (the UK will have to send its formal request to the WTO no earlier than 30 days before its withdrawal and no later than six months after a formal decision on accession) (see previous Report chapter for further detail).

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24 The GPA is a plurilateral agreement within the framework of the World Trade Organisation (WTO), which mutually opens government procurement markets among its 19 parties (covering 47 WTO members): Armenia; Canada; the EU; Hong Kong; China; Iceland; Israel; Japan; Republic of Korea; Liechtenstein; Republic of Moldova; Netherlands with respect to Aruba; New Zealand; Norway; Singapore; Switzerland (accession to the Revised GPA pending); Chinese Taipei, Ukraine; and the United States. The GPA does not automatically apply to all procurement activities of the Parties. Rather, it contains coverage schedules which define each Party’s commitments, or in other words, the level of access provided.

5.4 At its meeting on 13 February 2019, the Committee noted the importance of the UK's continued participation in the GPA after Brexit, as an independent member, without which UK businesses would lose guaranteed access to GPA covered procurement opportunities, UK subsidiaries and suppliers based in other GPA jurisdictions would not be protected against discriminatory treatment by procuring governments, and UK consumers and procuring bodies would no longer benefit from increased choice and value for money due to competition from third country GPA parties' suppliers. It granted a scrutiny waiver to allow the Minister for Implementation at the Cabinet Office (Oliver Dowden MP) to vote in favour of the proposed Council Decision at the Council on 18 February 2019, subject to being kept updated on the outcome of the Council vote and decision taken by the GPA Committee and receiving further information on the expected timetable for ratification and entry into force of the agreement, the implications for UK businesses if there is gap in UK membership (in the event of no deal), further analysis on UK access to procurement markets (both EU and non-EU) after Brexit, and the implications of the backstop for UK accession.

5.5 In his update letter dated 5 March 2019 (received on 6 March), the Minister informs the Committee that the Council Decision was adopted via the written procedure (that closed on 22 February 2019) and that on 27 February 2019 all GPA parties approved the UK's offer to accede to the GPA post-exit, with the effect that:

- in a negotiated withdrawal scenario, “the UK will continue to be treated as if it were a Member State of the EU for the purpose of the GPA and the GPA will continue to have effect during the transition period provided for in the Withdrawal Agreement. UK businesses will continue to have the same access, rights and remedies under the GPA as now”; and
- in a no deal scenario, “the UK will accede to the GPA as an independent member. UK businesses will have substantially the same access, rights and remedies under the GPA as now”.

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

5.6 At its meeting on 13 February 2019, the Committee flagged that there would be a gap of at least several weeks in GPA membership in the event of no deal on 29 March 2019. In response to our question on how UK stakeholders would be impacted by asymmetric access to procurement markets in a no deal scenario (noting that an amendment in the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 guaranteed continued access, rights and remedies for suppliers from GPA countries to UK procurement markets for a time limited period after EU exit, but that reciprocal access of UK businesses to GPA third parties' markets was not guaranteed), the Minister states:

In the event of a short gap in UK participation in the GPA, UK suppliers will not have access, rights or remedies provided by the GPA for this short period. We have considered the impact of this on UK suppliers in the GPA jurisdictions which, according to statistical analysis, are most significant for UK suppliers. In many jurisdictions, UK suppliers will maintain access, rights and remedies under the domestic laws of those jurisdictions, whereas in other jurisdictions whilst UK suppliers may not have legal

rights or remedies, we anticipate they will at least have continued access to procurements under current policy. The UK Government will be issuing guidance for suppliers on the potential impact.

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

5.7 In response to the Committee’s request for the Minister to set out the Government’s position on whether third countries and international organisations need to agree to the UK continuing to benefit from the terms of the GPA for the duration of the transition/implementation period, the Minister:

- considers that it “is in the interests of all parties that international agreements entered into by the European Union continue to operate fully in respect of the United Kingdom during the transition/implementation period”;
- notes that “the GPA Committee decision adopted at the GPA Committee on 27 February acknowledges that the UK is covered by the GPA until the end of a transition/implementation period if the EU and the UK conclude the Withdrawal Agreement. This provides evidence of the shared intention of the parties that there will be no disruption to the UK’s participation in the GPA during a transition period.”

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

5.8 In response to the Committee’s question on how UK suppliers’ access to EU procurement markets will change as a result of the UK becoming a member of the GPA, the Minister states:

- UK suppliers will have access to EU government procurement markets under the Single Market while the UK remains a Member State of the EU or until the end of any negotiated withdrawal transition period;
- post-exit/transition period, UK suppliers will have access to EU government procurements covered by the GPA, as set out in the EU’s schedules to the GPA, which will offer UK suppliers “the fullest level of access offered by the EU to any other GPA party”; and
- as part of the future EU-UK relationship, the Political Declaration outlines the EU and the UK’s commitment to opportunities for greater reciprocal market access for procurement than under the GPA.

5.9 In response to the Committee’s question on how UK suppliers’ access to third country procurement markets through existing EU free trade agreements that cover procurement (such as with Canada and South Korea) will be impacted in the event of no deal, and in particular whether the ‘replacement’ treaties will grant UK businesses the same level of access to these markets and be ratified in time, the Minister:

- reiterates the Government’s well-rehearsed position that the “Government is seeking continuity of our existing EU trade agreements as we leave the EU”;
- notes that “[m]any of these agreements contain public procurement obligations that the Government aims to retain and technically replicate” by 29 March

2019 or after the end of the transition period in order to “provide continuity and consistency for UK suppliers and businesses when seeking access to public procurement opportunities in our global trade partners”;

- states that the Government has “already signed a number of bilateral agreements, including with Switzerland...Chile and Israel”, which contain substantive public procurement obligations found in the existing EU trade agreements; and
- the Government “is working to have contingencies in place” for “those countries where we may not be able to get a full agreement signed by the day the UK exits the EU”.

5.10 In response to the Committee’s question on whether the UK is guaranteed to continue to secure the benefits of these EU-third country FTA agreements covering procurement during any transition period, the Minister:

- reiterates that the EU has undertaken to notify its treaty partners that the UK is treated as a Member State for the purposes of EU international agreements during the transition period, following signature of the Withdrawal Agreement; and
- states that a “number of countries (including Canada, Chile, Israel, Switzerland, and groupings such as the Southern African Customs Union and Eastern and Southern Africa European Partnership Agreement States) have already publicly welcomed this approach”, whilst others “are waiting for the notification to be issued before responding formally”.

5.11 Post-transition period, the Government states that it will “seek to bring into force agreements that technically replicate the effects of existing EU agreements, including the replication of those that contain public procurement obligations”. The Minister also asserts that if the backstop is applied at the end of any transition period (as set out in the Ireland/Northern Ireland Protocol attached to the draft Withdrawal Agreement), it “would not affect the UK’s ability to accede to the GPA”.

5.12 **We thank the Minister for his responses to our extensive queries. We note that:**

- **the Council Decision determining the EU’s position on the UK’s accession to the GPA was adopted via written procedure, and that all Members of the GPA Committee, including the EU, supported the UK’s accession to the GPA at the GPA Committee meeting on 27 February;**
- **the Government intends to deposit the UK’s instrument of accession with the Director General of the WTO as soon as possible after the expiry of the 21-day parliamentary scrutiny period required by the Constitutional Reform and Governance Act 2010 (which started on 18 February 2019). Under the terms of the GPA, the UK’s accession will enter into force 30 days thereafter. Given that there will be a gap in GPA coverage for UK suppliers if the UK leaves the EU without a deal on 29 March 2019 (if there is no extension to Article 50), we ask the Minister to:**

- i) **clarify, in relation to each GPA jurisdiction, whether UK suppliers:**
  - “will maintain access, rights and remedies under the domestic laws of those jurisdictions”; or
  - “will at least have continued access to procurements under current policy” and, if so, how;
- ii) **share the guidance the Government intends to share with business suppliers on the potential impact of a gap in GPA coverage and explain whether businesses consider it sufficient, given its late timing (so close to exit day) and the fact that a formal impact assessment of a gap in GPA coverage for UK suppliers has not been conducted by the Government;**
- **post-exit/transition, UK suppliers’ access to EU procurement markets under the GPA would be lower than “under the Single Market while the UK remains a Member State of the EU or until the end of any negotiated withdrawal transition period”; the future UK-EU relationship envisages greater reciprocal access for procurement relative to the GPA; and**
- **it is unclear which existing EU trade agreements that have procurement provisions will be replicated by exit date (in the event of no deal) or post-transition (if there is a negotiated withdrawal). We ask the Minister to provide a table setting out which existing EU trade agreements, to which the UK is currently a party via its EU membership, cover procurement, and to set out for each agreement:**
  - **whether the third country has confirmed that it will agree to replicate the existing public procurement provisions contained in the EU agreement with the UK in the event of a ‘no deal’ scenario (notwithstanding any technical changes required to make the bilateral agreement operational), or whether it will seek concessions;**
  - **the expected timetable for its entry into force (noting that ratification will be required on both sides); and**
  - **what contingency measures the Government intends to take if the agreements are not replicated by exit date.**

5.13 Subject to receiving satisfactory responses to our outstanding queries, we clear the document from scrutiny. We draw the Minister’s update and our conclusions to the attention of the Committee on Exiting the EU, the International Trade Committee, the Business, Energy and Industrial Strategy Committee and the Foreign Affairs Committee.

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

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

## Background

### *The GPA: parties and coverage*

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

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

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

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

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

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

5.18 The UK submitted its final access offer to the GPA parties on 2 October 2018, which is intended to replicate its existing GPA schedule of commitments as an EU member state as far as possible. The final offer was accepted in principle by the GPA parties on 27 November 2018 and adopted by the GPA Committee<sup>25</sup> on 27 February 2019.

5.19 The Government intends to deposit an instrument of accession as an independent party to the GPA. The UK's accession to the GPA would be based on schedules that are substantially the same to the coverage given by the UK under the EU's schedules.

## Previous Committee Reports

Fifty-fifth Report, [HC 301–liv, chapter 2](#) (13 February 2019).

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

## 6 Managing EU migration and security databases

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Committee’s assessment	Legally and politically important
<a href="#">Committee’s decision</a>	Cleared from scrutiny; drawn to the attention of the Home Affairs Committee and the Justice Committee
Document details	Proposal for a Regulation on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
Legal base	Articles 74, 77(2)(a) and (b), 78(2)(e), 79(2)(c), 82(1)(d), 85(1), 87(2)(a) and 88(2) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(38878), 10820/17, COM(17) 352

### Summary and Committee’s conclusions

6.1 Since 2012, a new EU Agency—“eu-LISA”—has been responsible for overseeing the operational management of three EU security, border and migration management information systems. The [proposed Regulation](#) would give eu-LISA responsibility for managing several new or planned EU information systems (described in the Background section of this chapter) and empower the Agency to take the actions needed to make these systems fully interoperable (this latter task being dependent on the adoption of a further legislative instrument).<sup>26</sup> It would also repeal and replace the 2011 Regulation establishing eu-LISA.

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

6.3 The UK participates fully in eu-LISA and the Government has also decided to participate in the proposed successor Regulation to “maximise our influence over how [eu-LISA] operates the IT systems that we take part in and for which it is responsible”.<sup>27</sup> Full UK participation in the revamped eu-LISA is dependent on the Council adopting a further Decision based on Article 4 of the Schengen Protocol—without it, UK participation would be limited to “eu-LISA’s management of the systems that we take part in or have

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

27 See the [Written Ministerial Statement](#) issued by the then Home Secretary (Amber Rudd MP) on 2 November 2017, Hansard 32W5.

opted into”.<sup>28</sup> It would not extend to eu-LISA’s management of new information systems which are not open to UK participation—the EU Entry/Exit System and European Travel Information and Authorisation System.

6.4 In his [letter dated 7 June 2018](#), the Minister for Policing and the Fire Service (Rt Hon. Nick Hurd MP) informed us that the Council had reached a political agreement on the proposed eu-LISA Regulation and that discussions on the terms of a new Council Decision to confirm the UK’s full participation in eu-LISA were “ongoing”. In a further [letter dated 28 September 2018](#), he anticipated that both instruments (the eu-LISA Regulation and related Council Decision) would be formally adopted at the October 2018 Justice and Home Affairs Council.

6.5 In our [Report agreed on 20 June 2018](#), we made clear that a Council Decision extending UK participation in the Schengen rule book, albeit for the limited purpose of enabling the UK to participate fully in eu-LISA, should be deposited for scrutiny and clearance sought ahead of adoption in the usual way. We also asked the Minister to clarify how the provisions of the proposed eu-LISA Regulation setting out the conditions for third country participation in eu-LISA would affect the UK post-exit.

6.6 We wrote on 10 October 2018 to remind the Minister that we still awaited a response. In his [letter of 15 January 2019](#), the Minister informed us that the [new eu-LISA Regulation](#) was agreed by the Justice and Home Affairs Council on 9 November and formally adopted on 14 November 2018.<sup>29</sup> The UK abstained in the Council vote as the proposal remained under scrutiny. He explained that the relevant provisions on third country participation were contained in Article 42 of the new eu-LISA Regulation (applicable from 11 December 2018) and provided for “the participation of non-EU third countries that have entered into agreements with the EU in relation to the Schengen *acquis*, Dublin- and Eurodac-related measures”. He added that the technical arrangements underpinning their participation would be based on the respective agreements providing for their association with the implementation, application and development of the Schengen rule book and with the Dublin and Eurodac Regulations.

6.7 The Minister also provided a copy of the related [Council Decision](#), told us it had been adopted in September 2018, but did not explain why it had not been deposited for scrutiny or how the UK had voted.<sup>30</sup>

6.8 In our [Report agreed on 23 January 2019](#), we expressed our dissatisfaction with the way in which scrutiny of the proposed Regulation and related Council Decision had been handled, noting that we were in the invidious position of being asked to clear from scrutiny a Regulation that had already been adopted and to examine a Council Decision that had also been adopted but had not been deposited for scrutiny. We asked the Minister to explain:

- why the Government had failed to deposit the Council Decision for scrutiny;
- how the UK voted when the Decision (which required unanimous approval within the Council) was adopted last September; and

28 See the [letter](#) of 1 December 2017 and the [letter](#) of 11 January 2018 from the Minister for Policing and the Fire Service (Rt Hon. Nick Hurd MP) to the Chair of the European Scrutiny Committee.

29 Regulation (EU) 2018/1726.

30 Council Decision (EU) 2018/1600.

- whether he accepted that the Government’s failure to deposit the Council Decision should not absolve it of responsibility for overriding scrutiny in this case.

6.9 We considered that the Minister had not directly addressed our concern about the scope of the provisions in the Regulation dealing with third country participation in eu-LISA and their relevance for the UK post-exit. We asked him to explain:

- whether Article 42 of the new eu-LISA Regulation would require full participation in the Schengen rule book (including free movement and the removal of internal border controls) or whether third countries that only apply parts of the Schengen rule book (the current UK position) would also be eligible to participate in the Agency; and
- whether a third country would also have to participate in the EU’s Dublin Regulation and Eurodac database to be eligible to participate in eu-LISA.

6.10 In his [letter of 11 March 2019](#), the Minister apologises for the Government’s handling of the (now in force) Council Decision and new eu-LISA Regulation. He accepts that “all efforts should have been made to ensure that the Council Decision was deposited for scrutiny as a matter of routine” and that there was “a failure of internal process”. He continues:

The UK voted in favour of the Council Decision on 26 September at COREPER, and it was formally adopted in Council on 28 September. Officials were informed of the vote at COREPER on 25 September and the vote taken the next day. Unfortunately, this did not allow time for the Committee to be informed.

Whilst this is clearly unsatisfactory, I would like to make clear that the adoption of the Council Decision does no more than maintain the existing position concerning UK participation in the Agency and has no practical consequence in respect of how that participation operates. I hope this offers some degree of reassurance.

I accept that responsibility for managing the scrutiny process rests with the Government and I can assure you that the upmost importance is attached to discharging that responsibility properly. I would like to reassure you that I have instructed officials to work with the Permanent UK Representation in Brussels to ensure that such errors are avoided in future.

Whilst not excusing the errors made in this case, I would ask the Committee to note that the entire dossier—including the Regulation, the Council Decision and the Council Decisions regarding the Associate States participation in eu-LISA—was concluded to an accelerated timetable that was not anticipated.

6.11 Turning to Article 42 of the new eu-LISA Regulation setting out the conditions for third country participation in the Agency, the Minister reiterates his earlier view that it would not provide a suitable legal base for the UK post-exit, adding:

As you are aware, the Government is seeking a coherent Security Partnership that includes mechanisms for rapid and secure data exchange as part of our future relationship. Such an agreement would provide the necessary legal base required to engage Article 42.

Should an agreement be concluded, we do not consider that Article 42 expressly requires the full participation in the Schengen rule book including free movement and the removal of internal border controls, nor does it explicitly require a third country to participate in the EU's Dublin Regulation and Eurodac database to be eligible. Article 42 clearly envisages a varying degree of participation, indeed 42(2) refers to the need to specify the "nature and extent" of the participation of countries in the work of the Agency. Therefore, the precise terms of any future UK participation in the Agency would be dictated by the terms of any mutually agreed security partnership agreement.

6.12 The Minister invites us to consider releasing the proposed Regulation from scrutiny.

## Our Conclusions

6.13 We welcome the Minister's apology and his candour in acknowledging "a failure of internal process" in his Department's handling of the new eu-LISA Regulation and related Council Decision, as well as his commitment to work with officials in the UK's Permanent Representation in Brussels to avoid a recurrence in the future. The Minister accepts that the Council Decision should have been deposited for scrutiny. We remain of the view that the Government's decision to vote for the Council Decision puts it in breach of our scrutiny reserve and expect the Government to treat it as a scrutiny override.

6.14 We take note of the Minister's position that a further agreement with the EU will be needed to enable the UK to participate in eu-LISA as a third country post-exit. Whilst this agreement would need to include provisions associating the UK with the Schengen rule book and with "Dublin- and Eurodac-related measures" to meet the requirements for participation set out in Article 42 of the eu-LISA Regulation, we note also the Minister's view that the UK would not be required to apply all of these measures—"a varying degree of participation" would be possible, though he does not speculate on how great a variation there could be or how great a risk there is that a "pick and mix" approach could be dismissed as cherry-picking. We recognise, in any event, that UK participation in eu-LISA is likely to be a second-order question, dependent on the UK first securing an agreement to take part in information systems managed by eu-LISA. As our earlier Reports have made clear, we expect the Minister to update us on any progress made in future negotiations on a new post-exit internal security treaty with the EU.

6.15 As the new eu-LISA Regulation and related Council Decision have been adopted and are now in force, and the Minister has responded to our questions, we are content to conclude our examination of these documents by clearing them from scrutiny. We draw this chapter to the attention of the Home Affairs Committee and the Justice Committee.

## Full details of the documents

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

## Background

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

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

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

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

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

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

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

### Previous Committee Reports

Fifty-second Report HC 301–li (2017–19), [chapter 1](#) (23 January 2019), Thirty-second Report HC 301–xxxii (2017–19), [chapter 7](#) (20 June 2018), Twenty-first Report HC 301–xx (2017–19), [chapter 8](#) (21 March 2018), Eleventh Report HC 301–xi (2017–19), [chapter 4](#) (24 January 2018), Seventh Report HC 301–vii (2017–19), [chapter 8](#) (19 December 2017) and First Report HC 301–i (2017–19), [chapter 26](#) (13 November 2017).

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

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

### Summary and Committee's conclusions

7.1 In September 2018, the EU adopted a [Regulation](#) establishing the legal framework for a new European Travel Information and Authorisation System (“the ETIAS Regulation”) which is expected to be operational after 2021. The Regulation will require all visa-exempt third country nationals—those who are not EU citizens and do not need a visa for short stays of up to three months in the Schengen area—to apply online for a travel authorisation before their journey. The personal information they provide when making their application will be stored in the ETIAS Central System and cross-checked against information held in other EU security and migration information systems, Europol data

and Interpol databases.<sup>31</sup> The purpose of these checks is to identify individuals whose presence in an EU Member State would pose “a security, illegal immigration or high epidemic risk”.<sup>32</sup>

7.2 The automated checks required under the ETIAS Regulation can only be carried out if the ETIAS Central System is able to communicate with other EU information systems. The proposed Regulations would amend the ETIAS Regulation and the Regulations establishing the EU Entry/Exit System (“EES”), the Visa Information System (“VIS”), the Schengen Information System (“SIS II”) and the European Criminal Records and Information System (ECRIS-TCN) to make all these systems interoperable.<sup>33</sup> The proposals also set out the conditions under which the ETIAS Central System can access, search and cross-check data held in these other information systems.

7.3 Two Regulations are needed to reflect the fact that most of the EU information systems which the ETIAS Central System will consult are only open to countries participating in the Schengen free movement area and therefore exclude the UK. The European Commission nonetheless envisages that the Regulations will “work seamlessly together to enable the comprehensive operation and use of the [ETIAS] system”.<sup>34</sup>

7.4 The [first proposed Regulation](#), document (a), would amend the EU information systems in which the UK does participate—the police component of the Schengen Information System and ECRIS-TCN, a new database to determine which Member State/s hold criminal record information on third country nationals convicted of an offence within the EU. As the first, SIS II, is a Schengen measure and the second, ECRIS-TCN, is not, two Protocols relevant to the UK apply. Under the Schengen Protocol, the UK will be bound by those parts of the proposal relating to SIS II *unless the UK decides to opt out*. Under the Title V (justice and home affairs) opt-in Protocol, the UK will only be bound by those parts of the proposal relating to ECRIS-TCN *if the UK decides to opt in*. The Government has three months in which to make a decision.<sup>35</sup>

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

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

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

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

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

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

7.6 In her [Explanatory Memorandum of 29 January 2019](#), the Immigration Minister (Caroline Nokes) expressed the Government’s support for the proposed Regulations:

They enhance efforts to improve the security of the external Schengen border of the EU by supplementing the amount of information available to ETIAS, which will allow for the EU to revoke a grant of admission to a third country national if a relevant alert is identified from EU information systems.

7.7 She indicated that the Government would undertake “a full analysis of the advantages and disadvantages” of participating in the first proposed Regulation—document (a)—with particular regard to:

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

7.8 The Minister drew our attention to the EU’s [Notice](#) on travelling between the EU and the UK following withdrawal of the UK from the EU (published on 13 November 2018) which makes clear that the UK will become a third country once it leaves the EU and that UK nationals will accordingly be treated as third country nationals. As part of its preparations for Brexit, the European Commission has proposed a Regulation which would allow UK nationals to travel to the EU and wider Schengen area without a visa. They would nonetheless be required to obtain an EU travel authorisation under the ETIAS system.<sup>36</sup> Whilst the European Commission has been working towards 2021 as the date on which ETIAS would become operational, the Minister suggested that it might be later (around 2023).

7.9 The Minister acknowledged that the proposed Regulations could result in some UK nationals being refused a travel authorisation to enter the Schengen area post-exit but considered that UK nationals with relevant criminal convictions in ECRIS-TCN or alerts in the Schengen Information System “should be subject to the rules of entry into the EU”. She added that the UK’s future relationship with the various EU information systems covered by the proposed Regulations had yet to be determined and would be considered in negotiations on the UK’s future partnership with the EU. She referred us to the Government’s December 2018 [White Paper](#), *The UK’s future skills-based immigration system*, which envisages the introduction of an Electronic Travel Authorisation scheme applicable to visitors to the UK, including EU citizens.<sup>37</sup>

7.10 In [our Report agreed on 13 February 2019](#), we asked the Minister to explain what operational benefits participation in the first proposed Regulation—document (a)—would bring the UK, given that the UK does not participate in the ETIAS Regulation. We also asked whether a decision *not* to participate would in any way prejudice the UK’s participation in the Schengen Information System and ECRIS-TCN during any post-exit transition/implementation period or damage the UK’s prospects for securing access to these information systems under a future EU/UK security agreement.

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

37 Command Paper 9722 published on 19 December 2018.

7.11 In her [response of 13 March 2019](#), the Minister observes:

Whilst there may be benefits to the EU from ETIAS units having access to UK data on SIS and ECRIS-TCN through this system, there are no obvious operational benefits to the UK from participating in the proposed Regulation.

7.12 She does not consider that a decision *not* to participate would put the UK at risk of being ejected from the Schengen Information System and ECRIS-TCN:

For a measure to be considered inoperable, and for the UK to be at risk of ejection, Article 4a(2) of Protocol (No. 21) to the Treaties requires the non-participation of the UK or Ireland in the amended version of an existing measure to make the application of the amended measure inoperable for other Member States or the Union. The proposal for ETIAS to establish conditions for accessing other EU information systems does not alter the fundamental structure of the Schengen Information System and ECRIS-TCN, or the way that Member States engage with these information systems on its core business.

7.13 Nor does the Minister consider that a decision *not* to participate would damage the UK's prospects for securing access to the Schengen Information System and ECRIS-TCN under a future EU/UK security agreement.

7.14 The Minister confirms that the three-month deadline for deciding whether to participate in document (a) will expire on 13 April 2019.

## Our Conclusions

7.15 **We note the Minister's view that there would be "no obvious operational benefits" for the UK if the Government were to decide to participate in the first proposed Regulation—document (a). We note also that she sees little risk of the UK being ejected from the Schengen Information System and ECRIS-TCN during any post-exit transition/implementation period should the Government decide *not* to participate in the proposed Regulation, nor does she anticipate that it would be prejudicial to negotiations on a future EU/UK security agreement. We infer from this that the Government is unlikely to participate in document (a) but retain both proposals under scrutiny pending confirmation of the Government's decision. We draw this chapter to the attention of the Home Affairs Committee.**

## Full details of the documents

(a) Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for accessing other EU information systems and amending Regulation (EU) 2018/1862 and Regulation (EU) yyyy/xxx: (40318), [5071/19](#), COM(19) 3; (b) Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for accessing other EU information systems for ETIAS purposes and amending Regulation (EU) 2018/1240, Regulation (EC) No 767/2008, Regulation (EU) 2017/2226 and Regulation (EU) 2018/1861: (40317), [5072/19](#), COM(19) 4.

## Previous Committee Reports

Fifty-fifth Report HC 301–liv (2017–19), [chapter 5](#) (13 February 2019). See also our earlier Reports on the proposed ETIAS Regulation (and consequential changes to the Europol Regulation) are relevant: Twenty-fifth Report HC 71–xxiii (2016–17), [chapter 12](#) (11 January 2017), Thirty-first Report HC 71–xxix (2016–17), [chapter 12](#) (8 February 2017), Thirty-fifth Report HC 71–xxxiii (2016–17), [chapter 7](#) (15 March 2017), Fortieth Report HC 71–xxxvii (2016–17), [chapter 18](#) (25 April 2017), First Report HC 301–i (2017–19), [chapter 23](#) (21 November 2017) and Fifty-fourth Report HC 301–liii (2017–19), chapter x (6 February 2019).

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

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### Cabinet Office

(40410) Report from the Commission to the European Parliament and the Council on the exercise of the delegation conferred on the Commission pursuant to Regulation (EU, EURATOM) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of the European political parties and the European political foundations.  
6865/19  
COM(19) 94

### Department for Environment, Food and Rural Affairs

(40405) Report from the Commission on the exercise of the delegation conferred on the Commission pursuant to Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation)  
6802/19  
COM(19) 86

(40428) Proposal for a Council Regulation amending Regulation (EU) 2019/124 as regards certain fishing opportunities.  
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+ ADD 1

COM(19) 123

### Food Standards Agency

(40403) Commission Delegated Regulation (EU) .../... of 8.2.2019 concerning specific rules for the performance of official controls on the production of meat and for production and relaying areas of live bivalve molluscs in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council.  
6302/19  
+ ADD 1  
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### Foreign and Commonwealth Office

(40419) Council Implementing Regulation (EU) 2019/270 implementing Regulation (EU) 2016/1686 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda  
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(40420) Council Decision (CFSP) 2019/271 amending Decision (CFSP) 2016/1693 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda

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(40438) Council Implementing Regulation implementing Regulation (EU) No.270/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt

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(40439) Council Decision amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt

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(40460) Council Implementing Regulation (EU) 2019/...implementing Regulation (EU) No. 359/2011 concerning restrictive measures against certain persons, entities and bodies in view of the situation in Iran

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(40461) Council Decision (CFSP) 2019/... amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran

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# Formal Minutes

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## Wednesday 20 March 2019

Members present:

Sir William Cash, in the Chair

Martyn Day	Stephen Kinnock
Kelvin Hopkins	Andrew Lewer
Darren Jones	Michael Tomlinson

### Scrutiny Report

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

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

Paragraphs 1.1 to 8 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Sixtieth Report of the Committee to the House.

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

[Adjourned till Wednesday 27 March at 1.45pm]

## Standing Order and membership

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

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

The expression “European Union document” covers—

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

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

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

**Current membership**

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

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

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

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

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Kate Green MP](#) (*Labour, Stretford and Urmston*)

[Kate Hoey MP](#) (*Labour, Vauxhall*)

[Kelvin Hopkins MP](#) (*Independent, Luton North*)

[Darren Jones MP](#) (*Labour, Bristol North West*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Andrew Lewer MP](#) (*Conservative, Northampton South*)

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

[David Warburton MP](#) (*Conservative, Somerton and Frome*)

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