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European Scrutiny Committee

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Documents considered by the Committee on 24 April 2019

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Staff

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Contents

Meeting Summary

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

Brexit-related issues

The Committee is now looking at documents in the light of the UK's decision to withdraw from the EU. Issues are explored in greater detail in report chapters and, where appropriate, in the summaries below.

Summary

Ending seasonal time changes

The proposed Directive, announced in European Commission President Juncker's State of the Union speech in September 2018, would discontinue the twice-yearly clock changes in March and October and require each Member State to decide whether to observe summer time (GMT+1 in the UK) or standard (GMT) time all year round. The proposal cites an internal market legal base, despite the fact that the changes could result in more rather than less variation in time across the EU than under the current arrangements. For this reason, the Government shares the Committee's concern that the use of an internal market legal base may not justified and indicates that other Member States also question whether it is appropriate. In her latest update, the Minister for Small Business, Consumers and Corporate Responsibility (Kelly Tolhurst MP) provides a brief update on the European Parliament's position (agreed in March) which would delay implementation of the Directive until 2021 to allow time for further consultation at Member State level. The European Scrutiny Committee requests further information on the changes put forward by the European Parliament ("EP"), the prospects for securing an agreement within the Council so that trilogue negotiations with the EP can start during the current Romanian Presidency, and the Government's plans for carrying out a stakeholder consultation, given continued uncertainty as to the date on which the UK will leave the EU.

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

New European prudential rules for banks

The Committee has published a final report on the EU's banking "risk reduction measures", which aim to bring European law on capital requirements for banks in line with the latest international standards. Controversially, the new legislation also introduces further restrictions on bankers' bonuses, which the Government is expected to reluctantly support given the need to establish new market access arrangements for financial services from the U.K. to the EU after it leaves the Single Market, which will rely largely on the European Commission's assessment of the "equivalence" between UK and EU law.

The new rules could affect the British banking sector directly during any post-Brexit transitional period, during which EU law would continue to apply here as if the UK were still an EU Member State. If the Withdrawal Agreement is ratified, the legislation would need to be implemented by the Bank of England and the Financial Conduct Authority.

Cleared from scrutiny; drawn to the attention of the Treasury 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: Ending seasonal time changes [Proposed Directive (NC)]

Committee on Exiting the European Union: Ending seasonal time changes [Proposed Directive (NC)]

International Trade Committee: Protection of intra-EU investment [Communication (NC)]

Treasury Committee: Banking reform: risk reduction measures [Proposed (a)-(b) Directives; (c) Regulation (C)]

1 Ending seasonal time changes

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

Summary and Committee's conclusions

1.1 The proposed Directive would repeal the current EU law which requires Member States to move their clocks forward by an hour on the last Sunday in March and move them back by an hour on the last Sunday in October.[1] EU laws on summertime arrangements were first introduced in 1980 to prevent uncoordinated seasonal time changes disrupting the operation of the EU's internal market. The proposed Directive would discontinue the twice-yearly clock changes and require each Member State to decide whether to opt for permanent summer or winter time arrangements, without the possibility of introducing any seasonal variation in subsequent years. Our earlier Reports listed at the end of this chapter provide a detailed overview of the proposal.

1.2 In her Explanatory Memorandum of 11 October 2018, the Minister for Small Business, Consumers and Corporate Responsibility (Kelly Tolhurst MP) accepted that the legal base for the proposed Directive—Article 114 TFEU—was appropriate "to advance the harmonisation of the single market" but questioned whether the proposal would achieve this objective or whether the European Commission had demonstrated a strong evidence base to support the ending of seasonal time changes.

1.3 We shared the Government's concern and the House of Commons, acting on our recommendation, issued a Reasoned Opinion on 13 November 2018.[2] We noted that the changes proposed in the Directive risked creating four functional time zones (GMT+3), resulting in greater variation than under the current arrangements, and questioned whether a legal base which seeks to approximate laws affecting the functioning of the internal market could or should be used to create more rather than less divergence.[3]

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

2 The House of Lords and the Danish Parliament each issued a Reasoned Opinion but the threshold needed to trigger a formal review of the proposal by the European Commission was not met.

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

In her letter of 21 January 2019, the Minister acknowledged that there were "legitimate concerns" that the proposed Directive would not improve the functioning of the internal market, adding:

> "[…] in the Government's view, the use of Article 114 to advance these proposals is not justified"

1.4 She explained that Transport Ministers had considered a revised Austrian Presidency text in December 2018 which would push back the date for implementing the proposed Directive by two years to April 2021, making it less likely that it would apply to the UK during any post-exit transition/implementation period. Whilst supporting any change which would delay the implementation of the proposed Directive, the Minister reiterated her continued opposition to its content and indicated that the Government was part of "a like-minded group of Member States" opposing the measure. She noted that the Romanian Presidency (in office since January 2019) did not intend to organise any Council working groups during the first three months of its Presidency and that it was as yet unclear whether the Transport Council on 6 June 2019 would be invited to agree a General Approach.

1.5 We asked the Minister:

- whether other Member States shared the Government's concern about the use of an Article 114 TFEU legal base;
- whether the opinion of the Council Legal Service had been sought; and
- whether the Government had made any headway in pressing the Commission to publish a full Impact Assessment on the proposed Directive.

We also asked her to provide details of the European Parliament's position.

1.6 In her letter of 4 April 2019, the Minister reiterates that the Government "does not believe there is any case for changing the current arrangements" and is "working with Member States and the Commission to convince them of this position". She confirms that no negotiations have taken place so far this year but expects them to resume in the second half of the Romanian Presidency. It is unclear whether the proposed Directive will be on the agenda for the next Transport Council in June.

1.7 The Minister shares our concern that the proposed Directive could result in greater variation of times zones across the EU and indicates that "others have raised concerns about the use of Article 114 in this way". She says the Government will "continue to work with Member States to seek clarification on the legal base and to press the Commission for a more detailed impact assessment".

1.8 The Minister reminds us that the European Parliament was an early proponent of changes to current EU law to discontinue seasonal clock changes. The Transport Committee (along with other EP Committees with an interest in the proposed Directive) has nonetheless criticised the European Commission for failing to carry out a full impact assessment before publishing its proposal. At its plenary session on 26 March 2019, the European Parliament agreed a resolution setting out its position on the proposed

Directive.[4] Whilst supporting the Commission's proposal, the European Parliament says that the changes should only take effect in Member States from 1 April 2021, two years later than originally envisaged by the Commission.

Our Conclusions

1.9 **The Minister is unwilling to disclose whether the Council Legal Service has been asked to produce an opinion on the use of an internal market (Article 114 TFEU) legal base for the proposed Directive. Given that the UK is not alone in raising concerns about the choice of legal base, we remain of the view that an opinion should be requested.**

1.10 **The European Parliament supports a later implementation date for the proposed Directive—1 April 2021 rather than 1 April 2019 as originally proposed by the European Commission—and envisages that this time should be used to carry out a wide-ranging consultation at Member State level on the implications of discontinuing seasonal time changes. It also proposes a new EU-level coordination mechanism to "discuss and assess the potential impact of the envisaged change on the functioning of the internal market, in order to avoid significant disruptions". Should the Commission determine that the decision taken by each Member State to opt for permanent summer or winter time might "significantly and permanently hamper the proper functioning of the internal market", it may adopt a delegated act to postpone the date for implementing the proposed Directive by up to 12 months and, during this period, bring forward a different legislative proposal.[5]**

1.11 **We ask the Minister to provide an update on developments ahead of the June Transport Council which sets out:**

- **the Government's assessment of the European Parliament's position and its proposal for a new coordination mechanism to mitigate any adverse impact that the proposed Directive may have on the operation of the EU's internal market; and**
- **any progress made in negotiations within the Council and the prospects for securing a political agreement or negotiating mandate so that trilogue discussions with the European Parliament may begin during the Romanian Presidency.**

1.12 **Given the continued uncertainty as to the date on which the UK will leave the EU, we cannot exclude the possibility that the UK may be required to apply the Directive domestically and to choose definitively between permanent summer or winter time. In the absence of a full impact assessment by the European Commission and the European Parliament's expectation that each Member State will carry out its own stakeholder consultation, we ask the Minister whether the Government intends to review its earlier decision not to consult formally on the proposal.**

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

4 Resolution adopted on 26 March 2019, Discontinuing seasonal changes of time.

5 See Articles 2 and 4a of the European Parliament's legislative resolution agreed on 26 March 2019.

Full details of the documents

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

Previous Committee Reports

Fifty-third Report HC 301–lii (2017–19), chapter 1 (30 January 2019), Forty-sixth Report HC 301–xlv (2017–19), chapter 4 (28 November 2018) and Forty-second Report HC 301–xli (2017–19), chapter 1 (31 October 2018).

2 Protection of intra-EU investment

Committee's assessment	Politically and legally important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the International Trade Committee
Document details	Communication on the Protection of intra-EU investment
Legal base	—
Department	International Trade
Document Number	(40011), 11509/18, COM(18) 547

Summary and Committee's conclusions

2.1 As part of the Commission's wider initiatives to encourage, enable and protect investments within the Single Market, the Communication aims to provide guidance on existing EU rules for the treatment of intra-EU cross-border investments[6] and available means of redress at both EU and Member State level.

2.2 Following the Achmea judgment of the European Court of Justice, which ruled that investor-State dispute settlement (ISDS) clauses in Bilateral Investment Treaties between Member States ("intra-EU BITs") are not compatible with EU law—the Commission's view is that:

- intra-EU BITs are inconsistent with EU law and have no legal effect, discriminate between EU investors and should be terminated; and
- EU investors' rights within the Single Market are effectively protected under EU law, which ensures that all EU investors are treated equally.

2.3 In his Explanatory Memorandum of 29 August 2019, the Minister for Investment (Graham Stuart MP):

- "welcomes the clarification provided by the Communication on the legal rights of investors within the single market, including the available means of redress"; and
- states that the Government is currently considering:
  - "the implications of the [Achmea] judgement and will co-ordinate with treaty partners as appropriate" in relation to the 12 intra-EU BITs to which the UK is party; and
  - "a wide range of options in the design of future bilateral trade and investment agreements", as part of its wider review of UK trade and investment policy.

6 It does not cover investments made by EU investors in third countries or by third country investors in the EU.

2.4 **We note that in January 2019, all Member States, including the UK, committed to terminating all intra-EU BITs and that 21 Member States, including the UK, considered that the ISDS clause in the Energy Charter Treaty (ECT) cannot be used as a basis for arbitration between EU investors and Member States.**[7]

2.5 **The Commission welcomed these commitments, considering that they provide additional legal clarity for investors and arbitral tribunals and help prevent new arbitral awards and arbitration procedures that are incompatible with EU law.**[8]

2.6 **We ask the Minister to:**

- **share the UK Government's assessment the Achmea judgment and its reasoning for signing the declaration of 15 January 2019;**
- **explain when and how the UK's intra-EU BITs will be terminated;**
- **explain what is likely to happen to intra-EU BITs and ECT arbitrations commenced prior to the termination of the intra-EU BITs and whether Member States' different declarations will lead to diverging outcomes in investment arbitrations and any related national court litigation;**
- **set out the Government's "range of options in the design of future bilateral trade and investment agreements" with the EU27 post-exit/transition period and share its preferred option; and**
- **explain how UK investors' investments in the EU27 (in Member States with which it currently has BITs) will be protected post-exit if existing intra EU BITs are terminated before then.**

2.7 **In the meantime, we retain the document under scrutiny and draw our conclusions to the International Trade Committee.**

Full details of the documents

Communication on the Protection of intra-EU investment: (40011), 11509/18, COM(18) 547.

Background

Achmea case (Slovak Republic v Achmea BV, C-284/16)

2.8 Following a referral by the German Federal Court of Justice to the ECJ for a preliminary ruling on whether the UNCITRAL arbitration clause in Article 8 of the Dutch-Slovak BIT is compatible with EU law, the ECJ held in March 2018 that arbitration clauses such as the one contained in Article 8 of the Slovak-Netherlands BIT, are incompatible with EU law.

7 Declaration of the Member States of 15 January 2019 on the legal consequences of the Achmea judgment and on investment protection.

8 Commission press release dated 17 January 2019: 'Single Market: Commission welcomes Member States' commitments to terminate all bilateral investment treaties within the EU'.

The ECJ did not follow the non-binding opinion of Advocate General Wathelet issued in September 2017 that such clauses are compatible with the Treaty on the Functioning of the EU (TFEU).

The Communication

2.9 The Communication forms a distinct work strand under the Commission's overarching Investment Plan for Europe and the Capital Markets Union (CMU) Action Plan. The guidance:

- considers the legal implications of the Achmea decision by the ECJ. The Commission's view is that it applies to all intra-EU BITs (including the ISDS clause in the ECT), that EU investors cannot seek redress against a Member State through an arbitration tribunal established under an intra-EU BIT and that intra-EU BITs should be terminated as they are inconsistent with EU law and have no legal effect;
- reviews the protection of all intra-EU investments throughout their lifecycle under EU law, including investors' access to the market, their operation on the market and their exit from the market;
  - summarises the protection of investors against unjustified restrictions under EU law;
  - discriminatory restrictions of investors' rights are in principle prohibited;
- any national restrictions must comply with the general principles of EU law (of proportionality, legal certainty and legitimate expectations) and fundamental rights (such as the right to conduct a business, the right to property and the right to effective judicial protection); and
- clarifies the rights that EU investors can invoke before national administrations and courts and enables Member States to protect the public interest in compliance with EU law.

Declarations by Member States on the legal consequences of the Achmea judgment and on investment protection in the EU

2.10 In January 2019, Member States issued separate declarations on their interpretation of the application of the Achmea judgment (as set out below). While they differed in several respects, all Member States committed to: terminating intra-EU BITs; informing tribunals in pending arbitrations initiated under intra-EU BITs of the Achmea decision; challenging the validity or enforcement of arbitration awards issued against them pursuant to intra-EU BITs; and informing the 'investor community' that no new intra-EU investment arbitration should be commenced.

2.11 On 15 January 2019, 21 Member States, including the UK, signed a declaration stating that:

- they would commit to terminating "all bilateral investment treaties concluded between them", with a view to making "best efforts to deposit their instruments

of ratification, approval or acceptance of that plurilateral treaty or of any bilateral treaty terminating bilateral investment treaties between Member States no later than 6 December 2019";

- the sunset clauses in intra-EU BITs have no effect as there was no valid offer to arbitrate by the Member State parties; and
- the Achmea decision also applies to intra-EU disputes pursuant to the ISDS provision of the Energy Charter Treaty (ECT).

2.12 On 16 January 2019, Finland, Luxembourg, Malta, Slovenia and Sweden adopted a declaration similar to that of the majority of Member States of 15 January 2019, except in respect of the ECT. It states that it would be inappropriate to express views on the compatibility of EU law with any intra-EU application of the ECT as the question of whether the ECT contains an ISDS clause applicable between Member States is currently being contested before a national court of a Member State.

2.13 On 16 January 2019, Hungary released a declaration on 16 January 2019 in which it considered that the Achmea decision concerns intra-EU BITs and not any pending or prospective arbitration under the ECT.

Previous Committee Reports

None.

3 Genetic Resources: Access and Benefit-Sharing

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny (decision reported on 13/03/2019)
Document details	Report from the Commission on the Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union.
Legal base	—
Department	Environment, Food and Rural Affairs
Document Number	(40350), 5925/19 + ADD 1, COM(19) 13

Summary and Committee's conclusions

3.1 The Convention on Biological Diversity (CBD) recognises that any benefits arising from the use of genetic resources[9] should be shared with the country providing those resources. This is the concept of "access and benefit sharing" (ABS). In 2010, 92 signatories agreed the "Nagoya Protocol"[10] establishing a clear, legally-binding framework determining how researchers and companies can obtain access to the genetic resources of a country and to the traditional knowledge associated with these resources. It also explained how the benefits arising from the use of these genetic resources and associated traditional knowledge will be shared.

3.2 The Commission's report assessed implementation of the EU ABS Regulation,[11] which brought EU law into line with the Nagoya Protocol. We first considered the document at our meeting of 13 March 2019. While we cleared it from scrutiny, we raised a series of issues to which the Parliamentary Under-Secretary of State for the Environment (Dr Thérèse Coffey MP) has responded.[12]

3.3 Concerning the post-Brexit reporting obligations adopted under UK secondary legislation,[13] the Minister explains that what appeared to us to be two separate obligations (the first being to report domestically on implementation of the Regulation and the second to report internationally on compliance with the Protocol) is in fact one single international reporting obligation. This is directed to the Conference of the Parties serving as the Meeting of the Parties to the Nagoya Protocol (COP-MOP).

9 All living organisms that carry genetic material.
10 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.
11 Regulation (EU) No 511/2014.
12 Letter from Dr Thérèse Coffey MP to Sir William Cash MP, dated 25 March 2019.
13 The Nagoya Protocol (Compliance) (Amendment) (EU Exit) Regulations 2018.

3.4 Once the reporting obligations are reduced to this single requirement, says the Minister, the UK will report measures taken to ensure compliance with the Protocol. For the UK, after leaving the EU, this will be reporting against implementation of the EU ABS Regulation (as amended by the Statutory Instrument) and on complimentary compliance activities such as awareness raising and capacity building activities.

3.5 The Minister goes on to explain that the international reporting process uses a reporting template prepared by the Secretariat of the CBD. Parties respond to a number of questions across a range of areas such as institutional structures for implementation, legislative, administrative or policy measures put in place. These questions help the Secretariat set a baseline for progress of implementation across all Parties and highlights individual Parties' progress, successes and challenges in implementation.

3.6 When the next National Report (due in 2023) is approved by Ministers, it will be uploaded to the Access and Benefit Sharing Clearing House (ABSCH), the primary platform for sharing information regarding the implementation of the Protocol. The report will appear on the UK's national profile and be open to public scrutiny.

3.7 Turning to the support provided to UK stakeholders to support compliance, the Minster explains that the Department for Business, Energy and Industrial Strategy (BEIS) is responsible for monitoring and enforcing UK user compliance in the UK. BEIS prioritises providing assistance and education to UK users in the first instance to help increase overall compliance in the UK. In collaboration with the Department for Environment, Food and Rural Affairs (DEFRA), a number of teach-ins, presentations and workshops have been given to stakeholders on how the Protocol affects them, how to determine if a country they are accessing resources from is a Party, how to approach such Parties and how to demonstrate compliance here in the UK.

3.8 DEFRA acts as the UK National Focal Point and has provided advice, assistance and occasionally mediated on behalf of UK users when accessing resources from Parties to the Protocol that have access legislation in place. It also hosts the UK ABS Stakeholder Forum.

3.9 Turning to action being taken by the UK in the areas identified by the Commission as requiring further work, the Minister highlights the following actions undertaken by the UK:

- designation of BEIS as the UK's Competent Authority;
- adoption of sanctions under The Nagoya Protocol (Compliance) Regulations 2015;
- development of a robust administrative framework across Whitehall, including a risk-based check plan (making the UK one of only five Member States to do so);
- BEIS has carried out on-the-ground checks (one of only four Member States to do so); and
- the allocation of £200,000 (inclusive of staff costs) annually for Nagoya Protocol activities (higher than the majority of Member States' annual budgets for Nagoya Protocol activities).

3.10 Responding to our query about the work undertaken by the Commission in drafting guidance on sector-specific needs in relation to the notion of utilisation, the Minister commends the Commission's efforts. She confirms that the UK is well equipped to take over these efforts, further engage with UK stakeholders and develop revised guidance that is directly applicable to UK legislation and approaches.

3.11 On applications for recognition of best practice, the Minister says that BEIS will assume responsibility for assessment of such applications post-Brexit. After exit, the UK will pursue domestically any outstanding applications for best practice.

3.12 **We consider the Minister's response to be comprehensive and helpful and so we report it to the House for information.**

3.13 **Our key concern related to the reporting requirements. We note that there will be one single reporting requirement—to the relevant international body—but that there is no statutory requirement to report domestically on implementation. This, we observe, is a change to the current circumstance where the UK reports to the Commission, which then publishes a report which is subject to scrutiny by this Committee. While this is potentially a reduction in formal oversight, we consider it likely that a Government submitting a National Report in the future would opt to draw it to the attention of Parliament in any case.**

3.14 **We have no further queries. The document has already been cleared from scrutiny.**

Full details of the documents

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

Previous Committee Reports

Fifty-ninth Report HC 301–lvii (2017–19), chapter 11 (13 March 2019).

4 Banking reform: risk reduction measures

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Treasury Committee
Document details	(a) Proposed Directive on loss-absorbing and recapitalisation capacity of credit institutions and investment firms; (b) Proposed Directive as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures; (c) Proposed Regulation concerning aspects of capital requirements
Legal base	(a) and (c) Article 114 TFEU, ordinary legislative procedure, QMV; (b) Article 53(1) TFEU, ordinary legislative procedure, QMV
Department	Treasury
Document Numbers	(a) (38300), 14777/16 + ADDs 1–2, COM(16) 852; (b) (38303), 14776/16 + ADDs 1–2, COM(16) 854; (c) (38304), 14775/16 + ADDs 1–3, COM(16) 850

Background and Committee's conclusions

4.1 The European Commission tabled a technically complex package of proposals in November 2016 to update the European prudential framework for banks. Known collectively as the "Risk Reduction Measures" (RRM), the proposals would bring the EU's current legal framework—the Capital Requirements Directive[14] and Regulation,[15] and the Bank Recovery & Resolution Directive[16]—in line with the most recent international standards set by the Basel Committee on Banking Supervision and the Financial Stability Board. They would, for example, set a leverage ratio limiting the amount of debt banks can take on, and introduce new rules that aim for the orderly winding up of financial institutions at risk of collapse without the need for taxpayer bail-outs.[17]

4.2 The RRM proposals are subject to the EU's ordinary legislative procedure, meaning they must be agreed jointly between the European Parliament (by simple majority) and the Member States in the Council (by qualified majority). As we set out further in paragraphs 10 to 17 below, the legislation—once it takes effect—is likely to have a substantial impact

14 Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

15 Regulation 575/2013 on prudential requirements for credit institutions and investment firms.

16 Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

17 The RRM package included a fourth proposal, related to the resolution powers of the European Central Bank over banks within the Eurozone. We cleared this from scrutiny on 11 January 2017, as it had no direct impact on UK banks. Similarly, the elements of the proposals relating to a new accounting standard on calculating banking losses and rules on creditor hierarchy in the event of bank failure were fast-tracked and have already been adopted (see our Report of 13 November 2017).

on the British financial services industry despite the UK's withdrawal from the European Union. We have therefore reported developments in the legislative process to the House on a number of occasions since 2016, most recently on 9 January 2019.

The legislative process

4.3 We set out the substance of the Commission proposals, and how they would impact on the British banking sector, in some detail in our previous Reports (most elaborately in February and March 2018).[18] Negotiations between the Parliament and the Member States to finalise the legal texts began in September 2018.[19] Throughout the legislative process, the Treasury has been broadly supportive of the package of reforms contained in the RRM package,[20] but it sought to use the legislative deliberations among Member States within the Council to address concerns over the new moratorium powers to suspend a failing bank's payment obligation,[21] and the extent to which some Member States were seeking to water down a new international standard of "bail-inable" capital for systemically-important banks to avoid taxpayer bail-outs (the so-called 'TLAC' standard).[22]

4.4 As we discuss in more detail in paragraphs 10 to 17 below, the RRM legislation is likely to be relevant to the UK despite its planned withdrawal from the European Union. In particular, under the draft Withdrawal Agreement the UK would enter a post-Brexit transitional period from 'exit day', during which it would stay part of the Single Market and remain directly bound by EU law as if it were still a Member State. The transition would last until at least 31 December 2020, but potentially even longer.[23] It could therefore be in effect when the new banking rules begin applying across the EU, meaning they would also apply in the UK.

4.5 In November 2018, the Minister (John Glen MP) told us there was a preliminary agreement on the table on the final substance of the RRM package, but "key differences" between the two institutions remained.[24] The following month, progress in the negotiations

18 See for example our Reports of 13 November 2017 and 21 February 2018.

19 The Member States adopted their 'general approach', the basis for the negotiations, in May 2018. The European Parliament's Economic and Monetary Affairs Committee adopted its position on the RRM proposals the following month.

20 Explanatory Memorandum submitted by HM Treasury (20 December 2016).

21 Moratoria powers related to bank recovery and resolution allows the authorities to suspend (contractual) payments by a bank in crisis. The rationale is that such moratoria allow an appropriate resolution strategy to be implemented, including the bail-in of a bank's assets. The Commission proposed a new moratorium tool allowing resolution authorities to suspend the payment obligations of a failing bank for a short period of time during the early intervention (pre-resolution) phase (when a bank might still recover). It also wanted to expand an existing in-resolution moratorium power (when a bank is already no longer viable). The UK consistently opposed this element of the proposal, amid concerns that an extended moratorium could have a significant economic impact (by interfering with financial markets and disrupting cash flows to a bank's counterparties) and "risks undoing international progress to address the risk of cross-border termination of contracts in resolution", such as the Universal Stay Protocol established by the Financial Stability Board.

22 TLAC stands for Total Loss-Absorbing Capacity.

23 Article 132 of the Withdrawal Agreement allows for the transition to be extended until 31 December 2022 by mutual agreement between the UK and the EU.

24 In particular, at that stage those included whether to fully implement the new international standards on market risk (the FRTB) at this stage or at some point in the next decade; the rules governing subordination of bail-in assets in the event of a bank failure; the flexibility for national regulators to impose additional micro- and macro-prudential requirements on their domestic banking industry above and beyond the statutory minimum (Pillar 2); and the asset threshold for the requirement for large 'third country' banks—including UK ones after its withdrawal from the Single Market—to establish an IPU in the EU for supervision purposes.

had led to a political agreement on most of the outstanding issues in the negotiations.[25] Member States, including the UK, also endorsed the substance of the new laws at a meeting of the Council of Ministers on 4 December 2018.[26] By letter dated 17 December 2018, the Economic Secretary informed us that negotiations between the Parliament and Member States would continue in early 2019 to iron out the remaining differences, which were centred on restrictions on bonus payments at banks and the entry into force of a new leverage ratio to limit banks' reliance on debt to finance their operations.

4.6 On 28 March 2019, the Economic Secretary again wrote to tell us that the European Parliament and the Council had reached their full and final agreement on the new banking legislation earlier in the year. This included a deal on the two outstanding elements he identified in his previous letter. In summary, the Risk Reduction Measures for the banking industry as now agreed will make the following changes:

- the amendments to the Capital Requirements Directive and Regulation will harmonise EU law with **international standards set by the Basel Committee** (which require banks to hold sufficient capital to prevent them from failing in the event of an economic shock), especially in relation to the minimum leverage ratio,[27] the Net Stable Funding Ratio[28] and the Fundamental Review of the Trading Book (FRTB).[29] The Government told us in December 2018 that the UK had "largely achieved" its negotiating objectives in this area;

- however, with respect to the **Fundamental Review of the Trading Book** (a new international standard increasing the capital that banks must hold to compensate

25 Elements of the proposals relating to a new accounting standard on calculating banking losses and rules on creditor hierarchy in the event of bank failure were fast-tracked and have already been adopted (see our Report of 13 November 2017).

26 See "Banking Union: Council endorses package of measures to reduce risk" (4 December 2018). The Government supported this political endorsement without seeking clearance from the European Scrutiny Committee in advance. The Minister apologised for this subsequently, noting that the Austrian Presidency of the Council had amended the agenda for the meeting "unexpectedly" and that "not supporting the compromise would likely have isolated the UK and we could have been viewed as an impediment to progressing risk reduction measures in the EU". The UK was represented by Mark Bowman, Director-General for International and EU affairs at HM Treasury.

27 The minimum leverage ratio is calculated by dividing a bank's core capital by its debt exposures. The relative exposure would be limited to three per cent, with the aim of preventing banks from excessively increasing their debt levels, for example to compensate for low profitability, which could turn them insolvent during an economic downturn. The main area contention between MEPs and Member States in this regard was whether this new requirement should apply from 1 January 2020 (the Parliament's position) or from two years after the new Capital Requirements Regulation takes effect, most likely in early 2021 (the Council's position). The final agreement was a vindication of the Council's position, setting the date of application of the leverage ratio two years after the new CRR enters into force.

28 The new, binding net stable funding ratio (NSFR) will establish a harmonised standard for how much stable, long-term sources of funding a bank needs in order to weather periods of market and funding stress. The NSFR is calculated as the ratio of an institution's amount of available stable funding (ASF) to its amount of required stable funding (RSF).

29 The FRTB is an international standard that aims to reduce market risk by establishing more risk-sensitive "own funds" prudential requirements for institutions that have substantial exposure to securities and derivatives. In this context, 'own funds' refers to funds available to a bank that allows it to absorb losses in a going or in a gone concern situation. The Capital Requirements Regulation (CRR) sets out the characteristics and conditions for own funds, backed up by further regulatory technical standards developed by the European Banking Authority.

for exposure to securities and derivatives), the legislation only commits to binding implementation into EU law in the future, subject to further European Commission proposals;[30]

- EU law will be brought in line with the new **'TLAC' standards**[31] set by the Financial Stability Board for the orderly winding down of a failing banks. These will be incorporated into the EU's existing 'MREL'[32] standard under the Bank Recovery & Resolution Directive. The TLAC is concerned with the level of "bail-inable" capital that the largest, systemically important banks should have to avoid the need for a taxpayer bail-out if they are at risk of collapse.[33] This includes special measures to ensure MREL stocks built up by European banks to meet current regulations remain valid when the new rules kick in;

- the Bank Resolution & Recovery Directive will be amended to introduce new, but limited **moratoria powers** (which allow regulators to suspend a bank's payment obligations to prevent it from becoming insolvent). These build on existing moratoria powers already available to Member State regulators under existing European law;[34]

- the new rules will make some changes to the ability of national financial supervisors to impose micro- and macro-prudential requirements that go beyond statutory limits (the so-called **Pillar 2 requirements**).[35] The Minister described maintaining flexibility for the Bank of England—especially as regards the way in which it can direct how a bank's liabilities are written off to re-capitalise it if it is at risk of collapse—as a "priority issue" for the UK, which it successfully defended;

- as regards the threshold for exempting smaller banks from **restrictions on bankers' pay**,[36] the final agreement deviates from the UK's preferred position

30 For example, the Fundamental Review of the Trading Book (FRTB), a new approach to reducing market risk in the banking sector, will not be incorporated into EU law at this point, to take into account recent changes to the international standard. Instead, the European Commission will present a further proposal to amend the EU's capital requirements legislation "as soon as [the FRTB is] finalised at international level. See for more information Council document 14448/18, p. 9. This proposal, which is intended to be published by June 2020, would be subject to the ordinary legislative procedure between the Council and the Parliament in its own right.

31 TLAC stands for "Total Loss-Absorbing Capacity".

32 MREL stands for "minimum requirement for own funds and eligible liabilities".

33 One of the key differences between the TLAC and MREL standards is that the former applies only to the largest (systemically-important) banks, whereas the latter—an EU legal concept—apply to all banks.

34 With respect to the proposed moratoria powers, the Government's priority was to limit "the length of suspension and avoiding the consecutive application of moratoria". The Minister told us in December 2018 that these objectives had been achieved in the final compromise, "as the moratorium power lasts for two business days" (compared to the original proposal of five business days) and "cannot be applied consecutively with existing moratorium and stays powers". This, he added, "aligns with Bank of England policy, and with international standards".

35 An example of a Pillar 2 requirement in the UK is the Financial Policy Committee's mandatory loan-to-income ratio for residential mortgages, implemented by the Bank of England and the Financial Conduct Authority.

36 Under Article 92(2) of the Capital Requirements Directive, the remuneration restrictions can be applied by Member States to banks 'in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities'. In practice, this has meant that most Member States waive the remuneration requirements for banks in their territory with a balance sheet below a certain threshold (which varies country-by-country). The Commission's original proposal contained provisions aimed at eliminating divergent practices and setting a common threshold for the waiver.

by making several concessions to the European Parliament.[37] In particular, it would extend the controversial bankers' bonus cap to smaller firms (which are currently exempt)[38] and apply a suite of remunerations restrictions to individual employees' pay packages of €50,000 more (where the UK current applies a threshold of £500,000).[39] If they had to be applied in the UK, the Minister says, these new pay restrictions "would change the UK's approach" but the impact on smaller firms would be "limited";[40] and

- the final element of the legislation is a new requirement for third-country banking groups with large-scale operations in the EU to establish an **intermediate parent undertakings (IPU)** within the Union, to facilitate supervision of all the group's activities within the Single Market. This would be an entirely new legal obligation, which the UK opposed given that its withdrawal from the EU will automatically give all its banks 'third country' status unless it remained in the Single Market, like there US and Japanese counterparts.[41] In the final agreement, the IPU obligation would apply to non-EU banks with assets in excess of €40 billion (£36 billion) across two or more subsidiaries within the EU, and take effect with some delay in 2022.[42]

4.7 The Minister's letter of 28 March 2019 summarised the Government's position on the final RRM package as broadly supportive of the agreement between the Parliament and the Council, even though the UK did not secure all the changes it had sought (especially as regards the restrictions on remuneration, the deferred implementation of the FTRB standard, and the IPU requirement for non-EU banks). He described the final outcome as a "significant step in implementing important international standards" and one that will "[reduce] risk and supports a stable and efficient banking system". Overall, therefore, the Government expects be able to support the new legislation if it is presented to the Council of Ministers for formal adoption while the UK is still a Member State of the EU.

4.8 Once formally approved by the Parliament and Council, the new banking legislation is expected to take effect in stages from late 2020 onwards. Before their entry into

37 In its general approach, the Council largely retained the status quo, given individual Member States the ability to raise or lower the asset threshold below which the restrictions would not apply (with a maximum of €15 billion). The European Parliament's position was to fix that threshold at €8 billion (£7.2 billion) in assets, with no flexibility for individual EU countries to vary it.

38 For banks within scope of the bonus cap, variable remuneration for individual employees is capped at a maximum of 200% of fixed pay (if shareholders approve).

39 These restrictions include, for example, deferral of bonuses, claw-back and pay-out in shares or other financial instruments to discourage excessive short-term risk-taking.

40 In his letter, the Economic Secretary explains that the impact of the new pay restrictions would be "manageable" for smaller banks, because they are less likely to pay bonuses in excess of the legal cap or which take overall pay packets above the new €50,000 threshold. The Minister also notes that the recently-agreed Investment Firm Review will take smaller investment banks outside of the scope of the Capital Requirements Regulation altogether by creating a new, standalone prudential framework for the investment services sector.

41 Although the UK opposed this in view of its impact on British banks after Brexit, both the remaining Member States and European Parliament agreed there should be such a requirement. However, they had different views on its scope and the date it should take effect. The Parliament had wanted it to apply to banking groups with €30 billion or more in assets held in the EU, versus €40 billion for the Council. The Parliament also wanted the IPU requirement to apply to any G-SIIs with two or more subsidiaries in the EU, irrespective of their total assets. The Council called for a four year transitional period for the IPU requirement after the amended Capital Requirements Directive has begun to apply, which itself would be 18 months after it is formally adopted by the Parliament and Council.

42 The Economic Secretary told us in December 2018 that this arrangement "significantly increases the proportionality and operability of the measure" compared to the Commission's original proposal, although it would still affect a sizable number of UK-based banks following Brexit.

force, the European Commission is due to adopt a number of technical Delegated and Implementing Acts—the EU equivalent of statutory instruments—to give full effect to the new prudential requirements. Those will need to be scrutinised by Member States prior to them becoming applicable.[43]

4.9 As set out in more detail in our conclusions below, the EU's RRM legislation is likely to have a domestic impact in the UK beyond the date of its formal withdrawal from the European Union, for several reasons.

Our conclusions

4.10 **The Risk Reduction Measures now informally agreed, and likely to be adopted formally by the EU institutions before the European elections in May 2019, are another important step in the EU's efforts to build a financial regulatory architecture that would help to prevent a recurrence of the 2008 banking crisis.**

4.11 **We have taken note of the Minister's assessment of the substance of the final RRM package, where we accept his assurance that the overall outcome—although not perfect—is acceptable and conducive to the health of Europe's banking sector. However, this new EU legislation also has a direct impact on the UK irrespective of its imminent withdrawal from the European Union. We have drawn attention to this in a number of our previous Reports on the RRM package, as summarised below.**

4.12 **First, the draft Agreement on the UK's withdrawal foresees a post-Brexit transition during which the UK would remain in the Single Market and continue applying EU law as if it were a Member State. However, the Government would have no right to attend meetings of the Council of Ministers or any of its associated bodies where EU Member States are represented, and by extension lack any right to vote on new EU policy measures. This transitional period would initially last until the end of 2020, but could potentially be extended until 31 December 2022. We note in this regard that the changes contained in the RRM agreement are likely to take effect from 2020 onwards, well within the putative extended transitional period. That means the amendments to the EU's capital requirements and bank resolution laws would apply to the British financial sector as and when they take effect. The main exception is the application of the IPU requirement for large 'third country' banks, which will only directly affect the British financial services sector after the UK has left the Single Market.**

4.13 **The continued supremacy of EU law during the transition would also extend to any regulatory and implementing technical standards which the European Commission is empowered to adopt under the RRM legislation in the coming years. Crucially, however, although any such EU tertiary legislation would be binding on the UK and its banking industry during transitional period, the Treasury and its independent financial regulators would have had no formal role in their formulation insofar as those discussions take place after the UK has ceased to be a Member State. The Financial Conduct Authority has warned such an extension could pose a risk to the UK's financial services industry, given that regulation affecting one of the world's largest financial centres would be formulated without its domestic regulators' input**

43 Delegated Acts can be vetoed by the European Parliament or the Council. Implementing Acts must be actively approved by Member States, with no formal decision-making role for the Parliament.

and without voting rights for its Government.[44] This only serves to reinforce the need for continued parliamentary scrutiny of the development of EU laws—including tertiary legislation—during the transitional period.

4.14 **Secondly, the substance of the Risk Reduction Measures would matter even in a 'no deal' scenario—where the Withdrawal Agreement is not ratified—because of the recent Financial Services (Implementation of Legislation) Bill.[45] Under this draft legislation, the Government has proposed to give itself the power to implement a limited number of pending ("in-flight") EU proposals on financial services which are not yet in effect when the UK leaves the EU—including the RRM package—into domestic law by statutory instrument in the event of a 'no deal' Brexit. With respect to the RRM package, we consider that there is a strong case for speedy implementation in UK law in such a scenario: the final substance of the laws is already known and has benefitted from full Treasury input, as described above; the new EU rules to a large extent reflects international standards which the UK would implement in any event; and the laws would have been explicitly endorsed by the Government in the Council of Ministers, subject to the scrutiny of this Committee.[46]**

4.15 **Lastly, the shape of the RRM package is likely to be important post-Brexit in the context of any future trade agreement on financial services between the UK and the EU. This new banking legislation will form part of the EU regulatory baseline, which will underpin negotiations on any future market access agreement for UK banks wanting to operate in the EU when they lose their Single Market 'passporting' rights. The Political Declaration on the future UK-EU relationship states that any such preferential access to markets for financial services between the UK and the EU is to be governed by 'equivalence', a legal mechanism that allows the EU to decide that the supervisory system of a 'third country' for a particular financial sector achieves the same regulatory outcomes as its own.[47]**

4.16 **Although the 'equivalence' provisions of the Capital Requirements Regulation for market access by non-EU banks are extremely limited compared to some other financial sector regulated by European law,[48] it is possible for EU-based financial institutions to obtain prudential reliefs for exposures to banks in third countries**

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44 Letter from Andrew Bailey to Nicky Morgan (29 November 2018).

45 Financial Services (Implementation of Legislation) Bill 2017–2019. After the Report stage for the Bill was delayed by the Government on 4 March 2019, it is not yet clear when the legislation is likely to complete its passage through Parliament.

46 The same cannot be said for a number of other pending EU proposals which the Treasury could also implement via statutory instrument under the Bill, which we believe require further detailed scrutiny by Parliament because their substance is still being negotiated at EU-level. Some of the EU proposals included in the scope of the Bill, including on the supervision of Central Counterparties and the powers of the European Supervisory Authorities—are still subject to intensive negotiations at EU-level, meaning it is far from clear what the eventual substance of those laws will be.

47 Where an 'equivalence' determination is made, firms from that non-EU country typically either gain preferential market access rights or (as is more common) become more attractive for EU-based financial services providers to do business with (from a regulatory and prudential perspective). Decisions taken by the European Commission relating to equivalence need to be approved by a qualified majority of Member States. Equivalence is also applied entirely unilaterally by the EU, with no right of appeal for the Government if it is not granted or withdrawn.

48 There is no 'equivalence' mechanism that gives non-EU banks the right to provide banking services, even wholesale, into the EU as a whole on a cross-border basis, although individual Member States may permit it based on local legislation. This is in contrast to the investment services sector, where such equivalence can be—but has not been—granted under the Markets in Financial Instruments Regulation.

considered equivalent in this way.[49] The assessments of whether the UK's prudential regime achieves the same outcomes as that of the EU will be affected by the amendments to Europe's banking rules as discussed in this Report, and may therefore need to be reflected in UK law in the long term if the Government wants to maintain any equivalence arrangements (including those elements with which the UK disagreed). Efforts to maintain equivalence would be facilitated by the Treasury's regulation-making powers described in paragraph 14, since there would be no need for primary legislation to align UK law with the amended version of the Capital Requirements Directive and Regulation even when the UK has become a 'third country'.

4.17 **In light of the imminent adoption by the Council of these new EU banking laws, we are content to now clear the RRM proposals from scrutiny. We also again draw the attention of the Treasury Committee to these developments, given the potential consequences of the new EU banking legislation for UK law (either during the post-Brexit transitional period, or if it is implemented domestically in a 'no deal' scenario under the Financial Services (Implementation of Legislation) Bill).**

Full details of the documents

(a) Proposed Directive on loss-absorbing and recapitalisation capacity of credit institutions and investment firms: (38300), 14777/16 + ADDs 1–2, COM(16) 852; (b) Proposed Directive as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures: (38303), 14776/16 + ADDs 1–2 COM(16) 854; (c) Proposed Regulation concerning aspects of capital requirements: (38304), 14775/16 + ADDs 1–3, COM(16) 850.

Previous Committee Reports

Twenty-fifth Report HC 71–xxiii (2016–17), chapter 6 (11 January 2017); Thirty-second Report HC 71–xxx (2016–17), chapter 6 (22 February 2017); First Report HC 301–i (2017–19), chapter 19 (13 November 2017); Fifteenth Report HC 301–xv (2017–19), chapter 1 (27 February 2018); Seventeenth Report HC 301–xvii (2017–19) chapter 2 (7 March 2018); Twenty-eighth Report HC 301–xxvii (2017–19), chapter 2 (16 May 2018); and Fiftieth Report HC 301–xlix (2017–19), chapter 2 (9 January 2019).

49 See Articles 107(4), 114(7), 115(4), 116(5) and 142(2) of the Capital Requirements Regulation. EU banks can generally hold less capital against exposures to other banks in 'equivalent' jurisdictions. See for more information "Equivalence in a future EU-UK trade framework for financial services" by UK Finance (accessed 20 December 2018).

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

Department for Environment, Food and Rural Affairs

(40469) — —	Court of Auditors Special Report: No. 4: The control system for organic products has improved, but some challenges remain.
(40478) 7809/19 + ADDs 1–2 COM(19) 146	Proposal for a Council Decision on the position to be taken on behalf of the European Union at the 18th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES CoP 18).

Department for Transport

(40415) 6820/19 + ADD 1 COM(19) 91	Proposal for a Council Decision on the signing, on behalf of the European Union of the Agreement between the European Union and the Republic of Korea on certain aspects of air services.
(40416) 6816/19 +ADD 1 COM (19) 92	Proposal for a Council Decision on the conclusion, on behalf of the European Union of the Agreement between the European Union and the Republic of Korea on certain aspects of air services.
(40470) 7577/19 + ADD 1 COM(19) 142	Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the status of production expansion of relevant food and feed crops worldwide.
(40487) 7495/19 + ADD 1 —	Commission Delegated Regulation (EU) …/... of 13.3.2019 supplementing Directive (EU) 2018/2001 as regards the determination of high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high carbon stock is observed and the certification of low indirect land-use change-risk biofuels, bioliquids and biomass fuels.

(40491)
7971/19
COM(19) 159

Proposal for a Council Decision on the position to be taken on behalf of the European Union in the International Maritime Organization's Marine Environment Protection Committee and Maritime Safety Committee on the adoption of amendments to Annex II to the International Convention for the Prevention of Pollution from Ships, amendments to the International Code on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, 2011, amendments to the International Life-Saving Appliance Code, amendments to Forms C, E and P of the appendix to the International Convention for the Safety of Life at Sea, and to the International Code of Safety for Ship Using Gases or Other Low-flashpoint Fuels.

Department for Work and Pensions

(40422)
7015/19
C0M(19) 151

Proposal for a Council Decision on guidelines for the employment policies of the Member States.

Foreign and Commonwealth Office

(40498)
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Council Decision (CFSP) 2019/416 of 14 March 2019 amending Decision 2014/145/CFSP concerning restrictive measures directed against actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

(40499)
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—

Council Implementing Regulation (EU) 2019/409 of 14 March 2019 amending Regulation (EU) No.269/2014 concerning restrictive measures directed against actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

HM Revenue and Customs

(40385)
6243/19
COM(19)59

Report from the Commission on the Mid-term evaluation of the Fiscalis 2020 programme

(40458)
7410/19
+ ADD 1
COM(19) 131

Proposal for a Council Decision on the position to be taken on behalf of the European Union within the Administrative Committee for the TIR Convention as regards the proposal to amend the Customs Convention on the international transport of goods under cover of TIR carnets.

HM Treasury

(40477) 7784/19 + ADD 1 COM(19) 136	Communication from the Commission Capital Markets Union: progress on building a single market for capital for a strong Economic and Monetary Union.

Formal Minutes

Wednesday 24 April 2019

Members present:

Sir William Cash, in the Chair

Richard Drax	Mr David Jones
Kate Hoey	Andrew Lewer
Kelvin Hopkins	Michael Tomlinson
Darren Jones	

Scrutiny Report

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

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

Paragraphs 1.1 to 5 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 1 May at 1.45pm

Standing Order and membership

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

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

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

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

The expression "European Union document" covers—

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

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

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

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

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

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

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

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

Current membership

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

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

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

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

Richard Drax MP (*Conservative, South Dorset*)

Mr Marcus Fysh MP (*Conservative, Yeovil*)

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

Kate Hoey MP (*Labour, Vauxhall*)

Kelvin Hopkins MP (*Independent, Luton North*)

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

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

Stephen Kinnock MP (*Labour, Aberavon*)

Andrew Lewer MP (*Conservative, Northampton South*)

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

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

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