



House of Commons  
European Scrutiny Committee

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**Seventieth Report of  
Session 2017–19**

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Documents considered by the Committee on 3 July 2019

*Report, together with formal minutes*

*Ordered by the House of Commons  
to be printed 3 July 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 setting of fishing quotas for 2020, particularly under a no-deal scenario

## Summary

### *Military Mobility in the EU*

The Committee has published an update on the EU’s “Military Mobility” initiative, based on a progress report issued by the European Commission. The initiative aims to eliminate barriers to the rapid cross-border movement of troops and military equipment between EU Member States. It consists of both regulatory measures at EU-level, for example related to customs, VAT and infrastructure, and inter-governmental discussions relating to matters such as streamlining diplomatic procedures to give permissions for troops from one EU country to enter the territory of another. The Ministry of Defence has previously indicated the Military Mobility initiative is of potential interest to the UK even after it has left the EU, and we therefore felt it appropriate to draw it to the attention of the House.

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

### *2020 Fishing opportunities*

As has become standard practice, the European Commission is consulting in advance of publishing its proposals for annual fishing quotas—in this instance, for the 2020 fishing year. Brexit is a key unknown for the setting of EU quotas in 2020. If the UK withdraws from the EU without a deal by 31 December 2019, it will be an independent coastal state and thus able to negotiate quotas separate from the EU. As the Committee notes, however, international law places an obligation on the UK and EU to cooperate on the management of shared stocks, of which there are around 100. The Committee therefore explores what this means in practice and how much latitude, in reality, there would be to depart from the management framework established under the reformed Common Fisheries Policy. The Committee also asks what preparation the Government is making to act as an independent coastal state, including plans for a UK-EU fisheries agreement and how that would be scrutinised by Parliament.

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

### ***EU participation in GRECO: Proposed Council Decision and Commission Communication***

The question of what, if any, role the EU might play in the Council of Europe’s anti-corruption body GRECO has been a long-running question. A Communication, proposing a staggered process for EU participation in GRECO and on which little progress had been made, has been held under scrutiny by successive European Scrutiny Committees since 2012.

Matters have now come to a head with the adoption of a Council Decision supporting an observer role for the EU. This was with a view to the matter being considered at the plenary of GRECO from 17–21 June 2019. The JHA opt-in applies to the Council Decision. Despite not being afforded the usual three-month opt-in period, the Government says it has not opted in to the proposal and is not bound by it. The Committee’s conclusions in its chapter flag numerous concerns about the scrutiny handling of this dossier. These include:

- the deposit of the Council Decision only after its adoption and the Government’s decision not to opt in;
- the Minister’s omission to recognise specifically that Parliament has been deprived of its opportunity for *enhanced* scrutiny of the opt-in decision and to provide a proper explanation of why the UK accepted the expedition of the proposal, overriding its rights under the JHA protocol;
- clarification whether the UK’s approach was based on the principle of sincere cooperation, reflecting the latest Article 50 extension decision; and
- the failure of the Minister to explain officially what happened at the GRECO meeting itself.

*Not cleared from scrutiny; further information requested*

### **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:** European Labour Authority [Proposed Regulation (C)]

**Defence Committee:** The EU’s “Military Mobility” Action Plan: Progress Report [Joint Report (C)]

**Environment, Food and Rural Affairs Committee:** 2020 Fishing Opportunities [Commission Communication (NC)]

**Foreign Affairs Committee:** The EU’s “Military Mobility” Action Plan: Progress Report [Joint Report (C)]

**Work and Pensions Committee:** European Labour Authority [Proposed Regulation (C)]

# 1 2020 Fishing Opportunities

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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 Environment, Food and Rural Affairs Committee
Document details	Commission Communication on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2020.
Legal base	—
Department	Environment, Food and Rural Affairs
Document Number	(40673), 10186/19 + ADD 1, COM(19) 274

## Summary and Committee's conclusions

1.1 Each year, the European Commission sets out its assessment of the state of the EU's fish stocks and its intended approach to setting fishing opportunities—Total Allowable Catches (TACs)—for the following year. This document presents the Commission's latest assessment and its intentions for the 2020 TACs. The timing and nature of the UK's withdrawal from the EU will be an important factor when the TACs come to be set for 2020.

### *State of play of the Common Fisheries Policy (CFP)*

1.2 The Commission says that pressure on fish stocks shows an overall downward trend in the Northern Atlantic and adjacent areas (those of direct relevance to the UK) and healthier stocks have also boosted the economic performance of the EU fleet. However, further significant efforts are needed—notably in the Mediterranean Sea—in order to make sure that Common Fisheries Policy (CFP) objectives are met, particularly to ensure that all stocks are rebuilt and fished at maximum sustainable yield (MSY) levels

1.3 The Commission notes that, for stocks subject to negotiation with the Coastal States (Norway, Iceland and the Faroe Islands), only the blue whiting TAC for 2019 was in line with the long-term management strategy and with scientific advice on fishing at MSY. The EU-Norway negotiations led to a less ambitious result in terms of conservation, as only 9 out of 17 TACs were set in line with MSY.

1.4 An important innovation in the most recent reform of the CFP was the greater regionalisation of decision-making. The Commission reports that this has proceeded well. Regional groups of Member States have played an important role in the phasing-in of the landing obligation (“discard ban”). Furthermore, Advisory Councils involving stakeholders are playing a greater role in the regionalisation process.

1.5 The current fishing year, 2019, marks the first year of the landing obligation's full application but implementation has been challenging, with particular issues around

addressing potential choke situations.<sup>1</sup> The Commission reports that it has worked with Member States and stakeholders to come up with possible solutions. These include commitments by certain Member States to swap quotas, or agreements on “bycatch-only TACs” accompanied by by-catch reduction measures. As enforcement of the landing obligation remains weak, the Commission will continue to pay close attention, and promote the use of remote electronic monitoring (REM) systems.

### ***Setting of fishing opportunities for 2020***

1.6 The main objective of the Commission’s proposals will be to reach MSY for all MSY-assessed stocks by 2020 and the proposals will also continue to look at ways of facilitating the effective implementation of the landing obligation. Concerning Brexit (see below for further information), the implications of the UK’s withdrawal for setting fishing opportunities will be reviewed in the light of the latest developments. The Commission acknowledges that, under a no-deal Brexit, the EU and the UK will have to consult each other on the joint management of the stocks they share.

1.7 Fishing opportunities for stocks in the North Sea and Western Waters will be set in accordance with scientific advice and on the basis of the relevant Multi-Annual Plans, which define MSY ranges of fishing mortality and therefore offer a degree of flexibility. To continue facilitating the full implementation of the landing obligation, all available mitigation tools should be utilised. The Commission also indicates that, for stocks subject to consultations with non-EU countries, it will aim for an agreement in line with long-term management strategies and scientific advice on achieving MSY.

### ***UK’s withdrawal from the EU***

1.8 In the event that the UK leaves the EU without a negotiated deal before the end of 2019, the EU’s arrangements<sup>2</sup> propose that the status quo (as previously negotiated for the whole of 2019) would apply for the remaining months of the year. The Government did not make a reciprocal commitment to that effect, but our position<sup>3</sup> was that it would be in the interests of all concerned to maintain the status quo until the end of 2019.

1.9 No arrangements are currently in place from 1 January 2020, the beginning of the new fishing year. As of that date, the UK will either:

- still be in the EU following one or more further extensions of the Article 50 period, or revocation of Article 50, and therefore TACs for the whole of 2020 would have been negotiated with the UK as an EU Member State; or
- be outside the EU but in a transition/implementation period during which the CFP would continue to apply to the UK—including quotas negotiated for 2020—as though the UK was an EU Member State; or

1 A choke situation could arise in mixed fisheries where a vessel is fishing a target species, but catches small amounts of another species for which the vessel has no quota but would be required to land it under the landing obligation. A lack of any “bycatch” quota for the other species could therefore restrict the harvesting of the target species.

2 [Regulation \(EU\) 2019/498](#) of the European Parliament and of the Council of 25 March 2019 amending Regulation (EU) 2017/2403 as regards fishing authorisations for Union fishing vessels in United Kingdom waters and fishing operations of United Kingdom fishing vessels in Union waters.

3 Sixty-fifth Report HC 301–lxiii (2017–19), [chapter 3](#) (8 May 2019).

- be outside the EU without a negotiated exit and engaging with the EU on the basis of international law.

1.10 Of the above scenarios, the second is the most stable for the 2020 fishing year as the first could move towards an in-year non-negotiated exit and the third could move towards an in-year negotiated arrangement.

1.11 In the event that the Withdrawal Agreement as previously negotiated—including a transition period ending on 31 December 2020, but extendable until 31 December 2022—entered into force, almost all EU law (including the CFP) would apply to the UK. The UK’s fishing opportunities would thus be set as though the EU was a Member State, although the UK would only be consulted. During 2020, the UK would negotiate fishing opportunities for 2021 as an independent coastal state assuming that the transition period was not extended.

1.12 Regardless of any extension of the transition period, the draft Withdrawal Agreement requires the EU and UK to “use their best endeavours” to conclude and ratify a future fisheries agreement on, inter alia, access to waters and quotas before 1 July 2020 (which is also the deadline for deciding whether to extend the transition period). The Political Declaration makes clear that this should be agreed in the context of the overall economic partnership, thus linking fishing opportunities to trade.

1.13 If, however, the UK leaves the EU without a deal, it would become an independent coastal state with immediate effect and would be required under international law<sup>4</sup> to cooperate on the management of shared stocks. This might include the swift conclusion of an EU-UK fisheries agreement.

1.14 The Environment Food and Rural Affairs Committee recently wrote<sup>5</sup> to the Secretary of State for Environment, Food and Rural Affairs requesting an update on the Department’s EU exit preparations in the area of fisheries. The Committee posed specific questions about: preparing to negotiate 2020 fishing opportunities as an independent coastal state; plans for a future UK-EU fishing agreement; and alternative arrangements in place in the event that the Fisheries Bill has not been passed before any no-deal exit.

### **Government position**

1.15 The Minister for Agriculture, Fisheries and Food (Rt Hon. Robert Goodwill MP) says in his [Explanatory Memorandum](#) (EM) that the Government shares the Commission’s view that, if the UK leaves the EU without an agreement on 31 October 2019, the EU and UK should consult with each other on the joint management of shared stocks.

1.16 The Government welcomes the assessment that continuing progress is being made towards more sustainable fishing and stock recovery in the North East Atlantic, and notes the positive economic trends reported in fleets which target stocks exploited sustainably. The Government agrees that fishing opportunities should be set so that stocks achieve their MSY where possible in 2020, but also recognises the need for some exceptions, for example to minimise discards of bycatches from mixed fisheries to allow for effective implementation of the landing obligation.

4 [Article 63\(1\)](#), UN Convention on the Law of the Seas and [United Nations Fish Stocks Agreement](#).

5 [Letter](#) from Neil Parish MP to Rt Hon. Michael Gove MP, dated 19 June 2019.

1.17 The Government recognises that this is the first year that fishing opportunities for most internal fish stocks will be set under the basis of a Multi Annual Plan. It welcomes the intention to use MSY ranges to set fishing opportunities, where possible under appropriate scientific advice, as this flexibility is one of the key tools to avoid choke risks in mixed fisheries.

1.18 The UK notes the potential improvements that the bycatch reduction plans for the North Western Waters can deliver but has also emphasised that there is more that can be done to reduce unwanted catch and improve how specific mixed fisheries, for example in the Celtic Sea, are managed.

1.19 Concerning the landing obligation, the Government has focused its efforts to date on ensuring the fishing industry has the right information available to enable them to comply. Control and enforcement efforts by the Marine Management Organisation are being increased to improve compliance. This includes exploring the potential future use of Remote Electronic Monitoring (REM) as part of the UK's compliance and enforcement toolbox. However, the UK continues to push for a formal review of the landing obligation's operation to identify and solve persisting challenges in order to truly make it a success. The UK will continue to work with the Commission and Member States to solve ongoing choke issues, and prevent new chokes developing, especially in fisheries that are economically important to the UK.

1.20 The Government supports the commitment to use long term management strategies compatible with relevant MAPs to set opportunities for jointly managed stocks wherever possible. This year, the UK has emphasised the importance of agreeing with Norway a new management strategy for North Sea cod, in order to develop sustained, long term solutions in the face of challenging advice. In relation to data limited stocks, the UK opposes automatic precautionary cuts and considers that decisions on TACs should be informed by all available evidence, including directional trends in fishing mortality, biomass and fishing effort.

1.21 The Government will make a detailed assessment of the Commission's actual proposals when they are issued later this year, in accordance with the Government's established principles for these annual negotiations: sound science, sustainability and the elimination of discards. The UK will submit written comments to the Commission before 1 September.

## Analysis and conclusions

**1.22 On the UK's withdrawal from the EU, an obvious issue for the setting of fishing opportunities in 2020, the Minister says only that the Government shares the Commission's view that, if the UK leaves the EU without an agreement on 31 October 2019, the EU and UK should consult with each other on the joint management of shared stocks. In fact, the UN Convention on the Law of the Seas uses more robust language, requiring Parties to "seek to agree upon the measures necessary to coordinate and ensure the conservation and development of [shared] stocks." The UN Fish Stocks Agreement provides that this legal requirement to cooperate should begin with consultations. It must, among 12 obligatory conditions, be based on scientific advice and must seek to preserve the sustainability of stocks. We look to the Minister**

to confirm that the UK would not only consult the EU but would actively seek to agree on measures to conserve shared stocks in line with the UK's responsibilities under international law.

1.23 The Commission highlights the challenges of negotiating sustainable fishing opportunities outside a clear framework such as the Common Fisheries Policy. It observes that, for stocks subject to consultations with the Coastal States, only the blue whiting TAC for 2019 was in line with the long-term management strategy for this stock and with scientific advice on fishing at MSY. In the EU-Norway negotiations, says the Commission, only 9 out of 17 TACs were set in line with MSY. We ask the Government whether it agrees with the Commission's observation that the agreed 2019 TACs for stocks shared with non-EU Coastal States are, for the most part, less sustainable than those for EU-only stocks and, if so, why the Government considers that to be the case.

1.24 Looking forward to 2020, the Commission says that, for stocks subject to consultations with non-EU countries, it will aim for an agreement in line with the long-term management strategies and scientific advice on fishing at MSY. The Government agrees with this approach. We ask the Minister to confirm if this means that the existing EU multi-annual plans which now form the basis for EU fisheries management decisions and are an important tenet of the Common Fisheries Policy would form the basis for future UK-EU cooperation on sustainable fish stocks.

1.25 Under all foreseeable scenarios other than a long extension of Article 50 or revocation, the UK will need to negotiate a fisheries agreement with the EU expeditiously. The negotiated Withdrawal Agreement includes a requirement for the UK and EU to make best endeavours to conclude and ratify an agreement by 1 July 2020. In the event that the UK leaves the EU without a deal, would the Minister agree that it would be preferable to negotiate the management of shared stocks on the basis of an agreed framework set out in a UK-EU fisheries agreement? Should that not be the case, how else would the UK and EU comply with the international legal requirements on them?

1.26 We ask the Minister what steps the Government is making to prepare any such agreement. Given that the UK currently operates fisheries management within the framework of the Common Fisheries Policy, to what extent would it make sense to base future cooperation on that same framework, particularly bearing in mind the requirements of international law? What elements of the current CFP framework—aside from access and opportunities—does the Minister consider inappropriate for future management of shared stocks and could be rejected while remaining compliant with international requirements?

1.27 Finally, we trust that Parliament will be fully engaged from as early a stage as possible in scrutinising the Government's approach to the future UK-EU fisheries relationship. We ask the Minister to set out the Government's detailed plans for parliamentary scrutiny.

1.28 The document is retained under scrutiny. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee and we look forward to a response by 17 July.

**1.29 We will subsequently look forward to sight of the Government’s written comments to the Commission to be submitted by 1 September, including the Government’s thoughts on measures to support implementation of the landing obligation.**

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

Commission Communication on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2020: (40673), [10186/19](#) + ADD 1, COM(19) 274.

### **Previous Committee Reports**

None.

## 2 EU participation in GRECO

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Committee's assessment	Legally and politically important
<a href="#">Committee's decision</a>	(a) Not cleared from scrutiny; further information requested; (b) Cleared from scrutiny
Document details	(a) Proposed Council Decision on the position to be taken, on behalf of the European Union, in the 83rd Plenary Meeting of the Group of States against Corruption (GRECO) as regards the participation of the European Union as observer in GRECO; (b) Commission Communication on Participation of the European Union in GRECO
Legal base	Article 83 TFEU in conjunction with Article 218(9) TFEU; QMV
Department	Ministry of Justice
Document Numbers	(a) (40688), 9850/19, COM(19) 273; (b) (34358), 15305/12, COM(12) 604

### Summary and Committee's conclusions

2.1 [GRECO](#) is the Council of Europe's anti-corruption organisation. It was established in 1999 to monitor contracting States' compliance with anti-corruption standards set out in the [Criminal Law Convention on Corruption](#) and the [Civil Law Convention on Corruption](#). GRECO has 49 members. These include all of the 28 EU Member States in their own right as well as the USA and ten observers.

2.2 The EU does not currently participate in GRECO although this has been a priority for its cooperation with the Council of Europe for some time. It is one of the few bodies of the Council of Europe for which the EU has no dedicated legal framework for cooperation. Instead informal cooperation is based on a Memorandum of Understanding. The lack of observer or other status means that the EU cannot attend GRECO meetings and therefore opportunities for it to cooperate fully with other GRECO members on common rule of law and anti-corruption issues are limited.

2.3 On 21 June the Government deposited with us a proposed Council [Decision](#) on the position to be taken by the EU in the 83rd meeting of GRECO concerning the EU's participation in that body as an observer (document (a)). This is an unexpected development. The last time a prior Government [wrote](#) to our predecessors concerning the question of EU participation in GRECO was on 28 March 2014. As the "background" section to this Report (paragraphs 2.17–2.19 of this chapter) explains, previous Committees have held under scrutiny a Commission [Communication](#) (document (b)) since 2012. Little progress has been made since then in getting any agreement in principle from Member States to the proposal in that Communication for a staggered type of EU participation in GRECO.

2.4 We understand from the Government that the Commission's proposal was published on 6 June and adopted at Council on 18 June, to enable the EU to attend the GRECO plenary on 17–21 June meeting as an observer. The decision to grant the EU observer

status can only be passed by the unanimous vote of GRECO members at that plenary meeting. If unanimity is not reached, then the matter may be referred to the Committee of Ministers for a decision by two thirds of its representatives. The substantive legal basis of the proposal is Article 83 TFEU. This concerns criminal justice cooperation in relation to serious crimes. Consequently, the UK's Justice and Home Affairs opt-in (Protocol 21 to the EU Treaties) applies to the proposed Council Decision.

2.5 On 25 June 2019, the Lord Chancellor and Secretary of State for Justice (Rt Hon. David Gauke MP) submitted a [Written Ministerial Statement](#)<sup>6</sup> (WMS) to the House. This states that the Government is supportive of the EU gaining observer status in GRECO and attending the June meeting but has not opted in to the adoption and application of the proposed Council Decision.

2.6 The Minister also explains that the UK did not have the normal three-month period under the JHA protocol to decide whether to opt into the proposal. It is therefore not bound by the proposal. The Minister concludes that in this case there are no practical consequences given that the proposal only concerns the EU's status as an observer in this international body. The UK therefore tabled a minute statement in the Council expressing regret about not having had the full period of time to consider its opt-in decision, that Parliamentary scrutiny procedures had not been observed as a result and that this instance should not constitute a precedent for future similar decisions.

2.7 The Minister's [Explanatory Memorandum](#) (EM) of 26 June which followed his WMS, provides some supplementary background concerning the adoption of the proposal and the process in the GRECO plenary. But in terms of policy implications does not add to the Government's view of the proposal as already set out in the WMS.

## Our Conclusions

2.8 **We now clear the Commission Communication (document (b)) from scrutiny as it has been superseded by the proposed Council Decision (document (a)) and by the UK's decision to leave the EU.**

2.9 **We retain document (a) under scrutiny until we receive the Minister's answers to the following questions concerning his department's handling of the scrutiny of this document. In doing so, we acknowledge the efforts of his officials to contact our staff in advance of the receipt of his Explanatory Memorandum to provide some advance background to the document. However, this is no adequate substitute for the Minister's own accountability to this Committee.**

### *Compliance with the Government's Code of Practice on Parliamentary scrutiny of justice and home affairs opt-in decisions*

2.10 **We understand from the Minister's Written Ministerial Statement (WMS) that the UK decided not to opt into this proposal, even though it had not been afforded the full three-month opt-in period to make this decision.**

2.11 We are particularly disappointed that neither the Minister’s WMS nor his Explanatory Memorandum makes an explicit reference<sup>7</sup> to the Government’s [Code of Practice on scrutiny of EU justice and home affairs opt-in decisions](#) which includes the following enhanced scrutiny commitments:

- to inform the Scrutiny Committees “as soon as possible” of the date on which the three-month opt-in deadline will expire, as well as the eight-week deadline for expressing a view on the opt-in decision;
- to inform the Scrutiny Committees of the progress of any negotiations during the three-month opt-in period;
- to take account of the views of Parliament when deciding whether to opt in; and
- to inform the Scrutiny Committees in writing of the Government’s decision “as soon as the Presidency has been notified”.

2.12 We ask the Minister to:

- confirm that, as he asserts in the Written Ministerial Statement, the UK has not opted into the proposal, and that the UK therefore did not adopt a position in Coreper nor have a vote in Council—and further to explain why, given the Minister refers in his WMS and his EM to the UK “being supportive of the EU gaining observer status”, the UK did not opt into this proposal;
- explain fully why he has not fulfilled the commitments made by the Government in the Code of Practice—it is not enough to simply state as a matter of fact that because the proposal was published on 6 June and adopted at the Council on 18 June, the Government did not have the three-month opt-in period;
- send us a copy of the minute statement when the Council Decision was adopted setting out the UK’s position on the JHA opt-in Protocol;
- clarify whether (and if so how) the UK objected to the early adoption of the proposed Council Decision; and
- send us the text of the adopted Decision and confirm that there is a recital making clear that the UK has not opted into the proposal and is therefore not bound by it.

### *Principle of sincere cooperation during the Article 50 extension period*

2.13 We would expect Parliament to be informed officially if the UK had in any way agreed to or refrained from contesting the non-observance of its Treaty right to have three-months to make an opt-in decision. Especially if any such approach was informed by the anticipation of the UK’s departure from the EU on 31 October 2019 (in default of the draft Withdrawal Agreement being ratified earlier, a further extension of the Article 50 TEU period or revocation of the UK’s Article 50 notification).

<sup>7</sup> The Minister simply mentions in passing in his WMS that “the Council Decision had not gone through Parliamentary scrutiny processes and that the procedure should not constitute a precedent for similar decisions”.

2.14 We recall the conclusions to our [Report](#) of 8 May 2019 on another matter within the Minister’s remit (concerning the rule of law in Poland and Hungary) where we said in relation to the Government not participating in a particular initiative:

We ask the Minister to confirm whether this abstinence is a direct example of the UK acting as indicated in Recital 10 of the second European Council Decision of 11 April to extend the Article 50 process. In other words, although the UK retains its full membership rights during the extension, it is expected to exercise them in accordance with the principle of sincere cooperation given that it is a “withdrawing Member State”. This strikes us as a potentially important and serious area of discretion for the Government. We therefore request that as on this dossier, the Government is clear about when it is holding back from exercising its full membership rights under the EU Treaties because it judges it to be inappropriate to do so as an exiting Member State. To hold the Government to account for such discretionary self-denial of exercise of Treaty rights falls squarely within the remit of this Committee. We also note that such an approach would put the Government in contradiction with the standard paragraph in all of its Explanatory Memoranda, which states that “Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period, the Government will also continue to negotiate, implement and apply EU legislation”.

We remind the Minister that we have yet to have a response to this Report. We would be grateful if he could now respond to our concerns in this respect on both that document and the current document. If a policy of not exercising Treaty rights or not insisting on the observance of UK Treaty rights is beginning to be practised by the UK Government in certain circumstances, we request that the Government at least be transparent about it. Even in respect of proposals, such as the one under scrutiny, which we accept may only have a minimal practical effect for the UK.

### *Legal basis*

2.15 Following the Court of Justice’s judgment in the *Germany v Council* ([C-399/12](#)), it is our understanding that the proposed Council Decision to allow the EU to be an observer in GRECO must concern an act of that body “capable of decisively influencing the content of the legislation adopted by the EU legislature in the area” to fall within the scope of Article 218(9) TFEU. We therefore ask the Minister to confirm that he is satisfied that Article 218(9) TFEU is the correct procedural legal basis for this proposal and if so, why.

### *Outcome of the GRECO Plenary Meeting*

2.16 The Minister omits to update us on the outcome of the Greco Plenary meeting. We would be grateful if he could confirm whether GRECO members voted unanimously to approve the EU’s observer status or whether the matter has been referred to the Council of Ministers. As the UK is also a member of GRECO in its own right, we would

**be grateful if he could confirm whether the UK voted in favour of the EU’s observer status in this capacity. This is clearly not a question of our scrutiny reserve, but is information of interest to Parliament.**

### Full details of the documents

(a) Proposal for a Council Decision on the position to be taken, on behalf of the European Union, in the 83rd Plenary Meeting of the Group of States against Corruption (GRECO) as regards the participation of the European Union as observer in GRECO: (40688), [9850/19](#), COM(19) 273; (b) Commission Communication on Participation of the European Union in the Council of Europe Group of States against Corruption (GRECO): (34358), [15305/12](#), COM(12) 604.

### Background

2.17 In a Communication (document(b)) published in 2012 the Commission proposed to “step up” the EU’s informal cooperation with GRECO to a level of full participation (as opposed to full membership), with the possibility of progressing to a second stage of full membership within four years of initial participation.

2.18 This approach was favoured by the Commission because “full membership” would require EU institutions themselves to be monitored and evaluated by GRECO. This would be problematic as that system was not designed for regional organisations. The “full participation” approach would mean that the EU would not be subject to evaluation processes, but still enjoy similar rights (with the exception of voting) to its Member States as members of GRECO, including involvement in their monitoring and evaluating them. In the absence of reciprocal accountability, the Government of the time could see no value to either the EU or UK of EU participation in GRECO. It also disputed the proposed Article 220 TFEU legal base for EU participation in GRECO, arguing that the proposed model of participation went beyond mere cooperation envisaged by Article 220 TFEU: Article 218 TFEU was the correct legal base.

2.19 When our predecessors first considered the Communication, they asked the then Government to elaborate further on its concerns about the legal base for the proposed participation. They also questioned whether it was appropriate for the Commission to avoid accountability within GRECO at time of heightened public concern about fraudulent disbursement of EU funds. Then on 27 January 2013 the then Lord Chancellor (Rt Hon. Chris Grayling MP) reiterated the Government’s views about the legal base. He also said that the Government was supported by other Member States in arguing that only the Council could authorise the opening of negotiations. EU participation involved “policy-making” (the prerogative of the Council under Article 16 TEU) and the Government believed that authorisation should be achieved by way of Council conclusions. He added that the Government would continue to consider the proposals carefully to ensure proper division of competences and equal accountability of the EU and GRECO members. Our predecessors in response asked to be kept informed of developments. The last communication they received from the then Government was on 28 March 2014, when the Minister wrote to say that:

The most significant of these is the Commission’s indication that it proposes for the EU to apply for full membership of GRECO, operating on the basis

on Article 220 of the Treaty of the functioning of the European Union. The Commission highlighted this aim at the January 2013 General Affairs and Evaluation Committee (GENVAL) meeting, the June 2013 GRECO plenary, and again in the EU anti-corruption report published in February.

The Commission, in cooperation with other EU institutions, is currently conducting an assessment of the legal and practical implications of full EU membership of GRECO. We understand that the assessment should conclude this year, and the Commission will thereafter inform Member States of the outcome. We will need to consider the EU's application once submitted before offering a Government opinion.”

2.20 The Minister undertook to keep the Committee informed of any further developments. Our predecessors anticipated hearing again from the Government once the outcome of the Commission's assessment was known. There have been no Ministerial updates since that time.

### Previous Committee Reports

(a) None; (b) Thirty-second Report HC 86–xxxii (2012–13), [chapter 6](#) (13 February 2013); Twenty-second Report HC 86–xxii (2012–13), [chapter 11](#) (5 December 2012).

## 3 European Labour Authority

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Committee's assessment	Politically important
<a href="#">Committee's decision</a>	Cleared from scrutiny; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Work and Pensions Committee
Document details	Proposal for a Regulation establishing a European Labour Authority
Legal base	Articles 46, 48, 53(1), 62 and 91(1) TFEU, ordinary legislative procedure, QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39563), 7203/18 + ADDs 1–3, COM(18) 131

### Summary and Committee's conclusions

3.1 When we last considered the [proposed Regulation to establish a European Labour Authority](#) (“ELA”) at our meeting on 5 June, we renewed a scrutiny waiver previously granted in March to enable the Government to support its adoption at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on 13 June. We did so on the strength of assurances given by the Government that the final compromise text “would not impose additional legislative obligations on Member States or impact national competencies”.<sup>8</sup>

3.2 The broad objective of the European Labour Authority is to support Member States in applying and enforcing EU rules on labour mobility within the internal market and on social security coordination. The ELA would have no direct regulatory or enforcement powers, nor would it be able to direct national authorities. It would, however, take over the work of various technical advisory bodies that already exist at EU-level, including the European Coordination Office of EURES,<sup>9</sup> the Advisory Committee on the Free Movement of Workers,<sup>10</sup> the European Platform on tackling undeclared work<sup>11</sup> and the Committee of Experts on Posting of Workers.<sup>12</sup> It would also take over certain functions of the Administrative Commission for the Coordination of Social Security Systems, a body of Member State representatives which plays an important role in overseeing the

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8 See the Minister's [letter of 8 February 2019](#) to the Chair of the European Scrutiny Committee.

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

10 The [Advisory Committee](#), which is composed of six members from each Member State, assists the European Commission in the examination of the application of EU law on free movement of workers.

11 The [European Platform tackling undeclared work](#) aims to enhance cooperation between EU countries in fighting undeclared work (UDW).

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

application of complex EU rules on the coordination of national social security systems. Our earlier Reports listed at the end of this chapter provide a more detailed overview of the role of the ELA, its projected running costs and staffing.

3.3 In her latest [letter of 25 June 2019](#), the Minister for Small Business, Consumers and Corporate Responsibility (Kelly Tolhurst MP) confirms that the UK was in “a clear majority” voting for the adoption of the Regulation, “with only a small number of Member States voting against [and] a couple abstaining”. She reiterates the Government’s support for “the overall aims” of the Regulation and says that earlier concerns that the ELA might usurp the role of the Administrative Commission for the Coordination of Social Security Systems have been resolved in the [final compromise text](#) agreed by the Council.

3.4 Four Member States—Bulgaria, Cyprus, Latvia and Slovakia—submitted bids to host the ELA. Bratislava (Slovakia) received the highest number of votes, based on a set of criteria for selecting the host city which included “geographical balance [...], accessibility of the location, and the existence of adequate education and work opportunities for families of the Authority’s staff”. The Minister explains that UK officials met with representatives from all four Member States to discuss their bids in detail as well as their labour enforcement policies. There was collective agreement across Government on the UK’s voting preferences, but the Minister does not disclose how the UK voted.

3.5 In our [earlier Report agreed on 5 June 2019](#), we asked the Minister to explain why the role originally envisaged for the ELA in resolving cross-border labour market disruptions had been removed from the final compromise text agreed by the European Parliament and the Council and whether the Government supported its removal. The Minister responds:

The European Parliament did not support the provision on cross-border labour market disruptions. The Council agreed to remove it as part of the compromise package. In coming to this decision, the Council took account of concerns from a number of Member States, including the UK, about the detail of the provision, including concerns that further definition would be needed. The Government supported this amendment as it removed any ambiguity on [the] ELA’s role in national Member State affairs.

3.6 A [press release](#) issued after the June EPSCO Council indicates that the ELA will start functioning by the end of 2019 and reach full operational capability by 2023.<sup>13</sup>

## Our Conclusions

3.7 **We note the Government’s decision to vote for the establishment of the European Labour Authority (“ELA”). The Minister has previously indicated that it would be “advantageous” for the UK to maintain a close relationship with the ELA post-exit, particularly if domestic UK laws remain in alignment with relevant EU laws, whilst making clear that the detailed arrangements would form part of negotiations on the UK’s future economic partnership with the EU.<sup>14</sup> We are content to clear the proposed Regulation from scrutiny following its formal adoption by the Council in June but expect the Minister to inform Parliament should the Government seek to negotiate**

13 Council press release issued on 13 June 2019, *European Labour Authority: Council adopts founding Regulation*.

14 See the Minister’s [letter of 23 May 2019](#) to the Chairman of the European Scrutiny Committee.

**UK participation in the ELA, or establish working arrangements with it, once the UK leaves the EU. We draw this chapter to the attention of the Business, Energy and Industrial Strategy Committee and the Work and Pensions Committee.**

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

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

### **Previous Committee Reports**

Sixty-seventh Report HC 301–lxv (2017–19), [chapter 2](#) (5 June 2019), Fifty-ninth Report HC 301–lvii (2017–19), [chapter 1](#) (13 March 2019) and Twenty-fifth Report HC 301–xxiv (2017–19), [chapter 1](#) (25 April 2018).

## 4 The EU’s “Military Mobility” Action Plan: Progress Report

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Committee’s assessment	Politically important
<a href="#">Committee’s decision</a>	Cleared from scrutiny; drawn to the attention of the Defence Committee and the Foreign Affairs Committee
Document details	Joint Report on the implementation of the Action Plan on Military Mobility.
Legal base	—
Department	Ministry of Defence
Document Number	(40607), 9863/19, JOIN(2019) 11

### Summary and Committee’s conclusions

4.1 In recent years, EU Member States—with the support of the European Commission and the European Defence Agency—have significantly increased their cooperation on defence matters. The broad objectives of the so-called ‘Defence Union’ were set out in the Commission’s [European Defence Action Plan](#), published in 2017.

4.2 Since then, twenty-five Member States have made political commitments to one another about improving their military capabilities and increasing defence expenditure as part of ‘Permanent Structured Cooperation’ (PESCO);<sup>15</sup> the EU has established a centralised Military Planning & Conduct Capability unit (MPCC) for its non-executive missions overseas;<sup>16</sup> and the EU budget is being used for the first time to [fund, research & develop](#) new defensive technologies.<sup>17</sup> In September 2018, the European Commission also [suggested](#) that Member States should take more decisions under the EU’s Common Foreign & Security Policy by qualified majority, rather than by unanimity.

4.3 A specific area of interest to EU countries in the area of defence cooperation is ‘military mobility’, the movement of military personnel and assets from one place to another (including across national borders) by various means of transport. This effectively consists of two parallel tracks, within which specific initiatives are being undertaken to remove barriers to the smooth transportation of personnel and equipment across EU borders:

- an EU (or ‘Community’) track, overseen by the European Commission, that aims to address barriers to the movement of troops and material which are

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15 The UK, alongside Malta and Denmark, has not signed up to PESCO.

16 Non-executive military operations are operations that provide an advisory role to the host nation only. Executive operations are operations mandated to conduct actions in replacement of the host nation’s own armed forces. The MPCC at present only provides operational planning and conduct for non-executive operations (the EU’s military training missions in Mali, Somalia and the Central African Republic), but [from 2020](#) is meant to take on a (limited) role in relation to the EU’s executive military operations as well.

17 At present, this funding is provided under the Preparatory Action on Defence Research (PADR) and the European Defence Industrial Development Programme (EDIDP). Both initiatives run until the end of 2020. From 2021, they will be subsumed into a larger European Defence Fund, which is currently being negotiated between the Member States and the European Parliament.

within the EU’s legal competence (such as customs and VAT procedures, the transport of dangerous goods, and investment in dual-use infrastructure from the EU budget); and

- an intergovernmental track, part of Permanent Structured Cooperation on defence, to which twenty-four Member States have signed up. This aims at improving military mobility in areas that remain within the national sovereign competence of individual EU countries (such as permissions for foreign troops to cross borders or prioritisation for military transports on national road or railway networks).

4.4 The UK is not a participant in PESCO (and by extension therefore not involved in the implementation of the intergovernmental ‘Military Mobility’ project). Any actions taken by the EU with respect to regulatory matters within its remit that affect movement of troops and equipment, like customs and VAT procedures, would apply to the UK while it remains bound by EU law.<sup>18</sup> After Brexit, the manner in which the UK cooperates with the EU on matters of defence and security remains very much an open question. However, the Ministry of Defence has consistently said that the UK participation in initiatives relating to military mobility could be of potential benefit. Indeed, it is the only PESCO project—[out of thirty-four](#)—that the Government has explicitly identified as being of interest to the UK, and one it may seek to join on a voluntary basis as a non-EU country.

4.5 In April 2018, the Minister for Europe and the Americas ( Rt Hon. Sir Alan Duncan MP) [told us](#):

The UK has experienced first-hand how issues with European transport infrastructure can hinder our ability to rapidly move forces and we are also committed to exploring innovative solutions to improve regulatory issues. The EU is well-placed with its existing competences to support this work, while respecting the sovereignty of national decision-making bodies. However, the UK strongly believes that NATO’s role is crucial in the delivery of the action plan. We are keen to ensure, not only that any work is fully coherent with existing NATO work strands, and that the Alliance’s requirements are effectively incorporated as part of the implementation. With this approach, the EU can support NATO’s objectives using levers that the Alliance could not influence unaided and therefore make tangible progress in an area of strategic importance to the UK.

4.6 The European Commission fleshed out its specific proposals for EU action to improve military mobility in [policy paper](#) in November 2017, and a lengthier ‘[Military Mobility Action Plan](#)’ in March 2018. We considered these in our Reports of [19 December 2017](#) and [2 May 2018](#). On 3 June 2019, the Commission published a [progress report](#) identifying what had been achieved over the past 18 months:

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18 The UK remains an EU Member State until 31 October 2020. If the Withdrawal Agreement is ratified before then, it would stay bound by EU law during a transitional period lasting until at least 31 December 2020 but potentially until 31 December 2022. The UK’s relationship with EU law in a ‘no deal’ scenario, or beyond the transition period, remains unknown and depends on future negotiations.

- the Member States in 2018 unanimously endorsed the EU’s [Military Requirements](#) which set out “all factors conditioning military movement” in the Union and how these need to function in practice, including planning and conduct support, transport infrastructure, and legal and regulatory aspects;<sup>19</sup>
- as part of the Military Requirements, a gap analysis was undertaken of transport infrastructure in the EU and how it supports the movement of military personnel and equipment.<sup>20</sup> This identified areas where further development of Europe’s transport network is considered necessary to aid military mobility, in particular for air, rail and maritime modes of transportation. The European Commission has proposed to earmark €6.5 billion (£5.8 billion) from the EU budget for investment in dual-use transport infrastructure over the 2021–2027 period under the [‘Connecting Europe Facility’](#);<sup>21</sup>
- the European Defence Agency conducted a survey of EU Member States on the way in which they treat dangerous goods, such as explosives or toxic material, being transported for military purposes. Based on the outcome, which was presented in April 2019, the European Commission is considering what next steps to take;
- the EU’s [Status of Forces Agreement](#) took effect in 2019, after it was [ratified by Ireland](#) in February.<sup>22</sup> This agreement covers the status of military and civilian staff seconded to the institutions of the EU as well as of the headquarters and forces which may be made available to the EU in the context of the preparation and execution of the EU’s Common Security & Defence Policy (CSDP);
- in May 2019 twenty-three of the participating countries<sup>23</sup> in the PESCO ‘Military Mobility’ project [signed up to a new programme](#) that aims to simplify the way in which each of those Member States grant permissions for cross-border surface and air movements by troops from the other 22 countries. This builds on an existing [Diplomatic Clearance Technical Arrangement](#) to facilitate the military flights within the EU; and
- the European Commission has taken steps to simplify the customs and VAT procedures applicable to military transports that cross intra-EU borders, for example by aligning customs forms with those produced by NATO and by [proposing to exempt](#) certain imported military supplies from VAT.

4.7 In terms of next steps, the Member States are expected to update the EU’s Military Requirements in summer 2019 to take into account the outcome of the gap analysis of Europe’s transport infrastructure for military use. Afterwards, they will establish a list of priority dual-use transport projects to receive funding from the EU’s 2021–2027

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19 Council document 14770/18.

20 European Commission staff working document SWD(2019) 175.

21 The European Parliament and the Member States have reached agreement on the legal framework for the 2021–2027 Connecting Europe Facility, including the ‘military mobility’ component, but the precise budget is unlikely to be agreed until 2020 as part of the wider discussions on the EU’s next Multiannual Financial Framework. See our [Report of 28 November 2018](#) for more information.

22 The Agreement was signed in 2003 but could only take effect after having been ratified by all EU Member States.

23 All but Finland. Ireland, while part of PESCO, is not a member of the Military Mobility project. The UK, Denmark and Malta have not joined PESCO altogether.

Connecting Europe Facility. As regards the movement of dangerous goods for military purposes, the Commission has said it is considering a way forward (which could include potential amendments to the EU’s [Dangerous Goods Directive](#) on movement of hazardous goods by road or waterways, which at present does not apply to military convoys).<sup>24</sup> The European Defence Agency is coordinating a project on streamlining customs procedures for eligible military goods, looking at both alignment of EU and NATO customs forms and the digitisation of the military customs process within the EU.

4.8 The Minister for Europe and the Americas (Rt Hon. Sir Alan Duncan MP) submitted an [Explanatory Memorandum](#) on the Commission’s progress report on 18 June 2019, summarising its substance and reiterating the UK’s support for the Military Mobility project (provided it is done in close cooperation with NATO). Indeed, the Minister noted that the initiative was described at the most recent meeting of EU Member States’ Chiefs of Defence Staff as the “flagship EU-NATO project”, because of the EU’s ability to “harmonise legislation and process across Member States and to identify gaps in, and provide funding to upgrade, Europe’s transport infrastructure”. He added that the UK has joined the European Defence Agency project on harmonising customs procedures for military equipment.

4.9 The Commission is due to present a further progress report on Military Mobility in the EU by summer 2020.

## Our conclusions

**4.10 We thank the Minister for his informative update on progress made by the Member States and the EU institutions on the Military Mobility action plan. We note that the initiatives being undertaken under this umbrella remain of interest to the Government given the possible benefits to the UK’s armed forces, and the Minister’s assessment that “the value of the EU’s work to NATO lies largely in the ability of the EU to harmonise legislation and process across Member States and to identify gaps in, and provide funding to upgrade, Europe’s transport infrastructure”.**

**4.11 We remain of the view that any military mobility actions undertaken by the EU within its areas of regulatory competence—such as investment in dual-use infrastructure, or the simplification of customs and VAT procedures on intra-EU movements of military supplies—are likely to be of little direct benefit to the UK in the longer term after it has ceased to be a Member State of the EU.<sup>25</sup>**

**4.12 In particular, funding from the Connecting Europe Facility (CEF) to non-EU countries is likely to be restricted only to cases where “it is indispensable to the achievement of the objectives of a given project of common interest”.<sup>26</sup> Moreover, as we have noted elsewhere, the continued uncertainty about the ratification of the UK’s Withdrawal Agreement means it is unclear if the UK and EU will have a financial settlement in place on ‘exit day’ to govern any legacy commitments to the EU budget as agreed in the December 2017 Joint Report. In the absence of a resolution of the**

24 [Directive 2008/68/EC](#), as amended. Article 1 provides that the Directive “shall not apply to the transport of dangerous goods [...] by vehicles, wagons or vessels belonging to or under the responsibility of the armed forces”.

25 Streamlining measures related to customs and tax will have little impact on the UK once it is outside of the Customs Union and Single Market.

26 See article 5 of the [European Commission proposal](#) for the 2021–2027 Connecting Europe Facility.

financial issue, it is highly unlikely the EU would allow the UK to participate in any of its programmes or funding instruments (including the Connecting Europe Facility and European Defence Fund).<sup>27</sup> It is unclear if the Government believes there are any gaps in the UK’s dual-use transport links to the Continent that would benefit from potential investment from the CEF to make them more suitable for military use.

4.13 With respect to the intergovernmental initiatives to facilitate Military Mobility being undertaken under the auspices of PESCO, such as the harmonisation of procedures related to troop movements, the UK’s position remains ambiguous. The Government is not currently signed up to the project, and also decided against joining the new agreement on cross-border movement permissions signed by 23 other EU countries in May 2019. However, the Ministry of Defence has consistently said that UK participation in the Military Mobility project overall could be in the national interest because of “its potential to resolve common practical, legal and regulatory impediments to NATO’s ability to manoeuvre forces and equipment across Europe”, and it already participates in the EDA initiative to facilitate customs controls on military equipment.<sup>28</sup> The specific rules for ‘third’ (non-EU) country participation in individual PESCO projects are still being drawn up by the twenty-five participating Member States, and may be adopted in summer 2019.

4.14 Whatever the outcome of the UK’s negotiations on a new foreign policy and security partnership with the EU, it is clear that any British participation in EU defence structures or programmes, whether before or after Brexit, will remain controversial. There has been no indication from the Government about how it would seek Parliament’s approval for UK participation in specific PESCO projects, such as the Military Mobility initiative, should it favour such involvement at a later stage. We will press the Government on this further as and when the proposed rules for ‘third country’ participation in PESCO are deposited for scrutiny, with particular reference to the potential implications of UK participation in the Military Mobility project.

4.15 The question of dialogue between the Government and Parliament on involvement in EU defence programmes after Brexit is a wider issue that the House will also want to scrutinise closely as and when the Government begins to negotiate its desired “ambitious, broad, deep and flexible partnership across [...] foreign policy, security and defence”, as set out in the Political Declaration on the future UK-EU relationship. In addition to possible participation in PESCO, the Government has also stated that this could involve continue contributing of troops, equipment or funding to specific EU military operations; an Administrative Arrangement with the European Defence Agency; and potentially even a financial contribution to the European Defence Fund. We urge the Government to work closely with the House of Commons on these matters proactively to establish whether sufficient parliamentary support exists for participation in EU defence projects, before any such involvement is formally decided on.

4.16 Given the Government’s indication that it would like to remain involved in the EU’s initiatives around military mobility, we consider the European Commission’s progress

27 The Committee is separately considering an EU proposal on continued UK contributions to the EU budget even in a ‘no deal’ scenario. See for more information our [Report of 3 April 2019](#).

28 See for example the Government’s [Explanatory Memorandum](#) of 24 May 2019 on the EU’s first annual report on PESCO.

**report of particular interest. We therefore draw it to the attention of the House, and of the Defence and Foreign Affairs Committees in particular. We will assess the rules for ‘third country’ participation in PESCO when these are deposited for scrutiny by the Government later this year.**

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

Joint Report on the implementation of the Action Plan on Military Mobility: (40607), 9863/19, JOIN(2019) 11.

### **Previous Committee Reports**

None on this document. However, we have previously considered the EU’s Military Mobility initiative in December 2017 and May 2018. See (39202), 14237/17 JOIN(2017) 41: Seventh Report HC 301–vii (2017–19), [chapter 14](#) (19 December 2017); and (39606), 7633/18 JOIN(2018) 5: Twenty-Sixth Report HC 301–xxv (2017–19), [chapter 10](#) (2 May 2018).

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

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### Department for Business, Energy and Industrial Strategy

(40523)                      Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Better regulation: taking stock and sustaining our commitment.  
8648/19  
+ ADD1  
COM(2019) 178

### Department for Digital, Culture, Media and Sport

(40562)                      Report from the Commission to the European Parliament and the Council on the implementation of the open internet access provisions of Regulation (EU) 2015/2120.  
9182/19  
COM(19) 203

### Department for Environment, Food and Rural Affairs

(40661)                      Report from the Commission: Annual Synthesis Report for the year 2017 on the implementation of the FLEGT licensing scheme provided for in Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community.  
10085/19  
COM(19) 249

### Department of Health and Social Care

(40612)                      Court of Auditors Special Report No. 7: EU actions for cross-border healthcare: significant ambitions but improved management required.  
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### Department for International Development

(40355)                      Report from the Commission to the European Parliament and the Council Annual Report on the implementation of the European Union's instruments for financing external actions in 2017.  
5988/19  
+ADDs 1–2  
COM(2019) 37

(40361) Commission Staff Working Document 2019 EU report on Policy  
Coherence for Development.  
5806/19  
SWD(2019) 20

## Department for Transport

(40622) Proposal for a Council Decision on the position to be taken on behalf  
of the European Union in the relevant Committees of the United  
9967/19 Nations Economic Commission for Europe as regards the proposals  
for modifications to UN Regulations Nos. 14, 17, 24, 30, 44, 51, 64, 75,  
+ ADD1 78, 79, 83, 85, 90, 115, 117, 129, 138, 139, 140 and 145, as regards the  
proposals for modifications to Global Technical Regulations (GTRs)  
COM(2019) 255 Nos. 15 and 19, as regards the proposal for an amendment to Mutual  
Resolution M.R.2, as regards the proposal for one new UN Regulation,  
and as regards the proposals for (amendments to) the authorisations to  
develop GTRs.

## HM Treasury

(40625) Recommendation for a Council Recommendation on the 2019 National  
Reform Programme of the United Kingdom and delivering a Council  
9954/19 opinion on the 2018–2019 Convergence Programme of the United  
Kingdom.  
COM(19) 528

(40626) Recommendation for a Council Recommendation on the 2019 National  
Reform Programme of Sweden and delivering a Council opinion on the  
9953/19 2019 Convergence Programme of Sweden.  
COM(2019) 527

(40627) Recommendation for a Council Recommendation on the 2019 National  
Reform Programme of Finland and delivering a Council opinion on the  
9952/19 2019 Stability Programme of Finland.  
COM(2019) 526

(40628) Recommendation for a Council Recommendation on the 2019 National  
Reform Programme of Slovakia and delivering a Council opinion on the  
9951/19 2019 Stability Programme of Slovakia.  
COM(2019) 525

(40629) Recommendation for a Council Recommendation on the 2019 National  
Reform Programme of Slovenia and delivering a Council opinion on  
9950/19 the 2019 Stability Programme of Slovenia.  
COM(2019) 524

(40630) Recommendation for a Council Recommendation on the 2019 National  
Reform Programme of Romania and delivering a Council opinion on  
9948/19 the 2019 Convergence Programme of Romania.  
COM(2019) 523

(40631) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Portugal and delivering a Council opinion on the 2019 Stability Programme of Portugal.

9947/19  
COM(2019) 522

(40632) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Poland and delivering a Council opinion on the 2019 Convergence Programme of Poland.

9946/19  
COM(2019) 521

(40633) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Austria and delivering a Council opinion on the 2019 Stability Programme of Austria.

9945/19  
COM(2019) 520

(40634) Recommendation for a Council Recommendation on the 2019 National Reform Programme of the Netherlands and delivering a Council opinion on the 2019 Stability Programme of the Netherlands.

9944/19  
COM(2019) 519

(40635) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Malta and delivering a Council opinion on the 2019 Stability Programme of Malta.

9943/19  
COM(2019) 518

(40636) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Hungary and delivering a Council opinion on the 2019 Convergence Programme of Hungary

9942/19  
COM(2019) 517

(40637) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Luxembourg and delivering a Council opinion on the 2019 Stability Programme of Luxembourg

9941/19  
COM(2019) 516

(40638) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Lithuania and delivering a Council opinion on the 2019 Stability Programme of Lithuania.

9939/19  
COM(2019) 515

(40639) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Latvia and delivering a Council opinion on the 2019 Stability Programme of Latvia.

9938/19  
COM(2019) 514

(40640) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Cyprus and delivering a Council opinion on the 2019 Stability Programme of Cyprus.

9937/19  
COM(2019) 513

(40641) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Italy and delivering a Council opinion on the 2019 Stability Programme of Italy

9936/19  
COM(2019) 512

(40642) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Croatia and delivering a Council opinion on the 2019 Convergence Programme of Croatia.

9935/19

COM(2019) 511

(40643) Recommendation for a Council Recommendation on the 2019 National Reform Programme of France and delivering a Council opinion on the 2019 Stability Programme of France.

9934/19

COM(2019) 510

(40644) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Spain and delivering a Council opinion on the 2019 Stability Programme of Spain.

9933/19

COM(2019) 509

(40645) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Greece and delivering a Council opinion on the 2019 Stability Programme of Greece.

9932/19

COM(2019) 508

(40646) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Ireland and delivering a Council opinion on the 2019 Stability Programme of Ireland.

9931/19

COM(2019) 507

(40647) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Estonia and delivering a Council opinion on the 2019 Stability Programme of Estonia.

9930/19

COM(2019) 506

(40648) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Germany and delivering a Council opinion on the 2019 Stability Programme of Germany.

9929/19

COM(2019) 505

(40649) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Denmark and delivering a Council opinion on the 2019 Convergence Programme of Denmark.

9928/19

COM(2019) 504

(40650) Recommendation for a Council Recommendation on the 2019 National Reform Programme of the Czech Republic and delivering a Council opinion on the 2019 Convergence Programme of the Czech Republic.

9927/19

COM(2019) 503

(40651) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Bulgaria and delivering a Council opinion on the 2019 Convergence Programme of Bulgaria.

9926/19

COM(2019) 502

(40652) Recommendation for a Council Recommendation on the 2019 National Reform Programme of Belgium and delivering a Council opinion on the 2019 Stability Programme of Belgium

9925/19

COM(2019) 501

(40653) Communication from the Commission 2019 European Semester:  
country-specific recommendations.

9924/19

COM(2019) 500

(40674) Proposal for a Decision on the mobilisation of the EU Solidarity Fund  
to provide for the payment of advances in the general budget of the  
Union for 2020.

10293/19

COM(19) 252

(40675) Proposal for a Decision on the mobilisation of the Flexibility  
Instrument.

10292/19

COM(19) 251

# Formal Minutes

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## Wednesday 3 July 2019

Members present:

Sir William Cash, in the Chair

Martyn Day	Stephen Kinnock
Geraint Davies	Andrew Lewer
Richard Drax	Michael Tomlinson
Mr Marcus Fysh	Dr Philippa Whitford
Mr David Jones	

### Scrutiny Report

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

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

Paragraphs 1.1 to 5 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 10 July at 1.45 p.m.]

## 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*)