



House of Commons
European Scrutiny Committee

Seventy-second Report of Session 2017–19

Documents considered by the Committee on 17 July 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/>.

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Meeting Summary

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

Brexit-related issues

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

- EMIR 2.2: EU regulation of the trade in over-the-counter derivatives

Summary

Whistleblowing: Proposed Directive in relation to breaches of EU law

The proposed Directive aims to harmonise national laws to a minimum standard on whistleblowing in relation to breaches of EU law. It seeks to improve on the current piecemeal approach to whistleblowing at EU level by introducing a horizontal approach across most EU policy areas. The proposal follows in the wake of recent scandals arising from whistleblowers' disclosures, such as Cambridge Analytica.

The proposal is due to be formally adopted in July. The UK will not have to implement the Directive unless the draft Withdrawal Agreement is ratified, and the implementation period is extended beyond 31 December 2020. The Government will not be supporting the Directive's adoption. Apart from concerns about the legal bases of the proposal, it also worries about the proposal disproportionately placing burdens on employers, especially SMEs. The latest text does at least allow Member States to defer for an extra two years the implementation of the internal reporting provisions (essentially in respect of SMEs). It also removes the mandatory hierarchy of whistleblower reporting. Whistleblowers would no longer have to report breaches of EU law to their employers first before resorting to external reporting—process which the Government feared would act as a deterrent to whistleblowers.

The Government requested scrutiny clearance but the Committee does not grant this nor any scrutiny waiver. Whilst clearance would normally be considered at this stage in the legislative process, there is no real imperative here. The Government are not going to support the proposal.

Given the extent of sustained interest across the House in whistleblowing, the Committee will keep the proposal under scrutiny until it has received the Government's response to some further questions. These concern the scope for a legal challenge to the Directive before the Court of Justice; possible implementation of the Directive in the UK in an extended transition period; non-regression commitments on workers' rights and possible future alignment of UK law with the Directive.

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

Financial services: EU regulation of the trade in over-the-counter derivatives (EMIR 2.2)

The Committee has discussed the final outcome of the amendments to the European Markets Infrastructure Regulation (EMIR 2.2), an important piece of post-crisis EU legislation on the managing of financial stability risks in the market for over-the-counter derivatives.

The new legislation is directly aimed at UK-based Central Counterparties after Brexit, which are of systemic importance to the liquidity of the European economy but would no longer be subject to EU law after the UK leaves the EU. The changes seek to give the EU expansive regulatory powers in the UK as a pre-condition for ‘equivalence’ that would allow British CCPs to continue operating in the EU after Brexit, and also introduces a new ‘location policy’ that could force the largest CCPs to relocate into the EU, ostensibly for financial stability reasons. The Committee has drawn the attention to the changes of the House of Commons because of the insight this new legislation provides into the EU’s likely uncompromising approach to a future trading arrangement with the UK on financial services.

Cleared from scrutiny; drawn to the attention of the Committee on Exiting the EU and the Treasury Committee

The automated exchange of DNA data with EU partners: UK implementation of Prüm

In June, EU Justice and Home Affairs Ministers adopted a Council Implementing Decision which gives formal approval for the UK to begin exchanging DNA profiles with the law enforcement authorities of other Member States under the so-called “Prüm” Decisions (named after an earlier Treaty signed in Prüm, Germany, in 2005). Although the UK’s national DNA database includes the DNA profiles of some criminal suspects, one of the safeguards insisted on by Parliament when it debated UK participation in Prüm in December 2015 was that the UK would only share the DNA profiles of individuals convicted of (and not merely arrested for or charged with) a criminal offence. The Council Implementing Decision requires the UK to review this limitation by 15 June 2020, raising the prospect that automated DNA data exchanges may be discontinued if the UK does not change its policy. The European Scrutiny Committee asks the Government: whether it accepts that excluding the DNA profiles of criminal suspects from Prüm data exchanges is not “in conformity” with the Prüm Decisions; to provide further details of the review required by the Council, Parliament’s involvement in it, and the risk that the EU might terminate DNA exchanges if the Government maintains its current policy; and the prospects for securing a “bespoke” internal security agreement post-exit which would include DNA data sharing.

Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee, the Justice Committee and the Joint Committee on Human Rights

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: Whistleblowing and breaches of EU law [Proposed Directive (NC)]

Committee on Exiting the European Union: Financial services: EU supervision of UK-based central counterparties after Brexit (EMIR 2.2) [Proposed (a) Regulation; (b) Recommended Decision (C)]; Negotiating mandates for EU-US trade talks [Proposed Decisions (C)]

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

Health and Social Care Committee: Whistleblowing and breaches of EU law [Proposed Directive (NC)]

Home Affairs Committee: The automated exchange of DNA data with EU partners: UK implementation of Prüm [Council Implementing Decision (NC)]

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

Joint Committee on Human Rights: The automated exchange of DNA data with EU partners: UK implementation of Prüm [Council Implementing Decision (NC)]

Justice Committee: The automated exchange of DNA data with EU partners: UK implementation of Prüm [Council Implementing Decision (NC)]

Treasury Committee: Financial services: EU supervision of UK-based central counterparties after Brexit (EMIR 2.2) [Proposed (a) Regulation; (b) Recommended Decision (C)]

Work and Pensions Committee: Whistleblowing and breaches of EU law [Proposed Directive (NC)]

1 Whistleblowing and breaches of EU law

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

Summary and Committee's conclusions

1.1 “Whistleblowing” is commonly understood to be the act of speaking out and disclosing serious wrongdoing, usually by employees. EU law on whistleblowing already applies in some areas such as financial services, transport safety and environmental protection. The Cambridge Analytica,¹ Lux Leaks,² Dieselgate³ and Paradise/Panama Papers⁴ scandals have all highlighted the importance but also the vulnerability of whistleblowers. In their wake, the Commission originally proposed this text of a [Directive](#) (document (a)) to strengthen and extend protection for whistleblowers across the EU who report breaches of a wide range of EU legislation.

1.2 We set out a full account of the proposal, the Government's view of it set against the current UK domestic legislation in our first [Report](#) on this proposal of 20 June 2018.⁵

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

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

3 See BBC website, [10 December 2015](#). The German car manufacturer Volkswagen has since admitted cheating diesel emissions tests in the US.

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

5 Thirty-second Report HC 301–xxxii (2017–19), [chapter 1](#) (20 June 2018).

We also set out a summary of our most recent scrutiny of the proposal in our [Report](#) of 27 February 2019. This summary highlights the most important issues concerning the proposal as identified by the Government and separately by ourselves.

1.3 The scope of the proposal is now set out in Article 1 of latest public [text](#) of the proposal.⁶ It covers breaches of EU law listed in the [Annex](#) to the proposal as regards the following areas: public procurement; financial services, products and markets and prevention of money laundering and terrorist financing; product safety; transport safety; protection of the environment; radiation protection and nuclear safety; food and feed safety, animal health and welfare; public health; consumer protection; protection of privacy and personal data, and security of network and information systems. However, it is important to note that the protection of workers (Articles 153 and 157 TFEU) is not included in the scope of the agreed text. The text also states that the proposal will not affect the responsibility of Member States to ensure national security and to protect their essential security interests. As this is a minimum harmonisation proposal, it is open to Member States to legislate for higher levels of protection.

1.4 In the original draft of the proposal, the deadline for implementing the Directive was proposed to be 15 May 2021. This meant that the UK would not have to implement the proposal,⁷ either in the case of “no-deal” or of a negotiated exit where the implementation period is not extended beyond 31 December 2020. However, the UK might have to align with the proposal as part of the core labour or competition provisions of an EU-UK free trade/other agreement or it may choose to do voluntarily. We note here the current Government’s commitments to build on workers’ rights after the UK’s exit from the EU.⁸

1.5 It is our own understanding that the [text](#) agreed in Coreper in March 2019 and by the European Parliament in April 2019 as the outcome of trilogue negotiations has changed the legal provisions on the implementation of the Directive.⁹ This now provides that the Directive should be implemented two years “after adoption” at the latest. As the proposed Directive is due to be adopted in Council this month,¹⁰ the position is unlikely to be materially different in terms of any obligation on the UK to implement the agreed text. Also, Member States can now defer implementing requirements for businesses and others with more than 50 but less than 250 employees to set up internal reporting channels for up to two years after a Member State’s transposition of the rest of the Directive.

6 This is the latest compromise text politically agreed between the institutions following trilogues, which although marked *limité* has now been made public, as appended to a Press Release from the Council of 14 March. Since then the EP resolved in plenary to agree the text on 16 April.

7 Nor continue it as retained EU law under the EU Withdrawal Act 2018.

8 [Command Paper](#) published on 6 March 2019, *Protecting and Enhancing Worker Rights after the UK Withdrawal from the European Union on any new EU laws enhancing workers’ rights*.

9 See Article 20 Transposition and transitional period. The Government has not yet drawn attention to this change.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive [2 years after adoption], at the latest;

1bis. In derogation of paragraph 1, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the obligation to set up an internal channel set out Article 4 (3) as regards legal entities with more than 50 and less than 250 employees by two years after transposition at the latest”.

10 See the Government’s letter of 9 July 2019, summarised later in this Report chapter.

Parliamentary interest in whistleblowing reform

1.6 We note that there has been considerable interest in Parliament in the reform of the current UK legislation on whistleblowing, particularly in the context of the NHS. Over the past year there has been a Westminster Hall [debate](#) on “NHS Whistleblowers” on 18 July 2018 and more recently a general [debate](#) on the floor of the House on 3 July 2019. In that latter debate, the Minister for Small Business, Consumers and Corporate Responsibility (Kelly Tolhurst MP), who has responsibility for this proposal, commented:

Hon. Members will be aware that the EU has developed a whistleblowing directive that we expect to be approved this summer. It is very wide-ranging and comprehensive, and we will have to consider how we take it into UK law. It could fall within the implementation period agreed under the terms of the withdrawal agreement, but, as we know, there are questions marks over that. The hon. Member for Ellesmere Port and Neston (Justin Madders MP) mentioned workers’ rights. As colleagues knows, the Government were clear throughout the EU negotiations that we would not reduce workers’ rights when we left the EU. Whistleblowing and how we proceed in that regard is covered by the overall provision for the protection of workers in employment. I hope that Members will take that as some kind of commitment from me, at least.¹¹

Minister’s letter of 9 July 2019

1.7 The Minister now says in her [letter](#) that:

- following trilogue negotiations,¹² the file was approved for adoption by Coreper on 15 March. The UK abstained from this vote. Subsequently, the plenary of the European Parliament voted to adopt the Directive on 16 April; and
- formal adoption in Council is expected at some point in July.

Legal bases

1.8 As explained in the “Background” section of this report, the legal soundness of the proposal based on multiple legal bases has been an issue of concern for the Committee and Government alike. In our last Report of 27 February, we asked the Government for a more detailed legal analysis of the problem.

1.9 The Minister recalls that the issue was considered by COREPER on 16 January before the General Approach was approved on 25 January. As this is an important legal issue, we set out the Minister’s further response here:

Discussion within working groups considered that where multiple legal bases are used, the objectives must be of equal weight, they must be inseparably linked, and the legal bases used must provide for compatible procedures. It was agreed that Article 114 served as the main legal base and that the Directive’s predominant aim is the enhancement of the enforcement of certain areas of Union law through rules on the protection

¹¹ HC Deb, 3 July 2019, Col 1306.

¹² Between the Commission, Council and European Parliament.

of whistleblowers. Article 114 requires use of the ordinary legislative procedure, and covers rules relating to public procurement; financial services; prevention of money laundering and terrorist financing; product safety; food and feed safety; consumer protection; the protection of privacy and personal data; and the security of network and information systems.

Where areas of law cannot be linked to the internal market, and there is a more specific legal base, that should be used. As a result of discussions, the Directive is now based on 12 rather than the initial 17 legal bases, as superfluous or incompatible legal bases were removed: Articles 33, 62, 103, 109 and 207 of the Treaty of the Functioning of the European Union. The Annex was also amended to remove some Directives which were based on Articles with incompatible legal procedures. These Directives include Regulation (EU) No 258/2012, Decision No 1082/2013/EU, and Directive 2017/1371.

It is very unusual to see a Directive which cites legal bases in so many numbers, and across such a breadth of EU legal areas. The UK has consistently argued that it is not appropriate to include within the Directive ‘acts which breach the rules of corporate tax or arrangements whose purpose is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law’. The Government believes that legislation related to corporate tax should be based on Article 115, the procedure for which requires unanimity. The requirement for unanimous decision making and Member States’ right to veto proposals under this legal base protects national sovereignty over tax policy and allows Member States to design their domestic tax regime as they see fit. The Government expressed this view on the legal bases of the text and was joined by a minority of Member States, however it was unsuccessful in amending this provision.

Changes to the text arising from trilogues

1.10 The Minister reports that the Government worked with other Member States to amend the proposed Directive to remove the hierarchy in reporting requirements. The text no longer requires a whistleblower to report internally to an employer before being able to report to an external “competent authority”. A whistleblower will be free to report either internally or externally in the first instance. The Minister comments:

This approach more closely aligns with the UK’s domestic position and removes an important barrier to whistleblowers coming forward to report.

1.11 As a result of trilogue negotiations, the “personal” scope of the proposal has been extended to “a wider class of individuals” including:

...facilitators, third persons connected with the reporting persons who may suffer retaliation in a work-related context, and legal entities that the reporting persons own, work for or are otherwise connected with in a work-related context.

1.12 The Government is unhappy with this widening of scope because it may be disproportionate given the aims of the proposal and lead to “spurious claims for whistleblower protection”.

Government position and views of the text

1.13 The Minister says that the Government recognises how valuable it is that whistleblowers be able to expose wrongdoing without fear of recriminations. However, it retains concerns about the overall proportionality of the proposals and will therefore not be supporting the text for formal adoption in Council. She nevertheless requests us to clear the proposal from scrutiny.

Our conclusions

1.14 **We thank the Minister for her letter of 9 July 2019. We note her request to clear the document from scrutiny but also that the Government are not intending to support the proposal in Council. However, we are not minded to grant clearance until we have received answers to our further questions below. This in part reflects ongoing Parliamentary interest in whistleblowing reform of which the Minister is aware given her participation in the debate on the floor of the House on 3 July.**

1.15 **Under the terms of the draft Withdrawal Agreement the UK would only be required to implement the Directive in national law where the transition/implementation period was extended beyond 31 December 2020. In the light of this possibility, does the Government have any plans to challenge the adopted Directive before the CJEU because of the use of multiple legal bases and the inclusion of corporate tax issues?**¹³

1.16 **We now turn to the scenarios in which the UK would not have to implement the Directive because:**

- **either the draft Withdrawal Agreement had not been ratified by exit day; or**
- **the implementation date for the Directive would fall outside of an unextended transition period under that Agreement.**

Noting that the Minister said in the debate of 3 July “that Government were clear throughout the EU negotiations that we would not reduce workers’ rights when we left the EU. Whistleblowing and how we proceed in that regard is covered by the overall provision for the protection of workers in employment”, we would be grateful for the following clarifications:

- i) **Do the Government’s commitments outlined in its [Command Paper](#)¹⁴ to not reduce workers’ rights only apply where the draft Withdrawal Agreement has been ratified? Are we correct in thinking that the Government under the current Prime Minister has made no such commitments if the UK leaves the EU without that deal?**

13 Challenges to the validity of the adopted Directive must be brought within 2 months of its publication in the Official Journal of the EU.

14 Published on 6 March 2019: Protecting and Enhancing Worker Rights after the UK Withdrawal from the European Union on any new EU laws enhancing workers’ rights.

- ii) Did the Minister mean to say in the 3 July debate that those commitments applied to this proposed Directive on whistleblowing and if so, why? We were uncertain that the commitments would apply given that the proposal omits “protection of workers” EU legal bases (Articles 153 and 157 TFEU). What would be the Government’s criteria for deciding whether an EU legislative acts fall within the scope of the commitments? The definitions in the commitments of “new workers’ rights” and “workers’ rights” are not entirely clear-cut.¹⁵
- iii) Once the new Prime Minister is installed, we would be grateful if the Minister would write to confirm whether these commitments on workers’ rights would apply to this Directive and/or at all.
- iv) In a scenario where the Government in future neither has to implement the Directive nor honour any of the current Government’s commitments on workers’ rights, does the Minister consider that the UK might voluntarily align its current legislation on whistleblowing (the Public Interest Disclosure Act 1998) with the Directive or aspects of it. As the UK is not supporting the proposal, it is hard to gauge to what extent, if at all, the Government finds any of it attractive.

1.17 Finally, in the event that the UK either has to implement the proposal or chooses to align with it, we would be interested to learn from the Minister what the impact might be on the use of the Non-Disclosure Agreements in the UK.

1.18 We look forward to receiving the Minister’s response. In the meantime, we retain the proposal under scrutiny. We draw it to the attention of the Business, Energy and Industrial Strategy Committee, the Work and Pensions Committee, the Health and Social Care Committee.

Full details of the documents

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

Background and previous scrutiny

1.19 We last [reported](#) on this proposal to the House on 27 February 2019. In that Report, we informed the House that the Government had [told](#)¹⁶ us that:

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

15 “Workers rights” are defined as “Rights of individuals, and classes of individuals, in the area of labour protection as regards—

(a) fundamental rights at work (b) fair working conditions and employment standards (c) information and consultation rights at company level (d) restructuring of undertakings, and (e) health and safety at work.”

16 Letter of 11 February from the Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility (Kelly Tolhurst MP) to Sir William Cash MP, Chairman of the European Scrutiny Committee.

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

1.20 In view of the March Council, the Minister asked us to consider granting a scrutiny waiver or clearance. Connected with this, she said that the Government will continue to press for amendments to the proposal during trilogues. We expected these would address the following concerns still held by the Government, broadly summarised as follows:

- any action at EU level should be proportionate and accommodate the existing different practices and systems at national level;
- the hierarchical approach that the proposal takes to reporting of wrongdoing, generally requiring the whistleblower to report first internally—the Government favouring instead an approach giving whistleblowers the freedom to choose whether to report wrongdoing internally (to their employer) or report to an external regulator;
- businesses and public authorities should be afforded the flexibility to establish internal reporting systems which suit the specific environments in which they operate and there should be no prescriptive requirements upon businesses and public bodies relating to both policies and functions to support whistleblowers; and
- there should be consideration of differences in Member State practice, including employment protections and rights for other categories of individuals, particularly in relation to imposition of penalties for specific types of retaliatory action taken against wide categories of individuals, including shareholders and volunteers.

1.21 In addition, we have been concerned ever since our very first Report whether the proposal is legally sound. This is because the original proposal relied on multiple legal bases and Member States have been concerned about what this means for the use of different legislative procedures. We said we understood from [press reports](#)¹⁷ that there had been a Council Legal Service opinion about the multiple legal bases (as proposed originally and additional legal bases proposed during negotiations) and the potential incompatibility of respective legislative procedures. We had also read the [legal opinion](#) of the EP’s Legal Affairs Committee (JURI). Although we understood that the Government would not comment on the legal opinions of the EU institutions, we asked it to provide a more detailed legal analysis of these issues itself.

1.22 As we reported in our last Report, the Government agrees with the view that the Directive needs to be legally sound but said in its last letter that the rapid pace of the negotiations had prevented the full consideration by the Government of all the different views expressed during recent negotiations.

17 “Whistleblowers could lose out in EU tax shakeup”, [Politico](#) 20 December 2018.

1.23 Given the Government’s ongoing concerns about the proposal, we did not grant the Government a scrutiny waiver for 7–8 March Council. This was because we considered it inconsistent with the Government’s ongoing concerns about the proportionality of the proposed General Approach text and our need for further information about the legal integrity of the text arising from the use of multiple legal bases. We were also mindful that the proposal could impact on the UK in a “deal” scenario where the transition/implementation period was extended beyond 31 December 2020. We also did not consider it likely that a scrutiny waiver could facilitate Government efforts to obtain any favourable developments in that text, since the General Approach vote effectively would be rubberstamping a text already agreed in COREPER. Instead we asked the Government to report on the outcome and on any progress made during trilogues.

Previous Committee Reports

Fifty-sixth Report HC 301–lv (2017–19), [chapter 1](#) (27 February 2019); Fifty-first Report HC 301–l (2017–19) [chapter 2](#) (16 January 2019); Thirty-second Report HC 301–xxxi (2017–19), [chapter 1](#) (20 June 2018).

2 Digital Taxation

Committee’s assessment	Politically important
Committee’s decision	(a) (b) (c) Not cleared from scrutiny; update requested
Document details	(a) Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (b) Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence; (c) Commission Recommendation of 21.3.2018 relating to the corporate taxation of a significant digital presence
Legal base	(a) Article 113 TFEU; special legislative procedure; unanimity; (b) Article 115 TFEU; special legislative procedure; unanimity; (c) Article 292 TFEU
Department	HM Treasury
Document Number	(a) (39585), 7420/18 + ADDs 1–3, COM(18) 148 (b) (39586), 7419/18 + ADDs 1–3, COM(18) 147; (c) (39590), 7421/18, C(18) 1650 final

Summary and Committee’s conclusions

2.1 These two proposals for Directives constitute the EU’s attempt to adapt Union-level and Member State arrangements regarding the taxation of digital companies to more adequately reflect the value that is generated by users based in the EU. Both proposals nonetheless remain broadly in line with the Government’s own thinking on digital taxation, as outlined in the Committee’s report on 13 June 2018.¹⁸

2.2 In its most recent report on these proposals on 6 March 2019,¹⁹ the Committee noted that, following the failure of the Commission’s proposal for a Digital Services Tax (DST) (document a) to secure the unanimous support of the Member States in advance of ECOFIN on 4 December 2018, a Franco-German proposal²⁰ had been brought forward which would reduce the scope of the proposal to the revenue which digital businesses make from advertising—a Digital Advertising Tax (DAT).

2.3 The Committee granted the Minister (Rt Hon. Mel Stride MP) a scrutiny waiver to participate at ECOFIN Council in March, if the modified proposal was put to a vote, on the understanding that the Government’s support would depend on the extent to which its concerns were addressed. These concerns related primarily to there being more clarity regarding how the scope of the tax was defined and how revenues would be attributable to Member States. However, on 3 April 2019 the Minister informed the Committee²¹ that discussions on this compromise approach did not lead to consensus “given continued

18 Thirty-first Report HC 301–xxx (2017–19), [chapter 4](#) (13 June 2018).

19 Fifty-seventh Report HC 301–lvi (2017–2019), [chapter 7](#) (6 March 2019).

20 See Proposal for a Council Directive on the common system of a digital advertising tax on revenues resulting from the provision of digital advertising services – Political agreement [6873/19](#).

21 Letter from the Minister to the Chair of the European Scrutiny Committee ([3 April 2019](#)).

opposition from a number of Member States” and that “the Presidency has indicated that it will now be focusing on the EU’s position in international discussions on tax and digitalisation, given the OECD’s ambition to agree a final report on this issue in 2020”.

2.4 Given that the Member States had chosen to prioritise the short-term “interim” DST/DAT, there has not been any progress on the second proposed Directive (document b) either. This had proposed to change existing corporate taxation rules by introducing a new form of permanent establishment based on ‘significant digital presence’, and laying down general principles for allocating profits to that presence which would allow for the market value of users and data to be taken into account. The Committee had previously concluded that the proposal was “speculative in character, because, to be fully effective, it would require third countries to modify their double tax treaties with Member States”, and noted the Minister’s comment in his Explanatory Memorandum that its principal effect was to provide “a basis upon which to explore options for global reform and may act to encourage non-EU countries to consider changes”.²²

2.5 The conclusions of the most recent meeting of the Economic and Financial Affairs Council on 17 May 2019 state that following the ministerial debate in March 2019 and the lack of unanimous agreement on the proposal, the presidency confirmed that work would continue on a two-track approach. The Council and member states jointly continue to work towards an agreement on a global solution at OECD level by 2020 to address the tax challenges of the digitalisation of the economy. If by the end of 2020, it appears that the agreement at OECD level is likely to take more time, the Council could, as necessary, revert to discussing a possible EU approach to the tax-related challenges arising from digitalisation. In addition, the proposal on significant digital presence is also still on the table of the Council for future follow-up.²³

2.6 It is thus clear that neither proposal has been formally withdrawn, and discussions regarding both could be reactivated (for example) if the OECD were to fail to generate a consensus approach in 2020. Nonetheless, the probability of any agreement on either proposal being reached by the Council on this issue appears low for the time being, as unanimity is required, and a number of Member States remain opposed to EU action in the absence of international agreement.

2.7 In the meantime, a number of Member States, including the UK, France and Austria have plans to introduce their own Digital Services taxes domestically. Competition Commissioner Margrethe Vestager has endorsed unilateral Member State actions, stating that: “The best thing is a global solution, no doubt about that, but if we want to have results in a reasonable timeframe, Europe will have to step forward. I think the inconvenience of a fragmented digital taxation unfortunately is part of the push”.²⁴

2.8 We thank the Minister for his updates. We note that the revised Franco-German proposal for a scaled-back version of the Digital Services Tax (DST), which would have focused solely on revenue generated from advertising, failed to secure a majority in the Economic and Financial Affairs Council (ECOFIN) on 12 March 2019. The 17 May ECOFIN discussed the matter further and concluded that the Council and the Member States would pursue a “twin-track approach” to address the tax challenges of

22 Explanatory Memorandum from the Minister, HM Treasury ([4 May 2018](#)).

23 See Proposal for a Council Directive on the common system of a digital advertising tax on revenues resulting from the provision of digital advertising services – Political agreement [6873/19](#).

24 Politico.eu, “Vestager backs national digital tax plans” ([8 March 2019](#)).

the digitalisation of the economy, continuing jointly to work towards an agreement on a global solution at OECD level, but if the OECD failed to agree an approach by the end of 2020, reverting to discussing EU action. ECOFIN also noted that the proposal on significant digital presence is also still on the table of the Council. Nonetheless, we remain persuaded that neither proposal is likely to progress through the Council, given the requirement for unanimity among the Member States, and fundamental opposition from countries including Ireland, Denmark, Finland and Sweden.

2.9 We ask for the Minister to provide an update if significant progress is made in relation to either of the proposed Directives. As neither of the proposals have been withdrawn by the Commission, we retain these documents under scrutiny.

Full details of the documents

(a) Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services: (39585), 7420/18 + ADDs 1–3, COM(18) 148 ; (b) Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence: (39586), 7419/18 + ADDs 1–3, COM(18) 147; (c) Commission Recommendation of 21 March 2018 relating to the corporate taxation of a significant digital presence: (39590), 7421/18, C(18) 1650 final.

Previous Committee Reports

Fifty-seventh Report HC 301–xlv (2017–2019), [chapter 7](#) (6 March 2019); Forty-sixth Report HC 301–xlv (2017–19), [chapter 14](#) (28 November 2018); Thirty-first Report HC 301–xxx (2017–19), [chapter 4](#) (13 June 2018); Fifth Report HC 301–v (2017–19), [chapter 10](#) (13 December 2017).

3 The automated exchange of DNA data with EU partners: UK implementation of Prüm

Committee’s assessment	Politically important
<u>Committee’s decision</u>	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee, the Justice Committee and the Joint Committee on Human Rights
Document details	Council Implementing Decision (EU) 2019/968 on the launch of automated data exchange with regard to DNA data in the United Kingdom
Legal base	Article 33 of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime; QMV in Council; consultation of EP
Department	Home Office
Document Number	(40679),—,—

Summary and Committee’s conclusions

3.1 The Prüm Council Decisions, adopted in 2008, allow EU Member States to carry out automated searches of each other’s DNA databases to support the investigation of criminal offences.²⁵ These searches operate on an anonymised “hit/no hit” basis. They enable a Member State to compare DNA profiles to see if they match those taken from a DNA sample or recovered from a crime scene elsewhere in the EU.²⁶ Before Member States can exchange DNA profiles, they must demonstrate that their national laws comply with the data protection requirements set out in the Prüm Decisions.

3.2 In December 2014, the then Coalition Government decided that it would not participate in the Prüm Decisions because it would not be possible for the UK to implement them within the timeframe agreed by the EU Council, exposing the UK to the risk of legal proceedings and a fine. The then Home Secretary (Rt Hon. Theresa May MP) noted, however, that the ability to compare DNA or fingerprint data with that held by police forces in other EU Member States was “an operational necessity”. She undertook to publish a full [business and implementation case](#) to assess “the potential practical benefits and the potential negative impacts” of participating in the Prüm Decisions whilst making clear that the final decision would be for Parliament.²⁷

3.3 Following a debate in the Commons on 8 December 2015, the House resolved that the Prüm Decisions were “an important aid to tackling crime” and voted in favour of UK participation. It did so on condition that “only a subset of the relevant national DNA

25 See [Council Decision 2008/615/JHA](#) and [Council Decision 2008/616/JHA](#).

26 DNA profiles consist of 16 pairs of numbers and a sex marker derived from a DNA sample.

27 See [Command Paper 9149](#) published in November 2015.

and fingerprint databases, *containing data relating to individuals convicted of recordable offences*, will be made available for searching by other participating States, and that the higher UK scientific standards will be applied to matches in the UK” (emphasis added).²⁸ The intention was to distinguish between the DNA profiles of individuals who have been convicted of a criminal offence and those who have not.

3.4 The [Protection of Freedoms Act 2012](#) sets out the legal framework governing the retention and destruction of DNA profiles in the UK. It also establishes a Biometrics Commissioner (the current-post holder is Paul Wiles) responsible for overseeing the retention and use of biometric material, including DNA profiles. His [Annual Report for 2018](#) provides an overview of the rules determining when DNA profiles taken by the police as part of a criminal investigation can be retained and for how long.²⁹ As a general rule, the police are only allowed to retain the DNA profiles of criminal suspects until any criminal investigation or proceedings against them have concluded. If they are convicted of a recordable offence, their DNA profiles may be kept indefinitely in the national DNA database, though there are some important exceptions for young people under the age of 18.³⁰ If they are not convicted, their DNA profiles must be deleted. An exception is made for individuals arrested or charged with (but not convicted of) a serious violent, sexual or terrorist offence or burglary. Their DNA profiles may be retained for an extendable period of three years from arrest.³¹

3.5 In its Business and Implementation Case published before the vote in Parliament to endorse UK participation in Prüm, the Government acknowledged concerns that there was no threshold of criminality which had to be exceeded before requesting a comparison of DNA profiles, meaning that they could just as easily be requested for a minor offence as a serious one:

Prüm does not permit Member States to reject a request on the grounds of proportionality; there is simply no technical way of stopping a request being made. However it is possible, in the event of a hit, for a Member State to choose not to send personal data if the crime abroad is not sufficiently serious i.e. to apply a proportionality bar in respect of the offence being investigated.³²

3.6 On 6 June 2019, the EU Justice and Home Affairs Council adopted a [Council Implementing Decision](#) officially launching the automated exchange of DNA profiles between other Prüm participants and the UK. The Decision was taken after the Council had considered the findings of an evaluation report reviewing the UK’s response to questionnaires on data protection and DNA data exchange, and the outcome of an evaluation visit and pilot run. Whilst authorising DNA exchanges to commence from 14 June 2019, the Decision also highlights the “practical and operational significance” of

28 See [Hansard, 8 December 2015, col 963](#)

29 Annual Report 2018 of the Commissioner for the Retention and Use of Biometric Material presented to Parliament in June 2019. See chapter 1 and Appendix A.

30 A recordable offence is one for which the police are required to keep a record. They include crimes for which an individual could be sentenced to a term of imprisonment or which have otherwise been made recordable by statute.

31 For further details, see pp. 2–3 and Appendix A of the Biometrics Commissioner’s Annual Report 2018.

32 See p.65 of Command Paper 9149.

accessing the DNA profiles of criminal suspects. It requires the UK to “complete a review of its policy of excluding suspects’ profiles from automated DNA data exchange” by 15 June 2020, adding:

If, [by 15 June 2020], the UK has not notified the Council that it makes available the DNA of suspects in conformity with Decision 2008/615/JHA, the Council shall, within three months, re-evaluate the situation with regard to the continuation or termination of DNA data exchange with the UK.³³

3.7 In his [Explanatory Memorandum of 1 July 2019](#), the Minister for Policing and the Fire Service (Rt Hon. Nick Hurd MP) confirms that the UK voted in favour of the Council Implementing Decision and says he expects Prüm DNA exchanges with the UK to “go live” in the week beginning 8 July 2019. He explains that the Decision is “the final step in implementing the [UK’s] decision to participate in Prüm taken in 2015” and is essentially “a matter for operational partners”. The Government did not therefore consider there was a need for the Decision to be deposited for scrutiny before it was formally adopted by the Council.

3.8 The Minister describes the “substantial operational benefits” of Prüm DNA exchanges:

Prüm will expand the current capability of our law enforcement and intelligence agencies. It will give our agencies a new tool to rapidly and efficiently identify criminals who have committed serious offences in the UK who have also committed offences in other states party to Prüm; to solve serious crimes that would otherwise go unsolved; and to protect UK citizens and keep our communities safe.

Prüm will enhance the mutual security of the UK and fellow Member States and presents a significantly faster process than the current information sharing process in relation to biometrics. It currently takes an average of 143 days for a DNA match to be returned through the Interpol process, compared with just 15 minutes under Prüm.

3.9 Moreover, the sharing of DNA profiles through Interpol channels takes place on a case-by-case basis and requests for DNA checks are carried out manually. The Prüm framework allows these exchanges and checks to happen more rapidly and efficiently and in a way that “cannot be achieved unilaterally at Member State level, nor bilaterally between Member States”.

3.10 The Minister notes that the review required by the Council Implementing Decision touches on one of the safeguards put in place by the Government when legislating to give effect to Prüm in the UK. He makes clear that it was on the basis of a commitment only to share the DNA profiles of individuals *convicted* of a recordable offence that Parliament agreed to the UK joining Prüm.

Other Member States have not inserted these safeguards, and as such, a provision of the UK’s access to Prüm DNA is that the UK will carry out a review of its policy on suspects. Work will progress to undertake this review once the UK element of Prüm DNA goes live.

33 See recital (10) and Article 2 of the Council Implementing Decision.

3.11 Looking beyond Brexit, the Minister confirms that the UK will be disconnected from Prüm (and, as a consequence, other Member States’ national DNA databases) if the UK leaves the EU without a withdrawal agreement. He continues:

Operational partners have plans in place to deal with existing data flows at the point of exit and those plans have taken into account the legal bases for retaining or having to delete certain Prüm data at the point of exit. If we disconnect, we will revert to the current process—manual data exchange mechanisms via Interpol, facilitated by the National Crime Agency.

3.12 The Government nonetheless intends to seek a “bespoke” internal security agreement with the EU which would reflect “our unique status and shared security interests”. He notes that the [Political Declaration](#) accompanying the draft EU/UK Withdrawal Agreement agreed by EU and UK negotiators last November envisages establishing “reciprocal arrangements for timely, effective and efficient exchanges of [...] DNA, fingerprints and vehicle registration data (Prüm)”.³⁴

Our Conclusions

3.13 **We note the Minister’s reason for not depositing the Council Implementing Decision for scrutiny before it was adopted by the Justice and Home Affairs Council in June. Whilst we appreciate that implementing acts are not routinely deposited for scrutiny, [Cabinet Office guidance on Parliamentary Scrutiny of EU Documents](#) makes clear that those which may be considered “sensitive” should be drawn to the Committee’s attention.³⁵ In our view, the approval given by the Council for the UK to begin the automated exchange of DNA profiles is more than a simple procedural step on the way to full participation in Prüm or a purely operational matter. This is because the approval is made conditional on the Government undertaking to conduct a review of one of the safeguards Parliament itself insisted on when agreeing to support UK participation in Prüm. We are disappointed that the Minister did not give us advance notice of the Council Implementing Decision but also acknowledge that he has responded promptly to our request for it to be formally deposited in Parliament and to provide an Explanatory Memorandum.**

3.14 **The wording of the Council Implementing Decision suggests that the Council does not consider the limitations on DNA data sharing introduced by the Government to be compatible with the Prüm framework which requires Member States to “ensure the availability of reference data from their national DNA analysis files”.³⁶ If this is indeed the case, it is not clear to us that the Council would have the legal authority to authorise DNA data sharing, even on a temporary basis. We ask the Minister to clarify the Council’s position, as well as any concerns expressed in the evaluation visit report on the UK, and to tell us whether he considers that excluding the DNA profiles of criminal suspects from the Prüm data exchange mechanism is “in conformity” with the Prüm Decisions.³⁷**

34 See para 86 of the draft Political Declaration.

35 See para 4.11.3 on p.59 of the guidance.

36 See Articles 2–7 of [Council Decision 2008/615/JHA](#).

37 See Article 2 of the Council Implementing Decision.

3.15 We note the Government’s intention to begin work on the review required by the Council Implementing Decision after the “go live” date for exchanging DNA data. We would welcome further information on the process and timescale envisaged for conducting the review and how the Government intends to inform and consult with Parliament during the review. We ask the Minister for his assessment of the likelihood that the EU would terminate DNA exchanges with the UK if there is no change to the Government’s current policy of limiting data sharing to the DNA profiles of convicted criminals.

3.16 We note the Government’s intention to negotiate a “bespoke” internal security agreement when the UK leaves the EU which would include continued Prüm cooperation. Drawing on existing precedents (the EU has concluded Prüm data sharing agreements with Iceland, Norway and Switzerland which are not yet operational), we ask the Minister whether he considers that such an agreement would allow greater scope for the UK to maintain the safeguards currently in place for Prüm DNA exchanges or, conversely, whether the EU would insist on full compliance with the requirements set out in the Prüm Decisions.

3.17 Pending further information, the Council Implementing Decision remains under scrutiny. As we understand that the review requested by the Council is now underway, we ask the Minister for a prompt response so that we can return to this matter during our September sitting. We draw this chapter to the attention of the Home Affairs Committee, the Justice Committee and the Joint Committee on Human Rights.

Full details of the documents

[Council Implementing Decision \(EU\) 2019/968](#) on the launch of automated data exchange with regard to DNA data in the United Kingdom: (40679),—.

Previous Committee Reports

None. For a detailed overview of the Prüm Council Decisions, see the European Scrutiny Committee’s [Twelfth Report](#), HC 342–xii (2015–16) on *Cross-border law enforcement cooperation—UK participation in Prüm*.

4 Negotiating mandates for EU-US trade talks

Committee's assessment	Politically important
<u>Committee's decision</u>	Cleared from scrutiny (scrutiny waiver previously granted until 22 May 2019) but further information requested; drawn to the attention of the Committee on Exiting the EU, the Foreign Affairs Committee and the International Trade Committee
Document details	(a) Recommendation for a Council Decision authorising the opening of negotiations of an agreement with the US on the elimination of tariffs for industrial goods (b) Recommendation for a Council Decision authorising the opening of negotiations of an agreement with the US on conformity assessment
Legal base	(a) Articles 207(3), 207(4), 218(3) and 218(4) TFEU, QMV (b) Articles 207(3), 207(4), 218(3) and 218(4) TFEU, QMV
Department	International Trade
Document Numbers	(a) (40336), 5459/19 + ADD 1, COM(19) 16; (b) (40335), 5461/19 + ADD 1, COM(19) 15

Summary and Committee's conclusions

Overview

4.1 In January 2019, the Commission proposed negotiating mandates to launch new, 'targeted'³⁸ trade talks with the US on a) the elimination of tariffs on industrial goods and b) conformity assessment, by making it easier for companies to prove their products meet technical requirements in both the EU and US.

4.2 The proposals are part of a package of measures intended to launch a 'new phase' in EU-US trade relations³⁹ and mitigate escalating trade tensions (following the US's imposition of additional steel and aluminium duties on EU imports since 1 June 2018 and the ongoing threat of 25 per cent tariffs on cars and car parts from the EU).

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

39 See the [Joint Statement](#) of Commission President Juncker and US President Trump of 25 July 2018.

The Government's position and the Committee's previous conclusions

4.3 The Minister of State for Trade Policy (George Hollingbery MP) has fully supported both negotiating mandates from the outset, stressing the “significant risk” of the US imposing Section 232 tariffs on cars and car parts from the EU if there is no progress in these EU-US negotiations.

4.4 However, the Minister has not been willing or able to comment on whether the UK would seek to transition or replicate the potential EU-US agreements post-exit. He has simply stated that the negotiating objectives published by the US Trade Representative (USTR) for post-Brexit trade talks with the UK are “a clear demonstration of the US Administration’s commitment to beginning talks as soon as possible and is something that the Government has welcomed” and “mark the starting point...and not the end”.

4.5 At its meeting on 3 April 2019, the Committee granted the Minister a further time-limited scrutiny waiver until 22 May 2019 to be able to support the proposals, on the condition that:

- the Minister keep the Committee updated on significant developments in the negotiations and the outcome of any vote, including different Member States’ positions; and
- the final compromise text of the proposed Council Decisions and scope of the mandates does not significantly deviate from the information shared by the Minister (see the Committee’s previous Report chapters listed at the end for further information).

The Minister's updates

4.6 In his letter of 7 May 2019, the Minister informs the Committee that the mandates were agreed by COREPER (Ambassadors) on 11 April 2019 and formally adopted by qualified majority voting (QMV) as an ‘A point’ (no discussion) in Council on 15 April 2019. France voted against and Belgium abstained, but all other Member States, including the UK, voted in favour of the mandates. He notes that “this was a departure from the established convention that EU trade mandates are adopted by unanimity”.

4.7 The Minister also confirms that the substance of the proposed Council Decisions and accompanying mandates remains the same as the compromise versions detailed in the Minister’s letters to the Committee of 4 March 2019 and 29 March 2019, clarifying that the UK did not object to “[s]mall changes” to the mandate on the elimination of tariffs on industrial goods, which now:

- includes “language stating that the negotiating mandate for the Transatlantic Trade and Investment Partnership (TTIP) is obsolete and no longer relevant”. The Minister does not consider that this impacts the substance of the mandates; and
- allows for the “most sensitive products in [the energy intensive product and fisheries] sectors to be exempted from tariff elimination”. The Minister states

that “this did not raise concerns for the UK” as “the negotiating directive for this agreement...stipulates that any agreement must be WTO compatible, and therefore must cover enough tariff lines to encompass substantially all trade”.

4.8 In his general trade policy update letter of 22 May 2019, the Minister notes that “exploratory talks between the Commission and US authorities began in Washington DC during the week of [6] May 2019...[but] formal negotiations have yet to be launched”. He also provides an update on potential Section 232 measures on cars, stating that:

- President Trump “issued a proclamation on [17] May 2019 stating the Section 232 investigation on autos found that present quantities of auto imports impair US national security” and has “instructed USTR to negotiate deals with the EU and Japan to adjust the level of auto imports into the US and extended the deadline for a decision on possible auto tariffs by a further 180 days”;
- the Commission has prepared a list of countermeasures in response to potential US auto tariffs, but this has not yet been shared with Member States; and
- while “[the UK] auto industry does not present a threat to US national security”, the Government continues to support ongoing EU-US negotiations and remains “fully committed to finding a solution to avoid any potential auto tariffs that works for all sides”.

4.9 We thank the Minister for his update on the outcome of the negotiations and note that the mandates were agreed by all Member States, except France, which opposed (despite stronger commitments/language on the EU only negotiating comprehensive FTAs with countries that have ratified the Paris Agreement on climate change and the TTIP negotiating mandate becoming “obsolete”) and Belgium, which abstained.

4.10 We highlight that their adoption by QMV (the legal requirement) marks a significant departure from the established convention that EU trade mandates are adopted by unanimity (with the support of all Member States), not least given the sensitivities involved. This break in convention (and the divisions exposed in Council) may be welcomed by other third countries seeking to launch trade negotiations with the EU (including the UK after exit).

4.11 We also note that EU-US trade tensions have recently escalated further following France’s approval of a digital services tax (DST) and [USTR’s announcement of 10 July 2019](#) that it is initiating a Section 301 of the Trade Act of 1974 investigation (that the DST is an unfair trading practice).

4.12 For ease of reference for the House, we summarise the key findings of our scrutiny of the final mandates adopted by the Council and the Government’s position on them as follows:

- a) the mandate on the elimination of tariffs on industrial goods:
 - covers all goods other than those included in Annex 1 of the WTO Agreement on Agriculture; it therefore *excludes* agriculture, but *includes* fish and fish products as well as forestry products; the Government has not raised any objections about scope or coverage;

- *includes* cars and car parts, but “allows for potential US sensitivities around pick-up trucks to be taken into consideration in the negotiations”; the Government supports this;
 - *makes clear* that the Commission will suspend negotiations if the US introduces new measures under Section 232 of the Trade Expansion Act of 1962 and may suspend talks if the US imposes tariffs under Section 301 of the 1974 Trade Act or under any similar US law; and a final agreement is conditional on the US removing Section 232 steel measures against the US;
 - *commits* the Commission to publishing a Sustainability Impact Assessment of the agreement, which takes into account the Paris Agreement on Climate Change; the Government did not actively seek this addition and does not consider it presents any issues for the UK;
 - *references* (in the recitals of the Council Decision) the US’s withdrawal from the Paris Agreement and that the EU only negotiates deep and comprehensive FTAs with parties to this agreement;
 - *includes* (in the recitals of the Council Decision) new commitments to take into account sensitivities in the energy intensive products and fisheries sectors by providing appropriate phasing out periods for the elimination of tariffs in these areas and allowing the “most sensitive products in [the energy intensive product and fisheries] sectors to be exempted from tariff elimination”; their addition has not changed the Government’s support for opening negotiations;
 - *includes* language (in the Council Decision) that the negotiating mandate for the Transatlantic Trade and Investment Partnership (TTIP) is obsolete and no longer relevant; the Government did not raise any policy concerns about this; and
- b) the mandate on facilitating conformity assessment is intended to maintain (and where possible improve) regulatory standards and a high level of protection, which the Government has actively supported.

4.13 As the Minister has provided a full update on the outcome of the vote in Council and changes to the adopted texts, we are content to clear the proposals from scrutiny, subject to the Minister providing a) regular updates on the negotiations and related bilateral trade issues that may impact their progress (for example, but not limited to: any Section 232 or Section 301 investigations and measures by the US and potential countermeasures by the EU; EU steel safeguard measures; and wider trade disputes) and b) updated assessments of their implications for the UK post-exit.

4.14 We draw the Minister’s updates and our conclusions to the attention of the Committee on Exiting the EU, the International Trade Committee and the Foreign Affairs Committee.

Full details of the documents

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

Previous Committee Reports

Sixty-second Report HC 301–lx (2017–19), [chapter 4](#) (3 April 2019); Fifty-ninth Report HC 301–lvii (2017–19), [chapter 5](#) (13 March 2019); Fifty-sixth Report HC 301–lv (2017–19), [chapter 7](#) (27 February 2019).

5 Financial services: EU supervision of UK-based central counterparties after Brexit (EMIR 2.2)

Committee's assessment	Politically important
Committee's decision	(a) and (b) Cleared from scrutiny; drawn to the attention of the Committee on Exiting the EU and the Treasury Committee
Document details	(a) Proposal for a Regulation on the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs; (b) Recommendation for a Decision amending Article 22 of the Statute of the European System of Central Banks and of the European Central Bank
Legal base	(a) Article 114 TFEU; ordinary legislative procedure; QMV; (b) Article 129(3) TFEU; ordinary legislative procedure; QMV (withdrawn)
Department	Treasury
Document Numbers	(a) (38840), 10363/17 + ADDs 1–3, COM(17) 331; (b) (38883), 10850/17,—

Background and Committee's conclusions

5.1 To prevent a reoccurrence of the financial instability caused by the loosely-regulated derivatives trades that in part precipitated the 2008 economic crisis,⁴⁰ the EU in 2012 adopted the [European Markets Infrastructure Regulation](#) (EMIR).⁴¹ This legislation obliges EU-based financial market participants to 'clear' most types of over-the-counter (OTC) derivative trades through a central counterparty (CCP).⁴² The CCP is, in effect, paid to take on most of the credit risk of both parties to a derivatives contract. This means that, if either counterparty defaults on their obligations, the CCP absorbs most of the impact and insulates the other counterparty from the resulting losses.⁴³ This, in theory, prevents a chain reaction of bankruptcies if one large financial institution defaults on its obligations linked to derivatives to which it is a counterparty. In addition, the details

40 More specifically, the financial crisis in the late 2000s exposed a serious lack of transparency in the trading of OTC derivatives that allowed systemically-important institutions to build up unsustainable levels of exposure to risky securitized assets, including sub-prime mortgages. This eventually resulted in Lehman Brother's collapse, and \$182 billion US Government bail-out for AIG, in September 2008.

41 [Regulation 648/2012](#). The Coalition Government in power in the UK at the time [voted in favour of the legislation](#).

42 A derivative is a security which can be sold and which derives its value from an underlying asset, like a currency or bonds, without actually transferring ownership of that asset. It is said to be 'over the counter' if the derivative can be traded without being listed on an exchange.

43 To ensure these credit risks are managed sustainably rather than simply transferred to the CCP, the central counterparty is subject to strict prudential and organisational requirements.

of derivatives transactions have to be reported to a regulated trade repository, to which European regulators and policy-makers have access to assess whether there are potential risks to financial stability.

5.2 The clearing and reporting obligations for EU-based financial institutions under EMIR must normally be fulfilled by a CCP or repository based in the European Economic Area, which—once licensed by their home Member State—then has an automatic ‘passport’ to operate in any EEA country.⁴⁴ Alternatively, clearing and reporting obligations can be fulfilled with a non-EU entity, provided it is located in a ‘third country’ whose regulatory regime has been approved by the European Commission as equivalent to EMIR, *and* the individual entity has been granted formal recognition by the central EU regulator for financial markets (the European Securities and Markets Authority or ESMA).⁴⁵

5.3 The UK is currently home to the world’s largest clearing industry. For example, its three central counterparties are responsible for clearing three-quarters of euro-denominated interest rate swaps, which are the largest category of OTC derivatives.⁴⁶

Proposals to reform the supervision of CCPs operating in the EU

5.4 In June 2017, three months after the UK notified its intention to withdraw from the EU under Article 50 TEU, the European Commission [proposed amendments](#) to EMIR relating to the way CCPs active within the European Union are supervised. The proposal is commonly referred to as “EMIR 2.2”.

5.5 Most prominently, the legislation would significantly increase the legal barriers to market entry for non-EU CCPs wanting to provide clearing services to EU-based counterparties. Under the Commission proposal, ESMA could refuse or withdraw formal recognition from a ‘third country’ CCP—one of the criteria that must be met by a non-EU entity before it can offer clearing services inside the EU under EMIR⁴⁷—if it is, or could become, “systematically important” to the European Union’s financial stability. The logic of the so-called ‘location policy’ is that ESMA’s refusal of recognition would lead to a loss of market access for the CCP in question, thereby incentivising—or forcing—it to relocate its European business to an EU country. In parallel, the European Central Bank (ECB) in June 2018 [also asked](#) for an amendment to its Statute that would give it a separate power to also regulate CCPs to “ensure efficient and sound clearing and payment systems, and clearing systems for financial instruments”. That would also, potentially, give the Bank a parallel authority to demand a CCP relocate to a Eurozone country if they were not based in the single currency area already.⁴⁸

44 EMIR was incorporated into the EEA Agreement, thereby extending it to Norway, Iceland and Liechtenstein, by [Decision 206/2016 of the EEA Joint Committee](#) of 30 September 2016. There are currently no CCPs authorised under EMIR based in those three countries.

45 Under EU law, regulated financial services providers that trade in derivatives—notably banks and investment firms—face additional prudential requirements if they clear transactions on CCPs that are not authorised or recognised under EMIR.

46 Commission Impact Assessment [SWD\(2017\) 246](#).

47 The second major criterion is that the non-EU CCP must be based in a country whose regulatory regime for clearing of derivatives has been formally approved as ‘equivalent’ to EMIR by the European Commission.

48 The proposed amendment to the ECB Statute was put forward after the Bank’s earlier attempt to enforce such a location policy in 2011 was invalidated by the General Court of the European Union (at the UK’s request), because the Bank’s Statutes did not confer a power to regulate clearing services important to the Eurozone explicitly. See for more information the [judgment of the General Court of the European Union](#) in case T-496/11, delivered on 4 March 2015.

5.6 The Commission proposal also touches on the way in which EU-based CCPs are supervised, giving ESMA a more prominent advisory role in the supervision of CCPs established in the EU (although decision-making powers, such as whether to grant or withdraw a licence, would remain with individual Member States). In addition, a *further* set of amendments to EMIR—relating to the substantive clearing and reporting obligations that apply to EU-based counterparties engaging in derivatives transactions, rather than how these are supervised—is also being finalised in Brussels. The final substance of the ‘EMIR REFIT’ proposal, which was agreed between the European Parliament and Member States in February 2019, is set out in our [Report of 27 March 2019](#).

Parliamentary scrutiny of the CCP supervision proposals

5.7 The Government has consistently voiced its opposition to the proposed ‘location policy’ for non-EU Central Counterparties, the centrepiece of the Commission’s EMIR 2.2 proposal to reform supervision of CCPs operating in the EU. In the Treasury’s initial [Explanatory Memorandum](#), dated July 2017, the then-Economic Secretary (Rt Hon. Stephen Barclay MP) told us that it was “inconsistent [with] a global approach to CCP regulation and supervision”, and “would risk fragmenting global derivatives markets”, acting as a “drag on growth”. Instead, the Government said any concerns about the systemic risks of clearing derivatives between different jurisdictions—i.e. between the UK and the EU after Brexit—should be “addressed through heightened supervision, deep cooperation and clear coordination”.⁴⁹

5.8 His successor as Economic Secretary (John Glen MP) provided a [first update](#) on the discussions on the file between EU Member States on 19 April 2018.⁵⁰ This noted that negotiations on the ‘location policy’ were still in full flow, and the UK continued to oppose the proposal (preferring instead to rely on the concept of ‘deference’, where regulators in one jurisdiction accept that those of another achieve the same regulatory outcome). The Minister also referred to concerns voiced by both Sweden and the US⁵¹ to the proposal, and explained that the European Parliament had taken the preliminary view that any decision to try and force a ‘third country’ CCP to relocate by refusing recognition should only be used as a “last resort” and be made based on an objective, evidence-based assessment.⁵²

5.9 In our [subsequent Report](#) on the proposal to the House in May 2018, we noted that under the [first draft of the Withdrawal Agreement](#) on the UK’s exit from the EU (which had been published in March 2018), the UK would stay in the Single Market for a transitional period beyond March 2019. During this time, British CCPs would retain their passporting rights in the EEA because EU law would continue to apply in full in the UK. However, that transition would depend on the Agreement, in full, being ratified by both the House of Commons and the European Parliament before the UK ceased to be a Member State of the EU.

49 We first reported the Commission and ECB proposals, and the Government’s position, to the House [on 22 November 2017](#), noting the clear risk of economic disruption if UK-based CCPs would lose their right to service EU-based counterparties abruptly when the UK formally exits the European Union on 29 March 2019.

50 We reported the Minister’s letter to the House in our [Report of 9 May 2018](#).

51 The Minister’s [letter of 19 April 2018](#) stated that US authorities noted that the proposal “goes beyond the US framework and indicated that the US may need to reconsider their regulatory framework in response to the final outcome”.

52 See the draft European Parliament Report (document [PE616.847](#)). Please note this represented only the view of the Rapporteur.

5.10 Discussions on the CCP supervision proposals continued throughout 2018. By November that year, the Economic Secretary [informed us](#) that it seemed certain some form of the ‘location policy’ for systemically important CCPs would be incorporated into EMIR. However, both the European Parliament and national governments were at that stage actively exploring substantive amendments to soften the impact of the original Commission proposal.⁵³ Options included the possibility of ESMA limiting recognition only to certain service lines, rather than simply all or none of a CCP’s activities; phasing in any withdrawal of market access from a non-EU CCP through a transitional or adaptation period once recognition was refused for financial stability reasons; and limiting the effects of withdrawing recognition only to new contracts, leaving derivatives already cleared unaffected. The Minister also explained that discussions were on-going about how the proposed new regulatory powers of the European Central Bank over clearing systems would interact with EMIR.

5.11 In November last year, the Minister indicated that Member States were likely to agree on their position on the proposed legislative changes to the supervision of CCPs in the EU before the end of the year.⁵⁴ The Government’s overall assessment at that stage was that both the European Parliament and the Presidency compromise text relating to EMIR and the ECB Statute “could be considered an improvement on the original [Commission proposal] in some areas”, especially when it came to ensuring recognition decisions are based on a “robust analysis” of the potential impact on the European economy.

5.12 However, the Treasury still had concerns about the fundamentals of the ‘location policy’ which—even in the watered-down forms proposed by the Parliament and the Council—risk “cutting the EU off from the global liquidity pools” provided by UK-based CCPs and “will ultimately raise costs for EU businesses”. The UK Government was, in any event, not alone in opposing the EU’s approach: in autumn 2018, the chairman of the US Commodity Futures Trading Commission (CFTC) again [voiced public concerns](#) about the potential impact of the proposals on American CCPs, saying that “the CFTC has every right to expect that non-U.S. regulators will defer to the [it] on oversight of the U.S. derivatives markets”.⁵⁵

5.13 Overall, the Minister’s view in November 2018 was that the final amendments to EMIR should:

- “properly reflect” the principle of regulatory deference, meaning that the EU’s legal framework for systemically-important third country CCPs should normally allow them to be supervised by their home regulator (e.g. the Bank of England);
- “not constrain EU authorities in making appropriate judgements that protect the proper functioning of global markets” (that is to say, the law as amended

53 [Letter](#) from John Glen MP to Sir William Cash MP (21 November 2018).

54 We reported the Minister’s update to the House in our [Report of 28 November 2018](#), again emphasising the potential impact of the proposals on the UK clearing industry following Brexit. We also noted, again, that the precise way in which the putative powers for the Commission and the European Central Bank to require relocation of systemically-important CCPs would interact remained unclear and potentially contradictory. The Minister also explained that discussions were on-going about how the proposed new powers of the ECB over clearing systems would interact with EMIR.

55 [Remarks](#) by CFTC Chairman J. Christopher Giancarlo at the ISDA Industry and Regulators Forum, Singapore (12 September 2018).

should not require ESMA and the Commission to refuse recognition where that is clearly detrimental for the EU’s access to international market infrastructure); and

- “avoid the potential for conflict” in instructions issued to CCPs by the different regulatory bodies by whom they would be overseen, given the complex interplay between the proposed responsibilities of ESMA, the Commission, national regulators and the European Central Bank in the field of clearing.

5.14 Another issue of contention, which the Minister did not refer to in his letter, was the decision-making procedure for refusing recognition to systemically important third country CCPs. In particular, there was an outstanding question as to whether such a refusal would be formalised by means of a Delegated Act—giving both the European Parliament and the Member States the power to block the decision—or Implementing Act (in which case only the Member State representatives would be asked to approve the decision by qualified majority).⁵⁶

Developments since November 2018

5.15 On 3 December 2018, the EU Member States in the Council [agreed their common position](#) on the CCP supervision proposal under EMIR, paving the way for negotiations with the European Parliament on its final legal text. This sought to add further conditions to the entire ‘equivalence’ process before non-EU CCPs would, in principle, be allowed to provide their services to European counterparties from outside the European Union (e.g. from London). Moreover, it maintained the ‘location policy’ proposals which would allow the European Commission to refuse market access to a systemically important, non-EU Central Counterparty *even where it did also meet these stricter ‘equivalence’ requirements*.

5.16 The UK entered a [statement in the minutes](#) of the meeting at which the other Member States endorsed this legal text, recording its opposition to the proposed revisions of EMIR because of its approach to supervision of non-EU CCPs. While recognising “valid concerns about the future supervision of UK CCPs with EU users” when EMIR no longer applies to and in the UK following Brexit, the Government objected in particular to a proposed amendment requiring non-EU countries to guarantee that their domestic regulator would “assure”—without further qualification—the enforcement of ESMA’s decisions with respect to CCPs within their jurisdiction (in return for continued market access into the EU under the equivalence regime). Such decisions could relate, for example, to requests for commercially confidential information; carrying out on-site inspections; and financial sanctions in cases of non-compliance. According to the Treasury, the new wording of the Regulation was objectionable because:

This would mean that ESMA’s decisions would be binding on third country supervisors [as a condition of any ‘equivalence’ decision]. It could require a supervisor to enforce a decision [that] may conflict with its own domestic requirements and could increase financial stability risks in a stress scenario. This proposal is unprecedented in supervisory cooperation and is not a workable solution for cross border supervisory and regulatory cooperation

⁵⁶ We considered the European Parliament was likely to push for such decisions to be taken by Delegated Act, given this would increase its control over the process.

for internationally active CCPs. It could become a barrier to market access in the future as third countries are very unlikely to bind their independent supervisors in this way.

Given the significant supervisory toolkit available to ESMA under EMIR in relation to third country CCPs—including on-site inspections, fines and withdrawal of recognition—it is unnecessary to require a third-country supervisor to agree to enforce decisions that could potentially conflict with their own statutory objectives.⁵⁷

5.17 At the same time, the Member States also agreed on a [draft set of amendments](#) to the ECB Statute which significantly watered down the Bank’s powers in relation to the clearing industry. Whereas the original proposal would have given the ECB the power to “make regulations to ensure efficient and sound [...] clearing systems for financial instruments” in the Eurozone, the Member States wanted to introduce an exhaustive list of the substance of such ‘regulation’. While these include requirements for non-EU CCPs to submit information and cooperate in stress tests, it did not include for a version of the ‘location policy’ for Central Counterparties based outside the single currency area which the Bank tried—and failed—to introduce in 2011. The ECB would, however, be involved in the assessment process of ‘third country’ central counterparties by ESMA under the revised version of EMIR.

5.18 As the European Parliament had already adopted its position on EMIR 2.2 (and the putative changes to the powers of the European Central Bank) in summer 2018,⁵⁸ the ‘trilogue’ negotiations between the Member States and MEPs on the final shape of the new rules began in early 2019. During the final stretch of the negotiations, the UK continued to argue for a change to the relevant provisions of the Regulation to read that ‘third country’ supervisors seeking equivalence (and therefore EU market access for their CCPs) would have to “appropriately” assure the effective enforcement of decisions adopted by ESMA, to replace the “unprecedented and unworkable” proposal whereby such decisions would be binding on the third country’s domestic regulator irrespective of circumstances, and even if it does not agree with them.

The final agreement on EMIR 2.2

5.19 On 13 March 2019, the European Parliament and Council [announced](#) that they had reached a final agreement on both the changes to EMIR and the amendments to the ECB Statute. The Economic Secretary, following several requests, eventually provided an assessment of the final set of amendments by letter dated 9 July (nearly four months after the negotiations were concluded). With respect to EU-based CCPS, under the [revised version of the Regulation](#) a new firm-specific Supervisory Committee within the European Securities and Markets Authority would be established for each such firm. However, as demanded by the Member States, ultimate supervisory responsibility would remain with national regulators (albeit with an ability for ESMA to submit opinions in certain cases).

57 The Government also noted that “this proposal is unbalanced in the significant powers it gives ESMA and the ECB over non-EU CCPs when they are not given these same powers over EU CCPs. This means ESMA could potentially have powers to “dual supervise” all significant CCPs worldwide except those inside the EU”.

58 See European Parliament documents [A8-0190/2018](#) and [P8_TA\(2018\)0288](#).

Conditions for market access by non-EU CCPs under ‘equivalence’

5.20 As expected, EMIR 2.2 has the potential to make it significantly more difficult for non-EU CCPs to provide clearing services within the European Union under EMIR’s equivalence regime compared to the current rules.

5.21 In particular, the new Regulation would make any ‘equivalence’ decisions with a non-EU country dependent on a cooperation agreement between ESMA and the relevant non-EU regulator which—against the UK’s vocal opposition—*would* need to specify “the procedures for third country authorities to assure the effective enforcement of decisions adopted by ESMA” in relation to CCPs in the third country’s jurisdiction. The Government’s proposed addition of the qualifier “appropriately” to the word “assure”, to give non-EU regulators more flexibility to disregard ESMA’s decisions with respect to CCPs in their jurisdiction without violating the terms of an equivalence decision, was rejected by the other Member States. ESMA would also need a legally enforceable right to access the CCP’s premises in its home country for supervisory purposes.

5.22 In its [last Report](#) on the proposal, dated 28 November 2018, the Committee asked the Treasury whether the conditions attached to equivalence decisions under EMIR 2.2—and in particular the apparent requirement the Bank of England would have to “assure” enforcement of ESMA’s decisions against UK-based CCPs in all cases, irrespective of their merit—would discourage the Government from seeking equivalence after Brexit. The Minister’s letter of 9 July 2019 now appears to offer a more nuanced assessment, saying this is only “one possible interpretation of the [legal] text”. In particular, he refers to a new provision on “comparable compliance”,⁵⁹ which would allow individual systemically-important CCPs based outside the EU (see paragraph 25 below) to seek a declaration that it already meets EMIR’s organisational, conduct and prudential requirements by virtue of its domestic regulatory framework. However, it is not immediately apparent how this would override the requirement for an intrusive Memorandum of Understanding between ESMA and the Bank of England in return for an equivalence decision, which applies at country-level (unlike “comparable compliance”, which will be decided on a firm-specific basis, and appears to be conditional on country-wide “equivalence” having been granted already).

Requirements for systemically-important non-EU CCPs

5.23 In addition to the new, stricter approach to equivalence generally, the new Regulation will apply further restrictions to non-EU Central Counterparties deemed to be (potentially) systemically important to the European Union. ESMA would classify these CCPs as “tier 2”.⁶⁰ To obtain recognition to provide services in the Union, tier 2 CCPs would face a more intensive level of scrutiny with respect to the prudential requirements in their home country, and the potential imposition of additional regulatory requirements by any of the EU’s Central Banks for whom the CCP’s operations are important, primarily the European Central Bank.⁶¹

59 New Article 25a of Regulation 648/2012.

60 New Article 25(2b) of Regulation 648/2012.

61 For example, Central Banks can request the non-EU CCP to provide further information, cooperate in market stress testing, and open a deposit account with the Bank. See Article 25(2b)(b) of Regulation 648/2012 as amended.

5.24 As noted, under certain conditions they could “meet EMIR requirements while following its own domestic framework” under the new “comparable compliance” provisions. In May 2019, ESMA [launched a formal consultation](#) on the relevant provisions of the new Regulation.⁶² As such, the Minister says, it is “too early to understand exactly how the new EMIR framework will be applied [third country CCPs] in practice”.

5.25 The final amendments under EMIR 2.2 also maintain the essentials of the ‘location policy’ for the largest non-EU CCPs as originally proposed by the European Commission in spring 2017. A new Article 25(2c) would allow ESMA—after a “fully reasoned assessment”—to “conclude that a CCP or some of its clearing services are of such substantial systemic importance [to the EU] that it should not be recognised to provide certain clearing services or activities”. Based on such a recommendation, which would also have to quantify the costs to the EU of *not* granting recognition, the Commission could refuse to allow a non-EU CCP to perform specific services within the EU (even if its domestic regulatory regime otherwise matches EMIR perfectly).⁶³

5.26 However, such a refusal would have to specify an “adaption period”—of no more than two years⁶⁴—during which the non-EU CCP in question could continue to provide its services while alternative infrastructure is established within the EU. This outcome represents a softening of the original Commission proposal, where a refusal to grant equivalence would have applied immediately and to all operations performed by a non-EU CCP and not, as in the final Regulation, potentially only to “some of its clearing services” and after an “adaptation period”.

Delegated and Implementing Acts

5.27 EMIR 2.2 will require the European Commission to adopt a number of Delegated and Implementing Acts—the EU equivalent of Statutory Instruments, formally known as tertiary legislation—to give full effect to the new rules. It will do so on the basis of formal advice provided by the European Securities and Markets Authority, and after public consultation of interested parties:

- delegated Acts, which supplement or amend non-essential parts of EU law, are adopted by the Commission. They take effect automatically, unless they are vetoed by a simple majority in the European Parliament or a qualified majority of Member States in the Council. Under EMIR 2.2, the Commission has to adopt Delegated Acts, including ones to specify the practical implementation of the “comparable compliance” provisions and the criteria to be used by ESMA to establish whether a non-EU CCP falls within the “tier 2” category; and
- implementing Acts aim to ensure uniform implementation of EU legislation by all Member States. They have to be actively approved by a qualified majority of representatives of the EU countries in a policy-specific technical committee (in the case of EMIR, the European Securities Committee) before they can take

62 This Delegated Act is due to be adopted within a year from the new Regulation taking effect (Article 25a(3) of Regulation 648/2012).

63 A Commission Decision to refuse recognition to a particular non-EU CCP would be taken by Implementing Act, meaning it would have to be approved by a Qualified Majority of Member States. The European Parliament cannot block or veto Implementing Acts.

64 Under the new Article 25(2c), this “adaptation period” could be extended once beyond the two year limit, by no more than six months.

effect, but the European Parliament only has a consultative role. EMIR 2.2 foresees the use of Implementing Acts for a number of important decisions, including a refusal to recognise a “tier 2” systemically-important non-EU CCP (in effect triggering the ‘location policy’), with the Member States having refused the Parliament’s call for such decisions to be taken by Delegated Acts (which would have given MEPs more power).

5.28 The adoption of this tertiary legislation is important because the bulk of EMIR 2.2 will only take effect when the necessary Delegated Acts are in place (see paragraph 31 below).

The powers of the European Central Bank

5.29 Under the agreement between the Parliament and the Member States, the [powers of the European Central Bank](#) in relation to clearing services performed by non-EU (British) CCPs would be limited compared to ESMA’s, and listed exhaustively in its Statute. For example, it could require cooperation in stress testing but not apply a ‘location policy’. It would also have a statutory role in ESMA’s assessment of the systemic importance of non-EU CCPs as referred to above. This was a substantial reduction in the powers the Bank had sought, which would simply state it could “make regulations, to ensure efficient and sound clearing and payment systems within the Union and with third countries”. Unhappy with this outcome, the ECB—which had initiated the legislative procedure to amend its own Statute—[withdrew its proposal](#) on the day the compromise was announced, preventing it from being formally adopted and taking effect.⁶⁵ It is unclear to what extent the new Article 25 of EMIR effectively gives the ECB the powers it would have had if it had not withdrawn its own proposal, since the final version of EMIR 2.2 would enable it to intervene in approximately the same way.

Formal adoption of the Regulation and entry into force

5.30 The European Parliament formally adopted the new EMIR Regulation on 18 April 2019, during its last Plenary Session before the EU elections. The Member States had already informally endorsed it in a meeting of COREPER on 20 March, with the UK voting against because of “concerns around the location policy and the importance of developing the framework around ‘comparable compliance’”.

5.31 As the legal text endorsed by MEPs had not yet undergone full legal-linguistic checks for all EU languages, the incoming Parliament will need to adopt a corrigendum to the legislation before it can be formally approved by the Member States in the Council. According to the Minister, final sign-off of the Regulation by the Council is likely to take place in October 2019, meaning the legislation would take effect across the EU when the necessary Implementing and Delegated Acts—for example on the exact criteria to

65 The ECB said it withdrew its proposal because the final outcome of the legislative process, by requiring the Bank to act in alignment with EMIR, “could undermine the ECB’s independence”. It also cited the asymmetry between its increased level of oversight of non-EU CCPs compared to EU-based CCPs, despite the Bank’s mandate as the central bank for the euro. At the [meeting of Permanent Representatives](#) of the Member States in Brussels on 2 May 2019, the Council Legal Service raises doubts that the changes made to the Bank’s proposal fundamentally deprived it of its “raison d’être” (the threshold set by the Court of Justice for withdrawal of legislative proposals by the European Commission). It also questioned “whether a withdrawal [...] at such a late stage, without any early warning—was within the spirit of sincere cooperation among institutions” and whether “the right of initiative of the ECB enjoys the same Treaty guarantees as that of the Commission”.

determine whether a non-EU CCP is or could become of systemic importance to the EU economy—have been adopted by the European Commission. Decisions by ESMA recognising third country CCPs on the basis of equivalence—allowing them to operate in the EU—taken *before* EMIR 2.2 takes effect would have to be reviewed within 18 months.

5.32 The exact implications of the new legislation for the UK financial services industry are difficult to predict at present, and depend on developments in the Brexit process. We have set out our assessment of the various EU exit scenarios and how these relate to the changes to the supervision of CCPs in the EU below. On the same day that the political agreement between the Council and Parliament was announced, the European Commission and the US Commodity Futures Trading Commission (CFTC) issued a [joint statement](#) saying the Commission would respond to any “legitimate concerns raised by [...] major derivatives clearing stakeholders in Third Countries”, and that both sides expect to see “more deference between the CFTC and the EU supervisors”—i.e. a more light-touch supervisory approach by the ‘host’ regulator towards CCPs from the US operating in the EU, and vice versa—than is currently the case.⁶⁶ It also indicates the CFTC’s intention to actively participate in the Commission’s consultations on the technical implementation of the new Regulation via Delegated Acts, and refers specifically to the UK’s withdrawal from the EU as one of the driving forces behind EMIR 2.2.

5.33 There has been no analogous UK-EU joint statement, and no acknowledgement from the EU side that it intends to be more ‘deferential’ towards the Bank of England with respect to UK CCPs providing services within the Single Market after the UK’s withdrawal on the basis of equivalence. However, the EU has—pre-emptively—granted British firms recognition to operate in the EU under EMIR for a limited time beyond a ‘no deal’ Brexit under a temporary equivalence decision (which is due to expire in March 2020). Naturally, if the Withdrawal Agreement is ratified and the post-Brexit transitional period takes effect, British CCPs would retain their ‘passporting’ rights under EMIR until the end of that period.

Our conclusions

5.34 **We thank the Economic Secretary for his update on the final substance of the new European rules relating to supervision of Central Counterparties in the market for derivatives. However, we are disappointed he failed to inform us of the agreement on EMIR reached in Brussels for nearly four months, given this is draft EU legislation with a potentially significant impact on a UK industry after Brexit. His letter of 9 July contains no explanation or apology for the significant, and unacceptable, delay in informing the Scrutiny Committees. We have written to him separately on this matter, as the provision of information from the Treasury has also been delayed on a number of other pending EU financial services files.**

5.35 **Given the UK’s decision to withdraw from the EU and the Single Market, the most important elements of the new EMIR Regulation relate to the way in which non-EU entities in the clearing industry would be supervised if they wish to service EU-based customers. However, in practical terms the impact of the changes to EMIR for British CCPs after Brexit will also depend, at least initially, on whether the UK’s Withdrawal Agreement is ratified. If so, the UK will remain part of the Single Market—with the**

66 [Joint European Commission and CFTC Statement on EMIR 2.2](#) (13 March 2019).

concomitant ‘passporting’ rights for its CCPs—until at least December 2020 and potentially until the end of 2022.⁶⁷ Any changes to EMIR related to the way EU-based entities are supervised would also apply to UK central counterparties from the date they start applying until the end of the transition period, including the more proactive involvement of ESMA in the supervision of Central Counterparties by the Bank of England.⁶⁸

The implications of EMIR 2.2 after Brexit

5.36 The changes to EMIR related to the supervision of non-EU CCPs are due to take effect from late 2020 at the earliest, and therefore in themselves have no immediate impact in a ‘no deal’ scenario (where the UK leaves the EU without a Withdrawal Agreement, and therefore without a transitional period, on 31 October 2019).⁶⁹ Although British CCPs would lose their passporting rights abruptly on the day the UK’s EU membership ends, their ability to access the European market would be governed by the current rules on equivalence (and not the new rules provisionally agreed in March 2019). Given the key role played by UK-based market infrastructure for the whole European economy, we have welcomed the EU’s decision in December 2018 to grant pre-emptive equivalence to the UK clearing industry in the event of a ‘no deal’ Brexit under the existing EMIR Regulation.

5.37 However, that equivalence decision is seen by the EU as a contingency measure and is due to expire on 30 March 2020. It could, technically, be revoked unilaterally before then, automatically ending UK market access rights in the absence of a new agreement.⁷⁰ It therefore does not offer the same short-term stability and certainty for CCPs and their clients as the transitional period foreseen in the draft Withdrawal Agreement. Moreover, EMIR 2.2 will require ESMA to review the systemic importance of any non-EU CCPs operating in the European Union under the current Regulation within 18 months of the new rules taking effect.⁷¹ Any British Central Counterparties active in the EU on the basis of equivalence before then would therefore not be ‘grandfathered’ into the old system, but would be reviewed to see if they qualify as “tier 2” CCPs that could be refused permission until they relocate some or all of their operations to an EU Member State.

5.38 In light of the above, the more significant impact of the new Regulation is expected to occur in the longer term, when the UK has left the Single Market (and British CCPs automatically become ‘third country’ entities for the purposes of EU law), the date of which is currently unknown, *and* the changes to the supervision of Central Counterparties operating in the EU have taken effect in the coming years.

5.39 Firstly, the conditions under which equivalence actually translates into market access for individual non-EU CCPs—including British ones—will fundamentally

67 Article 132 of the draft Withdrawal Agreement provides for the possibility of an extension of the transitional period by mutual agreement between the UK and the EU.

68 During the entire transition, UK CCPs would also be exempt from the ‘location policy’, which is aimed only at operators which are not bound by EU law.

69 The UK’s original date of exit from the EU has been extended twice by mutual agreement between the Government and the European Council, first from 29 March 2019 to 12 April 2019 and subsequently to 31 October 2019.

70 The EU’s ‘no deal’ [equivalence decision](#) under EMIR applies only to CCPs, not to UK-based trade repositories.

71 If the relevant Delegated and Implementing Acts are in force a year from EMIR 2.2 taking effect, i.e. by autumn 2020, that would set a deadline for the review of existing recognition decisions for non-EU CCPs by mid-2022.

change. Despite UK opposition, the final text of the amendments to EMIR could create a general expectation that the domestic supervisors of ‘equivalent’ countries will enforce ESMA’s decisions relating to their CCPs which operate in the EU.⁷² We take note of the Minister’s latest assessment that this is only “one possible interpretation” of the new legislation. However, it is clear that the Treasury’s suggestion that such legal assurance—to be set out in a cooperation agreement between ESMA and the non-EU regulator in question, like the Bank of England—should be “appropriate” (and therefore flexible) was not accepted by the remaining Member States or the European Parliament.

5.40 The result is that the revised legislation, when it takes effect, could undermine the Bank of England’s regulatory autonomy over Britain’s clearing industry as set out in UK law, if the Government and Bank accepted an equivalence decision with the EU under these conditions. It is of course an option for the UK to refuse to seek such a decision, in which case British CCPs could not operate in the EU beyond the expiry of any existing ‘equivalence’ decision. The new rules give the European Commission very little room for unilateral action to prevent market fragmentation: under EMIR as amended, it will not be legally possible for the UK to be granted ‘equivalence’ without a cooperation agreement between ESMA and the Bank of England in place. In such an eventuality, the EU would be deprived of an important part of its financial ecosystem (since the necessary capacity for clearing of derivatives trades without London’s market infrastructure does not exist in the EU-27). However, it may also—and is indeed likely—to act as an incentive for British-based Central Counterparties to establish subsidiaries within the EU and perform clearing services for euro-denominated derivatives through those.

5.41 We have taken note of the Minister’s assessment of the new “comparable compliance” provisions, which he says may result in more deference by ESMA to the Bank of England for the supervision of UK-based CCPs under any longer-term equivalence arrangement. We remain concerned about the practical benefit of this untested new approach, and the potential for politicisation of their use as part of negotiations on the wider UK-EU economic partnership after Brexit. There is, in our view, a real risk that use of the flexibilities afforded by EMIR 2.2 in supervising the activities of non-EU CCPs could be applied very differently by the European Commission and ESMA for different countries, with the US most likely to benefit the most. The recent decision by the European Commission to end the equivalence arrangement with Switzerland on stock exchanges to pressure Bern into accepting a new institutional treaty, is a development of serious concern in this regard. The European Commission’s letter to the Swiss Government explicitly cited the need to set a precedent for EU relations with the UK in the area of financial services.⁷³

5.42 The new legislation also contains another lever for the EU to put pressure on overseas—i.e. British—CCPs to relocate activity into the EU, even where they otherwise meet all the new, stricter conditions for equivalence (such as an ESMA-Bank of England cooperation agreement). The changes to EMIR will introduce a ‘location policy’ which could force large CCPs to either relocate to the EU, or lose the ability to

72 In particular, the UK had called for ESMA’s decisions to be ‘appropriately’ enforced by non-EU countries under equivalence arrangements, rather than setting out in European law a general requirement that that equivalence requires a third country to carry out ESMA’s instructions in all circumstances.

73 Bloomberg, “[Brexit hardens EU’s stance on Switzerland amid stock trading row](#)” (18 June 2019).

service EU-based counterparties under equivalence, even if all other conditions for operating from the UK (including the necessary cooperation agreements with ESMA referred to in the previous paragraph) are met. Given the significant volume of euro-denominated transactions cleared by London’s Central Counterparties, the latter would be economically disruptive for both sides.

5.43 Throughout this legislative process we have mindful of the fact that the Treasury’s role in these negotiations has been a delicate balancing act, as it is involved as a Member State while the new legislation would have a disproportionate impact on the UK *after* it has left the Single Market. We therefore appreciate that a number of positive, albeit limited, changes have been introduced compared to the original Commission proposal. Notably, the final Regulation provides for the possibility of an “adaptation period” before a non-EU CCP has to move into the EU or cease its operations there, as well as an ability for ESMA to limit a refusal of recognition for a non-EU CCP to certain service lines only. It is also a welcome, common-sense addition that assessments of requests for market access by ‘third country’ CCPs would need to look at the economic consequences of shutting British firms out of the EU’s market in this key part of Europe’s financial architecture.

5.44 However, the inescapable conclusion is that overall, the Government’s efforts to mould EMIR in a way beneficial to the UK have largely failed. The cumulative effect of the legal changes to the Regulation is the Treasury and Bank of England will find it more difficult to obtain a long-term existing equivalence decision for the UK clearing industry that is acceptable to both the EU and the UK. It is therefore not surprising that the Government voted against the new legislation when it was endorsed by the Member States in March. The longer term implications of the legislation for liquidity in European financial markets are also likely to be negative.

The domestic implementation of EMIR 2.2 in a ‘no deal’ scenario

5.45 We also note that the changes to EMIR may still have a direct impact on UK law even if the Withdrawal Agreement is not ratified, and there is no post-Brexit transitional period during which EU law continues to apply. The proposal is included in the Treasury’s Financial Services (Implementation of Legislation) Bill, which is still awaiting its third reading in the House of Commons. This means that, in a ‘no deal’ scenario, the Government could by means of statutory instrument “make provision corresponding, or similar to” the Regulation once it is adopted by the Council and the Parliament, “with any adjustments the Treasury consider appropriate” so long as they are not “different in a major way” from the EU legislation.⁷⁴

5.46 As we noted in our letter to the Economic Secretary of 20 March 2019, we considered the inclusion of the CCP supervision proposal in the scope of the Bill to be peculiar. Even though the Treasury had consistently argued that the reinforced set of EU tools to control which CCPs can operate in its jurisdiction—in particular the ‘location policy’—would lead to market fragmentation and act as “drag on growth”, its Memorandum accompanying the Bill notes that implementing the EU legislation as now agreed anyway, in a ‘no deal’ scenario, would “increase [its] ability to manage

74 The Government’s regulation-making power would expire two years after the UK formally leaves the EU.

financial stability risks posed by systemic third country CCPs”.⁷⁵ In addition, the original Memorandum made no mention of the extent to which these new regulation-making powers could facilitate continued UK equivalence with EU rules like EMIR without the need for recourse to primary legislation. We therefore asked the Minister to clarify the Treasury’s intentions in this area, given the apparent disconnect between its opposition to the proposal in Brussels and its insistence it needs to be able to implement the new legislation domestically even in a ‘no deal’ scenario.⁷⁶

5.47 In his latest letter, the Economic Secretary has clarified that “no decision has been made” about the potential implementation of the amendments to EMIR in a ‘no deal’ scenario by means of Statutory Instrument (presuming, of course, that the Bill creating the Treasury’s power to do so is in fact eventually approved by the House of Commons). The Minister emphasises that the Bill would allow the Government to “choose to implement only those EU files, or parts of those files, which would be beneficial for the UK”, and implies that some of the changes to the way in which the EU will supervise foreign Central Counterparties—such as “the ability to tier CCPs according to systemic importance” and the “comparable compliance” provisions—could be helpful tools for the Bank of England to “manage financial stability risks posed by systemic third country CCPs” even once the UK is outside the Single Market and has more control over its regulatory systems.

Final conclusions

5.48 Despite the very significant concerns about the potential for EMIR 2.2 to needlessly fragment Europe’s financial markets infrastructure by limiting EU firms’ access to British Central Counterparties, we accept that the legislative process in Brussels is now effectively at an end and there is no further scope for the Government to improve the text of the new EMIR Regulation. The finalised legislation has the support of the necessary Qualified Majority of Member States, and the UK has no way of blocking its adoption or entry into force. In light of this, we now clear the CCP supervision proposal—and the withdrawn amendment to the Statute of the European Central Bank—from scrutiny.

5.49 Given the considerable importance of the changes to EMIR for the UK’s financial services industry in the context of Brexit, we draw these developments to the attention of the Exiting the EU and Treasury Committees. We also consider that Parliament, and the Treasury Committee in particular, are likely to want to scrutinise the EU’s implementation of the new Regulation (especially its impact on the City of London and on Europe’s wider financial markets infrastructure). Given our remit, we will continue to closely follow the EU’s evolving thinking on “equivalence” and “comparable compliance” under EMIR in the coming months, including any Delegated Acts produced by the Commission.

75 [Memorandum from HM Treasury](#) to the Delegated Powers and Regulatory Reform Committee (accessed 19 February 2019).

76 We asked the Economic Secretary to clarify which elements of the final Regulation it believes would allow the Treasury to “manage financial stability risks” posed by non-UK CCPs more effectively than is the case at present, and in particular whether the Government is considering the introduce a domestic version of the ‘location policy’. The elements of the EU proposal relating to centralisation of supervisory responsibilities in ESMA, a body that would have no jurisdiction in the UK in a ‘no deal’ scenario, have no obvious read-across to the UK’s domestic regulatory framework, as supervision of British CCPs is already centralised within the Bank of England (i.e. not devolved).

Full details of the documents

(a) Proposal for a Regulation on the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs: (38840), 10363/17 + ADDs 1–3, COM(17) 331; (b) Recommendation for a Decision amending Article 22 of the Statute of the European System of Central Banks and of the European Central Bank: (38883), 10850/17,—.

Previous Committee Reports

Second Report HC 301–ii (2017–19), chapter 20 (22 November 2017) and Twenty-seventh Report HC 301–xxvi (2017–19), [chapter 4](#) (9 May 2018).

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

Department for Business, Energy and Industrial Strategy

(40663) European Court of Auditors Special report no.8: Wind and solar power for electricity generation: significant action needed if EU targets to be met.
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Department for Education

(40555) Commission Staff Working Document Evaluation of the EU Commission Agencies working in the employment and social affairs policy field: EUROFOUND, CEDEFOP, ETF and EU-OSHA.
8635/19
SWD(19) 159
(40556) Commission Staff Working Document Executive Summary of the Evaluation of the EU Commission Agencies working in the employment and social affairs policy field: EUROFOUND, CEDEFOP, ETF and EU-OSHA.
8640/10
SWD(19) 160

Department for Environment, Food and Rural Affairs

(40695) Proposal for a Council Decision on the position to be taken on behalf of the European Union in the International Sugar Council with respect to the extension of the International Sugar Agreement, 1992.
10632/19
COM(19) 286

Department for Work and Pensions

(40576) Report from the Commission Report from the Commission on the mid-term evaluation of the European Union Programme for Employment and Social Innovation (EaSI).
9536/19
+ ADD 1
COM(19) 234

Foreign and Commonwealth Office

- (40729) Proposal of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a Council Decision amending Decision 2016/2382/CFSP, establishing a European Security and Defence College
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- (40730) Proposal of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a Council Decision in support of strengthening biological safety and security in Ukraine in line with the implementation of United Nations Security Council Resolution 1540 (2004) on non-proliferation of weapons of mass destruction and their means of delivery.
10387/19
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HM Treasury

- (40570) Communication from the Commission: Technical adjustment of the financial framework for 2020 in line with movements in GNI
9335/19
COM(19) 310
- (40579) Proposal for a Decision of the European Parliament and of the Council on the mobilisation of the European Union Solidarity Fund to provide assistance to Romania, Italy and Austria
9606/19
COM(19) 206
- (40580) Draft amending budget No 3 to the general budget for 2019 accompanying the proposal to mobilise the European Union Solidarity Fund to provide assistance to Romania, Italy and Austria
9604/19
COM(19) 205
- (40591) Report from the Commission on the management of the guarantee fund of the European Fund For Strategic Investments in 2018
9830/19
COM(19) 244
- (40668) Communication from the Commission to the European Parliament, the European Council, the Council and the European Central Bank Fourth Progress Report on the reduction of non-performing loans and further risk reduction in the Banking Union.
9730/19
COM(19) 278
- (40686) Communication from the Commission Deepening Europe's Economic and Monetary Union: Taking stock four years after the Five Presidents' Report European Commission's contribution to the Euro Summit on 21 June 2019.
10453/19
COM(19) 279

Formal Minutes

Wednesday 17 July 2019

Members present:

Sir William Cash, in the Chair

Martyn Day	Stephen Kinnock
Richard Drax	Andrew Lewer
Darren Jones	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 6 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Seventy-second Report of the Committee to the House.

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

[Adjourned till Wednesday 4 September at 1.45 p.m.]

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*)