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Documents considered by the Committee on 4 September 2019

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Staff

The staff of the Committee are Jessica Mulley (Clerk), Luanne Middleton and Sibel Taner (Second Clerks) Kilian Bourke, Alistair Dillon, Leigh Gibson, Foeke Noppert and George Wilson (Clerk Advisers), Indira Rao (Counsel for European Legislation), Joanne Dee and Emily Unwin (Deputy Counsels for European Legislation), Daniel Moeller (Senior Committee Assistant), Nat Ireton, Apostolos Kostoulas and Beatrice Woods (Committee Assistants), Ravi Abhayaratne and Paula Saunderson (Office Support Assistants).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is (020) 7219 3292/5467. The Committee's email address is escom@parliament.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:

- The Government's approach to setting fishing quotas in the event of a "no-deal" Brexit

Summary

EU Participation in GRECO

The question of what, if any role, the EU might play in the Council of Europe's anti-corruption body GRECO has been under discussion in the EU since 2012. Matters have now come to a head with the adoption of this Council Decision in June supporting an observer role for the EU.

The JHA opt-in applies to this document. Despite not being afforded the usual three-month opt-in period, the Government told the Committee last time that the UK had not opted into the proposal and was not bound by it. The Committee asked a few questions in its last Report concerning the Government's handling of the opt-in and enhanced Parliamentary processes. The Government now provides a full response, together with the adopted text and the UK's minute statement. It clarifies that as the UK (together with Ireland) waived the three-month opt-in period, the Government did not make an active decision not to opt into the Decision and so says that that enhanced Parliamentary processes did not apply. As the Committee's questions have now been answered, we clear the document from scrutiny.

Cleared from scrutiny

Draft EU-UK Withdrawal Agreement

These two proposed Council Decisions would enable the EU to sign and conclude (ratify) the draft Withdrawal Agreement. The proposed Council Decision to sign the draft Agreement has already been adopted. The proposed Decision on conclusion has been approved in Council but can only be adopted once the European Parliament (EP) has voted to approve it. The EU has said that it will not sign the draft Agreement until the UK Parliament has voted to approve it as provided by Section 13 of the European Union (Withdrawal) Act 2018. The Government now writes to reply to various questions we asked about the documents and the draft Agreement in last Report. These included questions about the possible scrutiny role of Parliament in relation to the Joint Committee, compared with

EU commitments in relation to the EP's role. As the draft Withdrawal Agreement has not yet been approved, we keep the documents under scrutiny until there are any further developments.

Proposed Council Decisions retained under scrutiny; further information requested; drawn to the attention of the Committee on Exiting the EU

Rights and Values Programme 2021–27

When the Committee first considered this document in July 2018, the Government was unclear whether it would participate in this "2021–27" Rights and Values programme Regulation as a third country. The Committee therefore pressed the Government for an indication of the likely cost of such participation, whether the UK would be able to fulfil the qualifying criteria for participation, whether the benefits would outweigh both the costs and the inability to influence decision-making, what other legal or policy implications might flow from association and how it might fit with the UK not incorporating the EU Charter of Fundamental Rights into UK law after EU exit. After some considerable delay, the Government now responds. As it makes clear that the UK will not seek to participate as a third country in this programme, we are content to release the proposed Regulation from scrutiny.

Cleared from scrutiny; drawn to the attention of the Justice Committee and Joint Committee on Human Rights

EU Fund for Aid to the Most Deprived

The European Commission reports annually on Member States' implementation of a Fund agreed in 2014 which targets those furthest from the labour market and most at risk of material deprivation and/or social exclusion. The Fund provides for the delivery of aid (such as food, clothing and basic consumer goods) and social inclusion projects. The latest reports, covering the years 2016 and 2017, show that the UK is the only Member State in which implementation of the Fund has yet to start. The delay means that the UK has so far lost £600,000 of its allocation of around £3.46 million for 2014–20 under the EU's de-commitment rules and is at risk of losing more. In its latest update, the Government indicates that it may not secure Commission approval for the UK's operational programme until October or November, right on the cusp of exit day. The Committee asks to be informed as soon as approval has been given. It also asks the Government to explain what would happen to the UK's allocation of the Fund when the UK leaves the EU.

Document (a) cleared from scrutiny; document (b) not cleared from scrutiny; further information requested; drawn to the attention of the Education Committee, the Home Affairs Committee and the Work and Pensions Committee

Preventing the dissemination of terrorist propaganda online

The aim of the proposed Regulation is to ensure that online terrorist content is identified and removed as quickly as possible whilst safeguarding freedom of expression and information. It would require online platforms to take proactive measures to prevent the dissemination of terrorist content; empower national authorities to issue a legally binding removal order to take terrorist content off the web (or disable access to it) within an hour; introduce

penalties for platforms which fail to remove terrorist content promptly; and strengthen cooperation amongst Member States and with Europol. The Government has welcomed the proposal, noting important synergies with its own plans to legislate domestically on a wider range of online harms. The December 2018 Justice and Home Affairs Council agreed a general approach which the Government supported. In its latest update, the Government provides an overview of the changes proposed by the European Parliament. Their overall effect is to narrow the scope of the proposal and reduce the demands made on service providers, particularly by removing an obligation to take proactive steps to prevent the dissemination of online terrorist information. The Government is keen to reverse some of these changes, but time is running out—trilogue negotiations with the European Parliament have yet to start so the prospects of agreeing a compromise text before the UK leaves the EU are slim. This matters because the Government is keen to ensure alignment of EU and UK law in an area which it recognises is "inherently cross-border in nature". The European Scrutiny Committee requests regular progress reports once trilogue negotiations are underway.

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

Brexit: Cyprus and the Sovereign Base Areas

The Committee has considered the implications of the Brexit process for the UK's military Sovereign Base Areas (SBA) in Cyprus, and in particular the substance of the specific Protocol to the draft Withdrawal Agreement dealing with the status of the SBAs. The bases are currently part of the EU's customs territory, and apply rules relating to agri-food and the Common Agricultural Policy to ensure the free movement of goods between the bases and Cyprus (and therefore the entire EU). It concluded that the scope of the Brexit Protocol appears to expand the range of EU law applicable in the Base Areas significantly compared to the current situation, notably with respect to the Common Fisheries Policy and Single Market legislation. The Committee has therefore asked the Government to clarify why the types of EU law the UK would have to enforce in the SBAs is wider than at present after Brexit.

Cleared from scrutiny; further information requested; drawn to the attention of the Defence Committee and the Foreign Affairs Committee

Fishing opportunities 2020

The European Commission is consulting in advance of publishing its proposals for next year's fishing quotas. The Committee seeks clarity from the Government on its approach to the setting of fishing quotas in the event of a no-deal Brexit, including detail on when the Government will communicate to the UK's industry what their revised quotas might be through to the end of 2019.

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

Documents drawn to the attention of select committees:

('NC' indicates document is 'not cleared' from scrutiny; 'C' indicates document is 'cleared')

Business, Energy and Industrial Strategy Committee: Energy and climate policy [Commission (a)Communication; (b) Recommendation] [C]

Committee on Arms Export Controls: Control of Exports of Dual-Use Items [Proposed Regulation] [NC]

Committee on Exiting the European Union: The draft EU-UK Withdrawal Agreement [(a) Proposed Decision; (b) Revised proposed Decision] [NC]

Defence Committee: Cyprus: Brexit and UK Sovereign Base Areas (update) [Report] [C]

Digital, Culture, Media and Sport Committee: Preventing the dissemination of terrorist propaganda online [Proposed Regulation] [NC]

Education Committee: EU Fund for Aid to the Most Deprived [Commission Reports] [NC]

Environment, Food and Rural Affairs Committee: Fishing Opportunities 2020 [NC]

Foreign Affairs Committee: Cyprus: Brexit and UK Sovereign Base Areas (update) [Report] [C]

Home Affairs Committee: EU Fund for Aid to the Most Deprived [Commission Reports] [NC]; Future EU funding for border control, asylum and migration [Proposed Regulations] [C]; Third country participation in the EU's asylum database: Eurodac [Proposed Decisions] [C]; Combating document and identity fraud: UK participation in the EU's archive of false and authentic documents ("FADO") [Proposed Regulation] [NC]; Preventing the dissemination of terrorist propaganda online [Proposed Regulation] [NC]

International Trade Committee: Control of Exports of Dual-Use Items [Proposed Regulation] [NC]

Joint Committee on Human Rights: Control of Exports of Dual-Use Items [Proposed Regulation] [NC]; Preventing the dissemination of terrorist propaganda online [Proposed Regulation] [NC]; Rights and Values Programme 2021–2027 [Proposed Regulation] [C]

Justice Committee: Preventing the dissemination of terrorist propaganda online [Proposed Regulation] [NC]; Rights and Values Programme 2021–2027 [Proposed Regulation] [C]

Work and Pensions Committee: EU Fund for Aid to the Most Deprived [Commission Reports] [NC]

1 A New Deal for Consumers

Committee's assessment	Politically important
Committee's decision	(a) Cleared from scrutiny (b) Not cleared; further information requested
Document details	(a) Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules; (b) Proposal for a Directive Of The European Parliament And Of The Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC.
Legal base	(a) (b) Article 114 TFEU, ordinary legislative procedure, QMV
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (39618), 7876/18, COM(18) 185 + ADDS; (b) (39617), 7877/18, COM(18) 184 + ADDS .

Summary and Committee's conclusions

1.1 Trilogue negotiations between the European Parliament and the Council of the European Union have concluded regarding the proposed revision of the existing consumer protection acquis which is referred to as the Omnibus Directive (document a). This proposed Directive would effect the follow changes to the current framework for consumer protection:

- Member States' authorities would be empowered to impose fines for breaches of consumer law under each of the four cross-cutting Directives, with a minimum 'floor' level of four percent of a trader's annual turnover.
- Online marketplaces would be required to inform consumers about: how offers presented to them when using the online marketplace have been ranked; whether the contract would be concluded with a trader or not; and whether EU consumer law applies to their transaction.
- The consumer's right of withdrawal from distance sales would be made less burdensome for business, by removing the requirements for the trader to accept the consumer's withdrawal from the contract when they have used the good more than is necessary to establish its characteristics, and for the trader to reimburse the consumer before they have had receipt of the returned good.

- The application of the CRD would be extended to digital services for which a consumer has paid using their personal data, so that consumers would have the same right to pre-contractual information and to cancel the contract within a 14-day right-of-withdrawal period.
- The practice of marketing of a product in one country on the basis that it is identical to the same product marketed in other Member States, where those products differ ('dual quality') significantly, would be defined as a misleading commercial practice.

1.2 In a letter to the Committee on 15 May 2019,[1] the Minister for Small Business at the Department of Business, Energy and Industrial Strategy (BEIS), Kelly Tolhurst MP, confirms that the three negotiating objectives identified in her letter of 31 January 2019[2] have been achieved and details the outcome on these points, as set out below.

1.3 One objective was to preserve UK consumers existing right to withdraw from a contract. Whereas the original draft Directive proposed amending the operation of the existing EU right of withdrawal that allows consumers to cancel a distance (including online) or off-premises contract within 14 days, without having to give a reason, on the basis that the right puts disproportionate burdens on business and is open to abuse, the Government objected to this position on the basis that it would reduce the obligations on traders and slightly reduce the levels of protection currently afforded to consumers. The Minister reports that "The UK position was generally shared by other Member States which resulted in the amendment being removed from the text that received Council General Approach. As the European Parliament was also opposed to the amendment it is not present in the final compromise text".

1.4 A second objective was to preserve the UK's existing rules on secondary ticketing. The Government has already legislated to make online marketplaces liable for providing material information to consumers buying tickets that are re-sold online through the marketplace ('secondary ticketing'), and the Minister was concerned that the maximum harmonisation approach which was proposed by the Commission for the requirements on online marketplaces might require the UK to scale back or remove its existing rule on the information required from marketplaces about tickets re-sold online. The Minister informs the Committee that recital 29 to the Omnibus Directive and new article 6a (2) inserted into the Consumer Rights Directive give the Member States discretion to maintain or introduce additional information requirements on online marketplaces that are proportionate, non-discriminatory and justified on grounds of achieving a higher level of consumer protection. The Government's concern has therefore been addressed.

1.5 The third condition of UK support was that the changes to the rules on penalties should continue to apply a "minimum harmonisation" approach, which would allow courts to have the flexibility to consider other relevant factors when deciding whether to impose a penalty, and that the maximum fine should be at least 4% of a firm's annual turnover. The final text broadly conforms to this position. The Minister states that in the text that will go to the Member States for adoption at a forthcoming meeting,

1 Letter from the Minister (BEIS) to the Chair of the European Scrutiny Committee (15 May 2019).
2 Letter from the Minister (BEIS) to the Chair of the European Scrutiny Committee (31 January 2019).

1.6 The final provision would require Member States to ensure that certain, specified non-exhaustive and indicative criteria were taken into account when deciding on the imposition of penalties, `and that when penalties are to be imposed in accordance with Article 21 of the CPC Regulation, the maximum amount of the fine must be at least 4% of the trader's annual turnover in the relevant member state(s), or, where information on turnover is not available, 2 million euros. The Member States rejected the European Parliament's proposal to direct the revenues from fines towards a fund intended to enhance the protection of consumers, but accepted the inclusion of a Recital asking Member States to consider enhancing consumer protection when allocating revenues from fines. The Minister is thus content that, overall, "the UK negotiating objective was achieved."

1.7 The Minister also notes that, during the trilogue process, the European Parliament succeeded in adding some new provisions to the Directive:

- An addition was made to the existing Unfair Commercial Practices Directive regarding consumer reviews, where if a trader provides access to consumer reviews, it would have to explicitly make information about whether and how a trader verifies these reviews amount to "material information".
- The European Parliament proposed an addition to the Consumer Rights Directive that adds to the information that traders are required to give to consumers, before entering into a distance or off premises contract, to require traders to inform consumers when a price has been personalised based on automated decision making. Although the Government did not support this proposal, most Member States did, and the amendment was therefore included in the compromise text.

1.8 Officials have provided a further informal update to the Committee that the Finnish Presidency is anticipated to table the file for adoption at a Council meeting in September, possibly the General Affairs Council on 16 September.

1.9 Separately, the Minister wrote to the Committee on 31 January to respond to its questions about the implications of Brexit for consumer protection.[3]

1.10 In terms of the level of consumer protection provided in EU agreements with countries other than the EEA Member States and Switzerland, the Minister informed the Committee that cross-border consumer protection is "relatively new in the international landscape", "specific consumer protection provisions are not present in most trade deals, whether between the EU and non-EU countries, or between two non-EU countries" and where cross border protection is formalised, it tends to be "through standalone agreements or memoranda of understanding". The Minister noted that the EU-Ukraine Association Agreement, as part of a wider arrangement which requires changing domestic laws to match those of the EU for a "very high level of market access", requires "a nearly full approximation of the consumer acquis set out in the annex of the Consumer Protection Cooperation Regulation as well as the Regulations itself". The Minister noted that it "is unclear whether this would be reciprocal across borders" and whether there would be cooperation on enforcement.

3 Letter from the Minister (BEIS) to the Chair of the European Scrutiny Committee (31 January 2019).

1.11 In its previous report on 13 February 2019, the Committee also noted that the Government's guidance for consumers, in the event of a non-negotiated exit, provided relatively little clarity for consumers, and advised consumers purchasing goods/services to check the terms of the contract. The Committee noted that the relevant guidance was remarkably vague and equivocal, stating that when consumers buy from a business based in the EU, they "may" be covered by the consumer protections in the country where the business is based, how those protections apply to UK consumers "may change", as countries "may have brought in consumer protections in slightly different ways or offer different protections to EU based consumers and non-EU based consumers". The Committee therefore sought further clarification from the Government on this point.

1.12 The Minister provides the following response on this point:

- EU consumer legislation is addressed to EU Member States and is generally adopted as internal market measures under Article 114 of the Treaty on the Functioning of the European Union. As such, EU consumer legislation is, in principle, intended to confer rights and protections on nationals of the Member States to which it applies rather than nationals of third countries such as the UK post exit.

- It is possible that the laws of specific EU Member States might continue to confer protection on UK consumers in relevant circumstances. For instance, current EU-derived UK consumer laws do not distinguish between the nationality of consumers in relation to transactions to which those laws apply.

- However, the Government has not undertaken analysis of each Member States' implementation of each EU consumer protection Directive to ascertain the extent to which that might be the case.

- As the Committee will understand, it would be a significant task to track the implementation of legislation of 27 Member States some of which, in any event, have federal or devolved constitutional arrangements.

- It is also possible that EU traders will, as a matter of contract, provide consumers with full rights under EU law and will not distinguish between EU and non-EU consumers. We do not consider that EU traders are prevented from doing so, but the extent to which this will be the case in practice, or it will be practicable for consumers to enforce those rights in the case of dispute, is unclear. This is why we encourage all consumers to check the terms of the contract, whether they are making purchases within the UK or from a non-UK trader.

- Recognising the importance of these matters for UK consumers, I would like to draw the Committee's attention to the Government's decision, in the event of a no deal exit, to fund the UK European Consumer Centre for at least one year, until March 2020, so that consumers can continue to contact the Centre for free advice about their rights and protections in purchasing goods or services in EU Member States.

1.13 Regarding the Collective Redress Directive (document b), officials have updated the Committee that the Finnish Presidency is keen to make good progress on the Directive on representative actions for the protection of the collective interests of consumers during their tenure. Regular working groups have been scheduled in Brussels with the intention of having a General Approach agreed at a Competitiveness Council on 26–27 November.

1.14 **We have taken note of the Minister's assessment that the Government's negotiating objectives, as noted by the Committee in its report on 13 February 2019, have been successfully achieved in trilogue negotiations between the Council and the European Parliament. We welcome the Minister's thorough account of the changes made in the compromise text.**

1.15 **It remains the case that in the event of a No Deal exit, the EU (Withdrawal) Act 2018 and relevant secondary legislation will preserve in domestic law those effects of the EU consumer protection acquis which are not cross-border in character, meaning that UK consumers will continue to enjoy current protections when purchasing goods on the domestic market, but there is significantly less clarity about how consumers will be affected when engaging in cross-border purchases with businesses in the EU.**

1.16 **On this point, the Minister acknowledges that it is uncertain to what extent EU Member States in transposing the consumer protection acquis into domestic law have chosen to require that these EU protections, which must apply to EU consumers, are also applied to consumers in third countries, and, therefore, to what extent UK consumers making cross-border purchases of goods/services from EU providers will continue to benefit, albeit indirectly, from these protections, in the event of a non-negotiated exit. Therefore, the Minister reiterates the Government's position of advising consumers to check the terms of the contract, when making such purchases.**

1.17 **In the event of a no deal exit, the Government has decided to fund the UK European Consumer Centre for at least one year, until March 2020, so that consumers can continue to contact the Centre for free advice about their rights and protections in purchasing goods or services in EU Member States.**

1.18 **We now clear this proposal for a Directive (document a) from scrutiny in advance of its anticipated adoption in Council in September 2019. We retain document b under scrutiny, and await a further update and request for a waiver before Ministers vote on the anticipated General Approach later this year, although, we note that, as things stand, the UK will no longer be an EU Member State when this occurs.**

Full details of the documents

(a) Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules: (39618), 7876/18, COM(18) 185 + ADDs; (b) Proposal for a Directive Of The European Parliament And Of The Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC: (39617), 7877/18, COM(18) 184 + ADDs.

Previous Committee Reports

Fifty-fifth Report HC 301–liv (2017–2019) chapter 1 (13 February 2019); Thirty-sixth Report HC 301–xxxv (2017–2019) chapter 1 (18 July 2018).

2 Fishing Opportunities 2020

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Commission Communication on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2020.
Legal base	—
Department	Environment, Food and Rural Affairs
Document Number	(40673), 10186/19 + ADD 1, COM(19) 274

Summary and Committee's conclusions

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

2.2 The Committee first considered the document at its meeting of 3 July 2019, raising a series of questions relating to the UK's withdrawal from the EU.[4] The then Minister for Agriculture, Fisheries and Food (Rt Hon. Robert Goodwill MP) responded in his letter[5] of 22 July.

2.3 Concerning the UK's obligations under international law to cooperate with the EU on the management of shared stocks post-Brexit, the then Minister confirmed that, should the UK leave the EU on 31 October without an agreement, the UK would seek to agree with the EU measures to co-ordinate and ensure the conservation of shared stocks.

2.4 As regards the difficulties encountered by the EU in managing stocks shared with other coastal states, the then Minister noted that, of the three shared stocks of significant interest to the UK, the TACs for blue whiting and Atlanto-Scandian herring (ASH) were set at sustainable levels. While a revised TAC for mackerel was set at sustainable levels, catches continued to exceed those levels. This remained a key concern for the Government, said the then Minister, and needed to be resolved urgently.

2.5 Turning to the Commission's statement that long-term management strategies and scientific advice would form the basis for negotiations on shared stocks for 2019, the then Minister confirmed that the current EU multi-annual plans would initially be rolled over to form part of EU retained law and would therefore inform UK-EU cooperation.

4 Seventieth Report HC 301–lxviii (2017–19), chapter 1 (3 July 2019).

5 Letter from Rt Hon. Robert Goodwill MP to Sir William Cash MP, dated 22 July 2019.

2.6 Finally, the then Minister confirmed that the UK would negotiate a fisheries framework agreement with the EU to provide a process for annual negotiations on access and fishing opportunities. This, he said, would be consistent with the approach to fisheries taken by other coastal states. He indicated that parliamentary scrutiny of such discussions would be a matter for the new Prime Minister.

2.7 In a letter[6] of 7 August to the House of Lords EU Committee, the Minister for Environment, Food and Rural Affairs (George Eustice MP) emphasises the Government's commitment to co-operation and to sustainable fisheries.

2.8 **We welcome the commitments made to co-operation with the EU post-Brexit, in line with the UK's obligations under international law. Given the substantial changes in the Government, it would be helpful if the Minister could confirm that the Government considers that this co-operation should take place on the basis of a fisheries agreement with the EU. As part of the UK's preparations for leaving the EU on 31 October 2019 without an agreement, we ask the Minister to explain the intended timetable for negotiation of a fisheries agreement and how the Government intends to engage with Parliament on that negotiation.**

2.9 **Should the UK leave the EU on 31 October 2019 without an agreement in place, some sort of cooperation on the management of shared stocks for the remainder of 2019 would be required including an agreed approach to fishing opportunities. The EU's Brexit-preparedness Regulation[7] on this issue proposes that the status quo (as previously negotiated for the whole of 2019) would apply for the remaining months of the year. We ask the Minister to confirm that the UK would similarly adopt this approach. If not, we ask him to confirm when the Government will communicate to the UK's industry what their revised fishing opportunities might be through to the end of the year.**

2.10 **On the challenges of managing shared stocks, we note the then Minister's conclusion that over-fishing of mackerel is a concern that needed to be resolved urgently. We ask whether this remains a concern of the Government and, if so, how the Government intends to resolve it, both while the UK remains an EU Member State and when the UK is outside the EU.**

2.11 **Finally, and as we noted in our previous Report, we look forward to sight of the Government's written comments to the Commission, which were to be submitted by 1 September, including the Government's thoughts on measures to support implementation of the landing obligation ("discard ban").**

2.12 **The document remains under scrutiny. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee and we look forward to a response by 25 September 2019.**

6 Letter from George Eustice MP to Lord Boswell of Aynho, dated 7 August 2019.

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

Full details of the documents

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

Previous Committee Reports

Seventieth Report HC 301–lxviii (2017–19), chapter 1 (3 July 2019).

3 The draft EU-UK Withdrawal Agreement

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Committee for Exiting the EU
Document details	(a) Proposal for a Council Decision amending Decision (EU) 2019/274 on the signing on behalf of the European Union and of the European Atomic Energy Community, of the Agreement of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the Withdrawal Agreement; (b) Revised proposal for a Council Decision on the conclusion of the Withdrawal Agreement
Legal base	Article 50(2) TEU and Article 106a of the Euratom Treaty; enhanced qualified majority of the continuing EU27 Member States pursuant to Article 238(3(b) TFEU and for (b) only, EP consent
Department	Exiting the European Union
Document Numbers	(a) (40534),—, COM(19) 194; (b) (40589),—

Summary and Committee's conclusions

3.1 Following the end of the negotiation of the draft EU-UK Withdrawal Agreement[8] in November, proposed Council Decisions for the EU to sign and conclude the Withdrawal Agreement were deposited at our request in Parliament (documents (a) and (b) respectively). We scrutinised those Decisions in our Report of 8 March 2019 "*The draft EU/UK Withdrawal Agreement: key legal and political questions*".[9] We noted in that Report that the proposed Decision to sign had already been adopted as Decision (EU) 2019/274 on 11 January 2019. A full account of the documents and our questions to the Government on those documents are set out in that Report.

3.2 In the last Report of 5 June,[10] we cleared those proposals from scrutiny as they had been superseded by the current proposals: the (now) adopted Council Decision to amend the previously adopted Decision to sign and a revised Council Decision to conclude the Withdrawal Agreement. These new proposed Decisions were necessary to reflect the technical change to the "coming into force" provisions of the Withdrawal Agreement following the two recent extensions of the Article 50 TEU period. References to the draft

8 The draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Committee, 14 November, accessible from the website of the Department for Exiting the EU. After legal scrubbing, it was subsequently published in the Official Journal of the EU on 19 February 2019.

9 Fifty-eighth Report, HC 1798 (2017–19), 8 March 2019.

10 Sixty-seventh Report, HC 301–lxv, chapter 5 (2017–19): 5 June 2019.

Withdrawal Agreement coming into force on 29 March 2019 have been removed. They have been replaced with language reflecting the extension of the Article 50 TEU period but without reference to a fixed date.

3.3 In that last Report, we also asked questions concerning developments since the original proposals were published and following up answers to questions in our 8 March Report.

Minister's letter of 9 July 2019

3.4 In his letter of 9 July, the Parliamentary Under Secretary of State for Exiting the EU (Mr Robin Walker MP) provides the Government's response to the questions in our last Report. We set out the questions first in italics, followed by a summary of the Government's reply.

We turn to the Government's concession that the UK "has to follow" some of the administrative procedures set out in the revised Council Decision on conclusion (see Article 3(3)). In the light of this concession, we return to an area of questioning in our last Report which remains unanswered. What is the nature of this obligation? Does the Government accept that the proposed Council Decisions are legally binding on the UK? If they are legally-binding, is this as a matter of EU or international law or both?

3.5 The Government says that:

- The Council Decisions concern the EU's internal processes in relation to the Withdrawal Agreement.
- Under Article 129(4) of the Withdrawal Agreement, the UK is required to seek authorisation from the EU if it wishes to express its consent, in its own capacity, to be bound by an international agreement intended to enter into force or be applied during the transition period, in an area of exclusive competence of the Union. Article 3 of the Council Decision on Conclusion sets out the process for the provision of such authorisation by the EU, which is to begin with a notification by the UK to the Commission.
- Technically, the Council Decisions will fall within the scope of "Union law" as defined in Article 2 of the Withdrawal Agreement and will therefore form part of the acquis that applies to the UK during the implementation period (see Article 127 of the Withdrawal Agreement).

On the question of whether the UK can enjoy the benefits of EU-third country international agreements during the proposed transition/implementation period without specific third country agreement, we note the Government's relaxed position that "subsequent state practice" can suffice under international law as evidence of a third country's intention the agreement should continue to cover the UK. We ask the Government for a more detailed legal explanation of this position so that we can be convinced that this approach is legally robust. What would happen in the event that a third country refused to continue to apply the terms of the agreement to the UK?

3.6 The Government:

- Considers that treaty partners are likely to rely on the relevant Articles of the Withdrawal Agreement, taken together, as they judge necessary, with Article 31(1), Article 31(3), and/or Articles 35 and 36 of the Vienna Convention on the Law of Treaties (VCLT), or customary international law as reflected in these Articles.
- Adds that Article 31(3) VCLT allows for the parties to take into account in the interpretation of a treaty any subsequent agreement or subsequent practice concerning its interpretation.
- Further notes that Articles 35 and 36 VCLT provide for obligations and rights for third states to be established if the parties so intend; and
- would provide the Committee with a more detailed legal briefing, if requested.

3.7 On the second question of the legal position arising where a third country refuses to apply the terms of its EU agreements to the UK, the Government says that:

- In this situation, pursuant to Article 129(1) Withdrawal Agreement the UK would continue to be bound by the obligations of the EU agreements, but the UK would not benefit from the rights.
- In any case, following extensive engagement with affected third countries through the UK's Embassies, no country has so far said they would not support the approach.

We refer to the Government's response to questions we asked in our last Report about the role envisaged for the European Parliament (EP) in relation to the Joint Committee. As a further development we note the announcement on 16 April of the President of the Commission of a Commission Declaration on practical arrangements for involving the EP in the operation of a ratified Withdrawal Agreement, including decision-making in the Joint Committee. In particular, it addresses the role of the EP concerning key decisions in the Withdrawal Agreement relating to:

The extension of the transition period and the determination of the UK's corresponding financial contribution (Article 132);

The abolition of the independent authority supervising the UK's compliance with its obligations on Citizens' Rights (Part 2); and

The decision to terminate the backstop (Article 20 of the Ireland/Northern Ireland Protocol).

3.8 The Government says that:

- In relation to those three decisions, the declaration commits the Commission to informing "sufficiently in advance the European Parliament of its intention to present a proposal for a decision on the position to take in the Joint Committee and of the gist of its envisaged proposal".

- It further commits to taking "utmost account of possible comments of the European Parliament in that respect". If it does not follow the EP position, it undertakes "to explain the reasons for which it did not".

This appears to go beyond the usual role of the EP as determined by the combined effect of Articles 218(9) TFEU and Article 218(10) TFEU in terms of the EU's participation in the governance body of international agreement between the EU and a third country (usually a Joint Committee). We ask the Government whether it considers this Declaration to be in accordance with the strict legal position concerning the EP's role in relation to a ratified Withdrawal Agreement and what they will do to ensure that the UK Parliament has at least an equally influential role relating to the UK's participation in the Joint Committee

3.9 The Government considers that:

- It has previously been clear that it will ensure full ministerial accountability to Parliament in relation to the Joint Committee.
- It is happy to discuss this further with Parliament once the operational arrangements of the Joint Committee are developed with the EU.
- At a minimum, it will be important that Parliament is kept sufficiently informed around meetings of the Joint Committee, including being updated by ministers, and can convey its views to the Government on issues and priorities as they relate to the Joint Committee; but
- It is also important to recognise that international affairs remain an area of executive competence and so it is right for the Government to represent UK interests at the Joint Committee.

3.10 The Minister adds that:

- The Government does not believe the Commission's offer to the EP will go beyond its own offer to the UK parliament.
- Referring to that part of that offer providing for 'sufficient and timely' information ahead of the Withdrawal Agreement Joint Committee and Specialised Committee meetings, as well as 'adequate involvement' in the three key decisions, the Government has already made clear that Parliament would have a decisive role in any extension of the implementation period.
- The Independent Monitoring Authority[11] will need to be set up by statute, so there will be an opportunity for Parliament to debate its proper role.

Our conclusions

3.11 **We thank the Minister for his prompt and detailed response. We do not expect a further update until such time, if at all, there are further developments for the Government to report on these proposals. We keep them under scrutiny in the meantime but draw this chapter and the documents to the attention of the Committee for Exiting the EU.**

11 In respect of the supervision and enforcement of Citizens' Rights provisions in the Withdrawal Agreement.

Full details of the documents

(a) Proposal for a Council Decision amending Decision (EU) 2019/274 on the signing on behalf of the European Union and of the European Atomic Energy Community, of the Agreement of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the Withdrawal Agreement: (40534),—, COM(19) 194; (b) Revised proposal for a Council Decision on the conclusion of the Withdrawal Agreement: (40589),—.

Previous Committee Reports

Sixty-seventh Report, HC 301–lxv, chapter 5 (2017–19): 5 June 2019; See also: Fifty-eighth Report, HC 1798 (2017–19), 8 March 2019.

4 Control of Exports of Dual-Use Items

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the International Trade Committee, the Committees on Arms Export Controls and the Joint Committee on Human Rights
Document details	Proposal for a Regulation setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items
Legal base	Article 207(2) TFEU; ordinary legislative procedure; QMV
Department	International Trade
Document Number	(38114), 12785/16 + ADDs 1–3, COM(16) 616

Summary and Committee's conclusions

Overview

4.1 The existing EU legislative framework of controls on the export, brokering, transit and transfer of dual-use items[12] was adopted in 2009.[13] In September 2016, the Commission presented a draft Regulation aimed at updating the EU regime to reflect geo-political developments and technological changes (the proposed recast Regulation). This included measures to help prevent human rights violations associated with certain cyber-surveillance technologies.

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

4.2 At its meeting on 30 January 2019, the Committee:

- noted continuing divisions in the Council over the proposal, as the UK and a number of other EU Member States opposed the introduction of: a) an autonomous EU-specific list of dual-use cyber-surveillance technologies of concern on the basis that this would undermine the established practice to date of deriving control lists from the four existing multilateral export control regimes[14] and put EU/UK exporters at a commercial disadvantage; and b) a 'catch all' human rights end use clause aimed at ensuring that exports of non-listed goods (specified in the autonomous list) do not contribute to human rights violations; whilst the Government supported the principle, it raised concerns about its practical application; and

12 Dual-use items are products, including software and technology, which can have both civilian and military applications.

13 See Council Regulation (EC) 428/2009 (the current dual-use Regulation).

14 The four regimes are the: Wassenaar Arrangement (WA) on Export Controls for Conventional Arms and Dual-Use Goods and Technologies; Nuclear Suppliers Group (NSG) for the control of nuclear related technology; Australia Group (AG) for the control of chemical and biological technology that could be weaponised; Missile Technology Control Regime (MTCR) for the control of rockets and other aerial vehicles capable of delivering weapons of mass destruction.

- summarised the Government's responses to date on the implications of the proposal in all foreseeable Brexit scenarios as follows:
  - in a no-deal scenario, licences will be required to export dual-use items to the EU and vice versa, but both the EU and UK intend to implement simplified licensing schemes (in the form of a new Open General Export Licence for UK operators, and the addition of the UK to the EU's General Export Authorisation EU001) in order to minimise additional burdens for UK/EU operators exporting to the EU/UK;
  - during any scheduled transition period (if the draft Withdrawal Agreement published on 14 November 2018 is ratified), the UK would have to apply the recast Regulation if it enters into force during this time. The Minister asserted that the costs to UK businesses and competent authorities of applying and enforcing the proposed recast Regulation during the transition would "not be significant" as it only "brings a small number of additional goods under control"; and
  - post-exit/transition, the Government intends to seek continued cooperation with the EU in certain areas (such as sharing information on denied licences) and conduct a cost-benefit assessment of implementing any additional EU agreed controls that go beyond the UK's obligations under the established international export control regimes.

4.3 The Committee asked to be kept updated on the progress of negotiations and the expected shape of the UK's post-Brexit dual-use export control regime.

The Minister's letter of 31 May 2019

4.4 The Minister for Investment (Graham Stuart MP) explains that a 'blocking minority' of Member States, including the UK, continued to oppose the autonomous EU control list and human rights end use control clause. The Romanian Presidency "[u]nexpectedly" removed these references in early May 2019 and compromise text was agreed at Working Group level on 15 May 2019. The Minister anticipates that the compromise text will be "taken forward as an informal mandate" and that further progress will depend on the new Commission's and new European Parliament's priorities.

4.5 In response to the Committee's question on when the Government is likely to complete an assessment of the costs and benefits of future alignment with or divergence from the EU dual-use regime post-exit, the Minister states that future divergence is likely to be limited as both the UK and EU27 Member States will be obliged to comply with their international obligations, including those derived from the four international export control regimes. He states that the Government's decision on whether to adopt its own additional controls or "follow suit" (in replicating any additional EU controls) post-exit will be based on "an assessment of the costs to [UK] business and government, the likely effectiveness of the controls in preventing the activity [the Government] is concerned about and the risks (e.g. to national security) of not taking action".

4.6 **Following the Minister's update of 31 May 2019 notifying the Committee of agreement at Working Group level on the Romanian Presidency compromise text, COREPER(Ambassadors) agreed an informal mandate for the Council Presidency to enter into trilogue negotiations with the European Parliament on 5 June 2019.**[15]

4.7 **We ask the Minister to provide us with a full account of this Coreper meeting by: a) confirming how the UK voted; b) providing a copy of the agreed informal mandate; c) identifying the key changes to the final compromise text (relative to the version considered by the Minister in his update of 17 December 2018) and whether/why these changes were supported by the Government; and d) summarising—for the sake of transparency for UK stakeholders—the main new provisions of the proposed recast Regulation relative to the existing dual-use Regulation and the expected costs and benefits of implementing them. The Minister's next update should also include a review of any progress made in, and the expected timings for, trilogues.**

4.8 **In the meantime, we retain the document under scrutiny and draw the Minister's update and our conclusions to the attention of the International Trade Committee, the Committees on Arms Export Controls and the Joint Committee on Human Rights.**

Full details of the documents

Proposal for a Regulation setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items: (38114), 12785/16 + ADDs 1–3, COM(16) 616.

Background

4.9 See the Committee's previous Report chapters listed below.

Previous Committee Reports

Fifty-third Report HC 301–lii (2017–19), chapter 5 (30 January 2019); Forty-third Report HC 301–xlii (2017–19), chapter 3 (31 October 2018), Twenty-sixth Report HC 71–xxiv (2016–17), chapter 5 (18 January 2017).

15 See Council Press Release dated 5 June 2019.

5 Crowdfunding and P2P lending: new EU regulatory framework

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Treasury Committee
Document details	(a) Proposal for a Regulation on European Crowdfunding Service Providers (ECSP) for Business; (b) Proposal for a Directive amending Directive 2014/65/EU on markets in financial instruments with respect to crowdfunding.
Legal base	Article 114 TFEU; ordinary legislative procedure; QMV
Department	Treasury
Document Numbers	(a) (39550), 7049/18 + ADDs 1–3, COM(18) 113; (b) (39551), 7048/18 + ADDs 1–2, COM(18) 99

Summary and Committee's conclusions

5.1 Crowdfunding is a relatively new form of financing, where an online platform or intermediary connects investors—often individual savers—with counterparts looking for funding.[16] It is used by both consumers and businesses to access loans. British platforms are currently by far the most prolific European crowdfunding 'hubs': of the €4.2 billion (£3.6 billion) raised through crowdfunding in the EU in 2015, 80 per cent was raised in the UK.

5.2 As part of the EU's "Capital Markets Union" (CMU) project, the European Commission in March 2018 proposed a new Regulation to create an EU-level regulatory framework for investment- and loan-based crowdfunding platforms that provide funding for businesses (but not consumers).[17]

5.3 This Regulation as proposed would create an optional[18] "European Crowdfunding Service Provider" (ECSP) label, providing platforms from any Member State with a 'passport' allowing them to solicit investments from investors in any other EU country (without needing to seek country-by-country authorisation or licences). If they did not want to operate across EU borders, platforms could remain within the pre-existing national regulatory framework applicable in their home country. Under the original proposal, obtaining the ECSP label would require a platform to meet certain prudential, organisational and consumer protection requirements set out in the Regulation, and secure authorisation from the European Securities and Markets Authority (ESMA) in

16 The most common forms are peer-to-peer lending or loan-based crowdfunding, where businesses or consumers are provided with a loan and the investors receive debt repayments, and investment-based crowdfunding, where investors bet on a business generating a cash flow in the future by buying investments such as shares or debt securities.

17 The ECSP label would not apply to peer-to-peer lending to consumers, which is already covered by specific legislation governing consumer credit (including the Consumer Credit Directive).

18 Under the Commission proposal, the ECSP label would be explicitly 'opt-in': platforms could apply voluntarily for the label, but only if they did not already hold authorisation to provide crowdfunding services under national law (although such a domestic licence would not afford a 'passport' to operate in other Member States).

Paris.[19] Moreover, the new EU 'passport' would not be applicable to any crowdfunding projects seeking to raise more than €1 million (£880,000), which is the point at which EU law normally requires a formal prospectus to be issued to prospective investors.[20]

5.4 The European Commission envisaged the Regulation would take effect in 2020, provided it was adopted in time by the Member States in the Council and by the European Parliament.

Scrutiny history of the proposal for a Crowdfunding Regulation

5.5 The Government deposited the Commission proposal for parliamentary scrutiny in spring 2018, around the same time that the first draft of the Withdrawal Agreement on the UK's exit from the EU was published by the European Commission. This foresaw a post-Brexit transitional period, beginning on 29 March 2019 and ending on 31 December 2020, during which the UK would stay in the Single Market and Customs Union to avoid a change in the terms of the UK's trade with the EU-27. To achieve this, the UK would have to continue applying EU legislation during the transitional period, including new European laws that only take effect during the transition.

5.6 In his Explanatory Memorandum on the Crowdfunding Regulation of 27 March 2018, the Economic Secretary to the Treasury (John Glen MP) expressed the Government's support for efforts to increase the reach of crowdfunding platforms across the EU. However, the Treasury had concerns about the substance of the Commission proposal (including the need to differentiate between investment- and loan-based crowdfunding, given their different business models;[21] ensuring companies cannot use a 'lighter touch' ECSP regime to escape stricter domestic regulation when offering crowdfunding services; a larger role for domestic regulators in supervising the new regime; and the inclusion of proportionate prudential requirements for crowdfunding platforms as a pre-condition for their authorisation as an ECSP).

5.7 The Committee considered the proposal for the first time at its meeting on 25 April 2018, noting that the impact of the new Crowdfunding Regulation on UK firms was likely to depend largely on the future UK-EU agreement on financial services, because:

- the UK was due to leave the EU's Single Market, either on 'exit day' (then still scheduled for 29 March 2019), or at the end of the proposed transitional period on 31 December 2020 under the draft Withdrawal Agreement. It seemed unlikely the Regulation would take effect before either of those dates. As a result, UK crowdfunding platforms would not be eligible for the 'passport', since it would only be open to EU-based companies and they would be considered 'third country' (non-EU) firms; and
- the Regulation as proposed contained no 'equivalence' provisions which would allow the Commission to declare a non-EU crowdfunding legal regime as

19 The proposal is part of the wider Capital Markets Union (CMU) initiative, which aims to increase end fragmentation of the EU's capital markets along largely national lines.

20 See article 1(3) of Regulation 2017/1129 (the Prospectus Regulation). Similarly, the ECSP label would not be available to firms which provide wider investment services under the Markets in Financial Instruments Directive (MiFID II) which covers many more investment services than only linking investors and projects through crowdfunding. A supplementary legislative proposal would amend MiFID II to disapply that Directive to crowdfunding platforms authorised under the new Crowdfunding Regulation.

21 See footnote 16 for more information on loan- and investment-based crowdfunding.

equivalent, which in turn could theoretically permit crowdfunding platforms from that country to operate in the EU as if they were based in a Member State. Accordingly, the draft legislation had no mechanism that would allow UK crowdfunding providers to 'passport' into the EU market as 'third country' operators after Brexit.[22]

5.8 The Committee drew the proposal to the attention of the House, and of the Treasury Committee in particular, and asked the Minister "whether the Government intends to push for the inclusion of an equivalence regime under the Regulation, so that the UK—if necessary—could apply to stay part of the ESCP regime after it leaves the Single Market (if such market access cannot be secured through a bilateral trade agreement)".

5.9 Since we last reported the proposed Regulation to the House, a number of important political developments have taken place in the UK's process of withdrawing from the EU:

- Firstly, the previous Prime Minister and the EU provisionally agreed on a draft Withdrawal Agreement in November 2018, which provides for the possibility of an extension of the post-Brexit transitional period (during which EU law would continue to apply in its entirety), from December 2020 to December 2022. If the Agreement was ratified, that would therefore increase the chances that the new Crowdfunding Regulation could apply to and in the UK during transition.

- Secondly, the House of Commons thrice rejected the Withdrawal Agreement negotiated by the Government, leaving the 'no deal' Brexit scenario as a significant possibility (where EU law would cease to apply overnight when the UK's EU membership ends).

- Thirdly, the House of Commons also voted against the possibility of such a 'no deal' Brexit. As a consequence, the Government agreed two extensions of the UK's membership of the EU beyond the original 'exit day' of 29 March 2019. As a result, the UK is now due to leave the EU on 31 October 2019, irrespective of whether the Withdrawal Agreement is ratified by then.

5.10 In parallel, there have also been substantive developments in the legislative negotiations on the Crowdfunding Regulation. Based on information provided by the Economic Secretary to the Treasury in letters dated 19 July 2018, 13 December 2018 and 11 July 2019, we have set out the respective positions of the Member States in the Council and of the European Parliament below. Further down, we have assessed the potential implications of the Regulation for the UK in the context of the Brexit process.

22 As the Committee noted in its first Report on the proposal, although the Commission noted in its Impact Assessment that the withdrawal of the UK—as the EU's largest hub for crowdfunding—"raises questions about the need for a (…) framework to assess the equivalence of a third country regime", the draft legislation itself contains no provisions on equivalence mechanism to extend the passport to non-EU crowdfunding platforms.

The position of the Member States and of the European Parliament on the Crowdfunding Regulation

The position of the European Parliament

5.11 The Crowdfunding Regulation is subject to the ordinary legislative procedure, meaning it has to be adopted jointly by the European Parliament and a qualified majority of Member States in the Council.

5.12 The European Parliament's Economic and Monetary Affairs Committee, which leads the Parliament's negotiations on the Regulation, adopted its position on the proposal on 5 November 2018.[23] This was subsequently endorsed by the Parliament as a whole during its Plenary Session on 27 March 2019. Although the MEPs' position was adopted prior to its dissolution for the EU elections in May 2019, the new Parliament is likely to pursue negotiations based on this mandate when talks with the Member States begin in autumn 2019.[24]

5.13 Among other changes, MEPs wanted to significantly raise the value limit on calls for finance that could be issued by platforms with the ECSP label under the Crowdfunding Regulation. Under their proposals, this threshold would rise from the Commission's suggestion of €1 to €8 million (given that the new Prospectus Regulation—which took effect in July 2019—allows public offers of up to €8 million to be made without a formal prospectus).[25] In addition, the Parliament wanted platforms to be required to disclose the rate at which their borrowers default on loans, so investors can more accurately assess the risks of investing their money.

The position of the Member States in the Council

5.14 Extensive discussions between the EU's Member States on the Crowdfunding Regulation also took place since early 2018.

5.15 The Economic Secretary provided a first update on discussions among Member States on the Regulation in mid-July 2018, in which he explained that national governments wanted authorisation for use of the ECSP label to be the responsibility of national financial regulators, rather than ESMA. Many of them also, like the European Parliament, wanted to increase the €1 million limit for individual crowdfunding projects (above which a platform could not use its passport to seek funds from investors in other Member States). It appeared the Government's other concern, in particular the need to have different regulatory regimes for investment—and loan-based crowdfunding platforms, and the need for a basic prudential framework, or access to the framework by non-EU platforms, had not yet been discussed in the Council working party at that stage.

23 The Parliament's Rapporteur on the proposal was Ashley Fox, a British Conservative Party MEP.

24 Rule 240 of the European Parliament's Rules of Procedure provides that "all Parliament's unfinished business shall be deemed to have lapsed" at the last session before EU elections, except where "the Conference of Presidents shall take a decision on reasoned requests from parliamentary committees and other institutions to resume or continue the consideration of such unfinished business" at the beginning of the new parliamentary term. At the start of the 2014–2019 parliamentary term, that decision was taken in September 2014. It was communicated to the Commission and Council on 1 October 2014.

25 While article 1(3) of the Prospectus Regulation in principle applies the requirement to issue a prospectus for offers of €1 million or more, article 3(2)(b) allows individual Member States to exempt offers of less than €8 million.

5.16 Five months later, in December 2018, the Economic Secretary provided another update on the negotiations on the Crowdfunding Regulation. This explained that "the direction of travel among the majority of member states is towards changing the proposal into a minimum-harmonising Directive, rather than an opt-in Regulation". This would mark a substantial shift in the EU's regulatory approach to crowdfunding, as it would mean there would be no optional EU-wide 'label' for which platforms could apply to operate throughout the Single Market. Instead EU legislation would set a regulatory baseline for all crowdfunding activities, whether they are conducted cross-border or purely domestically.[26]

5.17 The Minister's letter did not indicate whether the UK supports this change of approach, but it did note that the Treasury's "focus remains on ensuring that EU rules do not impact on the competitiveness of the UK's crowdfunding sector". We asked for further clarification of the Government's position on this shift in the discussions, and whether the issue of 'equivalence'—potentially allowing UK crowdfunding platforms to operate in the EU post-Brexit—had featured in the negotiations and requested a response by 31 January 2019.

5.18 However, the Minister did not in fact reply to our questions until 11 July 2019.[27] At that point, he informed us that the Member States in the Council—via their Permanent Representatives in COREPER—had approved a mandate for negotiations with the European Parliament on the final text of the new legislation on 26 June. The Council's position maintained the proposed shift to harmonising legislation, which would "automatically apply to those platforms carrying out in-scope crowdfunding activities", rather than the original proposal of an opt-in Regulation (where firms would opt-in to the EU legislation should they wish to operate cross-border). Moreover, it maintained the use of a Regulation—rather than a Directive—as the chosen legal instrument, leaving less room for national flexibility if the legislation is adopted in this form.[28]

5.19 The Minister explains that, if the Council's approach is also endorsed by the European Parliament, "all Member States would be required to adopt the EU-wide rules contained in the proposal" and "allow platforms to operate in other Member States under a largely uniform regulatory framework, and investors to invest in platforms across the EU". However, only certain types of crowdfunding would be in scope,[29] and individual EU countries would "retain the ability to choose how certain elements of the Regulation will apply". For example, they would be able to choose whether to apply a

26 The Council and Parliament could change the type of instrument for the Commission proposal from Regulation to Directive by mutual agreement. This has previously happened, for example, during the negotiations on the Offshore Safety Directive (Directive 2013/30/EU).

27 In his letter, the Minister apologises for the delay in writing to the Committee, saying: "There have been several changes in the direction of travel for this file since I wrote to you in December, and it seemed prudent to wait until there was clarity on progress before updating the Committee".

28 Regulations apply automatically and uniformly to all EU countries as soon as they enter into force, without needing to be transposed into national law. Directives require EU countries adopt measures to 'transpose' them into national law, but leave them free to choose how to do so.

29 As originally proposed by the Commission, peer-to-peer lending to consumers would not be covered since this is regulated separately under the Consumer Credit Directive and national law. In addition, the Council's reworked version of the Crowdfunding Regulation would include 'pricing' and 'conduit' models (which the Minister explains is respectively where the platform either sets the price of the investment, or simply advertises the investment opportunity), while 'discretionary' platforms (where a platform manages a portfolio of loans on behalf of an investor in order to meet a target rate of return) would be out of scope, and regulated solely by national law. Its potential inclusion would be reviewed by the European Commission two years after the Regulation takes effect.

monetary limit or relative restriction on the maximum amount that 'non-sophisticated' retail investors[30] can invest in individual crowdfunding projects.[31] The Council's position also sets out "significant prudential requirements that mean platforms will need to hold buffers to protect against operational risk", and introduced a reflection period for non-sophisticated investors (including a right to withdraw from an agreement to contribute to a crowdfunding offer within seven days).

5.20 The Minister indicates the UK Government is supportive of the approach taken by the Council to re-draft the proposal as a minimum-harmonising Regulation, "in order to prevent regulatory arbitrage between national and EU-wide rules, and to allow the [UK] Financial Conduct Authority (FCA) to more easily monitor and administer these rules". Whether or not the legislation will impact on the UK's regulatory framework for crowdfunding depends on the wider Brexit process (see paragraphs 0.24 to 0.25 below). Other Member States appear to be much less supportive of the compromise text, with Austria and the Czech Republic in particular calling for crowdfunding platforms without cross-border activities to be excluded from the scope of the Regulation (and therefore regulated solely by national law).

Next steps in the legislative process

5.21 The new European Parliament was elected in May 2019, and will not fully resume its legislative activities until autumn. It is expected that the Parliament will carry over the position on the Crowdfunding Regulation adopted by its predecessor in April, and use this as a basis for negotiations with the Member States on the final text of the legislation. It is not yet clear at this stage when those 'trilogue' negotiations might start and finish, and consequently when the new Regulation is likely to take effect.

Our conclusions

5.22 **We thank the Minister for his detailed update on the negotiations around the EU's Crowdfunding Regulation. The Government is clearly supportive of the new approach taken by the Member States in setting a minimum regulatory baseline for all crowdfunding platforms across the EU, and the Minister reassures us that the Regulation as re-drafted within the Council—and provided it is also accepted by the European Parliament—"would not pose significant practical disruption to the continued regulation of platforms" in the UK. We also welcome the exclusion of consumer lending from the scope of the Regulation, preventing the possibility of crowdfunding platforms circumventing existing consumer credit laws.**

5.23 **We note that the potential application of the EU Crowdfunding Regulation in the UK, once agreed between the Council and the Parliament, will depend primarily on developments in the process of our withdrawal from the European Union.**

5.24 **Since the Committee last reported the proposal to the House in April 2018, the finalised Withdrawal Agreement was published. As drafted this provides for a**

30 The version of the Regulation put forward by the Council would define 'sophisticated investors' as those who are professional investors under MiFID II (e.g. financial firms, large non-financial companies, and "national and regional authorities") and other legal or natural persons which meet certain financial criteria, if they accept being treated as a 'sophisticated' investor.

31 The Minister says that, if it had to apply the Regulation, the UK would place a limit ensuring that non-sophisticated investors invest no more than 10% of their net wealth in an individual project.

transitional period, potentially lasting until the end of 2022, during which EU law would continue to apply. That would include the new regulatory framework for crowdfunding platforms if it takes effect during the transition (a distinct possibility if the Regulation is approved by the end of 2019).[32] Similarly, the Regulation could apply in the UK if Article 50 was revoked, or if the negotiating period—during which the UK remains a full Member State—was again extended beyond 31 October.

5.25 **After the end of any further extension or transitional period, or in a 'no deal' scenario (where there is no ratified Withdrawal Agreement and therefore no transition period), the Crowdfunding Regulation would by default not apply to the UK. Parliament would then be free to regulate this sector without reference to EU law if it so chose. However, given the dominance of the UK's crowdfunding industry, access to the European market post-Brexit is likely to remain a commercially attractive prospect.**

5.26 **When we last considered the Crowdfunding Regulation in January 2019, we asked the Economic Secretary to clarify if there was any appetite among the remaining Member States to introduce an 'equivalence' regime comparable to those provided for by other pieces of sectoral EU financial services legislation. Equivalence could allow non-EU platforms—including British ones after Brexit—to provide crowdfunding services within the EU, without having a subsidiary or legal presence within the EU itself.**

5.27 **In his letter of 11 July 2019, the Minister confirmed that "there has been no interest expressed" for such an equivalence mechanism in the Crowdfunding Regulation in the Council, because "the objective for many Member States has been to protect their smaller sectors". The implicit reasoning is that these countries do not want to open their domestic markets to UK competitors after Brexit, given Britain's dominant share of the European crowdfunding sector.[33] As such, after the UK leaves the Single Market, British crowdfunding websites would not be able to make use of any new 'passporting' arrangements under the Regulation, even if the UK's regulatory approach to crowdfunding was completely aligned with the EU's. Instead, UK platforms would have to establish a subsidiary within one of the remaining Member States to obtain a platform and provide services in multiple EU countries on a cross-border basis under the new Regulation.**

5.28 **More generally, we have concluded that the final outcome of the legislative deliberations on the Crowdfunding Regulation remains unclear, because the European Parliament adopted its position on the basis of the Commission's original 'opt-in' system. In light of the substantial divergence in the negotiating positions of the Council and the European Parliament, and the uncertainty about the potential application of the final legislation in the UK in the context of Brexit, we have decided to retain the proposals under scrutiny. We ask the Minister to inform us in due course of any significant progress in the trilogue negotiations, and draw these developments to the attention of the Treasury Committee.**

32 The draft Withdrawal Agreement would not give the Government the option of opting out of new EU legislation in the field of financial services during the transitional period, so during that time it would need to apply the Crowdfunding Regulation irrespective of its substance.

33 In his letter, the Minister notes that "the UK accounts for 75% of the European crowdfunding industry".

Full details of the documents

(a) Proposal for a Regulation on European Crowdfunding Service Providers (ECSP) for Business: (39550), 7049/18 + ADDs 1–3, COM(18) 113; (b) Proposal for a Directive amending Directive 2014/65/EU on markets in financial instruments with respect to crowdfunding: (39551), 7048/18 + ADDs 1–2, COM(18) 99.

Previous Committee Reports

39550, 7049/18 COM(2018) 113: See the Twenty-fifth Report HC 301–xxiv (2017–19), chapter 6 (25 April 2018).

6 Preventing the dissemination of terrorist propaganda online

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee, the Justice Committee, the Digital, Culture, Media and Sport Committee and the Joint Committee on Human Rights
Document details	Proposal for a Regulation on preventing the dissemination of terrorist content online
Legal base	Article 114 TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(40069), 12129/18 + ADDs 1–3, COM(18) 640

Summary and Committee's conclusions

6.1 The proposed Regulation seeks to fulfil the commitment made by the European Commission President, Jean-Claude Juncker, in his September 2018 State of the Union speech to put forward "new rules to get terrorist content off the web within one hour—the critical window in which the greatest damage is done".[34] The proposal would require online platforms to take proactive measures to prevent the dissemination of terrorist content; empower national authorities to issue a legally binding order for the removal of terrorist content from the web within an hour; introduce penalties for platforms which fail to act promptly; and strengthen cooperation amongst Member States and with Europol. The new power to issue a removal order would operate alongside existing voluntary referral mechanisms, but with a clear obligation on hosting service providers to put in place the necessary operational and technical measures to ensure that referrals are dealt with expeditiously.[35] The proposed Regulation also includes a range of safeguards in recognition of "the fundamental importance of freedom of expression and information in an open and democratic society".[36] Our Report agreed on 24 October 2018 provides a detailed overview of the proposal.

6.2 In his informative Explanatory Memorandum (see part one and part two), the then Minister for Security and Economic Crime (Rt Hon. Ben Wallace MP) welcomed the prospect of EU regulatory action to tackle online terrorist content. Whilst acknowledging the value of voluntary cooperation with service providers, he considered that tech companies had "not gone far enough or fast enough" and that the approach taken by the Commission in seeking to balance public security and fundamental rights established "a helpful precedent" and would "lay the groundwork and support our own intention to legislate on illegal online content". He shared the Commission's view that a fragmented framework of national rules would be burdensome for companies operating within the

34 For an overview of the Commission's proposal, see the European Commission's fact sheet published on 12 September 2018, A Europe that protects: Countering terrorist content online.

35 Article 5.

36 See Articles 3(1) and 6(4).

EU's digital single market and that Article 114 TFEU on the internal market, rather than EU Treaty provisions on justice and home affairs matters, was the appropriate legal base for EU action.

6.3 Noting the Government's support for regulatory action at EU level, we granted a scrutiny waiver ahead of the December 2018 Justice and Home Affairs Council to enable the Government to support the general approach put forward by the Austrian Presidency. Reporting back to us on the outcome of the Council, the Minister said there was a general recognition of the urgency of the threat posed by online terrorist content and a shared determination to strengthen the EU's "toolbox" of counter-measures, but some Member States had nonetheless been unable to support the text. Finland and Denmark cited a conflict with their own national constitutions, the Netherlands questioned whether the general approach struck "the right balance between removal of content and fundamental rights", and Slovakia, Slovenia, the Czech Republic and Poland expressed concern that an agreement was "premature" and called for further analysis at expert level. The Presidency had offered assurance that "various points of objection" could be addressed in trilogue negotiations with the European Parliament.

6.4 We also acknowledged the urgency of the threat and the need to act quickly, but expressed concern that the Presidency had been unable to put forward a compromise text commanding the support of all Member States. In our Report agreed on 9 January 2019 we asked the Minister to write to us again once the European Parliament had agreed its negotiating position on the proposed Regulation with details of:

- the main changes sought by the European Parliament and the Government's position on them;
- how the Presidency intended to overcome the constitutional or other obstacles raised by some Member States; and
- whether the Government would be willing to support (and vote for) a final text which failed to address the constitutional concerns of these Member States.

6.5 We noted that the Council had proposed a new consultation procedure intended to ensure that the Member State in which a service provider hosting terrorist content is established has an opportunity to raise concerns if it considers that a removal order issued by another Member State would "impact [its] fundamental interests".[37] We asked the Minister how effective this consultation procedure was likely to be in practice, given that a hosting service provider would be under an obligation to act within one hour, leaving little time for the Member State of establishment to voice an objection or set out the grounds for believing that a removal order would be unjustified.

6.6 In his letter of 24 July 2019, the Minister updates us on the negotiating position agreed by the European Parliament in April which establishes the basis for opening trilogue negotiations with the Council. He highlights the following changes to the Commission's original proposal:

37 Article 4(a) of the Council General Approach agreed in December 2018.

- **Scope of the proposal**: it would only apply to a hosting service provider disseminating information to the public (as opposed to 'third parties') and would exclude cloud providers and cloud infrastructure providers.[38]

- **Designation of a competent authority:** Member States would be required to designate a *single* authority responsible for issuing removal orders.[39]

- **Removal orders:** only the competent authority of the Member State in which a hosting service provider is established would have the power to issue a removal order requiring the provider to remove or disable access to terrorist content in *all* Member States. The competent authority of another Member State may request that a hosting service provider established elsewhere in the EU disable access to terrorist content for users in that State, not to remove it for all users in the EU.[40]

- **Relaxation of the one-hour deadline for the removal of terrorist content:** there would be a 12-hour buffer period for hosting service providers receiving their first removal order before having to take action to remove or disable access to terrorist content.[41]

- **Voluntary referrals:** provisions detailing how hosting service providers should respond to voluntary referrals would be deleted.[42]

- **Proactive measures:** there would be no legal obligation on hosting service providers to take proactive measures to protect their service against the dissemination of terrorist content, simply an exhortation to take specific measures which are targeted and proportionate. A competent Member State authority would only be able to request that additional specific measures are taken once it has established that a hosting service provider has received "a substantial number of removal orders". It could not insist on the use of automated tools.[43]

- **Preservation of content and related data:** content and related data held for the purpose of a criminal investigation or prosecution would have to be deleted after six months.[44]

- **Transparency obligations:** each national authority responsible for issuing removal orders would be required to publish an annual transparency report.[45]

6.7 The Minister considers that the revised text proposed by the European Parliament has "in certain parts, moved quite significantly from the versions put forward by the Commission and Council". Some (though not all) of the changes would be difficult for the Government to support and raises "clear concerns":

> Of most concern is the lack of provision regarding proactive measures. I have been clear since my first correspondence, as has the Government, that in order to see meaningful action against the threat of terrorist content

38 See the amendments to Articles 1 and 2 of the Commission's proposal.
39 See the new text in Article 2 and the amendment to Article 17(1) of the Commission's proposal.
40 See the amendments to Article 4 of the Commission's proposal.
41 See the amendments to Article 4 of the Commission's proposal.
42 The EP amendments would delete Article 5 of the Commission's proposal.
43 See the amendments to Article 6 of the Commission's proposal.
44 See the amendments to Article 7 of the Commission's proposal.
45 See the new text in Article 8a.

> online, HSPs [hosting service providers] need to proactively prevent their platforms from being misused by terrorists and their supporters, through better content moderation and the use of automated technology to identify and remove content. Notice and takedown regimes will not sufficiently address this problem.

6.8 The Minister highlights the publication of the Government's Online Harms White Paper in April 2019 which proposes a domestic legal framework to hold companies to account for harmful user-generated content hosted on their platforms.[46] He observes:

> Whilst the Government has committed to leaving the European Union, we want to ensure alignment of UK and EU law, particularly on an area which is inherently cross-border in nature.

6.9 The proposed Regulation would apply 12 months after entering into force, meaning that the UK would be bound by it under the post-exit transition period envisaged in the draft EU/UK Withdrawal Agreement. Moreover, as the proposal would establish uniform rules to support the functioning of the internal market, it would be difficult for individual Member States to apply stricter rules. The Minister notes:

> Given a key tenet of our Online Harms White Paper will be for companies to proactively moderate their platforms for terrorist content, in order to fulfil a duty of care to their users, we are concerned the European Parliament has suggested something substantially weaker, which our domestic legislation would have to align to, while we are still a member of the EU.

6.10 The Minister expresses concern that the changes proposed by the European Parliament would impose unnecessary restrictions and burdens on the UK national authority empowered to issue removal orders, citing new transparency obligations and "a complicated and watered-down removal order process". He considers that the European Parliament's insistence on a single judicial or independent administrative body in each Member State with a power to issue removal orders "is likely to be problematic in the short term"—the case for a single independent regulator is one of the issues the Government will be exploring in its consultation on the Online Harms White Paper.

6.11 The Government is keen to ensure that changes in terminology (such as the use of the term 'public' in defining the services covered by the proposed Regulation or the exclusion of cloud infrastructure services) do not inadvertently narrow the amount of user-generated content brought within the scope of EU regulation and "will look to align our position on this issue across both pieces of legislation" (domestic and EU). The Government would also "prefer not to place obligations on HSPs to erase preserved data" after six months.

6.12 The Minister is content to support changes proposed by the European Parliament to strengthen 'user redress' and the protection of fundamental rights, adding:

> These proposed changes are likely to allay some of the concerns previously raised by some Member States around striking the right balance between content removal and fundamental rights.

46 See CP 57.

6.13 The Minister recognises that the speed with which a removal order would take effect leaves little time for consultation with other Member States but considers that "the efficacy of notifying another Member State of a removal order lies in the transparency it provides, adding a further 'check' on the actions of a Member State".

6.14 The Minister anticipates that it will be "challenging" for the Council and European Parliament to reach agreement on a compromise text and says the Government will seek to retain the level of ambition in the Commission's original proposal. He concludes nonetheless that:

> […] the desire to legislate on this issue at EU level remains, and indeed has arguably been strengthened since the tragic events of the Christchurch attack. As such, we expect all parties will strive to reach an agreeable compromise. My officials have already engaged with the upcoming Finnish Presidency who have set aside time to hold subsequent meetings to progress this file in the autumn. Until trilogues begin, Government officials will look to engage Member State counterparts and newly elected MEPs to influence their position on this file ahead of negotiations. This links in with engagement we are doing across the EU on our Online Harms White Paper, putting the case forward for proportionate and effective regulation, which will meaningfully address the harms we see online.

Our Conclusions

6.15 **The political will to agree an EU framework to prevent the dissemination of terrorist content online appears undiminished, yet the significant differences in the approach taken by the Council and the Commission on the one hand, and the European Parliament on the other, to the intensity of regulation in this area, and the difficult balance that has to be struck between public safety and freedom of expression, suggest that there is little prospect of securing a compromise agreement before the UK leaves the EU on 31 October 2019. It therefore seems unlikely that the UK will have a vote on the legislation finally adopted by the European Union.**

6.16 **This is important for two reasons. First, should negotiations on a compromise text extend beyond 31 October 2019, the UK's ability to shape its content will be diminished. The loss of voting powers also means that the UK will not be able to play a decisive role in pushing through a text which it can support or in blocking one that it dislikes.**

6.17 **Second, in areas such as this which are "inherently cross-border in nature", the Minister recognises that regulation will be more effective if there is a close alignment between the UK's domestic law and the EU's legal framework, even after the UK has left the EU. The UK's ability to inform and influence legislative and policy developments within the EU will continue to matter. There will be an important role for Parliament in ensuring that the way in which the Government engages with EU institutions and Member States post-Brexit is transparent and that the influence and reach of EU law in establishing new domestic regulatory frameworks is properly understood.**

6.18 **Given the important synergies between the proposed Regulation and the Government's domestic agenda for legislating to tackle a broader range of online harms, we ask the Minister to provide regular progress reports once trilogue negotiations are**

underway. Meanwhile, the proposed Regulation remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee, the Justice Committee, the Digital, Culture, Media and Sport Committee and the Joint Committee on Human Rights.

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online: (40069), 12129/18 + ADDs 1–3, COM(18) 640.

Previous Committee Reports

Fiftieth Report HC 301–xlix (2017–19), chapter 5 (9 January 2019), Forty-sixth Report HC 301–xlv (2017–19), chapter 16 (28 November 2018) and Forty-first Report HC 301–xl (2017–19), chapter 6 (24 October 2018).

7 EU Fund for Aid to the Most Deprived

Committee's assessment	Politically important
Committee's decision	(a) Cleared from scrutiny
	(b) Not cleared from scrutiny; further information requested; drawn to the attention of the Education Committee, the Home Affairs Committee and the Work and Pensions Committee
Document details	(a) Commission report: *Summary of the annual implementation reports for the operational programmes co-financed by the Fund for European Aid to the Most Deprived in 2016*
	(b) Commission report: *Summary of the annual implementation reports for the operational programmes co-financed by the Fund for European Aid to the Most Deprived in 2017*
Legal base	(a) and (b)—
Department	Home Office
Document Numbers	(a) (40204), 14699/18 + ADD 1, COM(18) 742
	(b) (40692), 10602/19 + ADD 1, COM(19) 259

Summary and Committee's conclusions

7.1 The Fund for European Aid to the Most Deprived ("the Fund")[47] was established in 2014 to support Member States in meeting the poverty reduction target agreed by EU leaders in June 2010 which aims to "lift at least 20 million people out of the risk of poverty and social exclusion" by the end of 2020.[48] The Fund has a total budget of €3.4 billion for the period 2014–20, with each Member State receiving a minimum amount of €3.5 million to be distributed in annual instalments. It is intended to complement Member States' national poverty eradication and social inclusion policies by targeting those experiencing "forms of extreme poverty with the greatest social exclusion impact, such as homelessness, child poverty and food distribution".[49]

7.2 In January 2019, we examined a European Commission report on Member States' implementation of the Fund in 2016—document (a)—covering the second full year of the Fund's operation. The report indicated that around 16 million people had benefited from the Fund in 2016, with most (96%) receiving food support, bringing the total beneficiaries between 2014 and 2016 to around 38 million. None of these beneficiaries were in the UK.

7.3 The Minister for Crime, Safeguarding and Vulnerability (Victoria Atkins MP) explained why in her Explanatory Memorandum of 23 January 2019. In summary, the

47 See Regulation (EU) No 223/2014 on the Fund for European Aid to the Most Deprived.
48 See the Conclusions agreed by the European Council on 17 June 2010.
49 See recital (7) and Article 3 of Regulation (EU) No 223/2014.

Government had abandoned its original (2014) plan to expand breakfast club provision in deprived areas in England as it did not meet the Fund's eligibility requirements. The Government instead decided to use the Fund to support vulnerable 16–24-year olds who had entered the UK through a resettlement scheme, been granted refugee status through the in-country asylum process or identified as potential victims of modern slavery. The delay in setting up the necessary governance infrastructure and securing the agreement of the European Commission meant that the Government was unable to claim the initial tranche—£600,000—of the UK's allocation by the end of 2018, as required under the EU's "de-commitment rules". This sum had therefore been deducted from the UK's total share of £3.46 million, leaving £2.9 million to support the most deprived. The Minister anticipated that a new operational programme would be ready to submit to the European Commission "provisionally by the end of March 2019, with the programme of works scheduled to begin in July 2019 " and the programme and Fund becoming operational in the UK "by the end of the year".

7.4 We expressed concern that the UK was the only one amongst 28 Member States that had failed to establish an operational programme to deliver the Fund, adding that the eligibility requirements and administrative burdens which the Government had cited as an obstacle to delivery did not appear to have presented an insurmountable obstacle elsewhere in the EU.[50] We made clear that we were unwilling to clear the Commission's implementation report for 2016 from scrutiny until the Minister confirmed that work on the UK's operational programme for the remaining £2.9 million had been completed and approval obtained from the European Commission. We also asked the Minister to explain how the UK's exit from the EU would affect the UK's eligibility for the Fund which expires at the end of 2020.

7.5 In April, the Minister indicated that the timetable for securing approval of the UK's operational programme had slipped. She anticipated that it would be submitted to the European Commission "provisionally by the end of May 2019, with the programme of works scheduled to begin in the autumn". EU de-commitment rules would continue to apply, meaning that the UK would again be at risk of losing funding if it failed to spend its allocation for 2017 by the end of 2019.[51] The Minister added that UK eligibility for the Fund after leaving the EU would be contingent on wider developments in the UK's exit negotiations.

7.6 The European Commission has now published an implementation report for 2017. It says that most Member States have put in place "well-established and properly functioning programmes" targeting harder to reach groups, such as the homeless, who might not otherwise receive assistance. The Commission concludes that "many of the most deprived people in the EU are receiving effective assistance", with around 12.9 million beneficiaries of the Fund in 2017.[52] Once again, none are in the UK.

7.7 In her Explanatory Memorandum of 9 July 2019, the Minister reiterates the reasons for the delay in implementing the Fund in the UK. She confirms that the Government submitted the UK's operational programme to the European Commission on 2 July and is "finalising the governance structures to manage the programme and the arrangements to

50 See our Report agreed on 30 January 2019.

51 See the Minister's Explanatory Memorandum of 26 April 2019 on a Special Report published by the EU's Court of Auditors which is intended to inform discussions on a successor funding instrument for the next EU budgetary period from 2021–27.

52 See p.11 of the Commission report.

run grants under the programme, to enable us to begin seeking bids" once the European Commission has approved the programme. To this end, "the Home Office have signed a service level agreement with the Government Internal Audit Agency (GIAA) who will undertake the audit arrangements for the programme". The Minister anticipates obtaining the European Commission's approval for the UK's operational programme by October/ November 2019.

Our Conclusions

7.8 **As we have made clear in our earlier Reports on document (a), we intend to keep a close eye on developments to ensure that the UK does not, once more, fall foul of the EU's de-commitment rules, putting at risk a source of funding and material assistance for some of the most vulnerable in society. We note that the Minister expects to secure European Commission approval for the UK's operational programme "by October/ November", right on the cusp of exit day. We ask her to notify us as soon as the approval has been given and to confirm when the programme will be up and running. If the approval is not obtained by 31 October 2019, we ask her to explain:**

- **what would happen to the UK's allocation of the Fund if the UK were to leave the EU on the terms set out in the draft EU/UK Withdrawal Agreement;**
- **what would happen to the UK's allocation of the Fund if the UK were to leave without concluding a withdrawal agreement (a "no deal" exit); and**
- **whether the Government would step in to fill any gaps left by the loss of this source of EU funding for the vulnerable groups targeted in the UK's operational programme up until the Fund's expiry date at the end of 2020.**

7.9 **We are content to clear from scrutiny the Commission's implementation report for 2016—document (a). Pending further information from the Minister, the implementation report for 2017—document (b)—remains under scrutiny. We draw this chapter to the attention of the Education Committee, the Home Affairs Committee and the Work and Pensions Committee.**

Full details of the documents

(a) Commission Report: *Summary of the annual implementation reports for the operational programmes co-financed by the Fund for European Aid to the Most Deprived in 2016*: (40204), 14699/18 + ADD 1, COM(18) 742; (b) Commission Report: *Summary of the annual implementation reports for the operational programmes co-financed by the Fund for European Aid to the Most Deprived in 2017*: (40692), 10602/19 + ADD 1, COM(19) 259.

Previous Committee Reports

On document (a): Sixty-fifth Report HC 301–lxiii (2017–19), chapter 1 (8 May 2019) and Fifty-third Report HC 301–lii (2017–19), chapter 9 (30 January 2019). See also our earlier Reports on the Regulation establishing the Fund for European Aid to the Most Deprived: Twenty-second Report HC 86–xxii (2012–13), chapter 3 (5 December 2012), Fourteenth Report HC 83–xiv (2013–14), chapter 10 (11 September 2013), Twentieth Report HC 83–

xix (2013–14), chapter 3 (30 October 2013), Twenty-ninth Report HC 83–xxvi (2013–14), chapter 8 (8 January 2014), Ninth Report HC 219–ix (2014–15), chapter 12 (3 September 2014) and Thirty-fourth Report HC 219–xxxiii (2014–15), chapter 3 (25 February 2015).

8 Combating document and identity fraud: UK participation in the EU's archive of false and authentic documents ("FADO")

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Regulation on the false and authentic documents online ("FADO") system and repealing Joint Action 98/700/JHA
Legal base	Article 87(2)(a) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(40427), 6676/19,—

Summary and Committee's conclusions

8.1 Established in 1998, the EU's online archive of false and authentic documents (FADO) enables Member States to share images of genuine, false and forged documents to assist in combating illegal migration and document fraud.[53] The UK participates fully in the FADO system which currently operates within the General Secretariat of the Council. Under changes agreed by the Council and European Parliament earlier this year, the European Border and Coast Guard Agency (the successor to Frontex) will take over responsibility for FADO.[54] The UK is not entitled to participate in the Agency as it forms part of the Schengen rule book on external border control which does not apply to the UK.

8.2 To ensure that the UK (and Ireland) can continue to participate in FADO, despite it being brought under the control of the European Border and Coast Guard Agency, the European Commission has proposed a separate Regulation which would repeal and replace the 1998 Joint Action establishing FADO. The proposed Regulation would clarify the types of document to be included within FADO and rights of access to them.[55] Information on genuine documents would be accessible to the public, whereas information on forged or falsified documents would only be accessible to the authorities within each Member State responsible for tackling document fraud, such as immigration or law enforcement officers. The proposed Regulation envisages that access to this (restricted) information may be extended to third (non-EU) countries, international organisations, third parties (such as airlines) or EU institutions and agencies, with the conditions decided on by the European Commission in an implementing act.

53 See Council Joint Action 98/700/JHA.

54 See the Council press release issued on 1 April 2019.

55 The database will include images of genuine travel, identity, residence, civil status and other official documents, as well as driving and vehicle licences issued by EU Member States, third countries and international organisations. It will also include images of false, forged or counterfeit documents and information on forgery techniques.

8.3 In her Explanatory Memorandum of 20 March 2019, the then Immigration Minister (Rt. Hon Caroline Nokes MP) confirmed that the proposed Regulation was subject to the Schengen Protocol. The UK would therefore continue to participate in FADO unless it decided to opt out before the three month opt-out period expired on 20 May 2019. She underlined the utility of FADO in validating identity and travel documents and in helping to prevent illegal entry to the UK and wider criminal activity linked to the use of false documents. She anticipated that a decision to participate in the proposed Regulation before the UK's exit from the EU would help to secure continued participation in FADO when negotiating the UK's future relationship with the EU, adding that FADO would form part of "the package of current capabilities" which the UK would seek to retain in negotiations on a future internal security agreement with the EU.

8.4 In her letter dated 4 June 2019, the Minister told us that the Government had decided *not* to opt out of the proposed FADO Regulation, noting:

> We have always been a key contributor to the FADO database and the draft Regulation will ensure the continuity and development of FADO. The FADO system itself will remain fundamentally unchanged.

8.5 She added that, while the UK remained a full member of the EU, the Government would continue to approach Schengen opt-out decisions "on a case by case basis, with a view to maximising the UK's efforts to collaborate with the EU on a security partnership once the UK leaves the EU".

8.6 In our Report agreed on 5 June 2019, we asked whether there was any precedent for a non-Schengen EU measure (such as the 1998 Joint Action establishing FADO) to be repealed and replaced by a new Schengen-building measure. We also asked the Minister to address our concern that UK participation in FADO, once it was brought under the management of the European Border and Coast Guard Agency, would mean that the UK would be under an obligation to transmit data to FADO without having any say over its operation and management.

8.7 In her response of 23 July 2019, the Minister draws our attention to Council Regulation (EC) No 1683/95 establishing a uniform format for visas ("UFV measure"), originally a non-Schengen measure, which has been replaced by a Schengen measure (Regulation (EU) 2017/1370).[56] She adds:

The Government disagreed with this change as there was no legal justification, in the UK's view, for the UFV measure and subsequent updates to be brought within the Schengen *acquis*, particularly as the UK's JHA opt-in had applied.

8.8 By contrast, the Minister is content for FADO to be re-characterised as a Schengen measure as it will be "owned" by the European Border and Coast Guard Agency and the change does not affect the UK's ability to decide whether to participate.

8.9 The Minister says that initial discussions are underway between the Commission, European Border and Coast Guard Agency and Member State expert units on the transition of FADO from the Council to the Agency. She continues:

56 In this case, the designation of the later Regulation as a Schengen measure meant that the UK was unable to participate.

Every piece of data the UK, and every other FADO participant, transmits to FADO is and will continue to be fully anonymised. The Government remain committed to preventing travel document abuse and consider that the benefits of having UK documents on FADO supports that objective, both now and under the future arrangements.

Our Conclusions

8.10 **We infer from the Minister's response that she considers the benefits of UK participation in the EU's online archive of false and authentic documents—"FADO"—outweigh the loss of any role in the operation and management of the system once it is brought within the European Border and Coast Guard Agency.**

8.11 **We understand that the European Parliament has not yet agreed its position on the proposed Regulation. We ask the Minister to provide a further update when it has done so, highlighting any changes to the text under scrutiny and their implications for the UK, both before and after the UK's exit from the EU. Pending further information, the proposed FADO Regulation remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents

Proposal for a Regulation on the false and authentic documents online ("FADO") system and repealing Joint Action 98/700/JHA: (40427), 6676/19,—.

Previous Committee Reports

Sixty-seventh Report HC 301–lxv (2017–19), chapter 10 (5 June 2019) and Sixty-second Report HC 301–lx (2017–19), chapter 7 (3 April 2019).

9 Market surveillance

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council
Legal base	Articles 33,114,, and 207 TFEU; ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39394), 15950/17 + ADDs 1–11, COM(17) 795

Summary and Committee's conclusions

9.1 Following extensive correspondence with the Committee, the Minister for Small Business, Consumers and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy (Kelly Tolhurst MP) and the Secretary of State at the same department (Rt Hon. Greg Clark MP) have accepted the Committee's view that it should vote against this proposal for a Regulation and table a minute statement setting out the Government's specific objections.[57] As set out below, the Government did so at ECOFIN Council on 14 June 2019. The file was nonetheless adopted with the support of 24 of 28 Member States and will be directly applicable from July 2021.

9.2 By way of background, the Regulation is designed to strengthen the enforcement of EU goods rules through a wide range of measures including the creation of a Union Compliance Network, a system of pre-export checks and controls, and the introduction of a requirement for there to be an authorised representative in the Union who is responsible for compliance.

9.3 The Committee has in previous reports raised particular concerns about the introduction of a requirement for there to be an authorised representative in the Union responsible for compliance (Article 4). In its Report on 16 January 2019[58] the Committee rejected a Government request to grant it a scrutiny waiver which would potentially have allowed it to abstain in the vote on the final text, due to the lack of detailed information about how Article 4 of the proposal was revised by COREPER on 23 November 2018. It

57 Letter from the Minister, BEIS, to the Chair of the European Scrutiny Committee (4 July 2019).
58 Fifty-first Report HC 301–I (2017–19), chapter 1 (16 January 2019).

also requested a detailed update in advance of TTEE Council on 4 March 2019, at which it was anticipated the proposal would be adopted. When the Committee did not receive the update it had been promised in sufficient time to consider it before Council, it wrote a letter to the Minister stating that:

> We decline to grant the Government any form of scrutiny waiver to participate at Council and, exceptionally, **specifically request that the Government vote against this proposal** if it is brought forward for adoption at TTE Council on 4 March 2019, or in any other subsequent Council formation.

9.4 In a detailed update on 1 March 2019[59]—which was too late for the Committee to consider and respond to it pre-Council—the Minister provided the Committee with the comprehensive account of the final text which it had sought.

9.5 In this update, the Minister noted that the obligation to have an authorised representative remained in the text, but would apply to a smaller range of products (covering 17 of 70 product directives). However, the Minister also noted that the strength of the article had been increased, with authorised representatives being given a wider range of responsibilities.[60] The Minister remained of the view that the text was "not sufficiently risk-based and will create a disproportionate burden on small and medium businesses" and acknowledged that "if subject to the provisions as a third country, complying with this requirement will increase the cost for UK businesses conducting business in the EU." However, the Minister suggested that, despite these concerns, "there is much to support in the proposal that will strengthen market surveillance and increase protections for consumers", and urged that the Committee "reconsider its recommendation to vote against the proposal in light of that."

9.6 In its report on 3 April 2019,[61] the Committee considered the Government's submission and concluded that it was not willing to grant it a waiver to abstain on the proposal, continued to recommend that the Government vote against it, and suggested that, if it was concerned that doing so might undermine confidence in its commitment to market surveillance, it should table a minute statement clarifying the reasons for voting against:

> We have reviewed our recommendation that the Government vote against the proposal and consider that it remains the right recommendation, as it is the Government's own assessment that the Regulation will create disproportionate obligations for stakeholders from third countries exporting to the EU market and that the Regulation will "create a disproportionate burden on small and medium businesses", including UK businesses exporting to the EU post-exit. We therefore recommend once again that the Government vote against the proposal at any forthcoming Council at which it is proposed for adoption. If the Government is concerned to avoid

59 Letter from the Minister to the Chair of the European Scrutiny Committee (1 March 2019).

60 These responsibilities include: ensuring the declaration of conformity and technical documentation has been drawn up and is made available upon request from a market surveillance authority (MSA) in a language easily understood by that authority; informing MSAs when there is reason to believe a product presents a risk; cooperating with MSAs to make sure corrective action is taken to resolve any non-compliance or when this is not possible the risk is reduced as required by MSAs; and ensuring the name, registered trade name or mark, contact details, including postal address of the economic operator is on the product or packaging.

61 Sixty-second Report HC 301–lx (2017–19), chapter 2 (3 April 2019).

> undermining confidence in the UK's approach and commitment to robust market surveillance, the Minister could table a minute statement in order to clarify the reasons for its negative vote.

9.7 On 4 July 2019 the Minister (Kelly Tolhurst MP) replied to the Committee to confirm that the proposal was adopted by Council on 14 June.[62] She explained that, "on reflection, I and the Secretary of State agreed with your recommendation that the UK should oppose the proposal given the potential impact on UK business".

9.8 She elaborated on events as follows:

> The proposal went to Council as an 'A' point (not for discussion) on 14th June and the UK voted against. Since writing to you, other Member States had shifted their position so we were able to table a joint statement for the Council minutes with Slovakia, Bulgaria and Luxembourg. This made clear our support for the overall objective of the-proposal—to strengthen market surveillance, but that we were unable to fully support it because of our concerns about the impact of Article 4 on businesses which we argued had not been adequately assessed.
>
> The UK's final position did not change the outcome and the proposal was adopted by 24 votes in favour. Two Member States opposed the proposal (UK and Slovakia) and two abstained (Bulgaria and Luxembourg). We anticipate that it will come into force in July 2019 and be directly applicable from July 2021. How it applies to the UK will depend on the terms of any arrangement agreed on UK exit and the outcome of future negotiations.

9.9 The Joint Statement is available online[63] and concludes:

> We believe that the impact of Article 4 (Tasks of economic operators regarding products subject to certain Union harmonisation legislation) has not been adequately assessed, that it is not sufficiently based on risk and will place an undue burden on small and medium businesses.
>
> Whilst we, the signatories, agree with the principles of the proposal and are committed to a robust system of joined up market surveillance to protect consumers and ensure a level playing field for businesses, we are unable to give our full support to the proposal due to the significant risks of Article 4 that have not been adequately assessed.

9.10 **We welcome the Minister and the Secretary of State's acceptance of the Committee's recommendation that the Government vote against the final text of the Regulation at ECOFIN Council on 14 June 2019. The Government did so, and also tabled a joint statement for the minutes with Slovakia, Bulgaria and Luxembourg, setting out its support for the principle of strengthening market surveillance, and clarifying that the Government's concerns were confined to the impact of Article 4 on businesses (the requirement to have an authorised representative in the Union who is responsible for compliance) on the basis that this may create a disproportionate burden on small**

62 Letter from the Minister, BEIS, to the Chair of the European Scrutiny Committee (4 July 2019).

63 Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (first reading)—Adoption of the legislative act—Statements 9429/19 ADD 1.

and medium businesses based in third countries. We note that these impacts could potentially affect the UK post-exit, depending on the nature of future relations between the UK and the EU.

9.11 **The file was nonetheless adopted with the support of 24 of 28 Member States and will be directly applicable from July 2021.**

9.12 **The Regulation in its entirety (not including the third country provisions which the Government is concerned by, which would not apply to UK stakeholders as long as the Regulation was applicable in the UK) would therefore apply in the UK as a whole only if the Withdrawal Agreement were ratified and the transition/implementation period provided for in it were extended beyond the end of 2020. If the transition/implementation period were to end and the provisions of the Protocol on Ireland/Northern Ireland contained in the draft Withdrawal Agreement (the 'backstop') were to become operational, then the Regulation would apply, not to the UK as a whole, but to Northern Ireland specifically.**

9.13 **Conversely, the third country provisions of the Regulation (including the potential negative implications of Article 4 for stakeholders in third countries) would apply to UK stakeholders as a whole from the same date (July 2021), in the event that there was a non-negotiated withdrawal from the EU. These provisions would apply to Great Britain (but not Northern Ireland) in the event that the transition/implementation period came to an end without the future relationship being in place.**

9.14 **Despite the Government's concerns about the inadequate assessment of the implications of the proposal for some SMEs, we note the Minister's view that it will strengthen market surveillance of goods entering the Union market. We also note that the Regulation contains provisions which could benefit stakeholders in third countries such as the UK post-exit: most notably, Article 35 allows for agreements to be made which would reduce import controls by replacing them with a system of pre-export controls when "the third country possesses an efficient verification system of the compliance or products exported to the Union and the controls carried out in that third country are sufficiently effective and efficient". Post-exit, therefore, as long as UK and EU relations remain amicable, we consider that the UK would stand a high-chance of benefitting from arrangements of this kind, which would potentially mitigate or eliminate the concerns relating to Article 4. We also note that the Political Declaration[64] makes explicit reference to the possibility of there being reduced requirements in terms of checks and controls on products entering the Union market, based on the level of customs and regulatory cooperation in the context of the future relationship.**

9.15 **Given that the procedure has concluded, we now clear this document from scrutiny.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European

64 The Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom (25 November 2018).

Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council.: (39394), 15950/17 + ADDs 1–11, COM(17) 795.

Previous Committee Reports

Sixty-second Report HC 301–lx (2017–19), chapter 2 (3 April 2019); Fifty-first Report HC 301–l (2017–19), chapter 1 (16 January 2019); Forty-fifth Report HC 301–xliv (2017–19), chapter 1 (21 November 2018); Twenty-seventh Report HC 301–xxvi (2017–19), chapter 2 (9 May 2018).

10 Energy and climate policy

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	(a) Commission Communication: United in delivering the Energy Union and Climate Action—Setting the foundations for a successful clean energy transition; (b) Commission Recommendation on the draft integrated National Energy and Climate Plan of the United Kingdom covering the period 2021–2030.
Legal base	—
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (40690), 10251/19 + ADDs 1–2, COM(19) 285; (b) (40691), 10515/19 + ADD 1, C(19) 4428

Summary and Committee's conclusions

10.1 The EU has adopted a series of commitments to reduce greenhouse gas emissions and to provide secure, affordable and sustainable energy. These include targets on emissions reductions, renewable energy and energy efficiency. To ensure that the EU and its Member States collectively fulfil these targets, the EU also agreed a new system of energy and climate governance, through the energy 'Governance Regulation'.[65]

10.2 The Governance Regulation required Member States to submit draft National and Energy Climate Plans (NECPs) by the end of 2018 with a view to finalising their NECPs by 31 December 2019. These should set out Member States' targets and objectives over a ten-year period to 2030, and national plans and policies to achieve those, across the five dimensions of the Energy Union (decarbonisation, energy efficiency, internal energy market, energy security, and research, innovation and competitiveness). The Commission has responded to the draft NECPs through an overarching Communication (document(a)) and country-specific Recommendations, including one directed at the UK (document(b)). Member States also submitted National Forestry Accounting Plans (NFAPs).

10.3 In its assessment of the 28 draft NECPs as a whole, the Commission notes that the policies set out will not, cumulatively, fulfil the agreed targets by 2030. Those are: 32% target for renewables; 32.5% target for energy efficiency; and a 30% greenhouse gas (GHG) emissions reduction target for those sectors not included within the EU Emissions Trading System. The Commission's recommendations to the Member States seek to address this discrepancy between ambition and implementation.

65 Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action.

10.4 Regarding the UK's contribution, the Commission's recommendations highlight the need to align the UK NECP with EU objectives more clearly. The Commission advised that the UK consider further:

- specifying 2030 targets (greenhouse gases, renewables, energy efficiency);
- outlining national objectives on market integration, and research, innovation and competitiveness;
- setting out measures to support energy security, and the long-term supply of nuclear fuel;
- plans to phase out fossil fuel subsidies;
- building on regional cooperation frameworks (specifically, to continue cooperating with Ireland on emergency preparedness and response for electricity, security of supply for gas and oil);
- improving investment analysis and financing at both national and regional level, and providing an overview of investment needs, risks and barriers;
- presenting air pollution impacts of the different scenarios presented in the NECP; and
- detailing just and fair transition impacts, particularly in relation to coal and carbon-intensive regions, and consider carrying out a dedicated assessment of energy poverty issues.

10.5 The then Minister of State for Business, Energy and Industrial Strategy (Chris Skidmore MP) said in his Explanatory Memorandum (EM) that the Government would consider all the Commission's recommendations carefully and respond to them in the final version of the UK's NECP, for submission in December 2019. Preliminary UK observations on the recommendations are set out in the Annex to this chapter.

10.6 Several of the recommendations, and the Government's responses, pertain to the UK's withdrawal from the EU, notably on market integration (including interconnection), regional cooperation and research. On regional cooperation, the Minister committed to continued UK engagement in the North Seas Energy Cooperation[66] after departing the EU. He added that the UK was committed to seeking to maintain the Single Energy Market on the island of Ireland (I-SEM) and would continue to work with the Irish Government in an effort to ensure that the I-SEM was maintained in any future scenario.

10.7 The Minister also highlighted the laying of legislation to set a new net zero greenhouse gas emissions target for the UK, to be delivered by 2050. This, he said, made the UK one of the first major economies to legislate for net zero emissions. He added that the Commission specifically recognised the UK's Climate Change Act as good practice in its assessment of the UK's draft NECP.

10.8 In a separate letter of 16 July 2019 regarding the Finnish Presidency's priorities, the then Secretary of State for Business, Energy and Industrial Strategy (Rt Hon. Greg

66 Political Declaration on energy cooperation between the North Seas Countries, June 2016.

Clark MP) said that the Government looked forward to the scheduled Ministerial-level discussion about the Commission's recommendations on the draft NECPs, to take place at the 24 September Energy Council.

10.9 **We note that, for the most part, the Commission's recommendations to the UK derive from a failure to link more clearly UK policy with EU policy and its targets. While we trust that this will be addressed in the final version of the UK's NECP, we emphasise the importance of making such links clear. Should the UK wish to remain closely engaged with the EU's internal energy market, alignment with EU energy legislation would most likely be a requirement. We ask the Minister to confirm that the Government has no plans to diverge from EU legislation before there is some clarity over the future UK-EU energy relationship. We note that a non-negotiated withdrawal from the EU would not preclude a future agreement on the UK-EU relationship, including the energy sector.**

10.10 **Concerning the Irish Single Energy Market (I-SEM) specifically, the joint mapping exercise undertaken demonstrated that current energy cooperation on the island of Ireland is based on EU legislation. We ask the Minister to confirm that EU legislation would remain the basis for such cooperation in the future under all scenarios. We also ask the Minister to set out the state of discussions with the Irish Government on the retention of I-SEM in the event that the UK leaves the EU on 31 October without a withdrawal agreement.**

10.11 **We note the then Minister's support for continued UK engagement in the North Seas Energy Cooperation initiative. It would be helpful if the Minister would confirm this commitment and, second, if the Minister could set out how any UK energy policy divergence from EU energy market rules would affect the UK's engagement in the initiative.**

10.12 **A UK White Paper on energy was expected in summer 2019, but has been delayed. We ask the Minister to set out a timetable for that White Paper.**

10.13 **We clear the documents from scrutiny and look forward to a response to our queries within three working weeks, including a summary of the discussion on the draft NECPs at the 24 September Energy Council. We draw this chapter to the attention of the Business, Energy and Industrial Strategy Committee.**

Full details of the documents

(a) Commission Communication: United in delivering the Energy Union and Climate Action—Setting the foundations for a successful clean energy transition: (40690), 10251/19 + ADDs 1–2, COM(19) 285; (b) Commission Recommendation on the draft integrated National Energy and Climate Plan of the United Kingdom covering the period 2021–2030: (40691), 10515/19 + ADD 1, C(19) 4428.

Previous Committee Reports

None.

Annex: UK Government's initial response to the Commission's recommendations[67]

Recommendation 1: 2030 Greenhouse gas target—The UK is asked to further specify and quantify the impacts of policies and measures to achieve the 2030 GHG target for non-EU ETS sectors of -37% compared to 2005.

The UK's domestic carbon emissions reduction targets are more ambitious than those we have under EU law and are among the most stringent in the world; our fifth carbon budget requires an average reduction in emissions of 57% over 2028–32, compared with a 1990 baseline. Northern Ireland is continuing to provide new natural gas infrastructure to reduce dependency on other more polluting fuels such as oil, which should contribute to achieving emissions targets.

The UK Government's Clean Growth Strategy outlines our plans to reduce greenhouse gas emissions through to 2032, building on our progress in decarbonising the power sector. It sets out one possible pathway for meeting the fifth carbon budget through domestic action, and includes ambitious proposals on housing, business, transport, the natural environment and green finance. For instance, we are developing a package of measures to support businesses to improve their energy productivity by at least 20% by 2030, and it is our ambition to establish at least one low-carbon industrial cluster by 2030, with a view to establishing the first net-zero carbon industrial cluster by 2040, thereby reducing the emissions from heavy industry.

We are also taking action in the land use, land-use change, and forestry sectors (LULUCF) to enhance and protect the environment and maximise the carbon sink potential, such as establishing a new network of forests in England and a target to plant 11 million trees in this parliament, as well as supporting biodiversity, wider environmental benefits including flood management and pollination. As laid out in our 25 Year Environment Plan, we additionally plan to restore our vulnerable peatlands—organic and peat soils constitute 11% of England's total land area—and will publish an England Peat Strategy later this year which will set out our approach.

Our projections show that we are on track to deliver over 90% of our required emissions reductions in our fourth and fifth carbon budgets (covering 2023–2027 and 2028–2032 respectively), even before many of the Clean Growth Strategy's policies and proposals are taken into account. But we are not complacent, and we recognise the need to go further. We will continue to update our approach as we bring forward additional measures and policies.

Recommendation 2: Renewable energy 2030 contribution—The Commission recommends that the UK puts forward a 2030 contribution to the EU's 2030 target of at least 27%, with an indicative trajectory and policies and measures to achieve this contribution. The Commission also recommends the UK increase ambition to meet the Article 23 heating and cooling ambition and the Article 25 transport sub-target.

67 This Annex reproduces the view set out by the then Minister in his Explanatory Memorandum of 8 July 2019.

In line with our decarbonisation ambitions, the UK agrees with the need for action to increase the share of energy produced from renewables, and renewable energy will have a key role to play in delivering our ambitious Clean Growth Strategy. Since 2010, there has been over £92 billion of investment in clean energy in the UK.

This commitment to supporting renewables is demonstrated by our Offshore Wind Sector Deal published in March 2019, which will drive £250 million into offshore wind bringing forward up to a third of electricity by 2030 from this source.

Recommendation 3: Energy efficiency contributions 2030 energy efficiency contribution—The Commission recommends that the UK sets ambitious national contributions and proposes policies and measures to deliver additional energy savings by 2030, accompanied by an impact statement.

In line with our decarbonisation ambitions, the UK agrees with the need for action to promote efficiency in energy use, and energy efficiency will have a key role to play in delivering our ambitious Clean Growth Strategy.

Energy efficiency policies and measures that the UK has implemented include commitments to fund energy efficiency improvements in the public sector, industry, business and homes—for example, through the Energy Company Obligation (ECO).

Recommendation 4: Energy security—The UK is asked to specify measures which support diversification and reduction of energy dependency, including those relating to flexibility and the long-term supply of nuclear fuel.

A successful and efficient energy sector is of paramount importance to any Government, as it underpins the whole economy. The UK has a diverse mix of technologies and we are investing in new technologies in order to support the economy and continue to be a world leader in tackling climate change. Additionally, gas security of supply to Northern Ireland supports electricity generation and an expanding gas market.

The success of the Contracts for Difference scheme and its predecessors have enabled the UK to significantly diversify its electricity generation mix. Renewables' share of generation now stands at around one third.

The Capacity Market is a technology-neutral tool which has brought forward a range of technologies, from demand side response (DSR) to batteries to reciprocating engines, which is diversifying the mix of technologies making a contribution to Security of Supply.

New nuclear has an important role to play as we transition to a low carbon economy. This Government's commitment to new nuclear is demonstrated in giving the go-ahead to the first new nuclear power station in a generation at Hinkley Point C, as well as the publication of our landmark £200m Nuclear Sector Deal in June 2018, which includes providing millions for advanced nuclear technologies.

In July 2017, the UK Government and Ofgem published 'Upgrading our Energy System: Smart Systems and Flexibility Plan' , which sets out 29 actions that the UK Government, Ofgem, and industry will undertake to remove barriers to smart technologies. We aim to implement the actions in the Plan by 2022, enabling the electricity system to work more flexibly and efficiently, potentially unlocking £17–40 billion in savings across the electricity system by 2050 . In October 2018, BEIS and Ofgem published a progress update

to the Plan which set out that 15 of the 29 actions had been implemented. It also set out the UK Government and Ofgem's forward priorities in this area, which include 9 new actions beyond those set out in the original Plan.

Recommendation 5: Market integration—The Commission calls on the UK to define objectives and targets for market integration and a progression towards fully market-based prices.

Interconnection can help deliver security of supply, reduce the cost of decarbonisation and keep consumer bills low. The UK Government continues to strongly support an increase in electricity interconnection where it supports our energy objectives and can deliver benefits to GB consumers.

The UK currently has 5GW of interconnection capacity with other markets and 3.4GW is under construction. In addition, projects totalling 4.3GW of capacity have been approved. This represents an important step towards our objective of unlocking significant expansion of interconnection with other markets, as set out in the UK Government's Clean Growth Strategy (2017).

We believe at least 18GW of interconnector capacity is in the interests of consumers, and potentially more in a future electricity system with a high penetration of renewable generation. Realising this aim by 2030 depends on strong reciprocal cooperation with neighbouring countries and a willingness on all sides to unblock barriers to the continued efficient deployment and use of interconnection capacity. It also depends on continued private investment incentivised through our regulated market-led approach. This approach, where private developers identify commercial opportunities for projects and bring them forward for regulatory approval under Ofgem's Cap and Floor regime, has delivered a strong pipeline of projects in development and will continue to unlock significant investment and expansion of efficient electricity interconnection.

Northern Ireland accepts the benefits of market integration and market-based prices. However, NI has a small energy market, which can limit the extent of competition, and careful consideration is therefore necessary in certain circumstances of the impact on consumers of fully market-based prices.

Recommendation 6: Research, innovation and competitiveness—The UK is asked to clarify objectives and funding targets in research, innovation and competitiveness for the energy union to be achieved between 2023 and 2030, underpinned with specific policies and measures.

Our future research and innovation activities will be designed to achieve our legally binding domestic Carbon Budgets and our new commitment to achieve net zero greenhouse gas emissions from the UK by 2050. Our research and innovation priorities and related spending to deliver these targets are in the process of being considered and agreed, but in the meantime, our intention is to remain closely engaged with EU and international research and innovation activities to meet these world leading commitments.

Recommendation 7: Regional cooperation—The Commission calls on the UK to build on the good practice engagement in the North Seas Energy Cooperation to deliver on the objectives

of the energy union. It also notes the UK's decision to leave the EU and calls for measures to ensure continued regional cooperation with Ireland on emergency preparedness and response for electricity as well as security of supply for gas and oil.

The UK Government is a signatory of the 2016 Political Declaration on energy cooperation which set a three-year work programme, based on voluntary cooperation, between nine EU Member States and Norway, to facilitate the further cost-effective deployment of offshore renewable energy and greater interconnection in the region. The UK and partner countries agreed to deepen and prolong cooperation beyond 2019 via a Joint Statement at the North Seas Ministerial meeting on 20 June 2019.

We believe the UK should continue to play an active part in the North Seas Energy Cooperation after departing the EU. The UK is an important partner in the realisation of further integration of electricity markets, decarbonisation and security of supply in the North Sea due to our potential for large deployment of offshore wind with the geographical possibility to link to other jurisdictions.

The UK and Ireland has long-standing cooperation on emergency preparedness and response for electricity, gas and oil and our ambition is to maintain these arrangements. The Single Electricity Market (SEM) is an example of North-South cooperation that has benefited consumers and the economies of Northern Ireland and Ireland. The SEM was originally established under an inter-governmental Memorandum of Understanding between the UK and Ireland. The UK is committed to seeking to maintain the SEM and will continue to work with the Government of Ireland in an effort to ensure that the SEM is maintained in any future scenario.

Recommendation 8: Investment—The Commission recommends the UK improve its analysis of investment expenditures and sources, complemented by a general overview of needs, risks and barriers.

The UK Government's upcoming Green Finance Strategy will set out our approach to align private sector financial flows with clean, environmentally sustainable and resilient growth.

Recommendation 9: Energy subsidies—The Commission recommends all energy subsidies, and plans to phase those related to fossils, are listed in the UK's final NECP.

The UK uses the definition of fossil fuel subsidies developed with the Commission and other G20 Member States to respond to the G20 commitment to phase out such subsidies, and considers that it has no fossil fuel subsidies.

The UK has implemented a number of incentive schemes including those outlined below, which will be set out in the final NECP:

- Renewables Obligation (RO) scheme, which is being replaced by the competitive 'Contracts for Difference' support scheme
- Feed in Tariff (FIT) scheme which has closed to new applications from 31 March 2019
- Great Britain Renewable Heat Incentive ("RHI")

i) The UK Government is currently developing its low carbon heat policy for the 2020s and beyond. We are working on a Heat Policy Roadmap which will set out key steps required to make these important decisions on heat decarbonisation in the 2020s. We aim to publish this roadmap in mid-2020.

ii) The UK Government has already committed to phasing out high carbon fossil fuel heating in buildings off the gas grid in its Clean Growth Strategy (2017) and intends to consult on this.

Recommendation 10: Air quality—The UK is asked to present impacts on air quality resulting from the scenarios laid out in the final NECP.

The UK Government has pledged that this will be the first generation to leave the environment in a better state than we inherited it. We have undertaken a cross-department review into biomass and air quality, to ensure that our energy policies can jointly tackle climate change and improve air quality.

The UK has ambitious 2020 and 2030 emission reduction commitments in place for five key air pollutants, and we published a comprehensive Clean Air Strategy in January 2019 setting out how we will work toward these goals and reduce emissions, with subsequent technical analysis published in March. To measure progress towards our commitments, the UK annually compiles our national air pollutant emissions in the National Atmospheric Emissions Inventory (NAEI), which includes the UK Greenhouse Gas Inventory, used for reporting to the UNFCCC. We also produce air pollutant emissions projections for 2020, 2025 and 2030 which rely on data from various sources, key among which are the Updated Energy and Emissions Projections which take account of measures in place as far as is possible, given the data available.

The Clean Air Strategy included a commitment to consult on making coal to biomass conversions ineligible for future rounds of the contracts for difference scheme. We also consulted on banning new RHI biomass applications installed in urban areas which are on the gas grid, as well as introducing mandatory maintenance checks for those installations already accredited on the RHI.

Recommendation 11: Just Transition and energy poverty—The UK is recommended to detail just and fair transition aspects within the final NECP, and to provide a dedicated assessment of energy poverty issues. The Commission asks for consideration of social, employment and skills impacts of the policies in the NECP, and how coal and carbon intensive regions will be impacted by the energy transition.

The UK is committed to tackling fuel poverty. Nations in the UK have been the first to introduce legislation to create an objective for addressing fuel poverty. These objectives are reflected in the draft plan and will be updated over the course of the year to reflect the latest developments in fuel poverty policy across the UK.

In June 2019, UK Government published the 2019 Fuel Poverty Statistics for England. In the final NECP plan we will update the Energy Poverty section to include this assessment of the number of fuel poor households in England and the latest assessment for fuel poverty for each Devolved Administration. In the draft NECP relevant policies are embedded throughout the plan, but we will summarise the policies in place to tackle fuel poverty in this section.

The Clean Growth Strategy set out proposals for decarbonising all sectors of the UK economy through the 2020s. Ensuring an affordable energy supply for consumers is at the heart of the Clean Growth Strategy and Industrial Strategy. As such, support for low income and vulnerable consumers sits alongside action to decarbonise heating, to ensure fairness in the energy transition.

The transition to a net zero economy can give us towns and cities with cleaner air, warmer homes with lower bills and grow our economy, by supporting new jobs in growing low carbon industries—already there are almost 400,000 jobs in low carbon businesses and their supply chains.

We are acting now to ensure we deliver a just transition. Our Energy White Paper that will soon be published will aim to bring down energy bills for consumers and businesses. Over the last year we have developed sector deals on nuclear, offshore wind and automotive that will create jobs across the country and support our other world class sectors to take part in this transition, for example our expertise in the North Sea from oil and gas is now part of a growing offshore wind supply chain

We are establishing a technical education system that rivals the best in the world and are investing an additional £406 million in maths, digital and technical education to help address the shortage of science, technology, engineering and maths (STEM) skills. These measures will help provide good jobs and greater earning power for all and will help provide businesses with the skilled people they need to thrive in our growing low carbon economy.

Assessment of the national forestry accounting plans

The Commission noted that the recommendations to the UK and other Member States which submitted a NFAP in time "reflect the generally high quality of the submitted plans while pointing to some country-specific approaches that will require further careful analysis".

Specific recommendations to the UK in the assessment of the national forestry accounting plans relate mostly to adding information to further improve the transparency of the reporting. We will consider all the Commission's recommendations carefully and respond to them in the final version of our NFAP, due for submission in December 2019.

11 MFF Digital Europe Programme

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Regulation of the European Parliament and of the Council establishing the Digital Europe programme for the period 2021–2027.
Legal base	Articles 172 and 173(3) TFEU; ordinary legislative procedure; QMV
Department	Digital, Culture, Media and Sport
Document Number	(39900), 10167/18, COM(18) 434

Summary and Committee's conclusions

11.1 The Digital Europe Regulation would establish the 'Digital Europe' programme for the period 2021–2027. The Programme proposes approximately £8bn in funding from 2021 to 2027, for High Performance Computing (€2.6bn), Artificial Intelligence (€2.5bn), Cybersecurity (€1.9bn) and Advanced Digital Skills (€685m).

11.2 In terms of the scope for third country participation in the Programme, as with other MFF Programmes, the Commission proposed[68] to make this conditional on the negotiation of a specific agreement which would entail a fair balance of contributions and benefits and would not confer any "decisional power" regarding the Programme on participating country, in line with other MFF financial programmes.

11.3 The Commission's proposal also included a number of additional restrictions/potential restrictions on third country involvement in aspects of the Programme:

- Article 12 (Security) noted that actions under the Programme would have to comply with the applicable security rules, including those relating to classified information, and, where actions were carried out outside the Union, a security agreement would have to be concluded with the third country in question. Thus, UK engagement in some aspects of the Programme, post-exit, would require the negotiation of a security agreement with the EU.
- In relation to the Cybersecurity pillar of the Programme, Article 12 also stipulated that the Programme may also provide that "legal entities established in associated countries and legal entities established in the EU but controlled from third countries are not eligible for participation in all or some actions under Specific Objective 3 for security reasons. In such cases calls for proposals

68 Proposal for a Regulation of the European Parliament and of the Council establishing the Digital Europe programme for the period 2021–2027 COM/2018/434 final.

and calls for tenders shall be restricted to entities established or deemed to be established in Member States and controlled by Member States and/or nationals of Member States".

- Article 18 (Eligible entities) further stipulated that legal entities established in a third country which is not associated to the Programme would exceptionally be allowed to participate in specific actions where this was deemed necessary for the achievement of the Programme's objectives, but also noted that the work programme may provide that participation is limited to beneficiaries established in Member States only "for security reasons or actions directly related to EU strategic autonomy".

11.4 The Government did not raise any concerns regarding the proposal in its Explanatory Memorandum,[69] and in its report on the proposal[70] the Committee granted it a scrutiny waiver to support a Partial General Approach at TTE Council on 3/4 December 2018. This was on the basis that the Partial General Approach would not incorporate the final budget and spending figures and would not commit the UK to any spending requirement. Officials clarified that the section on participating third countries was expected to be excluded from the PGA, as this is being dealt with as part of horizontal MFF negotiations.

11.5 On 4 December 2018 the TTE Council adopted a partial general approach. As with other Financial Programmes, the partial general approach did not include provisions with budgetary implications or of horizontal nature, particularly relating to third country participation.

11.6 On 8 February 2019, the Presidency asked the Coreper for a mandate to start the negotiations with the European Parliament. The informal trilogue took place on 13 February 2019 in Strasbourg and reached a common understanding on a revised text, which is available online.[71] The General Affairs Council on 19 March endorsed a letter from the Romanian Presidency to the European Parliament setting out the "common understanding" of what has been provisionally agreed on all MFF programmes that were agreed before the elections.

11.7 On 11 April 2019 the then Minister for Digital and Creative Industries (Margot James MP) wrote to the Committee to provide an update on this process.[72] She stated that the progress report did not affect adoption of the file, and was without prejudice to any final negotiated text. She added that the text did not incorporate the final budget and spending figures (Article 9) or commit the UK to any spending requirements, and that the endorsement did not include general third-country participation provisions (Article 10).

11.8 A range of changes were made to the text on points that may affect UK stakeholders' scope to participate in particular actions post-exit.

11.9 On the security provisions (Article 12), the requirement to have a security agreement with the EU before third country stakeholders based outside the Union can participate remains. However, the Minister states that the Government worked with like-minded

69 Explanatory Memorandum from the Department of Business, Energy and Industrial Strategy (4 July 2018).
70 Forty-sixth Report HC 301–xlv (2017—2019), chapter 5 (28 November 2018).
71 Interinstitutional File: 2018/0227 Proposal for a Regulation of the European Parliament and of the Council establishing the Digital Europe programme for the period 2021–2027.
72 Letter from the Minister (BEIS) to the Chair of the European Scrutiny Committee (11 April 2019).

Member States and secured a provision under Article 12 regarding the AI and High Performance Computing pillars, "so that if the EU seeks to exclude legal entities controlled from third countries on the grounds of security, such entities may still apply to participate if they can demonstrate that they do not pose security concerns, subject to the conditions set out in the annual work programme". The Minister acknowledged that this provision did not apply to the Cybersecurity pillar, so third country companies may still be excluded from "all or some" actions.

11.10 On the references to strategic autonomy in Articles 3, 6 and 18, the Minister states that the Government supported limiting references to strategic autonomy as much as possible, resulting in references under Article 3 (programme objectives), 6 (cyber security and trust) and 18 (eligible entities) but avoiding the inclusion of this term in each pillar. The Minister adds that there is no agreed definition of how the term applies to digital, as it is usually used in a security context, and it is therefore unclear how actions would be measured against the objective.

11.11 The Minister adds that the agreed text also clarifies the process for creating and operating Digital Innovation Hubs, including a specification to have one hub per Member State provided that at least one candidate meets the selection criteria (with Member States selecting candidates through an open and competitive process).

11.12 The Minister informs the Committee that she decided to support the Romanian Presidency's letter regarding the proposal, and the common understanding it related to, on the basis that the compromise text was acceptable to the UK:

> I believe it is important at the present moment to demonstrate the UK's support for continuing European collaboration in digital and data sectors that exhibit high growth in the UK economy. We continue to assess whether the UK should pursue participation in the programme or access to certain workstreams, either through negotiations on our future relationship with the EU or as part of our wider cooperation as a third country. As I believe the current compromise text is acceptable to the UK, I supported endorsement of the Romanian Presidency's letter with respect to the Digital Europe programme.

11.13 **We have taken note of the Minister's letter, setting out the common understanding reached between the Council and the European Parliament on the text establishing the 'Digital Europe 'programme for the period 2021–2027, following trilogue negotiations with the European Parliament.**

11.14 **The Minister observes that the progress report setting out this text which was published by the Romanian Presidency did not affect adoption of the file and was without prejudice to any final negotiated text. While, technically, this does not constitute an override of the scrutiny reserve, which only applies to ministerial votes in the Council, we nonetheless note that it would have been better practice for the Minister to brief the Committee of the Government's negotiating position in relation to the trilogue and its intention with respect to the letter in advance of the Government offering its support to the proposed compromise text.**

11.15 **This is particularly the case given that, although the text did not include general third-country participation provisions (Article 10), it did include arguably**

more important articles which will have significant implications for third countries which may wish to participate in the Programme, potentially including the UK, as set out below.

11.16 **Firstly, where the processing of classified information is involved in any element of the Programme, it remains necessary that the participating country has a security agreement with the EU. EU rules relating to classified information must also be followed by participants.**

11.17 **Secondly, the text provides for the potential exclusion of stakeholders in third countries, and even stakeholders within the EU which are controlled by entities in third countries, to participate in elements of the Programme (the pillars relating to Cybersecurity, AI, and High Performance Computing). These potential exclusions are justified with reference to security and also the Union's "strategic autonomy".**

11.18 **While no definition of this latter concern is provided, it is clear that the EU increasingly regards certain building blocks of the digital economy as integral to the competitiveness of the Union and as important elements in its supply chains, and considers that investments in these technologies therefore warrant extra security. While this direction of policy is not specifically related to Brexit, it may have negative consequences for the UK and its stakeholders when it becomes a third country, although the extent to which this is the case will depend on the nature of the overall relationship between the two territories and the manner in which the EU applies these restrictions. The Minister emphasises that the Government succeeded in limiting references to strategic autonomy to an extent, avoiding the inclusion of the term in each pillar.**

11.19 **In terms of these restrictions, the Government emphasises that it has secured a modification to the text for the AI and High Performance Computing pillars, so that "if the EU seeks to exclude legal entities controlled from third countries on the grounds of security, such entities may still apply to participate if they can demonstrate that they do not pose security concerns, subject to the conditions set out in the annual work programme". It has not, however, secured such a mitigating provision for the Cybersecurity pillar. Nonetheless, the text states that the Union "may" exclude third country stakeholders from the Cybersecurity pillar, so it should not be assumed that there will be a blanket exclusion from this pillar.**

11.20 **The Minister concludes that the proposed compromise text was "acceptable to the UK" and therefore notes that the Government supported the endorsement of the Romanian Presidency's letter with respect to the Digital Europe programme.**

11.21 **The Minister also emphasises that the Government's desire to participate in the Programme remains unclear, and that the Government will "continue to assess whether the UK should pursue participation in the programme or access to certain workstreams, either through negotiations on our future relationship with the EU or as part of our wider cooperation as a third country".**

11.22 **We now clear this document from scrutiny.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council establishing the Digital Europe programme for the period 2021–2027: (39900), 10167/18, COM(18) 434.

Previous Committee Reports

Forty sixth Report HC 301–xlv (2017—2019), chapter5 (28 November 2019).

12 Rights and Values Programme 2021–2027

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Justice Committee and Joint Committee on Human Rights
Document details	Proposed Regulation establishing the Rights and Values programme.
Legal base	Articles 16(2),19(2), 21(2), 24, 167(5) and 168 TFEU; ordinary legislative procedure; QMV
Department	International Development (Government Equalities Office)
Document Number	(39814), 9605/18 + ADD 1, COM(18) 838

Summary and Committee's conclusions

12.1 The Commission has proposed to introduce a Rights and Values programme with effect from 1 January 2021 to cover the period from 2021–27. The new programme will build on the Rights, Equality and Citizenship programme, which runs from 2014 to the end of 2020. It is linked to the Justice Programme and we have also scrutinised that corresponding Regulation.[73] The combined Justice and Rights and Values fund (comprising this programme and the Justice programme) will have a budget for the period of the programmes of €947 million (£839 million).

12.2 In our last Report, we explained the purpose, scope and substance of the proposed programme. We also examined it in the light of Brexit. Although the UK would continue to participate in the current Rights, Equality and Citizenship programme (2014–20), after Brexit it would need to adhere to the criteria for third country participation in the new programme (2021–27). These are set out in Article 7 of the proposal.

12.3 As the Government was unclear whether it would participate in this "2021–27" Rights and Values programme Regulation as a third country, we asked them a series of related questions in our last Report. In particular, we asked:

- for an indication of the likely cost of such participation;
- whether the UK would be able to fulfil the qualifying criteria for participation;
- whether the benefits would outweigh both the costs and the inability to influence decision-making;
- what other legal or policy implications might flow from third country association; and

73 See on 39816, 9598/18:Thirty-third Report, HC 301–xxxi (2017–19), chapter 8 (27 June 2018) and our subsequent correspondence with the then Parliamentary Under Secretary of State for Justice (Lucy Frazer QC) dated 14 January 2019 and 3 April 2019.

- how association might fit with the UK not incorporating the EU Charter of Fundamental Rights into UK law after EU exit.

12.4 After apologising for the delay in responding, the former Minister for Women and Equalities (Right Hon. Penny Mordaunt MP) responded to us by letter of 23 July 2019. She informed us that:

- The Council and the European Parliament (EP) reached a partial common understanding on the programme on 19 March 2019 but this did not extend to third country participation.
- The understanding also did not cover budgetary aspects which will be wrapped up in wider budgetary negotiations as part of the agreement of the Multi-Annual Financial Framework (MFF) for 2021–27.
- The Government has no plans to participate in the programme once agreed as it has no positive evidence from the current and "broadly equivalent" Rights, Equalities and Citizenship Programme that funding has provided substantive value for money compared to equivalent domestic action that could be taken.
- The Government is confident that there are other "more effective" avenues through which the UK can contribute to and learn from other countries such as the OECD and the Council for Europe.

Our Conclusions

12.5 **Although the Government provides only a partial response to some of the questions we asked in our last Report, it is clear on the fundamental question of future third country association. The UK will not be participating in the programme as a future third country after Brexit. We are therefore content to clear the proposal from scrutiny. In doing so, we draw this chapter to the attention of the Justice Committee and the Joint Committee on Human Rights.**

Full details of the documents

Proposed Regulation establishing the Rights and Values programme: (39814), 9605/18 + ADD 1, COM(18) 838.

Previous Committee Reports

Thirty-sixth Report HC 301–xxxv (2017–19), chapter 3 (18 July 2018).

13 Second mobility package: Clean Vehicles Directive

Committee's assessment	Politically and legally important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/33/EU on the promotion of clean and energy-efficient road transport
Legal base	Article 192 TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39209), 14183/17 + ADDs 1–6, COM(17) 653

Summary and Committee's conclusions

13.1 The proposal under scrutiny concerns the amendment of Directive 2009/33/EC—on the promotion of clean and energy-efficient road transport vehicles—and was adopted at the Employment, Social Policy, Health and Consumer Affairs Council meeting of 13 June 2019. The agreed amendments widen the scope of the Directive to include a revised definition of what constitutes a 'clean' light-duty vehicle (LDV).[74] The Directive sets a minimum public procurement target for clean LDVs and a similar target for heavy-duty vehicles (HDVs).

13.2 In terms of the finer details of the Directive, minimum procurement targets are set for LDVs and HDVs for individual Member States. For both LDVs and HDVs, these are specified for the period 2 August 2021 to 31 December 2025 and 1 January 2026 to 31 December 2030. As an example of the targets set for Member States, the UK's LDV target for the first and second periods is 38.5%. This is the highest target provided for by the Directive with the lowest set for Lithuania at 18.7%.

13.3 A full background to the proposal, including information on the Commission's ex-post evaluation of Directive 2009/33/EC, its rational for further regulatory action, and the Government's initial legal and political assessment of the changes suggested by the Commission, can be found in our Twenty-first Report to the House of session 2017–19.

13.4 When the Committee last considered the proposal on 3 April 2019, we granted a scrutiny waiver in order for the Government to support the formal adoption of the Directive at the Employment, Social Policy, Health and Consumer Affairs Council of 13 June 2019. The Minister with charge over the proposal—Michael Ellis MP—now writes (20 June) to inform the Committee of the adoption of the Directive and in response to an outstanding question concerning the Government's plans for its implementation.[75]

74 Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles (Text with EEA relevance).

75 Letter from Michael Ellis MP to Sir William Cash MP, 20 June 2019.

13.5 On the adoption of the Directive, the Minister explains that the Government voted in favour at Council and that its final form was unchanged from when the Committee last considered its text on 3 April. The Minister further explains that, whilst supporting the overall aims of the Directive, four Member States voted against adoption and three abstained. This was said to be for various reasons, for example, one Member State did not support the inclusion of targets for buses.

13.6 The Committee previously asked whether the Government would consider aligning domestic law with the Directive irrespective of the outcome of the UK's withdrawal from the EU. This question was raised in light of the Government's strong support for the Directive and the ambition it showed for more stringent targets during working group negotiations. The Minister provides a somewhat disappointing response; stating that any future UK alignment with the Directive will depend on the terms of the UK's exit from the EU. He does, however, offer to keep the Committee informed of progress in this regard.

13.7 The Directive was published in the Official Journal on 12 July 2019 and will have to be transposed into national law by Member States by 2 August 2021.[76] As alluded to above, this takes the full applicability of the Directive beyond the end of the transitionary period set under the draft Withdrawal Agreement (31 December 2020).

13.8 **We thank the Minister for his letter and for updating the Committee on the outcome of the June 2019 Council at which the proposal was put for adoption. As the Directive has now been adopted, we are happy to clear it from scrutiny.**

Full details of the documents

13.9 Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/33/EU on the promotion of clean and energy-efficient road transport: (39209), 14183/17 + ADDs 1–6, COM(17) 653.

Previous Committee Reports

Twenty-first Report HC 301–xx (2017–19) chapter 7 (21 March 2018); Forty-fifth Report HC 301–xliv (2017–19) chapter 5 (21 November 2018); and Sixty-second Report HC 301–lx (2017–19) chapter 3 (3 April 2019).

76 Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles.

14 Commission Brexit preparedness proposal: Vehicle type approvals

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Regulation of the European Parliament and of the Council complementing EU type approval legislation with regard to the withdrawal of the United Kingdom from the Union
Legal base	Article 114 TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39857), 9716/18, COM(18) 397 final

Summary and Committee's conclusions

14.1 In its previous reports the Committee has considered in detail the Brexit implications of this Commission proposal for a Regulation which would allow manufacturers with Vehicle Certification Agency-issued EU type approvals to transfer these approvals to EU type approval authorities before EU exit.[77]

14.2 The Government has consistently supported the proposal[78] as it would avoid the immediate disruption which would occur if VCA-issued type-approvals became invalid overnight in the event of EU exit, although it would only address this issue for approvals issued prior to Brexit which had been or were in the process of being transferred to an EU approvals authority at the moment of exit, and would not address the much wider range of Brexit issues arising for the sector.

14.3 In its most recent report, on 28 November 2018,[79] the Committee granted the Government a scrutiny waiver to vote in support of the final text at its anticipated adoption in Council in December, on the basis that the European Parliament's amendments to the Commission's proposal were closely aligned to those of the Council and the Government supported the objectives of the proposal. However, the Committee chose not to clear the file from scrutiny as trilogues had not yet fully concluded and in case there should be any significant last-minute amendments.

14.4 On 28 March 2019 the Minister of State at the Department for Transport (Jesse Norman MP) provided the Committee with an update on the outcome of negotiations.[80] The Minister thanked the Committee for granting a scrutiny waiver to support the

77 See, particularly, Forty-sixth Report HC 301–xlv (2017–19), chapter 10 (28 November 2018); Forty-fourth Report HC 301–xliii (2017–19), chapter 5 (14 November 2018).

78 See: Explanatory Memorandum from the Minister to the Chair of the European Scrutiny Committee (20 June 2018).

79 Forty-sixth Report HC 301–xlv (2017–19), chapter 10 (28 November 2018).

80 Letter from the Minister to the Chair of the European Scrutiny Committee (28 March 2019).

adoption of the proposal, and confirmed that, as anticipated, "the trilogue discussions were swiftly concluded and a compromise text was reached". In response to the Committee's request, the Minister also confirmed that the amendments made as a result of the trilogue discussions "did not materially alter the text of the proposal". On this basis, he states that his assessment "remains unchanged", with him considering the proposal "acceptable, in that it meets the Government's negotiating objectives outlined in my previous letter".

14.5 In response to the Committee's analysis of the implications of EU exit for the future of VCA-issued approvals, the Minister said that:

> I note the Committee's concerns about the future of the VCA, including a potential agreement with the EU to allow UK technical services to continue to work with EU27 type approval authorities. The VCA is continuing to explore options to ensure it can provide technical services to its customers for EU approvals after exit, and is working closely with manufacturers to prepare for a no deal outcome. As I explained previously, VCA will continue to act as the UK's approval authority for UNECE approvals, which make up the majority of testing under the whole vehicle approval system.

14.6 The VCA are working with manufacturers to assist them with transferring their approvals to EU authorities in advance of a prospective non-negotiated exit.

14.7 The final text was adopted by the European Parliament Plenary on 11 December and subsequently by the Council of Ministers on 20 December. Regulation (EU) 2019/26 was published in the Official Journal of the European Union on 8 January.

14.8 **We have taken note of the Minister's update regarding Regulation (EU) 2019/26, which establishes a legal arrangement that will allow vehicle manufacturers to transfer VCA-issued type approvals to EU type approval authorities (TAAs) without the need for duplicate testing. Without such an arrangement, vehicles with approvals issued by the Vehicle Certification Agency (VCA) would potentially have to be withdrawn from the EU market post-exit, and manufacturers would incur costs of between £350,000 to £500,000 per vehicle for duplicate testing and redesign.**

14.9 **The Minister confirms that remaining stages of the trilogue negotiations "did not materially alter the text of the proposal", reiterates the Government's support for the final text, which was in line with its previously stated objectives, and confirms that the Government supported its adoption by the Council of Ministers on 20 December 2018.**

14.10 **The VCA are working with manufacturers to assist them with transferring their approvals to EU27 approval authorities in advance of a possible non-negotiated exit from the EU.**

14.11 **Given that the legislative procedure has concluded, we now clear this document from scrutiny.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council complementing EU type approval legislation with regard to the withdrawal of the United Kingdom from the Union: (39857), 9716/18, COM(18) 397 final.

Previous Committee Reports

Forty-sixth Report HC 301–xlv (2017–19), chapter 10 (28 November 2018); Forty-fourth Report HC 301–xliii (2017–19), chapter 5 (14 November 2018); Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 13 (12 September 2018).

15 Cyprus: Brexit and UK Sovereign Base Areas (update)

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Defence Committee and the Foreign Affairs Committee
Document details	Fifteenth report on the implementation of Council Regulation (EC) No 866/2004 of 29 April 2004 and the situation resulting from its application covering the period 1 January until 31 December 2018.
Legal base	Council Regulation (EC) No 866/2004
Department	Foreign and Commonwealth Office
Document Number	(40722), 11042/19, COM(2019) 323

Summary and Committee's conclusions

15.1 When Cyprus joined the EU in 2004, its accession covered the entire island even though the Republic of Cyprus—recognised internationally as its sovereign authority—only controls part of the country. The northern half, invaded by Turkey in 1974, is not under its effective control.

15.2 The conflict over this division has intensified in recent years, with Turkey's decision to drill for gas in Cyprus' continental shelf under the supervision of Turkish military vessels. These activities have been condemned repeatedly by EU leaders, who in June 2019 reiterated the possibility of sanctions against Turkey in an attempt to halt the drilling. After EU Foreign Affairs Ministers reduced their formal cooperation with Turkey in July,[81] the Turkish Government responded by saying it was suspending its Readmission Agreement with the EU[82] under which it accepts the return of Syrian refugees in Greece.[83]

15.3 There is therefore, at present, no prospect of a peaceful reunification of the island under the full control of the Republic of Cyprus authorities in Nicosia. To reflect this political reality, the application of EU law in Northern Cyprus is suspended. However, a special regime applies to facilitate trade between the two parts of the island, across a UN buffer zone known as the 'Green Line'. Under the EU's so-called 'Green Line Regulation' (Regulation 866/2004), entry of goods from Northern Cyprus into the Republic is subject to a more permissive regime than for 'third countries' outside the Single Market without a formal trade agreement, as there are no tariffs or quotas. However, regulatory controls for

81 The EU did not impose formal sanctions. Instead, the Foreign Affairs Council of 15 July 2019 announced the suspension of negotiations on an EU-Turkey Air Transport Agreement; the cancellation of all future Association Council meetings and those of the EU-Turkey high-level dialogues; a reduction in the EU's 'pre-accession assistance' to Turkey for 2020; and review by the European Investment Bank of its lending activities in Turkey, notably with regard to sovereign-backed lending.

82 The Readmission Agreement is not a formal treaty, but a "statement" issued jointly by Turkey and the EU in March 2016.

83 Euractiv, "Turkey suspends deal with the EU on migrant readmission" (24 July 2019).

animal health and food safety apply, and Cyprus also imposes additional trade barriers not mandated by EU law. As a result, trade between the two parts of the island is severely restricted in practice.

15.4 The European Commission reports annually on the implementation of the Green Line Regulation. Its latest report, covering 2018, was submitted for scrutiny by the Foreign & Commonwealth Office in July 2019, and the then-Minister for Europe and the Americas (Rt Hon. Alan Duncan MP) submitted an Explanatory Memorandum on 18 July. In the document, the Commission notes that the Regulation continues to provide a "workable basis" for the passage of goods and persons between the two parts of Cyprus given the political realities and the continued "significant Turkish military presence" in the northern part of the island. However, it also highlights concerns about the entry of unauthorised crossings into Cyprus, in some instances via the UK's Sovereign Base Area at Dhekelia (see below). The Cypriot authorities also continue to impose certain barriers to trade with Northern Cyprus not required by EU law, such as banning vehicles above a certain weight from crossing and preventing imports of processed food products.

The UK's Sovereign Base Areas on Cyprus

15.5 The decision of the British electorate to leave the EU also raises specific issues on the island of Cyprus. The UK administers two British Sovereign Base Areas (SBAs) on the island, remnants of its pre-1960 status as a UK Crown Colony. The Bases—Dhekelia and Akrotiri—are British Overseas Territories managed by the Ministry of Defence, and as such are not part of the territory of the European Union.[84] However, Dhekelia—also known as the Eastern Sovereign Base Area or ESBA—actually straddles the Green Line, and contains two crossing points for movements of goods and people between the two parts of Cyprus. It is therefore a key part of the implementation of the restrictions on trade as set out under Regulation 866/2004, which pass through the Base. In addition, there are Cypriot farmers who cultivate land within the area controlled by the UK, but sell their goods within Cyprus or export it further afield.

15.6 Prior to Cyprus' accession to the EU, the practical arrangements to ensure cooperation between the SBAs and the Cypriot authorities could be dealt with on a bilateral basis. However, when Cyprus joined the EU, it lost the autonomous legal competence to enter into arrangements with the UK on a range of relevant issues, including customs and product standards for goods entering its territory (and therefore that of the EU). Under Cyprus' 2004 Act of Accession to the Union, the UK therefore made a commitment "not to create customs posts or other frontier barriers between the Sovereign Base Areas and the Republic of Cyprus". This reflected the 1960 Treaty of Establishment, which makes the authorities of the Republic of Cyprus responsible for "a wide range of public services in the Sovereign Base Areas, including in the fields of agriculture, customs and taxation".

15.7 As a result of this situation, Protocols 3 and 10 to the 2004 Act of Accession refer specifically to the SBAs. These legal acts ensure the free movement of goods between the Republic of Cyprus (the area effectively controlled from Nicosia) and the Base Areas, by requiring the latter apply EU law in a number of areas, including customs, VAT, excise and

84 Article 355(5)(b) TFEU: "The Treaties shall not apply to the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus except to the extent necessary to ensure the implementation of the arrangements set out in the Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus".

food safety, and performing checks on goods entering from Northern Cyprus through Dhekelia. The Common Agricultural Policy also covers farms within the territory of the Bases. We have described the current trade regimes that govern movements of goods and people between the EU (including Cyprus), Northern Cyprus and the SBAs in more detail in our Report to the House of 18 July 2018.

15.8 In that Report, we also concluded that UK's decision to leave the EU complicates the situation for goods and people moving between Cyprus and the Sovereign Base Areas, as Protocols 3 and 10 will automatically cease to apply when the UK is no longer a Member State of the European Union. This means that, barring a new agreement between the UK and the EU to the contrary, goods would no longer be able to flow freely between the two once the SBAs leave the customs territory of the EU and cease to be bound by EU law on the safety of animal and plant products. Instead, EU law would require Cyprus to apply customs and regulatory controls on goods crossing between the two for the first time.[85] This would also disrupt any movements between the Republic of Cyprus and the northern half of the island via the border crossings within the Dhekelia base. There has been no suggestion that Cyprus is seeking to use the Brexit process to formally regain sovereignty over the SBAs.

15.9 When was last considered the implications of Brexit for the SBAs in July 2018, the UK, Cyprus and the European Commission were still negotiating a specific Protocol on the matter as part of the overall Withdrawal Agreement on the UK's exit from the EU. Its purpose would be to "protect the interests of Cypriots who live and work in the SBAs following the UK's withdrawal from the Union". We had little information to go on at that point, since no draft text for the Protocol was available (although in June 2018 the Government said that it had "made progress in agreeing the text"). We speculated at the time that the Protocol was likely to replicate to some extent the current situation—in which the Bases are part of the EU's customs territory and apply EU law on animal and plant health—even when the UK itself became a 'third country' vis-à-vis the EU.

The Withdrawal Agreement: Protocol on the Sovereign Base Areas

15.10 In November 2018, the Government and the European Commission published the full draft of the Withdrawal Agreement, including a Protocol "relating to the Sovereign Base Areas of the United Kingdom" in Cyprus.[86] As expected, this essentially replicates the existing Protocols to the EU Treaties:

- The SBAs would be kept in the "customs territory" of the European Union, meaning goods produced there would not need to undergo customs controls when entering Cyprus or any other EU Member State and there would be no tariffs or quotas on goods moving between the Bases and the EU. The Bases would remain covered by the Common Commercial Policy and the EU's Common External Tariff (article 2 of the Protocol).[87]

85 The absence of customs and regulatory controls between Cyprus and the SBAs was strictly a bilateral matter prior to Cyprus' accession in 2004, as the Bases are not part of the EU under the UK's own 1973 Act of Accession. The UK's exit from the EU, however, turns the borders between the SBAs and Cyprus into an external border of the European Union where a whole range of EU legislation on trade in goods applies.

86 The SBA Protocol is one of three Protocols to the Withdrawal Agreement, each of which deals with a UK land border with an EU Member State (Ireland, Spain and Cyprus respectively).

87 However, all goods for civilian use in the SBAs, whether imported from the EU or 'third countries', would have to enter via Cyprus' air- and seaports. Goods for military purposes could enter via the SBAs itself.

- The EU's Common Agricultural and Fisheries Policies,[88] as well as EU 'veterinary and phytosanitary rules',[89] would continue to apply in the Sovereign Base Areas, to ensure that agricultural and fisheries products originating there could circulate freely throughout the EU without the risk of unfair subsidies or different food safety standards (article 6).[90] The extension of the Common Fisheries Policy to the Base Areas appears to be a new development, as it is not included in the existing Protocol to the EU Treaties.

- As is the case at present, EU law on Value Added Tax and excise duty would continue to apply within the Base Areas (Article 3(1)), but duty relief would be provided for "goods or services received, acquired or imported for use by the armed forces of the United Kingdom" in the bases.

- In addition, 'Union law on goods', especially those adopted on the basis of the Article 114 TFEU for the completion of the 'internal market', would apply "to and in the Sovereign Base Areas" (Article 2(7)).91 This appears to go beyond the provisions of Protocol 3, which does not extend EU law adopted on the basis of Article 114 TFEU—or its predecessor prior to the Lisbon Treaty, Article 95 TEC—to the SBAs.

- The UK will "retain responsibility for enacting necessary domestic legislation" to implement relevant EU law for the Base Areas. It will however entrust the responsibility for implementation and enforcement—short of the use of force—to the Cypriot authorities in the areas of taxation, goods, agriculture, fisheries and veterinary and phytosanitary rules, as is the case at present.

- With respect to the movement of people, the Protocol would prohibit "checks on persons at the land and sea boundaries between the Sovereign Base Areas and the Republic of Cyprus", but the UK would have to continue carrying out checks on people entering from Northern Cyprus via Dhekelia (for example to ensure they had a visa to enter Cyprus, if necessary).

- EU law listed in the Protocol as applying in the Base Areas would have to be interpreted in line with the jurisprudence of the Court of Justice indefinitely, and any amendments to such laws adopted by the EU would automatically be incorporated into the Protocol.[92] The Green Line Regulation, and its provisions on controls on goods, would continue to apply on the movement of goods between Northern Cyprus and the Republic of Cyprus via the Eastern Sovereign Base Area.

88 As set out in Title III of Part Three TFEU, and secondary EU legislation adopted on the basis of those provisions.

89 These rules are mainly adopted under Article 168(4)(b) TFEU, which gives the EU competence to legislate for "measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health".

90 The performance of veterinary, phytosanitary and food safety checks on goods imported from Northern Cyprus via Dhekelia would be carried out by the Cypriot authorities (article 2(8) of the Protocol).

91 EU rules on goods adopted under Article 114 TFEU are numerous. Recent examples include Regulation 2019/1009 on fertilisers; EU contract law, such as Directive 2019/771/EU; The Mutual Recognition Regulation for goods (Regulation 2019/515); and the Food Labelling Regulation (Regulation 1169/2011).

92 The sole exception to this automatic alignment of the Protocol with changes to EU law is in relation to specific provisions of the Green Line Regulation, where amendments would only be binding on the UK in respect of the Sovereign Base Areas with the Government's explicit approval. See Article 1(4) of the SBA Protocol to the draft Withdrawal Agreement.

15.11 If the Withdrawal Agreement is not ratified and the SBA Protocol does not take effect, the UK and the Republic of Cyprus reached a private understanding in March 2019 that both parties would "maintain current arrangements as far as possible through unilateral measures".[93] The Minister notes that the EU "are willing to tolerate this as an interim arrangement […] in the short-term", but adds that it would be "necessary to negotiate a longer-term legal basis for maintaining current arrangements" given the EU's competence in many of the areas of concern (such as customs and food safety). It is unclear if it is the Government's expectation in a 'no deal' scenario that Cyprus would be authorised by the EU to negotiate such an arrangement with the UK bilaterally on the basis of a dispensation under Article 2(1) TFEU,[94] or whether the UK would need to conclude a new agreement on the Base Areas with the EU as a whole under Article 218 TFEU.[95]

Our conclusions

15.12 **We thank the Minister for his update on the implementation of the Green Line Regulation. We share his concerns about the continued lack of a resolution to the division of Cyprus, and the potential for further escalation of the conflict between Cyprus and Turkey due to the latter's gas drilling activities in the Cypriot Exclusive Economic Zone. We have already asked the Foreign & Commonwealth Office to keep us informed of any further developments in the EU's response to Turkey's actions, especially in light of the European Council's call in June 2019 for potential "targeted measures" against Ankara.**[96]

15.13 **In the context of the Brexit process, we also welcome the Government's confirmation that current arrangements between the UK's Sovereign Base Areas and the Cypriot Government would continue to apply on a bilateral basis even in the event of a 'no deal' Brexit. This would avoid disruption to the flow of goods between the SBAs and Cyprus, and ensure that people can cross freely between the two as they do now. We note, however, that negotiations would need to be launched swiftly in such a scenario to put those arrangements on a sound legal footing after Protocol 3 on the Sovereign Base Areas, along with all other EU law, would cease to be binding on the UK. In particular, we expect the European Commission—and other Member States—to insist on legally-binding safeguards with respect to the production of agri-food products within the Base Areas for export to Cyprus or elsewhere in the EU.**

15.14 **We have also used the opportunity of the latest Green Line report to consider the substance of the Protocol on the SBAs in the draft Withdrawal Agreement more closely. Although it is not clear from the explanatory notes published by the Government, it appears the Protocol would actually expand the scope of EU law which would apply within the Base Areas compared to the current situation under the EU Treaties. In**

93 This is set out in the Foreign & Commonwealth Office's Explanatory Memorandum of 18 July 2019.

94 Article 2(1) TFEU stipulates that, where the Treaties confer on the EU exclusive competence in a specific area, "the Member States being able to do so themselves only if so empowered by the Union". In practice, this would most likely require a Decision by the European Parliament and the Council for matters that fall under the co-decision procedure, like customs, and a separate Decision by the Council for matters subject to the consultation procedure, like VAT and excise duty.

95 Article 218 TFEU is the legal base for the EU to conclude treaties with third countries.

96 European Council conclusions of 20 June 2019.

particular, the envisaged application of 'Union law on goods' under Article 114 TFEU and the provisions of the Common Fisheries Policy to the SBAs post-Brexit appear to be new additions. In light of this, we ask the Minister to:

- **confirm on what basis 'Union law on goods' adopted under Article 114 TFEU or its pre-Lisbon predecessor, and EU rules on fisheries under Title III of Part Three TFEU, already apply to and in the Sovereign Base Areas at present;**
- **explain why, if those provisions of EU law do *not* currently apply in the SBAs, they would become applicable there under the Protocol in the draft Withdrawal Agreement; and**
- **clarify if it is the Government's expectation that, in a 'no deal' scenario, Cyprus would obtain an authorisation from the other Member States under Article 2(1) TFEU to negotiate with the UK bilaterally on a new legal arrangement for the SBAs, or whether such an agreement would need to be concluded with the EU as a whole using the procedure underArticle 218 TFEU (together with one or more substantive legal base(s)).**

15.15 **We look forward to receiving a reply from the Foreign & Commonwealth Office to these questions by 20 September 2019. We also draw this Report to the attention of the Defence and Foreign Affairs Committees, given the potential implications of Brexit for the Sovereign Area Bases. We are content to now clear the European Commission's latest Report on the Green Line Regulation from scrutiny.**

Full details of the documents

Fifteenth report on the implementation of Council Regulation (EC) No 866/2004 of 29 April 2004 and the situation resulting from its application covering the period 1 January until 31 December 2018: (40722), 11042/19, COM(2019) 323.

Previous Committee Reports

See (39931), 10435/18, COM(18) 488: Thirty-Sixth Report HC 301–xxxv (2017–19), chapter 8 (18 July 2018).

16 Future EU funding for border control, asylum and migration

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Home Affair Committee
Document details	(a) Proposal for a Regulation establishing the Asylum and Migration Fund (b) Proposal for a Regulation establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa
Legal base	(a) Articles 78(2) and 79(2) and (4) TFEU, ordinary legislative procedure, QMV (b) Articles 77(2) and 79(2)(d) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(a) (39913), 10153/18 + ADDs 1–3, COM(18) 471 (b) (39915), 10151/18 + ADD 1, COM(18) 473

Summary and Committee's conclusions

16.1 As part of its preparations for the EU's next seven-year budget ("MFF"—Multiannual Financial Framework) from 2021–27, the European Commission has proposed a near tripling of EU funding for asylum, migration and border management from €13 billion under the current budget (2014–20) to €34.9 billion under the new budget.[97] Around €12 billion would be allocated to EU agencies—mainly to the European Border and Coast Guard Agency, with the aim of establishing "a standing corps of around 10,000 border guards",[98] but also to eu-LISA (the Agency overseeing the EU's migration and security information systems), and to the EU Agency for Asylum. Most of the rest would be channelled through two EU funds:

- €10.4 billion (£9.1 billion) for a renewed Asylum and Migration Fund; and
- €9.3 billion (£8.17 billion) for a new Integrated Border Management Fund to support Member States in securing the EU's external borders.

16.2 The proposed Asylum and Migration Fund—document (a)—would support efforts to:

- strengthen the EU's common asylum system;

97 See our Thirty-fourth Report HC 301–xxxiii (2017–19), chapter 6 (4 July 2018) and the Commission's fact sheet, *EU Budget for the Future*.

98 See p.2 of the Commission's explanatory memorandum accompanying document (b).

- manage the legal migration and integration of third country nationals; and
- counter irregular migration through more effective return and readmission policies.[99]

16.3 The Integrated Border Management Fund would be split between two different funding instruments: one focused mainly on the movement of people across the EU's external borders (the Border Management and Visa Instrument), the other on enhanced customs checks on the movement of goods (the Customs Control Equipment Instrument). The bulk of funding, €8 billion (around £7 billion), would be allocated to the Border Management and Visa Instrument—document (b)—and is intended to ensure "strong and effective" management of the EU's external borders through:

- support for the European Border and Coast Guard Agency and national border control authorities in managing migratory flows (including search and rescue operations and the deployment of teams to migration "hotspots") and in preventing illegal immigration and cross-border crime; and
- support for the EU's common visa policy as a tool to facilitate legitimate travel and prevent migration and security risks.[100]

16.4 The proposed Asylum and Migration Fund and Border Management and Visa Instrument both include mechanisms to allocate EU funding in a more flexible way. Whilst continuing to ensure "a critical mass of upfront funding and large, multiannual investments in line with Member States' needs", a proportion of the Funds would be set aside to support investment in key EU priorities.[101] The European Commission envisages that a more targeted distribution of EU funding would not only ensure that it reaches the Member States most affected by migratory flows, but also give tangible expression to the "the principle of solidarity and fair sharing of responsibility, including its financial implications" enshrined in Article 80 of the Treaty on the Functioning of the European Union (TFEU) when Member States implement EU policies on asylum and migration.

16.5 The proposed Regulations establishing the funding instruments would take effect in January 2021, after the UK's expected exit from the EU on 31 October 2019, and are part of a set of budget proposals put forward by the European Commission for a Union of 27 Member States".[102] Although both cite Title V (justice and home affairs) legal bases, neither includes the customary recital to indicate whether the UK is participating in and bound by them.

16.6 In her Explanatory Memorandum of 5 July 2018 on the proposed Asylum and Migration Fund—document (a)—the then Immigration Minister (Rt Hon. Caroline Nokes MP) recognised that negotiations on the EU's next long-term budget for 2021–27 were "primarily a matter for the 27 remaining Member States". The UK would nonetheless participate in negotiations "on the basis that the UK is currently a full member of the European Union" and "engage where there are UK interests". In deciding whether to

99 Annexes II and III of the proposed Regulation contain a detailed list of measures and actions that the Fund would support.

100 Annexes II and III of the proposed Regulation contain a detailed list of measures and actions that the Fund would support.

101 See p.3 of the Commission's explanatory memorandum accompanying the first proposed Regulation—document (a).

102 See p.4 of the Commission's explanatory memorandum accompanying both proposed Regulations.

opt in, the Government would consider any possible benefits for the UK, including its ability to "steer the design of the fund to support our potential participation as a third country" after the end of any post-exit transition period. The Minister added that the UK had received an allocation of €370 million from the current EU Asylum, Migration and Integration Fund for the period 2014–20 and the Government would be considering the potential impact that the loss of EU funding in this area would have on the UK.

16.7 In her separate Explanatory Memorandum of 5 July 2018 on the Border Management and Visa Instrument—document (b)—the Minister indicated that the proposal was subject to the UK's Title V (justice and home affairs) opt-in and would only apply if the UK were to opt in, but later said the UK was unable to participate as the proposal built on parts of the Schengen rule book which do not apply to the UK.

16.8 We considered the proposed Regulations a year ago at our meeting on 5 September 2019. In our Report, we asked the Minister to confirm the deadline for deciding whether to opt into document (a) and whether the Government intended to press for the inclusion of a recital making clear that the UK's Title V opt-in Protocol applied. We also asked her to confirm that the UK was not entitled to participate in document (b) and to press for the inclusion of a recital to this effect in the proposed Regulation.

16.9 We noted that the European Commission had proposed a new formula for allocating EU funds amongst Member States to target those under greatest pressure and in greatest need, as well as stronger conditionality to ensure that beneficiaries of EU funding were held to their obligation to respect the rule of law. We asked whether the Government welcomed these changes, how other Member States had reacted, and how great an impact the changes were likely to have on the future distribution of funding.

16.10 We noted also that third (non-EU) countries would be able to participate in the Asylum and Migration Fund, subject to an agreement ensuring "a fair balance" between the contributions they made and the benefits they received, but they would have no decision-making powers.[103] By contrast, the Border Management and Visa Instrument only appeared to envisage the participation of third countries associated with the Schengen rule book—Iceland, Norway, Switzerland and Liechtenstein.[104] We sought further information on:

- the tangible benefits for the UK of being "associated" with the post-2020 Asylum and Migration Fund as a third country, given that much of the EU rule book underpinning cooperation on asylum, migration and returns would cease to apply to the UK on leaving the EU;
- the basis for calculating a "fair share" if the Government were to seek to associate the UK with the Fund; and
- the areas in which the loss of EU funding would be most keenly felt (for example, resettlement, support for refugees) and how the Government intended to minimise the impact for beneficiaries.

103 See Article 5 of document (a).
104 See Article 7(4) of document (b).

16.11 We asked the Minister to confirm our understanding that participation in or association with the Integrated Border Management and Visa Instrument would be restricted to third countries associated with the Schengen rule book and so would not be an option for the UK.

16.12 In her letter of 11 July 2019, the Minister apologises for the delay in responding to our questions. She says that both the proposed Regulations include recitals making clear that the UK is not participating. The first—document (a)—states that the UK's Title V (justice and home affairs) opt-in Protocol applies and that the UK "has not opted in and is not bound". The opt-in deadline expired on 28 September 2018.[105] The second—document (b)—states that the UK is not entitled to participate and will not be bound by the proposed Regulation as it builds on elements of the Schengen rule book which do not apply to the UK.

16.13 The Minister offers no view on the new formula proposed for allocating the Funds amongst Member States and for strengthening the conditionality attached to EU funding, noting only that these will be scrutinised "once the European Parliament is reconstituted after the summer period". Similarly, she says that future UK association with the Funds remains under consideration and will be addressed as part of the Government's preparations for the future EU/UK relationship. She adds that "there is a pathway for legal entities in third countries" to participate in the Integrated Border Management Fund, even if they are outside the Schengen area, highlighting a provision (Article 16a) which would exceptionally allow legal entities established in a third country to participate "if necessary for the achievement of the objectives of a given action".

16.14 The Minister explains that the Justice and Home Affairs Council agreed a partial general approach on both the proposed Regulations in June but the agreements reached so far remain subject to progress in wider discussions on the next Multiannual Financial Framework for 2021–27.[106]

16.15 In an earlier letter dated 17 October 2018 sent to our counterpart Committee in the House of Lords, the Minister provided a more detailed statement of the Government's position on UK participation in future EU programmes:

> The Government is encouraging the Commission to design future EU programmes in a way that ensures options remain open to maximise the mutual benefits available to all parties.
>
> Participation as a third country should be taken in the national interest. As such, the UK will only participate when we consider that there will be operational, policy or legal benefits to the United Kingdom. The Government has been clear that participation in programmes is subject to agreeing appropriate governance arrangements. These should ensure that both parties can shape the activities covered, recognising the need to respect the autonomy of the EU's decision making, and the need for adequate UK

105 See the Minster's Written Ministerial Statement of 8 January 2019 in which she says the Government has decided not to opt in. Hansard, 8 January 2019, WS1235.

106 See the Council press release issued on 7 June 2019, *Funding for migration, border and security policies: Council agrees its position*. It includes links to the Partial General Approach texts agreed by the Council in June.

control over any financial contributions. Until the Regulations are finalised, I am not able to say whether the terms of participation will be acceptable to the UK, or offer any assessment of the proposals in their initial form.

Our Conclusions

16.16 **We welcome the inclusion of recitals in the partial general approach texts agreed by the Council which make clear that the UK is not participating in either of the post-2020 funding instruments. It is disappointing that it has taken the Minister so long to inform us of the Government's decision not to participate in the proposed Asylum and Migration Fund—the opt-in deadline expired nearly a year ago on 28 September 2018. We note that this is one of a number of examples in which the Government has fallen short of the commitments made in its Code of Practice on Parliamentary scrutiny of EU justice and home affairs opt-in and Schengen opt-out decisions.[107] We expect the Minister to take active steps to ensure that the Government complies with these commitments for as long as the UK remains bound by EU law.**

16.17 **We suggested in our earlier Report that the European Commission's efforts to introduce a new formula for allocating EU funds amongst Member States so that they are targeted towards those under greatest pressure and in greatest need, and to push for stronger conditionality to ensure that beneficiaries of EU funding are held to their obligation to respect the rule of law, were significant changes. Whilst we appreciate that the Government's decision not to participate in the EU's post-2020 Asylum and Migration Fund means that the UK will have no vote when the proposed Regulation is brought to the Council for a vote, we are disappointed that the Minister is unwilling to express a view on the principles underpinning the proposed changes or provide any indication of how other Member States have reacted and what impact the changes might have on the future distribution of EU funding. The Minister similarly does not explain how the loss of future EU funding would affect current beneficiaries in the UK and what steps the Government intends to take to minimise the impact.**

16.18 **As the UK will not participate in either of the proposed Regulations, we clear them from scrutiny. We note that the Minister does not rule out the possibility of future UK association with the Asylum and Migration Fund, whilst making clear that this would form part of negotiations on the future EU/UK relationship once the UK has left the EU. We expect the Government to inform Parliament promptly of any proposal to associate the UK with this or any other of the EU's post-2020 funding instruments. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents

(a) Proposal for a Regulation establishing the Asylum and Migration Fund: (39913), 10153/18 + ADDs 1–3, COM(18) 471; (b) Proposal for a Regulation establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa: (39915), 10151/18 + ADD 1, COM(18) 473.

Previous Committee Reports

Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 19 (5 September 2019).

107 See Annex S of Cabinet Office guidance on Parliamentary scrutiny of EU documents.

17 Third country participation in the EU's asylum database: Eurodac

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Home Affairs Committee
Document details	(a) Proposal for a Council Decision on the signing, on behalf of the European Union, of a Protocol to the Agreement with Iceland and Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway regarding access to Eurodac for law enforcement purposes (b) Proposal for a Council Decision on the conclusion of a Protocol to the Agreement between the European Community and Iceland and Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway regarding access to Eurodac for law enforcement purposes (c) Proposal for a Council Decision on the signing, on behalf of the European Union, of a Protocol between the European Union, the Swiss Confederation and the Principality of Liechtenstein to the Agreement concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland regarding access to Eurodac for law enforcement purposes (d) Proposal for a Council Decision on the conclusion of a Protocol between the European Union, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland regarding access to Eurodac for law enforcement purposes (e) Proposal for a Council Decision on the signing, on behalf of the European Union, of a Protocol to the Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention extending that agreement to law enforcement (f) Proposal for a Council Decision on the conclusion of a Protocol to the Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention extending that agreement to law enforcement

Legal base	(a), (c) and (e) Articles 87(2)(a), 88(2)(a) and 218(5) TFEU, QMV (b), (d) and (f) Articles 87(2)(a), 88(2)(a) and 218(6)(a) TFEU, QMV, EP consent
Department	Home Office
Document Numbers	(a) (40276), 15658/18, COM(18) 827; (b) (40277), 15653/18 + ADD 1, COM(18) 826; (c) (40278), 15638/18, COM(18) 831; (d) (40279), 15626/18 + ADD 1, COM(18) 828; (e) (40290), 15860/18, COM(18) 836; (f) (40291), 15676/18 + ADD 1, COM(18) 835

Summary and Committee's conclusions

17.1 Eurodac is an EU database containing the fingerprints of third country nationals who have made an application for asylum within the European Union or who have been apprehended in connection with an irregular border crossing. It forms an integral part of the 'Dublin system', a set of EU rules for determining which Member State is responsible for examining an application for international protection made within the European Union. All EU Member States participate in Eurodac and the Dublin system. As Denmark has a longstanding opt-out of EU asylum policy (dating back to 1999), its participation is based on an international agreement concluded with the EU.[108] The four non-EU countries participating in the Schengen free movement area—Iceland, Norway, Switzerland and Liechtenstein—have also concluded international agreements with the EU enabling them to take part in Eurodac and the Dublin system.[109] These international agreements pre-date the current Eurodac Regulation which was adopted in 2013 and allows designated national law enforcement authorities and Europol to access the fingerprint data held in Eurodac where necessary to prevent, detect or investigate terrorism or other serious crimes.[110]

17.2 Iceland, Norway, Switzerland, Liechtenstein and Denmark all wish to participate in the provisions of the 2013 Eurodac Regulation on law enforcement access to Eurodac. These provisions are outside the scope of their existing agreements with the EU. The proposed Council Decisions would update these agreements (by adding new Protocols) to allow access to the fingerprint data held in the Eurodac asylum database on the same basis as EU Member States' national law enforcement authorities.

17.3 In his Explanatory Memorandum of 29 January 2019, the then Minister for Policing and the Fire Service (Rt Hon. Nick Hurd MP) underlined the Government's strong support for cross-border data sharing to help prevent terrorism and serious crime, subject to appropriate data protection safeguards, and indicated that extending law enforcement access to Eurodac data to Denmark and the four non-EU Schengen associated countries

108 See the Agreement with Denmark.

109 See the Agreement with Iceland and Norway, the Agreement with Switzerland and the Protocol extending the Agreement to Liechtenstein.

110 Regulation (EU) No 603/2013 on the establishment of Eurodac.

would "enhance both their security and ours". He confirmed that the UK's Title V (justice and home affairs) opt-in Protocol applied to the proposed Council Decisions, adding that no decision had yet been taken, despite the recitals indicating the contrary.[111]

17.4 The Minister's subsequent letter of 22 May 2019 informed us that the Decisions authorising the EU to sign new Protocols to the agreements had been adopted *before* the Government had completed its internal opt-in procedures. The UK did not opt in or take part in the vote on their adoption. The Government had since decided to opt into the Decisions authorising the EU to conclude the Protocols to the agreements. The Council formally adopted these Decisions on 13 May, with the UK abstaining as they remained under scrutiny.

17.5 Whilst making clear that we accepted the reasons given by the Government for opting into the proposed Council Decisions authorising the EU to conclude the Protocols, we expressed concern at the Government's handling of the proposals. The Minister had given no indication in his Explanatory Memorandum that the Presidency intended to proceed with such haste. Nor did his subsequent letter explain why the Government had failed to comply with the commitments made to Parliament in the Government's own Code of Practice on scrutiny of EU justice and home affairs opt-in decisions.[112] We asked him to explain:

- why his Explanatory Memorandum did not make clear (as his later letter did) that the Council contested the application of the UK's Title V opt-in Protocol, with the consequence that the Government's opt-in decision would be immaterial, *as a matter of EU law*, in determining whether the UK would be bound by the Protocols to the agreements;
- whether the UK had made a minute statement when the Council Decisions were adopted setting out the Government's position on the application of the Title V opt-in Protocol;
- whether the Government intended to challenge the Council's position in the Court of Justice, given the Minister's view that the Title V opt-in Protocol clearly applied;
- whether (and if so how) the UK objected to the early adoption of the proposed Council Decisions authorising the EU to sign the Protocols; and
- when the Government intended to issue a Written Ministerial Statement informing Parliament of the reasons for its opt-in decisions.

17.6 The Minister told us that the Government would seek to negotiate "a new reciprocal returns agreement with the EU to explicitly ensure that third country illegal migrants and asylum seekers can be returned to the country they entered the UK/EU from or have a connection with […] underpinned by a biometric system, such as Eurodac, which would be used to verify travel through or connection to the EU or the UK". The agreement "would mirror the EU's readmission agreements with third countries".[113]

111 All the proposed Council Decisions include a recital stating that the UK has notified its wish to take part in their adoption and application.

112 The Code of Practice forms part of the Government's Guidance for Departments on Parliamentary Scrutiny of European Union Documents.

113 See the Minister's letter of 22 May 2019 to the Chair of the European Scrutiny Committee.

17.7 We questioned whether the EU's readmission agreements would provide a suitable model for the type of agreement which the Government appeared to envisage, encompassing both asylum seekers and illegal third country migrants. We asked the Minister whether a readmission agreement was the only route open to the UK since full participation in the Schengen rule book appeared to be a necessary pre-condition for participating in the Dublin system and Eurodac database as a third (non-EU) country. We also asked whether the Government had broached with the EU the possibility of a "reciprocal returns agreement" to take effect after the UK leaves the EU or approached individual EU Member States to scope out the terms of one or more bilateral agreements.

17.8 In her letter of 18 July 2019, the then Immigration Minister (Rt. Hon. Caroline Nokes MP) apologises for the earlier delays in responding to our questions and says the Government "remains committed to complying with the Code of Practice". When the initial Explanatory Memorandum on the proposed Council Decisions was submitted in January 2019, the Government was not aware of the Presidency's timetable for adoption. Nor was it clear at that stage that the Council would consider the UK to be automatically bound by the proposed Decisions (and so would not be able to choose whether to opt in). The Minister reiterates the Government's position that "the JHA opt-in applies to all measures citing a JHA legal base". She contests our view that the opt-in decision taken by the Government was immaterial noting that " If the Government had decided not to opt in, the Government would have considered that the UK was not bound by the Protocols to the agreements".

17.9 On our remaining questions on the Government's handling of the proposed Council Decisions, the Minister responds:

> The Government did not make a minute statement when the Council Decisions were adopted as the Government opted into the Decisions on conclusion of the agreement, writing to the Presidency of the Council on 14 March confirming the application of the JHA opt-in and the Government's decision to opt in. Similarly, as the Government has taken a decision to opt in, and considers itself bound by these Protocols, the Government sees no need to challenge the Council's position in the Court of Justice.
>
> The Government did not object formally to the early adoption of the proposed Council Decisions on signature of the Protocols on this occasion, as the Government retained an ability to choose to participate in the Council Decisions on conclusion.
>
> The Written Ministerial Statement informing Parliament of the reasons for the decision to opt in to these measures will issue shortly

17.10 Turning to future EU/UK cooperation on asylum and illegal migration, the Minister explains why she considers that an agreement modelled on existing EU/third country readmission agreements ("EURAs") would be appropriate:

> […] the wording in most EURAs is such that a migrant can be returned when they do not or no longer fulfil the conditions for entry or stay in a country; there is no obligation to consider the asylum claim first and we do not consider that there are legal reasons preventing the application of a

> EURA to asylum seekers in appropriate circumstances. These agreements rightly have clear provisions about the need for signatories to comply with international obligations under human rights and refugee law.
>
> The UK also has Immigration Rules allowing for the return of nationals to a safe third country before their asylum claim is considered. The UK is currently signatory to Council Directive 2005/85/EC of 1 December 2005 on minimum standards of procedures in Member States for granting and withdrawing Refugee status (the Asylum Procedures Directive 2005). Similar provisions in the recast Asylum Procedures Directive enable other Member States to find certain asylum claims inadmissible. The return of those asylum seekers to the non-EU country would generally be under a EURA. The Procedures Directive clearly sets out the circumstances in which those claiming asylum in a Member State can, without consideration of their claim, be removed to another Member State (Article 25.1(a)) or to another country with which they have a relevant association (Articles 25.1(b) or (c)). These regulations work alongside arrangements in the Dublin III Regulations to help reinforce the commonly held principle that those fleeing persecution should claim asylum in the first safe country they reach. These regulations are reflected domestically in Rules 345A(i) to 345D of the Immigration Rules (HC395)1.

17.11 The Minister reiterates that the Government "is not seeking third country access to the Dublin III Regulation" but to negotiate "a new reciprocal returns agreement with the EU to ensure that third country illegal migrants and asylum seekers can be returned to the country they entered the UK/EU from or have a connection with (for example a student visa)." She continues:

> The UK and the EU have discussed ongoing cooperation on migration and returns, however agreements in these areas, including the underpinning of any agreements with access to Eurodac, are subject to ongoing negotiations which I am unable to comment on further at this time. It is the Government's view that agreeing a new returns relationship would provide strong messaging that dangerous and illegal secondary movements will not be tolerated after EU Exit. Underpinning this, agreement with Eurodac would provide the evidence base for monitoring secondary movements.

17.12 Finally, the Minister notes that "the UK currently participates in both the Dublin III Regulation and the Eurodac Regulation, whilst not a member of Schengen".

Our Conclusions

17.13 **We thank the Minister for her response and are content to clear the proposed Council Decisions from scrutiny. In doing so, we make the following observations:**

- **The UK's right to invoke the Title V (justice and home affairs) opt-in Protocol remains contested in this case. Although the Government considers that the UK would not be bound by the Protocols to the agreements if it had decided**

not to opt in, the Council takes a different view. It is for this reason that we asked whether the Government might wish to seek a definitive ruling from the Court of Justice.

- **The Minister notes that "the UK currently participates in both the Dublin III Regulation and the Eurodac Regulation, whilst not a member of Schengen". We do not question the UK's right to participate in both as an EU Member State, only the feasibility of doing so once outside the EU and Schengen.**

17.14 **We trust that the Minister will publish a Written Statement on UK participation in the proposed Council Decisions authorising the EU to conclude the Protocols at the earliest opportunity, given that the decision to opt in was taken four months ago in March.**

17.15 **We note that** section 17 of the European Union (Withdrawal) Act 2018 **requires the Government to seek to negotiate a post-exit agreement with the EU to protect the family unity of unaccompanied asylum-seeking children. We ask the Minister to ensure that Parliament is regularly updated on the progress made in these negotiations and on wider negotiations on a new reciprocal returns agreement to take effect after the UK leaves the EU. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents

(a) Proposal for a Council Decision on the signing, on behalf of the European Union, of a Protocol between the European Union, the Republic of Iceland and the Kingdom of Norway to the Agreement between the European Community and Iceland and Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway regarding access to Eurodac for law enforcement purposes: (40276), 15658/18, COM(18) 827; (b) Proposal for a Council Decision on the conclusion of a Protocol between the European Union, the Republic of Iceland and the Kingdom of Norway to the Agreement between the European Community and Iceland and Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway regarding access to Eurodac for law enforcement purposes: (40277), 15653/18 + ADD 1, COM(18) 826; (c) Proposal for a Council Decision on the signing, on behalf of the European Union, of a Protocol between the European Union, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland regarding access to Eurodac for law enforcement purposes: (40278), 15638/18, COM(18) 831; (d) Proposal for a Council Decision on the conclusion of a Protocol between the European Union, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland regarding access to Eurodac for law enforcement purposes: (40279), 15626/18 + ADD 1, COM(18) 828; (e) Proposal for a Council Decision on the signing, on behalf of the European Union, of a Protocol to the Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request

for asylum lodged in Denmark or any other Member State of the European Union and 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention extending that agreement to law enforcement: (40290), 15680/18, COM(18) 836; and(f) Proposal for a Council Decision on the conclusion of a Protocol to the Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention extending that agreement to law enforcement: (40291), 15676/18 + ADD 1, COM(18) 835.

Previous Committee Reports

Sixty-eighth Report HC 301–lxvi (2017–19), chapter 6 (19 June 2019) and Fifty-fourth Report HC 301–liii (2017–19), chapter 6 (6 February 2019).

18 EU participation in GRECO

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Council Decision on the position to be taken, on behalf of the European Union, in the 83rd Plenary Meeting of the Group of States against Corruption (GRECO)
Legal base	Article 83 TFEU in conjunction with Article 218(9) TFEU; QMV
Department	Ministry of Justice
Document Number	(40688), 9850/19, COM(19) 273

Summary and Committee's conclusions

18.1 GRECO is the Council of Europe's anti-corruption organisation. It was established in 1999 to monitor contracting States' compliance with anti-corruption standards set out in the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption. GRECO has 49 members. These include all of the 28 EU Member States in their own right as well as the USA and ten observers. The EU does not currently participate in GRECO although this has been a priority for its cooperation with the Council of Europe for some time.

18.2 In our last Report of 3 July, we set out the background to the proposed Council Decision under scrutiny. This Decision, which was adopted in the Council on 18 June, authorised the EU to request observer status in GRECO at its 83rd plenary on 22 June. We also asked the Government a number of questions concerning the application of the JHA opt-in to the proposal, in light of the Written Ministerial Statement[114] and Explanatory Memorandum that had been provided.

18.3 The then Lord Chancellor and Secretary of State for Justice (Rt Hon. David Gauke MP) now responds in his letter of 17 July 2019, enclosing the adopted text of the proposal and a minute statement.

UK supportive of EU observer status

18.4 The Minister reiterates that:

- The UK is supportive of the EU's participation in GRECO as an observer as it will ensure cooperation between the EU and the Council of Europe.
- The UK is a long-standing member of GRECO which fits with UK aims to counter corruption.
- Neither EU observer status nor Brexit will undermine ongoing work carried out at GRECO in tightening the UK's anti-corruption measures.

114 HCWS1653, 25 June 2019.

The position on the opt-in

18.5 The Minister then clarifies the position regarding UK's rights under the JHA opt-in Protocol (No 21) in the context of the proposed Council Decision:

- Under the JHA Protocol the UK and Ireland have three months from the date of the publication of the last EU language of a proposal to decide whether or not to participate in a measure. The decision to opt in or not is usually taken collectively by Government, by way of a cross-Whitehall consultation.

- The Commission published the proposal on 6 June. On 7 June, the Romanian Presidency formally requested that the UK and Ireland consider waiving the three-month opt-in period so the measure could be adopted in time for the GRECO Conference on 17—21 June 2019. The Presidency made clear that if the UK and Ireland did not do so, then the proposed Council Decision would not be adopted in time for the June meeting. This would result in the EU not having observer status to the Conference.

- Ireland decided to waive the opt-in period and stated in Coreper on 13 June that "in these exceptional circumstances, mindful of the importance of the proposed Council Decision and in acknowledgement of the need to allow its speedy adoption," it would not insist on its right to the opt-in period.

- To summarise, the tight timeline of EU decision-making did not allow the UK Government sufficient time to take the necessary domestic steps in order to reach a formal decision on whether or not to opt in. So no formal decision on whether or not to opt-in to the proposal was taken, which would have triggered obligations under the Code of Practice.

- Therefore, the default legal position is that—despite waiving the opt-in period—the UK is not legally bound by this Council Decision. As result, it had not voted in Coreper or in the Council.

- The Government does not consider that the opt-in is immaterial. It remains committed to complying with the Code of Practice as well as ensuring Parliament's scrutiny rights are upheld. It therefore tabled a statement underlining that the Council Decision had not gone through Parliamentary scrutiny processes and that the procedure would not constitute a precedent for similar decisions.

- The Government did not formally object to the early adoption of the proposed Council Decision on this occasion. Instead the UK expressed regret at not being able to take the full three months to reach a decision.

- The decision to waive the three-month period was made "on the merits, balancing adherence to the principle of sincere cooperation and that the proposal had no practical effect for the UK, with the desire not to disrupt the agenda of future EU business for a proposal that the UK agreed with in principle".

- The Council Decision (text provided) therefore included a recital (paragraph 12) stating that the UK and Ireland are not taking part in the adoption and application of this Decision and are not bound by it or subject to its application.

- Only post-adoption opt-in would now be possible at this stage.

Legal basis for the Council Decision

18.6 The Committee asked about the use of the Article 218(9) TFEU legal basis, mindful of the relevant Court of Justice ruling in Germany v Council (C 399/12). The Justice Secretary responds as follows:

- Article 218(9) TFEU is an appropriate legal base for the adoption of a decision establishing an EU position in a body set up by an agreement when that body is called upon to adopt acts having legal effects, including where the EU is not itself a party to the agreement.
- The EU's observer status has potential immediate legal effects for the EU (creating obligations and rights for the EU) and it is also likely that future decisions to be taken by GRECO will influence EU action in the same subject area, which will be informed by the EU's observer status in GRECO. The Government therefore had no objection to the legal basis.

The outcome of the GRECO conference

18.7 The Minister explains that at the GRECO meeting of 20 June a decision could not be taken on this issue due to the opposition of one non-EU Member State. The matter was therefore put to the Committee of Ministers of the Council of Europe who adopted a decision on 10 July accepting the EU's request to acquire observer status.

Our conclusions

18.8 **We thank the Justice Secretary for the extra information, explanation and texts that he has provided us. We have no further questions and are now content to clear this document from scrutiny.**

Full details of the documents

Proposal for a Council Decision on the position to be taken, on behalf of the European Union, in the 83rd Plenary Meeting of the Group of States against Corruption (GRECO): (40688), 9850/19, COM(19) 273.

Previous Committee Reports

Seventieth Report HC 301–lxviii (2017–19), chapter 2 (3 July 2019). See also (34358), 15305/12: Thirty-second Report HC 86–xxxii (2012–13), chapter 6 (13 February 2013); Twenty-second Report HC 86–xxii (2012–13), chapter 11 (5 December 2012).

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

Department for Digital, Culture, Media and Sport

(40683) 10372/19 JOIN(19) 12	Joint Communication: Report on the implementation of the Action Plan Against Disinformation.

Department for Environment, Food and Rural Affairs

(40698) 10771/19 + ADD 1 COM(19) 291	Recommendation for a Council Decision authorising the opening of negotiations for the establishment of a regional fisheries management organisation or arrangement for the conservation and management of marine living resources in the western and central Atlantic Ocean.
(40723) 11041/19 COM(19) 321	Proposal for a Council Decision establishing the position to be adopted, on behalf of the EU, with regard to the submission of proposals for amendments to the appendices to the Convention on the Conservation of Migratory Species of Wild Animals (CMS) with a view to the 13th meeting of the Conference of the Parties.
(40733) 11150/19 +ADD 1 COM(19) 327	Proposal for a Council Decision establishing the position to be taken on behalf of the EU in the Fishery Committee for the Eastern Central Atlantic (CECAF).
(40734) 10705/19 + ADD 1 COM(19) 284	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Western Central Atlantic Fishery Commission.
(40737) 11096/19 + ADD 1 COM(19) 326	Proposal for a Council Decision on the position to be taken on behalf of the European Union within the Joint Committee on Agriculture set up by the Agreement between the European Community and the Swiss Confederation on trade in agricultural products, as regards the amendment of Annexes 1 and 2 to the Decision.

(40740) 11238/19 COM(19) 335	Commission Report assessing the progress reported by Italy to the Commission and the Council on the recovery of the amount due from milk producers by virtue of the additional levy for the period 1995/1996 to 2001/2002.
(40749) 11315/19 COM(19) 338	Proposal for a Council Regulation amending Regulations (EU) 2019/124 and (EU) 2018/2025 as regards certain fishing opportunities.
(40760) 11416/19 + ADD 1 COM(19) 344	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Sanitary and Phytosanitary Management Sub-Committee established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part.
(40770) 11330/19 SWD(19) 298	Commission Staff Working Document Evaluation of Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents.
(40771) 11331/19 SWD(19) 299	Commission Staff Working Document Executive Summary of the Evaluation of Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents.
(40779) 11372/19 + ADD 1 —	Commission Delegated Regulation (EU) …/... of 28.6.2019 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for establishments keeping terrestrial animals and hatcheries, and the traceability of certain kept terrestrial animals and hatching eggs.
(40781) 11534/19 + ADD 1 —	Commission Staff Working Document Evaluation of the Entry/Exit scheme in accordance with Article 23(3) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy.

Department for Exiting the European Union

(40719) —	European Council Decision proposing to the European Parliament a candidate for President of the European Commission.
(40720) 10712/19 —	Proposal for a Council Decision on the non-replacement of Members of the Commission.

(40741) 11233/19 + ADDs 1–4 COM(19) 319	Report from the Commission Monitoring the application of European Union law 2018 Annual Report.
(40750) 11313/19 + ADD 1 COM(19) 333	Report from the Commission Annual Report 2018 on the application of the principles of subsidiarity and proportionality and on relations with national parliaments.
(40759) — —	Court of Auditors' Special Report no 13/2019: The ethical frameworks of the audited EU institutions: scope for improvement.

Department for International Trade

(40718) 10972/19 + ADD 1 COM(19) 314	Recommendation for a Council Decision supplementing the negotiating directives for the Doha Development Agenda regarding the negotiations of a multilateral framework on investment facilitation.
(40763) 11435/19 +ADDs 1 COM(19) 341	Proposal for a Council Decision on the position to be taken on behalf of the EU in the EPA Committee established under the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part, as regards the adoption of Protocol 1 concerning the definition of the concept of 'originating products' and methods of administrative cooperation (including Annex).

Department for Transport

(40736) 11127/19 COM(19) 298	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the written procedure to be launched by the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail (OTIF) for the adoption of modifications to NVR and UTP TAF.

Department for Work and Pensions

(40708) 10705/19 + ADDs 1–3 COM(19) 264	Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Findings of the Fitness Check of the most relevant chemicals legislation (excluding REACH) and identified challenges, gaps and weaknesses.

Foreign and Commonwealth Office

(40739) 10927/19 —	Proposal of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a Council Decision in support of an Africa- China-Europe dialogue and cooperation on preventing the diversion of arms and ammunition in Africa.
(40757) — —	Council Decision on the signature and conclusion of the Agreement between the European Union and the Government of the Republic of Mali regarding the status of the European Union Mission in Mali (EUCAP Sahel Mali).
(40758) — —	Council Decision appointing the European Union Special Representative in Bosnia and Herzegovina.

HM Revenue and Customs

(40700) 10831/19 + ADD 1 COM(19) 294	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the OECD Public Governance Committee and the OECD Council on the draft Recommendation on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones.

HM Treasury

(39930) 10436/18 COM(18) 487	Twelfth Annual Report on the instrument of financial support for encouraging the economic development of the Turkish Cypriot community.
(40689) 10550/19 COM(19) 282	Report from the Commission to the European Parliament and the Council on the Application of Chapter IV of Regulation (EU) 2015/847 on information accompanying transfers of funds.
(40703) 10818/19 COM(19) 292	Report from the Commission to the European Parliament and the Council on the application of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking and pursuit of the business of Insurance and Reinsurance (Solvency II) with regard to group supervision and capital management within a group of insurance or reinsurance undertakings.
(40711) 10874/19 COM(19) 610	Draft amending budget No 4 to the general budget for 2019: Reduction of commitment and payment appropriations in line with updated needs of expenditure and update of revenue (own resources).

(40713) 10961/19 COM(19) 334	Report from the Commission on the follow-up to the discharge for the financial year 2017 (Summary).
(40716) 10881/19 COM(19) 600	Proposal for a Decision of the European Parliament and of the Council amending Decision (EU) 2019/276 as regards adjustments to the amounts mobilised from the Flexibility Instrument for 2019 to be used for migration, refugee inflows and security threats.
(40721) 11043/19 COM(18) 322	Thirteenth Annual Report on the instrument of financial support for encouraging the economic development of the Turkish Cypriot community.
(40745) 8978/19 + ADDs 1–3 COM(19) 196	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the Court of Auditors: Commission Anti-Fraud Strategy: enhanced action to protect the EU budget.
(40746) 8979/19 + ADD 1 SWD(19) 500	Commission staff working document: Evaluation of the Commission's Anti-Fraud Strategy.
(40748) — —	Court of Auditors Special Report no 12/2019: E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved.

Home Office

(40667) 9656/19 SWD(19) 194	Commission Staff Working Document Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant—Year 2016.
(40727) 11049/19 + ADD 1 COM(19) 293	Report from the Commission to the European Parliament and the Council. Evaluation of the 2015–2019 action plan on firearms trafficking between the EU and the south-east Europe region.

Ministry of Defence

(40731) 10048/19	Council Conclusions of 17 June 2019 on Security and Defence in the context of the EU Global Strategy.

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Ministry of Justice

(40744) 11199/19 COM(19) 311	Report from the Commission to the European Parliament and the Council on the application of Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA.
(40755) 11217/19 COM(19) 343	Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions Strengthening the Rule of Law within the Union—A blueprint for action.
(40777) 11593/19 COM(19) 355	Report from the Commission to the European Parliament and the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector.

Office for National Statistics

(40714) 10956/19 COM(19) 308	Report from the Commission the exercise of the power to adopt delegated acts conferred on the Commission under Council Regulation (EC) No 577/98 on the organisation of a labour force sample survey in the Community.

Formal Minutes

Wednesday 4 September 2019

Members present:

Sir William Cash, in the Chair

Martyn Day	Kelvin Hopkins
Richard Drax	Mr David Jones
Mr Marcus Fysh	

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 19 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 11 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*)