House of Commons

European Scrutiny Committee

Tenth Report of Session 2017–19

Documents considered by the Committee on 17 January 2018

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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Contents

Meeting Summary

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

Brexit-related issues

The Committee is now looking at documents in the light of the UK 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:

Trans-European Energy Networks

- The Committee identifies an EU decision on cross-border energy projects as an example of UK-relevant legislation which could be negotiated and adopted by the EU during a post-Brexit implementation period.

SOLVIT Action Plan

- Whether the Government intends to provide enhanced support for informal cross-border dispute resolution to UK citizens and businesses encountering difficulties in the EU27 post-exit, in order to accommodate the likely increase in demand that will arise as a result of the shift from EU membership to third country status.

.eu Top-Level Domain

- To clarify whether workarounds exist which might enable the 340,000 UK-based users of .eu domain names to continue to use them, after Brexit.

Summary

EU Agenda for Education and Culture

The Committee considered the European Commission's recent paper on the future development of EU culture and education policy. The document sets out the Commission's intention to propose a number of initiatives in the coming years, including improved mutual recognition of diplomas and degrees; an EU Student Card to make academic records portable across borders; and increasing the uptake of available EU funding for the creative industries.

As the Commission document is light on the detail of these initiatives, the Committee has cleared it from scrutiny. However, we will assess any specific initiatives as and when they are proposed as the UK will retain an interest in possible participation in EU initiatives in this area after Brexit.

Cleared from scrutiny; drawn to the attention of the Education Committee and the Digital, Culture, Media & Sport Committee.

Trans-European Energy Networks

23 UK energy projects have been designated as "Projects of Common Interest" due to their contribution to developing further the EU's internal energy market. This allows them to access funding and to benefit from simplified planning procedures. As UK projects will continue to benefit from this scheme until the end of 2020, the Committee identified this decision as the type of UK-relevant legislation which could be proposed, negotiated and agreed during a post-Brexit implementation period.

Cleared; drawn to the attention of the Business, Energy and Industrial Strategy and the Exiting the European Union Committees.

World Trade Organisation Ministerial Conference

The 11th World Trade Organisation (WTO) Ministerial Conference took place in Buenos Aires on 10–13 December 2017. While there was no agreement on the main areas of discussion, the Government was pleased that progress was made at the plurilateral level (among groups of countries) on matters such as digital trade, investment facilitation and women's economic empowerment. The Committee notes the outcome and draws it to the attention of the House given the increased focus on the WTO as the UK exits the EU.

Cleared on 6 December 2017; drawn to the attention of the International Trade Committee.

Compliance package: Action plan on the reinforcement of SOLVIT

A non-legislative Action Plan proposes to strengthen the role of national SOLVIT Centres in various ways, to improve compliance with Single Market rules. In a letter to the Committee, the Minister (Lord Henley) states that the Commission has already begun to implement the Action Plan, and that no further developments are expected in Council. On EU exit, the Minister (Lord Henley) states that SOLVIT will not form part of the Article 50 withdrawal agreement, but that it could continue to apply during the transition period, and could in principle form part of the future relationship. The Minister does not respond very clearly to the Committee's questions about whether the Government anticipates that the legal changes that flow from a shift from EU membership to third country status will lead to an increase in demand for cross-border informal dispute resolution, and how it intends to ensure that this demand is met.

Not cleared from scrutiny; further information requested.

Report on .eu Top-Level Domain

.eu is the country code top-level domain (ccTLD) for the European Union (EU). It is only available to persons, companies and organisations based in the EU/EEA. At present, there are 340,000 UK owners of .eu domain registrations, whose usage of .eu domain names potentially stands to be affected by EU exit. The Minister (Matthew Hancock) reports that stakeholders have not been very vocal about the issue. Stakeholder comments suggest

that workarounds may exist for some UK users, particularly for multinationals with EU subsidiaries, but that continuing to use.eu domain names may be more difficult for individuals and smaller businesses.

Not cleared from scrutiny; further information requested.

International cooperation to combat match-fixing

The Commission has put forward proposals authorising the EU to participate in a Council of Europe Convention on match-fixing. The Government supports the Convention but questions whether it is necessary for the EU to become a party. It says that the UK cannot sign and ratify the Convention in its own right until the nature and extent of EU participation has been resolved. The Committee notes that the EU will be bound to participate if the Commission is able to establish that that EU has exclusive competence for parts of the Convention and that it has a realistic prospect of doing so in relatively minor areas. We consider that the proposals should be amended to make clear that EU participation in the Convention is limited to these areas and reiterate our position that the Government should resist further EU encroachment in areas where competence is shared between the EU and Member States. The Committee asks the Minister to explain why her Department has failed to comply with the Government's own Code of Practice on Parliamentary scrutiny of justice and home affairs opt-in decisions and to indicate whether there are any other factors, apart from the unresolved question of EU participation, which are impeding the UK from signing the Convention.

Not cleared from scrutiny, further information requested; drawn to the attention of the Digital, Culture, Media and Sport 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: Trans-European Energy Networks [(a) Commission Delegated Regulation (C), (b) Commission Communication (C)]

Digital, Culture, Media and Sport Committee: International cooperation to combat match-fixing [(a) and (b) Proposed Decisions (NC)]; EU Agenda for Education and Culture [Commission Communication (C)]

Education Committee: EU Agenda for Education and Culture [Commission Communication (C)]

Exiting the European Union Committee: Trans-European Energy Networks [(a) Commission Delegated Regulation (C), (b) Commission Communication (C)]

International Trade Committee: World Trade Organisation Ministerial Conference [Proposed Decision (C)]

1 Compliance package: Action Plan on the reinforcement of SOLVIT

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Action Plan on the Reinforcement of SOLVIT: Bringing the benefits of the Single Market to citizens and businesses
Legal base	—
Department	Business, Energy and Industrial Strategy
Document Number	(38697), 8770/17 + ADD 1, COM(17) 255

Summary and Committee's conclusions

1.1 On 2 May 2017, as part of its "compliance package"[1]—a group of measures designed to improve compliance with and enforcement of Single Market rules—the European Commission adopted an Action Plan for the reinforcement of the SOLVIT network.[2] SOLVIT is a free of charge service provided since 2002 by each EU Member State.[3] It works under short deadlines and provides solutions to EU/EEA citizens and businesses when they are experiencing difficulties with having their EU rights recognized by public authorities, particularly while moving or doing business across borders within the EU.

1.2 The Commission proposes, variously, to use EU funding opportunities to improve the quality of SOLVIT and to provide better legal support to the network, to increase awareness-raising activities, so that the network is better used and to ensure that the network collects information about the most recurrent problems, which would be used to inform future regulatory and enforcement activity.

1.3 In the Government's Explanatory Memorandum of 10 July 2017,[4] the then Parliamentary Under-Secretary of State (Lord Prior) indicated that the Government supported the Action Plan, but thought that a higher degree of ambition was required in order to "address more effectively problems that are outside of SOLVIT Centres' scope, or situations they are unable to influence satisfactorily". On Brexit, the Minister stated that "While the UK's involvement in the SOLVIT network after EU exit has yet to be determined, effective enforcement of the Single Market will remain important for UK businesses."

1 European Commission Press Release, Commission takes new steps to enhance compliance and practical functioning of the EU Single Market (2 May 2017).
2 Action Plan on the Reinforcement of SOLVIT: Bringing the benefits of the Single Market to citizens and businesses 8770/17.
3 Commission Recommendation 17.9.2013 on the principles governing SOLVIT COM (13) 5869 final.
4 Explanatory Memorandum from the Minister, BEIS, to the Chair of the European Scrutiny Committee (10 July 2017).

1.4 In its report on 13 November 2017[5] the Committee concluded that the legal changes arising as a consequence of the UK's withdrawal from the European Union would likely give rise to increased demand for informal cross-border dispute resolution of the type currently provided by SOLVIT. It said that there was a strong incentive for the Government to ensure that this demand was met, as otherwise some UK businesses might unnecessarily relocate part of their operations abroad.

1.5 On 5 December 2017 Lord Prior's successor at BEIS (Lord Henley) replied to the Committee's report.[6] The Minister states that the Commission has already begun implementing elements of the Action Plan. He adds that, at the Council working party at which the Plan was discussed, Member States "expressed a united and strong front in calling for the Commission to go further, in particular in relation to its own involvement in following up unresolved cases and providing expert input". However, unless a Presidency chooses to bring forward Council Conclusions on the subject, it is unlikely that there will be any further significant developments beyond expert-level discussions between SOLVIT Centres, who will monitor progress.

1.6 On Brexit, the Government's assessment is that:

- the SOLVIT Action Plan and UK participation in the SOLVIT network are not considered withdrawal issues and so will not be addressed in the Article 50 Exit Agreement;
- during the Prime Minister's proposed implementation period, the mechanisms for administering EU rules and regulations, including SOLVIT, "could continue to apply"; and
- beyond the implementation period continued UK participation in or cooperation with SOLVIT "would depend on whether this was appropriate for the future partnership" and would be subject to future relationship negotiations.

1.7 The Government states that it is committed to ensuring that appropriate arrangements are in place to meet the needs of UK business in the future partnership; however, it declines to provide further information about what it considers to constitute appropriate arrangements, on the basis that the needs of UK businesses and citizens for informal cross-border dispute resolution post-exit will be "partly dependent" on the shape of the future partnership. The Government states that discussion of these arrangements must therefore wait "until we have agreed the detail of the future partnership".

1.8 **We thank the Minister for his letter, and for the clarification it provides. We are nonetheless concerned by the lack of any indication as to whether the Government accepts that there will be an increase in the need for informal dispute resolution arrangements post-exit, as well as the lack of any sense of what the "appropriate arrangements" that it seeks to include in the future partnership might look like.**

1.9 **We note the Government's caveat that it will not be possible to anticipate these arrangements until the detail of the future partnership has been agreed, because the future partnership will partly determine the needs of UK business; however, the Government also states that it is committed to ensuring that appropriate arrangements**

5 First Report HC 301-I (2017–18) chapter 6 (13 November 2017).

6 Letter from the Minister, BEIS, to the Chair of the European Scrutiny Committee (5 December 2017).

are incorporated into the future partnership itself, implying that the matter will be settled not after, but during, the negotiations—a more sensible arrangement in our view.

1.10 **We also observe that, despite the uncertainty about the detail of the future relationship, the Government has committed to leaving the EU Single Market and the Customs Union, which provides sufficient clarity to begin to frame the issue. The legal changes which flow from this decision will alter the basis on which many UK businesses and citizens operate within the EU. Even if a "close" relationship is retained, the shift from the status quo (membership) will lead to an increase in cross-border complications, and to increased demand for information, support and informal dispute resolution arrangements of the type that are currently provided by SOLVIT.**

1.11 **The Committee also notes that it is possible that negotiations will not reach a successful conclusion, and that the UK could leave the EU in March 2019, without any withdrawal agreement or framework for a future relationship in place. Were this to happen, the demand for assistance from businesses and citizens encountering cross-border difficulties would increase suddenly and dramatically, although the likelihood of having arrangements in place with the EU27 to manage cross-border disputes informally would be low.**

1.12 **We therefore consider it imperative that the Government, if it has not already done so, begin to prepare for a significant increase in demand for informal dispute resolution services post-Brexit. We also consider that a contingency plan should be developed for provision of support to UK businesses and consumers in the event of a no deal scenario.**

1.13 **We ask the Government to clarify:**

- **whether the Government accepts that leaving the Single Market and the Customs Union is likely to lead to an increase in demand from UK citizens and businesses for support in cross-border disputes, or whether it believes this can be achieved with no increase in disruption of this kind;**
- **whether, given the limited capacity of the SOLVIT network, the Government intends to enhance the level of support that is available for UK citizens and businesses encountering difficulties in the EU27, to meet any increase in demand;**
- **in high-level terms, what type of "appropriate arrangements" for informal dispute resolution the Government would prefer to see included in the future relationship; also, whether the Government has sought input from business on this point, and (if so) what feedback it received;**
- **in the event of no deal being agreed, what forms of support the Government envisions itself being able to usefully provide UK citizens and businesses in the EU27, who may be affected by the legal changes that will occur, based on the contingency planning which the Government has undertaken;**
- **also in the event of no deal being agreed, whether the Government would endeavour to ensure that the provisions in paragraph 90 of the Joint Report**

on progress during phase 1 of negotiations[7] ("on ensuring continuity in the availability of goods placed on the market under Union law before withdrawal") would continue to apply; and

- **what precedents exist for countries securing reciprocal informal dispute resolution mechanisms as part of a Free Trade Agreement or other type of bilateral agreement with the EU.**

1.14 **We retain this document under scrutiny pending clarification of these points. We request a response by 28 February 2018.**

Full details of the documents

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Action Plan on the Reinforcement of SOLVIT: Bringing the benefits of the Single Market to citizens and businesses: (38697), 8770/17 + ADD 1, COM(17) 255.

Background

1.15 The Commission's proposed Action Plan[8] includes the following recommendations and commitments:

- promoting SOLVIT by further improving its quality: The Commission proposes that Member States should ensure SOLVIT Centres are adequately resourced and have the necessary legal expertise. The Commission commits to using EU funding opportunities to offer Member States support in boosting their capacity and to provide more effective legal support;

- promoting SOLVIT by increasing awareness-raising activities: The Commission commits to improving SOLVIT's online 'findability' and to working with Member States and intermediary organisations such as chambers of commerce to organise targeted awareness-raising activities; and

- promoting SOLVIT by upgrading its role in EU law enforcement: The Commission recommends that Member States try to find solutions to structural and recurrent problems identified by the network. The Commission undertakes to record and use the evidence of these problems in a more structured and systematic way. In particular, the Commission will explore the option of assessing unresolved cases using information already collected by SOLVIT.

1.16 In the Government's Explanatory Memorandum of 10 July 2017,[9] the then Parliamentary Under-Secretary of State (Lord Prior) indicated that he believed the Commission's Action Plan would improve the functioning of SOLVIT as a Single Market

7 Joint Report from the negotiators of the European Union and the United Kingdom government on progress during Phase 1 of negotiations under article 50 TEU on the United Kingdom's orderly withdrawal from the European Union (8 December 2017).

8 Action Plan on the Reinforcement of SOLVIT: Bringing the benefits of the Single Market to citizens and businesses 8770/17.

9 Explanatory Memorandum from the Minister, BEIS, to the Chair of the European Scrutiny Committee (10 July 2017).

enforcement tool, and particularly welcomed plans to improve the legal support provided to SOLVIT Centres and to use the evidence of SOLVIT cases to inform future policy and enforcement measures.

1.17 However, the Minister also indicated that the Government believed the proposals "should go further". To this end, he said that the Government would support "an improvement in the interaction with Commission services, CHAP (the Commission's register of complaints and enquiries), and Pilot and national SOLVIT Centres"; "a connection between SOLVIT and the Commission for the follow-up of unresolved cases and systemic problems"; and "including problems repeatedly raised in SOLVIT cases on the agenda of the relevant Council Working Party so that real, long-term solutions can be found".

1.18 In its report on 13 November 2017[10] the Committee observed that:

- the legal changes that arose as a consequence of the UK's departure from the Single Market were likely to lead to increased demand for cross-border support of the type provided by the SOLVIT network in the short to medium-term, particularly in relation to cross-border trade and employment; and
- there was therefore a strong incentive for the Government to ensure that this demand was met: if it was not, there was a risk that UK businesses which are obstructed by public authorities in EU Member States might choose to relocate part of their operations abroad in order to access the market directly, even when this was not legally necessary.

1.19 The Committee asked the Minister to explain what action the Government intended to take to address these concerns.

The Minister's letter of 5 December 2017[11]

1.20 On 5 December 2017 Lord Prior's successor as Parliamentary Under Secretary of State at BEIS (Lord Henley) replied to the Committee's report.

1.21 In response to the Committee's request for an update on progress in Council working groups, he states that there has been no discussion at Council working parties since the Commission's presentation to the Internal Market working party of 9 June 2017, at which Member States "expressed a united and strong front in calling for the Commission to go further, in particular in relation to its own involvement in following up unresolved cases and providing expert input". The Minister notes that a small number of Member States requested Council Conclusions on the Action Plan, but that the Estonian Presidency did not take this further, and no further discussion is currently expected. The Minister's assessment is that it is "unlikely there will be any further significant developments beyond expert-level discussions between SOLVIT Centres, who will monitor progress".

1.22 The Minister notes that the Commission has already begun implementing elements of the Plan.

10 First Report HC 301-I (2017–18) chapter 6 (13 November 2017).

11 Letter from the Minister, BEIS, to the Chair of the European Scrutiny Committee (5 December 2017).

1.23 On Brexit, the Minister states that the Action Plan concerns "improving enforcement of existing Single Market rules" and is therefore "not within the scope of Article 50 Exit Agreement discussions". Of SOLVIT itself, the Minister states that "The UK's participation in the SOLVIT network more generally is not considered a withdrawal issue and so will not be addressed in the Article 50 Exit Agreement".

1.24 Of continued UK participation in or cooperation with the SOLVIT network, the Minister notes that the Prime Minister has proposed an implementation period which would use existing EU rules and regulations as a framework. He states that "the mechanisms for administering these rules and regulations, including SOLVIT, could continue to apply during this period". The Minister also states that "continued participation in or cooperation with SOLVIT beyond the implementation period would depend on whether this was appropriate for the future partnership".

1.25 In response to the Committee's questions about future arrangements regarding informal cross-border dispute resolution after the UK has left the EU, the Minister states that "the needs of UK business will be shaped, at least in part, by the type of partnership to which the UK and EU27 agree in negotiations" and that it is "not possible therefore to anticipate what arrangements would be appropriate until we have agreed the detail of the future partnership". However, the Minister adds that "the Government is committed to ensuring that appropriate arrangements are in place to meet the needs of UK business in the future partnership", seeming to imply that these arrangements will be settled during negotiations of the future relationship, not after they have concluded.

Previous Committee Reports

First Report HC 301-i (2017–18) chapter 6 (13 November 2017).

2 International cooperation to combat match-fixing

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Digital, Culture, Media and Sport Committee
Document details	(a) Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the manipulation of sports competitions with regard to matters not related to substantive criminal law and judicial cooperation in criminal matters; (b) Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the manipulation of sports competitions with regard to matters related to substantive criminal law and judicial cooperation in criminal matters
Legal base	(a) Articles 114, 165 and 218(6)(a) TFEU, EP consent, QMV; (b) Articles 82(1), 83(1) and 218(6)(a) TFEU, EP consent, QMV
Department	Digital, Culture, Media and Sport
Document Numbers	(a) (38991), 11723/17, COM(17) 387 (b) (38992), 11724/17, COM(17) 386

Summary and Committee's conclusions

2.1 The Council of Europe Convention on the Manipulation of Sports Competitions ("the Convention") was agreed in July 2014 and opened for signature shortly afterwards, in September 2014. Its purpose is to protect the integrity of sport and sports ethics by establishing a range of measures to prevent, detect and sanction match-fixing which apply, variously, to public authorities, sports governing organisations, competition organisers, and those providing sports betting services. The Convention is open for signature by Member States of the Council of Europe, the EU and certain third countries. So far, 21 EU Member States (not including the UK) have signed and one (Portugal) ratified the Convention.[12]

2.2 Council Decisions agreed in 2013 authorised the Commission (alongside Member States) to take part in the negotiations leading to the adoption of the Convention, but only on those matters falling within EU competence, as set out in accompanying negotiating directives. A recital to both Decisions provided:

12 See the full list of signatures and ratifications.

> "In the case that the EU decides to join the future Convention, the legal nature of the Convention and distribution of the powers between the Member States and the Union will be determined separately at the end of the negotiations on the basis of an analysis of the precise scope of the coverage of the individual provisions."[13]

2.3 In May 2015 the Commission proposed two Council Decisions authorising the EU to sign the Convention, accompanied by a competence analysis which sought to clarify whether the Convention dealt with areas of policy or law falling within the exclusive competence of the EU (meaning that only the EU, not Member States, could act) or areas of shared competence (meaning that either the EU or Member States could act). The Council was unable to reach agreement and the proposed Decisions were not adopted.[14] The EU has not therefore signed the Convention.

2.4 The Commission's latest proposals (published in August 2017) would authorise the EU to conclude (ratify) the Convention and enable the EU to participate in its own right. Two Council Decisions are required to reflect the different areas of EU competence covered by the Convention and the different procedures to be followed for their adoption. The first—document (a)—covers those elements of the Convention which fall within the powers conferred on the EU by Article 114 (the internal market) and Article 165 (sport) of the Treaty on the Functioning of the European Union (TFEU). The second—document (b)—covers those elements dealing with criminal law, judicial cooperation and law enforcement which fall within the scope of Articles 82(1) and 83(1) TFEU (judicial cooperation in criminal matters). These Articles are subject to the UK's Title V (justice and home affairs) opt-in, meaning that the UK is not bound to participate in the second Council Decision unless it chooses to opt in, but will be bound by the first Decision if it is adopted. The full text of the Convention is annexed to both the proposed Council Decisions.

2.5 The UK did not opt into the earlier proposed Council Decision establishing the Commission's negotiating mandate or the proposed Council Decision authorising the EU to sign up to the criminal law elements of the Convention. The Government disagreed with the Commission's view that the EU had exclusive competence for two provisions of the Convention: the parts of Article 11 dealing with illegal sports betting services provided from and to third countries and Article 14 on data protection. It considered that the Convention covered areas of shared competence, that Member States and not the EU should act in areas of shared competence and that the Commission had failed to provide a clear rationale for the EU to participate in the Convention.

2.6 The Minister for Sport and Civil Society (Tracey Crouch) accepts that the EU may have "a yet to be determined role to play" in combatting match-fixing and that "it is legitimate for the EU to act where it has exclusive competence" but disputes the Commission's view that the Convention covers areas in which the EU has exclusive competence. She questions "what value the EU could add over and above Member States' efforts" and whether it is

13 See recital (6) of Council Decision 2013/304/EU and recital (8) of Council document 10180/13.

14 Although the procedure for adopting the proposed Decisions only requires a qualified majority, the Council Presidency at the time made clear that it would only proceed with the consent of all participating Member States.

necessary for the EU to participate in the Convention given that Article 165 TFEU only empowers the EU to encourage cooperation and support and supplement Member State action in the field of sport and excludes any harmonisation of national laws.

2.7 The Minister notes that document (b) on the criminal law aspects of the Convention is subject to the UK's Title V (justice and home affairs) opt-in and that the Government has decided *not* to opt in.

2.8 **The Minister has not complied with the commitments set out in the Government's Code of Practice on scrutiny of opt-in decisions.[15] Her Explanatory Memorandum, submitted on 15 December 2017, is three months overdue. It does not set out the date on which the three-month opt-in period will expire or the factors likely to influence the Government's opt-in decision. The delay means that the Government has failed to comply with its own undertaking to ensure that the Scrutiny Committees have an eight-week period in which to consider the factors informing the Government's opt-in decision and express a view before a final decision is reached. Nor has the Minister complied with the provisions of the Code which require her to write to inform the Committees of the Government's decision not to opt in "as soon as it has been reached" and to publish a Written Ministerial Statement setting out the reasons.**

2.9 **A similar lapse occurred during scrutiny of the proposed Council Decisions on signature of the Convention. The Minister told our predecessors in January 2016 that she was "mortified" at the delay, that "lessons have been learned", that appropriate processes had been put in place "so this is never repeated" and that her Department would in future ensure full compliance with the Code of Practice.[16] We ask the Minister to provide a full explanation of the reasons for this second lapse and to tell us:**

- **whether the three-month opt-in period has expired and, if so, when;**
- **when the Government's decision not to opt into document (b) was taken and why the Scrutiny Committees were not given the opportunity to express their view beforehand; and**
- **why the Government has not published a Written Ministerial Statement setting out the reasons for its decision.**

2.10 **The proposed Council Decision on the criminal law elements of the Convention—document (b)—does not include a recital making clear that the UK's Title V opt-in Protocol applies. We ask the Minister to ensure that that an appropriate recital is added. We also ask her to explain the legal and practical implications for the UK of being bound by the first proposed Council Decision—document (a)—but not the second.**

2.11 **When our predecessors examined the earlier proposed Council Decisions on signature, they supported the Government in resisting further EU encroachment in areas of shared or supporting competence, questioned whether EU action in these areas would produce clear "added value" and suggested that a degree of caution was warranted, given the Commission's reticence to use its existing internal market powers to harmonise gambling laws and practices across the EU. They nevertheless considered that:**

15 See the Code of Practice which is included as Annex S to Cabinet Office guidance on parliamentary scrutiny of EU documents.

16 See the Minister's letter of 20 January 2016 to the Chair of the European Scrutiny Committee.

- **the Commission had a realistic prospect of establishing that the EU had exclusive competence for relatively minor areas of the Convention dealing with data protection and illegal sports betting services affecting trade with third countries;**
- **if there were areas of exclusive EU competence, the EU would have to participate in the Convention and one or more Decisions enabling it to do so were inevitable;**
- **the Decisions should be amended to make clear that EU participation in the Convention would be limited to areas for which it had exclusive competence; and**
- **Member States should resist competence creep by ensuring that the EU was not authorised to act in areas where competence is shared.**[17]

Our predecessors' analysis of areas of exclusive EU competence is set in out in the Annex to this chapter. We see no reason to depart from their analysis.

2.12 **The Minister indicates that the Commission is asserting exclusive EU competence in two areas: data protection (relevant to Article 16 TFEU) and the provision of illegal sports betting services to and from third countries (relevant to Article 207 TFEU on the common commercial policy). Recital (2) of the proposed Council Decision on the criminal law aspects of the Convention—document (b)—suggests that the Commission also considers that the EU has exclusive competence for the money laundering aspects of the Convention. We ask the Minister:**

- **whether she agrees that this is the purpose and effect of recital (2); and**
- **whether she considers that the Commission has established exclusive EU competence for *any* parts of the Convention, particularly where the EU Treaty provisions relied on by the Commission—Article 207 TFEU (common commercial policy) and Article 16 TFEU (data protection)—are described as "ancillary" or "incidental" to the main purposes of the Convention (see paragraph 26 below) and are not cited as legal bases for document (a).**[18]

2.13 **During negotiations on the earlier proposed Council Decisions on signature, Member States succeeded in limiting EU participation in the Convention through the addition of new recitals clarifying that the EU was only authorised to act in areas where it had exclusive competence and through the removal of Article 114 TFEU as the legal base for the proposed Decision dealing with the non-criminal law aspects of the Convention. The Minister considered that this would "reduce the risk of political momentum in favour of EU harmonising legislation in the area of gambling". None of these changes appear in the proposed Council Decisions concluding (ratifying) the Convention. We ask the Minister to explain the reason for these omissions and their significance in terms of EU involvement in implementing the Convention. We also ask**

17 See their Thirty-ninth Report HC 219–xxxvii (2014–15), chapter 1 (24 March 2015).

18 We have in mind the Court of Justice Opinion on EU participation in the Marrakesh Treaty, Opinion 3/15 issued on 14 February 2017.

her whether she intends to press for changes to the substantive legal base of document (a) so that it only cites Article 165 TFEU, a supporting competence which precludes any harmonisation of national laws.

2.14 **We invite the Minister to clarify the timing and sequence envisaged for agreeing EU participation in the Convention and to explain, in particular, why the Commission has presented for adoption proposed Council Decisions on the conclusion of the Convention when the earlier Decisions on signature have not yet been adopted and whether it would be feasible to proceed directly to conclusion without first authorising the EU to sign the Convention.**

2.15 **The Minister made clear in 2015 that the Government intended to accede to the Convention but said that signing it in a national capacity would be contrary to the "duty of sincere cooperation" (set out in Article 4(3) of the Treaty on European Union) until the question of EU participation had been resolved.[19] We ask her whether this remains the Government's position, even though it is not disputed that most of the provisions of the Convention do not fall within the EU's exclusive competence and most (21) Member States have already signed it. Are there any other factors, apart from the unresolved question of EU participation, which are impeding the UK from signing?**

2.16 **Pending further information, we are holding the proposed Council Decisions under scrutiny. We draw this chapter to the attention of the Digital, Culture, Media and Sport Committee.**

Full details of the documents

(a) Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the manipulation of sports competitions with regard to matters not related to substantive criminal law and judicial cooperation in criminal matters: (38991), 11723/17, COM(17) 387; (b) Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the manipulation of sports competitions with regard to matters related to substantive criminal law and judicial cooperation in criminal matters: (38992), 11724/17, COM(17) 386.

Background

2.17 The Explanatory Report accompanying the Convention explains the reasons for establishing an international agreement to tackle match-fixing.[20] It notes that "greater commercialisation of sport and the extensive media coverage given to it have led to an increase in the economic stakes involved in achieving certain sport results". The incidence of match-fixing has risen significantly since the early 2000s, prompted in part by a proliferation of different types of betting which are easier to manipulate and harder to detect by supervisory authorities, as well as the development of a large illegal market and the involvement of organised crime.

19 See the Minister's letter of 29 November 2015 to the Chair of the European Scrutiny Committee.

20 Explanatory Report accompanying the Convention.

2.18 The Convention establishes a set of commonly agreed standards and principles to prevent, detect and punish match-fixing. It includes provisions on:

- the prevention of match-fixing (Chapter II);
- enhanced information exchange (Chapter III);
- the availability of criminal sanctions for match-fixing involving coercion, corruption or fraud (Chapter IV);
- jurisdiction, preservation of electronic evidence and protection measures (Chapter V);
- criminal and administrative sanctions (Chapter VI); and
- international cooperation (Chapter VII).

The proposed Council Decisions

2.19 The Commission describes match-fixing as "one of the major threats facing contemporary sport", undermining "integrity, fair play and respect for others". The involvement of organised crime networks means that match-fixing has become "a priority for public authorities, the sport movement and law enforcement agencies worldwide".[21] It considers that EU participation in the Convention would form an important part of the EU's wider efforts to protect the integrity of sport and combat match-fixing.

2.20 The Commission sets out its analysis of the nature and scope of EU competence for matters covered by the Convention. It identifies six legal bases in the EU Treaties which may be relevant:

- Article 16 TFEU on the protection of personal data;
- Article 82(1) and (2) TFEU on judicial co-operation in criminal matters;
- Article 83(1) TFEU on substantive criminal law;
- Article 114 TFEU on the internal market;
- Article 165 TFEU on sport; and
- Article 207 TFEU concerning the EU's common commercial policy, to the extent that Convention provisions affect services provided from a third (non-EU) country.

2.21 Article 165 TFEU enables the EU to "contribute to the promotion of European sporting issues", with a particular focus on "promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports" as well as "protecting the physical and moral integrity of sportsmen and sportswomen" and fostering co-operation with relevant international organisations, notably the Council of Europe. However, EU competence is limited in scope, excluding any harmonisation of Member States' laws and "supporting and supplementing" rather than superseding Member State action.

21 See p.2 of the Commission's explanatory memorandum accompanying the proposed Council Decisions.

2.22 The Commission suggests that measures relating to betting services "may touch upon the internal market freedoms concerning the right of establishment and the freedom to provide services, to the extent that betting operators exercise an economic activity" and that certain provisions of the Convention (Articles 9–11) concerning the regulation of sports betting and sports betting operators "could lead to a certain degree of approximation of laws" and provide a basis for the harmonisation of laws under Article 114 TFEU. It considers that Article 11 of the Convention may affect illegal sports betting services provided from a third country and fall within the scope of the EU's common commercial policy under Article 207 TFEU.

2.23 The Commission accepts that certain criminal offences provided for in the Convention are "currently not covered by Article 83(1) TFEU".[22] It considers, however, that the EU does have competence for money laundering (Article 16 of the Convention) based on various EU measures adopted under Articles 83(1) and 114 TFEU. It also considers that the criminal procedural provisions of the Convention dealing with electronic evidence, protection measures and seizure and confiscation (Articles 20, 21 and 25) "may be covered" by Article 82(2)(a) and (b) TFEU.

2.24 The Commission notes that the Convention "does not contain any legal regime that would replace existing rules, and it is therefore without prejudice to instruments which already exist in the field of mutual assistance in criminal matters and extradition". It lists "a comprehensive set" of EU instruments which facilitate judicial cooperation in criminal matters and would apply to the different aspects of match-fixing covered by the Convention or to any new match-fixing offence.[23]

2.25 The Commission concludes its analysis of EU competence:

> "Certain offences are currently not covered by Article 83(1) TFEU. The Union has competence over the rest, but is exclusive only over two provisions—Article 11 (to the extent that it applies to services from and to third countries) and Article 14 on data protection (in part). The remainder is shared or 'supportive' competence."[24]

2.26 The Commission sets out the legal test applied by the Court of Justice to determine the appropriate legal base for EU measures, based on the identification of the main or predominant purpose. It concludes that the main legal bases for the criminal law elements of the Convention are Articles 82(1) and 83(1) TFEU, and that the remaining elements of the Convention are covered by Articles 114 and 165 TFEU. The Commission considers that Article 207 TFEU is "ancillary to the internal market aspects" and so does not need to be cited as a legal base, but makes clear that Member States have no competence for parts of the Convention which are within the scope of the EU's common commercial

22 See p.5 of the Commission's explanatory memorandum accompanying the proposed Council Decisions.

23 See pp. 4–5 of the Commission's explanatory memorandum accompanying the proposed Council Decisions.

24 See p.5 of the Commission's explanatory memorandum accompanying the proposed Council Decisions.

policy.[25] Similarly, the Commission considers that data protection is "incidental" to the main objective of the Convention but that this too, in part, is an area of exclusive EU competence.

2.27 The Commission recognises that the Convention straddles areas of EU and Member State competence, noting:

> "It follows from the intertwined nature of the Convention, and the fact that it involves competences which may be exclusive [to] the EU and competences not granted to the EU, that it is not possible for the Union or the Member States to conclude the Convention in isolation."[26]

2.28 The outcome of the Commission's legal analysis is two proposed Council Decisions, the first—document (a)—citing Articles 114 and 165 TFEU as the legal bases for elements of the Convention not involving criminal law and judicial cooperation, the second—document (b)—citing Articles 82(1) and 83(1) TFEU. Both also cite a procedural legal base—Article 218(6)(a) TFEU—which determines how both instruments are to be adopted by the Council.

2.29 The recitals to each proposed Council Decision seek to clarify which provisions of the Convention fall within EU competence. The first—document (a)—indicates that:

- the provisions on prevention in Chapters II and III "may potentially be covered, in full or to a large extent, by Article 165 TFEU" and that this is only a supporting competence which "does not supersede the competences of Member States in these areas";
- Articles 9, 10(1) and (3), and 11 concerning the regulation of sports betting are within the scope of Article 114 TFEU;
- Article 11 may affect services provided from a third country—access to such services are within the scope of the EU's common commercial policy under Article 207 TFEU, for which the EU has *exclusive* competence; and
- Article 14 on data protection falls within the EU's *exclusive* competence under Article 16 TFEU.

2.30 The recitals to the second proposal—document (b)—indicate that:

- Article 15 of the Convention establishing criminal sanctions for certain types of match-fixing is only partly covered by Article 83(1) TFEU (where it involves organised crime or fraud);
- Article 16 of the Convention concerning money laundering offences also falls within Article 83(1) TFEU and, as the EU has established common rules defining money laundering offences, Article 16 is "likely to affect or alter the scope" of existing EU rules in this area;

25 The Commission's analysis makes no reference to Opinion 3/15 of the Court of Justice on EU participation in the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. The Court concluded that Article 207 TFEU was not an appropriate legal base for a Council Decision authorising the EU to conclude the Marrakesh Treaty, stating: "It must therefore be held that the conclusion of the Marrakesh Treaty does not fall within the common commercial policy defined in Article 207 TFEU and, consequently, that the European Union does not have exclusive competence under Article 3(1)(e) TFEU to conclude that Treaty".

26 See p.6 of the Minister's Explanatory Memorandum.

- various other Convention provisions are linked to these areas of EU competence (notably, Articles 17, 18, 22 and 23);
- provisions in Chapters V and VI on jurisdiction, criminal procedure, enforcement measures and sanctions are relevant to EU competence; and
- the Convention is underpinned by a comprehensive set of existing EU instruments in the field of mutual assistance in criminal matters and extradition (these are listed in a footnote).

2.31 The proposal does not include a recital establishing that the UK's Title V (justice and home affairs) opt-in applies.

The Minister's Explanatory Memorandum of 15 December 2017

2.32 The Minister agrees with the Commission that match-fixing and the manipulation of sports competitions pose a "significant threat" to the integrity of global sport. She considers the Convention to be "a potentially powerful tool in combating match-fixing", given the global nature of sport and sports betting and the involvement of international criminal networks, and is "broadly content" with its provisions which she describes as "primarily risk-based" and respectful of "differences of each territory's gambling market and methods of regulation".[27] She highlights the UK's leading role in combatting match-fixing and the importance of sharing expertise and raising standards in other countries, adding:

> "Combating match-fixing effectively requires a co-ordinated multi-agency approach—involving the sports movement, governments, betting operators, law enforcement authorities and international organisations—and the scope of the Convention is therefore wide-ranging, incorporating areas such as data protection as well as JHA [justice and home affairs]—as reflected in these two Council Decision proposals."[28]

2.33 The Minister explains that the UK is already "broadly compliant" with the main provisions of the Convention and does not expect it to "impose any new unwelcome measures on the UK", although some changes may be required to UK criminal law to ensure compliance with Article 15 on criminal offences.[29] She notes that the UK has already fulfilled one of the key requirements of the Convention by launching (in 2014) an independent Sports Betting Integrity Forum which brings together all the key actors in the UK (such as sports bodies, betting operators, the Gambling Commission and law enforcement representatives).

2.34 The UK participated in the negotiation of the Convention and intends to become a signatory in its own right. The Minister adds:

> "[…] in so doing, we will be joining the number of other EU Member States who have already become signatories. However, EU Member States are unable to ratify and implement the Convention's provisions until such

27 See paras 23–4 and 27 of the Minister's Explanatory Memorandum.
28 See para 26 of the Minister's Explanatory Memorandum.
29 See para 27 of the Minister's Explanatory Memorandum, as well as para (iv) under the heading Legal and Procedural Issues.

> time as the EU's participation is resolved. This is in line with the duty of sincere cooperation. It is important to note that one EU Member State, Portugal, has gone ahead and ratified the Convention, however, in so doing, has not adhered to the sincere duty of cooperation—there have been no consequences as a result of this to-date."[30]

2.35 Whilst the Government accepts that the EU could have "a yet to be determined role to play in the fight against match-fixing which complements the Council of Europe's efforts", the Minister says that it is "not clear what value the EU could add over and above Member States' efforts that goes beyond providing a platform to exchange best practice". She continues: "It is arguable that the Commission does not need to be a Convention signatory for this purpose."[31]

2.36 The Minister expands on her reservations as to the necessity of EU participation in the Convention. Whilst she accepts that the proposed Council Decisions are "arguably within the boundaries of the legal bases cited", she considers that the Commission "has not explained why any of the obligations in the Convention (other than those where it considers the EU has exclusive competence) need to be carried out at EU level and not at Member State level."[32]

2.37 As well as raising subsidiarity concerns, the Minister also questions the Commission's assertion that the EU has exclusive competence (albeit limited) for elements of the Convention. She considers that the proposed Council Decisions authorising the EU to conclude the Convention go further than the earlier Decisions on signature. This is because Member States succeeded in securing the addition of a recital in each of the proposed Council Decisions on signature which limited EU competence to provisions of the Convention affecting common EU rules or altering their scope, the intention being only to authorise the Commission to exercise powers in the limited areas where the EU had exclusive competence, with Member States acting in areas of shared competence.[33] In addition, Article 114 TFEU was removed as a legal base for the proposed Decision on the non-criminal law aspects of the Convention. On this basis, the Government was willing to support EU signature of the Convention. Neither Decision on signature was adopted, however, because of "Malta's reluctance to allow the EU to accede to the Convention on any basis".[34]

2.38 By contrast, the Commission's explanatory memorandum accompanying the proposed Council Decision indicates that it is seeking to exercise competence in areas of shared and exclusive competence.[35] The Minister considers that language limiting the EU's competence should be included as a substantive provision in document (a) but doubts whether this will be achievable.

30 See para 29 of the Minister's Explanatory Memorandum.

31 See para 31 of the Minister's Explanatory Memorandum.

32 See para (i) under the heading Legal and Procedural Issues.

33 The recital to the proposed Decision on the criminal law aspects of the Convention stated that the EU should only participate in the Convention "as regards matters falling within the Union's competence insofar as the Convention may affect these common rules or alter their scope. The Member States retain their competences insofar as the Convention does not affect common rules or alter the scope of such rules". The recital to the proposed Council Decision on the non-criminal law aspects of the Convention stated that the EU would "not be exercising shared competence, hence Member States retain their competence in the areas covered by the Convention which do not affect common rules or alter the scope of such rules".

34 See paras 12 and 35 of the Minister's Explanatory Memorandum.

35 See para (v) of the Minister's Explanatory Memorandum under the heading Legal and Procedural Issues

2.39 The Minister makes clear that "it is legitimate for the EU to act where it has exclusive competence" but does not accept that the Commission has established exclusive EU competence for matters covered by the Convention. She says that "the exact division of competence" will require further discussion but notes that the most relevant Treaty provision—Article 165 TFEU—"only provides the EU with a supporting, co-ordinating and supplementing competence for sport. Harmonisation of Member States' regulations or legislation on sport is explicitly excluded by the terms of the Article and so the EU's competence does not supersede that [of Member States] in this area".[36]

2.40 The Minister notes that the proposed Council Decision on the criminal law aspects of the Convention—document (b)—triggers the UK's Title V (justice and home affairs) opt-in. She says that the Government has decided *not* to opt in. Whilst she does not set out the factors informing the Government's decision, she indicates that opting in would likely require changes to UK criminal law to give effect to the provisions in Article 19 of the Convention on extra-territorial jurisdiction. This is because the EU would be unlikely to enter a reservation under Article 19 to limit the scope of extraterritorial jurisdiction for match-fixing offences. By not opting in to the proposed Council Decision, this possibility would remain open to the UK.

2.41 The Minister explains that the voting procedure in Council for both proposed Decisions is a qualified majority but says the Government shares the Council Legal Service view that a consensus is needed before proceeding to a vote, as the Convention is a "mixed agreement" (covering areas of EU and Member State competence). She notes that the proposals were discussed by a Council Working Party on Sport in September but have made no further progress. The UK has entered a scrutiny reservation and made clear that it will not opt into the proposed criminal law Decision. She anticipates that there may be an impasse on the proposals on conclusion as well as the earlier proposals on signature of the Convention for the same reason—"Malta's reluctance to allow the EU to accede to the Convention on any basis".[37]

Annex: Our predecessors' analysis of areas of exclusive EU competence

The Commission's claim for exclusive competence in respect of the data protection provisions in the Convention (Article 14) is based on the fact that these provisions may affect the EU's internal rules on data protection.[38] The Minister's Explanatory Memorandum sets out the Government's view that the Convention does not "adversely affect or otherwise require any changes to be made to EU internal rules on data protection."[39] However, the Court of Justice has made it clear that internal rules can be "affected", even if they are consistent with the relevant international agreement. Moreover, EU exclusive competence can arise if the subject matter of the international agreement is "largely covered" by EU internal legislation, as is, arguably, the case with existing EU data protection legislation.

The Commission claims that the incidence of the Convention on trade with third countries falls within the scope of the EU's common commercial policy which, in itself,

36 See para 30 of the Minister's Explanatory Memorandum and para (v) under the heading Legal and Procedural Issues.

37 See paras 12 and 35 of the Minister's Explanatory Memorandum.

38 Article 3(2) TFEU.

39 See para 18 of the Minister's Explanatory Memorandum.

is a matter of EU exclusive competence. The Minister asserts that the relevant provisions of the Convention (in Article 11) requiring closure of remote sports betting operations if their activity is illegal where the consumer is located (even if not illegal where the operator is located), the blocking of financial flows and the prohibition of advertising, do not have any effect on international trade. However some effect on international trade in betting appears likely, albeit one tainted with illegality.

The matter is potentially the subject of litigation before the Court of Justice. However that Court often takes what may be regarded as an expansive view of EU exclusive competence.[40]

Previous Committee Reports

None on these documents. Earlier Committee Reports on proposed Council Decisions to sign the Council of Europe Convention on the manipulation of sports competitions are relevant: Thirty-ninth Report HC 219–xxxvii (2014–15), chapter 1 (24 March 2015), Thirteenth Report HC 342–xiii (2015–16), chapter 3 (9 December 2015) and Twenty-first Report HC 342–xx (2016–17), chapter 9 (27 January 2016).

40 For a recent example see Opinion 1/13.

3 The ".eu" internet Top-Level Domain (TLD)

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Communication from the Commission to the European Parliament, the Council on the implementation, functioning and effectiveness of the .eu Top Level Domain
Legal base	—
Department	Digital, Culture, Media and Sport
Document Number	(39312), 15472/17, COM(17) 725

Summary and Committee's conclusions

3.1 A European Commission report[41] on the implementation, functioning and effectiveness of the .eu Top Level Domain (TLD) finds that the .eu TLD model has been implemented successfully and is performing effectively.

3.2 Of greater political importance in the current climate are the implications of EU exit for .eu domain names that have been registered by UK residents. Currently, Article 4 of Regulation 733/2002 on the implementation of the .eu Top Level Domain states that only persons, companies or organisation based in the European Economic Area (the EU plus Iceland, Norway and Liechtenstein) can register a .eu domain name.[42]

3.3 The UK currently has the fourth largest number of .eu registrations in the EU (340,000), which means that a significant number of organisations and individuals potentially stand to be affected.

3.4 In the Government's Explanatory Memorandum[43] the then Minister of State for Digital (Matt Hancock) acknowledges the restrictions on registrations, but states that "thus far, UK stakeholders have not been vocal in raising any issues or the possibility of UK based users of .eu losing its use on Brexit."

3.5 The Minister cites a statement[44] by the .eu registrar which clarifies that, as the UK currently remains an EU Member State, no immediate action will be taken against .eu or .ею domain names that have been registered by residents in UK, but that the European Registry for Internet Domains (EURid) awaits instruction from the Commission regarding how to proceed, when the UK eventually leaves.

41 Report from the Commission to the European Parliament and the Council on the implementation, functioning and effectiveness of the .eu Top-Level Domain (15472/17).

42 Regulation 733/2002 on the implementation of the .eu Top Level Domain.

43 Explanatory Memorandum from the Minister, DCMS, to the Chairman of the European Scrutiny Committee (21 December 2017).

44 EURid, Outcome of the UK referendum (accessed 10 January 2018).

3.6 The Minister states that the Government will continue to carry out stakeholder engagement to further understand the views of UK users of .eu, in order to inform the Government's negotiating position.

3.7 **The Committee thanks the Minister for his Explanatory Memorandum. We note that the EU legal act[45] governing the management of the .eu Top-Level Domain only permits persons, organisations and businesses based in the European Economic Area to register .eu domain names. By default, when the UK leaves the European Union, and any transition period ends, UK persons and organisations that have registered .eu domain names will no longer be legally eligible for these registrations. 340,000 UK users potentially stand to be affected by this development.**

3.8 **We note the Government's observation that UK stakeholders have not been vocal in raising concerns about the possibility of UK-based users of .eu losing its use on Brexit, as well as its assurance it will continue to carry out stakeholder engagement to further understand the views of UK users of .eu to inform its negotiating position.**

3.9 **We ask the Government:**

- **whether it considers that UK users who have already registered .eu domain names will have to cease to use them upon EU exit;**
- **summarise the stakeholder engagement the Government has undertaken and the views it received through this engagement;**
- **clarify how this engagement has informed the Government's negotiating position, including whether the Government desires to retain the ability of UK persons, businesses and organisations to continue to use the .eu domain name;**
- **clarify to what extent workarounds exist which would enable different types of .eu domain name users, including multinationals, small businesses and individuals to continue to use .eu domain names post-exit, in the absence of any agreement on this issue; and**
- **update the Committee regarding whether the Government has raised this issue with the Commission and whether it has received any further clarification about how it intends to proceed.**

3.10 **We retain the document under scrutiny and ask the Government to provide the Committee with an update, and responses to our questions, by 28 February 2018.**

Full details of the documents

Communication from the Commission to the European Parliament, the Council on the implementation, functioning and effectiveness of the .eu Top Level Domain: (39312), 5472/17, COM(17) 725.

45 Article 4 of Regulation 733/2002 on the implementation of the .eu Top Level Domain.

Background

3.11 .eu is the country code top-level domain (ccTLD) for the European Union (EU). Launched on 7 December 2005, following the adoption of Regulation 733/2002 in April 2002, the domain is available for any person, company or organization based in the European Economic Area (the EU member states, Iceland, Liechtenstein and Norway).

3.12 Article 4 of the Regulation (Obligations of the Registry), states that:

> "The Registry shall: […]
>
> (b) register domain names in the .eu TLD through any accredited .eu Registrar requested by any:
>
> (i) undertaking having its registered office, central administration or principal place of business within the Community, or
>
> (ii) organisation established within the Community without prejudice to the application of national law, or
>
> (iii) natural person resident within the Community."[46]

The Report

3.13 The document nominally under scrutiny in this report is a European Commission Report[47] to the European Parliament and Council on the implementation, effectiveness and functioning of the ".eu" internet Top-Level Domain (TLD) from 1 April 2015 to 31 March 2017. The Commission is required to submit a report on .eu every two years. This is the sixth progress report on the operation of .eu.

3.14 The Report finds that over the last eleven years of operation, the .eu TLD model has been implemented successfully and is performing effectively. The report notes that:

- recent changes in the domain name market, with the introduction of new 'generic Top-Level Domain' names (gTLDs) such as .car and .hotel. have led to a flattening of .eu take up during 2016;
- EURid (European Registry for Internet domains), which manages .eu under a contract from the EU Commission, has reduced its costs and generated surpluses in 2016 and 2017, which have been returned to the EU Budget;
- EURid has been countering malicious online behaviour through the use of domain names, for example copyright infringements, phishing and cyber attacks by carrying out background checks on applicants and assisting law enforcement. During 2016 EURid checked 18,000 domain names, of which over 9,000 were suspended and then over 1,000 subsequently withdrawn; and
- the Commission has launched a review of the .eu regulation to ensure that it is still fit for purpose.

46 Regulation 733/2002 on the implementation of the .eu Top Level Domain.

47 Report from the Commission to the European Parliament and the Council on the implementation, functioning and effectiveness of the .eu Top-Level Domain (15472/17).

3.15 An administrative report of this kind would not normally warrant a substantive report to the House; however, the implications of withdrawal from the European Union for .eu domain names that have been registered by UK residents, companies and organisations mean that the document possesses sufficient political importance to merit further scrutiny.

Explanatory Memorandum from the Minister of 21 December 2017[48]

3.16 The then Minister of State at the Departure of Digital, Media, Culture and Sport (DCMS) (Matthew Hancock), states that:

- currently, only persons, companies or organisation based in the European Union, Iceland, Norway or Liechtenstein can register a domain name under .eu or .ею (Cyrillic script);
- the UK has the fourth largest number of registrations within the EU (340,000), which is the same number as the previous report;
- top Level Domain Name policy is a reserved matter. However, as the Devolved Administrations may have interest in the use of .eu by persons, organisations and businesses based in Scotland, Wales and Northern Ireland, they were consulted in the preparation of the Government's Explanatory Memorandum (although no detail of the Devolved Administrations' views is provided);
- thus far, UK stakeholders have not been vocal in raising any issues or the possibility of UK based users of .eu losing its use on Brexit; and
- the UK Government will continue to carry out stakeholder engagement to further understand the views of UK users of .eu to inform its negotiating position.

3.17 The Government also quotes, in full, a statement from the .eu registrar about the implications of UK exit for .eu domain names that have been registered by UK residents, which essentially states that the registrar is awaiting instruction from the European Commission about how to proceed:

> "On 23 June 2016 voters in the UK referendum expressed their preference to leave the European Union. As the next steps have still not been determined and the political and legal processes have not yet been initiated, note that no action will be taken against .eu or .ею domain names that have been registered by residents in UK. EURid has been appointed by the European Commission to manage the technical infrastructure of .eu and its variants in other scripts. When further details are known about the timing and details of a UK exit, the European Commission will instruct EURid on how to proceed. We will continue to keep all our stakeholders fully informed."[49]

48 Explanatory Memorandum from the Minister, DCMS, to the Chairman of the European Scrutiny Committee (21 December 2017).

49 EURid, Outcome of the UK referendum (accessed 10 January 2018).

Industry comment

3.18 A number of other organisations have commented on this issue. Com Laude, a domain name management company, notes that a significant number of businesses and individual might be impacted. It concludes that "for many" this will be "a non-issue", although individuals and smaller businesses are likely to face "a little more challenge" than multinationals:

> "If you're a large corporation you'll likely have the ability to register domains in other eligible territories, through subsidiaries, etc.; or if you have your domains registered through a corporate domain name registrar they'll have practices for ensuring your names are safe. Individuals and smaller businesses may face a little more challenge, though you can be sure there'll be plenty of time to resolve any issues and there will be plenty of providers with solutions should this be necessary."[50]

3.19 On the other hand, Digital Trends concludes that:

> "…only time will tell how problematic this will become for individuals and businesses who do not have another physical location that will remain within the EU after Brexit is complete. For those that do not, they will have to wait for the European Commission decision on the issue, if there is one at all."[51]

Previous Committee Reports

None.

50 Com Laude, Possible impacts of Brexit for .eu domain registrants (27 June 2016).

51 Digital Trends, Brexit could cause havoc with .eu registered domains (26 June 2016).

4 Trans-European Energy Networks

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Business, Energy and Industrial Strategy and the Exiting the European Union Committees
Document details	(a) Commission delegated Regulation (EU) .../... of 23.11.2017 amending Regulation (EU) No 347/2013 as regards the Union list of projects of common interest; (b) Commission Communication on strengthening Europe's energy networks
Legal base	(a) Regulation (EU) No 347/2013; (b)—
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (39320), 15089/17+ ADDs 1–2, C(17)7834; (b) (39284), 15079/17, COM(17) 718

Summary and Committee's conclusions

4.1 The development of cross-border energy networks throughout the EU is seen as a critical part of the further development of the EU's internal energy market and the movement towards an Energy Union.

4.2 In 2013, the EU adopted a Regulation on guidelines for trans-European energy networks[52] (the TEN-E Regulation) requiring the Commission to establish a list of EU Projects of Common Interest (PCIs) every two years. PCIs are specific energy infrastructure projects that are deemed critical for completing the internal energy market. Document (a) establishes the third list of PCIs, including 173 projects of which 23 involve the UK. PCI designation facilitates the planning and authorisation processes and opens up the possibility of receiving financing under the Connecting Europe Facility (CEF). The CEF was created in 2013 to financially support the development of trans-European energy, transport and telecommunication networks.[53]

4.3 Document (b) takes stock of progress made in integrating and modernising European energy networks at transmission level since the adoption of the TEN-E and CEF Regulations in 2013. It concludes that further progress on electricity interconnection in particular is required.

4.4 The Minister for Energy and Industry (Richard Harrington) welcomes the inclusion of 23 PCIs involving the UK. These, he says, comprise 21 electricity and gas interconnection and storage projects and two carbon dioxide cross-border network projects. Previously, electricity and gas PCIs based in the UK have benefited significantly, he says, from CEF grant funding.

4.5 On Brexit, the Minister observes that the UK and EU have agreed that the UK will continue to participate in EU programmes financed by the current budget (2014–20), until

52 Regulation (EU) No 347/2013.
53 Regulation (EU) No 1316/2013.

their closure. The eligibility of UK organisations to apply to participate in EU programmes and receive EU funding will be unaffected by the UK's withdrawal from the EU for the entire lifetime of such projects. This would apply to projects granted PCI status and those allocated CEF grants.

4.6 The Minister welcomes the Communication on strengthening energy networks, document (b), as a comprehensive summary of progress since 2013 and a forward look to the level of gas and electricity interconnection by 2020 and beyond and actions needed to achieve that.

4.7 **While the Minister is silent in these Explanatory Memoranda on the UK's future energy relationship with the European Union, the Government has been clear that it wishes the UK to retain access to the EU's internal energy market. Energy will form part of the wider negotiations on the future UK-EU relationship.**

4.8 **We note the Government's support for the strengthening of energy networks across the EU and we welcome the inclusion of a number of UK projects within the list of Projects of Common Interest.**

4.9 **We note too that the Commission revises the list of PCIs every two years through a Delegated Regulation. The next such Regulation will therefore be adopted in November 2019, after the UK's exit from the EU but well before the end of the current financial framework. As the Minister notes, UK projects will be eligible for PCI status and to receive CEF financing until the end of 2020. The Government explains in its Explanatory Memorandum that the final version of the most recent list "was adopted by the decision-making bodies (Member States and the Commission)" following considerable consultation.**

4.10 **Upon the UK's withdrawal from the EU in March 2019, the UK will leave the EU's decision-making processes. In the EU's draft negotiating directives for phase two of the negotiations, it is suggested that the UK would be invited to attend relevant working group meetings. We make two observations: first, that this Delegated Regulation is an example of the type of legislation relevant to the UK that might be proposed, decided and come into effect during any implementation period; and second, that it may also be an example of an area where the UK would wish to participate in working groups discussions as the Commission has suggested.**

4.11 **We appreciate that the degree of UK involvement in UK-relevant decisions post-Brexit will depend on the outcome of negotiations. We place our observations on the record in case such an example is helpful as negotiations progress.**

4.12 **We consider that the Brexit-related aspects of these documents will be of interest to the House, but we have no further questions and release the documents from scrutiny. We draw the documents to the attention of the Business, Energy and Industrial Strategy Committee and the Exiting the European Union Committee.**

Full details of the documents

(a) Commission delegated Regulation (EU) .../... of 23.11.2017 amending Regulation (EU) No 347/2013 as regards the Union list of projects of common interest: (39320), 15089/17, C(2017)7834 + ADDs 1–2; (b) Commission Communication on strengthening Europe's energy networks: (39284), 15079/17, COM(17) 718.

Background

Union list of Projects of Common Interest (document (a))

4.13 The TEN-E Regulation established nine strategic geographical infrastructure priority corridors in the domains of electricity, gas and oil and three Union-wide infrastructure priority thematic areas for smart grids, electricity highways and cross-border carbon dioxide networks. It provides for the identification of specific PCIs that are needed to implement these priority corridors and areas.

4.14 PCI status confers the following benefits:

- strengthened transparency and improved public consultation;
- accelerated and streamlined permit granting procedure, including the binding three-and-a-half years' time limit;
- improved and streamlined environmental assessment;
- a single national competent authority acting as a one-stop-shop for permit granting procedures;
- improved regulatory incentives and a mechanism for allocating costs cross-border according to net benefits if appropriate; and
- the possibility of receiving financial assistance under the Connecting Europe Facility (CEF).

4.15 The new PCI list (document (a)) marks the culmination of a process that began in September 2016 and has involved collaborative working in regional groups of representatives of the Member States, national regulatory authorities (NRAs), transmission system operators (TSOs), storage operators, the European Networks of Transmission System Operators organisation for Gas and Electricity (ENTSO-G and ENTSO-E), the Agency for the Co-operation of Energy Regulators (ACER), relevant stakeholders acting in the field of energy, such as consumer and environmental protection organisations, and the Commission.

4.16 The final list, as published, was adopted by the decision-making bodies (Member States and the Commission) on 17 October 2017. The new PCI list comprises 173 energy projects and reflects a greater focus on electricity interconnection, electricity storage and smart grids projects than before. The list comprises 106 transmission and storage projects, four smart grid deployment projects, 53 gas projects, six oil projects and, for the first time, four cross-border carbon dioxide network projects. Some PCIs form part of a cluster of projects because they are either interdependent or (potentially) competing.

4.17 In the Northern Seas region, the electricity PCI projects will further integrate the markets around the North Sea, with expected future development of significant offshore wind capacity. UK-relevant PCIs include links with Belgium, France, Ireland, Norway, Iceland, Denmark and the Netherlands. A number of electricity storage facilities within the UK are also included.

4.18 In Western Europe, the electricity PCIs will help integrate the Iberian Peninsula with the European market, in particular the Biscay Bay interconnector. The only UK-relevant PCIs are designed to increase electricity exchange capacity between Ireland and Northern Ireland.

4.19 For gas, infrastructure is generally in good shape and resilient to a number of disruption scenarios. There are, however, pockets where significant action is still needed. These are primarily in the Eastern Baltic Sea area, the Central and South-Eastern part of Europe and in the Iberian Peninsula (links with France). UK-specific PCIs include Ireland-UK, Scotland-Northern Ireland and development of the underground gas storage facility at Larne.

4.20 For the first time, the PCI list provides for four PCIs that aim at developing carbon dioxide transport infrastructure. The projects are all around the North Sea and all involve the UK, but only two are UK-led.

Communication on strengthening Europe's energy networks (document (b))

4.21 The Communication covers progress with PCIs to date, noting that 30 have now been completed or will be in operation by 2018, with a further 47 scheduled to be completed around 2020 out of the total of 173 PCIs on the most recent list.

4.22 The Communication also refers to the important contribution of the Connecting Europe Facility. So far, 74 PCIs have received grants for awards and studies worth €1.6 billion, out of a total CEF energy budget of €5.35 billion (£4.70 billion)[54] for the period 2014–20.

4.23 Regulatory measures under TEN-E have contributed to accelerated implementation of PCIs. So far, eight gas and six electricity PCIs have benefited from cross-border cost-allocation decisions agreed by a process involving regulatory authorities and the Agency for the Cooperation of Energy Regulators.

4.24 Four regional high-level groups have been established by the Commission to accelerate infrastructure development in specific regions that face particular challenges, including the North Sea. The Northern Seas Memorandum of Understanding was signed in 2016, promoting the integration of offshore wind and enhanced interconnection. Public and private stakeholders will work together to establish a legal and regulatory framework to help facilitate the development of such projects. The adoption of a North Sea infrastructure/offshore grid Action Plan is foreseen for 2018.

4.25 The European Commission makes various recommendations as to how electricity interconnection in particular can be improved, looking forward to 2020 and then to 2030.

54 €1 = £1.13655 as at 30 November.

Explanatory Memorandum of 21 December 2017 (document (a))

4.26 In the context of the deal reached on the first phase of the withdrawal negotiations, the Minister says:

> "UK organisations should continue to bid for EU funding with the assurance that payments will continue after our departure from the EU. In respect of projects that have PCI status these would continue to be eligible to apply for, and receive, grants from the CEF energy programme and provided they meet the relevant criteria under the Connecting European Facility regulation and TEN-E regulation."

4.27 On the Delegated Act and the PCI process more generally, the Minister says:

> "The Government welcomes the publication of the PCI list with a significant number of UK projects (23) being included. These comprise 21 electricity and gas interconnection and storage projects and 2 carbon dioxide cross-border network projects. Electricity and gas PCIs located in the UK have benefited significantly from CEF grant funding to date in respect of awards for both works and studies.
>
> "The Government supports the important work the Commission has done over the last year to improve the PCI process through identification of the most pressing infrastructure needs and bottlenecks in the electricity and gas priority corridors that could not effectively be addressed by more efficient use of existing infrastructure. The Commission has also closely monitored the progress of existing PCIs."

Explanatory Memorandum of 12 December 2017 (document (b))

4.28 The Minister sets out the Government's position on the Communication in the following terms:

> "The Government welcomes this Communication on strengthening Europe's energy networks as a comprehensive summary of progress since 2013 and a forward look to the level of gas and electricity interconnection by 2020 and beyond (including for the first time carbon dioxide network PCIs) and actions needed to achieve that. The recent improvements in interconnection within the EU recorded in the report are welcome as an important building block towards a fully functioning energy market and an important contribution to energy security."

4.29 The Minister notes the number of UK projects listed in the third PCI list and adds that the UK has "benefited significantly" from CEF grant funding for both works and studies of electricity and gas awards to date. The UK, he says, is also a signatory to the political declaration on energy co-operation between the North Seas Countries adopted in 2016, which is referred to in the report.

Previous Committee Reports

None.

5 EU Agenda for Education and Culture

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Education and the Digital, Culture, Media & Sport Committees
Document details	Communication from the Commission: Strengthening European Identity through Education and Culture
Legal base	—
Department	Education
Document Number	(39224), 14436/17, COM(17) 673

Summary and Committee's conclusions

5.1 As part of a broader process of reflection on the strategic direction of the European Union in the years leading to 2025,[55] the European Commission has published a Communication on its vision for the future of the EU's education and cultural policies.[56] This will build on existing schemes, such as the Erasmus+ student exchange programme and the Creative Europe investment fund for the creative industries.

5.2 The policy paper includes a number of specific initiatives the Commission will pursue in the coming years, including a pilot project for an EU Student Card; improved mutual recognition of degree certificates and secondary school diplomas throughout the EU; and a discussion on the future of Euronews, the pan-European broadcaster which is part-funded from the EU budget. The Commission is not expected to table any legislative proposals affecting the Member States' educational or cultural sectors, as the EU's competence in these areas is very limited. We have discussed the contents of the Communication in more detail in paragraphs 5.11 to 5.17 below.

5.3 The Minister of State for Universities (Jo Johnson) submitted an Explanatory Memorandum on the Communication on 6 December. The Government's position on the policies proposed by the Commission remains ambiguous, considering that very little detail is available at present about their concrete and specific implications. The Minister explains that the Government would seek to ensure that the Commission respects the limits of the EU's competence in the fields of education and culture as laid down in the Treaties, and that any new benchmarks for secondary or higher education would be "realistic and helpful".

5.4 With respect to the implications of the Commission's vision for the UK's EU exit negotiations, the Minister argued that "there are very limited Brexit implications relating to the proposed recommendations", as they are "non-binding and are part of a longer-term vision for full implementation by 2025 with funding though the EU's next Multiannual Financial Framework".

55 See also the Commission's White Paper on the "Future of Europe".
56 Commission document COM(2017) 673.

5.5 **The Communication sets out the Commission's vision for the principal initiatives that will shape the EU's education and cultural policy in the coming years. We do not expect there to be any legislation affecting the UK's educational or cultural sectors flowing from this policy paper. Nonetheless, we consider the document to be politically important, given that some of the new initiatives could be of interest to the UK for post-Brexit participation. As the document contains very little detail on the substance of the policy measures the Commission is preparing, its exact aspirations remain ambiguous and the overall implications of its proposals are unclear.**

5.6 **Moreover, the UK's withdrawal from the EU creates further uncertainty about the domestic consequences of any new EU initiatives. The scope of both the post-Brexit transition period and the long-term partnership with the EU on educational and cultural matters are yet to be established. However, the provisional Article 50 financial settlement would retain the UK's participation in existing EU programmes which affect the educational and cultural sectors (such as the Erasmus+ programme and Creative Europe). UK participation in any new initiatives would have to be sought on a case-by-case basis, as they are not expected to become operational until after the end of the transition period.**

5.7 **In light of this, the Committee will carefully consider any proposals for concrete policy initiatives which flow from this Communication. We now clear the document from scrutiny, and draw it to the attention of the Education Committee and the Digital, Culture, Media & Sport Committee.**

Full details of the documents

Communication from the Commission: Strengthening European Identity through Education and Culture: (39224), 14436/17, COM(2017) 673.

Background

5.8 The European Union has a supporting competence in the fields of education and competence. It has used this, for example, to create schemes that incentivise student and teacher mobility between EU countries (Erasmus+)[57] and to create a funding instrument for the creative industries (the Creative Europe programme).[58] The EU, through the European Commission, also plays a leading role in the pan-European Higher Education Area (EHEA), in particular the Bologna Process on mutual recognition of university degrees[59] and the European Credit and Transfer System for study credits.[60]

5.9 In November 2017, as part of a broader process of reflection on the future development of the European Union after Brexit, the European Commission published a Communication on "strengthening European identity through education and culture":

> "The Commission believes that it is in the shared interest of all Member States to harness education and culture as drivers for job creation, economic

57 The Erasmus+ Programme was established by Regulation 1288/2013. The proposal was cleared from scrutiny by the previous Committee on 4 September 2013.

58 The Creative Europe Programme was established by Regulation 1295/2013. The proposal was cleared from scrutiny by the previous Committee on 11 September 2013.

59 http://ec.europa.eu/education/policy/higher-education/bologna-process_en/.

60 http://ec.europa.eu/education/resources/european-credit-transfer-accumulation-system_en.

> growth and social fairness, as well as a means to experience European identity and to promote active citizenship to help prevent populism, xenophobia and violent radicalisation."[61]

5.10 The document serves primarily to set out the Commission's high-level proposals for future initiatives in the fields of education and culture. We summarise these below. The possibility of legislative initiatives to give shape to the proposals in the Communication is limited, as the EU only has a supporting competence in the fields of education and culture. Articles 165 and 167 of the Treaty restrict legislative initiatives in these areas to "incentive measures, excluding any harmonisation of the laws and regulations of the Member States".

EU education policy

5.11 With respect to EU education policy, the Commission envisages the creation of a "European Education Area", where learning, studying and research "would not be hampered by borders". It also argues that further efforts are needed to ensure the EU's education policies ensure the Union's economic "resilience, innovation and competitiveness". In the context of globalisation and competition from around the world, it argues that "Europe does not excel in delivering high-quality skills, as even the best-performing Member States are outperformed by advanced Asian countries."[62]

5.12 The Commission has therefore outlined a number of policy initiatives in support of the Member States' higher, secondary and primary education systems.

Higher education

5.13 In the field of higher education, the "European Education Area" would entail the following new initiatives:

- a Council Recommendation on the mutual recognition of both higher and secondary education diplomas throughout the EU, to complement the Bologna Process;[63]
- increasing cross-border mobility of students by increasing participation in the Erasmus+ programme and the new European Solidarity Corps;[64]
- a pilot project in 2019 for an EU Student Card, which would store information on a person's academic records that can be used across the EU; and
- creating a network of European universities so that European universities can work seamlessly together across borders, including the establishment of a School of European and Transnational Governance in Florence.

61 http://europeanmemoranda.cabinetoffice.gov.uk/memorandum/communication-from-the-commission-to-the-european-parliament-the-council-the-european-economic-social-committee-1510910014.

62 See also the Commission's "Reflection Paper" on harnessing globalisation (September 2017).

63 The Commission proposes to call this the "Sorbonne Process", after the upcoming May 2018 Ministerial Conference on the European Higher Education Area.

64 The European Solidarity Corps was established by Regulation No 1288/2013. It was cleared from scrutiny on 12/03/2014.

Primary and secondary education

5.14 To support the Member States' primary and secondary education sectors, Commission initiatives will include:

- a Council Recommendation on linguistic skills, setting out a non-binding target for all EU residents finishing secondary education to have a good knowledge of two foreign languages by 2025;[65]
- an update to the EU's 2006 Recommendation on key competences for lifelong learning[66] in early 2018;
- a new EU connectivity target with the aim of ensuring that all schools have access to ultra-fast broadband by 2025;
- creating an EU Teacher Academy which offers policy guidance on the professional development of teachers and school leaders;
- preparing a Council Recommendation on a quality framework for Early Childhood Education and Care;
- preparing a Council Recommendation on common values, including education and the European dimension of teaching, with a possible benchmark for Member States to invest 5 per cent of their GDP in education; and
- updating existing EU benchmarks to reduce the number of low achievers and early school-leavers, and propose new benchmarks for digital competences and entrepreneurship.

EU cultural policy

5.15 The second element of the Commission Communication focuses on the future of the EU's cultural policies. As with education, the EU's cultural policy is limited to supporting and coordinating initiatives.[67] Some of the more high-profile schemes include the Capitals of Culture initiative,[68] the designation of 2018 as the "European Year of Cultural Heritage"[69] and the creation of the European Heritage Label,[70] as well as the provision of funding for the European Youth Orchestra and the EU Baroque Orchestra.[71]

65 The Commission notes that the UK, Germany, Ireland, Spain, Croatia, Hungary and the French Community of Belgium are the only EU countries where learning more than one foreign language is an option rather than an obligation.

66 Recommendation of 18 December 2006 on key competences for lifelong learning.

67 The EU also has more extensive legislative competence in areas that affect the cultural and creative industries, such as copyright and broadcasting regulation, which are not covered by the Commission in this Communication as they have a distinct Internal Market legal base.

68 The UK was due to host the European Capital of Culture in 2023, but the European Commission recently informed the Government that it should cancel its city selection process as the UK would no longer be eligible to nominate a Capital after Brexit.

69 See Decision 2017/864; the proposal was cleared from scrutiny by the previous Committee on 16 November 2016.

70 See Decision 2011/1194; the proposal was cleared from scrutiny on 5 April 2014. The UK, along with Ireland, Finland and Sweden, does not participate in the European Heritage Label.

71 Both orchestras were based in the UK but are in the process of relocating (to Italy and Belgium respectively) following the UK's decision to withdraw from the EU.

5.16 The EU's flagship funding programme for the cultural sector is the €1.4 billion (£1.2 billion)[72] 2014–2020 Creative Europe programme.[73] It supports cross-border cultural and artistic projects, artists' mobility, and the distribution of European films. It also includes a Creative and Cultural Sectors Guarantee Facility (CCSGF).[74] This Facility aims to compensate for the creative industries' limited access to traditional forms of finance, by providing a guarantee to banks or other investors which invest in the sector. Over the 2014–2020 period, the CCSGF is estimated to generate investment in the creative and cultural industries of worth €600 million (£529 million) across the EU.[75]

5.17 In its Communication, the Commission argues that Europe's cultural diversity "is a strength that fuels creativity and innovation", and that "understanding and preserving our cultural heritage and diversity are prerequisites to maintain our cultural community, our common values and identity". In parallel to the more extensive range of measures on educational matters, the Commission has also proposed a more limited (and less ambitious) long-term work programme on cultural matters. The policy paper notes that the following initiatives under preparation:

- increasing the uptake of the Creative and Cultural Sectors Guarantee Facility before the end of its current budgetary cycle in 2020;
- incorporating cultural policy into other EU areas of activity where appropriate through a "European Agenda for Culture", with a particular emphasis on a "European identity through culture and values"; and
- exploring the Member States' ambitions for Euronews, the pan-European news channel which is part-funded by the EU and in which a number of national broadcasters are shareholders.

The Government's view

5.18 On 6 December 2017, the Minister of State for Universities (Jo Johnson) submitted an Explanatory Memorandum on the Communication. It notes that the Government agrees with the Commission that education is important for economic growth and social mobility, and that the UK shares "many of the same priorities of improving basic skills, lifelong learning, digital skills and the learning of modern foreign languages".

5.19 In view of the fact that the Communication itself contains no concrete proposals, the Minister added that his Department "will look carefully at each proposal flowing from the Communication to consider the merits whilst being mindful of the need to avoid competence creep". He also noted that, where the Commission has suggested setting new EU-level benchmarks, the Government will seek to ensure that these are "realistic and helpful". Moreover, the Minister emphasised that, where Council Recommendations are foreseen as instruments for implementation of specific initiatives, the UK "will be free to interpret the recommendations in the context of national policy".

72 €1 = £1.13655 as at 30 November.

73 See Regulation 1295/2013 establishing the Creative Europe Programme. The scheme was last considered by the previous Committee on 11 September 2013.

74 https://ec.europa.eu/programmes/creative-europe/cross-sector/guarantee-facility_en.

75 There does not appear to have been take-up of the Guarantee Facility in the UK. The European Commission lists 475 UK-based beneficiaries of Creative Europe funding since 2014, with financial support amounting to approximately €137 million (£121 million). A significant part of that funding will also have been disbursed in other EU countries as Creative Europe projects must be multi-national.

5.20 Although the Communication has no financial implications *per se*, the Minister pointed out that a few of the Commission proposals, such as the boosting of the Cultural Sectors Guarantee Facility and the digital and culture strategies, are likely to have impacts for the EU budget. They will be considered as part of the much wider discussions on the next Multiannual Financial Framework from 2021 onwards, which are due to begin in earnest in autumn 2018.

5.21 With respect to the relevance of the Communication for the EU exit negotiations, the Minister states that "there are very limited Brexit implications relating to the proposed recommendations", as they are "non-binding and are part of a longer-term vision for full implementation by 2025 with funding though the EU's next Multiannual Financial Framework". He also noted that the UK participates in the pan-European Higher Education Area (EHEA) along with 47 other countries, and that the Government will seek to ensure that the Commission initiatives do not lead to "duplication or consequences for the mandate and governance of the EHEA".

Our assessment

5.22 Although the initiatives set out in the Commission document cover many different aspects of educational policy in particular, the proposals contained in the Communication are light on detail. For example, it is not clear how the Commission intends to increase participation in Erasmus+ or facilitate cooperation between European universities.

5.23 The Committee supports the Minister's view that education and cultural policy are the preserve of the Member States, and that any concrete policy initiatives which flow from this Communication, insofar as considered necessary at all, should be strictly limited to supporting national or devolved governments. We will reassess any subsidiarity concerns in due course when specific proposals for Council Recommendations or budgetary commitments are presented to us for scrutiny.

5.24 The eventual impact of concrete proposals that may flow from this policy paper also depend on the UK's relationship with the EU on cultural and educational policy after Brexit. During the immediate post-Brexit transitional period, we expect that the UK will remain part of all EU funding programmes (including Erasmus+ and the Creative Europe Programme). However, there is much less clarity about the Government's ambitions after the end of that transition, when a new UK-EU partnership would have to take effect.

5.25 For example, although we note that Universities UK,[76] the Russell Group,[77] and the NUS[78] have called for continued post-Brexit access to Erasmus+ for UK students, the Prime Minister at the European Council in December 2017 explicitly did not commit the UK to participation after the (presumed) end of the transitional period in December 2020.[79] The same applies to the Creative Europe programme. The legal acts establishing these schemes expire at the end of 2020, and proposals for their successors (including the rules for participation by third countries) are due to be presented in 2018.

76 http://www.universitiesuk.ac.uk/policy-and-analysis/brexit/Documents/brexit-briefing-final-june.pdf.

77 https://www.russellgroup.ac.uk/media/5552/russell-group-universities-and-brexit-briefing-note-august-2017.pdf.

78 https://www.nus.org.uk/PageFiles/2161132/NUS%20written%20evidence%20–%20Education%20Committee%20–%20Brexit%20and%20HE%20inquiry%20–%20November%202016.pdf.

79 Statement by Prime Minister Theresa May: " I was pleased to confirm at this Council that UK students will be able to continue to participate in the Erasmus student exchange programme for at least another three years—until the end of this budget period" (18 December 2017).

5.26 However, little can be deduced about the contents of those proposals from this Commission Communication. It presents no more than a vague indication of possible EU funding allocations for similar programmes under the next Multiannual Financial Framework. Until March 2019, when the UK will lose its representation in the Council, the Government will be able to influence the direction of the negotiations on any relevant proposals, including their budgets, priorities and rules for participation. However, that influence will be limited by the fact that the UK will no longer be a Member State for most of those negotiations (which are expected to last until 2020).[80] In any event, post-Brexit participation by the UK in any EU funding programmes will require a financial contribution, most likely in proportion to the UK's GNI.

5.27 The Committee will closely monitor the upcoming negotiations on the post-2020 EU budgetary cycle, including new programmes for investment in the education and cultural sectors. In the meantime, it has cleared this latest Commission Communication from scrutiny.

Previous Committee Reports

None.

80 The Commission published its proposals for the 2014–2020 MFF and its specific funding programmes in the second half of 2011, and they were formally adopted in late 2013.

6 World Trade Organisation Ministerial Conference

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny (decision reported on 06/12/2017); drawn to the attention of the International Trade Committee
Document details	Proposal for a Council Decision on the position to be taken on behalf of the EU in the Ministerial Conference of the World Trade Organisation as regards public stockholding for food security purposes, trade-distorting domestic support, including for cotton, export restrictions in agriculture, fisheries subsidies, domestic regulation in services, and SMEs/Transparency of Regulatory Measures for Trade in Goods
Legal base	Articles 207(4), 218(9) TFEU
Department	International Trade
Document Number	(39234), 14474/17, COM(17) 668

Summary and Committee's conclusions

6.1 The 11th World Trade Organisation (WTO) Ministerial Conference (MC11) took place in Buenos Aires on 10–13 December 2017. The Ministerial Conference is the WTO's highest decision-making body and meets every two years.

6.2 There were five main areas of discussion at MC11: public stockholding for food security purposes; trade-distorting domestic support in agriculture, including for cotton; export restrictions in agriculture; elimination of certain fisheries subsidies; domestic regulation in services; and transparency of regulatory measures for trade in goods.

6.3 Agreement was not reached in any of the five main areas of discussion, but various ministerial decisions making commitments to further work were agreed, covering: fisheries subsidies; electronic commerce; TRIPS[81] non-violation and situation complaints; a work programme on small economies; and the creation of a working party on accession for South Sudan. A number of initiatives were agreed among groupings of WTO Members.

6.4 The Commission had prepared a draft Council Decision in order to reach a combined EU consensus at MC11 in each of the proposed areas of discussion. Ultimately, no Council Decision was required as there were no agreements. The Council did, however, adopt two sets of Conclusions.[82]

6.5 The Minister for Trade Policy (Greg Hands) has written to the Committee, explaining the outcome of the meeting. His response is set out below. While regretting the lack of significant advances at a multilateral level, the Minister is nevertheless pleased with some

81 Trade-Related Aspects of Intellectual Property Rights.

82 Outcome of the Council Meeting, 3585th Council meeting, Foreign Affairs (Trade issues) 10–13 December 2017.

of the progress made among groupings of WTO Members. He considers that MC11 has provided a good basis from which to carry on important discussions to advance global trade.

6.6 **We reproduce below the text of the letter received from the Minister. While we require no further action from the Government, we consider the discussions at MC11 are likely to be of interest to the House given the increased focus on the WTO as the UK exits the EU. The relative success of initiatives at the plurilateral level (agreements among groupings of WTO Members) compared to the multilateral approach (consensus among all Members) is of note. The document has already been cleared from scrutiny. We draw this chapter to the attention of the International Trade Committee.**

Full details of the documents

Proposal for a Council Decision on the position to be taken on behalf of the EU in the Ministerial Conference of the World Trade Organisation as regards public stockholding for food security purposes, trade-distorting domestic support, including for cotton, export restrictions in agriculture, fisheries subsidies, domestic regulation in services, and SMEs/Transparency of Regulatory Measures for Trade in Goods: (39234), 14474/17, COM(17) 668.

Background

6.7 Prior to the Conference, negotiations were ongoing in relation to:

- public stockholding for food security purposes—there was a question as to whether potentially trade-distorting programmes under which developing countries purchase and stockpile food and distribute it to those in need should be permitted;
- trade-distorting domestic support in agriculture, including for cotton—a proposal had been made to introduce a cap on domestic support as a percentage of domestic production;
- export restrictions in agriculture—this concerned a requirement that a notification should be submitted at least 30 days prior to the implementation of an export restriction measure;
- elimination of certain fisheries subsidies—prohibition of subsidies linked to illegal, unreported or unregulated fishing;
- domestic regulation in services—such regulation (for example qualification requirements) should not constitute unnecessary barriers to trade in service; and
- transparency of regulatory measures for trade in goods.

6.8 In the Government's Explanatory Memorandum of 30 November, the Minister noted the uncertainty over the outcome but also stated that a successful outcome would strengthen the WTO as the arbiter of the rules-based multilateral trading system.

6.9 The UK position on the specific issues was:

- support for agreement on eliminating certain fisheries subsidies;
- MC11 should aim to achieve a "permanent solution" on public stockholding for food security purposes;
- discussions should be advanced on trade-distorting domestic support in agriculture, including for cotton;
- proposals to enhance transparency when countries engage in export restrictions were particularly important for poorer countries that are net food importers; and
- the proposals on services and on goods would make an important contribution to strengthening the global trading environment.

6.10 The Committee cleared the document from scrutiny at its meeting of 6 December in order not to fetter the UK position in Buenos Aires. In doing so, the Committee wrote to the Government requesting a letter on the outcome of MC11.

Letter from the Minister dated 22 December

6.11 The Minister regrets that it was not possible to make significant advances at a multilateral level at MC11. He observes that MC11 was nevertheless able to deliver a number of important outcomes in a challenging context and sets out the details in the following terms:

> "The Ministerial Conference concluded with ministerial decisions on fisheries subsidies, on TRIPS non-violation and situation complaints, a work programme on small economies and the creation of the working party on accession for South Sudan. It agreed to maintain the current practice of not imposing customs duties on electronic transmissions for a further two years. Furthermore, a number of initiatives were launched among groupings of WTO Members seeking to advance discussions with like-minded countries in plurilateral settings.
>
> "A key priority for the UK at MC11 was to see progress in the discussion on digital trade. We therefore welcome the decision of 70 countries led by Australia, Japan and Singapore to look at ways of making digital trade easier across the world. These discussions will be open to all members and recognise the specific challenges faced by developing countries and LDCs and micro, small and medium sized enterprises (MSMEs).
>
> "Further groupings of WTO Members agreed to advance discussions on domestic regulation in services, investment facilitation and SMEs. We welcomed the addition of China and Russia as co-sponsors of the proposal in domestic regulation, which would facilitate services trade. Although a multilateral outcome was not possible at MC11, all 59 co-sponsors agreed to accelerate multilateral discussions.

"On investment facilitation, 70 WTO members announced plans to pursue structured discussions with the aim of developing a multilateral framework on investment facilitation. The proponents, including the EU, China, Brazil, Russia, Japan and several developing economies, agreed to meet early in 2018 to discuss how to organise this. These talks will not cover market access, investment protections, or investor-state dispute settlement. Signatories encouraged all WTO members to participate actively in this work.

"58 WTO Members agreed to create an Informal Working Group on micro, small and medium sized enterprises (MSMEs) at the WTO. This group will continue to strive for a multilateral outcome aimed at establishing a formal work programme for MSMEs at the next Ministerial Conference. The Informal Working Group is a forum in which discussions on the EU's proposal for a Ministerial Decision on greater transparency of regulatory measures for trade in goods, which did not generate consensus among WTO Members when tabled in the market access negotiating group, could be taken forward.

"A further priority was to advance support for women's economic empowerment. In the margins of MC11, 118 WTO Members adopted a Joint Declaration on Trade and Women's Economic Empowerment. The first of its kind, the declaration seeks to enhance the participation of women in trade.

"MC11 has therefore provided a good basis from which to carry on important discussions to advance global trade. The UK will work closely with the EU and other WTO Members to ensure that the momentum behind these initiatives is maintained in 2018.

"In the margins of MC11, the UK announced £18 million funding from the Department for International Development which will help 51 of the world's poorest countries produce products fit for export, trade more easily across borders and access untapped new markets which have the potential to create thousands of jobs and lift their citizens out of poverty.

"£16.25 million of the funding will go to the WTO's Enhanced Integrated Framework (EIF) programme, which helps governments and businesses build the capacity, infrastructure and policies needed to successfully export and trade. A further £2 million will go to the WTO's Standards and Trade Development Facility which helps developing countries meet international agricultural standards, enabling them to export more produce."

6.12 The UK's national statement[83] and the two sets of Council Conclusions[84] adopted at MC11 were attached to the letter.

Previous Committee Reports

None.

83 https://www.gov.uk/government/speeches/uk-statement-to-the-wto-11th-ministerial-conference-by-the-secretary-of-state-for-international-trade.

84 Outcome of the Council Meeting, 3585th Council meeting, Foreign Affairs (Trade issues) 10–13 December 2017.

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

Department for Business, Energy and Industrial Strategy

(39267) — — Special report No 15/2017: Ex ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instruments.

Department for Transport

(38809) 9924/17 SWD(17) 179 — Commission Staff Working Document Executive summary of the evaluation of Directive 98/70/EC Evaluation of Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels (Fuel Quality Directive).

(38811) — COM(17) 284 — Report from the Commission to the European Parliament and the Council In accordance with Article 9 of Directive 98/70/EC relating to the quality of petrol and diesel fuels.

(38833) 10105/17 SWD(17) 178 — Commission Staff Working Document Evaluation of Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels ('Fuel Quality Directive').

Foreign and Commonwealth Office

(39357) — Special report No 22/2017: Election Observation Missions—efforts made to follow up recommendations, but better monitoring needed.

(39382) — Proposal of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a Council Decision amending Decision 2014/219/CFSP on the European Union CSDP Mission in Mali (EUCAP Sahel Mali).

(39405) — Council Decision CFSP/2017/2264 of 7 December 2017 amending Decision 2014/219/CFSP on the European Union CSDP mission in Mali (EUCAP Sahel Mali).

HM Revenue and Customs

(39321) 14331/17 COM(17) 731	Proposal for a Council Regulation temporarily suspending the autonomous Common Customs Tariff duties on certain goods of a kind to be incorporated in or used for aircraft, and repealing Regulation (EC) No 1147/2002.

HM Treasury

(39308) 15334/17 COM(17) 736	Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Follow up to the Call for Evidence—EU regulatory framework for financial services.

Home Office

(39206) 14203/17 + ADD 1, + ADD 1 Rev COM(17) 631	Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions in accordance with Article 58 of Directive 2010/63/EU on the protection of animals used for scientific purposes.

Formal Minutes

Wednesday 17 January 2018

Members present:

Sir William Cash, in the Chair

Douglas Chapman	David Jones
Steve Double	Andrew Lewer
Richard Drax	David Warburton
Marcus Fysh	Dr Philippa Whitford
Darren Jones	

2. 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 7 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Tenth Report of the Committee to the House.

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

[Adjourned till Wednesday 24 January at 1.45pm

Standing Order and membership

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

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

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

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

The expression "European Union document" covers—

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

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

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

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

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

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

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

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

Current membership

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

Douglas Chapman MP (*Scottish National Party, Dunfermline and West Fife*)

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

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*)