



House of Commons
European Scrutiny Committee

Thirteenth Report of Session 2017–19

Documents considered by the Committee on 7 February 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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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:

Brexit implications

Law enforcement and information sharing—EU-Canada Agreement on Passenger Name Record Data

- Does the Government intend to “grandfather” existing EU PNR agreements with third countries during a transitional/implementation period to ensure legal certainty for British airlines transferring PNR data to these countries?
- Will the UK be free to negotiate and sign bilateral PNR agreements with third countries during a transitional/implementation period to take effect once it comes to an end and does it intend to do so?

Anti-microbial resistance

- Additional anti-microbial resistance efforts required to at least maintain existing levels of animal and public health protection post-Brexit.

Summary

Europol: exchanging personal data with third countries

These proposals would authorise the Commission to negotiate agreements enabling Europol to exchange personal data with the law enforcement authorities of eight countries—Jordan, Turkey, Lebanon, Israel, Tunisia, Morocco, Egypt and Algeria. Two of these countries—Israel and Egypt—are considered by the Government to be “human rights priority countries” and it has concerns about respect for human rights and the rule of law in some of the others. Whilst expressing general support for enhancing Europol’s ability to share personal data with third countries to help combat international crime and terrorism, the Government underlines the need to be “fully assured that exchanges of personal data come with sufficient protections to ensure they are consistent with fundamental rights”. We ask what additional assurances the Government would like to see, whether the proposed negotiating directives should be amended to include specific safeguards and whether their terms should be the same for each country, or tailored to address specific human rights concerns in each one. We also request further information on legal base for the proposals and the UK’s Title V (justice and home affairs) opt-in.

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

EU-Canada Agreement on Passenger Name Record Data

In July 2017 the Court of Justice ruled that some provisions of a draft agreement between the EU and Canada on the sharing of Passenger Name Record (PNR) data were incompatible with the EU Charter of Fundamental Rights. This proposal would authorise the Commission to re-open negotiations with Canada to the extent needed to make the Agreement compatible with EU law. It was adopted in December 2017, before the UK's three-month deadline for deciding whether to opt in had expired. The Government considers that an early opt-in decision was essential to enable the UK to take part in negotiations which are likely to provide a template for a future EU/UK PNR agreement. It says it is considering a number of options to maintain the benefits of existing EU PNR agreements with third countries during a transitional/implementation period and confirms that it intends to maintain data protection standards equivalent to those applied in the EU post-exit. Although the Decision has been adopted, we are holding it under scrutiny and requesting progress reports as the negotiations are clearly relevant to any future PNR agreement between the EU and the UK. Although there will be further Council Decisions authorising the EU to sign and conclude a new agreement with Canada, it will be too late at that stage to unpick. We ask the Government to provide further information on arrangements for sharing PNR data within the EU and with third countries during a transitional/implementation period and note that this is an area in which the EU Charter will affect the interpretation and application of EU data protection standards post-exit.

Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the Committee on Exiting the European Union.

Anti-microbial resistance

The Minister is confident that the implications of Brexit in managing anti-microbial resistance can be overcome. While the Committee welcomes this confidence, we consider that additional efforts will logically be required in order to at least maintain existing levels of animal and public health protection. The Committee asks for further information, once agreement on transition has been concluded, on the development of plans to mitigate the risks. This should include access to relevant networks.

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

Documents drawn to the attention of select committees:

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

Environment, Food and Rural Affairs Committee: EU Antimicrobial Resistance (AMR) Action Plan [Commission Communication (NC)]

Committee on Exiting the European Union: EU-Canada Agreement on Passenger Name Record Data [Recommended Decision (NC)]

Health Committee: EU Antimicrobial Resistance (AMR) Action Plan [Commission Communication (NC)]

Home Affairs Committee: EU-Canada Agreement on Passenger Name Record Data [Recommended Decision (NC)]; Europol: exchanging personal data with third countries [Recommendations for Decisions (NC)]

Joint Committee on Human Rights: Europol: exchanging personal data with third countries [Recommendations for Decisions (NC)]

1 EU Antimicrobial Resistance (AMR) Action Plan

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Health Committee and of the Environment, Food and Rural Affairs Committee
Document details	Communication from the Commission—A European One Health Action Plan against Antimicrobial Resistance
Legal base	—
Department	Health
Document Number	(38929), 11128/17 + ADD 1, COM(17) 339

Summary and Committee's conclusions

1.1 The excessive or inappropriate use of antimicrobials, such as antibiotics, has caused bacteria to become increasingly resistant to those antimicrobials to which they were previously susceptible. This is known as antimicrobial resistance (AMR) and is recognised as a challenge requiring action nationally, regionally and globally.

1.2 The EU's new AMR Action Plan is based on the One Health approach, which takes into account both human and animal health as well as the environment. The Action Plan aims to: make the EU a best practice region; boost research, development and innovation; and intensify EU efforts worldwide to shape the global agenda on AMR.

1.3 At its meeting of 29 November 2017, the Committee raised a number of Brexit-related issues, to which the Minister (Lord O'Shaughnessy) has responded. The Minister acknowledges that the post-Brexit revision of AMR-related legislation could have implications for trade. As with any changes to regional or international standards, the UK will review EU developments and update domestic legislation where there is good evidence to do so.

1.4 The Minister is confident that any AMR implications arising from exit can be minimised by:

- maintaining strong relationships with the EU and EU Member States through a range of fora including EU-specific groups where there is scope to continue UK participation after Brexit; and
- inputting into the exit negotiations and constantly adapting the UK's approach as more detailed information comes through on the delivery of the high-level commitments made in the EU Action Plan (e.g. when the review of relevant EU legislation is completed or when any new Free Trade Agreement is put in place).

1.5 We note the Government’s confidence that the potential implications of the UK’s exit from the EU on tackling AMR can be managed and that the key areas of influence for the UK extend far beyond the EU. While we are pleased to note this confidence, the uncertainties that underpin the Minister’s response are nevertheless evident.

1.6 We are concerned that the AMR challenges resulting from Brexit have not received the attention that such a critical issue requires. While it is clear that this is a global matter, and that national and EU-level work alone is insufficient, effective collaboration with the UK’s closest neighbours is—and will remain—crucial. Our interpretation of the Minister’s letter is that, in his view, EU membership has facilitated that collaboration. On the basis that the UK and EU will continue to enjoy a strong trading relationship, additional efforts will logically be required in order to at least maintain existing levels of animal and public health protection.

1.7 We appreciate current uncertainties over the precise arrangements for transition. In that light, we ask for further information from the Minister, once agreement on a post-Brexit transition agreement has been concluded, on the development of plans to mitigate the risks. By then, it should be clearer what access the UK will have to existing networks and what access might be lost.

1.8 We hold the Communication under scrutiny and draw this chapter to the attention of the Health Committee and the Environment, Food and Rural Affairs Committee.

Full details of the documents

Communication from the Commission—A European One Health Action Plan against Antimicrobial Resistance: (38929), [11128/17](#) + ADD 1, COM(17) 339.

Background

1.9 The full background to, and content of, the Communication were set out in our Report of 29 November 2017.

1.10 In his original position, the Minister indicated that the proposed actions were in line with the UK AMR Strategy 2013–18 and the range of international frameworks, ambitions and commitments. The Minister noted that the new implications for domestic policy were limited to future amendments to relevant EU legislation, although the Minister judged it unlikely that such changes would be made before the UK had left the EU.

1.11 At our meeting of 29 November, the Committee raised a number of issues. On the recently established AMR One Health network (consisting of government experts from the human health, animal health and environmental sectors as well as the EU scientific agencies working in the human and animal health sectors), the Committee asked:

- Is the UK involved in the EU’s AMR One Health network?
- If so, what are the advantages to the UK of participating in the network? and
- Will the UK seek to retain participation in the network post-Brexit and, if not, how is the UK seeking to mitigate any potential public and animal health implications of non-participation?

1.12 On the UK's exit from the EU, the Committee also asked the Minister:

- whether the Government would take note of, and potentially mirror, any changes to relevant EU legislation both to facilitate continued trade on a safe and One Health basis and to ensure that the UK's AMR approach does not fall behind the EU's approach; and
- what risks and opportunities arise from Brexit for the UK's AMR Strategy.

1.13 Noting the Commission's suggestion that concessions made to EU trading partners could be linked with compliance with specific EU AMR policy objectives., the Committee also asked for the Government's view of that suggestion, both as an EU Member State and as a future third country in the position of seeking to be an EU trading partner.

The Minister's letter of 9 January 2018

1.14 The Minister acknowledges that the international nature of public health threats arising from infectious diseases, and particularly AMR, poses a significant risk to the security, prosperity, and health of the UK and the rest of the world. While the UK is a world leader in tackling the AMR threat, says the Minister, it can only be effectively addressed through strong and sustainable global collaboration.

1.15 The Minister assures the Committee that the Department of Health—on behalf of the UK—is working with other relevant Government departments to:

“ensure the best outcomes for the health and social care system; to safeguard and support our leading food and farming and life sciences industries; and to protect the environment as we leave the EU. This includes assessing and mitigating where possible the implications of the UK leaving the EU on AMR-related policy issues.”

1.16 While the UK remains an EU Member State, the Government is continuing to work collaboratively with EU colleagues. The EU AMR 'One Health' Network is one such way for the UK to do that. This group has so far met once on 23 February 2017 to inform the content of the EU Action Plan. Officials from the Department of Health and Department for Environment, Food and Rural Affairs were in attendance and the UK looks forward to continuing to build strong networks, share best practice, and influence EU policy at future meetings.

1.17 As regards future trade policy implications, the Minister says:

“As the Committee correctly highlights, there is existing EU legislation relating to AMR (e.g. rules on AMR monitoring and use of veterinary medicine in food-producing animal products) that if revised post the UK exiting the EU will potentially have implications for trade. As with any changes to regional or international standards in relation to AMR, we keep these under review and will seek to update our own domestic legislation where there is good evidence to do so. Alignment and progress with the UK AMR Strategy and trade considerations will be key factors in these

considerations. The UK is a world leader in the fight against AMR in food-producing animals and a leader in the ‘One Health’ approach. It is vital that this position is maintained.

“The same considerations and principles pertain to any AMR-related provisions that could be applied through UK trade agreements. While it is too early to speculate about what will be included in any UK trade agreements, the Environment Secretary has been clear that we will not water down our trusted standards on food safety and environmental protection in pursuit of any future trade deals.”

1.18 In terms of the UK’s work globally, the Minister emphasises that the key areas for influence for the UK extend far beyond the EU:

“The United Nations and other multilateral fora, including the G20 and the G7 bring a wider range of countries and international organisations into the AMR discussion. The UK is at the forefront of AMR policy-making and is widely acknowledged to be leading the way both domestically and internationally. With the current UK AMR strategy coming to end in 2018 and work already underway to draft its successor, we have the opportunity to continue this trend and push for greater ambition across the board. Contrary to the concerns raised by the Committee about falling behind, we believe that our exit from the EU will not present any barrier to us continuing to be a global leader on addressing AMR.”

1.19 In concluding remarks, the Minister expresses confidence that the UK will be able to minimise any implications that may arise from exit by:

- “maintaining strong relationships with the EU and EU member states through a range of fora including EU-specific groups where there is scope to continue UK participation after we leave the EU; and
- “inputting into the exit negotiations and constantly adapting our approach as more detailed information comes through on the delivery of the high-level commitments made in the EU Action Plan (e.g. when the review of relevant EU legislation is completed or when any new FTA is put in place).”

Previous Committee Reports

Third Report HC 301–iii (2017–19), [chapter 10](#) (29 November 2017).

2 EU-Canada Agreement on Passenger Name Record Data

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the Committee on Exiting the European Union
Document details	Recommendation for a Council Decision authorising the opening of negotiations on an Agreement between the European Union and Canada for the transfer of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime
Legal base	Articles 16(2), 87(2)(a) and 218(3) and (4) TFEU, QMV
Department	Home Office
Document Number	(39151), 13490/17 + ADD 1, COM(17) 605

Summary and Committee’s conclusions

2.1 The UK has been at the forefront of EU efforts to promote the sharing of Passenger Name Record (PNR) data both within the EU (a new EU PNR Directive will take effect in May) and externally through the negotiation of PNR Agreements with third countries. EU data protection law prohibits the transfer of personal data to third countries unless they ensure an adequate level of protection—in practice, protection “essentially equivalent” to that guaranteed within the European Union.¹ In an Opinion issued in July 2017, the Court of Justice accepted that the transfer of PNR data to third (non-EU) countries was justified to protect public safety, but said that some of the provisions of a draft PNR Agreement between the EU and Canada were incompatible with the EU Charter of Fundamental Rights and contrary to EU law.² The proposed Council Decision would authorise the Commission to re-open negotiations with Canada to the extent needed to make the Agreement compatible with EU law. It is subject to the UK’s Title V (justice and home affairs) opt-in Protocol (Protocol 21) meaning that it will only be binding on the UK if the Government decides to opt in.

2.2 The then Immigration Minister (Brandon Lewis) wrote to inform us on 30 November that the Justice and Home Affairs Council was expected to agree the proposed Council Decision at its meeting on 7/8 December, even though the three-month deadline for reaching an opt-in decision had not expired. He said that changes had been made “as a direct result of concerns being expressed by the UK and some other Member States” and that the Government was “minded to opt into” the proposal and vote for its adoption. The changes would give the Council a greater say in the negotiations by requiring the

1 See p.2 of the Commission’s Explanatory Memorandum accompanying the proposed Council Decision.

2 See [Opinion 1/15](#) published by the Court of Justice on 26 July 2017.

Commission to consult the relevant Council Working Party and act in accordance with the directives agreed by the Council, including “any directives which the Council may subsequently issue to the Commission”.³

2.3 We agreed, with some reluctance, to grant a scrutiny waiver to enable the Government to support the adoption of the proposed Council Decision. We noted that the proposal was the first of several steps towards securing a revised PNR Agreement and that further Council Decisions—and separate opt-in decisions—would be needed to authorise the EU to sign and conclude the agreement that emerges from the negotiations with Canada. We considered that the UK would be in a better position to influence the outcome of negotiations, which may well serve as a model for a future EU/UK PNR agreement, if it participated in the negotiations. We nonetheless asked the Minister to explain:

- whether the Government has made any representations to the Presidency to protest at its handling of the proposed Council Decision and its apparent disregard for the procedures set out in the UK’s Title V opt-in Protocol;
- whether he considered an early opt-in decision to be “necessary” or “essential” in this case;⁴ and
- whether the Government intended to make a minute statement underlining the importance it attaches to full adherence to the three-month opt-in period provided for in the UK’s opt-in Protocol.

2.4 We noted that the Minister appeared to rule out the possibility of “grandfathering” existing EU PNR agreements with third countries during a transitional period after the UK leaves the EU. We asked whether the Government accepted that there was likely to be a gap between existing EU/third country PNR agreements ceasing to apply to the UK on exit day and the UK being able to conclude new bilateral PNR agreements and how the Government intended to mitigate the risk and uncertainty for carriers.

2.5 The Minister told us that the UK would “maintain equivalency with the EU on data protection” post-exit but would not be tied to replicating the EU template for PNR agreements when negotiating bilaterally with third countries.⁵ We asked whether he accepted that the scope for the UK to diverge from the EU “template” was likely to be extremely limited and that, the greater the degree of divergence, the higher the risk that the UK would be unable to conclude its own PNR agreement with the EU.

2.6 In her response, the recently-appointed Immigration Minister (Caroline Nokes) confirms that the UK supported the adoption of the proposed Council Decision in December but also made “representations informally and privately with the Presidency about the timings” and entered a statement in the Council minutes expressing “regret that the UK was not given the full three months” to deliberate on its opt-in decision. She

3 See the [letter](#) of 30 November 2017 from the then Immigration Minister (Brandon Lewis) to the Chair of the European Scrutiny Committee.

4 Under the so-called “Ashton undertakings” made to Parliament in 2008, where the Government considers that an early opt-in decision is “necessary” or “essential”, it will explain its reasons to the Scrutiny Committees “as soon as is possible”.

5 See the [letter](#) of 30 November 2017 from the then Immigration Minister (Brandon Lewis) to the Chair of the European Scrutiny Committee.

considers that an early opt-in decision was “essential” to enable the UK to influence the Council’s position on negotiations with Canada, given that the outcome could potentially set a precedent for a future PNR agreement between the EU and the UK.

2.7 The Minister says that “the mechanisms to enable our participation in existing security measures during the implementation period will also need to be addressed in negotiations on the implementation period” and that the Government has “not ruled out any approaches yet” and is considering various options, including “grandfathering existing EU PNR agreements” and obtaining “official assurances” that the competent authorities in third countries will “protect and use British PNR data in accordance with the EU third country PNR Agreements until new UK bilateral agreements have been ratified”. She says that the Commission, Member States and third countries “are all working to understand the implications of the Court’s Opinion on the use of PNR within the EU and the future use of EU PNR data by third countries” with a view to ensuring that third countries “provide an equivalent level of protection to passengers’ personal data in line with European standards on fundamental rights and privacy”.

2.8 **We accept that there are compelling reasons for the UK to take part in the negotiation of a new PNR agreement with Canada given that it is likely to provide a template for a future PNR agreement with the UK post-exit. We note that the Minister has issued a Written Ministerial Statement notifying the House of the Government’s decision to opt in and the reasons for doing so.**⁶

2.9 **As we explained in our earlier Reports, the new agreement with Canada will need to contain all the safeguards specified in the Court’s Opinion, leaving limited scope to negotiate out those aspects of the Opinion that the Government dislikes. Changes to the proposed Decision agreed by the Justice and Home Affairs Council ensure that the Council will be closely involved in the negotiations. This will give the Government some influence in seeking an outcome that preserves as far as possible “present operational capabilities” and avoids setting an unwelcome precedent for any future agreement on the transfer of PNR data between the UK and the EU. Given the importance of these negotiations for the future EU/UK relationship, we are holding the proposed Council Decision under scrutiny (even though it has been adopted) and ask the Minister to provide progress reports.**

2.10 **We welcome the Government’s efforts to ensure that “British airlines are not exposed to unnecessary risk or unresolved conflict of law” and note that the “grandfathering” of existing EU PNR agreements with third countries during a transitional/implementation period remains an option. We ask the Minister whether the Government intends to pursue this option during negotiations on a transitional/implementation period and to report back to us on the outcome achieved—including whether the UK will be free to (and intends to) negotiate and sign bilateral PNR agreements with third countries during the transitional/implementation period to take effect once it comes to an end. We also ask her whether she expects the EU PNR Directive (which will take effect in May this year) to continue to apply to the UK during a transitional/implementation period and whether the Government intends to negotiate a PNR agreement with the EU during this period to take immediate effect once the Directive ceases to apply to the UK.**

6 See the Minister’s [Written Ministerial Statement](#) issued on 30 January 2018.

2.11 The Minister reiterates the Government’s intention to “maintain equivalent data protection standards to those of the EU” post-exit. We add the observation that the standards underpinning a future PNR agreement between the EU and the UK will also have to be compatible with the EU Charter of Fundamental Rights and are unlikely to remain static, as the Court of Justice Opinion on the EU/Canada PNR Agreement demonstrates.

2.12 Pending further developments, the Council Decision remains under scrutiny. We look forward to receiving progress reports on the negotiations. We draw this chapter to the attention of the Home Affairs Committee and the Committee on Exiting the European Union.

Full details of the documents

Recommendation for a Council Decision authorising the opening of negotiations on an Agreement between the European Union and Canada for the transfer of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime: (39151), [13490/17](#) + [ADD 1](#), COM(17) 605.

Background

2.13 Our earlier Reports listed at the end of this chapter describe the current framework for the transfer of PNR data to Canada, the reasons why the Commission is seeking a mandate from the Council to re-open negotiations with Canada, and the Government’s concerns with aspects of the Opinion issued by the Court of Justice in July 2017.

The Minister’s letter of 22 January 2018

2.14 The Minister confirms that the Home Secretary supported the adoption of the proposed Council Decision at the Justice and Home Affairs Council on 7 December 2017. She explains that the Presidency was keen to secure a mandate to open negotiations with Canada “as soon as possible” following the adverse Opinion of the Court of Justice on the earlier draft agreement, adding:

“The UK undertook to fast track our procedures as a mark of good will and support for the Commission, and to ensure the UK could be best placed to influence negotiations with Canada which will in turn have an influence on future such agreements with third countries—which the UK will become following its exit from the EU.”

2.15 She also confirms that the Government made representations “informally and privately with the Presidency about the timings and at the adoption of the Council Decision, and that a minute statement was laid highlighting our regret that the UK was not given the full three months, in accordance with the Treaties, to take a decision on whether we wished to participate in the measure”. The full text of the UK Statement provides:

“The United Kingdom and Ireland have a special position under Protocol 21 to the Treaty on the Functioning of the European Union. Article 3 of Protocol 21 provides the United Kingdom and Ireland with a period of 3 months to consider whether to take part in a measure.

“That Protocol applies to the proposed Council Decision authorising the opening of negotiations on an Agreement between the European Union and Canada for the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime.

“The United Kingdom regrets that it has not been given the full three months, in accordance with the Treaties, to take a decision on whether to participate in this measure.

“Nevertheless, in this case, the United Kingdom has informed the Presidency that it is taking part in the adoption of the Council Decision.”⁷

2.16 The Minister explains why her predecessor (Brandon Lewis) considered that an early opt-in decision was essential:

“The decision to opt in was informed by our concerns around the Court’s Opinion on the retention of PNR data and the conditions for onward disclosure of PNR data to third countries by Canadian authorities. This approach to an Agreement with Canada would significantly impede Canada’s present operational capabilities and would also set [a] precedent for any renegotiation of the EU PNR Agreements in place with Australia and the US, and potentially for the UK which could be party to such an agreement post-exit. This could also impact on the EU’s approach to PNR as it goes beyond [what] is set out in the EU Directive on the use of PNR. Participating within the Council during the negotiations on an Agreement with Canada will provide the UK with some influence to address our concerns and those of our close partner, Canada.”

2.17 Turning to the wider implications of the UK’s decision to leave the EU, the Minister says that “how the EU will cooperate with the UK as a third country including on PNR will need to be addressed in the course of negotiations on our future relationship” The mechanisms to enable the UK to continue to participate in existing security measures during a transitional/implementation period “will also need to be addressed in negotiations on the implementation period”. She continues:

“We are working to ensure that British airlines are not exposed to unnecessary risk or unresolved conflict of law. We have not ruled out any approaches yet and are considering a number of options at present including ‘grandfathering’ existing EU PNR agreements and, as my predecessor mentioned in previous correspondence, obtaining official assurances from respective national authorities to protect and use British PNR data in accordance with the EU third country PNR Agreements until new UK bilateral arrangements have been ratified.”

2.18 The Minister does not comment directly on how any divergence from the EU template for PNR agreements when negotiating the UK’s own agreements with third countries might affect the UK’s prospects for concluding a PNR agreement with the EU. She says

7 See [Council document 14763/1/17](#) dated 6 December 2017. The Government formally notified the Council of its decision to opt into the proposed Council Decision on 5 December 2017.

the Commission, Member States and third countries “are all working to understand the implications of the Court’s Opinion on the use of PNR within the EU and the future use of EU PNR data by third countries” and adds:

“The purpose of the EU’s PNR Agreements with third countries is to ensure those countries provide an equivalent level of protection to passengers’ personal data in line with European standards on fundamental rights and privacy. As the Government has proposed that, post-exit from the EU, the UK will maintain equivalent data protection standards to those of the EU, the UK may need to seek its own bilateral PNR agreements.”

Previous Committee Reports

First Report HC 301–i (2017–19), [chapter 28](#) (13 November 2017) and Fourth Report HC 301–iv (2017–19), [chapter 11](#) (6 December 2017).

3 Europol: exchanging personal data with third countries

Committee's assessment	Legally and politically important
<u>Committee's decision</u>	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the Joint Committee on Human Rights
Document details	<p>(a) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Jordan on the exchange of personal data between Europol and the Jordanian authorities competent for fighting serious crime and terrorism;</p> <p>(b) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Turkey on the exchange of personal data between Europol and the Turkish authorities competent for fighting serious crime and terrorism;</p> <p>(c) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Lebanon on the exchange of personal data between Europol and the Lebanese authorities competent for fighting serious crime and terrorism;</p> <p>(d) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Israel on the exchange of personal data between Europol and the Israeli authorities competent for fighting serious crime and terrorism;</p> <p>(e) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Tunisia on the exchange of personal data between Europol and the Tunisian authorities competent for fighting serious crime and terrorism;</p> <p>(f) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Morocco on the exchange of personal data between Europol and the Moroccan authorities competent for fighting serious crime and terrorism;</p> <p>(g) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Egypt on the exchange of personal data between Europol and the Egyptian authorities competent for fighting serious crime and terrorism;</p>

	(h) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Algeria on the exchange of personal data between Europol and the Algerian authorities competent for fighting serious crime and terrorism
Legal base	(All) Article 218(3) and (4) TFEU, QMV
Department	Home Office
Document Numbers	(a) (39411), 5033/18 + ADD 1; (b) (39412), 5034/18 + ADD 1; (c) (39413), 5035/18 + ADD 1; (d) (39414), 5036/18 + ADD 1; (e) (39415), 5037/18 + ADD 1 (f) (39416), 5038/18 + ADD 1; (g) (39417), 5039/18 + ADD 1; (h) (39418), 5040/18 + ADD 1

Summary and Committee's conclusions

3.1 The Commission has put forward Recommendations for eight Council Decisions which would authorise it to negotiate agreements enabling Europol to exchange personal data with the law enforcement authorities of eight countries—Jordan, Turkey, Lebanon, Israel, Tunisia, Morocco, Egypt and Algeria. Under the Europol Regulation, the transfer of personal data agreed after 1 May 2017 (when the Regulation took effect) must be based either on a so-called “adequacy decision” establishing that a third country (or processing sector within it) ensures an adequate level of protection of personal data or on an international agreement concluded by the EU which “adduces adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals”.⁸ Negotiating directives setting out the objectives to be achieved in the negotiations are annexed to each of the proposed Council Decisions. If approved, further Council Decisions will be needed once the negotiations have been completed to authorise the EU to sign and to conclude the agreements.

3.2 The agreements would be the first to be concluded with countries in the Mediterranean, Middle East and North Africa region. The Commission says that they reflect Europol's operational needs and the long-term security threat which instability in the region presents for the EU. The exchange of personal data would be limited to the types of serious crime listed in the Europol Regulation, with a particular focus on tackling terrorism and preventing radicalisation, disrupting organised crime (especially trafficking in firearms and drugs and migrant smuggling) and combating cybercrime.

3.3 The Minister for Policing and the Fire Service (Nick Hurd) says that he expects the Council to insist on the inclusion of a substantive legal base to complement the procedural legal bases cited in the Commission proposals and that the UK's Title V (justice and home affairs) opt-in applies, meaning that each Council Decision will only apply to the UK if the Government decides to opt in. Whilst “generally supportive of Europol exchanging data with third countries to maximise its potential in the fight against serious and organised crime”, he notes that the Government considers Israel and Egypt to be “human rights priority countries” and has human rights concerns about several of the

8 See Article 25 of [Regulation \(EU\) 2016/794](#).

remaining countries. In deciding whether to opt in to each proposed Council Decision, “the Government will need to be fully assured that exchanges of personal data come with sufficient protections to ensure they are consistent with fundamental rights”.

3.4 We agree that the proposed Council Decisions should cite the same substantive legal base as the Europol Regulation—Article 88 TFEU—and that there should be a specific recital indicating that the proposals are subject to the UK’s Title V (justice and home affairs) opt-in Protocol. We urge the Minister to press for the inclusion of both and to report back to us on whether he has succeeded. We also ask him to inform us when the three-month period available to the UK to decide whether to opt in will expire.

3.5 We share the Minister’s concern that the agreements proposed include some countries where there are well-documented human rights violations or threats to democracy and the rule of law.⁹ We agree that the Government will need to be “fully assured that exchanges of personal data come with sufficient protections to ensure they are consistent with fundamental rights” but would welcome further information on how the Minister intends to achieve this. We ask him to indicate:

- **what additional assurances the Government would like to obtain;**
- **what form these assurances should take;**
- **whether the negotiating directives should be amended to include specific safeguards; and**
- **whether the negotiating directives should be the same for each country, or tailored to address specific human rights concerns in each one.**

3.6 Pending further information, the proposed Council Decisions remain under scrutiny. We draw this chapter to the attention of the Home Affairs Committee and the Joint Committee on Human Rights.

Full details of the documents

(a) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Hashemite Kingdom of Jordan on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Jordanian authorities competent for fighting serious crime and terrorism: (39411), 5033/18 + ADD 1 , COM(17) 798; (b) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Turkey on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Turkish authorities competent for fighting serious crime and terrorism: (39412), 5034/18 + ADD 1 , COM(17) 799; (c) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Lebanese Republic on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Lebanese authorities competent for fighting serious crime and terrorism: (39413), 5035/18 + ADD 1, COM(17) 805; (d) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between

⁹ See the [Human Rights and Democracy](#) report published by the Foreign and Commonwealth Office in July 2017.

the European Union and the State of Israel on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Israeli authorities competent for fighting serious crime and terrorism: (39414), 5036/18 + ADD 1, COM(17) 806; (e) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Tunisia on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Tunisian authorities competent for fighting serious crime and terrorism: (39415), 5037/18 + ADD 1, COM(17) 807; (f) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Kingdom of Morocco on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Moroccan authorities competent for fighting serious crime and terrorism: (39416), 5038/18 + ADD 1, COM(17) 808; (g) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Arab Republic of Egypt on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Egyptian authorities competent for fighting serious crime and terrorism: (39417), 5039/18 + ADD 1, COM(17) 809; (h) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the People’s Democratic Republic of Algeria on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Algerian authorities competent for fighting serious crime and terrorism: (39418), 5040/18 + ADD 1, COM(17) 811.

Background

3.7 Europol has already concluded operational agreements which allow it to exchange personal data with a wide range of third countries—Albania, Australia, Bosnia and Herzegovina, Canada, Colombia, the former Yugoslav Republic of Macedonia, Georgia, Iceland, Liechtenstein, Moldova, Monaco, Montenegro, Norway, Serbia, Switzerland, Ukraine and the United States of America.¹⁰ These agreements are based on an earlier Council Decision (now replaced by the Europol Regulation) and also required Council approval.¹¹

The proposed Council Decisions

3.8 In its explanatory memorandum accompanying each proposed Council Decision, the Commission provides a brief description of the political context for the envisaged agreement and the operational needs it is intended to meet. It says that cooperation with local law enforcement authorities in each country is “critical” to meet these needs.

Operational needs	Jordan	Turkey	Lebanon	Israel	Tunisia	Morocco	Egypt	Algeria
Terrorism and terrorist financing	√	√	√	√	√	√	√	√
Firearms trafficking	√	√	√		√	√	√	√

¹⁰ See the Operational Agreements listed on [Europol’s website](#).

¹¹ See Article 23 of [Council Decision 2009/371/JHA](#)

Migration and migrant smuggling	√	√	√		√	√	√	√
Drug trafficking	√	√	√		√	√	√	√
Counterfeit goods		√	√				√	
Cybercrime				√		√		

3.9 The proposed Council Decisions are based on Article 218(3) and (4) of the Treaty on the Functioning of the European Union (TFEU) which provides that:

- the Commission shall submit a recommendation to open negotiations with a third country;
- the Council shall adopt a Decision nominating the EU negotiator—in this case the Commission; and
- the Council may also agree negotiating directives and require the EU negotiator to consult a special committee during the course of negotiations.

The Council acts by a qualified majority throughout this procedure.

3.10 The agreements would be concluded between the European Union and each of the eight countries concerned. They would provide the legal basis for the transfer of personal data between Europol and the competent authorities in each country responsible for combatting serious transnational crime and terrorism. The proposed negotiating directives envisage that information could be provided to “other authorities” within each country, “subject to appropriate conditions and safeguards”. They would also permit the onward transfer of information to authorities in another third country, but only in the following circumstances:

- the Commission has adopted an adequacy decision for that country (or an authority within it); or
- the EU has concluded an agreement with that country containing adequate safeguards for the protection of privacy and fundamental rights and freedoms; or
- the country concerned concluded an agreement with Europol before 1 May 2017 providing for the exchange of personal data.

3.11 The proposed negotiating directives also make clear that the agreements concluded with each of the eight countries must ensure “a system of oversight by one or more independent public authorities responsible for data protection with effective powers of investigation and intervention”, including the power to hear complaints and engage in legal proceedings, and that this system of oversight must cover all public authorities that use information provided by or exchanged with Europol.

3.12 Whilst there would be a general prohibition on the transfer of sensitive personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs,

trade union membership, genetic data and data concerning an individual’s health and sex life, exceptions would be permitted (subject to “appropriate safeguards”) where “strictly necessary and proportionate in individual cases” to prevent or combat serious crime.

3.13 An introductory recital in each of the proposed Council Decisions specifies that the agreements should “respect the fundamental rights and observe the principles” recognised by the EU Charter of Fundamental Rights. The proposed negotiating directives also state that each agreement shall “spell out clearly and precisely the necessary safeguards and controls with respect to the protection of personal data, fundamental rights and freedoms of individuals, irrespective of nationality and place of residence” which are to govern the exchange of personal data.¹²

The Minister’s Explanatory Memorandum of 26 January 2017

3.14 The Minister explains that the Commission’s assessment of priority countries takes into account Europol’s operational needs:

“The Europol Strategy 2016–2020 identifies the Mediterranean region as priority for enhanced partnerships. The Europol External Strategy 2017–2020 also stresses the need for closer cooperation between Europol and the Middle East/North Africa (MENA) due to the current terrorist threat and migration-related challenges. Europol does not currently have any agreements in place with any of the countries in this region.”¹³

3.15 He says that the ability to transfer personal data will help to support and strengthen cooperation in preventing and combating serious transnational crime and terrorism, subject to appropriate safeguards ensuring respect for the protection of privacy, personal data and the fundamental rights and freedoms of individuals.

3.16 The Minister notes that the proposed Council Decisions only cite a procedural legal base—Article 218(3) and (4) TFEU—but says he expects the Council to add a substantive Title V (justice and home affairs) legal base, given that the proposals are related to the Europol Regulation. He is unable to confirm, at this stage, when the three-month deadline for deciding whether to opt in will expire, but undertakes to inform us once the last language version of the proposals has been adopted.

3.17 The Minister reiterates the Government’s policy of “taking all opt-in decisions on a case-by-case basis, putting the national interest at the heart of the decision-making process”. Whilst the Government “is generally supportive of Europol exchanging data with third countries to maximise its potential in the fight against serious and organised crime”, he identifies Israel and Egypt as “human rights priority countries” and adds that “there are also human right concerns regarding several of the other countries Europol has identified”. He continues:

“The Government will need to be fully assured that exchanges of personal data come with sufficient protections to ensure they are consistent with fundamental rights.”¹⁴

12 See the Annex (ADD 1) to each of the proposed Council Decisions.

13 See para 3 of the Minister’s [Explanatory Memorandum](#).

14 See para 14 and the fundamental rights analysis in the Minister’s Explanatory Memorandum.

Previous Committee Reports

None.

4 Access to published works for the visually impaired

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled.
Legal base	Articles 114, 207 and 218(6)(a)(v) TFEU; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(36437), 14617/14, COM(14) 638

Summary and Committee's conclusions

4.1 The document enables the EU to conclude (ratify) this Treaty. The Treaty comes into force once 20 World Intellectual Property Organization (WIPO) Parties have ratified it.

4.2 As set out in detail in our first Report on this subject, the Marrakesh Treaty was negotiated by Members of the UN's World Intellectual Property Organisation (WIPO), and aims to improve access to copyright works for people who are visually impaired or have print disabilities. The Treaty achieves this through the international harmonisation of copyright exceptions (acts that do not need the permission of the copyright owner) allowing for the creation of accessible format versions of copyright works (for example, Braille versions) for the benefit of visually impaired or otherwise print disabled people, under certain conditions, without infringing copyright. The Treaty also provides, in certain circumstances, for the import and export of accessible copies between contracting parties.

4.3 It has been signed by the EU (and the UK). The Decision on the signature of the Treaty was cleared by the then Committee at its meeting of 4 June 2014, having been adopted on 14 April 2014 in the face of a contrary UK vote. At the time there were issues with the document concerning competence and legal base.

4.4 The European Commission requested, on 17 July 2015, a formal Opinion from the Court of Justice of the European Union (CJEU) on whether the European Union has exclusive competence to conclude the Marrakesh Treaty. On 14 February 2017 the CJEU ruled (Opinion 3/15) that, although the Treaty did not fall within the EU's common commercial policy, the EU nevertheless had exclusive competence as it was likely to affect existing EU policies.

4.5 In his letter of 30 October 2017 the then Minister for Universities, Science, Research and Innovation (Jo Johnson) informed the Committee that he had taken the decision to "override the scrutiny reserve of the Committee and vote in favour of conclusion of the

Treaty”. In fact the decision in question was not to conclude the Treaty but to seek the necessary European Parliament consent to conclude it. This was given on 18 January 2018. The Council is now in a position to formally adopt the necessary Decision.

4.6 Two EU instruments give effect to the Treaty within EU law, a Regulation (Regulation 2017/1563) and a Directive (2017/1564). These instruments bring EU law into line with the Marrakesh Treaty, thus enabling the EU to conclude (ratify) the Treaty. These instruments were the subject of an override which occurred when the Committee had not yet been constituted.

4.7 **The Marrakesh Treaty is widely regarded as a ground-breaking development for the benefit of disabled people. The Committee notes that the UK is a signatory to the Marrakesh Treaty in its own right, a position which pre-dates the date of the CJEU’s Opinion. The Committee also notes that, during the anticipated transitional period following the UK’s exit from the EU, it is not clear on what basis and to what extent, the UK would participate in the Treaty. In that regard, it is also unclear whether, as a result of the position taken by the EU in its supplementary Brexit negotiating directives, the visually impaired in the UK would be able to benefit fully from the limitations on copyright flowing from the Treaty.**

4.8 **The Committee clears this document but asks the Minister:**

- a) **whether any steps need to be taken before exit day with regard to the UK’s position as signatory of the Treaty given that the UK will not be ratifying the Marrakesh Treaty whilst an EU Member State. The Committee refers to the Chairman’s letter of 25 April¹⁵ in this regard;**
- b) **during the anticipated transitional/implementation period following the UK’s formal exit from the EU, what are the Minister’s intentions as regards ratification of the Treaty by the UK in its own right, given that the supplementary negotiation directives foresee the possibility of the UK entering into international agreements “in the fields of competence of Union law, unless authorised to do so by the Union”;**
- c) **during a transitional/implementing period whether the intention is that the provisions of the Treaty will apply reciprocally between the EU and the UK (as formalised in an EU/UK Withdrawal agreement). Additionally, whether the expectation is that, if the Treaty comes into force during the transitional/implementing period, the UK would be expected to accord non-EU States the benefit of the Treaty, whilst those States may or may not accord the benefit of the Treaty to the UK; and**
- d) **once the transitional period has ended, whether the UK intends to ratify the Treaty (if it has not already done so).**

Full details of the documents

Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled: (36437), 14617/14, COM(14) 638.

15 In response to the then Minister for Universities, Science, Research and Innovation’s letter of [11 April 2017](#).

The Minister's letters

4.9 The then Minister provided full updates to this Committee on 28 November, 30 October, 19 October, 7 August and 29 June 2017 and to the previous Committee on 11 April 2017.

4.10 The final letter of 28 November 2017 explained the timetable for writing to the Committee and the reasons why there was an override of scrutiny in the Council when deciding to seek the consent of the European Parliament to conclusion. In his letter of 30 October 2017 the Minister explained:

“in view of the benefits the Marrakesh Treaty will bring to visually impaired people (as set out in previous correspondence), I took the decision to override the scrutiny reserve of the Committee and vote in favour on conclusion of the Treaty”.

As this Committee had not yet been formed we have taken no issue on the override of scrutiny.

4.11 The only outstanding matter is an update to the previous Committee in response to the previous Committee's letter of 25 April.

Previous Committee Reports

Thirty-seventh Report HC 219–xxxvi (2014–15), [chapter 7](#) (18 March 2015); Twenty-second Report HC 219–xxi (2014–15), [chapter 3](#) (26 November 2014); and see also, in respect of the Decision to sign the Marrakesh Treaty (35710), 5076/14: First Report HC 219–i (2014–15), [chapter 20](#) (4 June 2014); Forty-fourth Report HC 83–xxxix (2013–14), [chapter 5](#) (26 March 2014).

5 EU-US co-operation on air traffic management systems

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Council Decision on the signing, on behalf of the Union, and provisional application of Amendment 1 to the Memorandum of Co-operation NAT-I-9406 between the United States of America and the European Union
Legal base	Article 100(2) in conjunction with Article 218(5) TFEU; QMV;—
Department	Transport
Document Number	(39150), 13544/17, + ADD 1, COM(17) 620

Summary and Committee's conclusions

5.1 The US and the EU have developed separate technological programmes¹⁶ to achieve greater efficiencies in air traffic management (ATM) systems, in order to cope with growth in air traffic. Since 2011, the EU and the US have coordinated their respective programmes—SESAR and NextGen—through Memorandum of Cooperation NAT-I-9406. The chief objective of this coordination is to ensure that both air traffic management systems (ATMs) are interoperable.

5.2 Both programmes are now moving into the deployment phase, and so the European Commission and the FAA have negotiated amendments to the MoC which would allow this cooperation to extend into the deployment phase. On 23 October 2017 the European Commission published a draft Council Decision which would have this effect.¹⁷ As well as extending the scope of the MoC to cover deployment, certain aspects of it are modernised, and the management process is streamlined.

5.3 On 2 November 2017, the Secretary of State for Transport (Chris Grayling) submitted an Explanatory Memorandum¹⁸ to the Committee seeking clearance to support the proposed Decision in the Council of Ministers on 10 November 2017. The Minister stated that it was “in the UK’s interest to ensure the two programmes remain aligned, as UK airlines will wish to have continued access to both regions”, and said that the alignment of the two systems provided UK industry with the opportunity “to have full access to and to compete effectively in the US market”.

16 The US programme is known as NextGen. The EU’s equivalent programme is Single European Sky Air Traffic Management Research (SESAR)—the technology pillar of the Single European Sky programme.

17 Proposal for a COUNCIL DECISION on the signing, on behalf of the Union, and provisional application of Amendment 1 to the Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union ([23 October 2017](#)).

18 Explanatory Memorandum from the Minister, DFT, to the Chairman of the European Scrutiny Committee ([2 November 2017](#)).

5.4 In our report on 22 November 2017,¹⁹ the Committee asked the Government to provide further information about the effects of the agreement, whether it would cease to apply in the context of EU exit, as well as the implications for UK stakeholders of its ceasing to apply.

5.5 On 6 December 2017 the Parliamentary Under Secretary of State at the Department for Transport (Baroness Sugg) replied to the Committee.²⁰ She clarifies that the full access to the US market to which the Minister had referred related only to the benefits of increased interoperability the MoC would provide, which would benefit both carriers and manufacturers. She adds that the agreement will cease to apply to the UK upon EU exit (notwithstanding provisions in any transition agreement which might extend its effects to the UK during this period), and that the Government is considering its future relationship with the EU's ATM programme, including SESAR.

5.6 The Committee notes the Government's clarification that the "full access to ... the US market" referred to in its Explanatory Memorandum²¹ is confined to providing greater interoperability between US and EU Air Traffic Management systems, and "more about interoperability than market access".²² This interoperability will benefit carriers, if they only have to be equipped with one ATM system, as well as manufacturers, if the programme means that they can manufacture equipment for use in both the EU and US markets. However, we observe that EU exit raises other more salient issues for both carriers and manufacturers, including, inter alia, traffic rights and tariffs.

5.7 We note the Government's assessment that as the MoC is an agreement between the EU and the US, the UK will no longer be a party to it post-exit, unless a new agreement is negotiated with the EU and the US which extends this cooperation to the UK.

5.8 In relation to future of UK Air Traffic Management systems in the context of EU exit, the Government states that:

- due to the UK's geographical location and the amount of traffic between the UK and Europe, the UK will need to remain interoperable with the EU ATM system which is being modernised through SESAR; the Government is therefore considering its future relationship with the SESAR programme;
- the Government is considering the potential implications for participants in the EU ATM System arising from the UK's exit from the EU (although no information about these implications is provided); and
- the Government recognises the need for continued cooperation with the EU on Air Traffic Management.

5.9 We clear this document from scrutiny. We will seek further clarification regarding the implications of EU exit for air traffic management, including the SESAR programme, through scrutiny of the Court of Auditors Special Report 18/2017 on Single European Sky.

19 Second Report HC 301–ii (2017–18) [chapter 15](#) (22 November 2017).

20 Letter from Baroness Sugg to the Chairman of the European Scrutiny Committee ([6 December 2017](#)).

21 Explanatory Memorandum from the Minister, DFT, to the Chairman of the European Scrutiny Committee ([2 November 2017](#)).

22 Letter from the Minister, DFT, to the Chairman of the European Scrutiny Committee ([6 December 2017](#)).

Full details of the documents

Proposal for a Council Decision on the signing, on behalf of the Union, and provisional application of Amendment 1 to the Memorandum of Co-operation NAT-I-9406 between the United States of America and the European Union: (39150), 13544/17, + ADD 1, COM(17) 620.

Background

5.10 The US and the EU have separate programmes to develop technological solutions to the challenges—principally caused by the growth of air traffic—facing air traffic management systems (ATMS). NextGen is the US programme and Single European Sky Air Traffic Management Research (SESAR) is the EU programme. SESAR is the technology pillar of the EU’s Single European Sky (SES) programme which aims to improve the performance of the European ATM system.

5.11 In 2011 Memorandum of Cooperation (MoC) NAT-I-9406 was put in place to ensure these programmes were coordinated and to encourage the development, safety, and efficiency of civil aeronautics in the US and in the EU.²³ This followed the endorsement of the European Air Traffic Management Master Plan in 2009, which asked the Commission to take steps to achieve the highest level of interoperability between the SESAR project and its US equivalent, NextGen.²⁴

5.12 The cooperative activities carried out so far under the MoC mainly address air traffic management, in particular R&D cooperation between SESAR and NextGen; however, both programmes have now moved beyond R&D and are starting to be deployed. On 8 May 2017 the Council authorised the Commission to negotiate with the US Federal Aviation Administration (FAA) an amendment to the MoC to extend its scope to deployment.

5.13 The Commission’s three main negotiating objectives with the FAA were:

- to expand the scope of the existing MoC for civil aviation R&D to include the full scope of ATM modernisation (i.e., R&D, validation, demonstration, deployment) addressing also emerging aviation areas and other ATM domains of the Single European Sky beyond technology;
- to streamline and optimise the governance arrangements of the MoC and its Annexes and Appendices; based on experience under the current MoC, both parties concluded that the management process should be made leaner and more effective at the high level and that the operational services dealing with the technical topics of cooperation should be better involved; and
- to negotiate specific arrangements for cooperation on ATM deployment, while maintaining the existing arrangements on “SESAR-NextGen cooperation on global interoperability” and on “Collaboration on ATM performance measurements”, duly adapted to the new framework.

23 Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union <https://goo.gl/z6TYQU>.

24 See page 3 of European Commission, European Air Traffic Management Master Plan <https://goo.gl/LcZcsN> (30 March 2009).

5.14 The Commission’s proposal concludes that “these three objectives have been fully met.” The draft Decision states that:

- amendments have now been negotiated to the MoC which extend the scope of cooperation between the Union and the USA to all phases of ATM modernisation including deployment; and
- the MoC also simplifies governance arrangements, replacing the somewhat unwieldy Joint Committee, which was tasked with overseeing an ‘approval process’, but in practice managed the operation of the MoC, with a streamlined management process which involves a single representative from each party for the purpose of overseeing the functioning of the entire MoC and taking decisions at a policy level—the Director General of DG Mobility and Transport (DG MOVE) and the administrator of the Federal Aviation Administration (FAA). The Commission states that this approach “ensures supervision and steering of the MoC at a high level and the link with the parties’ respective political authorities to which they shall report.” The thematic Annexes are managed by executive committees composed of representatives of the parties that are closer to the operational level for the specific topics they address.

5.15 In practical terms, the MoC will allow for information to be shared between the EU and US on:

- programs and projects, research results, or publications; joint analyses;
- the coordination of civil aviation research, development and validation programs and projects, and the coordination of ATM modernisation activities and the Parties’ respective execution thereof, based on shared effort;
- the exchange of scientific and technical staff; exchange of specific equipment, software and systems for research activities and compatibility studies;
- joint organisation of symposia or conferences; and
- reciprocal consultations with the aim of establishing concerted action in appropriate international bodies.

5.16 In his Explanatory Memorandum of 2 November 2017,²⁵ the Secretary of State for Transport (Chris Grayling) said that the Government fully supported the amendment to the MoC between the EU and the US in the field of civil aviation R&D and that he considered it “extremely important” to support the continued integration of the SESAR and NextGen ATM modernisation programmes.

5.17 In terms of its effects, the Minister stated that the MoC would:

- continue to ensure mutually-beneficial co-operation in all fields of civil aviation including interoperability, the introduction of new technologies, reducing the environmental impact of aviation and coordination of deployment activities;
- contribute to the success and realisation of SESAR, and (vice versa) of the US NextGen programme; and

25 Explanatory Memorandum from the Minister, DFT, to the Chairman of the European Scrutiny Committee ([2 November 2017](#)).

- help achieve global interoperability in ATM which will increase safety, efficiency and sustainability, and avoid costly duplication of on-board equipment for airlines.

5.18 Of the MoC’s benefits for UK stakeholders, the Minister states that the MoC provides an opportunity for UK industry “to have full access to and to compete effectively in the US market.” The Committee sought further clarification about to what extent this benefit—i.e. the avoidance of carriers having to duplicate on-board equipment to comply with both ATMS—was contingent on being a party to the MoC.

5.19 Regarding the implications of the UK’s impending departure from the European Union, the Minister stated that: “The Government considers that it is in the UK’s interest to ensure the two programmes remain aligned, as UK airlines will wish to have continued access to both regions”.

5.20 In our report on 22 November 2017²⁶ the Committee granted the Government a waiver to vote for the MoC at the relevant meeting of Council. We retained the proposal under scrutiny and asked the Government to:

- specify in greater detail the nature of the “full access to ... the US market” that the Minister said the MoC would provide UK stakeholders with;
- clarify whether the market access referred to is strictly contingent on the UK being a party to the agreement, or whether these stakeholders would retain the same level of access outside it;
- clarify whether the Government considered that the UK would, if the UK left the EU without negotiating new arrangements in relation to the MoC, cease to be a party to it; and
- provide an assessment of how important the Government considered it that the UK find a way to continue to participate in this coordination between the EU and US ATMS systems post-withdrawal.

Letter from the Minister of 6 December 2017²⁷

5.21 The Transport Minister for Aviation, International and Security (Baroness Sugg) has responded to the Committee’s questions.

Market access provided by the MoC post-exit

5.22 On the nature of the market access that is provided by the MoC, she states that “The MoC will help to ensure that the operating concepts and technology used in the US and EU air traffic management systems will be interoperable, able to work between the two continents as seamlessly as possible, and make as much use of the same technology as possible.” She adds that, in practical terms, this interoperability will mean airline operators do not have to equip differently to operate in European and US airspace, and aerospace manufacturers will increase the prospect that they will be able to manufacture ATM equipment suitable for use by both US and EU service providers and operators.

26 Second Report HC 301–ii (2017–18) [chapter 15](#) (22 November 2017).

27 Letter from the Minister, DFT, to the Chairman of the European Scrutiny Committee ([6 December 2017](#)).

Application of the MoC post-exit

5.23 The Committee asked whether the MoC would cease to apply if the UK left the EU without any alternative arrangement in place. The Minister confirms that the MoC puts in place cooperation between the EU and US ATM modernisation programmes, and would therefore only apply to the UK while it remained an EU Member State.

Impact on UK stakeholders of non-participation

5.24 The Minister states that due to the UK’s geographical location and the amount of traffic between the UK and Europe, the UK will need to remain interoperable with the EU ATM system which is being modernised through SESAR, and that it is “therefore considering our future relationship with the programme.” The Minister states that the UK will also need to ensure the same interoperability with the US system and want to avoid our carriers having to equip differently to operate in the two regions. She adds that the MoC will help ensure the alignment between the US and EU ATM systems.

5.25 The Minister states that the Government is considering all the potential implications for participants in the UK ATM System arising from the UK’s exit from the EU.

5.26 In response to the Committee’s question about how important it was that the Government find a way to continue to participate in the EU-US initiative post-exit (in light of the Government’s assessment that the MoC was “extremely important”) the Minister states that whether the UK remains in the MoC is a matter for the negotiations but the Government recognises the need for continued cooperation with the EU on Air Traffic Management.

Previous Committee Reports

Second Report HC 301–ii (2017–18) [chapter 15](#) (22 November 2017).

6 UNCLOS: Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction

Committee’s assessment	Legally and politically important
Committee’s decision	Cleared from scrutiny; further information required
Document details	Recommendation for a Council Decision authorising the opening of negotiations on an international legally-binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
Legal base	Article 218(3) and (4) TFEU: unanimity
Department	Foreign and Commonwealth Office
Document Number	(39460), 5171/18 + ADD 1, COM(17) 812

Summary and Committee’s conclusions

6.1 This proposal would authorise the Commission, on behalf of the EU, to negotiate a new implementing agreement on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction in an intergovernmental conference under the UN Convention on the Law of the Sea (“UNCLOS”); and includes directives for it to conduct that negotiation. There have already been discussions within a Preparatory Committee of UNCLOS which has made a report to the UN General Assembly on the elements of a draft agreement and it has resolved to establish an intergovernmental conference to negotiate a text of a new agreement. The Commission was authorised to participate in the Preparatory Committee by Council Decision 2016/455.

6.2 The negotiating directives broadly seek: an effective and strengthened framework for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction using general principles for good governance—such as a science-based approach, application of the precautionary principle and the polluter pays principle; an express obligation to cooperate and a mechanism to do so; no undermining of existing legal instruments, rights and obligations; the promotion of legal certainty for users of marine genetic resources; the identification, designation and establishment of globally recognised marine protected areas; the use of environmental impact assessments; and provisions for capacity building.

6.3 The Minister (Sir Alan Duncan) indicates that the UK is a strong supporter of these negotiations which align with the Government’s 25 Year Plan to Improve the Environment.

6.4 However, he raises legal concerns that the proposal does not adequately reflect the fact that the negotiations covered areas of shared and parallel competence. Decision 2016/455 had an environmental legal basis to reflect the existence of shared competence

and made special provision for coordination between the Commission and the Member States in areas of shared competence – neither of which are found in the current proposal. He indicates that “This matter may be addressed in Council negotiations on this draft Decision”.

6.5 As this document raises no policy issues we clear it from scrutiny to facilitate its adoption in time for an April meeting of the intergovernmental conference. We note that the Minister believes that the issue of competence “may” be addressed in Council negotiations. We expect him to press for the competence issue to be satisfactorily resolved and ask him to report the outcome to us.

6.6 We also ask that his response elaborate on the standard-formula Brexit paragraph in his Explanatory Memorandum, and in particular address whether the UK can be a separate and full participant in any agreement that is reached after the UK’s formal exit from the EU or the expiry of any transitional/implementing period.

Full details of the documents

Recommendation for a Council Decision authorising the opening of negotiations on an international legally-binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction: (39460), 5171/18 + ADD 1, COM(17) 812.

The Explanatory Memorandum of 23 January 2018

6.7 In respect of the policy the Minister indicates:

“The United Kingdom is strong supporter of the negotiations for a new implementing agreement. This is because whilst a range of different bodies with varying responsibilities address the protection of marine biodiversity in areas beyond national jurisdiction, these bodies have sectorally or regionally restricted mandates. UK officials have participated in the negotiations from the outset of the Ad-Hoc working group.

“In the Government’s 25 Year Plan to Improve the Environment, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/673203/25-year-environment-plan.pdf, the Government commits to “Playing an active role in securing a new international agreement for the conservation and sustainable use of marine areas beyond national jurisdiction”. The Government’s priority in these negotiations is to deliver an outcome that protects the marine environment areas beyond national jurisdiction through the establishment of Marine Protected Areas and delivering an effective Environmental Impact Assessment regime. The new instrument should not inhibit research and allow appropriate commercial development of products derived from marine genetic resources.”

6.8 In respect of the legal issue arising on this proposal he indicates:

“Legal Basis of the Council Decision: the draft Council Decision states that the legal basis is Article 218 (3) and (4) of the Treaty on the Functioning of the European Union.

“It was the view of the Member States that the Prepcom negotiations covered matters of shared and parallel competence. This was reflected in the substantive legal base of Decision 2016/455, Article 192(1)—Environment, which is a matter of shared competence. This matter may be addressed in Council negotiations on this draft Decision.

....

The Commission’s mandate for the PrepCom phase of these negotiations was limited to negotiating matters falling within Union competence and on which the Union had adopted rules. The Presidency led the negotiations on matters falling within Member States’ competence (in areas of shared and parallel competence) based on positions agreed between the Member States. This draft Decision and the Negotiating Directives will be the subject of detailed negotiations in the Law of the Sea Working Party (COMAR).”

Previous Committee Reports

None.

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

Department for Environment, Food and Rural Affairs

- (39392) Report from the Commission to the European Parliament and the Council on the operation of the system of paying agencies in the agricultural sector.
15968/17
COM(17) 745
- (39404) Communication from the Commission on the European Citizens' Initiative "Ban glyphosate and protect people and the environment from toxic pesticides".
15992/17
+ ADD 1
- (39408) Report from the Commission to the European Parliament and the Council on the implementation of Article 45 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council on information measures relating to the common agricultural policy.
5058/18
+ ADD 1
COM(17) 777

Department for Transport

- (39355) Commission Delegated Regulation (EU) .../... of 17.11.2017 supplementing Directive 2014/94/EU of the European Parliament and of the Council as regards recharging points for L-category motor vehicles, shore-side electricity supply for inland waterway vessels and refuelling points for LNG for waterborne transport, and amending that Directive as regards connectors for motor vehicles for the refuelling of gaseous hydrogen.
14971/17
—
- (39446) Proposal for a Council Decision on the conclusion, on behalf of the European Union, of Amendment 1 to the Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union.
5474/18
COM(18) 27

Foreign and Commonwealth Office

- 39473 Council Decision (CFSP) 2018/... of [dd/02/2018] amending Decision 2011/101/CFSP concerning restrictive measures against Zimbabwe.
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39474 Council Implementing Decision (CFSP) 2018/... of [dd/02/2018] implementing Decision 2011/101/CFSP concerning restrictive measures against Zimbabwe.

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39475 Council Implementing Regulation (EU) 2018/88 of 22 January 2018 implementing Regulation (EU) 2017/2063 concerning restrictive measures in view of the situation in Venezuela.

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39476 Council Decision (CFSP) 2018/90 of 22 January 2018 amending Decision (CFSP) 2017/2074 concerning restrictive measures in view of the situation in Venezuela.

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39478 Council Decision on the European Union Special Representative for Human Rights.

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39480 Council Decision amending Decision 2012/389/CFSP on the European Union Mission on Regional Maritime Capacity Building in the Horn of Africa (EUCAP Somalia).

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HM Treasury

39058 Report from the Commission to the European Parliament and the Council on the Guarantee Fund for External Action and its management in 2016.

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Home Office

(39316) Communication from the Commission to the Council and the European Parliament on the mid-term evaluation of the Programme for exchange, assistance and training for the protection of the euro against counterfeiting ("Pericles 2020" Programme).

15521/17

COM(17) 741

Formal Minutes

Wednesday 7 February 2018

Members present:

Sir William Cash, in the Chair

Steve Double	Darren Jones
Kate Green	David Jones
Kate Hoey	Andrew Lewer
Kelvin Hopkins	Michael Tomlinson

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 Thirteenth Report of the Committee to the House.

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

[Adjourned till Wednesday 21 February 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*)