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European Scrutiny Committee

Twentieth Report of Session 2017–19

Documents considered by the Committee on 14 March 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/.

Staff

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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:

Brexit implications

Health technology assessment

- Post-Brexit participation in the EU's health technology assessment process.

Summary

Making EU subordinate legislation—adapting outstanding legal acts to new post Lisbon procedures

EU subordinate or "tertiary" legislation can be made by the Commission, in accordance with the powers conferred by parent Directives, Regulations or Decisions. Before Lisbon, such legislation was made in committees, a process known as "comitology". Much of it was aligned to Lisbon legislative procedures as either delegated acts (Article 290 TFEU) or implementing legislation (Article 291 TFEU) by the 2011 Comitology Regulation. This sounds very technical but control over tertiary legislation can be politically important to Member States as it can impact on daily lives, for example, by affecting product and food standards.

These two proposals are intended to align remaining pre- Lisbon subordinate legislation still subject to the old "regulatory procedure with scrutiny" (RPS) to post Lisbon procedure; one of the proposed Regulations covers Justice measures and the other, non-justice measures. The JHA opt-in applies to the proposal covering Justice measures and in previous correspondence the Government has informed us that it has opted into the proposal, despite some scrutiny lapses. Member States opposed a previous attempt in 2013 to align all acts automatically to delegated acts procedure. This is because Member States consider that they have better control than the EP over implementing acts due to the presence of their national experts on comitology committees. This is despite the fact that both the Council and EP can veto delegated acts.

It is unclear yet whether these proposals will apply before Brexit. Even so it seems unlikely that they would have a significant impact on the UK given that they only affect 168 measures, mostly align with implementing measures and can rely on the "Common Understanding" of early expert consultation. There are no specific Brexit implications. Given that and the fact that the Government is happy with approach being taken, we grant

a scrutiny waiver for a partial General Approach expected to be agreed in Council on 20 March. However, we retain the proposals under scrutiny until the outcome of Council meeting and trilogues as the EP may well wish to defend itself against any diminution of influence over future relevant tertiary legislation.

Not cleared from scrutiny; scrutiny waiver granted; further information requested.

Health technology assessment

The Commission proposes an EU framework for health technology assessment (HTA). This is the systematic evaluation of properties, effects and/or impacts of a health technology such as a particular drug or medical device. The Committee sees clear benefits to cooperation on HTAs, such as efficiency and speed, but recognises concerns expressed by the Government about the mandatory nature of HTA at EU level. The Committee looks forward to receipt of further information on the Government's position, particularly on the mandatory aspects of the proposal. In the light of the Prime Minister's announcement in her Mansion House speech that the UK will seek associate membership of the European Medicines' Agency (EMA), the Committee observes the links between this draft legislation and the EMA and considers it sensible to operate on the basis that the legislation will apply in some form to the UK post-Brexit. The Committee asks if the UK will be seeking to include language opening-up the possibility of third country participation in the EU's HTA process.

Not cleared; further information requested; drawn to the attention of the Health Committee.

Documents drawn to the attention of select committees:

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

Digital, Culture, Media and Sport Committee: International cooperation to combat match-fixing [Proposed Decisions (NC)]

Health Committee: Health Technology Assessment Regulation [Proposed Regulation (NC)]

1 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

1.1 The Council of Europe Convention on the Manipulation of Sports Competitions ("the Convention") seeks 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 the providers of sports betting services. The Convention is open for signature by Council of Europe members, the EU and certain third countries. So far, 21 EU Member States (not including the UK) have signed and one (Portugal) ratified the Convention.[1]

1.2 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.[2] In 2015, the Commission proposed two

1 See the full list of signatures and ratifications.

2 See recital (6) of Council Decision 2013/304/EU and recital (8) of Council document 10180/13 which provide: "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."

Council Decisions authorising the EU to sign the Convention. The Council was unable to reach agreement and the proposed Decisions were not adopted.[3] The EU has not therefore signed the Convention.

1.3 The Commission's latest proposals (published in August 2017) would authorise the EU to conclude (ratify) the Convention. The first of the two proposed Council Decisions—document (a)—would cover 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)—would cover 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.

1.4 The UK did not opt in to the earlier Council Decisions 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 some parts of the Convention were within the EU's exclusive competence, meaning that only the EU, not Member States, could act in relation to the provisions in 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.

1.5 In her Explanatory Memorandum on the latest Commission proposals to ratify the Convention, the Minister for Sport and Civil Society (Tracey Crouch) accepted that the EU might have "a yet to be determined role to play" in combatting match-fixing but disputed the Commission's view that the Convention covered areas in which the EU had exclusive competence. She questioned "what value the EU could add over and above Member States' efforts" and whether it was 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.[4]

1.6 The Minister told us that document (b) on the criminal law aspects of the Convention was subject to the UK's Title V (justice and home affairs) opt-in and that the Government had decided *not* to opt in.

1.7 We asked the Minister to explain why she had not complied with the Government's Code of Practice on parliamentary scrutiny of opt-in decisions which (amongst other things) is intended to ensure that the Scrutiny Committees in both Houses are able to consider the factors informing the Government's opt-in decision and express a view before a final decision is reached.[5]

3 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.

4 See the Minister's Explanatory Memorandum of 15 December 2017.

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

We also asked 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;
- clarify the Government's position on the division of competences between the EU and Member States and on the appropriate legal base for document (a);
- provide further information on the timing and sequence envisaged for agreeing EU participation in the Convention, including whether it would be feasible to proceed directly to conclusion without first authorising the EU to sign the Convention; and
- indicate whether and when the UK intends to sign the Convention.

1.8 The Minister offers her sincere apologies for breaching the Code of Practice. She says that the proposed Council Decisions have been discussed once, at Council Working Party level, and are unlikely to progress during the current Bulgarian Presidency. She does not consider that it would be feasible for the Council to adopt Decisions authorising the EU to conclude (ratify) the Convention without first authorising the EU to sign the Convention and says there is little to indicate that the "stalemate" which has so far prevented the Decisions on signature from being adopted will be overcome. The Minister confirms that the Government is taking steps to sign the Convention this year but will only be able to ratify it once the EU's involvement in the Convention has been resolved.

1.9 **We note the "distinct lack of clarity" about the prospects for advancing these proposals and the possibility that they may not be adopted by the Council. It is, nonetheless, unacceptable for the Government to take an opt-in decision—in this case, a decision *not* to opt in to document (b)—before setting out its position in an Explanatory Memorandum and ensuring that Parliament has been given the opportunity to express a view. We welcome the Minister's sincere apology but remain to be convinced that she appreciates the gravity of the breach of the Government's own Code of Practice on parliamentary scrutiny of opt-in decisions. Given her assurance in 2016 that "lessons have been learned" and processes put in place to ensure that breaches of the Code are "never repeated", we ask her to write to us with details of the steps that she now intends to take to ensure full compliance with the Code of Practice.**

1.10 **We note that the proposed Council Decisions are unlikely to be taken forward during the current Bulgarian Presidency. Should that change, we ask the Minister to update us promptly on any developments. Meanwhile, the proposals remain under scrutiny. We reiterate the position set out in our earlier Report that EU involvement in the Convention should be limited to areas in which the EU has exclusive competence. Member States should resist competence creep by ensuring that the EU is not authorised to act in areas where competence is shared.**

1.11 **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

1.12 Our earlier Report listed at the end of this chapter provides a more detailed overview of the proposed Council Decisions, the EU's attempts to participate in the Convention and our analysis of areas of exclusive and shared competence.

The Minister's letter of 21 February 2018

1.13 We recalled in our earlier Report that the Minister had not only failed to comply with the commitments set out in the Government's Code of Practice on scrutiny of opt-in decisions on this occasion, but also when our predecessors scrutinised the proposed Council Decisions authorising the EU to sign the Convention in 2015. She had said 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.[6] We asked her to provide a full explanation of the reasons for this second lapse and to tell us:

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

1.14 The Minister accepts that "the breach in following the Committee's procedures cannot be excused" and offers a sincere apology. She says that the Government had placed a scrutiny reservation on the proposed Council Decisions, adding:

> "[…] there being a distinct lack of clarity on how this file will, or will not be, taken forward for adoption within the European institutions, the department was very keen to exhaust every avenue in order to provide a more substantive update to the Committee. Unfortunately, owing to continuing lack of clarity from the European institutions, and despite concerted attempts by numerous departments to gain further insight, this has not been possible, and has resulted in this unfortunate delay.

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

> "Regarding the opt-in period, as the proposed Council Decisions were published on 24 August 2017, we believe that the three-month opt-in period expired on 24 November 2017. The Government's decision not to opt in was taken on 24 November 2017."

1.15 She confirms that she has now published a Written Ministerial Statement informing Parliament of the Government's decision not to opt into document (b).[7] This says:

> "While there there remains uncertainty as to how the EU might participate in the Convention, the Government have taken the decision […] not [to] opt in to the justice and home affairs provision in order to preserve the UK's ability to implement the Convention according to national needs, and in particular to preserve the ability to exercise the right of derogation under article 19 of the Convention (the extraterritorial application of offences)—preventing the EU from exercising competence on behalf of the UK."

1.16 We noted that the proposed Council Decision on the criminal law elements of the Convention—document (b)—did not include a recital making clear that the UK's Title V opt-in Protocol applied. We asked the Minister to ensure that that an appropriate recital was added and 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.

1.17 The Minister responds:

> "The proposed Council Decisions were drafted by the European Commission in isolation. There has only been one initial discussion on these Decisions at the Council Working Party level (26 September) where the UK placed a scrutiny reservation on the text which remains in place since no further discussions or negotiations are scheduled, nor has a timetable for the adoption of these Decisions been presented.
>
> "When the 2015 proposed Council Decision on the criminal law elements was presented, the UK successfully argued for the inclusion of a recital making clear that the UK's Title V opt-in Protocol applied. However, the revised Council Decisions agreed in draft form in 2015 containing this recital were never taken forward to the Council for adoption. Should these new Decisions be subject to any negotiation, the Government will again seek for the appropriate recital to be included in the proposed Council Decision on the criminal law elements of the Convention. As it stands, neither of the Council Decisions published in 2017 (documents (a) and (b)) are in a format to be taken forward and cannot be progressed, in our view, without the unanimous support of all Member States as it is a mixed agreement."

1.18 The Minister's Explanatory Memorandum indicated that the Commission was 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). We noted that recital

7 See the Minister's Written Ministerial Statement of 23 February 2018 on the Convention on the Manipulation of Sports Competitors.

(2) of the proposed Council Decision on the criminal law aspects of the Convention—document (b)—suggested that the Commission also considered there was exclusive EU competence for the money laundering aspects of the Convention. We asked the Minister:

- whether she agreed that this was the purpose and effect of recital (2); and
- whether she considered that the Commission had 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)—were described as "ancillary" or "incidental" to the main purposes of the Convention and so were not cited as legal bases for document (a).[8]

1.19 The Minister notes that recital (2) cites Council Framework Decision 2001/500/JHA on money laundering and the confiscation of proceeds of crime. The Commission considers that the Framework Decision establishes common rules on the definition of money laundering which might be affected by the provisions on money laundering in Article 16 of the Convention, giving the EU exclusive competence on the basis set out in a 1971 Court of Justice ruling (the AETR case).[9] She continues:

> "Article 83(1) TFEU allows the EU to establish minimum rules concerning the definition of criminal offences and sanctions in the area of serious crime. As both the Convention and Framework Decision 2001/500/JHA set out minimum standards, signature and conclusion of the Convention by the EU will not affect the uniform application of those EU rules. Therefore, the Government does not consider that this Framework Decision creates AETR exclusive EU competence vis-a-vis Article 16 of the Convention. The Government took this position during negotiations in 2015 on the draft Council Decisions on signature of the Convention, and will make the same arguments when the Council Decisions on conclusion are considered."

1.20 The Minister provides a copy of the statement in the Council minutes made by the UK and five other Member States in 2015:

> "The Republic of Cyprus, the Republic of Finland, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the United Kingdom continue to have doubts as to the existence of EU exclusive external competence in relation to Article 16(1) of the Convention. Article 83(1) of the Treaty on the Function of the European Union allows the European Parliament and the Council to establish minimum rules concerning the definition of criminal offences and sanctions in the area of particularly serious crime. In the view of the Republic of Cyprus, the Republic of Finland, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the United Kingdom, signature of the Convention will not affect the uniform application of common EU rules. Both the Convention and the European Union legislation simply set out minimum standards.

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

9 See the so-called AETR case (Case 22/70) in which the Court ruled that "wherever a matter forms the subject of a common policy, the Member States are bound in every case to act jointly in defence of the interests of the Community".

> "Therefore, in the opinion of the Republic of Cyprus, the Republic of Finland, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the United Kingdom, the Council Decision on signing the Convention on behalf of the European Union does not set a precedent concerning the exclusive external competence of the European Union."

1.21 During negotiations on the earlier proposed Council Decisions on signature, we noted that Member States had 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. None of these changes appear in the proposed Council Decisions concluding (ratifying) the Convention. We asked the Minister to explain the reason for these omissions and their significance in terms of EU involvement in implementing the Convention. We also asked whether she intended to press for changes to the substantive legal base of document (a) so that it would only cite Article 165 TFEU, a supporting competence which precludes any harmonisation of national laws.

1.22 The Minister says there has been no substantive discussion of the Commission's latest proposals so she is not yet in a position to explain why the Commission has not followed the approach taken by the Council in 2015/16 on the proposed Council Decisions on signature. She continues: "The Government will seek to make similar amendments to the draft Council Decisions on Conclusion as were made to the draft Council Decisions on signature in 2015."

1.23 We invited the Minister to clarify the timing and sequence envisaged for agreeing EU participation in the Convention and to explain:

- why the Commission had presented for adoption proposed Council Decisions on the conclusion of the Convention when the earlier Decisions on signature had not yet been adopted; and
- whether it would be feasible to proceed directly to conclusion without first authorising the EU to sign the Convention.

1.24 The Minister responds:

> "We attempted to seek clarity from the European Commission, the former Estonian Presidency of the EU Council, and the Council Secretariat upon publication of these proposed Council Decisions and around the time of the initial discussion on them on 26 September. However, no further information or clarity has been forthcoming. We have spoken to the incumbent Bulgarian Presidency of the EU Council who have indicated that they are not currently planning to progress this matter during their Presidency. We should also recognise that the earlier proposed Council Decisions on signature from 2015 have not been taken forward for adoption.
>
> "As the Committee notes, 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. This remains the case. We are aware of one

> Member State, Malta, that is not supportive of the Convention, nor of the EU's interest, and has therefore effectively blocked the EU's participation which appears to have led to a position of stalemate.
>
> "It is not clear but we believe that the Commission has presented for adoption proposed Council Decisions on the conclusion of the Convention—while the earlier Decisions on signature have not yet been adopted—as a tactic to resolve this deadlock. Given that there has been no substantive progress since publication, and with there continuing to be a lack of clarity as to how these Decisions will be taken forward, it is entirely possible that these Decisions will now sit alongside the earlier Decisions on signature from 2015 and remain unresolved. In any event, the Government view remains that it would not be feasible to proceed directly to conclusion without first authorising the EU to sign the Convention. On the basis that the Convention is a mixed agreement, there is a need for unanimity before the Proposal can proceed to a Qualified Majority Vote (QMV)."

1.25 Finally, the Minister had made clear in 2015 that the Government intended the UK 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.[10] We asked whether this remained the Government's position, even though it was 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. We invited her to explain whether there were other factors, apart from the unresolved question of EU participation, which were impeding the UK from signing.

1.26 The Minister tells us:

> "It is our understanding now that Member States are free to sign the Convention but are unable to ratify it until such time that the question of the EU's participation has been resolved. The Government is supportive of the Convention and has a stated commitment, as set out in the recently published Anti-Corruption Strategy, to sign it this year and are taking steps to do so.[11]
>
> "Were Member State signatories to ratify the Convention prior to the EU's participation being resolved, it would be contrary to the 'duty of sincere cooperation'. We have noted that Portugal has already proceeded to ratify the Convention but, it is not clear as to why it has done so, and the EU has not responded to this."

Previous Committee Reports

Tenth Report HC 301–x (2017–19), chapter 2 (17 January 2018).

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

11 See the UK Anti-Corruption Strategy 2017–22.

2 Comitology—adapting remaining legal acts to Lisbon procedures

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; scrutiny waiver granted for partial general approach; further information requested
Document details	Proposed Regulations adapting a number of legal acts (a) providing for the use of the Regulatory Procedure with Scrutiny (RPS) to Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU); (b) in the area of Justice providing for RPS to Article 290 TFEU.
Legal base	(a) Articles 33, 43(2), 53(1), 62, 62(2), 91, 100(2), 114, 153(2)(b), 168(4)(a), 168(4)(b), 172, 192(1), 207, 214(3) and 338(1) TFEU; ordinary legislative procedure; QMV; (b) Article 82(1) TFEU; ordinary legislative procedure; QMV
Department	Exiting the European Union
Document Numbers	(a) (38475), 5623/17 + ADD 1, COM (16) 799; (b) (38481), 5705/17 + ADD 1, COM (16) 798

Summary and Committee's conclusions

2.1 The Lisbon Treaty substantially altered the procedures for EU subordinate legislation. Previously the Commission only had the power to adopt implementing legislation subject to one or other of various "comitology" procedures. Now it can be given the power to adopt either:

- implementing legislation,[12] where uniform conditions for implementation' are needed (as defined in Article 291 TFEU); or
- delegated legislation[13] "for measures to `supplement or amend certain non-essential elements of a basic legislative act' (as defined in Article 290 TFEU).

2.2 One form of the previous comitology procedure, the regulatory procedure with scrutiny (RPS), was not automatically transferred by the 2011 Comitology Regulation[14] to the new implementing legislation procedures, as were the other procedures. Currently RPS still covers 168 existing basic acts and continues to apply in those acts until they are formally amended and adapted to the Lisbon Treaty.

2.3 The unsuccessful history of the previous alignment proposals (Omnibus I, II and III) initiated in 2013 by the Commission is set out in our previous Report.[15] The Commission,

12 Subject to procedures similar to the previous comitology procedures, whereby the adoption of an implementing act by the Commission is subject to its scrutiny (to varying degrees of stringency) by a committee of the representatives of the Member States chaired by the Commission itself.

13 The main characteristic of the delegated legislation procedure is that the Council or the European Parliament may block the adoption of the proposed subordinate legislation by the Commission.

14 182/2011.

15 Thirty-second Report, HC71–xxx (2016–17), chapter 2 (22 February 2017).

responding to Member State opposition to the wholesale alignment to delegated acts in those Omnibus proposals, proposed these two new measures in early 2017. Document (a) seeks alignment for non-justice related acts and (b) for those in the justice field.

2.4 The previous Government told our predecessors that although it regretted the loss of expert representatives on an RPS committee to block or amend a proposal, its approach to the new proposals had been tempered by:

- commitments in the "Common Understanding on Delegated Acts"[16] which accompanied the IIA to consult national experts early on the preparation of draft delegated acts; and
- a more nuanced approach to alignment taken by the Commission this time, reflected in its alignment of some RPS procedures with implementing acts, rather than delegated legislation.

2.5 In our predecessors' Report on the proposals in February 2017, they concluded that:

- given the expected timings of the Brexit negotiations and the mitigations offered by the "Common Understanding on Delegated Acts", they did not think the proposals were likely to have a significant impact on the UK before Brexit. Nevertheless, they asked the then Minister (David Jones) to highlight any particular measures of concern caught by alignment to delegated act procedures when he next wrote; and
- although the proposals themselves did not have direct Brexit implications, the Committee would be looking at the relationship between Brexit and EU subordinate legislation during scrutiny of other ongoing substantive EU proposals. This might include identifying whether the UK has a policy of ensuring that provisions in current legislative proposals affecting third country cooperation with the EU are settled favourably whilst the UK still has influence as a Member State and not left subject to the unpredictability of Commission delegated or implementing powers after Brexit.

2.6 The current Government informed us in July 2017 that it had decided to opt in to proposal (b) to protect its pre-Brexit position in relation to the three civil justice measures covered by the proposal (see paragraph 2.10 for further detail and links to related correspondence).

2.7 The Minister of State for Exiting the EU (Lord Callanan) now writes to update us on progress in the negotiations of the proposals. In particular, the government would like to support a General Approach being sought at the General Affairs Council of 20 March. The Government therefore requests a scrutiny waiver or clearance of the proposal. Subsequent to the Minister's letter, our staff were informed by Government officials that only a partial General Approach will now be sought. This is on the basis that Council discussions be deferred on certain legal acts, including two of the acts in the Justice field.

2.8 **We thank the Minister for the update on the proposals as set out in his letter.**

16 Common Understanding between the European Parliament, the Council and the Commission on Delegated Acts, Annex to the IIA, COM(15) 216.

2.9 **We retain the documents under scrutiny until the outcome of this partial General Approach and then future trilogue negotiations is known. This is not least because the European Parliament may be mindful of any diminution in its own influence over future tertiary legislation resulting from these proposals. However, on the basis of what the Minister says in his letter and informed by the latest information from Government officials about the agreement now sought at the 20 March Council meeting, we are prepared to grant the Government a scrutiny waiver for the agreement of a partial General Approach at that meeting. We would be grateful to be updated on the outcome of that meeting in due course.**

Full details of the documents

(a) Proposal for a Regulation of the European Parliament and the Council adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union: (38475), 5623/17 + ADD 1, COM(16) 799; (b) Proposal for a Regulation of the European Parliament and the Council adapting a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny to Article 290 of the Treaty on the functioning of the European Union: (38481), 5705/17 + ADD 1, COM(16) 798.

Previous correspondence

2.10 We have corresponded with the Government on two occasions since our last Report of 22 February 2017 in relation to proposal (b) on adapting legal acts in the Justice field to post Lisbon comitology procedures. Both letters concern scrutiny formalities relating to the Government's decision to opt into proposal (b) covering three civil justice measures covered by proposal (b):[17]

- letter from the former Minister of State for Exiting the EU (Baroness Anelay of St Johns) dated 17 July 2017[18] and our reply of 13 November 2017 to her successor, the current Minister (Lord Callanan);[19] and
- letter from Lord Callanan dated 20 December 2017[20] and our reply of 17 January 2018.[21]

The Minister's letter

2.11 In his most recent letter of 6 March which is the central focus of this Report chapter, the Minister of State for Exiting the EU (Lord Callanan) says:

> "Thank you for your letter of 17 January 2018, requesting an update on significant developments in the negotiations of the alignment proposals

17 Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters; Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims; and Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation No 1348/2000.

18 See this link to the Cabinet Office European Memoranda website.

19 See this link to the European Scrutiny Committee website.

20 See this link to the Cabinet Office European Memoranda website.

21 See this link to the European Scrutiny Committee website.

dealing with measures requiring adaption to post-Lisbon subordinate legislation procedures. Each individual change has been discussed in the EU at a technical level.

"I am writing to inform you that on 26 February, after one year of negotiations, the last Friends of Presidency (FoP) meeting took place to discuss the proposals. A general approach will now be discussed in COREPER on 14 March before going to the General Affairs Council on 20 March for agreement.

"As outlined in the Explanatory Memorandum the exercise is intended to align existing legislation to the new post-Lisbon tertiary legislation methodology. The substance and effect of these Regulations are not being amended, but instead will become subject to the same updating procedures as apply to other, post-Lisbon Regulations. These changes are merely a technical adjustment forming part of a wider effort to streamline legislation, which the UK is supportive of. This exercise of alignment has failed twice before but has been progressing well within the Council since the Commission proposed the present draft Regulation in December 2016.

"At the final FoP meeting on 26 February 2018, the Presidency provisionally agreed that there was an agreement on enacting the terms of the proposal for the adaption of a number of legal acts with some exceptions—it was agreed that Act 99 (Cosmetics Directive) and Act 121 (Driving Licenses Directive) should be removed from the Omnibus measure to be dealt with separately at a later date. Such a withdrawal has already been chosen for 28 texts out of the list initially included in the Omnibus. Officials in my department consulted the relevant departments on the UK's position on these individual acts and are content with the final outcome. It is not yet clear what the process for dealing with acts removed from the Omnibus will be.

"We remain a member of the EU until the process of withdrawal is completed and continue to play a role in supporting the interests of the UK and contribute to the EU agenda. As the Prime Minister set out, the UK is seeking a strictly time-limited implementation period, based on the existing structure of EU rules and regulations. It is therefore important that we continue to constructively engage on this alignment exercise.

"To be able to participate in the vote at the General Affairs Council on 20 March, I am requesting scrutiny clearance or a waiver to be able to support the Council position. I will of course keep you updated on the progress of the trilogue negotiations."

Previous Committee Reports

Thirty-second Report, HC71–xxx (2016–17), chapter 2 (22 February 2017).

3 Health Technology Assessment Regulation (39488)

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Health Committee
Document details	Proposal for a Regulation of the European Parliament and Council on health technology assessment and amending Directive 2011/24/EU
Legal base	Article 114 TFEU, QMV, Ordinary legislative procedure
Department	Health
Document Number	(39488), 5844/18 + ADDs 1–2, COM(18) 51

Summary and Committee's conclusions

3.1 Following several years of informal and project-based cooperation, the Commission proposes an EU framework for health technology assessment (HTA). This is the systematic evaluation of properties, effects and/or impacts of a health technology such as a particular drug or medical device. It is multidisciplinary, taking into account the social, economic, organisational and ethical issues of the technology.

3.2 The Commission is concerned that the different approaches to HTA across the EU lead to duplication of effort, unnecessary costs and divergent results which, ultimately, mean variable patient access to drugs and devices in different Member States. Following a consultation about options for strengthened cooperation on HTA, the Commission proposes:

- mandatory joint clinical assessments—phased-in over a transitional period—focusing on the most innovative health technologies, those with potentially the greatest impact and those with a "significant cross-border dimension";
- joint scientific consultations whereby manufacturers can seek the advice of HTA authorities on the type of data that would be required to support a joint clinical assessment;
- identification of emerging health technologies; and
- voluntary cooperation at EU level in areas not covered by mandatory cooperation—for example on health technologies other than medical devices (such as surgical procedures) or on economic aspects of health technologies.

3.3 The Parliamentary Under Secretary of State for Health (Lord O'Shaughnessy) summarises the Government's position as supportive of the potential benefits that voluntary collaboration on HTAs can bring, but wary of the mandatory aspects. The Government looks forward to constructive discussion on the proposal.

3.4 The Minister highlights a number of uncertainties in assessing the impact of the proposal on the UK. These are set out in detail below, but they include:

- the nature of the future EU-UK relationship;
- the overall ambition may change in the course of negotiations; and
- a lack of clarity as to any potential impact on Member States' decisions on funding decisions on reimbursement and delivery of healthcare.

3.5 **We see clear benefits to cooperation on HTAs, such as efficiency and speed, but recognise the concerns around their mandatory nature. We note that mandatory assessments are largely restricted to those medicines subject to centralised EU authorisation through the European Medicines' Agency as well as those medical devices with a significant cross-border dimension. While we support the high-level objective of the proposal and acknowledge the case for EU-level action, we share the Government's concern that the proposals may be disproportionate.**

3.6 **It is clear from the Minister's helpful Explanatory Memorandum that the Government is at an early stage of its analysis. We look forward to receipt of further information on the Government's position, including:**

- **the extent to which the Government agrees with the three problems identified by the Commission (impeded and distorted market access, duplication of effort and unsustainability of current cooperation mechanisms);**
- **the role, composition and powers of the proposed Member State Coordination Group on HTAs;**
- **the scope and identification of joint clinical assessments;**
- **the procedures for preparing and approving joint clinical assessment reports;**
- **the use of joint clinical assessment reports at Member State level;**
- **transitional arrangements;**
- **the proposed rules for clinical assessments and proposed safeguard clause, allowing Member States to carry out a clinical assessment on the basis of different rules; and**
- **any other concerns relating to the proposals for mandatory joint clinical assessment and other aspects of the proposal.**

3.7 **In terms of the future EU-UK relationship, we note the Prime Minister's announcement in her Mansion House speech[22] that the UK will seek associate membership of the European Medicines' Agency (EMA). She described the benefits of this as meaning, among other advantages, that innovative new medicines could reach UK patients faster as firms prioritise larger markets when they start the lengthy process of seeking authorisations. Medicines are authorised by the EMA through Regulation 726/2004, and it is these medicines which would be subject to mandatory**

22 https://www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union.

joint clinical assessments under the Commission's proposal. While the EU's response to the Prime Minister's suggestion cannot be foreseen, it would be prudent to imagine that the UK would be required to apply relevant EU legislation should it wish to be an associate member of the EMA and that this proposed legislation would be deemed to be relevant. For the moment, we consider it sensible to operate on the basis that the legislation will apply in some form to the UK post-Brexit. The modalities of any such application would clearly need to be worked through as the proposal provides no possibility for third country involvement. It would be helpful to know if the UK will be seeking to include language opening-up the possibility of third country participation in the EU's HTA process.

3.8 **We draw this document to the attention of the House as politically important and retain it under scrutiny. Given the interest of the Health Committee in medicines and medical devices, we draw the document to the particular attention of that Committee.**

Full details of the documents

Proposal for a Regulation of the European Parliament and Council on health technology assessment and amending Directive 2011/24/EU: (39488), 5844/18 + ADDs 1–2, COM(18) 51.

Background

Current approach to HTA in UK and across EU

3.9 HTAs are carried out in England by the National Institute for Health and Care Excellence (NICE), in Scotland by the Scottish Medicines Consortium (SMC), in Wales by the All Wales Medicines Strategy Group (AWMSC) and in Northern Ireland by the Department of Health, Social Services and Public Safety (DHSSPS).

3.10 In England, commissioners are legally required to fund drugs and treatments positively appraised by NICE through its technology appraisal and highly specialised technologies programmes. In Wales, all health boards and trusts are required to fund all positive recommendations made by NICE and the AWMSG. In Scotland, where the SMC accept a medicine for routine use in the NHS, Health Boards are expected to make it, or its equivalent, available. Where NICE-approved technologies are endorsed by the DHSSPS for implementation in Northern Ireland, they are expected to be made available to patients within specified timeframes; there are separate arrangements in Northern Ireland for drugs recommended by the SMC but not appraised by NICE.

3.11 Other Member States have HTA bodies but these are all different, some are part of government or government agencies and others not. All countries have different systems for assessing health technologies and for patient access:

- some health systems are funded by the tax payer while others are insurance based;
- different legislative requirements underpin the various HTA bodies;
- some countries give more weight to budget impact and others to general health economics; and
- different societal priorities, for example weightings given to end of life criteria, are used by different bodies.

3.12 Member State HTA bodies have been co-operating informally over a number of years, but recently intensified. An HTA network[23] was established in 2013 following adoption of the Cross-Border Healthcare Directive (Directive 2011/24/EU), requiring that the EU support and facilitate cooperation on HTA. The current joint action focuses on developing common assessment methodologies, and piloting and producing joint reports. All EU Member States participate in this on a voluntary basis—as well as Norway and Switzerland—and NICE is a key player. For example, NICE leads on work supporting implementation of joint HTA outputs into national procedures and is also involved in evidence generation and scientific advice.

Problems identified by the Commission

3.13 The Commission has identified three problems, which it considers cannot be sufficiently addressed by continued project-based voluntary cooperation:

- impeded and distorted market access—different national processes and methodologies mean that health technology developers are confronted with a range of data and evidence requests which can also contribute to delays and inequalities in the availability of innovative health technologies for patients;
- duplication of work carried out by HTA bodies—clinical assessments of the same technologies are being conducted in parallel by HTA bodies in different Member States, resulting in duplication of work and inefficient use of resources; and
- unsustainability of HTA cooperation—current EU-level cooperation is project-based, meaning that its funding is short term, needs to be secured and renegotiated in every financial cycle and there is no guarantee for the continuation of activities in the long-term.

Proposed solution

3.14 The proposal sets out four areas for joint work of Member States at EU-level. These are: mandatory joint clinical assessments; joint scientific consultations; identification of emerging health technologies; and voluntary cooperation at EU level in areas outside the scope of mandatory cooperation.

3.15 A Member State Coordination Group on HTA would be established comprised of the responsible national authorities for HTA. It would be responsible for carrying out joint clinical assessments.

3.16 The joint clinical assessments would eventually cover medicinal products undergoing the central marketing authorisation procedure, all medicines with a new active substance, existing products for which the marketing authorisation is extended to a new therapeutic indication and a number of (but not all) medical devices.

23 http://www.eunethta.eu/about-eunethta/our-network/.

3.17 At the end of a transitional period, participation in the joint clinical assessments and use of the reports would be compulsory at Member State level. However, Member States would continue to be responsible for assessing non-clinical (e.g. economic, social, ethical) aspects of a health technology.

3.18 Member States would also be required to follow common rules and an agreed methodology when carrying out HTAs nationally. The rules and methodologies will be set out in implementing acts to be adopted after the Regulation comes into force. These will seek to ensure that HTAs are done independently, transparently and free from conflicts of interest. They would also be used for joint clinical assessments at EU-level. In addition, implementing or delegated acts would set out procedural rules on the data and evidence to be provided by the industry for HTAs, the contents of the reports and which stakeholders would need to be consulted. The Commission would sign off joint clinical assessment reports. If the Commission is not satisfied that the joint clinical assessment report complies with the Regulation it would be able to ask the Coordination Committee to review it.

3.19 There is a "safeguard" clause allowing HTAs to be carried out at national level using means other than the common rules should there be a need to protect public health specific to a Member State. However, this would have to be officially justified and notified to the Commission for assessment.

3.20 On joint scientific consultations, the proposal provides for the possibility for health technology developers to make a request to the Coordination Group for such a consultation. These would allow a developer of a health technology to seek the advice of HTA authorities and bodies on the data and evidence likely to be required as part of a potential future joint clinical assessment.

3.21 Emerging health technologies would be identified in an annual study to be carried out under the responsibility of the Coordination Group.

3.22 Finally, the proposal provides for the possibility for Member States to continue to cooperate on a voluntary basis at Union-level. This voluntary cooperation would allow for HTA on health technologies other than medicinal products or medical devices, non-clinical assessments, collaborative assessments on medical devices i.e. on medical devices not selected for joint clinical assessment, and cooperation on the provision of additional evidence which can facilitate HTA.

3.23 The proposal is for the Regulation to apply in 2022, three years after it comes into force, to allow for all the planned implementing and delegated acts to be prepared and adopted, as well as for the preparatory steps necessary for the joint work. Member States would also be able to delay their participation in joint clinical assessments and joint scientific consultations for a further three years during a proposed transition period (likely 2022–2025) to allow them time to fully adapt to the new system.

The Minister's Explanatory Memorandum of 26 February 2018

3.24 The Minister observes that, in England, NICE already does much of what is proposed: early dialogue with manufacturers; stakeholder consultations on draft guidance; horizon

scanning for emerging technologies; updates in cases of new evidence; growing use of real world data; and using proposed timelines to enable Member States to make decisions at time of market launch is similar to what NICE's processes seek to achieve currently.

3.25 While the Government recognises the potential benefits of voluntary EU collaboration on health technology assessments and looks forward to constructive discussions on the proposal, there are a number of uncertainties which mean that the Government cannot yet be clear what the Regulations would mean for the UK. These are:

- the nature of the future relationship between the EU and the UK;
- what the tertiary legislation will cover and what procedures will be used for adoption of such legislation;
- potential changes to the overall ambitions of the proposed Regulation during the course of negotiations;
- the level of quality and timeliness of the proposed joint clinical assessments;
- the need to analyse the mandatory aspects of joint clinical assessments and consider their impacts (for example, any Member State carrying out an HTA on a health technology subject to a joint clinical assessment would be prohibited from repeating any of that assessment within Member State processes);
- the extent to which the proposals will impact Member States' funding decisions on reimbursement and delivery of healthcare (the Commission has said that the proposals should not have any such impact); and
- any difference in the proposed methodology compared to how NICE currently undertakes HTAs.

3.26 The Minister concludes in the following terms:

> "In summary, though there remain a number of uncertainties, the Government recognises the potential benefits that voluntary EU collaboration on health technology assessments can bring and looks forward to constructive discussions on the proposal. The UK has much to offer in this area in technical expertise including, as mentioned above, the experience of NICE. The Government will question the use of mandatory aspects and will monitor carefully discussions on Member State competence."

Previous Committee Reports

None.

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

(39506) 6318/18 + ADD 1 COM(18) 72	Proposal for a Council Decision on the signing, on behalf of the European Union, and provisional application of the Agreement for scientific and technological cooperation between the European Union and the Kingdom of Morocco setting out the terms and conditions for the participation of the Kingdom of Morocco in the Partnership for Research and Innovation in the Mediterranean Area (PRIMA).
(39507) 6321/18 + ADD 1 COM(18) 74	Proposal for a Council Decision on the conclusion of the Agreement for scientific and technological cooperation between the European Union and the Kingdom of Morocco setting out the terms and conditions for the participation of the Kingdom of Morocco in the Partnership for Research and Innovation in the Mediterranean Area (PRIMA).

Department for Environment, Food and Rural Affairs

(39365) 15780/17 COM(17) 810	Report from the Commission to the European Parliament and the Council on progress in implementing Regulation (EC) 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register (EPRTR).

Department of Health

(39213) — —	Report on the annual accounts of the European Food Safety Authority for the financial year 2016 together with the Authority's reply.

Department for International Development

(39519) — —	On the position to be taken on behalf of the European Union in the ACP-EU Committee of Ambassadors regarding the revision of Annex IC of the ACP-EU Partnership Agreement.

Foreign and Commonwealth Office

(39256)
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Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank Annual Growth Survey 2018.

(39257)
—
—
Council Implementing Regulation (EU) 2018/… of … implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.

(39528)
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—
Council Decision (CFSP) 2018/280 of 23 February 2018 amending Decision 2012/642/CFSP concerning restrictive measures against Belarus.

(39529)
—
—
Council Regulation (EU) 2018/275 of 23 February 2018 amending Regulation (EC) No.765/2006 concerning restrictive measures in respect of Belarus.

(39531)
—
—
Council Decision (CFSP) 2017/… of (dd/mm/2017) amending Decision 2011/173/CFSP concerning restrictive measures in view of the situation in Bosnia and Herzegovina.

(39532)
—
—
Council Decision (CFSP) 2017/… of (dd/mm/2017) repealing Common Position 97/193/CFSP.

HM Treasury

(39192)
13933/17
COM(17) 636
Report from the Commission to the European Parliament and the Council on the activities of the European Globalisation Adjustment Fund in 2015 and 2016.

(39498)
6135/18
COM(18) 61
Proposal for a decision of the European Parliament and of the Council on the mobilisation of the European Globalisation Adjustment Fund following an application from Germany EGF/2017/008 DE/Goodyear.

Home Office

(39231)
14473/17
+ ADDs 1–8
COM(17) 669
Report from the Commission to the European Parliament, the European Council and the Council Progress report on the European Agenda on Migration.

(39322) 15574/17 COM(17) 820	Communication from the Commission to the European Parliament, the European Council and the Council Commission contribution to the EU Leaders' thematic debate on a way forward on the external and the internal dimension of migration policy.
(39426) 5260/18 + ADD 1 COM(18) 31	Proposal for a Council Decision on the position to be adopted, on behalf of the European Union, in the sixty-first session of the Commission on Narcotic Drugs on the scheduling of substances under the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol and the Convention on Psychotropic Substances of 1971.
(39429) 5248/18 + ADD 1 COM(18) 7	Proposal for a Council Decision establishing the position to be taken on behalf of the European Union within the Joint Committee set up under the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas, with regard to the adoption of common guidelines for the implementation of the Agreement.
(39402) 16006/17 + ADD 1 COM(17) 815	Report from the Commission to the European Parliament and the Council First Report under the Visa Suspension Mechanism.

Formal Minutes

Wednesday 14 March 2018

Members present:

Sir William Cash, in the Chair

Douglas Chapman	Darren Jones
Geraint Davies	David Jones
Richard Drax	Stephen Kinnock
Marcus Fysh	Andrew Lewer
Kate Green	Michael Tomlinson
Kate Hoey	David Warburton
Kelvin Hopkins	

3. 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 4 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 21 March 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*)