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European Scrutiny Committee

Forty-third Report of Session 2017–19

Documents considered by the Committee on 31 October 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.

Summary

Ending seasonal time changes

The European Commission President (Jean-Claude Juncker) announced in his recent State of the Union speech: "Clock-changing must stop. Member States should themselves decide whether their citizens live in summer or winter time". The proposed Directive would discontinue the twice-yearly clock changes in March and October and require each Member State to decide whether to observe summer time (GMT+1 in the UK) or standard time all year round. EU legislation to coordinate the dates on which the clocks change has been in place since 1980. It was introduced to avoid any disruption to the functioning of the common (and later) EU internal market. The Government considers that "the evidence to support maintaining harmonisation of time in the Union is strong" but doubts whether it is sufficient to warrant the wholesale discontinuation of seasonal clock changes throughout the EU. The European Scrutiny Committee questions whether the power to coordinate arrangements originally decided on at national level can be extended in such a way as to divest Member States of the right to determine at national level whether seasonal time changes are necessary. It also questions whether seasonal time variations are more detrimental to the operation of the internal market than different time zones (which remain a Member State competence) and why there is a clear market rationale to intervene on one but not the other. **The Committee recommends that the House issue a Reasoned Opinion*** — a mechanism contained in the EU Treaties which enables national parliaments to challenge the need for the EU to act and the "added value" of the action proposed. The Committee also asks the Government for a more detailed analysis of the scope of the EU's powers to act and the justification for the action proposed by the Commission. It requests further information on the position of the Devolved Administrations and on the wider Brexit implications, given the possibility that the Directive may be adopted and take effect during a post-exit transition/implementation period in which EU law would continue to apply to the UK.

Not cleared from scrutiny; recommended for debate on a Reasoned Opinion in European Committee C; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Exiting the European Union Committee

*See the Forty-second Report of Session 2017–19.

Control of exports of dual-use items

The proposal aims to modernise and strengthen the current EU legislative framework for export controls on dual-use items (i.e. goods, including software and technology, which can have both civil and military applications). This includes measures to help prevent human rights violations associated with certain cyber-surveillance technologies. The Government provides its first substantive update on Council negotiations since October

2016. It notes that the Council remains divided on key aspects of the proposal, including the proposed introduction of an autonomous (EU-specific) list of dual-use cyber-surveillance technologies of concern, which would depart from the established practice to date of deriving control lists from the various multilateral export control regimes. The Committee asks to be kept updated on negotiations, and to be provided with an updated assessment of the expected shape of the UK's post-Brexit dual-use export control regime, focusing on the administrative and financial costs to UK competent authorities and traders of dual-use items: in the event of 'no-deal' (leaving the EU without an agreement and therefore no transition period); during any transition period; and post-exit/transition period.

Not cleared from scrutiny; further information requested; drawn to the attention of the International Trade Committee, the Committees on Arms Export Controls and the Joint Committee on Human Rights

Strengthening the European Union Agency for Asylum

In response to the migration and refugee crisis, the European Commission put forward a package of asylum reforms in 2016, including a proposed Regulation to transform the existing European Asylum Support Office into a fully-fledged EU Agency for Asylum with stronger powers to monitor the application of EU asylum rules and provide operational and technical assistance to Member States. The Government decided not to opt in, describing the UK's asylum system as "a sovereign matter". The Council and European Parliament reached a provisional agreement on the proposal at the end of 2017, but it can only be formally adopted once all the other elements of the Commission's asylum reform package have also been agreed. The Commission's latest proposed Regulation is part of a wider effort to break the deadlock in negotiations by identifying a range of support measures to relieve pressure on Member States facing disproportionate migratory flows and "strike the right balance between solidarity and responsibility". It would amend the Commission's 2016 proposal to increase the operational and technical support that the Agency can provide to Member States and strengthen cooperation with other EU agencies, notably the European Border and Coast Guard Agency. The Government considers that the proposed Regulation is subject to the UK's Title V (justice and home affairs) opt-in as it cites a Title V legal base. There appears little prospect that the Government would wish to opt in, given its view that monitoring by the Agency and intervention in the UK's asylum procedures would be "unacceptable". The European Scrutiny Committee questions whether a further opt-in decision has to (or can) be taken, in light of the Government's decision not to opt into the earlier (2016) proposal. It asks what relationship the Government envisages seeking with the new Agency (if established) post-exit.

Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee

Strengthening the European Border and Coast Guard

The proposed Regulation would significantly enhance the operational capability of the European Border and Coast Guard (EBCG) Agency (the successor to Frontex) so that it is equipped to operate as "a genuine border police", providing operational and technical assistance to Member States in border management and returns. It is intended to

complement the Commission's proposal for a strengthened EU Asylum Agency. The core element of the proposed Regulation is the creation of a "standing corps" of 10,000 staff (some directly employed by the EBCG Agency, the rest seconded by Member States) by 2020. As the proposed Regulation builds on parts of the Schengen rule book on external border control which do not apply to the UK, the UK is not entitled to participate in (or vote on) the proposal and will not be bound by it once adopted. The Government nonetheless sees "great value in supporting the Agency" and broadly welcomes the changes proposed. The European Scrutiny Committee notes that the changes proposed would signify a substantial scaling-up of the staff and equipment available to the European Border and Coast Guard, its operational capabilities and powers, and its budget (totalling €11.3 billion for the period 2021–27). It requests further information on: the role of the EBCG Agency in "controlled centres" (a new concept emerging from discussions at the June 2018 European Council); the Government's view on the size of the new standing corps, the scope of its operational powers and the impact on the sovereign control of national borders; and the implications of a more visible EBCG Agency for UK nationals crossing the EU's external borders post-exit/transition.

Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee

Documents drawn to the attention of select committees:

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

Business, Energy and Industrial Strategy Committee: Ending seasonal changes of time [Proposed Directive (NC; Draft Reasoned Opinion; Recommended for Debate)]

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

Defence Committee: Permanent Structured Cooperation on defence: binding commitments for participating countries [Council Recommendation (C)]

Exiting the European Union Committee: Ending seasonal changes of time [Proposed Directive (NC; Draft Reasoned Opinion; Recommended for Debate)]

Foreign Affairs Committee: Permanent Structured Cooperation on defence: binding commitments for participating countries [Council Recommendation (C)]

Home Affairs Committee: Strengthening the European Union Agency for Asylum [Proposed Regulation (NC)]; Strengthening the European Border and Coast Guard [Proposed Regulation (NC)]

International Trade Committee: Trade and Investment Barriers in 2017 [Commission Report (C)]; Control of Exports of Dual-Use Items [Proposed Regulation (NC)]

Joint Committee on Human Rights: Control of Exports of Dual-Use Items [Proposed Regulation (NC)]

Treasury Committee: Non-performing loans: prudential requirements, debt management and collateral recovery [(a) Proposed Regulation (C); (b) Proposed Directive (NC)]

1 Second mobility package: international coach and bus travel

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services
Legal base	Article 91(1) TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39208), 14184/17 + ADDs 1–4, COM(17) 647

Summary and Committee's conclusions

1.1 The proposal under scrutiny would amend existing EU-level rules on access to the international market for coach and bus services.[1] The proposal forms part of the second phase of the Commission's 'Europe on the Move' mobility initiative (which is broadly focussed on the promotion of clean mobility).

1.2 The proposal aims to address shortcomings in the operation of the EU's coach and bus framework identified by an ex-post evaluation undertaken by the Commission between 2015 — 17. The shortcomings identified by the *ex-post* evaluation include:

- The failure of the inter-urban coach and bus sector to grow at a rate comparable to that of other transport modes and its continued decline in modal share over an extended period;
- Obstacles in national markets hindering the development of inter-urban coach and bus services;
- The lesser appeal to users of international regular services by coach and bus without competitive inter-urban services;
- The omission from the objectives of the 2009 Regulation of the problem of discrimination in access to terminals; and
- Excessive administrative costs to entry.

1.3 The proposed amending Regulation seeks to tackle these problems by:

- Redefining the meaning of cabotage, in particular, removing the element that refers to it as being 'temporary';

1 Primarily under Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services.

- Allowing operators to provide services in other Member States;
- Defining what constitutes a coach terminal and setting out the basis for non-discriminatory access to terminals;
- Requiring Member States to establish a national regulatory body to ensure access to terminals and to assess whether any public service contracts are jeopardised by the provision of any service where passengers are carried less than 100km (as the crow flies);
- Abolishing the requirement for a 'journey form' on international occasional journeys; and
- Introducing new reporting obligations for Member States.

1.4 In his Explanatory Memorandum of 20 December 2017, the Parliamentary Under Secretary of State (Jesse Norman) at the Department for Transport stated that the Government was still considering its position on the proposal and had not, at the time of writing, undertaken a detailed analysis of its potential policy implications.

1.5 As such, we requested further information on the following points:

- Clarification as to how the Government intends to tackle the issue of enforcement if non-resident carriers will be regulated by enforcement agencies in another country;
- Clarification as to whether the Government intends to create a new regulatory body or simply to modify the existing system;
- Clarification as to whether the Government intends to accept liberalised terms of access for non-resident EU operators if the same terms are not reciprocated after exit; and
- That the Government inform us of any assessment it carries out with regard to the proposal's impact and costs for the UK.

1.6 In her letter of 14 May 2018, the Parliamentary Under Secretary of State (Nusrat Ghani) lays out the details of the EU-level system for reporting non-compliance with relevant bus and coach rules (such as on road safety, environmental protection and driver's hours). This system requires competent authorities in the Member State of a vehicle's registration to act upon reported offences. The Minister notes that as the proposal includes the possibility for vehicles to be permanently based in a Member State other than that of its registration, questions remain as to how effective monitoring and enforcement will be ensured. The Minister raises a similar issue with regards to checks that have to be made at operational bases. On both fronts, the Minister states that further clarification will be sought in forthcoming negotiations.

1.7 On the Government's plans for implementing the Regulation (mainly on collecting and providing information on access to bus and coach terminals), the Minister states that the Government's current preference is to modify existing domestic arrangements, for example, by expanding the role of the Office for Traffic Commissioner. The Minister does caution, however, that this position may change as the proposal develops.

1.8 On the final substantive point raised in the Committee's previous Report (whether the Government intends to accept liberalised terms of access for non-resident EU operators if the same terms are not reciprocated after exit), the Minister does not provide any specific information, noting, instead, that securing access for commercial freight and passenger vehicles to and from the territory of the EU will include the consideration of a number of linked issues. These are said to include those related to motor insurance, authorisations of operators, driving licenses and vehicle roadworthiness.

1.9 In her letter, the Minister provides helpful information on the progress of the proposal. To date, there has only been one working group meeting at which it has been discussed. At this meeting, Member States were said to have raised a number of concerns regarding its content. The Minister suggests that, on this basis, it is likely that the proposal will be significantly amended before it becomes law. Furthermore, in terms of timeline, significant delays are expected.

1.10 **We thank the Minister for her letter and for providing the information requested in our first Report. In light of the limited progress of the proposal, we ask the Minister to write again once negotiations have gained momentum. We note, in particular, the Government's concerns regarding enforcement and its plans for implementing the Regulation and request that her update addresses these points. We retain the proposal under scrutiny.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services: (39208), 14184/17 + ADDs 1–4, COM(17) 647.

Previous Committee Reports

Twenty-first report HC 301–xx (2017–19) chapter 6 (21 March 2018).

2 Third mobility package: Proposal for a Regulation setting CO2 emission performance standards for new heavy-duty vehicles

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council setting CO2 emission performance standards for new heavy-duty vehicles
Legal base	Article 192(1) TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39723), 8922/18 ADDs 1–4, COM(18) 284

Summary and Committee's conclusions

2.1 The proposal under scrutiny concerns the introduction of binding carbon dioxide (CO2) emission standards for new heavy-duty vehicles (HDVs). The proposal forms part of the Commission's 'third mobility package' of legislative initiatives and non-binding actions (which is focussed on ensuring Europe's future mobility system is "safe, clean and efficient for all EU citizens"). The proposal follows on the heels of the Commission's plans — outlined in its 2016 Communication 'A European Strategy for Low-Emission Mobility' — to cut emissions from on-road freight vehicles. As such, the proposal complements the recently adopted CO2 Certification Regulation for HDVs (outlining vehicle types to be certified for CO2 reduction purposes) and the proposed Monitoring and Reporting Regulation (governing the monitoring, reporting and publication of CO2 emissions and fuel consumption information of new HDVs).

2.2 The importance of the proposal is underscored by the position of road transport as a significant contributor to greenhouse gas emissions (GHG). According to the Commission's own estimates, CO2 emissions from HDVs account for 6% of total EU emissions and 25% of road transport emissions. These levels are projected to rise in coming years. The Union's 2030 framework for climate and energy includes a target of reducing GHG emissions by at least 40% compared to 1990 levels. The proposal marks the first attempt to regulate CO2 emissions for HDVs at EU-level. Similar measures have been introduced in the United States, Canada, China, Japan and India.

2.3 As an antecedent objective, the proposal is viewed as a way of reducing fuel prices for transport operators as, to-date, manufactures have been reticent to adopt efficiency improving technologies. Furthermore, the Union is keen for the automotive sector to remain competitive with other advanced economies—notably the United States and China—who have already adopted measures to reduce HDV CO2 emissions.

2.4 The key elements of the proposal can be divided into six main parts: scope (the vehicles to which the Regulation would apply); baseline (the reference values against which reduction standards would be set); targets and timelines; incentives for zero-emission and low-emission vehicles; flexibilities (centred around a credit/debt system for manufacturers) and penalties.

2.5 On the first of these six areas, the scope of the proposal, the Regulation would apply to vehicles belonging to groups 4, 5, 9 and 10 of the Certification Regulation. These categories correspond to rigid and tractor trucks with a GVW (gross vehicle weight rating) exceeding 16 tonnes and with 4x2 and 6x2 axel configurations. According to Commission estimates, these vehicles account for 65–70% of all CO2 emissions from the EU's HDV fleet. Vehicle that are not intended for the delivery of goods, such as refuse collection lorries and construction trucks, are, effectively, exempted under the proposed. They are termed 'vocational' vehicles and would not count towards the calculation of average CO2 emissions for manufactures' fleets. This exemption is justified against the lower mileage and payloads carried by refuse collection lorries—and similar-type vehicles—compared to other HDVs.

2.6 Neither the Certification Regulation nor the proposal provide technical criteria for the identification of vocation vehicles. As a consequence, the certification of vocational vehicles and, importantly, the determination as to whether they are excluded from emissions calculations, is to be made by manufacturers themselves. In light of the recent Dieselgate scandal and the record fines levied on truck manufacturers in 2016 for price fixing, this has caused some disquiet amongst stakeholders.

2.7 The CO2 standards proposed would mandate relative feet-average reductions against a fixed baseline. Baselines are to be defined for each vehicle sub-group and would be common to all manufacturers. The Commission does not provide a numerical value for reference emissions but rather establishes a methodology for their determination.[2] Reference emissions would be based upon data collected during 2019.

2.8 On target values and implementation timelines, the Commission's proposal is split between two periods:

- From 2025 to 2029: A reduction of 15% versus 2019 levels; and
- From 2030 onwards: A reduction of *at least* 30% versus 2019 levels.

2.9 The reduction target for 2030 onwards would be subject to review in 2022 to account for the development and deployment of advanced technologies—such as fuel saving systems—that are not yet available on the market. From these headline targets, more specific targets are proposed for manufactures in gCO2/t-km.[3] These would be set based upon the composition of a manufacturer's fleet and the reference CO2 emissions of each vehicle sub-group (the latter of which would be common to all manufacturers).

2.10 The proposed reduction targets are based upon a cost-benefit analysis undertaken by the Commission in support of the proposal. The Commission notes that although these values would result in increased manufacturing costs, the fuel saved by operators would more than offset the increase in capital investment made by truck buyers. In terms of the

2 In accordance with—and under—the Monitoring and Reporting Regulation.

3 Grams of CO2 per ton kilometre.

ambition of the Commission's headline targets, it appears they reflect neither what would be required in order to meet the Union's GHG reduction targets nor what is possible without having a detrimental effect upon manufactures in terms of cost implications. By way of example, the Commission's own Impact Assessment identifies that CO2 cuts of 20% in 2025 and 35% in 2030, relative to the 2019 baseline, are not only technologically feasible but would also result in greater economic and societal benefit.

2.11 In a recent report from the European Parliament's Environment Committee, MEPs supported a revised version of the Commission's proposal that set a 20% reduction target from 2020 and a 35% target from 2030. The Committee suggested that these increases, amongst other considerations, would deliver an additional €14,000 in fuel savings per new truck in its first five years of service (relative to the 15% standard proposed by the Commission from 2020).

2.12 Another strand of the Commission's proposal is to provide incentives for accelerating the development and adoption of zero- and low-emission vehicles (ZEVs and LEVs).[4] This incentive consists of counting ZEVs and LEVs as more than one vehicle—referred to as a 'super-credit multiplier'—when calculating the average specific CO2 emissions permissible per manufacturer. The super-credit scheme would extend to vehicles outside of the scope of the proposed Regulation i.e. groups 4, 5, 9 and 10; increasing the opportunities for manufactures to reap rewards from producing clean(er) vehicles. In the calculation of average specific CO2 emissions per manufacturer, super-credits will only lead to a maximum reduction of 3% (or 1.5% for ZEVs and LEVs outside of the scope of the proposal).

2.13 This system stands in contrast to suggestions from environmental non-government organisations (NGOs) to require manufacturers to register a minimum share of ZEV/LEVs. This suggestion has been picked-up and endorsed by the European Parliament's Environment Committee who suggest a binding target of 5% for zero emission truck sales by 2025.[5]

2.14 In a nod to the concerns of manufacturers, the proposal includes measures designed to enable targets to be met cost effectively. These mainly consist of a 'bank and borrow' system whereby manufacturers would be able save and then loan (from themselves) CO2 emission credits across compliance years. This would allow manufactures to overrun set limits providing that such overruns are made-up in later years. In a further concession to industry, manufacturers would be permitted to meet CO2 emissions targets across all types of HDV (in scope of the Regulation); meaning that emissions could be balanced between different vehicle categories.

2.15 In terms of penalties for manufacturers found to have exceeded emission targets, fines are to be set at €6,800 per gCO2/t-km of excess emissions (the equivalent of €570 per g/km based on an average payload of 12 tons). The Commission's explanatory memorandum to the proposal states that the method for collecting premiums is to be determined by means of implementing act.

4 ZEVs are defined as vehicles producing 0 gCO2/km and LEVs 175 gCO2/km.

5 See European Parliament Committee on the Environment, Public Health and Food Safety, "Draft report on the Proposal for a Regulation of the European Parliament and of the Council setting CO2 emission performance standards for new heavy-duty vehicles" (July 2018) 2018/143(COD).

2.16 Aside from the six main areas of the proposal, provision is also made for several policy elements that would have an indirect effect upon the stringency and environmental benefits of the suggested reduction targets. Of these, potentially the most contentious appears to be the introduction of an in-service conformity procedure for verifying emissions. This is provided for under Article 9 of the proposed Regulation alongside the Article 16 amendment to Regulation (EC) No 595/2009 (on Euro 6 emissions type approval). As identified by numerous stakeholders, monitoring and accurate reporting of manufacturer's emission values is of paramount importance in fostering trust in any new system.

2.17 Also worthy of note is the review and reporting requirements set by Article 12 of the proposal. Article 12 would require the Commission to report on the effectiveness of the Regulation by 2022. The Commission proposes that this report covers values for the 2030 reduction target and the potential inclusion of targets for other types of HDVs (including trailers). The Commission also proposes to include an assessment of the ZEV/LEV incentives and the bank and borrow system.

2.18 In the context of negotiations on the UK's withdrawal from the EU, it is unclear whether the Regulation would come into effect during the proposed transition/implementation period (taken as ending on 31 December 2020). As a new area of regulation at EU-level and, moreover, as a *proposal* for legislative action, it is perhaps not that surprising that the Government is yet to issue a technical notice on the potential implications of a 'no-deal Brexit' for HDV emission targets. In a similar notice on LDVs, the Government suggests that EU CO2 targets, procedures (such as super-credits) and reporting obligations would remain in substance similar, however, minor amendments would be made to correct any legislative deficiencies stemming from a disorderly withdrawal (e.g. removing and replacing reporting obligations to the Commission).

2.19 In a recent letter on the proposal to the Chairman of the European Union Committee (Lord Boswell of Aynho), the Parliamentary Under Secretary of State at the Department of Transport (Jesse Norman) provides useful background information on the current state of play with regard to its negotiation. According to the Minister, to-date, there have been six working group meetings on the proposal. Member States are said to be still formulating their positions and, as a consequence, negotiations have focussed on understanding the technical details of the proposal. This having been said, the Minister does highlight specific points of concern as including emissions target levels and the ZEV/LEV incentivisation scheme.

2.20 On the potential timeline for negotiations, the Minister notes that it is possible—given the stage of the Austrian Presidency—that a mandate will be sought from COREPER in November to open trilogue negotiations as soon as possible. The Minister recognises that this is ambitious given the limited consideration of the proposal and, furthermore, the divergent opinions likely between Member States on key elements (this has been seen, for example, with regard to the sister proposal of the Regulation on emission standards for light-duty vehicles (LDVs)). In recent conversations with officials at the Department for Transport, we have been made aware that this approach has been adopted in light of the Austrian Presidency's plans to complete trialogue negotiations before European Parliamentary elections in March 2019.

2.21 In his Explanatory Memorandum dated 27 June 2018, the Parliamentary Under Secretary of State at the Department for Transport (Jesse Norman) outlines the potential policy implications of the proposal for the UK. The Minister largely rehashes the Commission's explanatory memorandum, however, he does state that the Government believes "that CO2 emission standards for HDVs could achieve much-needed emission reductions for the sector". In a nod to the lack of detail provided on the substance of the proposal, the Minister acknowledges that "the Government is still considering the policy implications of the proposed Regulation".

2.22 **We thank the Minister for his Explanatory Memorandum. In light of the four months that have passed since this was provided, we seek the Government's views and further information on a number of points.**

2.23 **On the substance of the proposal, we seek the Government's views on the emission reduction targets the Commission has proposed for 2025 and 2030. More specifically, we are interested to hear whether the Government believes that the suggested reduction targets of 15% for 2025 and the initial target of 30% for 2030 are sufficiently ambitious. Leading on from this, we request information on potential alternative values that the Government would be willing to support, for example, would the Government be in favour of a revised target of 35% from 2030 (in line with the suggestions of the European Parliament's Environment Committee).**

2.24 **We request the Government's view on the Commission's proposals for incentivising the development and adoption of zero- and low-emission vehicles. Does the Government support the Commission's plans to base this system around the issuance of credits—and the use of these credits towards calculating average specific CO2 emissions per manufacturer—or, alternatively, would it favour a system where manufactures are required to register a minimum share of ZEV/LEVs. If the Government favours the latter approach, we request information on the potential target values that it would support.**

2.25 **We request the Government's view on the financial penalties to be levied for manufacturers found to have exceeded emission targets, in particular, whether they are set at a sufficiently high level in order to deter non-compliance. On a technical point, we seek clarification that the Government is content that the method for collecting premiums is to be determined by implementing act.**

2.26 **If, or when, available, we request further information on the in-service conformity procedure proposed for verifying emissions.**

2.27 **We also seek, if adopted, clarification of when a new Regulation would be likely to take effect and, if this were to fall during the implementation period, the Government's plans for its operation afterwards (in other words, would the Government retain the new Regulation in domestic legislation?).**

2.28 **Officials at the Department for Transport have informed us that the Austrian Presidency may seek a mandate from COREPER in November to open trilogue negotiations (with a view to concluding these as quickly as possible). We therefore ask that the information requested in provided in good time before this mandate is sought. We retain the proposal under scrutiny.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council setting CO2 emission performance standards for new heavy-duty vehicles: (39723), 8922/18 + ADDs 1–4, COM(18) 284.

Previous Committee Reports

None.

3 Control of Exports of Dual-Use Items

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

Summary and Committee's conclusions

3.1 In 2016, the Commission proposed a new Regulation to replace Council Regulation (EC) 428/2009 (the Dual-Use Regulation), which currently provides the legislative framework for EU export controls on dual-use items (i.e. goods, including software and technology, which can have both civil and military applications).

3.2 The proposal aims to modernise and strengthen controls covering the export of dual-use items, to reflect geo-political developments and technological changes since the original Dual-Use Regulation was adopted. This includes measures to help prevent human rights violations associated with certain cyber-surveillance technologies, through the proposed introduction of: an autonomous list of EU-specific cyber-surveillance technologies of concern; a complementary, targeted 'catch-all' measure that enables the control of non-listed goods in defined situations where there is evidence that they may be misused; and associated changes to the definition of dual-use items.

3.3 At its meeting on 18 January 2017, our predecessor Committee noted the Government's concerns in relation to: the introduction of an EU autonomous list of items as this would be "a significant departure from the established position where control lists are derived from the various international export control regimes"; the proposed extension of the EU's delegated authority to amend the list of dual-use items subject to control, to include updating the new autonomous list of items and amending the destinations or items covered under EU General Export Authorisations (EUGEAs); and the potential additional administrative/financial burdens from implementing the proposed new controls. It asked the Government to keep the Committee updated on the negotiations and to provide an assessment on the implications for UK-EU cooperation on export controls of dual-use items after UK exit from the EU.

3.4 In his letter of 17 July 2018, the Minister for Investment (Graham Stuart) provides the first detailed update to this Committee on this legislative file since its Explanatory Memorandum of 17 October 2016. He provides a comprehensive assessment of the

issues which remain "contentious" at Working Group level and are expected to dominate discussions under the Austrian Presidency, and the Government's position on each issue, as summarised below:

- The Council is split on the introduction of an EU autonomous list of dual-list items. While some Member States consider it "a more acceptable alternative to the human rights end use control", the UK and nine other Member States remain concerned that this "represents a significant departure from the established position where control lists are derived from four recognised international export control regimes". The Minister considers that this could undermine the multilateral approach to export control regimes and put UK/EU exporters at a commercial disadvantage. He further notes that there is widespread resistance in the Council to the Commission being conferred delegated powers to introduce further autonomous controls in order to avoid "…the autonomous list developing into a broad-ranging list that could include any new technologies such as artificial intelligence and robotics";

- A large majority of Member States (23), including the UK, oppose the proposed human rights end-use control as it is "an unknown quantity [that] potentially covers all goods" and would be difficult for competent authorities to effectively administer;

- Member States consider that the proposed text on an EU general export licence allowing the unrestricted export of all cryptographic items to destinations other than those subject to an arms embargo or other EU restrictive measures is "too lax" from a national security perspective and needs to be revised; and

- Only the UK supports the proposed terrorist end use control.

3.5 In response to our predecessor Committee's question on future UK-EU cooperation post-exit/transition period, the Minister refers the Committee to his letter to Lord Boswell dated 25 January 2018. He notes that:

- The Government's overarching objective for export controls post-Brexit is to "maintain the integrity and effectiveness of the export licensing system" by remaining compliant with relevant international obligations, enforcing controls robustly, retaining existing EU controls in UK law and minimising additional burdens on business;

- The Dual-Use Regulation will "be preserved through the European Union (Withdrawal) Bill" in its current form, but can be updated in future to reflect changes to the lists of controlled items arising from implementing any future international obligations; and

- There are several potential areas where continued cooperation with the EU in the field of export controls after UK exit would be mutually beneficial (but stresses that all elements are subject to negotiation). These include:

  - Information sharing on denied export licence applications and related consultation procedures, on the basis that this larger pool of information

would improve the robustness of licence assessment processes both in the UK and EU, and therefore "enhance[s] the overall security of the UK and EU";

- Cooperation on annual updates to the control lists (Annexes l and lV of the Dual-Use Regulation), which implement changes agreed in the four international export control regimes, as continued alignment between the EU control list and the UK control list "would mean fewer differences between how the UK and the EU interpret a changed control" and "help maintain a level playing field and minimise the burden on UK exporters with a presence in the EU"; and

- Simplified procedures for exports of controlled items between the EU and the UK after exit to minimise the burden on UK and EU competent authorities and exporters. The Government intends to: "argue for the UK to be included in an EU open licence that would simplify exports from the EU to the UK" and for the UK to reciprocate this arrangement with an open general licence for the export of dual-use items to the EU; and seek mutual recognition of dual-use licences granted before UK exit/end of the transition period until their expiry (typically two years after their issue); and

- The UK already has its own system of export controls under the Export Control Act 2002 and the Export Control Order 2008, and that "[p]olicy development is still ongoing on the exact shape of a post Brexit dual-use export control regime. Firm conclusions on this will depend on the final recast proposal and the outcome of the negotiations on the future economic and security relationship with the EU".

3.6 **This is the first substantive update from the Government on Council negotiations (at Working Group level) of the proposed recast Regulation, since our predecessor Committee last considered the proposal in January 2017.**

3.7 **We understand that the Austrian Presidency is pushing to secure an informal mandate (at COREPER) in the coming months, despite ongoing divisions within the Council on key aspects of the proposal—notably, on the introduction of an EU autonomous list of dual-use items and proposed extension of the Commission's delegated powers to amend the autonomous list. We ask that the Minister keep us informed of developments ahead of trilogues, including the position that the Government intends to take on any compromise text (a copy of which should be shared with the Committee).**

3.8 **We also ask the Minister to provide our Committee with an up-to-date assessment of the expected shape of the UK's dual-use export control regime post-Brexit, which reflects developments in the negotiations of the proposed recast Regulation and future UK-EU security and trade relations (since the Government's last assessment of January 2018). This should be broken down by stage/event:**

- **'No deal': In its guidance of 23 August 2018, the Government states that UK and EU operators will require a licence to trade dual-use items if the UK leaves the EU without a deal on 29 March 2019. Furthermore, existing export licences**

for dual use goods issued in the UK will no longer be valid for UK companies exporting from the EU27 (and vice versa for EU27 companies exporting from the UK using an EU27-issued licence). What assessment, if any, has the Government conducted on: the expected costs to the UK authorities of implementing and enforcing these new licensing requirements; the expected costs to UK exporters/traders (in particular SMEs) of complying with these new licensing requirements; the expected impact on trade flows; and the risks of UK/EU Member State competent authorities not having sufficient time/ resource to effectively enforce them?;

- **During any implementation/transition period: If the recast Regulation is adopted and enters into force during the scheduled transition period (up to 31 December 2020), what are the expected financial and administrative costs to the UK authorities and to UK operators of its application; and to what extent, if any, would an extension to the scheduled transition period impact the analysis?; and**
- **Post-exit/transition period:**
  - **What criteria will the Government use to assess the costs and benefits of UK convergence or divergence from the EU regime (relative to supporting a 'multilateral approach' through the four established export control regimes)? and**
  - **What indication has the EU given that it would agree to continued cooperation with the UK in the field of export controls after UK exit, including: the sharing of information on denied export licence applications and related consultation procedures; cooperation on annual updates to the control lists (Annexes l and lV of the Dual-Use Regulation); and simplified procedures for exports of controlled items between the EU and the UK (such as reciprocal open general licences and mutual recognition of licences granted before UK exit/end of the scheduled transition period)?**

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

Full details of the documents:

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

Background

3.10 The full details of the proposal and the Government's position on it, as set out in its Explanatory Memorandum of 17 October 2016, is set out in the predecessor Committee's Report chapter of 18 January 2018.

The Government's 'no deal' guidance on export controls

3.11 The export of many controlled items within the EU does not require a licence. On 23 August 2018, the Department for International Trade issued guidance on how export controls would be affected if the UK leaves the EU without an agreement (i.e. 'no deal' scenario).

3.12 The Government states that the overall UK framework of controls of dual-use exports would not change, as EU regulations on dual-use items would become UK regulations under the EU (Withdrawal) Act 2018. However, regulations would apply to exports from the UK rather than to exports from the EU Customs Territory, and licensing requirements would change as a result:

- Companies would need to obtain licences to export certain dual-use products between the EU27 and the UK (as is currently case the for non-EU destinations);
- Export licences issued in the UK would no longer be valid for exporting dual-use items from EU Member States, and a new licence, issued by an EU member state, would be required; and
- Export licences issued by the EU27 would no longer be valid for exporting dual-use items from the UK and a new licence, issued by the UK, would be required.

Previous Committee Reports

Twenty-sixth Report HC 71–xxiv (2016–17), chapter 5 (18 January 2017).

4 Non-performing loans: prudential requirements, debt management and collateral recovery

Committee's assessment	Politically important
Committee's decision	(a) Cleared from scrutiny; (b) Not cleared from scrutiny; drawn to the attention of the Treasury Committee
Document details	(a) Proposal for a Regulation on amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures; (b) Proposal for a Directive on credit servicers, credit purchasers and the recovery of collateral
Legal base	(a) Article 114 TFEU; ordinary legislative procedure; QMV; (b) Articles 53 and 114 TFEU; ordinary legislative procedure; QMV
Department	Treasury
Document Number	(a) (39604), 7407/18 + ADDs 1–2, COM(18) 134; b) (39588), 7403/18 + ADDs 1–4, COM(18) 135

Summary and Committee's conclusions

4.1 Banks in several EU countries—especially Cyprus, Greece, Romania and Slovenia — have large stocks of non-performing loans (NPLs), acting as a drag on bank capital and investment and potentially threatening financial stability in the case of large-scale defaults.

4.2 Following a request by EU Finance Ministers to address these risks, the European Commission in March 2018 proposed two new pieces of EU legislation (the 'NPL package') to reduce stocks of bad bank loans across the EU:

- Firstly, an amendment to the Capital Requirements Regulation that would make it costlier for banks to have NPLs on their books (a 'prudential backstop') and thereby encourage them to sell the right to collect payments on those loans to specialist credit purchasers on secondary markets. The Treasury has told us the domestic impact of the proposal—should it take effect while the UK is still bound by EU law[6]—would be minimal, given the low volume of NPLs held by British banks; and

- Secondly, a proposed Directive to aid banks' recovery of collateral from defaulting borrowers by mandating the introduction of an "accelerated extrajudicial collateral enforcement procedure" (AECE). It would also set EU-wide standards

6 The UK will remain bound by EU law while it is still a Member State, and subsequently during the proposed post-Brexit transitional period. That period is currently scheduled to end on 31 December 2020, pending ratification of the Withdrawal Agreement, but the Prime Minister confirmed on 17 October 2018 that the Government is considering whether an extension is necessary to provide more time to negotiate a new UK-EU trade agreement.

for debt management and credit purchasers (i.e. specialised companies that buy the rights to collect on 'bad' loans from the issuing banks). For those companies, it would create a financial services 'passport', allowing debt management companies to operate throughout the EU on the basis of a regulatory licence granted by any Member State.

4.3 We have set out the substance of both proposals in more detail in 'Background' below, and in our initial Report on the NPL package published in May 2018.

4.4 By letter dated 25 October 2018, the Economic Secretary to the Treasury (John Glen) informed us that officials representing all 28 EU Member States had made good progress on the prudential proposal since spring 2018. Because of this, he explained, EU Finance Ministers are expected to agree a common position (a so-called 'general approach') on the prudential backstop proposal when they meet in Brussels on 6 November. The key outstanding issue for Member States is to reach consensus on whether there should be transitional period before the backstop applies to loans that become non-performing in the first few years after the Regulation takes effect, and how much capital banks could ultimately be required to set aside compared to the total value of long-term non-performing loans (the coverage ratio).[7]

4.5 Once agreed, the Council 'general approach' would serve as the Council Presidency's basis for negotiations with the European Parliament on the final shape of the prudential backstop.[8] The European Parliament's Economic and Monetary Affairs Committee is due to adopt its position in early December, potentially paving the way for final agreement on the Regulation in early 2019. In view of the Government's generally favourable view of the state of play in the negotiations, the Minister asks for a scrutiny waiver or clearance to enable the Treasury to formally support the general approach in early November 2018.

4.6 With respect to the Directive on collateral recovery, the Minister explained that progress "has been slower", reflecting concerns among a majority of Member States that the proposal would adversely affect domestic consumer protection (by giving companies based in 'light touch' Member States a 'passport' to provide debt management services in any EU country), and conflict with well-established national collateral enforcement rules. As a result, he says, "it is unclear how the Directive will evolve over the course of the Council negotiations, or whether it will pass at all in its current form".

4.7 **We thank the Economic Secretary for his latest update on the EU's regulatory proposals related to non-performing loans. Given the Treasury's positive assessment of the 'general approach' on the prudential backstop, the Minister requested we lift the scrutiny reserve enabling the Government to support its adoption at the ECOFIN Council in November. In light of the expected minimal impact of the proposal for the UK, we are content to clear the file from scrutiny. However, we ask that the Minister write to us if the Government abstains or votes against the proposal, either at the 'general approach' stage or following trilogue negotiations with the European Parliament, explaining why it felt unable to support the proposed Regulation at that stage.**

7 We have described the contents of the 'general approach', and the issues relating to the coverage ratio, in more detail in 'Background' below.

8 The European Parliament's Economic and Monetary Affairs Committee is due to adopt its position in early December, potentially paving the way for final agreement on the Regulation in early 2019.

4.8 **We note that negotiations on the proposed Directive on collateral recovery have revealed widespread concerns about the proposed 'passporting' regime for debt management companies, and the impact imposing a new out-of-court collateral recovery procedure would have on national insolvency and debt management law. These are concerns we ourselves raised in previous Reports on this proposal, and we are glad to see these reflected in the Council. We retain the proposed Directive under scrutiny, given the Minister's statement that its substance is likely to be changed significantly if it is to garner the support of the necessary qualified majority of Member States at all.**

4.9 **We also reiterate again that it remains unclear whether the proposed NPL measures may have to be applied in the UK. During the proposed post-Brexit transitional period, the UK would remain bound by EU law as if it had remained a Member State. The transition is currently scheduled to last until 31 December 2020 pending agreement and ratification of the Withdrawal Agreement—but the Prime Minister has recently indicated it may be extended into 2021. Given the state of play on the 'prudential backstop', it is likely that an adopted Regulation would apply directly to the UK banking sector. The potential impact of the proposed Directive on collateral recovery and debt management is less clear, but naturally a longer transition would make it more likely the legislation in its eventual final form would have to be transposed into UK law.**

4.10 **In light of this we draw these latest developments to the attention of the Treasury Committee, given its interest in the regulation of the banking industry and the UK's post-Brexit economic relationship with the EU.**

Full details of the documents:

Proposal for a Regulation on amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures: (39604), 7407/18 + ADDs 1–2, COM(18) 134.

Background

4.11 In several EU countries, national banking sectors continue to hold unsustainably high levels of bad debt: non-performing exposures (known as NPLs), like mortgages or business loans, that are unlikely to ever be repaid in full. These constitute a drag on bank capital and resources, hindering new lending to fuel the economy, as well as potentially posing a risk to financial stability if banks cannot absorb the losses incurred on loans that will never be repaid.

4.12 In July 2017 EU Finance Ministers explicitly called for a package of measures, at both EU and national level, to help reduce overall stocks of NPLs and to ensure banks have sufficient capital to deal with the financial consequences of bad loans. This included a new EU-wide statutory prudential requirement for banks to ensure they make adequate 'provision' for the possibility of new loans not being repaid.

4.13 In March 2018, the European Commission tabled a legislative proposal to that effect, amending the Capital Requirements Regulation (CRR) to include specific provisions related to non-performing loans (a 'prudential backstop'). It was accompanied by a separate proposal for a Directive to improve banks' ability to recover collateral from defaulting borrowers.

4.14 The prudential proposal would require all banks to have sufficient liquid funds to cover the incurred and expected losses on new loans once such loans become non-performing, up to a common minimum level (the 'minimum coverage requirement'), made up of provisions recognised by the applicable accounting framework. Where an institution does not meet the minimum coverage requirement, the prudential 'backstop' would apply: a bank would have to deduct the difference between the level of the actual coverage and the minimum coverage from its statutory Common Equity Tier 1 (CET1) prudential capital, forcing it to act to top up its regulatory capital. The overall effect would be to make it costlier for banks to have NPLs on their books and thereby encourage them to sell the right to collect payments on those loans to specialist credit purchasers on secondary markets.[9]

4.15 The separate proposed Directive on collateral recovery and debt management would make much more sweeping regulatory changes, also aimed at preventing excessive future build-up of NPLs on banks' balance sheets. Fundamentally, it would do so by encouraging the development of an EU-wide secondary market for non-performing loans (by allowing debt management companies licensed in one Member State to operate in any other without a local presence, the so-called 'passport')[10] and by requiring each EU country to establish an "accelerated extrajudicial collateral enforcement procedure" (AECE), a faster way for banks to salvage bad business loans by recovering the collateral against which they are secured rather than through existing insolvency and debt recovery legislation.

Parliamentary scrutiny of the NPL proposals

4.16 The Economic Secretary to the Treasury (John Glen) submitted an Explanatory Memorandum on both proposals on 16 April 2018. This stated that the Treasury was satisfied that the proposals were "targeted at specific problem areas" but did not provide a substantive assessment of their (potential) implications for the UK.

4.17 The European Scrutiny Committee considered the proposals in its Report of 2 May 2018, and retained them under scrutiny given that both the Member States and the European Parliament were likely to make amendments, and the final Regulation could apply directly to the UK during any post-Brexit transitional period. It also raised specific concerns about the proposed Directive, namely that "any new EU rules on out-of-court debt enforcement of secured commercial loans should contain robust protections for borrowers" and that letting overseas debt management firms operate in the UK without oversight by the Financial Conduct Authority was likely to lead to consumer harm.

4.18 The Minister replied to those concerns by letter dated 24 May 2018, which we reported to the House in early June.[11] This committed to "closely monitor the development of these proposals to ensure that these provide the appropriate level of consumer protection". At that stage, the Minister also informed us the UK was purporting to not opt-in to some

9 The prudential backstop as proposed by the Commission would apply only to loan agreements originated or amended after 14 March 2018, the date the Commission formally adopted its proposal, as "from that date there [was] sufficient clarity how the new rule would apply" to banks. Any exposures originated before that date "should be treated accordingly to the rules in force at that date, even if they are refinanced or subject to other forbearance measures".

10 The debt management 'passport' would be subject to EU-wide common standards for the "proper conduct and supervision" of credit servicing companies, to ensure the 'passport' would only be available to specialist firms with the "necessary risk appetite and expertise" to help banks to seek repayment of non-performing consumer and commercial loans.

11 See for more information the Committee's Report of 13 June 2018.

elements of the proposed Collateral Recovery Directive because they argued they fell within the scope of the UK's Justice & Home Affairs opt-in under Protocol 21.[12] The Committee's long-standing view is that the opt-in does not apply to EU legislation without an explicit JHA legal base, which the proposed Directive does not have, and as such does not consider that Protocol 21 is actually engaged in this case.

Developments since June 2018

4.19 The Economic Secretary wrote to the Committee again on 25 October 2018 with more information on the state of the negotiations on the NPL proposals.

The prudential backstop

4.20 Member State officials, including those representing the Treasury and the Bank of England, considered the prudential backstop proposal on a number of occasions since its publication in March 2018.

4.21 By letter dated 25 October 2018, the Economic Secretary informed us that these efforts had led to a common position — a so-called 'general approach'—on the prudential backstop proposal. EU Finance Ministers, he wrote, would consider this amended legal text for formal endorsement at the meeting of the Council in Brussels on 6 November. The Member States have agreed on the following:

- The definition of a 'non-performing loan', in relation to which the prudential backstop would apply, should be the same as the definition currently used for existing supervisory reporting purposes incumbent on banks;
- There should be a prolongation of accounting provisions along the lines of the ECB Addendum on non-performing loans, which allows regulators to rely on existing accounting provisions—which enable them to require additional regulatory capital to be set aside where they reveal under-provisioning — for a period before the prudential backstop applies; and
- While several Member States and the Commission had pushed for the backstop to apply to loans entered into on or after the date of the publication of the proposal in March 2018 (or even earlier), under the general approach the new rules will apply only to loans made after the entry into force of the Regulation, not retrospectively. However, it may not fully take effect in relation to new 'bad' bank loans during a potential transitional period (see below).

4.22 However, the Minister explains that Member States have not yet agreed on the timeframe within which banks would need to start applying the backstop to loans that become non-performing. In the latest negotiations, the Austrian Presidency has presented two options. While both would see a gradual build-up of capital banks would need to set aside as a proportion of the value of a loan the longer it remains non-performing, the rate at which this loss coverage would increase over time (and the maximum possible proportion of the value of the loan it could cover) would be different:

12 The Minister clarified the scope of the purported opt-out by letter dated 28 June 2018. This explained it related to specific choice-of-law elements of the proposed out-of-court collateral enforcement procedure.

- Under the first option, there would be a transitional period for loans that become non-performing during the first three years after the backstop takes effect. Concretely, this means banks would not have to fully provision for such loans (i.e. a 100% coverage ratio, where a bank must set aside sufficient capital to cover all outstanding debt on a loan) until it has been non-performing for 9 to 10 years. For loans that become non-performing after the transitional period, the 100% coverage ratio would be mandatory after 7 to 8 years;[13]

- Under the second option, there would be no transitional period (meaning non-performing loans be subject to a larger coverage ratio earlier than they would be under option 1), but the impact of the backstop would be mitigated by capping the maximum coverage ratio for long-term non-performing loans to 85 per cent of the outstanding debt.[14] As a consequence, there would not be a requirement to fully provision (which there would be under option 1), and over the long term the backstop would be less costly for banks under this option.

4.23 In his letter, the Minister indicated that the Government prefers the 85 per cent coverage option, which would be "less complex […], provides more certainty and […] is less operationally challenging for industry to implement". He also explains that the UK's general position in the negotiations has been to protect the flexibility of its domestic regulators—principally the Prudential Regulation Authority of the Bank of England — to deal with any build-up of non-performing loans against the "wider political context in which the NPL package was proposed" (namely the efforts by the remaining Member States, after the UK's EU withdrawal, to deepen their economic integration by means of the Capital Markets Union and Banking Union).

4.24 He adds that the Government is likely to support the general approach at Council, because the UK has some of the lowest levels of NPLs in the EU and its banks are therefore "unlikely to be as affected by the reforms as other EU Member States". As such, the Minister asked the Committee to grant clearance, or waive scrutiny, on the prudential backstop proposal to enable the Government to "support an agreement that meets UK objectives".[15]

4.25 The general approach, once approved, will form the basis for future negotiations with the European Parliament on the final substance of the proposed Regulation. The Economic & Monetary Affairs Committee of the European Parliament is due to adopt its negotiating position on the proposed Regulation on 3 December 2018, potentially

13 The option with the transitional period would also include a freeze period, allowing a bank not to apply the backstop for a year when it has exercised forbearance measures (like a suspension or reduction of payments) in respect of a particular loan.

14 We understand that—for loans which turn non-performing during the putative transitional period under option 1 — the difference between the two options under consideration would become apparent between 7 and 8 years after a loan has become an NPL: under option 1, banks would need to provision for 80% of the remaining debt not being repaid, whereas under option 2 that would be 85%. Under option 1 that ratio would subsequently increase to 100%.

15 The Minister makes note of one further concern: the interaction of the proposed backstop with the five-year transitional period under IFRS 9 (a new accounting standard for the banking industry which aims to improve the reporting on banks' expected credit losses on financial assets, likely to lead to higher loss predictions and, as a result, a reduction in the capital held by financial institutions to meet regulatory requirements). The way the IFRS9 standard and the prudential backstop would interact is currently unclear.

allowing the legislation to be adopted before the May 2019 European elections.[16] In light of the on-going discussions highlighted above, it is not yet known when the prudential backstop would take effect.

The Directive on collateral recovery and debt management

4.26 With respect to the proposed Directive, the Minister's letter notes that the proposal "has been broadly unpopular with EU Member States" because:

- They are concerned that the proposed 'passport' for debt management companies, allowing them to operate throughout the EU based on a licence issued by a single Member State, "would undermine consumer protection standards, as firms from Member States with lower authorisation requirements would be able to passport to Member States with higher standards". The UK, the Minister says, shares these concerns and wants to ensure that "the Directive, if passed, does not undermine consumer protections in the UK".[17]
- Secondly, many Member States believe the proposed out-of-court collateral enforcement tool could "undermine their existing tools for recovering value from collateral".

4.27 As a result of this widespread opposition to the core of the Commission proposal, the Minister says, "it is unclear how the Directive will evolve over the course of the Council negotiations, or whether it will pass at all in its current form". We note that the European Parliament's Economic & Monetary Affairs Committee is due to adopt its negotiating mandate for the substance of the proposal in early December 2018, but that there is no timetable for the Member States to agree on their 'general approach' (a common position).

Implications of the proposals for the UK

4.28 The UK is due to leave the European Union on 29 March 2019. Under the terms of the proposed post-Brexit transitional arrangement in the draft Withdrawal Agreement, it would remain part of the Single Market—and bound by EU law—as if still a Member State until 31 December 2020. However, despite the continued application of such law the Government would lose its voting rights over new EU legislation in the Council. As such, if the Withdrawal Agreement is ratified, the prudential backstop (irrespective of the Government's position on it) could have full force of law in the UK between its eventual date of application and the end of any transitional period. The same would apply to the proposed Collateral Recovery Directive, although this appears much less likely, given the opposition to its substance and consequently the uncertain timing of its adoption.

4.29 The Committee has noted with concern, however, that the Prime Minister and the Government are now considering a possible extension of the transitional period into 2021.[18] While the above assessment remains valid, it is clear that a longer transition means there

16 The Economic & Monetary Affairs Committee of the European Parliament is due to adopt its negotiating position on the Regulation on 3 December 2018.

17 The Minister's letter also states that new passporting regime introduces additional reporting obligations "which, in [the Government's] view, are unnecessary and excessive".

18 Statement by Prime Minister Theresa May on 22 October 2018: "I believe there are four steps we need to take [to break the impasse in the Brexit negotiations […] The second step is to create an option to extend the implementation period as an alternative to the backstop."

would be larger volume of EU law the UK would have to apply over which it had no voting rights. This raises a much broader issue of democratic legitimacy which we will continue to raise with Ministers as appropriate.

Previous Committee Reports

See (39604), 7407/18 + ADDs 1–2, COM(18) 134: Twenty-sixth Report HC 301–xxv (2017–19), chapter 4 (2 May 2018) and (39588), 7403/18 + ADDs 1–4, COM(18) 135: Thirty-first Report HC 301–xxx (2017–19), chapter 5 (13 June 2018).

5 EU anti-fraud body OLAF: new powers and cooperation with the European Public Prosecutor's Office

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations
Legal base	Article 325 TFEU and Article 106a Euratom Treaty; ordinary legislative procedure; QMV
Department	Treasury
Document Number	(39775), 9313/18 + ADD1, COM(2018) 338

Summary and Committee's conclusions

5.1 In late 2017, a large majority of EU Member States formally established the legal framework for the European Public Prosecutor's Office (EPPO).[19] This is a new EU body that will have the power to investigate, and where necessary prosecute through national courts, crimes that affect the EU budget (such as customs fraud[20] or unlawful claims for EU agricultural subsidies). As it was adopted under 'enhanced cooperation', the EPPO will only have jurisdiction in those EU countries that have explicitly accepted this. The UK, along with five other Member States,[21] has chosen not to participate in this new institution.[22]

5.2 As the EPPO's responsibilities overlap to some extent with those of OLAF, the EU's existing anti-fraud body that carries out administrative (rather than criminal) investigations, the European Commission in May 2018 tabled draft legislation to require OLAF to provide assistance to the new Prosecutor's Office where required. The proposal would also make a number of unrelated changes to OLAF's legal framework based on a 2017 evaluation of its functioning, for example related to its ability to conduct on-site inspections, its access to bank account information, and its right to obtain VAT-related data from Eurofisc (a network of national tax officials).[23]

19 See Council Regulation 2017/1939.

20 Customs duties collected on goods entering the EU Customs Union are an 'own resource', and therefore are used as revenue to underpin the EU budget (minus a 20 per cent collection cost retained by the Member State where the good cleared customs).

21 The other Member States not participating in the EPPO are Ireland, Denmark, Sweden, Poland and Hungary.

22 We also recall that the House of Commons, on our predecessors' recommendation, issued a subsidiarity Reasoned Opinion with respect to the Commission's proposal for an EPPO Regulation. In conjunction with Reasoned Opinions submitted by other national parliaments, the "Yellow Card" threshold was reached, meaning that the Commission was forced to review its original proposal.

23 Eurofisc is a network of tax officials from all EU Member States who cooperate to tackle VAT fraud.

5.3 We have described the role and powers of both the EPPO and OLAF, including the changes now proposed by the Commission, in more detail in "Background" below.

5.4 Although the UK is due to leave the EU on 29 March 2019, it would remain subject to the jurisdiction of OLAF—including, if adopted, the non-EPPO related changes to its legal framework now proposed—for the duration of any subsequent transitional period under the Withdrawal Agreement. In addition, as we describe in more detail in 'Background' below, OLAF may have a role to play in the UK where it participates in EU funding programmes as a 'third country',[24] or if there is an exceptionally close customs and VAT agreement between the UK and the EU in the future after the transitional period has ended.[25]

5.5 The Chief Secretary to the Treasury (Elizabeth Truss) submitted an Explanatory Memorandum on the proposal in October 2018, with considerable delay (five months after the original Commission proposal).[26] It contains no substantive assessment of the proposed amendments to the OLAF Regulation, but notes that—as the UK has opted out of participation in the Public Prosecutor's Office—"OLAF will continue its investigations, in the same way as today, in the Member States not participating in the EPPO". Implicitly, that will include the UK both while it remains a Member State and during any subsequent transitional period. The Minister's Memorandum is also silent with respect to the possibility of continued OLAF jurisdiction in the UK where it participates in EU funding programmes, or potentially under a new customs and VAT arrangement with the EU as part of a new trade agreement.

5.6 **We thank the Chief Secretary for her Explanatory Memorandum on the proposal to amend the OLAF Regulation, but again express our dismay at the unacceptable five-month delay between the publication of the Commission proposal and the submission of the Government's Explanatory Memoranda setting out its position. We have sought reassurances from the Treasury that such delays will not reoccur in the future.**

5.7 **With respect to the substantive implications of the proposal for the UK, we consider that these are more significant than appear from the Minister's Memorandum. It is our view there may be a continued role for OLAF in the UK, even after it is due to formally cease being a Member State in March 2019.**

5.8 **Firstly, during the proposed post-Brexit transitional period—currently scheduled due to last until December 2020, although the Prime Minister has recently said she would consider an extension[27]—the UK would still be bound by the OLAF Regulation**

24 OLAF's jurisdiction extends beyond the EU where 'third countries' participate in EU funding programmes. When non-Member States sign a legal agreement for involvement in those initiatives, enabling them to receive European funding, the EU typically requires them to accept OLAF's jurisdiction to carry out investigations, including site inspections, "with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union". The powers of OLAF in these cases are those as laid down in EU law, and would therefore—once adopted by the Parliament and Council—include the changes proposed by the European Commission in May 2018. The role the European Public Prosecutor's Office could play under any 'association' with EU spending programmes as a third country remains unclear.

25 Both customs duties and VAT are a basis for Member States' contributions to the EU budget, meaning any instances of irregularities or fraud here could, conceivably, have an impact depending on the terms of the arrangements negotiated by the Government.

26 The proposed Regulation was deposited in Parliament for scrutiny by the end of May 2018, meaning that under normal procedure an Explanatory Memorandum should have been submitted by 12 June. In the event, we did not receive it until 17 October 2018.

27 BBC News, "Brexit: UK to consider longer transition period" (17 October 2018).

and therefore remain within the body's jurisdiction. In that respect, the Commission proposal is directly relevant insofar as it could alter how UK authorities are legally required to cooperate with OLAF, and the powers the latter would have to conduct investigations in the United Kingdom. We note that the changes to the Regulation not related to OLAF's cooperation with the European Public Prosecutor's Office[28] are meant to take effect almost immediately upon adoption by the Parliament and Council, which could well be during the transitional period.

5.9 **Secondly, under the envisaged new economic partnership with the EU after the UK ceases to be a Member State (and after any subsequent transitional period), the Government is seeking to remain a participant in a number of EU funding programmes—like the Framework Programme for Research and the Euratom nuclear research programme[29]—well into the next decade.[30] Based on existing precedents, like Norway[31] and Switzerland,[32] any UK participation in EU spending programmes as a 'third country' is likely to require the Government's acceptance of OLAF's jurisdiction to investigate potential irregularities with EU funding in the UK. However, whether to pursue its findings through the criminal justice system would remain an autonomous decision for British law enforcement agencies.[33]**

5.10 **Thirdly, there may also be another potential role for OLAF in the future UK-EU economic partnership. The Government, in its 'Chequers' White Paper of July 2018, has proposed a new trade arrangement where the UK and the EU act 'as if' they are a joint customs territory, effectively binding the UK to the EU Customs Union.[34] It also wants to agree "common procedures and processes" for the collection of VAT on trade between the UK and the EU, to avoid the need for fiscal border controls on goods moving in either direction. Although these proposals are unlikely to be accepted by the EU in their current form, it shows the Government is seeking to remain closely aligned to the Customs Union and the single EU VAT area. Since customs duties and the VAT base are an EU "own resource" affecting the revenue side of its budget,[35] any such arrangement could require the UK authorities to work with OLAF (since it investigates irregularities affecting the EU budget), although the exact parameters of such cooperation would be a matter for negotiation.**

5.11 **Given the continued importance of OLAF during the transitional period after Brexit and, possibly, under the UK's new partnership with the EU afterwards, we**

28 See "Background" for a description of the non-EPPO related changes referred to here.

29 See https://publications.parliament.uk/pa/cm201719/cmselect/cmeuleg/301–xxxvi/30107.htm.

30 For more information on the Government's plans for UK participation in EU funding after Brexit, see our Report of 12 September 2018 on the 2021–2027 Multiannual Financial Framework.

31 The powers of OLAF to investigate irregular use of EU funding in Norway for programmes in which that country participates are set down by incorporation of the relevant legislation into the EEA Agreement (for example the Regulation establishing Horizon 2020).

32 For example, the EU-Switzerland Agreement on scientific cooperation provides that "within the framework of this Agreement, the Commission (OLAF) may carry out investigations, including on-the-spot checks and inspections, on Swiss territory, in accordance with the terms and conditions laid down in Council Regulation 2185/96 and Regulation 883/2013".

33 Naturally, a failure to follow up on any such irregularities could jeopardise UK participation more generally.

34 Department for Exiting the EU, "The future relationship between the United Kingdom and the European Union" (12 July 2018).

35 See our Report of 4 July 2018 on the Multiannual Financial Framework for more information on the way customs duty and VAT fund the EU budget.

consider the proposal to amend its legal framework politically important. As such, we retain it under scrutiny and ask the Minister to keep the Committee informed of developments in the legislative process.

5.12 **We also note that the Government, by means of Regulations passed under the European Union (Withdrawal) Act 2018, has now repealed most of the European Union Act 2011.[36] This means that any decision by a UK Government to join the European Public Prosecutor's Office is no longer subject to approval by both Act of Parliament and a public referendum, as it was while the 2011 Act was still in force. This is, however, a purely hypothetical scenario as the Government has repeatedly provided assurance to both us and our predecessor Committees that it has no intention of exercising its opt-in right in this area.[37]**

Full details of the documents:

Proposal for a Regulation amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations: (39775), 9313/18 + ADD 1, COM(18) 338.

Background

5.13 Since 1999, the EU's anti-fraud body (called OLAF)[38] has been responsible for investigating fraud and irregularities that affect the EU 'financial interests', as well as corruption and serious misconduct within the European institutions.[39] The EU's finances can be affected by misconduct on the expenditure side (i.e. fraudulent claims of EU funds like agricultural subsidies), but also on the revenue side (for example fraud related to customs duty or Value Added Tax, both of which constitute "own resources" of the European Union).[40]

5.14 OLAF's original legal framework, Regulation 1073/1999, was comprehensively reviewed in 2006. This lead the European Parliament and the Council to adopt a new OLAF Regulation in 2013, which aimed to improve its effectiveness; protect the rights of those subject to investigations; and strengthen OLAF's cooperation with Member States and other stakeholders. In 2017, the European Commission published another evaluation of OLAF's functioning, focusing on the impact of the changes to its legal framework adopted in 2013..[41] It found that there had been a "clear improvement" in the effective conduct of investigations, but also concluded that OLAF still suffered from a number of shortcomings, including:

- a lack of clarity about the interaction between the OLAF Regulation and Member State law with respect to **on-site physical inspections**;
- inadequate **access to bank account information**;

36 The European Union (Withdrawal) Act 2018 (Commencement and Transitional Provisions) Regulations 2018.

37 In an Explanatory Memorandum relating to the selection of the European Chief Prosecutor, submitted on 14 June 2018, the Minister for Policing (Nick Hurd) reiterated that the Government "will not consider a post-adoption opt-in decision".

38 OLAF is its French acronym, from *Office européen de lutte antifraude*.

39 The OLAF legal framework is Regulation 883/2013.

40 See for more information on the revenue side of the EU budget our recent Report on the EU's Multiannual Financial Framework.

41 See Commission document COM(2017) 589.

- a lack of information to investigate **fraud or irregularities involving VAT** (which affects the EU budget, because a small proportion of each Member State's VAT base is an EU 'own resource').[42]

The European Public Prosecutor's Office

5.15 As things stand, although OLAF has the power to conduct on-the-spot unannounced inspections on the premises of economic operators, it remains an administrative body: if it uncovers evidence of criminal activity, it must pass its findings onto the relevant national judicial authority. However, it cannot require a Member State to initiate a criminal investigation. Many Member States took the view that as a result neither OLAF, nor their national law enforcement authorities were fully equipped to effectively investigate the often complex cases of fraud against the EU's finances, in particular where crimes — such like VAT missing trader fraud[43] — have a cross-border element.

5.16 To address these concerns, the 2009 Lisbon Treaty introduced the possibility of the establishment of an EU-level Public Prosecutor's Office (EPPO).[44] This EU body would have the task of "investigating, prosecuting and bringing to judgment […] the perpetrators of, and accomplices in, offences against the Union's financial interests", i.e. crimes affecting EU expenditure or revenue.[45] The aim is to ensure that criminal behaviour relating to the EU budget would be addressed more effectively, because this new EU body would have the necessary expertise relevant to this type of fraud, and have the power to bring prosecutions before the national courts of the Member States.

5.17 The EU Treaties require that the Public Prosecutor be established by unanimity among the Member States, or by a sub-set of EU countries under 'enhanced cooperation' (in which case the Office's powers would be limited to the territories of the participating countries). The European Commission formally proposed the establishment of the EPPO in 2013, but the required unanimity for an EU-wide EPPO could not be achieved (with the UK one of the most prominent opponents). By 2011, the Government had already legislated so that the UK becoming part of the new body would require both an Act of Parliament and a referendum.[46] As a result, in spring 2017 a group of EU Member States decided to set

42 The Commission concluded OLAF lacked the necessary information undertake such investigations, because its on-site inspection powers were limited by statute to "revenue collected directly on behalf of the EU", which could be interpreted as excluding VAT. Under the Own Resources Decision, the EU's Own Resource related to VAT is a 'call rate' applied to each Member State's VAT base and not the actual amount of VAT collected. VAT itself could therefore not necessarily be seen as 'revenue collected directly on behalf of the EU'.

43 Intra-EU missing trader VAT fraud takes place when the company buys goods from another Member State, because purchasing the goods cross-border within the EU is VAT-free. When then selling the goods on domestically, the company receives the entire amount of VAT, which it pockets rather than transferring it to their national Treasury. Because the company disappears, this type of fraud is called missing trader fraud. Carousel fraud takes this a step further: the same goods are bought and resold by the fraudster several times via middlemen, and each time the amount of collected VAT increases and the company either disappears or becomes insolvent before the tax authority can collect the accumulated VAT.

44 Article 86 TFEU.

45 The EU budget is funded, among other things, from customs duties and a share of the VAT base of each Member State.

46 See section 6 of the European Union Act 2011. This section was repealed in July 2018 by regulations passed under the European Union (Withdrawal) Act 2018. As a result, the Government could technically opt-in to participation in the EPPO without approval by parliament and the electorate. However, the Government has no intention of doing so, and in event its participation would automatically end when EU law ceases to apply to the UK (i.e. on 29 March 2019 or at the end of any subsequent transitional period).

up the EPPO under enhanced cooperation. Twenty EU countries formally established the new Prosecutor's Office under in November 2017, and two more subsequently announced their intention to join the new body.[47]

5.18 Under the legal framework, the EPPO will have a central office and delegated offices in all participating Member States. A new Directive on the fight against fraud on the EU budget by means of criminal law, defines the specific offences which the EPPO will be competent to prosecute.[48] National and European prosecutors will have concurrent competence, meaning they will both have the ability to investigate crimes that affect the EU budget. However, this is subject to the 'right of evocation': if the Office takes up an investigation within its remit, national authorities are required to stand back from pursuing the same case. The European Public Prosecutor's Office will assume its investigative and prosecutorial tasks at a future date, most likely in late 2020 or early 2021. The Chief Prosecutor is due to be appointed in the first half of 2019.[49]

5.19 Given that both the EPPO and OLAF investigate instances of fraud that affect the EU budget, Article 101 of the EPPO Regulation establishes the basic framework for its relations with its administrative counterpart. This requires the Prosecutor to maintain a "close relationship with OLAF", based on "mutual cooperation within their respective mandates and on information exchange". In particular, it can ask OLAF for analysis or operational support in specific investigations. The EPPO Regulation also allows the Prosecutor to refer cases to OLAF where there has been no evidence of criminal conduct, but an administrative inquiry may nevertheless be appropriate.

5.20 Under the Treaties, the remit of the EPPO can also be extended to "serious crimes" with a cross-border dimension, such as terrorism. The Commission presented a Communication[50] to the European Council in September proposing an extension to cross-border terrorist crime , and recommending that a decision on a further formal proposal be taken unanimously by all Member States in the European Council in May 2018[51] As the UK is due to have left by this time, the Government will not have its current veto.[52] However, there remains some uncertainty about the timing of such a development.

The Commission proposal to amend the OLAF Regulation

5.21 Given that OLAF predates the establishment of the EPPO, its legal framework does not refer to the Prosecutor's Office in the way the latter does refer to OLAF (see above).

47 See Council Regulation 2017/1939. The non-participating Member States are Ireland, the UK, Hungary, Poland, and Denmark.

48 See Directive (EU) 2017/1371. The UK is not bound by this Directive, not having exercised its Justice & Home Affairs opt-in.

49 The Commission in May 2018 proposed a Council Implementing Decision listing 12 members4 to be appointed to the Selection Panel for the European Chief Prosecutor and European Prosecutors. The selection panel, once in place, will be required to draw up a shortlist of qualified candidates for the position of European Chief Prosecutor before his/her appointment by the European Parliament and Council and to provide a reasoned opinion on the qualifications of candidates for European Prosecutors before their appointment by the Council.

50 12190/18: Communication from the Commission: A Europe that protects: an initiative to extend the competences of the European Public Prosecutor's Office to cross-border terrorist crimes A contribution from the European Commission to the Leader's meeting in Salzburg on 19–20 September 2018.

51 There is no possibility for use of the enhanced cooperation procedure to extend the remit of the EPPO. It requires a unanimous decision in the European Council first.

52 Under section 6 of the European Union Act 2011, the Government could only vote in the European Council to extend the EPPO's remit after obtaining approval via both an Act of Parliament and a referendum. That requirement was abolished when the 2011 Act was repealed by regulations in July 2018.

This was one of the shortcomings identified by the Commission in its 2017 review of the anti-fraud office, and in May 2018 it therefore tabled a legislative proposal to put in place the necessary legal requirements for OLAF's work with the EPPO.

5.22 In practice, the Commission proposal would:

- Oblige OLAF to inform the EPPO "without undue delay" of any conduct it uncovers which falls within the latter's remit. Information received from OLAF would not require the Prosecutor's Office to launch a full investigation, as it can conduct a "preliminary evaluation" to ensure that the information supplied is "sufficiently substantiated and contains the necessary elements" for further action;
- Prevent OLAF from opening or maintaining a parallel investigation into facts which are the object of an investigation by the EPPO. However, with the Prosecutor's consent, OLAF could open or continue a parallel investigation to enable "administrative investigations"—i.e., those not aimed at ascertaining possible elements of a criminal offence — for example where the amount of money that needs to be recovered is very high or not taking swift administrative action risks further money being lost to fraud or irregularities; and
- Entrench the ability of the EPPO to ask OLAF for support (see paragraph 0.19), namely by requiring the latter to comply with any request for information, analysis or operational support.

5.23 The changes to the OLAF legal framework to take into account the establishment of the EPPO must be jointly approved by the European Parliament and the Council, which can still amend the Commission proposal. They would not take effect until the date the Prosecutor's Office becomes operational, which as noted is expected to take place in early 2021.

Other changes to the OLAF legal framework

5.24 In addition to clarifying OLAF's role in the context of the new Public Prosecutor's functions, the Commission has also proposed a number of changes related to the Office's role more generally, based on the 2017 evaluation. It believes these are mainly technical in nature and can be agreed by the Member States and the European Parliament before the EPPO becomes operational:

- The proposal would clarify that on-site inspections by the anti-fraud office are subject only to EU law, namely the OLAF Regulation and Regulation 2185/1996 regarding on-the-spot checks carried by the European Commission (of which OLAF is part). If OLAF requires the help of national law enforcement authorities for any reason (for example if the business being inspected refuses to cooperate), this assistance would be rendered in compliance with the national law of the relevant Member State. This reflects recent caselaw of the General Court of the European Union;[53]

53 See judgment in Case T-48/16 (*Sigma Orionis v Commission*). The Commission describes the relevant parts of the judgment as follows: "The Court ruled that, in the absence of opposition by the economic operator, on-the-spot checks and inspections are conducted by OLAF on the basis of Regulation No 883/2013 and Regulation No 2185/1996, and of the written authorisation of the Director-General of OLAF. Union law supersedes national law when a matter is regulated by Regulations No 883/2013 or No 2185/1996."

- Article 8 of the OLAF Regulation would be amended to clarify that national authorities have to provide the Office with the information it requires for an on-going investigation, unless prohibited from doing so by national law (where the current legislation says more ambiguously that this obligation applies "in so far as their national law allows");

- To improve its operations in relation to VAT fraud and irregularities (which are an EU 'own resource' and therefore affect the Union budget), OLAF would be given an explicit legal basis to exchange information with Eurofisc, a network of Member State tax authorities where the results of their analytical work in identifying VAT fraud are exchanged on an ad hoc basis;

- With respect to access by OLAF to bank account information, the Commission proposes to give the Office access to information on the beneficial ownership of money held in a bank account in any EU Member State,[54] as well as a record of associated transactions "when strictly necessary";

- Under the proposed article 11, evidence collected by OLAF would benefit from a presumption of admissibility in non-criminal judicial proceedings in any Member State or before the Court of Justice of the European Union. In criminal proceedings, OLAF's reports would be admissible where "their use proves necessary in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors"; and

- Lastly, the new Regulation would make a number of simplifications, for example by streamlining the conduct of OLAF's digital forensic operations (allowing it to access electronically-held data relevant to its investigations).

5.25 These changes in the powers of OLAF would not be dependent on the date the EPPO becomes operational: the Commission proposes they should take effect twenty days after the new Regulation was published in the Official Journal, following adoption by the European Parliament and the Council. Other shortcomings in OLAF's functioning identified by the 2017 evaluation, which would be more far-reaching, may be addressed through a separate legislative proposal at a later stage.[55]

The Government's position

5.26 The Chief Secretary to the Treasury (Elizabeth Truss) submitted an Explanatory Memorandum on the proposal in October 2018, five months after the Commission document was deposited for scrutiny. We have written to the Minister separately to express our dismay at this unacceptable delay, and to seek reassurance that it will not reoccur.

5.27 With respect to the substance of the Commission proposal to reform OLAF, the Minister states in her Memorandum that the UK "supports efforts to reduce fraud in

54 Under the fifth Anti-Money Laundering Directive, adopted in May 2018, all EU Member States will need to establish registers or retrieval systems for information on bank accounts held in their territory by September 2020. The UK would also be under an obligation to do so under the terms of the proposed post-Brexit transitional arrangement in the draft Withdrawal Agreement, which is scheduled to last until December 2020.

55 These remaining findings relate to a wide range of areas including OLAF's investigative tools, the enforcement of OLAF powers, uniform conditions in the conduct of internal investigations, the conduct of digital forensic operations, divergences in the follow-up to OLAF recommendations, the duties of cooperation by Member States and Union institutions, bodies, offices and agencies, and the overall coherence of the legal framework.

the EU budget" and will engage in the negotiations on the proposed amendments "to reform OLAF's investigative efficiency and effectiveness, particularly to ensure that its independence is not compromised". She adds that the UK has opted out of participation in the European Public Prosecutor's Office, and has received reassurance from the European Commission that "OLAF will continue its investigations, in the same way as today, in the Member States not participating in the EPPO".

5.28 The Minister's Memorandum does not refer to the role that OLAF would continue to play in the UK for the duration of any post-Brexit transitional period, or its possible jurisdiction in the UK where it participates in EU funding programmes like the Framework Programme for Research. We have nevertheless assessed the implications of the role of OLAF after Brexit (see paragraphs 0.7 to 0.11), and retained the proposal under scrutiny in anticipation of further information from the Government about progress in the legislative negotiations.

Previous Committee Reports

None. We last considered the European Public Prosecutor's Office in December 2017, see: (36931), 9372/15: Fifth Report HC 301–v (2017–19), chapter 17 (13 December 2017).

6 EU anti-fraud programme 2021–27 (Hercule IV)

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council establishing the EU Anti-Fraud Programme
Legal base	Articles 33 and 325 TFEU, ordinary legislative procedure; QMV
Department	Treasury
Document Number	(39810), 9539/18 + ADDs 1–2, COM(18) 386

Summary and Committee's conclusions

6.1 The EU currently spends approximately €144 billion (£127 billion) annually,[56] either by the European Commission or by the Member States themselves ('shared management'). This expenditure is funded by the EU's "traditional own resources"—customs duties and sugar levies collected on the entry of goods into the Union, and a share of the VAT base of each Member State—as well as a contribution by each national treasury based on their GNI as a proportion of that of the EU as a whole.[57]

6.2 Given the size of the EU budget, there is considerable scope for it to be affected by fraud or irregularities. Those can affect both the expenditure side (for example the fraudulent use of EU farming subsidies or Cohesion Funding) or the revenue side (such as evasion of customs duties, for example through smuggling of tobacco products). In its 2017 Annual Report on the protection of the EU's financial interests, the European Commission notes that in 2016 it received nearly 20,000 reports of fraudulent and non-fraudulent irregularities relating to the EU budget in 2016, involving total sums of approximately €2.97 billion (£2.66 billion), of which €391 million (£350 million) were alleged instances of fraud.

6.3 Article 325 TFEU therefore requires the Member States and the EU itself to take the necessary measures to protect the Union's financial interests. At EU-level, this is done in multiple ways, including:

- the work of OLAF, the EU's anti-fraud body, which leads administrative investigations into fraud and irregularities affecting the EU budget;
- the establishment of the European Public Prosecutor's Office (EPPO), a new EU body—to become operational in late 2020—which will sit above OLAF and have the power to investigate and prosecute criminal activity affecting the EU budget in twenty-two participating Member States;[58]

56 The EU budget for 2018 provides for €160.1 billion in 'commitments' (expenditure commitments that can be made in that year) and €144.7 billion in 'payment' (actual disbursements of money).

57 In 2015, the distribution of revenue between these different sources was as follows: Customs duties and sugar levies: €18.6 billion; VAT-based contribution: €17 billion; GNI-based contribution: €103 billion.

58 The UK, along with Denmark, Hungary, Ireland, Poland and Sweden, do not participate in the EPPO. See for more information the separate chapter in this Report on cooperation between OLAF and EPPO.

- the new Directive on the fight against fraud affecting the EU budget, which defines such offences as well as harmonising criminal sanctions and time limitations (except in the UK and Denmark);[59]
- the Anti-Fraud Information System (AFIS, a common information system used to share information between Member States on compliance with EU customs and agricultural legislation);[60] and
- the Irregularity Management System (IMS, which allows the Member States report cases of irregularities, including fraud, affecting EU expenditure).

6.4 In addition, the EU has since 2004 operated a dedicated funding programme (called 'Hercule') that provides support to Member States in their efforts to protect Union's financial interests. It contributes to financing a range of activities, such as the purchase of technical equipment and analytical tools, as well as training and conferences for Member State officials.[61] The current (third) Hercule programme was approved by the European Parliament and the Member States in February 2014, and runs until the end of the current Multiannual Financial Framework in December 2020. The UK was the only Member State to vote against the proposal, for reasons related to its financial management.[62]

6.5 The final element of the EU's structures to protect its financial interests are its institutions: the European Commission, as 'Guardian of the Treaties', has a role in monitoring the correct application and enforcement of EU rules affecting its budget by the Member States, especially in the field of customs. It can ask the Court of Justice to request repayment—paid for by national taxpayers—if it believes a national government has failed to collect customs duties in line with EU law (and, by extension, has contributed less than it was due to the EU budget).

6.6 For example, the UK is currently subject to an infringement procedure by the European Commission related to alleged failure to collect €2.7 billion of customs duty on imports from China between 2011 and 2017.[63] The Commission has demanded that the Government compensate the EU budget for the 'own resources' evaded, although the Treasury has repeatedly rejected the estimate of the total duty loss. The matter remains subject of discussions between the UK and the Commission, the latter of which recently escalated the dispute to the 'reasoned opinion' stage of the infringement procedure, and it may yet be referred to the European Court of Justice.[64]

59 See Directive 2017/1371. It has to be transposed by all Member States by July 2019, except the UK and Denmark which have opted out.

60 See Council Regulation 515/97 on mutual assistance between the Member States on customs and agricultural matters. Agriculture is included because of the relatively high risk of fraud and irregularities affecting EU farming subsidies. AFIS has a budget of €7.6 million in 2018.

61 There is also a parallel 'Customs' programme, which supports the EU's national customs authorities in protecting the EU's external border. By extension, any efforts to ensure the collection of customs duty also benefit the EU budget.

62 The UK did not support the high co-financing rate in Hercule III. This allowed grants from the EU budget contributing up to 90 per cent of eligible costs for 'Hercule' projects, leaving only a small proportion to be paid for by the recipient Member State itself. Sweden abstained from supporting the programme for the same reason.

63 The Commission notes that the Automated Monitoring Tool (AMT), an EU-level tool that identifies anomalies in trade flows which was funded by Hercule, was "instrumental in identifying large undervaluation fraud schemes in the import of textile and footwear from third countries".

64 Whether any judgement by the Court would be binding on the UK depends on the terms of any ratified Withdrawal Agreement relating to the UK's exit from the EU, as the Court would not deliver its ruling until after the UK is due to leave the EU on 29 March 2019.

The Commission proposal for 'Hercule IV'

6.7 In May 2018, as part of a wider set of negotiations on the EU's next Multiannual Financial Framework for the 2021–2027 period, the Commission tabled a proposal for a continuation of 'Hercule'. The fourth iteration would have a budget of €181 million (£159 million) over that seven-year period, representing only a minor proportion of the EU's total proposed expenditure during that budgetary cycle but a 72 per cent nominal increase compared to Hercule III.[65]

6.8 The objectives of Hercule IV are to prevent fraud, corruption and any other illegal activities affecting the financial interests of the Union; support the reporting to the Commission of irregularities, including fraud, relating to EU expenditure which is managed by the Member States; and provide tools for information exchange and support to Member States when applying EU legislation on customs and agricultural subsidies.

6.9 The 2021–2027 programme as proposed is not radically different from the current EU anti-fraud programme.[66] The most notable change in the programme called to Hercule III is that the legal basis for the financing of the Anti-Fraud Information System (which also serves as the operational platform for the Irregularity Management System) would be transferred to the anti-fraud programme. The Commission has also set out some suggested new activities that could be funded by Hercule, such as data analysis; staff exchanges between Member States; closer involvement of non-EU countries, especially in relation to customs fraud; and support for the Framework Convention on Tobacco Control to tackle cigarette smuggling. Individual measures to be funded from the Programme will be decided by the Commission, on the basis of Annual Work Programmes that need to be approved by a qualified majority of Member States.

6.10 The proposed Programme is open to participation by 'third countries'—like the UK after it ceases to be a Member State—subject to a specific legal agreement to that effect, which would also specify a "fair balance as regards the contributions and benefits". It would also require the UK to allow the European Court of Auditors and the EU's anti-fraud body (OLAF) to "exert […] their competences", including on-the-spot checks.

6.11 The Chief Secretary to the Treasury (Elizabeth Truss) submitted an Explanatory Memorandum on Hercule IV with considerable delay on 17 October 2018, four months after the proposal was published by the Commission. In it, the Minister reiterates the Government's position that "the UK has an interest in participating in future EU programmes and collaboration where it is in the UK's and the EU's mutual interest". With respect to Hercule IV, she states "there may be a case for cooperating with the EU […] where this would be mutually beneficial and if the UK had access to the necessary systems". Accordingly, the Minister adds that the Government "will take this into account in negotiating a future customs arrangement with the EU and will keep Parliament updated".

65 Under the Commission proposal for the next MFF, total EU expenditure from 2021 to 2027 would amount to €1.134 trillion (£997 billion). The anti-fraud programme would constitute less than 0.02 per cent of that total.

66 The Commission notes in its impact assessment that "considering that Hercule, AFIS and IMS have all proved overall positive, the EU Anti-Fraud Programme will largely roll them over in a single, combined, programme."

Related Commission proposals

6.12 In parallel to Hercule IV, the European Commission has also proposed significant reforms of the way in which the EU budget is funded: it wants to decrease the proportion of customs duties retained by national governments, and introduce three new types of own resources linked to corporate tax receipts, volumes of unrecycled plastic, and the revenues of the EU's emissions trading system. We described these proposals in more detail in our Report of 4 July 2018. If these changes are approved by the Member States (which remains to be seen),[67] Hercule IV could also be used to support collection of EU revenue in those areas.

6.13 In addition, the Commission has also proposed a funding instrument in support of EU customs authorities more generally, for the duration of the 2021–2027 MFF. This will also have an impact on the EU's financial interests insofar as it improves the collection rates for customs duties, which then accrue to the EU budget.

6.14 The Customs Programme includes a new Custom Control Equipment Instrument (CCEI), which like Hercule will finance the acquisition of customs equipment such as scanners.[68] This creates an obvious risk of overlap with Hercule IV, which can also finance such equipment. The Commission has explained that the Customs Control Equipment Instrument should be used for "larger customs equipment in order to improve uniformity in the performance of customs controls throughout Member States", whereas Hercule would focus on more specific equipment such as "digital forensic equipment, surveillance equipment, intelligence equipment, equipment for combatting cigarettes trafficking, such as sniffer dogs", as well as support for non-customs authorities such as "tax authorities, judicial authorities, police inspectorates and border police, ministries, various investigative bodies [and] anti-corruption bodies".

Our assessment

6.15 **The implications of the Hercule IV proposal for the UK appear to be minimal at present, given its exit from the EU before the new Programme becomes operational in early 2021 and there is no firm indication the Government wants to participate as a 'third country'. Once it ceases to be a full contributor to the EU budget, scheduled for the end of the post-Brexit transitional period,[69] the UK would in principle no longer have an obligation to transfer customs duties or a share of its VAT base to the EU budget. Any fraud or irregularities affecting HMRC's collection of those taxes would then be a matter for the UK itself, since the revenues would flow wholly to the Treasury. It is questionable in any event whether a budget of €181 million—which minus the UK amounts to an average of €950,000 per Member State per year over the 2021–2027 period—will make a significant dent in the fraudulent use of the EU budget (which was estimated at €391 million in 2016 alone).**

67 The last substantial reform of the EU's system of own resources took place in [1980s], when the [VAT-based contribution] was introduced.

68 We have considered the Customs Programme proposals in a separate chapter of this Report.

69 Even if the Withdrawal Agreement and its financial settlement are not agreed before the end of the two-year Article 50 period in March 2019, it seems likely the EU would insist on an agreement on the UK's outstanding financial obligations accrued during its membership before it would consider any new negotiations, for example on a future trade agreement or UK participation in EU programmes.

6.16 **However, the proposal may nevertheless be relevant for the UK. In its Government's Chequers White Paper, the Government called for a 'facilitated customs agreement' with the EU after Brexit where the UK would act "as if" it formed a joint customs territory with the Union.[70] We consider that the depth of the customs and trade relationship sought—even if it is unlikely to take the form as described in the White Paper—could lead the EU to request a revenue sharing mechanism related to customs duties. If there is any form of revenue sharing mechanism between the UK and the EU under the future trading arrangement, customs duty collected on goods entering the UK could still partially flow to the EU budget. In those circumstances, there may be some added value in the Government participating in the Hercule IV programme. Such participation could also be interpreted as a positive sign in the context of the Government's dispute with the EU over €2.7 billion in customs duty that the latter claims has been fraudulently evaded at UK ports in recent years.**

6.17 **There is also continued uncertainty about the eventual length of the post-Brexit transitional period: if it were to be extended into 2021, the UK would most likely be asked to make further financial contributions to the EU budget—above and beyond the financial settlement as currently agreed in the draft Withdrawal Agreement—and therefore potentially co-finance Hercule IV irrespective of the Government's position on the merits of the programme.**

6.18 **In light of these considerations, we have decided to retain the proposal under scrutiny for now and ask the Minister to keep us informed of developments in the legislative process.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council establishing the EU Anti-Fraud Programme: (39810), 9539/18 + ADDs 1–2, COM(18) 386.

Previous Committee Reports

None, this is a new legislative proposal.

70 Department for Exiting the EU, "The future relationship between the United Kingdom and the European Union" (12 July 2018).

7 Strengthening the European Border and Coast Guard

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Regulation on the European Border and Coast Guard
Legal base	Articles 77(2)(b) and (d) and 79(2)(c) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(40060), 12143/18 + ADD 1, COM(18) 631

Summary and Committee's conclusions

7.1 At the peak of the migration and refugee crisis in 2015, Member States reported more than 1.8 million illegal border crossings along the EU's external borders. The scale of the migratory flows and concern that uncontrolled movements within the EU might place the border-free Schengen area at risk prompted the EU to establish the European Border and Coast Guard at the end of 2016.[71] The aim was to develop a model of shared management of the EU's external borders, with a new European Border and Coast Guard Agency taking over the functions of Frontex (the EU's external borders agency) and acting as the operational arm of the EU in close partnership with national border control authorities. Although there has been a substantial reduction in migratory flows in the two years since the new Agency began operations, the latest Risk Analysis for 2018 concludes:

> Geopolitical and economic drivers of migration are on the rise and the EU remains exposed to large migration flows.

7.2 The Risk Analysis highlights a need to adapt and scale up border control resources so that they can respond to the multiplicity of threats and challenges that arise at the EU's external borders — from humanitarian assistance and support for victims of human trafficking and smuggled migrants to the detection of document fraud, foreign terrorist fighters and other cross-border criminals or criminal acts.

7.3 For the European Commission, the European Border and Coast Guard should stand as "a tangible example of European solidarity available for operational deployment" whenever needed to protect the EU's "shared external borders".[72] In practice, the dependence on Member States for voluntary contributions of personnel and equipment has resulted in "persistent gaps" which have limited the capacity to provide operational support to frontline Member States. Recognising the need for more "EU financial and

71 See Regulation (EU) 2016/2024 on the European Border and Coast Guard.

72 See p.1 of the Commission's explanatory memorandum accompanying the proposed Regulation.

material support" to ensure that Member States can control the EU's external borders effectively, EU leaders called for "increased resources and an enhanced mandate" for the European Border and Coast Guard Agency at their June Summit meeting.[73]

7.4 The proposed Regulation would increase the resources available to the European Border and Coast Guard, expand its tasks and powers, strengthen its role in identifying and returning third country nationals who are not entitled to enter or remain in the EU, and enhance cooperation with third countries. The Commission's aim is to provide "a tool box of capabilities" which enables the European Border and Coast Guard to respond to "the new challenges and political realities faced by the Union, both as regards migration management and internal security" and maximises EU support on the ground.[74] All operations involving the European Border and Coast Guard would take place under the control and command of the host Member State.

7.5 The main changes made by the proposed Regulation are:

- the introduction of a new "policy cycle" to coordinate the development of border management and return strategies at European and national level based on common policy objectives, improve capability and contingency planning, and strengthen early warning mechanisms to ensure a quicker response to crises;[75]
- the creation of a standing corps of 10,000 operational staff within the European Border and Coast Guard Agency by 2020 — described by the Commission as "a game changer" in ensuring effective control of the EU's external borders, the standing corps would include staff members directly employed by the Agency and staff seconded by Member States on the basis of a mandatory distribution key;[76]
- additional financial support for Member States so that their contribution to the standing corps does not diminish their own border control capabilities;[77]
- the conferral of "executive powers" on Agency staff so that they are able to support Member States in performing all tasks related to border control and returns, whilst remaining under the authority and control of the Member State in which they are deployed and subject to the host Member State's law on the use of service weapons;[78]
- a larger equipment budget to enable the Agency to acquire, maintain and operate its own air, sea and land assets, with decisions informed by a "capability roadmap" covering the European Border and Coast Guard as a whole—these assets would provide the "backbone" for the Agency's operational deployments, with Member State contributions sought only in "exceptional circumstances";[79]

73 See the European Council Conclusions issued on 28 June 2018.
74 See p.12 of the Commission's explanatory memorandum accompanying the proposed Regulation.
75 See Articles 8–9 of the proposed Regulation.
76 See Articles 5, 55–9 and Annexes I-IV of the proposed Regulation and p.2 of the Commission's accompanying explanatory memorandum. Members of the standing corps would include officials capable of carrying out border control or return tasks.
77 See Article 61 of the proposed Regulation.
78 See Articles 55, 83 and Annexes II and V of the proposed Regulation.
79 See Articles 63–4 of the proposed Regulation and p.16 of the Commission's accompanying explanatory memorandum.

- the possibility to establish temporary "antenna offices" in Member States hosting the Agency's operational activities to facilitate coordination, communication and logistical support;[80]

- enhanced border surveillance and control capabilities through the incorporation of the European Border Surveillance System (Eurosur) to anticipate, detect and react to crises at the EU's external land, sea and air borders;[81]

- more effective tools to combat document fraud by entrusting the European Border and Coast Guard Agency with the management of the EU's online system for checking the authenticity of travel and residence documents ("FADO");[82]

- greater capability to assist with returns, including new powers for the European Border and Coast Guard Agency to assist Member States in implementing return procedures and return operations;[83]

- enhanced cooperation between the European Border and Coast Guard Agency and the EU Agency for Asylum to strengthen the synergies between asylum and returns procedures;[84] and

- stronger cooperation with (non-EU) third countries to support returns and provide technical and operational assistance at their external borders.[85]

7.6 The creation of a standing corps would ensure that the European Border and Coast Guard Agency is able to deploy staff whenever needed to support Member States in managing their external borders, including as part of a larger migration management support team involving other EU agencies operating in "hotspot" areas and "controlled centres".[86]

7.7 The Commission anticipates that the changes it has proposed would enable the European Border and Coast Guard to "act as a genuine border police".[87] If the proposed Regulation is agreed, additional funding of €577.5 million would be needed in 2019–20 (making a total of €1.3 billion) to enable the European Border and Coast Guard to fulfil its extended mandate. The Commission's proposals for the EU's next long-term budget for 2021–7 include an allocation of around €11.3 billion for the European Border and Coast Guard.

7.8 The proposed Regulation builds on parts of the Schengen rule book on external border control which do not apply to the UK. The UK is therefore not entitled to participate in (or vote on) the proposal and will not be bound by it once adopted.[88] The UK may nonetheless be invited to attend meetings of the European Border and Coast Guard Agency's Management Board (but without voting rights) while the UK remains an EU

80 See Article 60 of the proposed Regulation.
81 See Articles 18–36 of the proposed Regulation.
82 See Article 80 of the proposed Regulation.
83 See Articles 49–54 of the proposed Regulation.
84 See Articles 10, 12, 41 and 102 of the proposed Regulation.
85 See Articles 72–9 of the proposed Regulation.
86 The types of deployment are set out in Articles 37 and 43 of the proposed Regulation and include "rapid border interventions", "joint operations" with Member States and/or third countries, "migration management support teams" and "return teams".
87 See p.3 of the Commission's explanatory memorandum accompanying the proposed Regulation.
88 See recital (108) of the proposed Regulation.

Member State. It may also request to take part in some of the Agency's activities before it leaves the EU and afterwards for the duration of any post-exit transition/implementation period forming part of the EU/UK Withdrawal Agreement.[89] Once the UK leaves the EU and any post-exit transitional period has expired, cooperation with the European Border and Coast Guard Agency and with other EU Member States will be based on the third country provisions of the proposed Regulation.[90]

7.9 In her Explanatory Memorandum of 17 October 2018, the Immigration Minister (Caroline Nokes) confirms that the UK will not take part in the adoption of the proposed Regulation or be bound by it and that it will not necessitate any changes to UK law or have any direct financial implications. Nonetheless, she makes clear that the Government sees "great value in supporting the Agency" and is "broadly supportive" of the proposal, reiterating the Government's "strong interest in effective management of the EU's external border, not just in combating illegal migration and cross-border crime but also as part of the EU-wide counter-terrorism effort".

7.10 The Minister notes that the proposed Regulation would carry over the existing arrangements which allow the UK to take part in European Border and Coast Guard activities and joint operations as advisers/observers with the agreement of the Management Board on a case-by-case basis but adds that these provisions are "caveated" to take account of the UK's imminent withdrawal from the EU.[91] A similar caveat applies to the arrangements enabling the UK to enter into agreements on the exchange of information shared amongst Schengen States under the EU's border surveillance system (Eurosur).

7.11 A more substantial concern arises from the Commission's proposal to entrust the European Border and Coast Guard Agency with the operation of the EU's false and authentic documents database (FADO). FADO is one of the non-Schengen EU police and criminal justice measures that the UK opted back into in December 2014 and participates in fully. The Minister says she will seek to clarify with the Commission how the new arrangement would affect the UK's access to the database.

7.12 The Minister underlines the UK's operational support for Frontex and its reincarnation as the European Border and Coast Guard Agency in 2016, reflecting the UK's commitment to "practical cooperation with EU Member States, particularly those facing the greatest pressures at their external borders to tackle illegal migration and organised immigration crime". Turning to the UK's future relationship with the Agency post-exit/transition, the Minister observes:

> As part of a deal on withdrawal from the EU, we want to continue to provide operational support to the Agency on a case by case basis to strengthen the EU's external border and the proposal appears to make allowances for this. Our continued cooperation will be dependent on an ongoing relationship with the Agency whereby operational rules for engagement are clear and we continue to have policy channels for engagement.

7.13 EU Justice and Home Affairs Ministers had a preliminary discussion of the Commission's proposal to strengthen the European Border and Coast Guard at their

89 See recitals (110) and (111) and Articles 71, 98(5) and 102 of the proposed Regulation.

90 See Articles 72–79 of the proposed Regulation.

91 The Minister explains that the UK makes no direct contribution to the Agency's central budget but provides experts and technical equipment to support Agency activities on a cost-free basis.

October Council meeting. The Government's post-Council Statement records Member States' support for a stronger Agency but also concern at "the size of the standing corps, its impact on national authorities and the consequences for Member State competence on border protection".[92]

Our Conclusions

7.14 **The policing of the EU's external borders and the allocation of responsibility for those who cross them in search of international protection has been a source of division amongst Member States since the migration and refugee crisis reached its peak in 2015. These divisions have hampered efforts to reform the EU's asylum rules in a way that respects "the principle of solidarity and fair sharing of responsibility, including its financial implications".[93] The proposed Regulation, if agreed, would signify a substantial scaling-up of the staff and equipment available to the European Border and Coast Guard, a strengthening of its operational capabilities and powers, and a large increase in its funding (totalling €11.3 billion for the period 2021–27). For the European Commission, this enhanced role "should stand as a tangible example of European solidarity", providing "more Europe where Europe is needed by maximising EU support on border and migration management" so that the European Border and Coast Guard can "act as a genuine border police".[94] Given the scale of the ambition, we consider that the proposed Regulation should be reported to the House, even though (as a Schengen measure) the UK will not take part in its adoption or application.**

7.15 **We would welcome further information from the Minister on the following aspects of the proposed Regulation.**

7.16 **First, the proposed Regulation envisages a role for the European Border and Coast Guard within "hotspot areas" and "controlled centres". We remind the Minister that we wrote in July to ask whether any Member State has indicated a willingness to host a controlled centre and how these controlled centres would differ from the hotspots already established in Greece and Italy.[95] In her response we ask her also to explain how the role and functions of the European Border and Coast Guard would differ if deployed in a controlled centre rather than a hotspot area.**

7.17 **Second, the Minister does not comment specifically on the size of the standing corps proposed by the European Commission and the enhanced operational powers that it would have to assist with border management and return operations on the ground. We ask whether she shares the Commission's view that there is "a clear need for permanent, fully trained staff of the Agency that can be deployed at any time anywhere" or the concern expressed by some Member States that the proposed Regulation could**

92 See the Written Ministerial Statement by the Lord Chancellor and Justice Secretary (David Gauke) issued on 18 October 2018.

93 See Article 80 of the Treaty on the Functioning of the European Union which provides: "The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the acts of the Union adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle."

94 See p.1 and p.3 of the Commission's explanatory memorandum accompanying the proposed Regulation and its press release of 12 September 2018, *State of the Union 2018—Commission proposes last elements needed for compromise on migration and border reform.*

95 The concept of controlled centres emerged from the deliberations of EU leaders at their Summit meeting in June 2018.

undermine the sovereign control of national borders.[96] We also ask her to update us on her discussions with the European Commission concerning continued UK access to the EU's false and authentic documents database (FADO) once it is taken over by the European Border and Coast Guard Agency.

7.18 **Finally, the changes proposed by the European Commission mean that the European Border and Coast Guard Agency is likely to be a more visible presence at parts of the EU's external border. As UK nationals will cease to be EU citizens with a right of free movement within the wider European Economic Area post-exit/transition, there is a much greater likelihood that they will encounter Agency staff and face potentially greater bureaucracy when crossing the EU's external border. We ask the Minister for an assurance that the proposed Regulation includes a robust set of safeguards, complaints procedures and redress mechanisms to ensure that any violations of individual rights or complaints of mis-treatment are dealt with swiftly, fairly and effectively.**

7.19 **Pending further information, the proposed Regulation remains under scrutiny. We ask the Minister to provide further updates on the progress of negotiations. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents:

Proposal for a Regulation on the European Border and Coast Guard and repealing Council Joint Action no. 98/700/JHA, Regulation (EU) no 1052/2013 and Regulation (EU) no. 2016/1624: (40060), 12143/18 + ADD 1, COM(18) 631.

Previous Committee Reports

None.

96 See p.5 of the Commission's explanatory memorandum accompanying the proposed Regulation.

8 Strengthening the European Union Agency for Asylum

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
Document details	Amended proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010
Legal base	Articles 78(1) and (2) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(40064), 12112/18, COM(18) 633

Summary and Committee's conclusions

8.1 The unprecedented surge in irregular migration to the EU, which reached its peak in 2015, exposed weaknesses in the management of the EU's external borders and deficiencies in the application of EU asylum rules. It also cast doubt on the sustainability of the open borders policy within the Schengen area. Responding to what the President of the European Council (Donald Tusk) described at the time as "an existential challenge for the EU",[97] the Commission put forward a comprehensive EU asylum reform package in 2016 and a raft of other measures to strengthen the EU's external borders. The asylum reforms included a proposed Regulation to transform the existing European Asylum Support Office (EASO) into a European Union Agency for Asylum with stronger powers to monitor the application of EU asylum rules and provide operational and technical assistance to Member States. The Council and the European Parliament reached a provisional agreement on the proposed Regulation in June 2017, but it can only be formally adopted once all the other elements of the Commission's asylum reform package have also been agreed.[98] The central element of that package — the reform of the Dublin rules determining the Member State responsible for examining an application for international protection made in the EU — has also proved to be the most intractable to negotiate, with Member States unable to agree a new "solidarity" mechanism to share responsibility for asylum seekers more equitably.[99]

8.2 At their June Summit, EU leaders made clear that migration is a challenge "not only for a single Member State, but for Europe as a whole" and underlined the need to find "a speedy solution".[100] The Commission, in turn, has sought to identify a range of "solidarity support measures" to relieve pressure on Member States facing disproportionate

97 See Donald Tusk's report to the European Parliament on the outcome of the December 2015 European Council, 19 January 2016.

98 See the press release issued by the Council on 29 June 2017.

99 This Presidency paper (Council document 12826/18) summarises the progress made in negotiations on the seven legislative proposals forming part of the asylum reform package.

100 See the European Council Conclusions of 28 June 2018.

migratory flows and "strike the right balance between solidarity and responsibility".[101] Its latest contribution—a proposed Regulation—sets out some targeted amendments to its 2016 proposal establishing the European Union Agency for Asylum. The purpose of these changes is to increase the operational and technical support that the Agency can provide to Member States so that they are able to apply EU asylum rules more effectively and facilitate the return of individuals who do not qualify for international protection. The Agency would be able to:

- assist Member States in determining responsibility for examining an application for international protection under the (revised) Dublin rules and carrying out any transfers between Member States;
- carry out all or part of the administrative procedures for handling applications for international protection—this could include identifying and registering third country nationals, taking biometric data, providing information on asylum procedures and interpretation services, registering applications for international protection, identifying applicants in need of special procedural guarantees or reception needs, carrying out interviews, preparing decisions, helping to set up reception facilities, and deploying technical equipment;
- assist with the handling of asylum appeals, for example, by providing legal research and analysis; and
- help coordinate returns for applicants whose asylum claims have been rejected.

8.3 The Commission makes clear that assistance would only be provided at the request or with the agreement of a Member State and that national authorities (not the Agency) would be responsible for taking the final decision on asylum applications and appeals.[102] The Agency may deploy asylum support teams comprising the Agency's own staff and experts provided by Member States if a Member State requests enhanced assistance. Even more comprehensive assistance may be provided through the deployment of migration management support teams which bring together asylum support teams, operational staff from the European Border and Coast Guard Agency, and experts from Europol and other EU agencies.[103] The Commission would be responsible for coordinating the activities of these teams.

8.4 To ensure that the European Union Agency for Asylum is able to provide the enhanced operational and technical assistance envisaged in the proposed Regulation, the Commission estimates that the Agency's budget will need to be supplemented by

101 See the European Commission's fact sheet: *How the future asylum reform will provide solidarity and address secondary movements* and p.2 of the Commission's explanatory memorandum accompanying the proposed Regulation.

102 The Commission's 2016 proposal also allows the Agency to deploy an asylum intervention team (based on a Council implementing decision) if a Member State is unwilling or unable to address pressures on its asylum and reception systems or its inaction jeopardises the overall functioning of the EU's common asylum rules.

103 Migration management support teams may include asylum and return experts, border surveillance officers, registration, fingerprinting and screening experts, interpreters and cultural mediators, and experts in child protection, human trafficking, and fundamental rights — see the European Commission's fact sheet on *A reinforced European Union Agency for Asylum* and Questions and Answers.

additional funding of €55 million per year from 2019 to 2027, meaning that the Agency's total budget for 2019–20 (when the EU's current seven-year budget cycle ends) would amount to €320.8 million, and €1.25 billion for the period 2021–27.[104]

8.5 The proposed Regulation is intended to complement a further set of proposals to strengthen the European Border and Coast Guard Agency so that both Agencies can coordinate their activities more effectively and offer "fully integrated European support on migration". According to the European Commission:

> This integrated approach will ensure a strong link between asylum and return procedures, in coordination with the national authorities, so people who are in genuine need of international protection can receive it as quickly as possible, and those who are not can be effectively returned.[105]

8.6 The UK participates in the existing European Asylum Support Office. The Commission's original proposal for a Regulation establishing the European Union Agency for Asylum was subject to the UK's Title V (justice and home affairs) opt-in Protocol, meaning that the UK would only take part in the new Agency if the Government decided to opt in. The Government informed our predecessors in December 2016 that it had decided *not* to opt in as the proposal would give the new Agency "a significant degree of oversight over national asylum systems" and the functioning of the UK's asylum system was "a sovereign matter".[106]

8.7 In her Explanatory Memorandum of 9 October 2018, the Immigration Minister (Caroline Nokes) says that the Title V opt-in Protocol also applies to the Commission's latest proposal which would amend its earlier Regulation proposed in 2016 (and not yet formally adopted by the Council and European Parliament). The date on which the three-month deadline for reaching an opt-in decision will expire is not yet known.[107] The Minister sets out the factors which will inform the Government's opt-in decision:

- the UK's imminent exit from the EU;
- UK sovereignty over its borders;
- the UK's non-participation in the Commission's original (2016) proposal on the European Union Agency for Asylum and in other elements of the EU asylum reform package, particularly the proposed "Dublin IV" Regulation given the role envisaged for the Agency in applying the revised Dublin rules;
- the implications of the Agency's enhanced mandate for the UK, as well as the prospects for improving the proposal and removing any unacceptable elements during negotiations;
- the benefits and drawbacks of UK participation — the Minister highlights greater sharing of information and analysis as a benefit, but adds that "an intervention from the Agency in our asylum system would be a significant concern"; and

104 The funding allows for a gradual increase in the Agency's staff to 500 in 2020, as envisaged in the Commission's original (2016) proposal.

105 See the European Commission's press release, *A reinforced European Union Agency for Asylum*.

106 See the letter of 16 December 2016 from the then Immigration Minister (Robert Goodwill) to the Chair of the European Scrutiny Committee.

107 The three-month period starts to run from the date on which the last language version is published.

- the implications of not being fully involved in the EU's asylum reform package, the impact on the UK's broader relationship with the EU and other Member States in securing their cooperation and support on immigration and broader justice and home affairs matters, and the UK's ability to continue practical cooperation with the Agency if it does not opt in.

8.8 Whilst the Minister supports efforts to strengthen EU borders, she questions whether the proposed Regulation strikes the right balance:

> The Government notes the role of the Agency in monitoring and its ability to intervene in a Member State based on a Council Decision where there is increased or urgent pressure and insufficient action has been taken. The Government recognises that this may be necessary or appropriate in some Member States, however, the Government is clear that the UK Government should retain sovereignty over the management of UK borders. The Government considers monitoring and intervention in asylum procedures in the UK to be unacceptable.

8.9 The enhanced operational and technical assistance envisaged in the proposed Regulation will also depend on the Agency establishing a reserve pool of 500 asylum experts available for immediate deployment. The Minister questions whether Member States have the capacity to nominate sufficient experts.

Our Conclusions

8.10 **The Government decided *not* to opt into the Commission's original (2016) proposal for a Regulation establishing the European Union Agency for Asylum as it considered the functioning of the UK's asylum system to be "a sovereign matter".**[108] **In her Explanatory Memorandum on the Commission's latest proposed Regulation, the Minister makes clear that she considers monitoring and intervention in the UK's asylum procedures to be "unacceptable", albeit "necessary or appropriate in some Member States". As the proposal would further strengthen the Agency's powers, we can see little prospect of the Government reversing its earlier decision and opting in. Nor are we convinced that the Government would have the right to do so.**

8.11 **First, although the proposed Regulation cites a Title V (justice and home affairs) legal base, it does not contain a recital stating that the UK's Title V opt-in Protocol applies. We assume that this is because a recital to this effect was included in the earlier (2016) proposal, prompting the Government's decision not to opt in. As the proposed Regulation seeks neither to amend or replace this recital, it is not clear why the Government should have another bite at the same cherry and assert that the UK has a right to revisit its earlier opt-in decision.**

8.12 **Second, whilst we recognise that the UK's Title V opt-in Protocol applies to amending measures proposed "pursuant to Title V", it only bites on those measures which are "amending an existing measure by which [the UK and/or Ireland] are bound". That is not, however, the case as the proposed Regulation would make targeted**

108 See the letter of 16 December 2016 from the then Immigration Minister (Mr Robert Goodwill) to the Chair of the European Scrutiny Committee.

amendments to an earlier Commission proposal which has not been formally adopted. Even once adopted, it will not be binding on the UK because the Government has already decided not to participate.

8.13 **We ask the Minister whether she shares our analysis and, if not, to substantiate her reasons for considering that the UK's Title V Protocol applies and to indicate whether she intends to press for the inclusion of a separate recital to this effect. We also ask her whether the Commission and the Council agree with the Government's position.**

8.14 **Should the Government be correct in its view that the UK's Title V Protocol applies, and decide to opt in, we ask the Minister to explain how UK participation would affect the UK during a post-exit transition/implementation period. We also ask her what relationship the Government envisages seeking with the Agency (if established) post-exit.**

8.15 **Pending further information, the proposed Regulation remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.**

Full details of the documents:

Amended proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010: (40064), 12112/18, COM(18) 633.

Background

8.16 Our earlier Reports listed at the end of this chapter provide a detailed overview of the Commission's 2016 proposal which would repeal the 2010 Regulation establishing the European Asylum Support Office and create in its place the European Agency for Asylum — a centre of expertise with a stronger mandate to facilitate the implementation of the Common European Asylum System and improve its overall functioning so that there is greater convergence in the way the rules are applied and the outcomes they produce. The main tasks of the Agency would be to:

- enhance practical cooperation and the exchange of information on asylum matters;
- provide country of origin information;
- develop operational standards and guidelines to ensure the effective implementation of EU asylum laws;
- monitor and assess how Member States implement the Common European Asylum System; and
- provide operational and technical assistance to Member States.

Previous Committee Reports

None on this document, but the following Reports on the Commission's original (2016) proposal on the European Union Agency for Asylum are relevant: Seventh Report HC 71–v (2016–17), chapter 1 (6 July 2016), Twenty-fifth Report HC 71–xxiii (2016–17), chapter 7 (11 January 2017), Thirty-second Report HC 71–xxx (2016–17), chapter 7 (22 February 2017), Thirty-ninth Report HC 71–xxxvi (2016–17), chapter 2 (19 April 2017).

9 Audiovisual Media Services Directive

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Directive amending Directive 2010/13/EU concerning the provision of audiovisual media services in view of changing market realities
Legal base	Articles 53(1) and 62 TFEU; QMV; Ordinary Legislative Procedure
Department	Digital, Culture, Media and Sport
Document Number	(37812), 9479/16 + ADDs 1–4, COM(16) 287

Summary and Committee's conclusions

9.1 Trilogue negotiations regarding a proposed Directive (EU) 9479/16[109] revising the principal regulatory framework governing EU-wide coordination of national legislation of audiovisual media[110] concluded with a preliminary political agreement on 26 April 2018, following which a final compromise text was developed and made available.[111]

9.2 The Minister of State for Digital and the Creative Industries (Margot James) subsequently wrote to the Committee to provide an update on the outcome of negotiations.[112]

9.3 In its report on 5 September 2018[113] the Committee concluded its scrutiny of the implications of EU exit for the broadcasting sector, but chose not to release the document from scrutiny, on the basis that the Government's voting intention remained unclear.

9.4 The Government's uncertainty arose as a consequence of the fact that the final text crossed two of the UK's red lines in the negotiations:

- the introduction of optional levies for video-on-demand and linear services, which give Member States an option of requiring these services to contribute financially towards national film funds in the country of operation; and
- the extension of the scope of the definition of video-sharing platforms, to include social media and live-streaming services.

109 Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities COM(16) 287.

110 OJ L 95, 15.4.2010 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Text with EEA relevance).

111 Council of the European Union, Audiovisual media services: agreement on a directive to protect minors, boost competitiveness and promote European content (13 June 2018).

112 Letter from the Minister (DCMS) to the Chair of the European Scrutiny Committee (2 May 2018).

113 Thirty Seventh Report HC 301–xxxvi (2017—19), chapter 6 (5 September 2018).

9.5 The Committee therefore asked the Government to clarify its voting intention.

9.6 On 24 October 2018 the Minister wrote a letter to the Committee[114] stating that the Government was "broadly supportive of the measures within the Directive, except for the levies on industry, which we consider will have a negative impact." The Minister acknowledged that although the Government was initially concerned about extending the scope of video-sharing platforms beyond the Commission's initial proposal, it now recognised that the new provisions reflected the Government's current work on the Digital Charter and the 2017 Manifesto commitments on making the UK the safest place to be online. As such, the Minister concludes, "the aims of HMG's emerging work in this space are closely aligned with the provisions on regulating video-sharing platforms in the updated AVMSD."

9.7 Although the Minister did not clarify the Government's voting intention in her letter, as the position had not yet been formally cleared, officials subsequently provided an update that the Government planned to abstain, due to its concerns regarding the extension of national film levies.

9.8 The relevant vote in Council will take place at the Economic and Financial Affairs Council on 6 November 2018.

9.9 **We have taken note of the Government's intention to abstain in the vote on the revised Audiovisual Media and Services Directive (9479/16) at the forthcoming Economic and Financial Affairs Council, due to the Government's concerns regarding the introduction of optional host country levies for linear and non-linear broadcasting, which somewhat weakens the operation of the Country-of-Origin principle in the EU's regulatory framework for broadcasting. The Government does not intend to vote against the text as otherwise it is content with the outcome of negotiations.**

9.10 **We now clear this proposal from scrutiny.**

Full details of the documents:

9.11 Proposal for a Directive amending Directive 2010/13/EU concerning the provision of audiovisual media services in view of changing market realities: (37812), 9479/16 + ADDs 1–4, COM(16) 287.

Previous Committee Reports

Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 6 (5 September 2018); First Report HC 301–i (2017–19) chapter 10, (13 November 2017); Fortieth Report 71–xxxvii (2016–17), chapter 10 (25 April 2017), Thirty-third Report 71–xxxi (2016–17), chapter 5 (1 March 2017), Nineteenth Report 71–xvii (2016–17), chapter 4 (23 November 2016), Seventh Report 71–v (2016–17), chapter 7 (6 July 2016)

114 Letter from the Minister (DCMS) to the Chairman of the European Scrutiny Committee (24 October 2018).

10 Trade and Investment Barriers in 2017

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the International Trade Committee
Document details	Commission Report on Trade and Investment Barriers 1 January 2017 — 31 December 2017
Legal base	—
Department	International Trade
Document Number	(39934), 10554/18, COM(18) 489

Summary and Committee's conclusions

10.1 The Commission routinely analyses trade and investment barriers faced by EU companies in third countries, which have been reported by EU businesses and Member States through the EU's Market Access Partnership,[115] as part of the EU's wider Market Access Strategy.[116]

10.2 This report, covering the period 1 January 2017 to 31 December 2017, is divided into four sections:

- The first section provides an overview of the trade and investment barriers registered in the database, listing a total stock of 396 barriers (67 of which were reported in 2017) across 57 countries, and providing a further breakdown by:
  - country — the nine countries with the highest number of reported trade barriers in place against EU businesses were all G20 economies;
  - barrier — highlighting the range of 'at the border' (such as burdensome licensing schemes) and 'behind the border' (including internal tax measures or unjustified regulatory barriers) obstacles; and
  - sector — with agri-food and manufacturing sectors facing the highest number of reported barriers.
- The second section provides a qualitative analysis of new trade barriers recorded in 2017, focusing on those imposed by China, Russia, South Africa, India and Turkey. The Commission estimates that these new trade barriers affected EU exports worth €23.1 billion (£20.5 billion), or approximately 1.2% of all 2017 EU exports;

115 The EU's Market Access Partnership was set up in 2007 to enhance cooperation between the Commission, Member States and EU businesses in addressing non-tariff barriers in third countries. It draws on monthly meetings of the Market Access Advisory Committee, sectoral Market Access Working Groups and Market Access Teams/Trade Counsellors in third countries.

116 The EU launched its Market Access Strategy in 1996, with the aim of enforcing multilateral and bilateral trade agreements and opening up third country markets to EU exports. A key operational tool was the creation of the Market Access Database (MADB) — a free online service, which provides information to exporters on market access conditions in third countries.

- The third section sets out the tools used by the EU to address market access barriers, including: the use of diplomacy; the WTO dispute settlement mechanism; and new trade negotiations to help open markets and resolve trade barriers; and
- The fourth section analyses the impact of removing trade barriers on EU trade flows. The Commission reports that the EU's Market Access Strategy successfully resolved 45 barriers in 2017 (more than twice as many as in 2016), which it estimates may generate up to €4.8 billion (£4.3 billion) of additional EU exports per year.

10.3 In his Explanatory Memorandum of 11 July 2018, the Minister of State for Trade Policy (George Hollingbery) expresses concern at the reported "trend towards increasingly protectionist trade policy" and states that the UK remains "steadfast in our [its] commitment to upholding the rules-based world trading system". He points out that the UK is currently developing its own approach to resolving barriers faced by UK businesses after the UK's exit from the EU, which includes the development of a Market Access Digital Service that will log market access issues facing UK businesses in third countries.[117]

10.4 **The report highlights the trend towards growing protectionist tendencies globally. It is striking that the nine countries with the highest number of reported trade barriers in place against EU businesses in 2017 were G20 economies — despite their leaders' pledges to reject protectionism. This includes countries that the Government has prioritised establishing free trade deals with following the UK's exit from the EU, including the United States and Australia.**[118]

10.5 **Post-exit/transition period (and subject to the final form of any future UK-EU relationship), the UK government will assume the responsibilities currently held by the Commission in addressing market access barriers in third countries, whether through bilateral delegations, WTO redress mechanisms or future free trade negotiations. As highlighted by the report, tackling the complex range of 'at the border' and 'behind the border' barriers facing UK businesses will be both resource- and time-intensive.**

10.6 **The Minister informs us that the Government is continuing to develop its approach to resolving barriers faced by UK businesses after UK exit, which includes the development of a UK Market Access Database Service to help identify and resolve market access barriers for UK businesses. However, it is not clear when this service will be rolled out, or the extent to which the UK and the EU27 will seek to share information on, or coordinate their approach to tackling, market access barriers post-exit/transition period.**

10.7 **We are content to clear the report from scrutiny, but draw its findings and the Minister's update on the Market Access Digital Service to the attention of the International Trade Committee, which may wish to probe the Minister further on**

117 In a letter to Lord Boswell dated 17 April 2018, the then Minister for Trade Policy (Greg Hands) noted that the UK's Market Access Digital Service was at its "Beta (build and user test) phase of development" and that "any public roll-out will be dependent on this Beta phase successfully confirming value for money". In that update, Mr Hands also stated that efforts were underway to develop new training for staff on dealing with market access barriers.

118 See Written Ministerial Statement of 18 July 2018.

when and how the Market Access Database Service will be rolled out, and how market access cases will be prioritised and addressed by the Government post-exit/transition period.

Full details of the documents:

Commission Report on Trade and Investment Barriers 1 January 2017 — 31 December 2017: (39934), 10554/18, COM(18) 489.

Previous Committee Reports

None.

11 Permanent Structured Cooperation on defence: binding commitments for participating countries

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Defence Committee and the Foreign Affairs Committees
Document details	Council Recommendation concerning the sequencing of the fulfilment of the more binding commitments undertaken in the framework of permanent structured cooperation (PESCO) and specifying more precise objectives
Legal base	Articles 42(6) and 46(6) TEU and Article 4(2)(b) of Council Decision (CFSP) 2017/2315; unanimity among PESCO participating countries
Department	Foreign and Commonwealth Office
Document Number	(40143), 2018/C 374/01

Summary

11.1 In December 2017, 25 EU Member States—all bar the UK, Denmark and Malta—launched Permanent Structured Cooperation (PESCO) on defence matters. This means they have jointly agreed to 20 political commitments related to their defence budget, participation in EU-level military cooperation and missions, and collaboration to identify and close gaps in their cumulative military capabilities. In addition, they can choose to participate in any number of 17 more detailed projects, such as information-sharing on cyber-security threats, improving maritime surveillance, and removing obstacles to rapid movement of troops across borders. The UK is not a participating country in PESCO and as such does not have a vote over any decisions relating to the detailed legal and political framework that governs its implementation.

11.2 In October 2018, the participating countries adopted detailed guidance about the way in which they are to report to the EU and each other in their National Implementation Plans on progress made towards those commitments every year. This includes financial information on military expenditure—to demonstrate a commitment to a collective target of spending 2 per cent of GDP on defence—and how each country intends to contribute financially and in kind to the EU's Common Security & Defence Policy. Given the unprecedented nature of the commitments made within the framework of the EU Treaties, and the uncertainty about the UK's future security partnership with the Union after Brexit, we considered the new details on the PESCO commitments politically important and accordingly have publicised them through this Report.

11.3 By the end of 2018, the participating countries are also expected to establish detailed legal rules on the participation of 'third countries'—like the UK after Brexit—to

participate in specific PESCO projects. Securing a route for such participation is one of the Government's key objectives for the post-Brexit security partnership with the EU. We will report the substance of the 'third country' PESCO framework to the House in due course.

Background

11.4 The 2009 Lisbon Treaty created the legal basis for "Permanent Structured Cooperation" (PESCO) in the area of defence, a political framework within which EU Member States can choose to make commitments intended to improve their military assets and defence capabilities in the context of specific initiatives and projects.[119] In December 2017, against a general backdrop of intensified cooperation on defence matters at EU-level,[120] 25 EU countries—all except the UK, Denmark and Malta—formally launched PESCO on the basis of 20 binding commitments about their national defence policies.[121]

11.5 The 20 PESCO commitments cover a range of requirements including investment expenditure on defence equipment, capability development, interoperability of forces and the development of major European equipment programmes. They also set out a possibility for cooperation in specific projects—currently numbering 17—to increase their joint strategic defence capabilities.[122] The commitments are binding on all participating countries, whereas specific projects—like the "Military Mobility" project to make it easier for troops and materiel to move across national borders within the EU—are open on a voluntary basis.[123] In December 2017, the participating Member States also decided to sequence the fulfilment of the commitments over two initial consecutive phases: 2018–2020 and 2021–2025 and to provide further detailed guidance about what was expected of each participating country.[124]

11.6 While the UK is not a formal participant in PESCO, the Government has supported its launch, as well as consistently calling for an option for 'third countries' to request involvement in specific projects. This would enable the Ministry of Defence and UK industry to seek participation in PESCO after Brexit on a case-by-case basis. The exact legal framework that would govern non-EU participation, and the rights and obligations it would entail, is still being formulated by the PESCO countries (with a decision due by the end of 2018).

11.7 When the European Scrutiny Committee considered the launch of PESCO in December 2017, we concluded it was a major political development—irrespective of the UK's decision not to participate and its exit from the EU—in light of the Government's

119 PESCO does not affect the veto of each EU Member State over EU military operations under the Common Security & Defence Policy (CSDP) and other EU foreign policy measures under the Treaties, or their right to decide unilaterally whether to deploy military personnel or equipment to specific operations or missions.

120 PESCO should be seen in the context of other developments in EU's approach to defence matters, including the establishment of the EU's Coordinated Annual Review on Defence (CARD) and the Capability Development Plan; the creation, in July 2017, of a Military Planning and Conduct Capability (MPCC) unit for the EU's non-executive military CSDP missions; the launch of a new European Defence Fund, which will co-finance PESCO projects seeking to develop new military technology at a favourable rate; and the European Commission's Action Plan on military mobility, envisages regulatory measures to remove obstacles to the intra-EU movements of troops and equipment.

121 Council Decision (CFSP) 2017/2315 of 11 December 2017.

122 Details about the 17 PESCO projects are available at https://www.consilium.europa.eu/media/32079/pesco-overview-of-first-collaborative-of-projects-for-press.pdf.

123 In March 2018, the 25 participating Member States formally adopted the initial list of 17 PESCO projects, which—on average—have seven participating countries each.

124 Article 4 (2)(b) of Council Decision (CFSP) 2017/2315.

clear interest in safeguarding its ability to participate in projects of mutual benefit under the PESCO aegis.[125] We therefore recommended the Council Decisions establishing PESCO for debate on the Floor of the House.[126]

11.8 In early March 2018, the Defence Ministers of the PESCO countries adopted a Council Decision that formally established the 17 projects, as well as a separate Council Recommendation on PESCO's implementation.[127] This was followed by a set of detailed governance arrangements for individual projects (June 2018).

11.9 As a non-participating State, the UK does not have a vote on PESCO related decisions, and will not be bound by them. The Minister for Europe (Sir Alan Duncan) has consistently expressed the Government's support for PESCO and confirming the UK will seek a clear legal route for participation in individual projects after Brexit (to ensure it can seek involvement where this is in the UK's interest or "where there is clear value in doing so, including for [the] defence industry", and to prevent duplication of efforts between PESCO and NATO). From the 17 initial PESCO projects, the Minister identified the 'military mobility' project as the one of principal interest to the UK.

11.10 In June 2018, the Defence Select Committee published a Report on the UK's future security partnership with the EU, asking the Government to clarify what would be the policy, financial, broader resources and legal implications of the UK taking part in the military mobility PESCO project (the project in which the Government has indicated the clearest interest), and what the outcomes of any such participation it expects to be.[128] As of 23 October, the Government is yet to reply.

The Council Recommendation of 15 October 2018 with detailed PESCO objectives

11.11 As noted, the Council Decision of December 2017 established an initial list of 20 PESCO 'commitments' concerning the strategic direction of the participating countries' national defence policies. On 15 October 2018, the participating countries agreed more detailed guidance on the practical implementation of the defence commitments they have jointly identified, setting out in more detail what is expected of each participating country in the first phase (ending in 2020). The Recommendation also sets out the necessary data the PESCO countries will be expected to include in their annual 'National Implementation Plans' (NIPs) against each relevant commitment, with the first such review to be communicated to the EU in January 2019.

11.12 The full list of commitments and accompanying benchmarks and requirements are set out in a formal Council Recommendation, adopted by the Foreign Affairs Council on 15 October 2018.[129] Most of the information will need to be provided on an annual basis through the NIPs, which the European External Action Service will condense into an

125 See the Committee's Seventh Report HC 301–vii (2017–19), chapter 1 (19 December 2017).
126 The debate eventually took place in European Committee on 26 April 2018.
127 Council Recommendation of 6 March 2018 (2018/C 88/01).
128 Defence Committee, Sixth Report of Session 2017–19, "The Government's proposals for a future security partnership with the European Union" (June 2018).
129 As the UK is not a participating Member State, it did not have a veto and as such the House of Commons scrutiny reserve does not apply. However, the Government has provided a commitment to keep the Scrutiny Committees of both Houses informed of developments relating to PESCO.

Annual Report highlighting progress and shortcomings. In summary, some of the specific benchmarks and guidance set out in the Recommendation require the participating PESCO to:

- provide precise financial data on the evolution of **total defence expenditure** compared to the previous year in real terms and demonstrate "a plan for a regular increase in spending" if necessary (including towards the collective target of spending 2 per cent of the GDP of the PESCO countries on defence, of which in turn 20 per cent of should be invested in research and development to fill "strategic capability gaps");

- make a "fair" **contribution to the means and capabilities of EU military operations under the Common Security & Defence Policy**, including by facilitating cross-border movements under the Military Mobility project; considering ways of jointly funding aspects of CSDP operations that are not a "common cost" borne by all EU Member States;[130] and considering the options—under national law—of streamlining national procedures for the rapid deployment of troops or material for use in EU missions;

- indicate how they intend to increase the "number, size and impact" of joint and **collaborative strategic defence capability projects** with other countries, including by showing how they intend to contribute to the target of spending 35 per cent of total equipment spending on **joint procurement** with other Member States and how they intend to contribute to the specific PESCO projects in which they participate;

- demonstrate how they will implement the EU's **capability development priorities** identified through the annual Capability Development Plan (CDP)[131] and the new Coordinated Annual Review on Defence (CARD),[132] including through national priority-setting;

- make use of **funding opportunities under the pilot phase of the European Defence Fund**[133] for collaborative projects with an identified EU added value, by indicating in which collaborative capability development projects co-funded from the EU budget they (plan to) take part; and

- Explain how they will increase and maintain cooperation with other participating PESCO countries on **cyber defence**, including through one of the 17 PESCO projects related to cyber threats.[134]

130 For the military aspects of CSDP operations, the 'common costs' are borne by all EU Member States except Denmark according to a distribution key based on economic size (see our recent Report on the proposed European Peace Facility for more information). The remaining costs are borne by individual Member States. The Council Recommendation calls on the PESCO Member States to propose formal proposals to the Council on how those types of costs could be jointly funded by the participating countries by early 2020.

131 The CDP is the European Defence Agency's strategic tool for defining future European capability needs in the short and long term and sets priority areas to guide Member States in their development plans.

132 CARD is a stocktake of the European Capability Development landscape that provides Member States and the European Defence Agency with a "clear understanding of current capabilities, shortfalls, Member States' plans, and potential areas for cooperation", the initial results of which are likely to be published in November 2018.

133 The precursors to the full European Defence Fund, which will not become operational until 1 January 2021, are the preparatory action on defence research (2017–2019) and the European Defence Industrial Development Programme (EDIDP) (2019–20).

134 For example, one of the PESCO projects relates specifically to "Cyber Threats and Incident Response Information Sharing Platform". Another focusses on "Cyber Rapid Response Teams and Mutual Assistance in Cyber Security".

Next steps

11.13 In November 2018, EU Defence Ministers will be invited to agree the launch of the first full Coordinated Annual Review on Defence (CARD), the EU's new "structured way" to identify where its collective military capabilities could benefit from greater coordination and cooperation. This process will feed into PESCO by establishing which areas of capability development the participating countries are expected to prioritise.[135]

11.14 The participating countries in PESCO will then submit their first revised National Implementation Plans in early January 2019, providing the information on their approach to each of the commitments (as summarised above). On the basis of the information provided in the NIPs, the EU will publish its first Annual Report on PESCO, providing "a detailed overview of the evolution of the defence spending by participating Member State". That process will be repeated every year. The participating countries will review the Recommendation and its benchmarks in anticipation of the second phase of PESCO in early 2021 and update it "as necessary". This could include new or modified commitments to reflect changing circumstances and the experiences gained during the first phase.

11.15 In parallel, various other initiatives related to EU defence policy are also under consideration. These include notably the budget and legal framework for the post-2020 European Defence Fund, which is on the agenda for the November 2018 Foreign Affairs Council. EU leaders are also expected to discuss in May 2019 whether, in some areas of the Common Security & Defence Policy, decisions should be taken by qualified majority rather than giving each EU Member State a veto.

The Government's position

11.16 The Minister for Europe (Sir Alan Duncan) deposited the Council Recommendation with the detailed PESCO commitments for scrutiny on 23 October, the week after it was formally adopted by the participating Member States.[136] In the Government's accompanying Explanatory Memorandum, the Minister again expressed the UK's support for PESCO— despite its decision not to join—and its intention to seek participation in specific projects as a 'third country' after Brexit where it is considered in the national interest do so.

11.17 The Minister noted that it is "not yet clear whether there will be any linkage between the commitments and third state participation", but that the Government does not expect that 'third countries' like the UK would be "required to sign up to the commitments in the same way as [participating EU Member States] as they cannot join PESCO as a whole, only PESCO projects". The implication is that the UK would not have to accept the detailed guidance and benchmarks, for example those relating to contributions to EU military operations or cross-border procurement exercises, even where it sought participation in specific PESCO projects.

135 CARD is an exercise in which all EU Member States, including the UK, take part because it does not entail any binding commitments.

136 As the UK is not a participating Member State, it did not have a veto and as such the House of Commons scrutiny reserve does not apply. However, the Government has provided a commitment to keep the Scrutiny Committees of both Houses informed of developments relating to PESCO.

Our assessment

11.18 **We remain of the view that developments related to PESCO are of especial political importance to the UK, even though the Government has chosen not to participate and it appears the high-level commitments will not be binding on 'third countries' that seek project-specific participation (an option in which the Ministry of Defence has expressed an interest, especially in relation to the Military Mobility project).**

11.19 **The UK will, by mutual necessity, need to have a close relationship on security and defence matters with the rest of Europe, including EU Member States which are now collaborating more closely through PESCO. The establishment of the joint commitments underpins the list of 17 specific projects, in a number of which the UK is interested in participating even after Brexit. Moreover, PESCO countries' aim to work together more closely on a coherent approach to military matters via the Common Security & Defence Policy will have an impact on their national priorities, and as a result colour how the UK can work with them on matters of mutual interest after the Government loses its representation in the EU Foreign Affairs Council and its related bodies.**

11.20 **In light of this, we draw the latest details on the PESCO commitments entered into by the participating EU Member States to the attention of the House, and of the Defence and Foreign Affairs Committee in particular. We are content to now clear the Council Recommendation from scrutiny, but will issue a further Report in due course when we receive further information from the Government about the legal framework for 'third country' participation in PESCO.**

Full details of the documents:

Council Recommendation concerning the sequencing of the fulfilment of the more binding commitments undertaken in the framework of permanent structured cooperation (PESCO) and specifying more precise objectives: (40143), 2018/C 374/01.

Previous Committee Reports

See (39553): Twenty-Second Report HC 301–xxi (2017–19), chapter 1 (28 March 2018) and (39354): Seventh Report HC 301–vii (2017–19), chapter 1 (19 December 2017)

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

Other

(39962) 9018/18 COM(18) 263	Report from the Commission to the European Parliament and the Council on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market information System ('the IMI Regulation').

Cabinet Office

(40101) 12828/18 + ADD 1 COM(18) 663	Report from the Commission on the application in 2017 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Department for Digital, Culture, Media and Sport

(39968) 9018/18 COM(18) 263	Report from the Commission to the European Parliament and the Council on the implementation of Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks.

Department for Environment, Food and Rural Affairs

(40043) 11827/18 COM(18) 613	Proposal for a Council Regulation amending Regulation (EU) 2018/120 as regards fishing opportunities for European seabass.

Department for Exiting the European Union

(40048) 11951/18 COM(18) 578	Report from the Commission on the use of contract staff in 2016.

Department for International Trade

(40035) 11686/18 COM(18) 572	Commission to the European Parliament and the Council Annual report on the implementation of the EU Aid Volunteers initiative in 2017.

Department for Transport

(40112) 13057/18 + ADD 1 COM(18) 674	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the relevant Committees of the United Nations Economic Commission for Europe as regards the proposals for modifications to UN Regulations Nos 3, 4, 6, 7, 11, 14, 16, 17, 19, 23, 24, 27, 29, 34, 37, 38, 43, 44, 46, 48, 50, 53, 60, 67, 69, 70, 74, 77, 83, 86, 87, 91, 94, 95, 98, 99, 100, 101, 104, 105, 110, 112, 113, 119, 121, 123, 128, 129, 132 and 137 and to UN Global Technical Regulation No 9, and as regards the proposals for three new UN Regulations.
(40132) 13269/18 COM(18) 707	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the European Committee for drawing up Standards in the field of Inland Navigation and in the Central Commission for the Navigation on the Rhine on the adoption of standards concerning technical requirements for inland waterways vessels.

Department for Work and Pensions

(40023) 11647/18 COM(18) 596	Report from the Commission to the European Parliament and the Council on the exercise of the delegation conferred on the Commission pursuant to Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals.

Foreign and Commonwealth Office

(40118) – –	Council Decision in support of combating the illicit trade in and proliferation of small arms and light weapons in Member States of the League of Arab States.
(40139) – –	Proposal of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a Council Decision amending Decision (CFSP) 2016/2382, establishing a European Security and Defence College (ESDC)

(40140)
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–
Council Decision in support of the implementation of the Regional Roadmap on combatting illicit arms trafficking in the Western Balkans

(40141)
–
–
Council Decision (CFSP) 2018/1540 amending Decision (CFSP) 2016/1693 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them

(40142)
–
–
Council Implementing Regulation (EU) 2018/1539 implementing Regulation (EU) 2016/1686 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them

(40149)
–
–
Council Decision (CFSP) 2018/XX amending Decision (CFSP) 2017/2074 concerning restrictive measures in view of the situation in Venezuela

(40150)
–
–
Council Implementing Regulation (EU) 2018/XX of [dd/mm/2018] implementing Regulation (EU) 2017/2063 concerning restrictive measures in view of the situation in Venezuela

HM Revenue and Customs

(40095)
12617/18
COM(18) 652
Proposal for a Council Implementing Decision authorising the United Kingdom to apply a special measure derogating from Articles 16 and 168 of Directive 2006/112/EC on the common system of value added tax.

HM Treasury

(40028)
11657/18
COM(18) 548
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 the Netherlands — EGF/2018/001 NL/ Financial service activities

(40056)
12029/18
COM(18)621
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 the Portugal — EGF/2018/002 PT/ Norte — Centro — Lisboa wearing apparel

(40104)
12859/18
COM(18)667
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 the Greece — EGF/2018/003 EL/Attica publishing

Formal Minutes

Wednesday 31 October 2018

Members present:

Sir William Cash, in the Chair

Martyn Day	Mr David Jones
Marcus Fysh	Andrew Lewer
Kelvin Hopkins	Michael Tomlinson

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 12 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 14 November 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)

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

Martyn Day MP (*Scottish National Party, Linlithgow and East Falkirk*)

Steve Double MP (*Conservative, St Austell and Newquay*)

Richard Drax MP (*Conservative, South Dorset*)

Mr Marcus Fysh MP (*Conservative, Yeovil*)

Kate Green MP (*Labour, Stretford and Urmston*)

Kate Hoey MP (*Labour, Vauxhall*)

Kelvin Hopkins MP (*Independent, Luton North*)

Darren Jones MP (*Labour, Bristol North West*)

Mr David Jones MP (*Conservative, Clwyd West*)

Stephen Kinnock MP (*Labour, Aberavon*)

Andrew Lewer MP (*Conservative, Northampton South*)

Michael Tomlinson MP (*Conservative, Mid Dorset and North Poole*)

David Warburton MP (*Conservative, Somerton and Frome*)

Dr Philippa Whitford MP (*Scottish National Party, Central Ayrshire*)