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Documents considered by the Committee on 21 November 2018

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Staff

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Meeting Summary

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

Brexit-related issues

The Committee is now looking at documents in the light of the UK decision to withdraw from the EU. Issues are explored in greater detail in report chapters and, where appropriate, in the summaries below. The Committee notes that in the current week the following issues and questions have arisen in documents or in correspondence with Ministers:

- The implications of the conditions applicable to third countries hoping to participate in the EU's next Framework Programme for research, Horizon Europe;
- The implications of a "no deal" exit with respect to continuing UK participation in Horizon 2020 and Horizon Europe.

Summary

MFF Horizon Europe

The Commission's proposal for the next Framework Programme for research (Horizon Europe), which would replace Horizon 2020, proposes a financial envelope of £82.5bn (up from £68bn)—a significant increase in the context of the loss of the UK as an EU Member State. The Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy (Sam Gyimah) indicates that the proposals broadly align with the UK's position paper on the same subject, published earlier this year. The Minister also indicates that the proposals keep the door open to future UK association to the Programme, which was the UK's principle objective in negotiations.

However, the Regulation also specifies in much greater detail the conditions which should apply to the participation of third countries associating to the Programme. For one, there should be a balance of receipts and contributions, and an automatic correction of any such imbalances, meaning that the UK will not be able to remain a major net beneficiary. The Union must also take its economic interests into account when negotiating associations and can exclude third countries from parts of the Programme where it is in the Union's interests to do so. These changes should not necessarily change the attractiveness of association to the UK—it is still in principle possible for the UK to comprehensively participate—however it clearly gives the EU greater flexibility to adopt a tailored approach in its negotiations with the UK, which takes into account wider EU exit negotiations.

Regarding a "no deal" scenario, although the Government has made two funding guarantees for ongoing UK stakeholder involvement in Horizon 2020 calls and future successful bids to Horizon 2020 calls, a variety of complications would arise in the event

that the UK became a third country, the most notable of which is the restriction on third country stakeholders participating in elements of the Programme which currently account for over 40% of UK receipts from it.

The Minister indicates that the direction of travel on both files is positive and seeks a waiver to support a Partial General Approach on 29/30 November: the text is not expected to include the section on the conditions of association for third countries (which is the most relevant section for the UK). The Committee granted the Government a scrutiny waiver and asked a number of further questions about the implications of EU exit.

The Committee's decision: waiver granted; not cleared from scrutiny.

The EU Civil Protection Mechanism: strengthening EU disaster management

The EU Civil Protection Mechanism enables Member States to coordinate their response to natural and man-made disasters within and beyond the EU. It is funded until the end of 2020. The European Commission considers that changes need to be made before then as the Mechanism cannot meet the demands placed on it—in 2017 alone, it was unable to respond to seven (out of 17) requests for assistance to fight forest fires. The proposed Decision seeks to strengthen the capacity of the EU and Member States to respond to disasters and address capacity gaps in two ways: by increasing the incentives for Member States to "pre-commit" their own disaster response capacities to a voluntary pool (to be renamed the European Civil Protection Pool) so that these assets are more readily available in an emergency and (more controversially) by establishing a dedicated reserve of EU response capacities (rescEU) which would provide "a last resort capacity" that could be mobilised as soon as a request to the EU Civil Protection Mechanism is made.

The Commission's ambitions for an autonomous EU response capacity have been significantly watered down during negotiations within the Council. The Government is content that the changes to the current EU Civil Protection Mechanism would be commensurate with the EU's limited powers under the Treaties to "support, coordinate or supplement" (and not supplant) action taken by Member States in the civil protection field and considers that the compromise text to be agreed by the Council and European Parliament strikes an appropriate balance between operational need and Member States' ability to determine how the assets they own are to be deployed. The Government confirms that the proposed changes do not affect its assessment that there would be "clear benefits" in cooperating with the EU on civil protection post-exit. The European Scrutiny Committee agrees to clear the proposed Decision from scrutiny to enable the Government to support the compromise text if it is brought to a vote at the 6–7 December Justice and Home Affairs Council. It does so in the expectation that the Government will only support the adoption of a final text which ensures that the level of EU expenditure on rescEU assets is "fiscally appropriate" and proportionate and maintains the principle of cost sharing between the EU and Member States.

Cleared from scrutiny; drawn to the attention of the Public Administration and Constitutional Affairs Committee.

Insolvency: Restructuring and Second Chances for Businesses and Entrepreneurs

This proposed Directive represents a significant initiative by the EU to harmonise national insolvency laws for the first time. It is unlikely that the UK would be legally obliged to implement it before the end of the expected transition/implementation period (31.12.20). Nevertheless, the Government is negotiating for a favourable text which will:

- facilitate a future EU-UK relationship; and
- complement both existing UK law and potential domestic insolvency reform on which it has recently consulted.

On 12 September we granted a scrutiny waiver to enable the Government to support a General Approach at the Justice and Home Affairs Council of 11 October. The Government now reports on that General Approach and how the UK successfully influenced the text: for example, concerning the viability threshold for accessing restructuring plans and enhancing protection for creditors so that they are to be no worse off under a restructuring plan than they would be in a liquidation or "best alternative scenario". There has been quick progress in trilogues. As it is anticipated that final adoption could take place at the Justice and Home Affairs Council of 6–7 December, the Minister now asks us to clear the proposal. We agree to do so as the Government has answered all outstanding scrutiny questions including those on Brexit implications and the UK is unlikely to have to implement the text before 31.12.20. However, we ask the Government to update the Committee if there are significant changes to the text before final adoption.

Cleared; further information requested; drawn to the attention of the Business and Industrial Strategy Committee.

Regulation on vehicle and passenger safety

The proposal under scrutiny was first considered by the Committee on 17 October 2018. The proposal introduces a number of new safety standards for vehicles in light of recent technological advancements. The Committee requested further information from the Government relating, primarily, to the technical standards the proposal would set, how these would be implemented and the timeline suggested for their adoption. The Minister wrote to the Committee on 15 November 2018 requesting clearance of the proposal in order for the Government to support a General Approach to be sought by the Austrian Presidency at the Competitiveness Council of 29 November 2018. Given the technical nature of the proposal and its potential implications for the adoption of future vehicle safety standards after the UK's withdrawal from the EU, the Committee will retain a watching brief over its progress. On the basis that the Government has provided thorough answers to our questions on the substance of the proposal and is "broadly content with the outcome of Working Group negotiations…", the Committee provides a scrutiny waiver for the 29 November Competitiveness Council.

Not cleared from scrutiny; further information requested; but scrutiny waiver granted for a General Approach to be sought in the Competitiveness Council of 29 November 2018.

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: Insolvency, Restructuring and Second Chances for Businesses and Entrepreneurs [(a) Proposed Directive; (b) Opinion of the ECB]; MFF Horizon Europe [(a) Proposed Regulation (NC, scrutiny waiver granted); (b) Proposed Decision (NC, scrutiny waiver granted); (c) Commission Report (C)]; Screening of foreign direct investment [Proposed Regulation (NC)]

Education Committee: MFF Horizon Europe [(a) Proposed Regulation (NC, scrutiny waiver granted); (b) Proposed Decision (NC, scrutiny waiver granted); (c) Commission Report (C)]

International Trade Committee: Screening of foreign direct investment [Proposed Regulation (NC)]

Northern Ireland Affairs Committee: EU structural funds post-2020 [Proposed Regulations (NC)]

Public Accounts Committee: Long-term forecasts for EU expenditure: implications for the Brexit financial settlement [Commission Report (C)]

Public Administration and Constitutional Affairs Committee: The EU Civil Protection Mechanism: strengthening EU disaster management [Proposed Decision (C)]

Science and Technology Committee: MFF Horizon Europe [(a) Proposed Regulation (NC, scrutiny waiver granted); (b) Proposed Decision (NC, scrutiny waiver granted); (c) Commission Report (C)]

Treasury Committee: Long-term forecasts for EU expenditure: implications for the Brexit financial settlement [Commission Report (C)]

1 Market surveillance

Committee's assessment	Politically important
Committee's decision	(a) Not cleared from scrutiny; waiver granted; further information requested (b) cleared from scrutiny
Document details	(a) Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council; (b) Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93
Legal base	(a) Articles 33 (customs co-operation), 114 (internal market), and 207 (common commercial policy) TFEU; ordinary legislative procedure; QMV; (b)—
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (39394), 15950/17 + ADDs 1–11, COM(17) 795; (b) (39407), 5002/18, COM(17) 789

Summary and Committee's conclusions

1.1 On 19 December 2017 the European Commission published a package[1] of proposals related to the Single Market for Goods, which included an amending Regulation that set out a range of provisions aimed at increasing the levels of deterrence to non-compliant economic operators, increasing market surveillance, strengthening the controls on products entering the EU, and offering incentives for regulatory compliance.

1.2 Key new elements in the proposed Regulation, which is summarised in greater detail in the background section of this report, included:

- increased co-operation and sharing of responsibilities between market surveillance and customs authorities;

1 European Commission, Safe products in the EU Single Market: Commission acts to reinforce trust (19 December 2017).

- defined minimum powers for national market surveillance authorities;
- establishment of an EU Product Compliance Network to increase co-operation between national market surveillance authorities;
- introduction of a new system of pre-export checks and controls on products entering the EU from third countries with the intention of expediting legitimate trade; and
- the mandatory presence within the EU of a person responsible for proving compliance information to competent authorities before a product can be made available.

1.3 In the Government's Explanatory Memorandum,[2] the then Minister of State for Consumers at the Department for Business, Energy and Industrial Strategy, Andrew Griffiths, indicated that the Government supported measures which address non-compliant products, that a minimum harmonisation approach was proposed, and that the proposed policy objective could only be achieved at EU level. However, the Minister also expressed concern about a number of aspects of the proposal and said that the Government intended to investigate its implications in greater detail in order to ensure that its provisions were proportionate, not overly prescriptive, and would not constrain UK market surveillance authorities.

1.4 In its first report on the proposal,[3] the Committee urged the Minister to seek greater clarity regarding the implications of the proposed Regulation, and particularly requested an update regarding the Union Product Compliance Network, "including an assessment as to whether it could limit the ability of the Member States and their competent authorities to act, and an indication of how the Government intends to proceed regarding this aspect of the proposal." In its report, the Committee also noted that the proposal had mixed implications in the context of EU exit—the proposed system of pre-export checks and controls could reduce the need for compliance checks at the EU's external borders, on the other hand, the proposal to reduce the number of non-compliant goods entering free circulation at the EU's external borders could increase border controls on goods, and the requirement for there to be established within the Union a person responsible for proving compliance information to competent authorities before a product could be made available would have cost implications for UK-based businesses—leading the Committee to request an assessment of the overall impact of the proposal on UK businesses post-EU exit.

1.5 The Minister has subsequently sent two updates to the Committee,[4] responding to each of these questions and requesting that the Committee clear the file from scrutiny or grant the Government a scrutiny waiver in advance of anticipated votes in the Committee of Permanent Representation in the European Union (COREPER) and in the Council of Ministers before the end of November.

1.6 Of the Commission's proposal to mandate the presence of a person responsible for proving compliance within the Union, the Minister (Kelly Tolhurst) informed the Committee that the Government agreed that it should seek changes to the text of this

2 Explanatory Memorandum from the Department for Business, Energy and Industrial Strategy (12 January 2018).
3 Twenty Seventh Report HC 301–xxvi (2017—2019), chapter 2 (9 May 2018).
4 Letters from the Minister to the Chair of the European Scrutiny Committee (5 September 2018), (13 November 2018).

article in order to address potential adverse effects on third-country small businesses and sought in working parties to co-operate with like-minded Member States in order to resist the initial proposed provisions on the basis that they were disproportionate, would create a barrier to trade, and would be costly to businesses. The Minister states that the Austrian Presidency is currently considering a risk-based approach to the requirement for a responsible person to be based within the EU, which is intended to target the provisions more effectively to apply only to products which carry a higher degree of risk to the consumer, which might address the Government's concerns. However, at present, the basic premise of the article remains that a legal presence would need to be established in the EU for the sale of all products subject to harmonised legislation—something the Government will not support.

1.7 In response to the Committee's concerns about the Union Product Compliance Network, the Minister stated that the Government opposed the Network in the format set out in the original proposal, as it was concerned that representatives from business and consumer groups might be "indirectly empowered to impose obligations on market surveillance authorities, removing competence from national governments", but that the format of the Network has been substantially amended in negotiations. Officials subsequently provided the Committee with a list of specific changes that have been made to the text. These include the addition of a paragraph to Article 31 which emphasises that the purpose of the Network is to serve as a platform for structured coordination and cooperation between enforcement authorities of the Member States and the Commission, the clarification that decisions taken by the Network shall be legally non-binding recommendations, and the clarification that the Commission's role is about supporting rather than directing the Network's activities. The Minister states that, although the proposed Regulation still creates a Network, the provisions are less heavy handed and better allow for Member States, rather than the Commission, to direct a Network which is focused on increasing market surveillance cooperation between Member States.

1.8 In response to the Committee's request that the Government assess the aggregate impact of the proposed Regulation on the volume of regulatory checks on industrial goods which would have to take place at the EU's external borders, the Minister states that it is not possible to do so as the terms of the UK's exit from the EU continue to be negotiated (we note that this will continue to be the case, even if the Withdrawal Agreement is ratified in the coming months), the extent to which the UK will have to apply the proposed Regulation has therefore not yet been agreed, and the provisions of the Regulation themselves remain subject to negotiation and amendment. The Minister also notes that Article 35 of the proposed Regulation, which specifically addresses international cooperation, currently provides for the Commission to approve a third country's system of product-related pre-export control if they satisfy the requirements of the Union harmonisation legislation, which would reduce or remove the need for border checks for third countries.

1.9 **We have taken note of the Minister's update, in advance of forthcoming meetings of the Committee of Permanent Representatives in the European Union (COREPER) and the Council of Ministers, at which it is anticipated that the Member States will adopt a General Approach on the proposed Regulation.**

1.10 **The Minister states that many Member States shared the Government's view that parts of the proposal "were too prescriptive, placed a disproportionate burden on businesses, reduced Member State competence, and were not sufficiently risk-**

based". This has led to numerous revisions to the proposal text, notably including the downgrading of the Union Compliance Network, whose decisions will now take the form of legally non-binding recommendations, and which will principally serve as a platform for structured coordination and cooperation between enforcement authorities of the Member States and the Commission. The Minister assures the Committee that these amendments have helped to improve the proposal so that it is less prescriptive and better preserves Member State discretion, thus addressing the Committee's concerns about interference with Member State competence.

1.11 **Although the Minister indicates that the current proposal is an improvement on the original, and that the Government supports the overarching principles of better enforcement of Single Market goods rules upon which the proposal is based, she indicates that the Government continues to object to the requirement for there to be an authorised representative in the Union who is responsible for compliance. The Austrian Presidency is currently considering proposing a more risk-based approach to the requirement for an authorised representative to be based within the EU, which would ensure that the provisions were limited to products which carry a higher degree of risk to the consumer, which would potentially address the Government's concerns. The Minister indicates that the Government will determine its final position depending on what further progress can be made on this point, but that the Government "would not be able to support the proposal" in its current form.**

1.12 **On the basis of the Minister's update, we are willing to grant the Government a conditional scrutiny waiver at any forthcoming vote in the Council of Ministers. The conditions applicable to this waiver are that (i) the provisions in Chapter II relating to the requirement for an authorised representative to be based within the EU are made significantly more risk-based than those contained in the original proposal, and (ii) the principal improvements which were secured to the text in working groups, notably those which relate to the Union Product Compliance Network, are broadly retained.**

1.13 **In the meantime, we retain this proposal under scrutiny. We ask for the Minister to provide the Committee with an update on the outcome, and an indication of next steps, not later than 11 January 2018. We clear document (b), a non-legislative report, from scrutiny.**

Full details of the documents:

(a) Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council: (39394), 15950/17 + ADDs 1–11, COM(17) 795; (b) Report from the Commission to the European Parliament, the Council and the European Economic a+nd Social Committee on the implementation of Regulation (EC)

No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93: (39407), 5002/18, COM(17) 789.

Background

1.14 The chief elements of the Commission's proposal are summarised below.

(i) Market surveillance organisation: single liaison office and mutual assistance procedure

1.15 Member States would still determine the internal organisation of their market surveillance authorities, however the proposal sets out at a high-level their obligations as regards organisation of market surveillance within their territory, including specifying the types of procedures they must establish, and general principles for the activities of market surveillance authorities (e.g. that measures be proportional and authorities take a risk-based approach and act with transparency, independence and impartiality).

1.16 Two specific requirements are introduced, with the aim of facilitating better coordination and more effective cross-border enforcement in the event of non-compliance:

- *Member States would be required to designate a single liaison office,* which must be an existing market surveillance authorities or other competent authority, which would be responsible for coordinating enforcement and market surveillance activities within their territory and cross-border; and
- *A mutual assistance procedure is introduced*, whereby surveillance authorities in Member States may request either information or that enforcement measures be taken. These requests must be sent to the single liaison offices in both countries, using the information and communication system that the proposed Regulation would create. The proposal also provides that evidence obtained in one Member State may be used in another Member State, and that products deemed to be non-compliant on the basis of a decision taken by market surveillance authorities in one Member State should be presumed to be non-compliant by market surveillance authorities in another Member State, unless the concerned economic operator can provide evidence to the contrary.

(ii) Market surveillance powers and measures

1.17 Article 14 of the Regulation would harmonise the minimum powers of national market surveillance authorities. These would include:

- the power to access data and documents related to an instance of non-compliance;
- the power to carry out on-site inspections;
- the power to make test purchases and carry out mystery shopping;
- the power to require economic operators and public entities to provide all information related to an incidence of non-compliance; and
- the power to impose penalties and order the recovery of profits obtained as a result of non-compliance.

1.18 Article 20 of the Regulation also permits the Commission to designate Union testing facilities for specific products or a specific category or group of products or for specific risks related to a category or group of products which are made available on the market.

1.19 The proposal is not a maximum harmonisation and Member States would retain freedom to grant their national market surveillance authorities additional powers. Member States would also retain the freedom to determine whether the competent authorities would exercise the powers directly or by application to national courts.

(iii) Union Product Compliance Network

1.20 It is proposed that an EU Product Compliance Network be created within the Commission which would be responsible for coordinating market surveillance cooperation at EU level. The network would consist of representatives of the Commission, national single liaison offices, competent national surveillance authorities, and, in some cases, representatives of business and consumer associations.

1.21 Article 33 of the Regulation identifies a wide range of "coordinated enforcement tasks" for the Commission, including:

- supporting the functioning of the Product Contact Points;
- coordinating the activities of the single liaison offices; and
- organising cooperation and the effective exchange of information and best practices between market surveillance authorities.

1.22 The tasks of the Union Product Compliance Network Board, which would consist of one representative from each of the national single liaison offices referred to in Article 11, and two representatives from the Commission, would include:

- defining the priorities for common market surveillance actions; and
- ensuring the coordination and monitoring of the administrative coordination groups and their activities.

(iv) Information and communication systems

1.23 The proposal also sets out measures for maintaining and developing the existing Information and Communication System for Market Surveillance (ICSMS). An electronic interface would also be developed to allow the effective exchange of information between national customs systems and market surveillance authorities. The Union Product Compliance Network will be placed in charge of maintaining this system, which would collect and store information on the enforcement of Union harmonisation legislation on products. The system is available to the Commission and market surveillance authorities in the Member States and will have a public interface. The detailed operation of this system will be set out in implementing acts.

(v) Products entering the Union market

1.24 On the basis that the most effective way to ensure that unsafe products are not placed on the market is to carry out adequate checks before they are released for free circulation, a requirement is introduced for market surveillance authorities to provide customs authorities with information on categories of products or the identity of economic operators where a higher risk of non-compliance has been identified.

(vi) Framework for international cooperation

1.25 The proposal also sets out a framework for international cooperation with third countries.

1.26 This would include a system for *product related pre-export controls* carried out by a third country on products, before they are exported to the Union. The details of the implementation of this system will be established by implementing acts.

1.27 The Commission proposal would also give it the power to *exchange market surveillance related information with the regulatory authorities of third countries and organisations*, also with a view to ensuring compliance prior to their export of products to the Union market. The Minister indicates that the Government will need to consider the full implications of this aspect of the proposal as the UK's relationship with the EU changes.

(vii) Responsible person

1.28 For products subject to EU harmonisation legislation, Article 4 of the proposal would require a person responsible for compliance information to be established in the EU to engage and communicate with market surveillance authorities. The proposal states that the person responsible for compliance information can be the manufacturer, an importer or another natural or legal person with a written mandate from the manufacturer but that, whichever of these roles the person occupies, they must be established in the Union.

Previous Committee Reports

Twenty Seventh Report HC 301–xxvi (2017—2019), chapter 2 (9 May 2018).

2 EU structural funds post-2020

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; but scrutiny waiver granted; drawn to the attention of the Northern Ireland Affairs Committee
Document details	(a) Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument; (b) Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments.
Legal base	(a) Articles 177, 322(1)(a) and 349 TFEU, Ordinary legislative procedure, QMV; (b) Articles 178, 209(1), 212(2) and 349 TFEU, Ordinary legislative procedure, QMV
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (39801), 9511/18 + ADD 1, COM(18) 375; (b) (39811), 9536/18 + ADD 1, COM(18) 374

Summary and Committee's conclusions

2.1 The EU's European Structural and Investment (ESI) Funds[5] aim to reduce economic, social and regional disparities across the EU, and to address the impacts of migration. In line with proposals for EU financing—the Multiannual Financial Framework (MFF)—from 2021 until 2027 inclusive, the Commission has proposed revised rules governing the ESI Funds for that period.

2.2 The UK does not expect to participate in the Funds over the period 2021–27, with the possible exception of the European Territorial Cooperation (ETC) programmes, health elements of the European Social Fund and the asylum and migration-related programmes.

2.3 We set out further details on the proposals in our Report of 5 September[6] and we reported again on the ETC programme on 17 October.[7] The ETC goal of the ESI funds (otherwise known as "Interreg"—inter-regional cooperation) is a long-established strand, designed to promote regional cooperation across borders within the EU. It includes the PEACE Programme, specifically designed to support cooperation across the Irish border.

5 European Regional Development Fund (ERDF), European Social Fund Plus (ESF +), Cohesion Fund (CF), European Maritime and Fisheries Fund (EMFF), Asylum and Migration Fund, Internal Security Fund and the Instrument for Border Management and Visa.

6 Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 2 and chapter 3 (5 September 2018).

7 Fortieth Report, HC 301–xxxix (2017–19), chapter 1 (17 October 2018).

2.4 The Parliamentary Under-Secretary of State (Lord Henley) has written[8] to explain that the Council may be invited on 30 November to agree a partial general approach on these proposals. This will centre on two aspects of the draft regulations: how ESI funds are to be structured and governed; and how they are to be monitored. While these are technical matters, the Government would like to be able to support the texts in order to send a positive signal to other Member States regarding the UK's continued commitment to the PEACE Programme under the next MFF. The Minister therefore asks the Committee to waive the proposals from scrutiny to allow the Government to support any partial general approach tabled for agreement at the 30 November Council.

2.5 The Minister had previously written[9] to us providing no new information to that contained in his original Explanatory Memorandum and re-asserting the Government's position on future participation in the ESI funds and on the future relationship with the EU. In our response,[10] we noted the position that the UK would no longer pay "vast sums into the EU budget" but observed that this rules out neither some payments—whether or not tied directly to UK participation in a specific programme—nor payments directly to Member States to assist with structural policy.

2.6 **We are content to waive these proposals from scrutiny in order that the Government can support a partial general approach at the 30 November Council meeting. Our earlier requests for information on the progress of negotiations and on progress in determining future UK engagement remain outstanding and we look forward to receiving that information in due course. The proposals remain under scrutiny. We draw this chapter to the attention of the Northern Ireland Affairs Committee.**

Full details of the documents:

(a) Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument: (39801), 9511/18 + ADD 1, COM(18) 375; (b) Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments: (39811), 9536/18 + ADD 1, COM(18) 374.

Previous Committee Reports

Document (a): Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 2 (5 September 2018). Document (b): Fortieth Report, HC 301–xxxix (2017–19), chapter 1 (17 October 2018); Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 3 (5 September 2018).

8 Letter from Lord Henley to Sir William Cash, dated 5 November 2018.
9 Letter from Lord Henley to Sir William Cash, dated 13 September 2018.
10 Letter from Sir William Cash to Lord Henley, dated 17 October 2018

3 MFF Horizon Europe

Committee's assessment	Politically important
Committee's decision	(a) (b) Not cleared from scrutiny; waiver granted; further information requested (c) cleared from scrutiny; drawn to the attention of the Business, Energy & Industrial Strategy, Education, and Science & Technology Committees
Document details	(a) Proposal for a Regulation of the European Parliament and of the Council establishing Horizon Europe—the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination; (b) Proposal for a Decision of the European Parliament and of the Council on establishing the specific programme implementing Horizon Europe—the Framework Programme for Research and Innovation; (c) Report From The Commission To The European Parliament And The Council Annual Report on Research and Technological Development Activities of the European Union and Monitoring of Horizon 2020 in 2017
Legal base	(a) Article 173 TFEU, Article 182 TFEU, Article 183 TFEU, Article 188 TFEU; OLP; QMV (b) Article 182 TFEU, Article 173 TFEU; OLP; QMV (c)—
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (39882), 9865/18 + ADDs 1–6, COM(18) 435 final; (b) (39880), 9870/18 + ADDs 1–6, COM(18) 436 final; (c) (39942), 10675/18, COM(18) 493 final

Summary and Committee's conclusions

3.1 The Treaties give the EU the power to establish a "Framework Programme" for research, which funds scientific research and innovation projects across Europe. The current, eighth, Framework Programme was named "Horizon 2020", and runs from 2014 to 2020 with contributions totalling €77 billion (£68 billion) from the EU budget. The UK is currently the second-largest recipient of funding under the programme, after Germany.

3.2 The proposals under scrutiny represent the Commission's draft proposals for the next, ninth, Framework Programme (Horizon Europe) which will run from 2021—2027. This is a financial programme and forms part of the wider Multiannual Financial Framework (MFF), which the Committee has scrutinised separately.[11] The Committee has also previously scrutinised a Commission Communication which made recommendations as to how the next Framework Programme should be reformed.[12]

3.3 The overall budget envelope proposed for Horizon Europe in the Council Decision is €94.1bn (£82.5bn), up from €77bn (£68bn). Over half of the proposed envelope—€52.7bn (£46.2bn)—is being proposed for the Global Challenges and Industrial Competitiveness

11 Thirty Eighth Report HC 301–xxxvii (2017—2019) chapter 18 (12 September 2018).
12 Sixteenth Report HC 301–xvi (2017—2019), chapter 10 (28 February 2018).

pillar. The Open Science pillar has a proposed budget of €25.8bn (£22.6bn), and €13.5bn (£11.8bn) is proposed for the Open Innovation pillar. Funding for the European Research Council (ERC) and Marie Skłodowska-Curie Actions (MSCA) has increased in cash terms to €16.6bn (£14.6bn) and €6.8bn (£6.0bn) respectively. However, the final budget will be settled as part of the EU's negotiations on the Multiannual Financial Framework, after negotiations with the European Council and the European Parliament. Only then will the detail of the specific Programme be finalised.

3.4 The proposed Programme retains the three-pillar structure of the previous Framework Programme. However, there are changes to the titles and content of each pillar to align with priorities of (i) supporting creation and diffusion of high-quality knowledge and technologies (ii) addressing global challenges, and (iii) fostering innovation:

- The first pillar is called 'Open Science' and ensures strong continuity with Horizon 2020 in supporting excellent science with a bottom up approach. This pillar contains the European Research Council (ERC), the Marie Skłodowska-Curie Actions (MSCA) and Research Infrastructures (RIs).

- The second pillar, which is more impact oriented, is titled 'Global Challenges and Industrial Competitiveness'. It aims to use a top-down approach to address societal issues and support key enabling technologies. This pillar includes five clusters around which activity will be based: Health; Inclusive and Secure Society; Digital and Industry; Climate, Energy and Mobility; and Food and Natural resources.

- The third pillar is called 'Open Innovation' and focuses on fostering breakthrough and market-creating innovation through a bottom-up approach. A key feature of this pillar will be the newly created European Innovation Council (EIC), which was piloted in the final years of Horizon 2020.

3.5 There are a number of new elements within the programme:

- "Missions" are a new feature under the Global Challenges and Industrial Competitiveness pillar. They are planned to prioritise investment and set direction to achieve objectives with societal relevance. Details of mission areas are to be determined as part of the Horizon Europe proposal negotiations. Missions are normally expected to be cross-cutting in nature and so receive their budget from more than one cluster.

- European Innovation Council (EIC) Blended Finance and Innovation: There is a focus on innovation, and particular support for breakthrough market-creating innovation. The EIC will support innovators with breakthrough ideas and market creating innovations that currently face high risks due to the fragmentation of the innovation eco-system, lack of risk finance and risk aversion. Two specific instruments are proposed: A "Pathfinder for Advanced Research" will provide grants from the early technology stage to the early commercial stage, while an "Accelerator" will support the further development and market deployment of breakthrough and market-creating innovations, to a stage where it can be financed under normal commercial terms by investors, and will provide EIC blended finance (i.e. grants combining direct equity and access to financial guarantees).

- A simplification of the European Partnerships landscape is proposed, with fewer types of partnership permitted. Partnerships will also be time-limited and include conditions for phasing out programme funding.
- Although not an entirely new addition, for certain aspects of the programme immediate open access for publications and data will be required, and the proliferation of FAIR (findable, accessible, interoperable, and re-usable) data will be encouraged, including use of the newly created European Open Science Cloud (EOSC).
- There is a greater focus on potential for synergy and cumulative funding of programmes and linked to this is the provision for proposals to be awarded a 'Seal of Excellence'. This provides options for proposals which do not receive funding through Horizon Europe, but display promise, to be eligible for support from other Union programmes. This is linked to the 'Widening' activities which took place under Horizon 2020 which seek to spread excellence and exploit the full potential of the European science base.

3.6 In the context of EU exit, a key aspect of the proposal for the UK is the role the proposed Regulation permits for third countries in the Research Programme. The draft Regulation states that the programme shall be open to the association of third countries belonging to the EEA, EFTA and who are acceding, or candidate countries to EU membership. It also provides for association from countries under the European Neighbourhood Policy, and other third countries, provided they have a good capacity in science, technology and innovation, a commitment to a rules-based open market economy, and that they actively promote policies to improve the economic and social wellbeing of citizens.

3.7 The proposed Regulation stipulates, like its predecessor, that the detailed terms of association for third countries are a matter for negotiation, however any such agreement would need to be based on the principles of a fair balance of contributions and benefits—taking into account any significant imbalances—and sound financial management. The Regulation specifies that association agreements should not confer "decisional power" upon these countries. The Regulation is also clear that the scope of any association shall take into account the objective of driving economic growth in the European Union, and that access to elements of the programme may be limited for participating countries for this purpose. Reciprocal access to domestic programmes in the associated countries may also be conferred to entities established in the European Union. The detail of the above arrangements would be negotiated and outlined within an Association Agreement.

3.8 In the Government's Explanatory Memorandum[13] regarding the proposal, the Minister of State for Universities, Science, Research and Innovation at the Department for Business, Energy and Industrial Strategy (Sam Gyimah) stated that as the UK will no longer be a member of the European Union when the next MFF is implemented, negotiations on EU programmes starting in the next MFF are therefore "primarily a matter for the 27 remaining Member States", but that, as the UK wants the option to fully associate with the EU's science and innovation programmes, the Government would "therefore seek to influence the shape of the proposal to create a programme which would operate in the mutual interests of the UK and the EU."

13 Explanatory Memorandum from the Government (25 June 2018).

3.9 The Minister's initial assessment regarding the programme was that it broadly aligned to the Government's position paper, published in February 2018. The Minister stated that the proposal has "left the door open to UK association to Horizon Europe based on the principle of a fair balance of contribution and benefit", a principle which the Minister accepts as reasonable, with "the precise level of UK financial contributions, access to components of the programme, and influence over the programme, [being] matters for negotiations on any potential UK association".

3.10 The Government's Explanatory Memorandum also expressed a concern that the evaluation process for proposals (Articles 24–27) no longer provided for evaluation entirely by independent experts, but by a committee that can be fully or partially composed of experts, including representatives of EU institutions. However, in a subsequent letter[14] the Minister suggested that these concerns were not significant, stating that "the proposed evaluation process remains largely in line with the process in Horizon 2020", but that Article 26 of the Regulation, which sets out the evaluation process, states that the evaluation committee may be fully or partially composed of external independent experts, and may include representatives of Union Institutions or bodies. In practice, the Government expects that in most cases the evaluation will be conducted entirely by independent experts, but that there may be exceptions in parts of the programme, such as missions, where it is necessary to consider how the overall portfolio of projects aligns with the EU's objectives.

3.11 The Minister has now written to the Committee prior to the 29–30 November Competitiveness Council,[15] at which he reports the Austrian Presidency will seek a Partial General Approach (PGA) on both proposals. The Minister states that the Government is content with the current direction of travel of both the Regulation and Decision, and will continue to monitor developments closely to identify any new amendments with significant impacts for the UK.

3.12 He informs the Committee that that the Government has been informed that Article 12.1 (d) of the Regulation—the article setting out the terms of participation for third countries that would be most relevant to possible future UK participation—will be excluded from the PGA.

3.13 He states that it is unclear whether the provisions regarding the changes to the evaluation process will be included in the PGA, but that the Government is now of the view that these new aspects of the proposals have been introduced to support evaluation of applications under new areas of the programme, such as the European Innovation Council and missions, and the Government is "happy to support them".

3.14 The Minister therefore requests that the Committee grant the Government a scrutiny waiver to participate at Council, with the following provisos:

> Provided there are no major changes to the content of the proposals—which, for example, would jeopardise the excellence of the programme, make it less open to other countries, or significantly reduce its potential value to the UK—the Government is likely to seek to support the PGA

14 Letter to the Chair of the House of Lords EU Committee (15 October 2018).
15 Letter to the Chair of the European Scrutiny Committee (6 November 2018).

at the Competitiveness Council. However, any final decision on the UK's approach will be based on consideration of the text within the PGA as a whole.

3.15 **We have taken note of the Minister's account of the proposed Regulation establishing the EU's next Framework Programme for research (Horizon Europe) and the parallel proposal for a Decision establishing the specific programme, both of which the Minister considers "broadly align" with the Government's February 2018 position paper.[16] Although the Minister states that the MFF proposals are "primarily a matter for the 27 remaining Member States", we note his intention for the UK to engage in negotiations in order to ensure that the proposal can be of mutual benefit to the UK and the EU, given the possibility of the UK associating to the Programme.**

3.16 **Regarding the proposed Programme, we particularly take note of the stronger emphasis on industrial competitiveness and innovation, as well as the fact that the overall budget envelope proposed is £82.5bn (up from £68bn). While it is highly probable that the Member States will somewhat scale back the Commission's ambitions in this regard as part of the wider negotiations on the Multiannual Financial Framework, the proposal nonetheless represents a strong statement of ambition, particularly given the impending loss of a major Member State.**

EU exit implications of Horizon Europe

3.17 **The Minister confirms that the proposed Regulation has "left the door open to UK association to Horizon Europe based on the principle of a fair balance of contribution and benefit", a principle for which he expresses support. The proposals therefore meet the UK's principal objective in the context of EU exit.**

3.18 **However, the proposed Regulation also specifies with much greater precision than its predecessor a wide range of conditions which should be applied to the agreements by which third countries are associated to the Programme. These conditions include that:**

- **Such agreements must ensure a "fair balance as regards the contributions and benefits" of the third country participating in the Union programmes, with there being an "automatic correction of any significant imbalance" compared to the amount that entities established in the associated country receive. It is clear from this that it will no longer be possible for the UK to remain a major net financial beneficiary of the EU's research programmes, although we note that the principal benefits of participation in the Framework Programmes are not financial but rather relate to the effects of large-scale cross-border integration of research.**
- **Such agreements must ensure that "decisional power" regarding the programme is not conferred on the participating country, which includes matters covering the administration of the programme as well as those relating to its aims and objectives. The Minister states that any association arrangement should involve a "fair level" of influence for the UK, in line**

16 Department for Business, Energy and Industrial Strategy, UK Position Paper on the ninth EU Framework Programme for Research and Innovation (FP9) (March 2018).

with financial contributions, but does not specify in detail what this would entail. The Government has previously stated that "associated countries do not have a formal vote over the work programme, but can attend programme committees, which provides them with a degree of influence",[17] but also that the UK's level of influence "should be greater than current non-EU precedents, recognising the quality and breadth of the UK's contribution".[18]

- **Such agreements should "take into account" the objective of driving economic growth in the EU through innovation, and "specific" third countries (but not EEA members, acceding countries, candidate countries, and potential candidates) may be excluded from parts of the Programme for this reason. Given the increased focus that is proposed on open innovation and industrial competitiveness, exclusion from these areas, alongside other parts of the Programme from which third countries are automatically excluded, could in principle cover a significant proportion of the Programme; however, we note that nothing in the Regulation prevents third countries securing participation in these elements of the Programme, if a close association can be negotiated.**
- **The EU may limit or exclude participation in research actions related to strategic assets, interests, autonomy or security.**

3.19 **In addition, when the EU is negotiating a country's association to the Programme it will retain the power to impose additional conditions which depend on the overall political relationship with the third country in question, as illustrated by the EU's partial suspension of Switzerland's participation in Horizon 2020 between 2014 and 2016, after it refused to extend freedom of movement to Croatian nationals.[19]**

3.20 **We conclude that, in the context of EU exit, although the proposed Framework Programme leaves the door open to UK association, and does not preclude comprehensive ongoing participation, by variously spelling out the principles and conditions applicable to third countries seeking to become associated to the Programme, requiring the EU to take its economic interests into account when concluding such agreements, and providing for the exclusion of third countries where it is in the EU's economic interests to do so, the proposed Regulation gives the EU greater flexibility to adopt a less standardised, more tailored approach to future UK association to the Programme, according to the nature of wider UK-EU economic and political relations.**

Government No Deal guidance

3.21 **We have also taken note of the Government's guidance for a "no deal" scenario with respect to Horizon 2020,[20] in which the Government restates its guarantee to replace EU funding for successful UK bids for Horizon 2020 research calls after EU exit for which the participation of third country researchers is permitted: in principle, these**

17 Letter from the Minister to the Chair of the European Scrutiny Committee (14 March 2018).
18 HM Government, Framework for the UK-EU partnership Science, research and innovation (May 2018).
19 See European Commission, "Swiss participation in Horizon 2020" (accessed 19 February 2018).
20 HM Government, Guidance: Horizon 2020 funding if there's no Brexit deal (23 August 2018).

researchers would then be able to continue to take part as third country participants, even in the absence of the UK becoming formally associated with H2020, with the UK providing its stake of project funding.

3.22 **However, the Government has also identified a range of complications which could arise as a result of the UK becoming a third country, which could lead to concerns about ongoing compliance with Horizon 2020 rules, despite the Government's guarantee. These concern:**

- **Ongoing participation of UK stakeholders in Horizon 2020 calls for which third country participation is not permitted, including European Research Council (ERC) grants, Marie Sklodowska-Curie Actions (MSCA) and the SME instrument, as well as some projects relating to European Union security and defence;**
- **Situations where a UK stakeholder leads a consortium and is responsible for distributing funding to the other participants; and**
- **Projects where the UK's change in status from member state to third country could mean that a consortium no longer met the threshold for member state and/or associated country participants.**

3.23 **The Government has also committed through an "Extended Guarantee"[21] to provide funding for successful applications from UK stakeholders to participate in Horizon 2020 calls which are open to third country participants. This extended guarantee cannot extend to projects for which third country participation is not permitted, regarding which the Government states only that it is "considering what other measures may be necessary to support UK research and innovation in the event that the guarantee and the extension are required."**

3.24 **We note that UK non-participation in those parts of the Programme from which third countries are excluded would potentially have a significant impact on UK stakeholders given that, as of 31 May 2018, the UK had secured 19.9% of all European Research Council (ERC) grants, which have collectively amounted to €1.3bn (representing around 28% of UK H2020 funding to date) and 21.2% of all Marie Skłodowska-Curie Actions (MSCA), which have collectively amounted to 694 million euros (around 15% of UK H2020 funding to date).**

3.25 **Neither the Government's guarantee nor its extended guarantee provide researchers with any assurances in relation to Horizon Europe, the successor of the Horizon 2020 programme. The possibility for UK stakeholders to participate in Horizon Europe calls will therefore be contingent on the UK either extending these guarantees in relation to Horizon Europe (which would enable participation in those projects which are open to third country participants) or becoming associated to Horizon Europe (in which case wider UK involvement in the Programme, within the scope of the association agreement, would become possible).**

21 HM Government, Funding from EU programmes guaranteed until the end of 2020 (24 July 2018).

Request for information

3.26 **We ask the Government to provide, in its next update to the Committee:**

- **An indication of whether these proposals, which provide the Government with a clear picture of the shape of the next Framework Programme, increase or decrease the probability of it seeking to become associated to it in future;**
- **An update regarding what progress has been made, if any, in relation to the various problems which would arise in the event of a "no deal" exit referenced above, including: ongoing participation of UK stakeholders in existing Horizon 2020 calls for which third country participation is not permitted; situations where a UK stakeholder leads a consortium and is responsible for distributing funding to the other participants; and projects where the UK's change in status from member state to third country could mean that a consortium no longer met the threshold for member state and/or associated country participants;**
- **Clarification as to what action the Government would propose in the event of an exit which did not involve UK association to Horizon Europe, to offset the inability of UK stakeholders to participate in calls relating to European Research Council (ERC) grants, Marie Sklodowska-Curie Actions (MSCA) and the SME instrument, from which UK stakeholders would be excluded—which collectively represent almost half of all current UK funds received from Horizon 2020; and**
- **To clarify what level of "influence" over the Horizon Europe Programme would be the minimum acceptable level to the Government and whether the provisions in the Regulation precluding associated countries from having "decisional power" regarding the Programme would permit this level of influence.**

Partial General Approach

3.27 **The Minister has subsequently written to inform the Committee that the Austrian Presidency is seeking a Partial General Approach (PGA) on the Horizon Europe proposals at the upcoming Competitiveness Council to be held across 29/30 November. The Minister indicates that the Government is "content with the current direction of travel of both the Regulation and Decision", although it will not be clear precisely which articles of the Regulation and Decision will be covered until approximately a week ahead of the Competitiveness Council meeting, by which time it would be too late to write to the Committee requesting a waiver. However, the Government has been informed that the provisions of the greatest interest to the UK—those which set out the terms of association for third countries—will be excluded. The Minister indicates that the Government is likely "to seek to support the PGA at the Competitiveness Council" provided that there are no major changes to the content of the proposals which would "make it less open to other countries, or significantly reduce its potential value to the UK".**

3.28 **We grant the Government scrutiny waivers to participate fully in relation to both proposals in Council, including if the provision relating to third countries is unexpectedly included in the Partial General Approach regarding the Regulation. In the meantime, we retain both documents under scrutiny and request that the Minister provide us with a thorough update, including responses to the above questions, not later than 11 January 2019. We clear document (c) from scrutiny.**

3.29 **We draw this report to the attention of the Business, Energy and Industrial Strategy Committee, and to the attention of the Education and the Science and Technology Committees.**

Full details of the documents:

(a) Proposal for a Regulation of the European Parliament and of the Council establishing Horizon Europe—the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination: (39882), 9865/18 + ADDS 1-5, COM(18) 435 final; (b) Proposal for a decision of the European Parliament and of the Council on establishing the specific programme implementing Horizon Europe—the Framework Programme for Research and Innovation: (39880), 9870/18 + ADDS, COM(18) 436 final;(c) Report From The Commission To The European Parliament And The Council Annual Report on Research and Technological Development Activities of the European Union and Monitoring of Horizon 2020 in 2017: (39942), 10675/18, COM(18) 493.

Previous Committee Reports

Sixteenth Report HC 301–xvi (2017—2019), chapter 10 (28 February 2018).

4 Second mobility package: Combined transport

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Directive of the European Parliament and of the Council amending Directive 92/106/EEC on the establishment of common rules for certain types of Combined Transport of goods between Member States.
Legal base	Article 91(1) TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39205), 14213/17 + ADDs 1–2, COM(17) 648

Summary and Committee's conclusions

4.1 The proposal under scrutiny was first considered by the Committee on 21 March 2018 and forms part of the Commission's 'Europe on the Move' mobility initiative which aims to ensure that the European transport sector stays "competitive in a socially fair transition towards clean energy and digitalisation".

4.2 The proposal would amend Directive 92/106/EEC—on the establishment of common rules for certain types of combined transport of goods between Member States—by extending and refining the definition of 'combined' transport. This change is justified in pursuit of encouraging and facilitating a modal shift away from roads to alternative modes of transportation.[22]

4.3 The proposal would make 5 main changes to the existing combined transport framework, by:

- Providing a clearer definition of combined transport;
- Modifying relevant reporting conditions;
- Extending and introducing additional economic support conditions;
- Introducing specific provisions for own-account transport (where goods are moved by an operation owning them as part of a wider business); and
- Supporting the use of electronic documentation for businesses undertaking combined transport operations.

22 'Combined' transport is a form of intermodal transport—the transportation of freight using multiple modes of transport (e.g. road, rail, ship or truck etc.) — where most of the journey is made via rail, inland waterways or sea and any initial and/or final legs carried out by road are as short as possible. Financial incentives—by way of reduced taxation and maximum permissible vehicle weights—competition are offered in some Member States for road legs of combined transport operations.

4.4 A full background to the proposal—including an assessment of the Commission's rationale for action, the Government's initial legal and political analysis and the questions the Committee asked in response—can be found in our first Report to the House of 21 March 2018.

4.5 Since the Committee's first Report on the proposal, Minister of State at the Department for Transport (Jesse Norman), has written to the Committee on three occasions. Firstly, the Minister wrote to the Committee in response to our initial request for further information on 20 April 2018 and, secondly, with a progress update on Working Group negotiations on 8 May 2018. The Minister now writes—on 14 November 2018—requesting the Committee clear the proposal from scrutiny to allow the Government to support a General Approach to be sought in the Transport Council of 3 December 2018.

The Committee's initial questions and Ministerial correspondence

4.6 In its first Report on the proposal, the Committee sought further information from the Government on:

- The potential cost implications of the proposal for the UK; and
- Clarification as to whether the Government intends to support 'transhipment terminals' (as destinations where transport modalities can be changed), after the UK's withdrawal from the EU.

4.7 In his letter of 20 April 2018, the Minister informed the Committee that the Government was unsure of the potential cost implications of the proposal due to a lack of clarity as to how the Directive would operate. On the second question the Committee asked, the Minister provided the somewhat generic response that [supporting transhipment terminals in the future] "will be a matter for the negotiations about the UK's exit from the EU, including the future relationship".

4.8 The Minister wrote to the Committee again on 8 May 2018 with an update on the proposal in advance of the 7 June Transport Council. The Minister informed the Committee that a number of changes had been made to the proposal during Working Group negotiations. Of these, the most important concerned the requirement that Member States take measures to support investment in transhipment terminals. Before the June Transport Council meeting, the working text of the proposal was clarified so that support could take the form of 'softer' measures (such as transport policy planning rather than 'hard' investment).

4.9 Also noteworthy was the removal from the proposal of maximum permissible distances between transhipment terminals.

The Minister's letter of 14 November 2018

4.10 The Minister wrote to the Committee on 14 November 2018 requesting clearance of the proposal to allow the Government to support a General Approach to be sought in the Transport Council of 3 December 2018.

4.11 The Minister provides a helpful update in his letter covering the changes that have been made to the proposal to-date and the Government's position on these. The Minister

explains that after the latest round of Working Group negotiations, a combined transport operation is now defined as "one consisting of an initial or final road leg, or both, as well as one or more non-road legs using rail, inland waterway or maritime transport. Such road legs should not exceed 150km in distance, allowing operators, in theory, to connect with terminals for switching to road from non-road transport". The Minister also outlines three further changes made to the current text, these are:

- An amendment to limit the scope of the proposal to international operations;
- The inclusion of a provision that would give Member States flexibility to disapply some of the support measures specified for combined transport; and
- The ability for operators to exceed distance limits—at the moment set at 150km—in the event that a suitable terminal cannot be found.

4.12 The Minister welcomes these changes and is willing to support the proposed General Approach providing that it remains broadly similar to the current draft text.

4.13 **We thank the Minister for his correspondence and the information he has supplied in response to our enquiries. The Minister requests the Committee clear the proposed Directive from scrutiny to allow the Government to support a General Approach to be sought in the Transport Council of 3 December 2018.**

4.14 **The Committee are keen to keep a close eye on the development of the proposal beyond the December Transport Council and, therefore, will continue to hold it under scrutiny. We are, however, satisfied that the Minister has provided the Committee with sufficient information on the development of the proposal and the Government's voting intentions at the December Transport Council to grant a scrutiny waiver.**

4.15 **We seek an update on the outcome of the December Transport Council by 14 January 2019.**

Full details of the documents:

Proposal for a Directive of the European Parliament and of the Council amending Directive 92/106/EEC on the establishment of common rules for certain types of Combined Transport of goods between Member States: (39205), 14213/17 + ADDs 1–2, COM(17) 648.

Previous Committee Reports

Twenty-first report HC 301–xx (2017–19) chapter 5 (27 March 2018).

5 Second mobility package: clean and energy-efficient vehicles

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; but a scrutiny waiver granted for a General Approach to be sought in the Transport Council of 3 December 2018.
Document details	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/33/EU on the promotion of clean and energy-efficient road transport vehicles
Legal base	Article 192 TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39209), 14183/17 + ADDs 1–6, COM(17) 653

Summary and Committee's conclusions

5.1 The proposal under scrutiny was first considered by the Committee on 21 March 2018 and forms part of the Commission's 'Europe on the Move' mobility initiative which aims to ensure that the European transport sector stays "competitive in a socially fair transition towards clean energy and digitalisation".

5.2 The proposal would amend Directive 2009/33/EU — on the promotion of clean and energy-efficient road transport vehicles — by widening its scope to include a revised definition of what constitutes a "clean" light-duty vehicle (LDVs). The Directive would also set a minimum public procurement target of 35% for clean LDVs by 2025 and delegate power to the Commission to set a similar target for heavy-duty vehicles (HDVs) once relevant CO2 emission standards have been set at EU-level.

5.3 A full background to the proposal, including information on the Commission's ex-post evaluation of Directive 2009/33/EU, its rationale for regulatory action and the Government's initial legal and political assessment, can be found in our first Report to the House of 21 March 2018.

5.4 In response to our requests for further information, Minister of State at the Department for Transport (Jesse Norman), wrote to the Committee on 14 November 2018. The Minister asks that the Committee consider granting the Government a scrutiny waiver so that it can support a General Approach on the proposal likely to be sought in the Transport Council of 3 December 2018.

5.5 We note that the Committee's initial Report on the proposal was committed to the House on 27 March 2018. It is nearly eight months between this Report being made available to the Minister and his response. In his letter of 14 November, the Minister apologises for this delay citing "developments in negotiations" as affecting his ability to respond to the first question we raised. It is unclear why this delay prevented the Minister from writing to the Committee to address our other questions or, out of courtesy to the

Committee, providing a report on the progress of Working Group discussions. We note that the Minister now seeks a scrutiny waiver to support a General Approach less than three weeks from the date of his first formal correspondence.

Minister's letter of 14 November 2018

5.6 In our first Report, the Committee asked whether the Government intends to implement any Commission delegated act under the proposed Directive after the UK's withdrawal from the EU. In response, the Minister explains that the proposed use of delegated acts to set procurement targets for HDVs was contentious and, at the behest of Member States (including the UK), has been removed from the latest working text of the proposed Directive.

5.7 The Committee also enquired as to whether the UK would maintain reporting obligations provided for under the proposal after leaving the EU. The Minister states that "this will depend on whether the UK is required to implement the Directive under the terms of the final Withdrawal Agreement".

5.8 Our final question asked whether the Government had undertaken any assessment of the proposal's proportionality, appropriateness, impact, costs and benefits for the UK. The Minister informs us that his department have undertaken some initial work based on the Commission's Impact Assessment but are unable to provide any further information at this time.

5.9 The Minister informs the Committee that, to-date, discussions in Working Groups have focussed on the definition of a 'clean' vehicle and the procurement targets suggested for clean vehicles. With regards to the former, the Minister states that the Government is seeking consistency between the definition adopted in the proposal and that provided for in EU legislation currently under discussion concerning CO2 reduction targets for LDVs and HDVs. On the latter, the Government believes that it is inappropriate for clean vehicle targets to be set for the entirety of the public-sector fleet and that it should be for Member States to decide the scope of such targets.

5.10 **The Minister requests a scrutiny waiver in order to support a General Approach on the proposed Directive should it be included in the final agenda for the 3 December Transport Council. As the Minister has satisfactorily answered the questions raised in our first Report and has updated the Committee on those areas of the proposal that are contentious and has, furthermore, clearly outlined the Government's positions in this regard, we grant the requested waiver.**

5.11 **This having been said, we are concerned at the amount of time — nearly eight months — that it has taken the Minister to respond to our initial Report. We remind the Minister that effective scrutiny is dependent upon the active engagement of Government. Irrespective of delays in negotiations (which are to be expected), at minimum, the Committee must be kept abreast, at regular intervals, of developments concerning the documents that it holds under scrutiny. Failure to do so, especially against tight deadlines (as is presently the case), may lead to such requests being declined.**

5.12 **We seek an update on the outcome of the December Transport Council by 14 January 2019. We are interested to hear, in particular, of any alternative arrangements proposed for setting procurement targets for HDVs. Furthermore, we acknowledge the Government's position of opposing procurement targets for the entirety of the public sector but, as the proposal is currently framed, request further information on the target values for LDVs and HDVs that it would be willing to support.**

Full details of the documents:

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

Previous Committee Reports

Twenty-first report HC 301–xx (2017–19) chapter 7 (21 March 2018).

6 Third mobility package: General Safety Regulation

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; but scrutiny waiver granted for a General Approach to be sought in the Competitiveness Council of 29 November 2018
Document details	Proposal for a Regulation of the European Parliament and of the Council on type-approval requirements for motor vehicles and their trailers, and systems, components and separate technical units intended for such vehicles, as regards their general safety and the protection of vehicle occupants and vulnerable road users, amending Regulation (EU) 2018/... and repealing Regulations (EC) No 78/2009, (EC) No 79/2009 and (EC) No 661/2009
Legal base	Article 114 TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39712), 9006/18 + ADDs 1–3, COM(18) 286

Summary and Committee's conclusions

6.1 The proposal under scrutiny is 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").

6.2 The proposed General Safety Regulation (GSR) would repeal and replace the current General Vehicle Safety Regulation, Pedestrian Safety Regulation and Hydrogen Safety Regulation. These instruments form part of the Union's type-approval framework and set uniform standards pertaining to active and passive vehicle safety and are aimed, respectively, at preventing collisions with other vehicles, pedestrians and cyclists, and, when collisions do occur, mitigating their consequences. Examples of safety standards include lane-keeping technology, seatbelt warning lights and car crumple zones. New vehicles, systems and components must be manufactured according to such standards before they can be placed on the market.

6.3 The current EU-level vehicle safety framework is considered to be largely out-of-date and in need of replacement with technical requirements comparable to United Nations standards, in particular, those set by the United Nations Economic Commission for Europe. The EU Commission sees the revision of the Union's framework — along with rules governing road infrastructure — as integral to addressing the stall in falling road fatalities seen in recent years.

6.4 The GSR would update EU standards in light of technological advancements and introduce a simplified regulatory framework (with all standards held under a single Regulation). Proposed amendments and new types worthy of note include:

- The current requirement for passenger cars to be fitted with a tyre pressure monitoring system to be extended to all vehicle categories;
- The introduction of a range of new advanced vehicle safety features for all vehicles (including, for example, intelligent speed assistance, driver drowsiness and attention monitoring/distraction recognition systems, reversing detection and alcohol interlock installation facilitation);
- Specific requirements for cars and vans to be fitted with advanced emergency braking systems and accident data recorders;
- Rules on frontal protection systems for passenger cars and light commercial vehicles; and
- New requirements specific to buses and trucks (these include systems that are capable of detecting vulnerable road users in close proximity to the front or nearside of vehicles).

6.5 The full background to the proposal — including further information on the specifics of the safety standards proposed and dates for their adoption — can be found in our first Report to the House of 17 October 2018.

6.6 In response to the Committee's requests for further information, the Minister of State at the Department for Transport (Jesse Norman) wrote to us on 15 November 2018. The Minister has requested that the Committee clear the proposal from scrutiny in order for the Government to support a General Approach to be sought in the Competitiveness Council of 29 November 2018.

General update on progress

6.7 Since the Committee last considered the proposal, the European Economic and Social Committee (EESC) has adopted an opinion on the proposal. During this intervening period, representations have also been made by stakeholder groups to the European Parliament's Internal Market and Consumer Protection Committee, and Transport and Tourism Committee (both Committees will be undertaking scrutiny of the proposal).[23]

6.8 The substance of the EESC's opinion relates to the absence of legal requirements in the proposal for lorries, trucks and buses to be fitted with accident data recorders. The EESC also opines that alcohol interlock devices should be mandatory rather than voluntary for lorries and trucks (under the current iteration of the proposal, manufacturers would have to take steps to ensure interlock devices *could* be installed, if so desired, by end users).

6.9 A coalition of stakeholders — including the European Transport and Safety Council — are concerned with apparent attempts by manufacturers to prioritise 'active' over 'passive' vehicle safety technologies.[24] In response, these groups argue that the proposal should not be open to 'cherry picking' and that all of the technologies suggested for inclusion are necessary to protect passengers and pedestrians.

23 See, for example, European Transport Safety Council et. al., "Letter: ACEA's attempts to weaken the European Commission's proposals on new vehicle safety measures" (October 2018).

24 ibid.

The Minister's letter of 15 November 2018

6.10 In his letter of 15 November 2018, the Minister provides detailed responses to the requests for further information made by the Committee and, very usefully, an update on progress on the proposal and a timeline for its future negotiation.

6.11 At the time of publication, there have been a number of working group meetings on the proposal (the most recent of which was held on 23 October 2018). Member States are said to be supportive of its aims and the amendments made during these discussions. As noted above, the Austrian Presidency plans to seek a General Approach at the November Competitiveness Council.

6.12 In its first report, the Committee asked the Government for its opinion on six points relating to the substance of the proposal. The Minister has provided detailed responses to each. On the first point, we asked the Government about the strength of the Commission's case for amending the existing vehicle and pedestrian safety framework. In response, the Government states that it has considered the Commission's Impact Assessment and has carried out its own analysis over a ten-year period from 2021 to 2030. This analysis shows that the changes proposed have the potential to prevent roughly 1,000 road casualties in the UK. On this basis, the Government believes that the Commission's justification for intervention is well founded (especially in light of "the devastating human consequences of road casualties and the cost of road collisions to the economy").

6.13 The Committee questioned the timeline suggested for the introduction of new and amended safety standards and whether the Commission's plans are sufficiently ambitious. The Minister informs us that some Member States have sought a more ambitious timeframe, however, the Government believes that current proposals represent the right balance between allowing sufficient time for manufacturers to develop appropriate safety technologies and the drafting of (often) detailed technical requirements. For broadly the same reasons, the Government informs us that, as per the current draft of the proposal, it has been advocating in Council for its entry into force 36 months after publication.

6.14 The Committee was also interested to hear the Government's views on the potential fundamental rights implications of safety technologies for which types are yet to be set. In this regard, we queried the proposal to use delegated rather than implementing acts to set such standards. The Minister reports that similar concerns were raised in working groups and that, as a consequence, the compromise text suggested by the Presidency reflects this. The text is now said to provide for the use of implementing acts to outline detailed rules concerning specific test procedures and technical requirements.

6.15 On a linked point, the Committee was also concerned with the proposed use of delegated acts to set safety standards for connected and autonomous vehicles (especially in light of the infancy of such technologies). The Minister informs us that implementing acts will now be used for this purpose and will draw heavily on standards set by the United Nations Economic Commission for Europe (UNECE) Working Party on Automated/Autonomous and Connected Vehicles. The UK's participation in this group will be unaffected by withdrawal from the EU. In this area, the Government is content that the proposal supports technological neutrality and open access in standard setting.

6.16 The Minister has also provided the Committee with supplementary information — in addition to the Commission's Impact Assessment — on the estimated costs of the

proposal for industry. The Government's analysis indicates overall costs to UK business of between £0.6 billion — £2.0 billion from 2021 to 2030. This is broadly similar, per Member State, to estimates provided by the Commission

6.17 **We thank the Minister for his letter of 15 November 2018 and, in particular, the thorough responses he has provided to our questions. We note his request for the Committee to clear the proposal from scrutiny in order for the Government to support a General Approach to be sought by the Austrian Presidency at the November Competitiveness Council.**

6.18 **Given the technical nature of the proposal and its potential implications for the adoption of future vehicle safety standards after the UK's withdrawal from the EU, we wish to retain a watching brief over its progress. On the basis that the Government has provided detailed answers to our questions on the substance of the proposal and is "broadly content with the outcome of Working Group negotiations…" we are happy to provide a scrutiny waiver for the 29 November Competitiveness Council.**

6.19 **We request an update on the outcome of the November Competitiveness Council by 10 January 2019.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council on type-approval requirements for motor vehicles and their trailers, and systems, components and separate technical units intended for such vehicles, as regards their general safety and the protection of vehicle occupants and vulnerable road users, amending Regulation (EU) 2018/... and repealing Regulations (EC) No 78/2009, (EC) No 79/2009 and (EC) No 661/2009: (39712), 9006/18, COM(18) 286.

Previous Committee Reports

Fortieth Report HC 301–xxxix (2017–19) chapter 6 (17 October 2018).

7 Council Decision on the Union's position on Carbon offsetting and reduction for international aviation

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; scrutiny waiver granted; further information requested
Document details	Proposal for a Council Decision on the position to be taken on behalf of the European Union in the International Civil Aviation Organization, in respect of the First Edition of the International Standards and Recommended Practices on Environmental Protection — Carbon Offsetting and Reduction Scheme for International Aviation
Legal base	Articles 192(1) and 219(8) TFEU; QMV
Department	Transport
Document Number	40193, —

Summary and Committee's conclusions

7.1 In 2016, the International Civil Aviation Organisation (ICAO) agreed to implement the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). The CORSIA agreement is a global measure aimed at reducing emissions from international aviation and delivering Carbon neutral growth for the sector by 2020.

7.2 The proposal under scrutiny concerns the position to be adopted by the Union—on behalf of Member States—on the implementation of CORSIA (this is in response to the ICAO requesting information from its Contracting Parties regarding progress towards the implementation of CORSIA from 1 January 2019).

7.3 Contracting Parties to CORSIA are obliged, in good faith, to implement its rules—which form part of the ICAO's 'Standards and Recommended Practices' (SARPs)—in national legislation. Contracting Parties must inform the ICAO where national implementation is expected to differ from that set out in the SARPS. In the EU, CORSIA will be implemented through a revision to the EU Emission Trading System (ETS) Directive. This is likely to be achieved through delegated act—under the ETS Directive—before the 1 January 2019 deadline.

7.4 The proposal is classified as 'LIMITE' and has not been made publicly available as the Union believes that doing so could affect ongoing negotiations in the ICAO. Officials at the Department for Transport have shared a copy of the proposal with the Committee on the understanding that it is not released into the public domain. Parliamentary Under

Secretary for Transport (Baroness Sugg), wrote to the Committee regarding the proposal on 17 November 2018. The Minister's letter accompanies an unnumbered Explanatory Memorandum of the same date.

7.5 The Minister explains that the proposal is expected to be put to the Council of Ministers for agreement before 1 December 2018 (the date by which all CORSIA Contracting Parties are required to notify the ICAO of any differences that they expect will exist on 1 January 2019 between their own national regulations and the provisions of the ICAO's SARPS). Ahead of this meeting, the Minister has requested a scrutiny waiver in order to support a Council Decision. This is likely to comprise a uniform approach by Member States to reporting existing differences between relevant EU legislation and the CORSIA SARPS.

7.6 **We thank the Minister for sharing the document under scrutiny and for writing to the Committee to explain the circumstances surrounding its LIMITE classification.**

7.7 **We grant the requested scrutiny waiver and request that the Minister share the official text of the document once publicly available. To aid our scrutiny of the document, we would appreciate a short report on the Council Decision once adopted.**

Full details of the documents:

Proposal for a Council Decision on the position to be taken on behalf of the European Union in the International Civil Aviation Organization, in respect of the First Edition of the International Standards and Recommended Practices on Environmental Protection—Carbon Offsetting and Reduction Scheme for International Aviation: (40193) , —, (LIMITE).

Previous Committee Reports

None.

8 Screening of foreign direct investment

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of International Trade Committee and the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Regulation establishing a framework for screening of foreign direct investments into the European Union
Legal base	Article 207(2) TFEU; Ordinary legislative procedure; QMV
Department	International Trade
Document Number	(39017), 12137/17 + ADDs 1–2, COM(17) 487

Summary and Committee's conclusions

8.1 The draft Regulation seeks to establish an EU-wide framework for screening foreign direct investment (FDI)[25] into the EU, based on security and public order grounds.

8.2 It introduces information-sharing requirements for Member States operating such schemes[26] and enables Member States and the Commission to submit comments on potential or actual foreign acquisitions of critical assets, technology and know-how in one Member State that may affect national security or public order in another Member State.

8.3 At its last meeting on 12 September 2018, the Committee requested that the Minister for Trade Policy (George Hollingbery) provide:

- further information on the Government's position and expected next steps, including: which specific elements of the Regulation it remains "dissatisfied with" and may seek to influence during the trilogue negotiations; and what aspects of the proposal would need to change for it to vote in favour of the final text; and

- an assessment of how it may impact the UK's screening regime and UK investors in the range of scenarios foreseeable after UK withdrawal, namely: during the scheduled transition/implementation period; in the event of a 'no deal' scenario; and post-transition/implementation period. We asked the Minister to provide this analysis **in light of, and by reference to, the UK's** amended FDI

25 FDI covers a broad range of investments which establish or maintain lasting and direct links between investors from third countries and the investment vehicle in the host state. It does not include portfolio investment.

26 12 Member States operate FDI screening mechanisms based on national security or public interest grounds, but the design, scope and implementation of these rules vary significantly between them.

> screening process of 11 June 2018[27] and the Government's intention to introduce mandatory notification requirements for foreign investments in civil nuclear, energy, telecommunication and transport sectors. [28]

8.4 In his letter of 29 October 2018 and accompanying Annex, the Minister responds to the Committee's questions on the progress of the proposed Regulation and its Brexit implications.

Progress of negotiations and the UK's position

8.5 The Minister states that the draft Regulation is progressing "at pace through the European Parliament and is a priority file for the Austrian Presidency, which is seeking to agree a final Regulation before the end of the year."

8.6 He reiterates that the UK Government helped secure amendments to the compromise text that mitigate several of the UK's concerns, particularly in relation to securing exemptions on mandatory information sharing requirements concerning matters of national security. However, it remains "dissatisfied" with mandatory information-sharing requirements that may be commercially sensitive, the proposed 35 calendar day timeframe for the Commission and Member to comment on new investments, the proposed 18-month review period (after completion), and potential amendments by the European Parliament to widen information sharing requirements and enable third parties to request an investment screening opinion.

8.7 The Minister concludes that:

> the UK will need to consider the final Regulation in detail before taking a view on the position it will take in any vote. The removal or reduction in the scope of the mandatory sharing of information, the reduction in mandatory timeframe and a clear statement that individual Member States will be the ultimate arbiter of the individual screening decisions will minimise the likelihood that the UK will not vote in favour of the Regulation.

Brexit implications

8.8 The Minister considers it likely that the proposal will come into force during the transition/implementation period (scheduled between 30 March 2019 and 31 December 2020).

8.9 During any transition/implementation period, the Minister:

- reiterates that the UK will need to comply with the Regulation and that the information-sharing requirements may create "additional burden[s] for business and extend the length of the UK's own screening processes"; and

27 Amendments to the Enterprise Act 2002, in force as of 11 June 2018 enable the Government to intervene in cases where the target's UK turnover exceeds £1 million (the previous threshold was £70 million) or where the target alone has a 25% share of the supply of any goods or services (the previous requirement was the merger must lead to an increase in the merging parties' share of supply to, or over, 25%) in the following sectors: the development or production of items for military or military and civilian use ('dual use'); the design and maintenance of aspects of computer hardware; and the development and production of quantum technology.

28 Department of Business, Energy and Industrial Strategy news story ' Government upgrades national security investment powers', 24 Jul 2018.

- considers that its impact on the UK is likely to be limited on the basis that "… though some elements could be introduced during an Implementation Period, the full application of the Regulation will not come into force before 2020" and the UK Government screens "only a limited number of foreign investments and that will not change as a result of this Regulation". However, he also notes that any changes to the UK regime in relation to mandatory notification requirements for foreign investments in civil nuclear, energy, telecommunication and transport sectors during the transition/implementation period "**may mean that more transactions are called in for scrutiny".**

8.10 Post-transition/implementation period, the Minister states that:

- the UK "will no longer be subject to the information sharing requirements of the Regulation and as such will avoid the delays that the EU proposals could bring", but that UK investors seeking to invest in the EU may face additional burdens;
- **the Government will seek "to work with allies both inside and outside the European Union to identify and mitigate any national security risks that are posed by foreign direct investment into the country" after UK exit; and**
- the "UK will seek to ensure the future UK-EU future economic partnership minimises the introduction of barriers to cross-border trade in services and investment".

8.11 **The Committee notes that the Minister retains strong reservations about the proposal and asks to be kept updated on the outcome of the trilogue negotiations — particularly in relation to the mandatory information sharing requirements, the timelines for Member States and the Commission to request information or comment on new investments, and the proposed review period for completed investments — and whether the UK Government intends to support the final text in any Council vote.**

8.12 **The Committee also seeks further clarity on the Brexit implications of the proposal, as detailed below.**

During any implementation/transition period in which the UK remains a 'de facto member' and must comply with the obligations of the Regulation:

8.13 **The Minister asserts that the Regulation is not expected to "substantially affect either the UK's ability to operate [the UK's] investment screening regime or [the UK's] attractiveness as a destination for foreign direct investment." Yet he also expresses strong concerns about the mandatory information requirements and timeframes for the review process, which may "have a negative effect on foreign investors' confidence in the UK". We ask the Minister to clarify these inherently contradictory statements.**

8.14 **We also ask the Minister to explain:**

- **which elements of the proposal will not be applied in full before 2020 ("meaning the impact on the UK's investment screening regime is likely to be limited to a short period"); and**

- **how any extension to the implementation/transition period or implementation of the Northern Ireland backstop would impact the UK's investment screening regime and UK FDI flows.**

Post-exit (either in the event of a 'no-deal' scenario or post-transition/implementation period):

8.15 **We note that the Minister is not able to commit to whether the UK will participate in the EU-wide screening mechanism as part of a future framework agreement. He simply states that the "UK will seek to ensure the future UK-EU future economic partnership minimises the introduction of barriers to cross-border trade in services and investment." Noting that "the Regulation risks creating an increased burden for British investors in EU businesses" and the importance of continued FDI to/from the EU, we ask the Minister to set out the criteria the Government will use to determine the UK's potential participation in the EU-wide framework post-exit/transition period.**

8.16 **In the meantime, we retain the document under scrutiny and draw the Minister's update and our conclusions to the International Trade Committee and the Business, Energy and Industrial Strategy Committee.**

Full details of the documents:

Proposal for a Regulation establishing a framework for screening of foreign direct investments into the European Union: (39017), 12137/17 + ADDs 1–3, COM(17) 487, SWD (17) 297.

Background

8.17 Details of the draft Regulation and the Government's position are set out in the Explanatory Memorandum of 5 October 2017 and the Committee's previous Report chapters (listed below).

Previous Committee Reports

Thirty-eighth Report, HC 301–xxxvii, chapter 15 (12 September 2018); Third Report, HC 301–iii, chapter 11 (29 November 2017).

9 Reallocation of EU funding for the transfer of beneficiaries of international protection between Member States

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation amending Regulation (EU) 516/2014 to recommit or reallocate funding for EU relocation measures
Legal base	Articles 78(2) and 79(2) and (4) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(40146), 13356/18, COM(18) 719

Summary and Committee's conclusions

9.1 At the height of the migration and refugee crisis in 2015, the EU agreed two Council Decisions for the relocation of 106,000 individuals in clear need of international protection from Italy and Greece to other EU Member States.[29] The aim was to relieve the pressure placed on the asylum systems of these frontline countries by an unprecedented influx of asylum seekers and migrants, many fleeing the civil war in Syria, by giving effect to "the principle of solidarity and fair sharing of responsibility" enshrined in the EU Treaties.[30] The distribution of asylum seekers under the first Council Decision was based on voluntary commitments made by Member States, the second on a mandatory distribution key. In both cases, Member States were to receive a lump sum of €6,000 for each relocated asylum seeker, funded by the EU Asylum, Migration and Integration Fund ("AMIF").[31] In September 2016, the Council decided that the resettlement of Syrian nationals directly from Turkey could count towards Member States' relocation quotas and would attract the same level of EU funding.[32] As relocation was intended as a temporary or emergency measure, the 2015 relocation Decisions included a "sunset clause" stating that they would cease to apply after two years (in September 2017).

9.2 The relocation of asylum seekers has taken place at a slower pace and in smaller numbers than was anticipated in 2015. According to the European Commission, 34,705

29 See Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece. The second Decision also makes provision for a further 54,000 individuals to be relocated from Italy and Greece or from other Member States at a later date (26 September 2016).

30 See Article 80 of the Treaty on the Functioning of the European Union (TFEU) which states that EU policies and laws in the field of asylum and migration "shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications".

31 See Regulation (EU) No 516/2014 of 16 April 2014 establishing the Asylum, Migration and Integration Fund.

32 See Council Decision (EU) 2016/1754 amending Council Decision (EU) 2015/1601.

individuals in need of international protection have been relocated from Greece and Italy and a further 5,345 resettled directly from Turkey.[33] This means that around €567 (£505) million of the €843 (£751) million committed to Member States' national AMIF programmes in 2016 to support the implementation of EU relocation measures has not been used. Under the rules governing the Asylum, Migration and Integration Fund, this sum will be "decommitted" (and so cease to be available to Member States) if payments have not been made by the end of 2018.

9.3 The proposed Regulation would amend the 2014 Regulation establishing the Asylum, Migration and Integration Fund to enable Member States to use the funds committed in 2016 beyond the 2018 deadline. To achieve this, the proposal must be adopted and take effect before the end of 2018. The changes proposed would allow Member States to revise their national AMIF programmes so that the funds could continue to be used for a further two years for the relocation of recognised refugees and applicants for international protection within the EU or transferred to other EU priorities in the asylum and migration field. Examples given by the European Commission include the strengthening of national asylum systems, support for integration, and enhanced cooperation with third countries on legal pathways to the EU and on the return and readmission of illegal migrants.[34]

9.4 The UK's Title V (justice and home affairs) opt-in Protocol applied to the 2014 Regulation establishing the Asylum, Migration and Integration Fund and to the 2015 Council Decisions on relocation. The UK opted into the Asylum, Migration and Integration Fund and has been allocated €370 million for the period 2014–20. The UK has chosen not to participate in EU relocation measures. In her Explanatory Memorandum of 7 November 2018, the Immigration Minister (Caroline Nokes) reiterates the Government's opposition to "the large scale or mandatory relocation of migrants within the EU", adding:

> In our view, this moves the problem around, exacerbates the issue rather than solving it, and creates incentives for illegal immigration. It also detracts from resettlement activity.

9.5 She confirms that the UK's Title V opt-in Protocol applies to the proposed Regulation amending the Asylum, Migration and Integration Fund but says the Government has yet to determine whether there would be any financial benefit to the UK if it were to opt in:

> The UK is not in the [EU] relocation measures. Therefore, if the money is for relocation, the UK will not benefit financially. If the money is being allocated for migration-related activities, the UK may benefit [from] opt[ing] in, so we can access the funds.

9.6 Despite the UK's patchwork participation in EU asylum and migration measures, the Minister recognises that the UK has "a strong interest in the 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". She continues:

> The UK has also been supportive of our European partners' work to reform their internal processes, including on asylum procedures. A more secure external Schengen border is of direct benefit to the UK if the journeys of migrants seeking to enter the UK clandestinely are disrupted and stopped.

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

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

9.7 The Minister says that the proposed Regulation will have to be formally adopted by the end of 2018 to ensure that the funds committed in 2016 remain available to Member States. She expects the Presidency to seek a mandate for negotiations with the European Parliament at the meeting of Member States' Permanent Representatives to the EU (COREPER) on 7 November with a view to reaching a political agreement at the Justice and Home Affairs Council on 6/7 December 2018. This accelerated timetable for negotiations and final agreement means that the Government will have to decide either to opt in before the three-month period envisaged for reaching an opt-in decision in the UK's Title V opt-in Protocol has expired or seek to opt in after the Regulation has been formally adopted.

Our Conclusions

9.8 **It is disappointing, given the accelerated timetable for deciding whether to opt into the proposed amending Regulation, that the Minister is unable to tell us whether there would be a financial benefit if the UK were to participate. We ask the Minister to explain:**

- **whether the outstanding figure of €567 million relates to unspent commitments made solely for the purpose of implementing the 2015 Council Decisions on relocation or also includes the purposes envisaged in Article 18 of the 2014 Regulation establishing the Asylum, Migration and Integration Fund (the relocation of beneficiaries of international protection within the EU carried out independently of the 2015 EU relocation scheme);**
- **if the latter, what assessment the Government has made of the proportion of that funding that the UK might be eligible to claim;**
- **what would happen to the unspent commitments if the proposed Regulation is not adopted before the end of 2018; and**
- **whether, as a matter of general policy, the Government considers that unspent commitments should continue to be made available to Member States if payments have not been made within the agreed deadline.**[35]

9.9 **We also ask the Minister to update us on the outcome of the COREPER meeting on 7 November, to provide details of any negotiating mandate agreed, to indicate how soon she expects the Government to take an opt-in decision and, if the decision is to opt in, whether she agrees with the changes proposed to the 2014 AMIF Regulation and intends to support them at the December Justice and Home Affairs Council. Pending further information, the proposed Regulation remains under scrutiny.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 516/2014 as regards the re-commitment of the remaining amounts

35 In this case, within two years of the budget commitment being made—see Article 50 of Regulation (EU) No 514/2014 of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management.

committed to support the implementation of Council Decisions (EU) 2015/1523 and (EU) 2015/1601 or the allocation thereof to other actions under the national programmes: (40146), 13356/18, COM(18) 719.

Previous Committee Reports

None.

10 European Foundation for the improvement of living and working conditions (Eurofound)

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Regulation establishing the European Foundation for the improvement of living and working conditions (Eurofound) and repealing Council Regulation (EEC) No 1365/75
Legal base	Article 153(2)(a) TFEU, Ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(38024), 11530/16, COM(16) 531

Summary and Committee's conclusions

10.1 The European Foundation for the improving of living and working conditions (Eurofound) is an EU Agency that was established in 1975 to contribute to the planning and design of better living and working conditions. The Commission proposed in 2016 to update Eurofound's objectives and tasks in the light of changing circumstances and changes that have been agreed for all EU Agencies.

10.2 Our predecessors initially raised queries regarding: the legal base; the seemingly premature decision to amend the Regulation before conducting a full evaluation; and the implications of Brexit.[36] Following ministerial responses,[37] the Committee was content to waive the scrutiny reserve in order that the Government could support a Council Common Position in December 2016.[38] On Brexit, our predecessors were told that the UK's future relationship with Eurofound was unclear, a position which remains unchanged.

10.3 The Minister for Small Business, Consumers and Corporate Responsibility (Kelly Tolhurst) has now written[39] to update the Committee and request scrutiny clearance ahead of final adoption of the legislation. She explains that trilogue negotiations with the European Parliament were delayed due to the link with proposals on other EU agencies and the interaction with the recently published European Labour Authority (ELA) proposal,[40]

36 Eleventh Report HC 71–ix (2016–17), chapter 2 (14 September 2016).
37 Letters from Margot James to Sir William Cash dated 21 October 2016 and 16 November 2016.
38 Nineteenth Report HC 71–xvii (2016–17), chapter 3 (23 November 2016).
39 Letter from Kelly Tolhurst to Sir William Cash, dated 13 November 2018.
40 7203/18 Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority.

on which we have reported and which remains under scrutiny.[41] The Minister confirms that the ELA proposal does not include any changes to the functioning of Eurofound, but it is intended that both agencies will co-operate in the future.

10.4 On the substance of the Eurofound legislation, the Minister indicates that the text has not changed substantially since the Committee granted a scrutiny waiver to vote in favour of a General Approach in December 2016. Changes made at trilogue stage involve translation arrangements, the work of the liaison office and cooperation with EU bodies, management board composition, as well as provisions concerning communication, transparency and evaluation.

10.5 The final Regulation will now be voted on, she says, at the next available Council, which is likely to be no later than 6 December 2018.

10.6 **We thank the Minister for her update on the negotiation of this Regulation. Noting that the changes since we granted a scrutiny waiver in November 2016 are minor, we are content to release the proposal from scrutiny. We require no further correspondence.**

Full details of the documents:

Proposal for a Regulation establishing the European Foundation for the improvement of living and working conditions (Eurofound) and repealing Council Regulation (EEC) No 1365/75: (38024), 11530/16, COM(16) 531.

Previous Committee Reports

Nineteenth Report HC 71–xvii (2016–17), chapter 3 (23 November 2016); Eleventh Report HC 71–ix (2016–17), chapter 2 (14 September 2016).

41 Twenty-fifth Report HC 301–xxiv (2017–19), chapter 1 (25 April 2018).

11 Insolvency, Restructuring and Second Chances for Businesses and Entrepreneurs

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	(a) Proposed Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU; (b) Opinion of the European Central Bank on proposal (a)
Legal base	(a) Articles 53 and 114 TFEU, ordinary legislative procedure, QMV; (b) —
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (38313), 14875/16 + ADDs 1–2, COM(16) 723; (b) (38828), 10182/17

Summary and Committee's conclusions

11.1 This proposed Directive (document a) aims to harmonise aspects of insolvency laws across the EU to support business rescue and afford a second chance to entrepreneurs. It is a significant initiative by the EU to harmonise national insolvency laws for the first time, as previous insolvency measures have only provided for mutual recognition and judicial cooperation on cross-border insolvency proceedings.[42] Document (b) is an Opinion of the European Central Bank on the proposal.

11.2 The full background to this proposal, a summary of its provisions and how these have changed during negotiations in the Council can be found in our previous Reports, together with a summary of the Opinion (see "Previous Committee Reports", below).

11.3 We understand from previous and current correspondence with the Government that it is unlikely that the UK would be required to implement the proposed Directive before the end of the proposed transition/implementation period (31 December 2020). In fact, the text was revised during the 2017 Estonian Presidency to allow Member States three years before having to implement the proposal (once adopted) into national law. So even if the proposal was adopted at the end of this year, it would not have to be implemented until 2021.

42 Most of the provisions in the 2015 recast EU Regulation 2015/848 on Insolvency Proceedings started to apply to Member States from 26 June 2017.

11.4 In our last Report of 12 September, we granted a scrutiny waiver for a General Approach on the preventive restructuring frameworks[43] Titles of the proposed Directive, planned for the Justice and Home Affairs Council of 11–12 October. We did so on the strength of the improvements to the text which the UK has been supporting and which the Minister for Small Business, Consumers and Corporate Responsibility (Kelly Tolhurst) now confirms were achieved in the General Approach on 11 October. In her letter of 12 November, she also provides us with a copy of the General Approach text and informs us that trilogue discussions are already underway. In fact, as it is likely that proposal will be put forward for final adoption at the Justice and Home Affairs Council on 6 and 7 December, she asks to us to consider clearing it from scrutiny.

11.5 After providing background on the key provisions agreed (summarised in the "background" section below), the Minister provides more detail of the provisions agreed to as part of the General Approach which partly resulted from UK pressure:

- The inclusion of a viability test to access a restructuring plan;
- The insertion of a "next best alternative" safeguard to qualify the "best interests of creditors test". This ensures that creditors are no worse off than they would be in liquidation or the next best alternative scenario. This is important because in the UK alternatives to liquidation, such as administration, may produce a better outcome and return for creditors than liquidation.
- The inclusion of flexibility in the "absolute priority rule" (where a dissenting voting class of creditors has to be satisfied in full if a more junior class of creditors receives any satisfaction[44] under a restructuring plan) so that the court can derogate from the rule where it is necessary to achieve the aims of the restructuring and it does not unfairly prejudice any creditor.

11.6 The Minister believes these changes supported by the UK will not only be beneficial for the restructuring frameworks themselves but also enable better alignment between UK and EU insolvency law post Brexit.

11.7 She then addresses questions we asked in our last Report about Government concerns regarding the proposal's interaction with other legal instruments, including international agreements. She explains that:

- Her concern about interaction with existing EU measures to regulate financial markets had now been addressed because the proposal makes clear that financial measures prevail over the Directive.
- As a result of pressure from the UK, Sweden and Ireland, changes were made to the text to ensure that the restructuring provisions in the Cape Town Convention Aircraft Protocol) will not be adversely affected by the proposal. This allows the UK to preserve the financial benefits of the Protocol to which it is a party, and which is important to UK airlines and UK aerospace companies.

43 These frameworks enable financially-distressed debtor to restructure a business to avoid insolvency and secure a viable future for a business. They allow a stay or "moratorium" during which creditors cannot enforce their claims.

44 Receives any payment or keeps any interest.

11.8 In response to our question about whether the UK can fall back on any international agreements in the event of a non-negotiated exit from the EU, the Minister says that insolvency judgments are generally excluded from the main international treaties on the recognition of judgments. However, there are two UNCITRAL[45] texts in this area of law: the Model Law on Cross-Border Insolvency and The Model Law on Recognition and Enforcement of Insolvency Related Judgments (adopted in July this year). These are not international agreements as such but model laws which states are encouraged to adopt in respect of judgments, seeking recognition or enforcement in the UK. They do not rely therefore on the arrangements being reciprocal. The Minister reiterates that the UNCITRAL Model Law on Cross-Border Insolvency has been given effect in Great Britain through the Cross-Border Insolvency Regulations 2006. She says that in any case the Government remains committed to securing a negotiated settlement with the EU along the lines indicated in the White Paper on the Future Relationship.

11.9 The Minister also confirms that the Government has now published the outcome of its 2016 Review of the corporate insolvency framework. The package features, in common with the proposed Directive, a moratorium (stay), restructuring plan procedure, and measures aimed at restricting a supplier's ability to terminate contracts when the counterparty enters a rescue or insolvency procedure.

11.10 **We thank the Minister for her helpful update, for answering our outstanding questions and for telling us about the likely timing of the adoption of the proposed Directive. Given this and our extensive scrutiny of the proposal to date, we are content to now clear it together with the Opinion of the European Central Bank before the anticipated final adoption of the proposal at the Justice and Home Affairs Council of 6–7 December.**

11.11 **However, we ask the Minister to write to us again before final adoption if there are any significant changes to the final text compared with the General Approach text which:**

- **could mean that the UK would have to implement the proposal before the end of the implementation/transition period; or**
- **would make it difficult for the UK to align with the proposal for the purposes of future UK-EU cooperation in the insolvency field.**

11.12 **We draw this document and chapter to the attention of the Business, Energy and Industrial Strategy Committee.**

Full details of the documents:

(a) Proposal for a Directive of the European Parliament and the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU: (38313), 14875/16 + ADDs 1–2, COM(16) 723; (b) Opinion of the European Central bank on the Proposal for a Directive of the European Parliament and of the Council

45 UNCITRAL stands for the United Nations Commission on International Trade Law.

on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU: (38828), 10182/17.

Background

11.13 The proposal for restructuring may be approved by a required majority of creditors (and, where applicable, shareholders) divided into classes with substantially similar interests. This feature closely resembles the existing English scheme of arrangement procedure, which likewise provides for debt restructuring. If approved by all classes of creditors (and shareholders where applicable), the court will decide whether to confirm the restructuring plan. However, unlike the scheme of arrangement, under the Directive the court will still be able to confirm the plan where not all classes have voted in favour, providing there is compliance with certain safeguards.

11.14 The two most important safeguards are a 'best interests of creditors test' and a provision which requires that a dissenting voting class of creditors is satisfied in full if a more junior class of creditors (i.e. lower priority) is to receive any payment or keep any interest under the restructuring plan. This latter requirement is like a feature in Chapter 11 of the US Bankruptcy Code and several other international regimes, which is referred to as the "absolute priority rule". As explained above, neither the "best interest of creditors test", nor the "absolute priority rule" currently exist in the UK's insolvency and restructuring frameworks.

Previous Committee Reports

(a) and (b): Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 2 (12 September 2018); Twenty-ninth Report HC 301–xxviii (2017–19), chapter 3, (23 May 2018); Twelfth Report HC 301–xii (2017–19), chapter 2 (31 January 2018); First Report HC 301–i (2017–19), chapter 2 (13 November 2017); (a) Thirty-fourth Report HC 71–xxxii (2016–17), chapter 2 (8 March 2017); Twenty-sixth Report HC 71–xxiv (2016–17), chapter 2 (18 January 2017).

12 The EU Civil Protection Mechanism: strengthening EU disaster management

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Public Administration and Constitutional Affairs Committee
Document details	Proposal for a Decision amending Decision No 1313/2013 on a Union Civil Protection Mechanism
Legal base	Article 196 TFEU, ordinary legislative procedure, QMV
Department	Cabinet Office
Document Number	(39265), 14884/17, COM(17) 772

Summary and Committee's conclusions

12.1 The EU Civil Protection Mechanism enables Member States to coordinate their response to natural and man-made disasters within and beyond the EU. The Emergency Response Coordination Centre is the operational hub of the Mechanism, drawing on a voluntary pool of assets committed in advance by Member States to respond to emergencies (the European Emergency Response Capacity). The Commission considers that the EU Civil Protection Mechanism as it currently operates cannot meet the demands placed on it—in 2017 alone, it was unable to respond to seven (out of 17) requests for assistance to fight forest fires. It has therefore proposed an amending Decision which seeks to address capacity gaps and ensure that the Mechanism is equipped to respond to a range of emergency situations. The Commission proposes a dual system based on "two complementary pillars":

- a European Civil Protection Pool which would operate in a similar way to the existing voluntary pool, but with additional incentives for Member States to "pre-commit" their own disaster response capacities so that these assets are more readily available in an emergency; and
- a new dedicated reserve of EU-acquired and funded response capacities—*rescEU*—which would provide "a last resort capacity" that could be mobilised immediately and (unlike assets provided by Member States) would be under the Commission's operational control.

12.2 Our earlier Reports listed at the end of this chapter provide a detailed overview of the changes proposed by the Commission and the Government's position. A key Government objective is to ensure that any changes are "proportionate, cost-effective and in line with the voluntary and Member State-led principles underpinning the EU Civil Protection Mechanism".[46] This means that:

46 See the letter of 6 June 2018 from the Minister for Implementation at the Cabinet Office (Oliver Dowden) to the Chair of the European Scrutiny Committee.

- action at EU level should not undermine or be a substitute for Member States' own investment in core civil protection capabilities;
- the Commission's role should be to support and coordinate Member States' efforts— *rescEU* assets should not be directly owned or operated by the Commission;
- *rescEU* assets may be acquired, rented or leased via joint procurement with the Commission, but ownership should rest with the Member State hosting the assets; and
- a decision to deploy *rescEU* assets should be taken by the Commission in consultation with Member States, with the ultimate decision remaining with the Member State hosting the *rescEU* asset, particularly if its personnel are involved.

12.3 The Minister for Implementation at the Cabinet Office (Oliver Dowden) informed us in his letter of 6 August 2018 that the Committee of Member States' Permanent Representatives to the EU (COREPER) was able to agree a negotiating mandate in July which addressed the Government's principal concerns regarding the financing, ownership, and command and control of *rescEU* assets. Whilst sharing the Minister's assessment, we noted that the COREPER text also made clear that decisions on the deployment of *rescEU* assets must be taken by the Commission "in close coordination" with the Member State requesting assistance and the Member State/s owning the assets. We asked the Minister whether he was satisfied that this wording was sufficient to ensure that "the ultimate decision" would rest with the Member State hosting the *rescEU* asset, particularly in cases involving the deployment of that Member State's personnel.[47]

12.4 The Minister acknowledges in his letter of 31 October 2018 that the COREPER text does not state explicitly that the ultimate decision on deployment of *rescEU* assets would rest with the Member States concerned, but also explains why, in practice, he considers that the formula used "is not likely to diminish the ultimate decision making power of Member States". He cites the following factors:

- *rescEU* assets would only be deployed to support Member States "in overwhelming circumstances where existing capacities at national level and those committed by Member States to the European Civil Protection Pool have been exhausted";
- the Council's agreement that deployment of *rescEU* assets should be taken by the Commission "in close coordination" with Member States ensures that the Commission can continue its role of supporting and coordinating the activities of Member States (including arbitrating in cases where deployment of *rescEU* assets is required simultaneously in more than one Member State);
- all decisions on the deployment of *rescEU* assets would consider the risks to and availability of Member State personnel; and
- the relevant EU Treaty provisions on civil protection make clear that the EU only has competence to "support, coordinate or supplement" action taken by Member

47 See the Minister's letter of 6 June 2018 to the Chair of the European Scrutiny Committee.

> States—based on legal advice, the Government considers that "independent decisions concerning deployment of Member State personnel would fall outside the EU's supporting competence in civil protection".[48]

12.5 The Minister says that the effect of the wording used in the COREPER text stating that the decision on the deployment of *rescEU* assets (and arbitration in the event of conflicting requests) shall be taken "by the Commission in close coordination with the requesting Member State and the Member State owning, renting or leasing" the asset was "discussed at length during negotiations". He continues:

> Our understanding from the negotiations thus far is that deployment decisions 'in close coordination' with Member States would provide an opportunity for the Commission and the Member State/s concerned to discuss and agree the circumstances where Member State/s cannot deploy personnel, despite the fact that this is not expressly provided for in the compromise text. A range of circumstances may result in a Member State refusing to deploy personnel. For example, in practice, a Member State could refuse to deploy a *rescEU* asset based on an assessment by that Member State that there is a risk to life to personnel. There may also be scope for the UK and other Member States to influence implementing acts underpinning the proposed legislation, which could relate to the deployment of personnel as well as the contractual terms under which personnel are deployed.

12.6 The Minister adds that the UK does not currently have any assets committed to the EU Civil Protection Mechanism. The UK's contribution to EU civil protection activities is therefore based "solely on the terms of the UK Government and we expect this to continue in future".

12.7 The Minister confirms that trilogue negotiations with the European Parliament began in September and the progress made so far indicates that there are "many areas where compromises can be easily reached". He highlights the funding of *rescEU* assets as one of the outstanding issues that will need to be resolved but says that "all parties remain committed to finding a suitable compromise". The Presidency expects to seek agreement to a final compromise text at the Justice and Home Affairs Council on 6–7 December 2018.

12.8 In a further letter dated 12 November 2018, the Minister tells us that trilogue negotiations are nearing their completion. He sets out the Government's position on *rescEU* financing and the expected outcome:

> The UK, alongside many other Member States, maintain that funding from the European Commission to incentivise further development of capabilities and deployment of those capacities should remain proportionate through appropriate sharing of costs between the Commission and Member States. The existing legislation supports this principle and we are keen that this principle is maintained. The Commission, generally supported by the European Parliament, proposed a new structure which included capacities that would be fully funded by EU financing. The Government's view is that Member States are primarily responsible for protecting their citizens. Full EU funding of all *rescEU* capacities or activities would undermine

48 See Article 6(f) of the Treaty on the Functioning of the European Union.

> the principle of, and responsibility for, prevention and preparedness at the national level. The level of Commission spending on this activity must be fiscally appropriate, in line with this principle. The UK and other like-minded Member States have sought to maintain this principle during trilogue negotiations but have demonstrated flexibility and willingness to find a suitable compromise on the respective levels of cost sharing. The developing final proposed compromise on this key issue broadly honours the principle of proportionality through maintaining cost sharing between the European Commission and Member States.

12.9 The Minister anticipates that the UK "may well play a decisive role" in any vote on the compromise text agreed with the European Parliament and invites us to clear the proposed Council Decision from scrutiny.

12.10 Turning to the future, the Minister reiterates the Government's view that the compromise text likely to emerge from trilogue negotiations "should not diminish the benefits of our current and future cooperation with the EU on civil protection". He continues:

> The UK is an active contributor to European civil protection through sharing of expertise and provision of international assistance. Since 2013, the UK (mainly via the Department for International Development) has undertaken more than 220 movements of experts, responders and equipment, provided more than 5,000 tonnes of assistance items, worth nearly €50m; and sent more than 1200 experts to assist in disaster responses. The benefits of cooperation with the EU on civil protection include enhancing the UK's capabilities to respond to crises. The UK's access to the Mechanism's structured training programme allows UK responders to gain experience of multiagency decision-making during disasters, improving expertise in the UK crisis management community. The Mechanism also provides opportunities for collaborative exercising and sharing of expertise. Exercises are an effective way to validate training. Planning and running an exercise is a resource intensive process and the Mechanism allows for cost sharing between participating states.
>
> The Mechanism also allows timely coordination of a pan-European response to disasters. The European Commission acts as a single point of contact for all participating states of the Mechanism to offer and receive assistance during responses to disasters. The UK has benefitted from around €15m funding from the Commission to co-finance the transport of humanitarian assistance between 2013 and 2017. Participation in the Mechanism provides opportunities for the UK to project its expertise in civil protection and influence resilience policy across Europe. The UK is engaged in a wide range of resilience and crisis management forums and is regarding as a positive leader in the area of civil protection in Europe.

12.11 The Minister recognises that the UK's future relationship with the EU "remains a live and developing issue" and recalls the aspiration set out in the Government's White Paper, The Future Relationship Between the United Kingdom and the European Union to "continue participation as a third country in a civil protection mechanism which supports

European nations in preparing for and responding to disasters, benefiting the security of citizens across Europe and more globally". He expects the UK to continue to participate in the EU Civil Protection Mechanism during a post-exit transition/implementation (if agreed as part of the UK's exit negotiations) and says that participation thereafter will depend on the EU and the UK concluding a further agreement (this could form part of a new Future Security Partnership with the EU or be a separate agreement between the UK and the EU only, or between the UK, the EU and Member States relating specifically to the Mechanism). Any such agreement would have to be laid before Parliament under the procedure set out in the Constitutional Reform and Governance Act 2010 on the ratification of treaties.[49]

Our Conclusions

12.12 **We thank the Minister for the comprehensive information he has provided during our scrutiny of the proposed changes to the EU Civil Protection Mechanism. Whilst the changes would undoubtedly enhance the Commission's role within the Mechanism, giving it the power to decide on the deployment of *rescEU* assets "in close coordination with Member States", we are satisfied that the compromise text expected to emerge from trilogue negotiations with the European Parliament strikes a reasonable between operational need and Member States' ability to determine how the assets they own are to be deployed. We agree to clear the proposed Decision from scrutiny in the expectation that the Government will only support the adoption of a final compromise text at the December Justice and Home Affairs Council which ensures that the level of EU expenditure on *rescEU* assets is "fiscally appropriate" and proportionate and maintains the principle of cost sharing between the EU and Member States. We draw this chapter to the attention of the Public Administration and Constitutional Affairs Committee.**

Full details of the documents:

Proposed Decision amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism: (39265), 14884/17, COM(17) 772.

Previous Committee Reports

Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 5 (12 September 2018), Thirty-fourth Report HC 301–xxxiii (2017–19), chapter 2 (4 July 2018), Twenty-fifth Report HC 301–xxiv (2017–19), chapter 2 (25 April 2018) and Eleventh Report HC 301–xi (2017–19), chapter 2 (24 January 2018).

49 See section 20 of the Constitutional Reform and Governance Act 2010 which specifies that a treaty must be laid before Parliament for 21 sitting days without Parliament resolving that it should not be ratified.

13 Long-term forecasts for EU expenditure: implications for the Brexit financial settlement

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Public Accounts and Treasury Committees
Document details	Report from the Commission: Long-term forecast of future inflows and outflows of the EU budget (2019–2023)
Legal base	—
Department	Treasury
Document Number	(40113), 13056/18, COM(18) 687

Summary and Committee's conclusions

Background

13.1 The annual EU budget is decided each year by the Member States and the European Parliament, and reached €160.1 billion (£140.1 billion) in spending commitments in 2018. Expenditure from the EU budget is divided into 'differentiated' and 'non-differentiated' commitments. Non-differentiated expenditure is committed (legally agreed) and paid out during the same financial year. This is the case, for example, for agricultural subsidies under the Common Agricultural Policy. Differentiated expenditure is agreed in one year, but only paid out in subsequent years (for example, EU investment in transport infrastructure or research funding).

13.2 This delay between funding being committed and when it is actually paid is why the annual EU budget contains two types of appropriations: commitments and payments. Amounts categorised as 'commitments' can be used to agree to new expenditure, to be paid out in the same year (non-differentiated) or at a later stage (differentiated). 'Payment' appropriations are agreed each year as the amount of money available to be actually paid to recipients, often in relation to the (differentiated) commitments made in previous years. Because of this, there is a gap between what the EU has legally committed to spend and how much it has actually paid out: the difference is known as the '*reste à liquider*' or RAL.

13.3 Although EU spending is organised into so-called Multiannual Financial Frameworks (MFF), the current one lasting from 2014 until 2020, funding commitments made under an MFF do not expire if they are not paid by the end of such a budgetary period. Instead, money needs to be found to pay for these commitments under the subsequent Financial Framework. (For example, the Commission has previously estimated that EU funding committed under the 2007–2013 MFF will only be fully paid off in 2019.)[50]

50 See Commission Staff Working Document SWD(2016) 299, p. 64.

13.4 The size of the RAL is important because the maximum overall expenditure from the EU budget (i.e. payment appropriations) in any given year is capped at 1.23 per cent of the collective Gross National Income of its Member States.[51] By deferring payment for spending commitments made in one year until a later date, there is less flexibility for how the EU spends its budget in the future (because part of subsequent annual budgets will already have been committed in advance, while the cap on total payments remains unchanged). In turn, this incentivises the use of more differentiated commitments in later years, deferring payments on new initiatives, to avoid a situation where demands for payment outstrip what the EU can legally spend in a given year. By the end of 2018, the EU's *Reste à Liquider* is estimated to reach €276.3 billion (£241.9 billion).

The Commission's latest budgetary forecast

13.5 On 10 October 2018, the European Commission published its latest long-term forecast of EU revenue and expenditure between 2019 and 2023. As we set out in more detail in paragraphs 0.9 to 0.13 below, these revised forecasts are important for the UK—despite its exit from the EU—because they have an impact on the size, composition and timing of the long-term payments—the 'Brexit bill'—which the Government has agreed to make to the EU budget under the draft Withdrawal Agreement, including the latest version published on 14 November 2018.

13.6 The first major element of the Commission's long-term budgetary forecast relates to so-called 'de-commitments'. These are instances where the EU has initially committed funding, which is eventually not—or only partially—paid out, for a variety of reasons. As such, de-commitments normally reduce the RAL, by decreasing the amount of commitments for which payments must be made available.

13.7 The Commission now forecasts that €6.4 billion of EU funding commitments will be cancelled between 2019 and 2023, all relating to spending initially agreed between January 2014 and December 2020. However, this estimate crucially does not include the majority of de-commitments expected in relation to the European Structural & Investment Funds (ESIFs)[52] under the EU's 2014–20 MFF. Due to the late start of these programmes after the current long-term budget was agreed in 2014, the majority of their de-commitments are expected to fall within the 2024–26 period (which falls outside of the horizon covered by the latest forecasts). The effect of this on the amount of unpaid spending commitments under the 2014–20 MFF by the end of 2020 could be significant, as the ESIFs account for a significant part of all EU funding: under the 2018 budget, €68.3 billion (43 per cent of all commitment appropriations that year) relate to an ESI Fund.

13.8 Taking into account the implementation of various EU funding programmes, and the latest expected de-commitment rate (see above), the Commission now estimates that the EU's payments due on funding commitments made as part of the 2014–2020 MFF by 31 December 2020 will total €295 billion (£258 billion).[53]

51 This cap on annual payment appropriations is set out in the Own Resources Decision (Decision 2014/335/EU), which was ratified by Parliament under the European Union (Finances) Act 2015.

52 The ESIFs are the European Social Fund (ESF), the European Regional Development Fund (ERDF), the Cohesion Fund (CF), the Rural Development Fund (EAFRD) and the Maritime & Fisheries Fund (EMFF).

53 The Commission's forecast is predicated on the ratification of the UK's Withdrawal Agreement, as it "takes into account the principles and terms set out in the draft Withdrawal Agreement between the EU and the United Kingdom" and "does not assess the impact on the long-term forecast of a failure to conclude or ratify the [...] Agreement".

13.9 This is a substantial increase compared to the Commission's last public forecast, made in September 2016, when it estimated that the total RAL would be €254 billion (£222 billion) by that date; the discrepancy is caused in part because the latest figure does not include de-commitments expected to materialise after 2023.[54] The eventual RAL for commitments the EU has made before 31 December 2020, which is relevant for the UK under the financial settlement, is therefore not yet known. However, once the post-2023 de-commitments are factored in, it is likely to be substantially lower than the €295 billion figure put forward by the Commission for the time being.[55] (In any event, a higher RAL does not mean the EU is spending more than forecast; it indicates that a higher rate of funding commitments made under the 2014–2020 budget is now likely to be paid in 2021 or later than previously expected.)

The EU budgetary forecasts and Brexit

13.10 Following the UK's notification of its withdrawal from the European Union in March 2017, the EU issued a position paper on the "essential principles [of a] financial settlement" which argued that the UK had financial obligations vis-à-vis the EU budget that would need to be settled as part of any Withdrawal Agreement.

13.11 In December 2017, the Government and the European Commission announced that they had reached provisional agreement on the financial settlement: from the UK's formal withdrawal on 29 March 2019 until the end of the EU's current 'Multiannual Financial Framework' on 31 December 2020, the UK would remain a contributor to the EU budget as if it were still a Member State. Moreover, after that date, the UK would pay for a share of the RAL outstanding at that point (the figure now very provisionally estimated at €295 billion). The effect of this is that the UK will contribute approximately the same as a Member State to EU expenditure committed as part of the 2014–20 EU budgets, even if the payments are not made until 2021 or later. In return, UK entities will remain eligible for EU funding as if they are based in a Member State until 31 December 2020 (including receiving payments after that date for funding agreed by that date). UK contributions would need to be made as payments fall due, rather than as a 'lump sum' in advance. The legal provisions to give effect to the settlement were provisionally agreed in March 2018, and confirmed in the full Withdrawal Agreement published on 14 November.

13.12 The Treasury has said it estimates the financial settlement will cost the UK taxpayer a net amount of £35 to £39 billion. However, the National Audit Office explained in an April 2018 Report that "the actual value of the settlement is uncertain because it depends on future events", including the EU's funding commitments up until 31 December 2020; the UK's economic performance relative to the remaining Member States, which affects its financing share; the flow of receipts from the EU budget to UK recipients (which is already decreasing in areas like EU research funding); and the euro-sterling exchange rate. As a result, the NAO says, "relatively small changes to some of [the Government's] assumptions would cause [its] central estimate to be outside its £35 billion to £39 billion range".

54 See for the previous estimate Commission Staff Working Document SWD(2016) 299, p. 64. As a result of these outstanding expenditure commitments, over half of the actual payments made by the EU in 2021–2022 (51 per cent) is expected to be made towards commitments made before 31 December 2020.

55 In September 2016, the European Commission estimated total de-commitments for funding granted in the 2014–2020 budgetary period would amount to €28.1 billion.

13.13 One of the assumptions made by the Treasury, referred to by the NAO in its Report, relates to the UK's obligations to pay off a share of the EU's RAL on funding commitments entered into before 31 December 2020. Following the putative agreement on the financial settlement, the Treasury estimated that the UK's net contribution to the RAL from 2021 onwards would be €21–23 billion (£19–20 billion, part of the overall £35–£39 billion estimate). This was based on an assumption that the EU's unpaid commitments at the end of 2020 would amount to €260.2 billion, including the Government's own estimate of total de-commitments at €34.2 billion.

13.14 It is unclear how the European Commission's latest forecasts for the de-commitment rate and the overall RAL impact on the Treasury's estimate of the financial settlement; the Explanatory Memorandum on the Commission document submitted by the Chief Secretary to the Treasury (Elizabeth Truss) on 8 November 2018 does not provide this information.

Our assessment

13.15 **We consider this Commission forecast for the long-term outflows from the EU budget politically important, in light of the fact that the RAL and de-commitment rate will influence the size and timing of the UK's payments to the EU under the terms of the financial settlement in the draft Withdrawal Agreement.**

13.16 **The rate at which EU funding is 'de-committed' will in principle reduce overall EU spending under the 2014–2020 Multiannual Financial Framework, and therefore the amount the UK would be asked to contribute as part of the settlement. It is unfortunate in this regard that the de-commitments relating to the Structural Funds, which are likely to be substantial, fall outside of the forecast horizon used by the Commission.**

13.17 **By reducing the EU's overall spending commitments, the expected de-commitment rate should also reduce the size of the RAL, that is to say the EU's unpaid funding commitments outstanding on 31 December 2020 (the cut-off date to establish the UK's residual budgetary obligations under the financial settlement). The overall amount of RAL would primarily affect the timing of UK payments under the draft Withdrawal Agreement (with a higher RAL, meaning more deferred payments, expected to lead to a lower contribution in 2019 and 2020 and higher payments afterwards). Whether changes in the amount of RAL as at December 2020 will have an impact on the overall *size* of the UK's Brexit settlement is unclear, given that the method of calculating the UK's contribution to the EU's spending commitments will be different after January 2021 (at which point it would only be contributing to legacy commitments already made, not towards any new EU funding commitments made under the post-2020 Multiannual Financial Framework).**[56]

13.18 **Given the complexities of the calculations involved in establishing the UK's payments under the financial settlement, we ask the Chief Secretary to write to us by 7 December 2018 to clarify to what extent the Commission's revised forecasts for the RAL and the de-commitment rate differ from those used by the Treasury to**

56 The implications of an extended transitional period, lasting beyond 31 December 2020, would necessitate an update to the UK's financial settlement.

calculate its £35–£39 billion estimate for the financial settlement in January 2018, and consequently, explain what impact she expects the revised forecasts to have on the 'Brexit bill' (both in terms of its total size and the timing of payments).

13.19 **We are content to now clear the Commission's budgetary forecast from scrutiny. We draw these developments to the attention of the Public Accounts and Treasury Committees, given their interest in the cost to the UK taxpayer of the financial settlement under the Withdrawal Agreement.**

Full details of the documents:

Report from the Commission: Long-term forecast of future inflows and outflows of the EU budget (2019–2023): (40113), 13056/18, COM(18) 687.

Previous Committee Reports

None.

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

Department for Business, Energy and Industrial Strategy

Other

(40147) 13433/18 COM(18) 705	Report from the Commission on the activities of the IFRS Foundation, EFRAG and PIOB in 2017
(40148) — —	European Court of Auditor's Special Report 24/2018: Demonstrating carbon capture and storage and innovative renewables at commercial scale in the EU: intended progress not achieved in the past decade.

Department for Environment, Food and Rural Affairs

(40115) 12561/18 COM(18) 657	Proposal for a Council Decision on the position to be taken on behalf of the European Union at the second meeting of the Conference of the Parties to the Minamata Convention on Mercury with regard to the adoption of guidelines on the environmentally sound interim storage of mercury, other than waste mercury, referred to in its Article 10, paragraphs 2 and 3.
(40119) 13229/18 + ADD 1 COM(18) 673	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A sustainable Bioeconomy for Europe: Strengthening the connection between economy, society and the environment.
(40151) 13596/18 + ADD 1 COM(18) 711	Report from the Commission to the Council and the European Parliament Progress report on the implementation of the EU Action Plan against Wildlife Trafficking.

Department for Exiting the European Union

(40154) 13582/18 + ADD 1 COM(18) 675	Report from the Commission on the Working of Committees during 2017.
(40155) 13544/18 + ADD 1 COM(18) 703	Communication from the Commission the Principles of Subsidiarity and Proportionality: Strengthening their Role in the EU's Policymaking.

Department for International Development

(40068) 12167/18 COM(18) 643	Communication from the Commission Communication on a new Africa — Europe Alliance for Sustainable Investment and Jobs: Taking our partnership for investment and jobs to the next level.
(40080) –	Court of Auditors Special Report no: 2018 / 20: The African Peace and Security Architecture: need to refocus EU support

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Department for International Trade

(40133) 13385/18 + ADD 1 COM(18) 701	Report from the Commission to the Council and the European Parliament Fifteenth Report Overview of Third Country Trade Defence Actions against the European Union for the year 2017.
(40191) 10147/18 —	Proposal for a Council Decision on the position to be adopted, on behalf of the European Union, in the Association Committee established by the Euro-Mediterranean Agreement establishing an Association between the European Communities and the Member States of the one Part, and the Hashemite Kingdom of Jordan, of the other Part, as regards an amendment to Protocol 3 to that Agreement concerning the definition of the concept of "originating products" and methods of administrative cooperation.

Foreign and Commonwealth Office

(40166) —	Council Decision in support of the Biological and Toxin Weapons Convention (BTWC) in the framework of the EU Strategy against Proliferation of Weapons of Mass Destruction.

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(40167) — —	Proposal of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a Council Decision on Union support for the universalization and the effective implementation of the International Convention for the Suppression of Acts of Nuclear Terrorism.

HM Treasury

(39997) 11338/18 COM(18) 545	Report from the Commission on the follow-up to the discharge for the financial year 2016 (Summary)
(40091) 12464/18 COM(18) 661	Report from the Commission: Annual report to the Discharge Authority on internal audits carried out in 2017
(40121) 13198/18 COM(18) 708	Proposal for a Decision of the European Parliament and of the Council on the mobilisation of the Flexibility Instrument to finance immediate budgetary measures to address the on-going challenges of migration, refugee inflows and security threats.

Formal Minutes

Members present:

Sir William Cash, in the Chair

Martyn Day	Mr David Jones
Marcus Fysh	Stephen Kinnock
Kelvin Hopkins	Andrew Lewer
Darren Jones	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 14 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 28 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*)