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Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

AFSJ Area of Freedom Security and Justice

CFSP Common Foreign and Security Policy

CSDP Common Security and Defence Policy

ECA European Court of Auditors

ECB European Central Bank

EEAS European External Action Service

EM Explanatory Memorandum (submitted by the Government to the Committee)*

EP European Parliament

EU European Union

JHA Justice and Home Affairs

OJ Official Journal of the European Communities

QMV Qualified majority voting

SEM Supplementary Explanatory Memorandum

TEU Treaty on European Union

TFEU Treaty on the Functioning of the European Union

Euros

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

Further information

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

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

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Meeting Summary

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

Brexit-related issues

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

UK engagement in formulating future EU climate change policy given its relevance to the UK post-Brexit

Summary

EU budget 2019

The Committee has cleared from scrutiny the EU's annual budget for 2019, which was approved by Member States (with the UK abstaining) in December last year. The Committee notes that it was the last EU budget over which the Government will have had a vote, even though it will remain a contributor to the EU's coffers until the end of 2020 if the Withdrawal Agreement is ratified. That would mean next year's EU budget will be decided without UK input, despite the substantial cost to the British taxpayer. The Committee's Report also covers the UK's veto of a substantial increase in the budget of the European Defence Agency, which is likely to be overturned as soon as the Government loses its voting rights in March 2019.

Cleared from scrutiny; drawn to the attention of the Public Accounts Committee and Treasury Committee

ENISA / EU Cybersecurity Agency

This proposal for a Regulation would grant ENISA, the EU Cybersecurity Agency, a permanent mandate, and establish a cybersecurity certification framework with the aim of limiting market fragmentation in the cybersecurity sector. Trilogue negotiations have concluded with agreement on a text which will be adopted at a meeting of the Council in January 2019. The final text is in line with the UK's interests on the most substantive aspects of the proposal: ENISA's "operational" role in dealing with cross-border incidents is limited and does not impinge on Member State competence; the system of "assurance levels" which forms part of the certification framework will not interfere with the UK's Secure by Design initiative; and the European Parliament's proposal that mandatory cybersecurity certification be required for operators of essential services has been rejected.

One point of concern for the Government relates to the late addition at the behest of the European Parliament of a task for ENISA to promote cyber security policies related to sustaining the general availability or integrity of "the public core of the open internet"—

language which originates in a document produced by the Global Commission on the Stability of Cyberspace and which was incorporated in the Paris Call for Trust and Security in Cyberspace, which the UK signed. The Minister (Margot James MP) expresses this term which she considers may conflict with the multi-stakeholder model of internet governance the UK supports. However, as it was a late addition the practical significance of the provision is not very clear. The Minister indicates that the Government wishes to support the proposal, but to table a minute statement indicating its objection to the language used in relation to the additional ENISA task.

The Committee declined the Government's request to clear the file from scrutiny due to the lack of clarity regarding the effects of this provision, and instead granted the Government a waiver to support the proposal on the strict condition that, following a further assessment of the implications of this provision, the Minister concludes that it will not have substantial detrimental effects. The Committee also asked the Government to write to further explain these implications and to justify its decision.

Not cleared from scrutiny; waiver granted; further information requested

Preventing the dissemination of terrorist propaganda online

The European Commission has proposed a Regulation to ensure that online terrorist content is identified and removed as quickly as possible whilst safeguarding freedom of expression and information. It would require online platforms to take proactive measures to prevent the dissemination of terrorist content; empower national authorities to issue a legally binding removal order to take terrorist content off the web within an hour; introduce penalties for platforms which fail to remove terrorist content promptly; and strengthen cooperation amongst Member States and with Europol. In his latest update, the Minister for Security and Economic Crime (Mr Ben Wallace MP) confirms the Government's support for the general approach agreed at the December 2018 Justice and Home Affairs Council. It is clear, however, that some Member States are less enthusiastic, citing constitutional and other concerns. The European Parliament has yet to agree its position. The European Scrutiny Committee requests a further update in light of any changes proposed by the European Parliament. It also asks how the Presidency intends to overcome the constitutional or other concerns raised by some Member States and whether the Government would be willing to support a final text which failed to address these concerns.

Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee, the Justice Committee, the Digital, Culture, Media and Sport Committee and the Joint Committee on Human Rights

Improving cross-border law enforcement access to financial information

The European Commission's proposal for a Directive is intended to improve cross-border law enforcement access to financial information to support the investigation and prosecution of serious crime. The Government has opted in and, in its latest update, confirms that Committee of Permanent Representatives (COREPER) has agreed a mandate to begin negotiations with the European Parliament. The European Scrutiny Committee seeks further information on two changes agreed by COREPER: the first concerning the UK's prospects for negotiating and concluding information exchange and mutual legal

assistance agreements with EU Member States post-exit; the second putting back the date for Member States to implement the Directive, once adopted, which may take it beyond the post-exit transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement.

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

Prudential requirements for investment firms

The Committee has published a new report on negotiations at EU-level to set new prudential requirements for investment firms (the 'investment firm review'), tailored to the risk they are deemed to pose to financial stability. It considered particularly the Brexit implications, namely that the new rules could have force of law in the UK during the proposed post-Brexit transitional period (even if the UK has lost its voting right by the time they are formally adopted). The Committee has also expressed concern about the tightening of the criteria of market access rights for non-EU investment firms based on 'equivalence', which could potentially make it more difficult for British firms to serve European clients after the UK leave the Single Market. The Government has also recently published draft legislation allowing it to implement the EU investment firm review domestically via Statutory Instrument in a 'no deal' scenario.

Not cleared from scrutiny, but scrutiny waiver granted; drawn to the attention of the Treasury Committee

Banking reform: risk reduction measures

Following political agreement at the meeting of EU Finance Ministers in December 2018, the European Scrutiny Committee has published its latest report on reforms to EU rules on prudential requirements for banks. These aim to put EU law in line with the latest post-crisis standards developed at international level. The UK would have to apply the new prudential rules during the post-Brexit transitional period if the Withdrawal Agreement is ratified, and even in a 'no deal' scenario the Government has asked for the power to implement them domestically by Statutory Instrument even if no longer under an EU legal obligation to do so.

Not cleared from scrutiny; drawn to the attention of the Treasury Committee

EU regulation of crowdfunding platforms

The European Scrutiny Committee has written a letter to the Treasury about EU proposals to regulate the crowdfunding industry, to request further information on the potential impact on UK P2P platforms during the proposed post-Brexit transitional period. In particular, the Committee has raised concerns about the decision by a majority of Member States to modify the draft rules, from providing an optional 'quality label' for crowdfunding platforms that want to operate across borders within the Single Market, to a minimum-harmonising Directive that would apply to all crowdfunding platforms, even if they only operate domestically.

Not cleared from scrutiny; drawn to the attention of the Treasury Committee

Documents drawn to the attention of select committees:

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

Business, Energy and Industrial Strategy Committee: Duty on alcohol, tobacco and fuel: EU excise reforms [Proposed (a) (d) Directive; (b) Decision; (c) Regulation (C)]; EU climate change strategy [Communication (C)]

Digital, Culture, Media and Sport Committee: Preventing the dissemination of terrorist propaganda online [Proposed Regulation (NC)]

Environmental Audit Committee: Green finance: sustainability disclosure requirements for investment advisors and asset managers [Proposed Regulation (C)]

Home Affairs Committee: Improving cross-border law enforcement access to financial information [Proposed Directive (NC)]; Preventing the dissemination of terrorist propaganda online [Proposed Regulation (NC)]

Joint Committee on Human Rights: Preventing the dissemination of terrorist propaganda online [Proposed Regulation (NC)]

Justice Committee: Improving cross-border law enforcement access to financial information [Proposed Directive (NC)]; Preventing the dissemination of terrorist propaganda online [Proposed Regulation (NC)]

Northern Ireland Affairs Committee: Duty on alcohol, tobacco and fuel: EU excise reforms [Proposed (a) (d) Directive; (b) Decision; (c) Regulation (C)]

Public Accounts Committee: EU budget 2019 [(a) Statement of Estimates; (b) Letter of Amendment (C)]

Treasury Committee: Banking reform: risk reduction measures [Proposed (a)(b) Directives; (c) Regulation (NC)]; Duty on alcohol, tobacco and fuel: EU excise reforms [Proposed (a) (d) Directive; (b) Decision; (c) Regulation (C)]; Prudential requirements for investment firms [Proposed (a) Regulation; (b) Directive (NC; scrutiny waiver granted)]; EU budget 2019 [(a) Statement of Estimates; (b) Letter of Amendment (C)]; Green finance: sustainability disclosure requirements for investment advisors and asset managers [Proposed Regulation (C)]

1 ENISA / EU Cybersecurity Agency

Committee's assessment	Politically important
Committee's decision	Waiver granted; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council on ENISA, the "EU Cybersecurity Agency", and repealing Regulation (EU) 526/2013, and on Information and Communication Technology cybersecurity certification ("Cybersecurity Act")
Legal base	Article 114 TFEU; ordinary legislative procedure; QMV
Department	Digital, Culture, Media and Sport
Document Number	(39045), 12183/17, COM(17) 477

Summary and Committee's conclusions

1.1 In September 2017 the European Commission presented a proposal for a Regulation 12183/17 which would make permanent the European Union Agency for Network and Information Security (ENISA) and update its mandate. The most significant aspect of the proposal would be the creation of a new Cybersecurity Certification Framework, which would enable the Commission to adopt EU-wide cybersecurity certification schemes. ENISA would play a central role in the development of such schemes, supported by a Cybersecurity Certification Group consisting of national certification supervisory authorities of all Member States.

1.2 During its scrutiny of the implications of the proposal, the Committee has sought and received assurances from the Government that the proposal would not grant ENISA an operational role which would impinge on national competences, and that the comitology procedure proposed for the adoption of implementing acts which would establish a specific cybersecurity certification scheme would be adopted in accordance with the more stringent examination procedure.

1.3 A further concern subsequently arose during negotiations in Working Groups within the Council, when it was proposed that three "assurance levels" should be introduced for all EU certification schemes: basic, substantial or high. The Government was unsure whether this would be compatible with its Secure by Design initiative,[1] which relates to Consumer Internet of Things (IoT) Security. On the basis of assurances from the Minister (Margot James MP),[2] the Committee granted the Government a waiver to support a general approach in June 2018.

1 HM Government, Secure by Design: The Government's Code of Practice for Consumer Internet of Things (IoT) Security for manufacturers, with guidance for consumers on smart devices at home (7 March 2018).

2 Letter from the Minister, DCMS, to the Chair of the European Scrutiny Committee (15 May 2018).

1.4 Trilogue negotiations began formally on the 1st October 2018 and on 22 December 2018 the Minister wrote[3] to inform the Committee that they had concluded with the agreement of a compromise text which was expected to be adopted in the Council in January 2019.

1.5 In the Minister's update she informed the Committee that:

- Although the European Parliament had advocated a stronger role for ENISA in operational cooperation, only minor changes to the Council's General Approach and that the agency's tasks remained "'in support' of operational cooperation among Member States, with technical support being at their request and information [.....] being analysed on the basis of voluntarily shared information"—an outcome which is in line with the UK position.

- Regarding the certification framework, and the European Parliament's proposal to modify changes to the text on assurance levels which had been made in order to address UK concerns about its compatibility with the UK Secure by Design initiative, the text of the General Approach was broadly agreed to in its existing form—an outcome which closely reflects the UK position.

- Regarding the European Parliament's proposal that mandatory cybersecurity certification be required for operators of essential services under the NIS Directive, which the Government opposed, a compromise was agreed which would allow for a future assessment to be carried out to consider the merits of schemes in operation and whether any should be made mandatory through relevant Union legislation—a compromise which is acceptable to the UK.

- The European Parliament put forward a late stage proposal to include a task for ENISA to promote cyber security policies "related to sustaining the general availability or integrity of the public core of the open internet", a proposal which originated in a paper by the Global Commission on the Stability of Cyberspace[4] and which was subsequently reflected in the Paris Call for Trust and Security in Cyberspace.[5] The Minister notes that the UK remains concerned about the use of the term 'public core' in this context on the basis that it appears contrary to the multi-stakeholder model of internet governance and could undermine positions taken by the EU and Member States regarding avoiding fragmentation of the internet. However, the European Parliament was not willing to amend this text other than to include a clarification of the term's meaning in a recital.[6]

1.6 Given the Government's overall support for the Regulation, the Minister indicates that the Government intends to vote in favour of the Regulation. The Minister adds that the Government will include a Minute Statement alongside its vote, to put on record the UK's formal position in relation to the language on 'public core'.

3 Letter from the Minister, DCMS, to the Chair of the House of Lords European Union Committee (22 December 2018). An identical letter was sent to the Chair of the European Scrutiny Committee but is not yet available on the Department for Exiting the EU's European Memoranda web-site.

4 Global Commission on the Stability of Cyberspace: "Definition of the public core, to which the norm applies" (May 2018).

5 Gouvernement FR, Paris Call for Trust and Security in Cyberspace (11 December 2018).

6 The recital states that "The public core of the open internet, meaning its main protocols and infrastructure, which are a global public good".

1.7 The Regulation will be directly applicable in UK law if it comes into force before the UK leaves the EU on 29th March 2019 or within the Implementation Period provided for in the Withdrawal Agreement if it is in effect.

1.8 **Trilogues have concluded regarding the proposed Regulation, which would make the European Union Agency for Network and Information Security (ENISA) permanent and update its mandate, as well as creating a framework which would enable the Commission to adopt EU-wide cybersecurity certification schemes.**

1.9 **The Government's principal concerns have been addressed during the negotiations: despite pushback from the European Parliament, ENISA's "operational" role is limited to supporting cooperation among the Member States with technical support being provided at their request; the more flexible text on "assurance levels" introduced into the Council's General Approach in order to address UK concerns is retained, meaning that the certification framework will not interfere with the UK's Secure by Design initiative; and the European Parliament's proposal that mandatory cybersecurity certification be required for operators of essential services under the NIS Directive has been replaced with a much lighter-touch provision which allows for a future assessment to be carried out to consider whether any EU cybersecurity schemes should be made mandatory through Union legislation. The most substantive elements of the proposal are thus in line with UK interests.**

1.10 **We note the Minister's concern at the inclusion, at the behest of the European Parliament, of text which establishes a task for ENISA to promote cyber security policies "related to sustaining the general availability or integrity of the public core of the open internet", which the Government considers to be contrary to the multi-stakeholder model of internet governance which it supports. As it was a late addition to the text, the practical import of the provision is not particularly clear and has not been subjected to a detailed impact assessment, and the Minister's analysis, although welcome, does not provide sufficient information for the Committee to evaluate the extent to which it may have significant negative effects; however, our provisional assessment is that establishing this task for ENISA will not herald significant changes in the approach of the EU and its Member States to internet governance more widely. Officials have been contacted about this aspect of the proposal and have undertaken to provide the Committee with further information as soon as possible.**

1.11 **Although the UK's principal concerns have been addressed in the negotiations, we are unwilling to clear the proposal from scrutiny due to the lack of clear information on this point. We are, however, willing to grant the Government a conditional waiver to vote in support of the adoption of the Regulation on the condition that it is the Minister's considered assessment, having reviewed the implications of this provision, that it will not have substantial detrimental policy impacts.**

1.12 **Following the vote in Council in January, we ask the Minister to provide us with a further written update which explains in greater detail why the Government objects to the conception of the "public core of the open internet", as defined in a paper by the Global Commission on the Stability of Cyberspace, what practical effects the provision can be anticipated to have, particularly in relation to internet governance, and which provides a justification of how the Government voted. In the meantime, we retain this document under scrutiny.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council on ENISA, the "EU Cybersecurity Agency", and repealing Regulation (EU) 526/2013, and on Information and Communication Technology cybersecurity certification ("Cybersecurity Act"): (39045), 12183/17, COM(17) 477.

Previous Committee Reports

Thirtieth Report HC 301–xxix (2017—19), chapter 7 (6 June 2018); Fourteenth Report HC 71–xvi (2017–19), chapter 2 (21 February 2018); Fourth Report HC 301–iv (2017–18), chapter 3 (6 December 2017).

2 Banking reform: risk reduction measures

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Treasury Committee
Document details	(a) Proposed Directive on loss-absorbing and recapitalisation capacity of credit institutions and investment firms; (b) Proposed Directive as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures; (c) Proposed Regulation concerning aspects of capital requirements
Legal base	(a) and (c) Article 114 TFEU, ordinary legislative procedure, QMV; (b) Article 53(1) TFEU, ordinary legislative procedure, QMV
Department	Treasury
Document Numbers	(a) (38300), 14777/16 + ADDs 1–2, COM(16) 852; (b) (38303), 14776/16 + ADDs 1–2, COM(16) 854; (c) (38304), 14775/16 + ADDs 1–3, COM(16) 850

Background and Committee's conclusions

2.1 The European Commission tabled a technically complex package of proposals in November 2016 to update the EU's prudential framework for banks. Known collectively as the "Risk Reduction Measures" (RRM), the proposals would bring the current legal framework—the Capital Requirements Directive[7] and Regulation,[8] and the Bank Recovery & Resolution Directive[9]—in line with the most recent international standards.[10]

2.2 We set out the substance of the proposals in some details in our previous Reports, most recently on 16 May 2018.[11] In summary, the proposed new prudential requirements for banks under the RRM package would:

- establish a legally-binding **minimum leverage ratio** of three per cent, calculated by dividing a bank's core capital by its debt exposures. By limiting the amount of a bank's exposure, this should prevent banks from excessively increasing their debt levels, for example to compensate for low profitability, which could turn them insolvent during an economic downturn;

7 Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

8 Regulation 575/2013 on prudential requirements for credit institutions and investment firms.

9 Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

10 These international standards are set by the Basel Committee and the Financial Stability Board.

11 See for example our Reports of 13 November 2017 and 21 February 2018.

- introduce a binding **net stable funding ratio** (**NSFR**) which will establish a harmonised standard for how much stable, long-term sources of funding a financial institution needs in order to weather periods of market and funding stress. The NSFR is calculated as the ratio of an institution's amount of available stable funding (ASF) to its amount of required stable funding (RSF);

- reduce **market risk**[12] by establishing more risk-sensitive "own funds" prudential requirements for institutions that have substantial exposure to securities and derivatives, implementing the Basel Committee's **Fundamental Review of the Trading Book** (**FRTB**);[13]

- amend the rules relating to additional prudential requirements (so-called **Pillar 2 requirements**) competent authorities can impose above and beyond the EU statutory minimum for particular banks, with the intent of achieving greater harmonisation across the EU;[14]

- set an EU-wide threshold for the threshold at which banks must observe some of the **remuneration restrictions** set out in the Capital Requirements Directive to discourage excessive risk-taking, and end Member States' divergent interpretations of how this threshold can be implemented under the present legislation;[15] and

- require non-EU banks with subsidiaries in multiple EU countries to establish an **Intermediate Holding Company** within the Single Market to facilitate any resolution efforts.

2.3 In addition, the Commission proposals sought to amend the Bank Resolution & Recovery Directive (BRRD) to:

- Implement the new international standards on the **total loss-absorbing capacity** (**TLAC**) of global systemically important banks (G-SIBs),[16] which will require those institutions to have more recapitalisation capacity in the event they are at

12 The European Commission has explained that instruments that banks hold for trading, such as shares, bonds, or derivatives, "are usually subject to volatility, which has a daily impact on banks' profits and losses". Consequently, sudden drops in the value of these instruments may damage the solvency position of banks. This justifies a specific prudential regime for these instruments (the so-called 'trading book'), which is different from that applicable to other instruments, such as loans (the so-called 'banking book').

13 In this context, 'own funds' refers to funds available to a bank that allows it to absorb losses in a going or in a gone concern situation. The Capital Requirements Regulation (CRR) sets out the characteristics and conditions for own funds, backed up by further regulatory technical standards developed by the European Banking Authority.

14 Under the current Capital Requirements Directive, the Pillar 2 framework is a set of provisions that give competent authorities the discretion to impose additional capital requirements and other precautionary measures where, in the authorities' assessment, statutory prudential requirements fail to capture (in full or in part) certain risks of a bank or the sector as a whole. The Commission had proposed to remove the ability of regulators to impose macro-prudential pillar 2 requirements, limiting their competences only to micro-prudential (i.e. firm-specific) pillar 2 interventions. The UK uses macro-prudential interventions, like the cap on loan-to-income ratios for mortgages. The Commission had wanted to remove the ability for Member States to use the Pillar 2 capital add-ons for macroprudential reasons, arguing that they are meant to be "institution-specific measures that should be used to address risks to which an institution is exposed".

15 The so-called "bonus cap", which limits bankers' bonuses to 200 per cent of their fixed salary, would not be affected by this new exemption.

16 The ten G-SIBs based in the EU as of November 2017 are BNP Paribas, Crédit Agricole and Société Générale (France); Deutsche Bank (Germany); Unicredit (Italy); ING (the Netherlands); Santander (Spain); and Barclays, HSBC and Standard Chartered (UK).

risk of collapsing and require resolution. The TLAC is to be incorporated into the EU's existing **Minimum Requirements for Own Funds & Eligible Liabilities** (**MREL**), the rules on bail-in capital that apply to *all* European banks in case of failure;[17]

- Partially repeal existing rules that require banks to include **contractual recognition of the EU's bail-in powers** in contracts not governed by EU law, as the current rules are seen as too wide and impossible to implement;[18]

- Introduce new pre-resolution **moratoria powers** giving regulators expanded powers to freeze the flow of payment and delivery obligations of a bank at risk of collapsing for a short period of time (subject to exceptions, including a requirement to release most savers' deposits); and

- Implement a **new accounting standard on calculating banking losses** and rules on **creditor hierarchy** in the event of bank failure; these two proposals were fast-tracked and have already been adopted (see our Report of 13 November 2017).

2.4 The UK Government has been broadly supportive of the package of reforms,[19] but it has sought to use the legislative deliberations among Member States within the Council to address concerns over the new moratorium powers to suspend a failing bank's payment obligation,[20] and the extent to which some Member States were seeking to water down a new international standard of "bail-inable" capital for systemically-important banks (the TLAC standard).

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17 The BRRD established the "Minimum Requirement for own funds and Eligible Liabilities" (MREL). This requires national resolution authorities to fix a firm-specific level of liabilities that can be readily "bailed-in", such as deposits, to absorb losses based on their firm-specific risk profile, while also remaining compliant with the prudential requirements that underpin their authorisation. MREL applies to any bank authorised by an EU financial regulator, but there is no minimum "floor" that must be used for all institutions. Separately however, the Financial Stability Board (FSB) developed the international Total Loss-Absorption Capacity (TLAC). This sets an 18 per cent minimum proportion of the risk-weighted assets of global systemically-important banks ("G-SIIs") that must be readily bail-inable in the event of bank failure. As TLAC and MERL have the same regulatory objective, the Commission proposed to incorporate the TLAC standard into EU law by requiring EU-based G-SIIs to hold a statutory (Pillar 1) minimum MREL equivalent to the TLAC standard. It would also allow national resolution authorities to impose firm-specific additional (Pillar 2) MREL requirements on G-SIIs. The existing MREL requirements for other (smaller) banks would remain substantially the same. The Commission proposal would make "appropriate technical amendments" to the existing MREL for non-G-SIBs, in order to "align them with the TLAC standard as regards inter alia the denominators used for measuring loss-absorbing capacity, the interaction with capital buffer requirements, disclosure of risks to investors and their application in relation to different resolution strategies".

18 Article 55 of the BRRD requires banks to include a clause in a large number of contracts governed by non-EEA law, acknowledging that the contract may be subject to the bail-in powers of the EU resolution authority. This requirement currently has a very broad scope, leading banks to raise concerns that it was "extremely difficult and costly to implement and extends to contracts which would be unlikely to be bailed-in". The Commission proposal amends Article 55 so that it need not apply in instances of "legal, contractual and economic impracticability".

19 Explanatory Memorandum submitted by HM Treasury (20 December 2016).

20 The Commission proposed a new moratorium tool allowing resolution authorities to suspend the payment obligations of a failing bank for a short period of time during both the early intervention phase (when a bank might still recover) and during resolution (when it is no longer viable). The rationale is that such a moratorium allows the authorities to evaluate the bank's assets and liabilities, and implement an appropriate resolution strategy. The moratorium would not apply to deposit-holders wishing to withdraw deposits covered by their national Deposit Guarantee Scheme. The UK has consistently opposed this element of the proposal, amid concerns that an extended moratorium could have a significant economic impact and "risks undoing international progress to address the risk of cross-border termination of contracts in resolution", such as the Universal Stay Protocol elaborated by the Financial Stability Board.

2.5 In the context of the UK's exit from the EU, the Government also opposed a proposed new requirement for large non-EU banks and investment firms with operations in more than one Member State to create an intermediate, independently-capitalised EU-based parent undertaking (IPU) to facilitate group supervision and resolution.[21] This would have a direct impact on UK banks, whose operations within the Single Market would require a larger (and therefore more costly) presence in the EU after the UK loses its 'passporting' rights for financial services when it becomes a "third country" (either on 29 March 2019 or at the end of any subsequent post-Brexit transitional period).

2.6 We last published a Report on the RRM package in May 2018, after the Economic Secretary informed us that the then-Bulgarian Presidency of the Council was seeking the adoption of a general approach—the Council's basis for negotiations with the European Parliament on the final substance of the proposed legislation—at the next meeting of EU Finance Ministers (ECOFIN). We granted a scrutiny waiver allowing the Government to support the general approach, which was subsequently approved at the ECOFIN Council on 25 May.[22]

Developments since May 2018

2.7 The European Parliament's Economic and Monetary Affairs Committee adopted its position on the RRM proposals in June last year, allowing 'trilogue' negotiations to start in September 2018. By letter dated 8 November 2018, the Economic Secretary provided a further update on the state of play in the negotiations between the Member States—represented by the Austrian Presidency of the Council—and the European Parliament on the final legal texts of the RRM measures.

2.8 Overall, the Minister noted, there was at that point a preliminary agreement on some "technical issues" but "key differences" between the two institutions remained. In particular, at that stage those included whether to fully implement the new international standards on market risk (the FRTB) at this stage or at some point in the next decade; the rules governing subordination of MREL in the event of a bank failure; the flexibility for national regulators to impose additional micro- and macro-prudential requirements on their domestic banking industry above and beyond the statutory minimum (Pillar 2); and the asset threshold for the requirement for large 'third country' banks—including UK ones after its withdrawal from the Single Market—to establish an IPU in the EU for supervision purposes.

2.9 In a second letter, dated 17 December 2018, the Minister informed us that the European Parliament and the Council had in the intervening period managed to reach political agreement on most of the outstanding issues in the negotiations. EU Finance Ministers—including the Chancellor of the Exchequer—also endorsed the substance of the new laws at their meeting on 4 December 2018, with formal approval to follow after the legal texts had been finalised and translated, most likely in January 2019.[23]

2.10 The substance of the RRM measures, as provisionally agreed between the Parliament and the Council, is described in the next section. Whether this new EU legislation will

21 Given the dominant position of UK banks within the EU's financial system, the European Commission has linked this part of its proposal explicitly to the EU's "preparedness" for Brexit.

22 An earlier attempt to secure a general approach at an ECOFIN meeting in March 2018 was unsuccessful because there was no agreement yet on several outstanding issues. See for more information our Report of 16 May 2018.

23 See Banking Union: Council endorses package of measures to reduce risk

have force of law in the UK will depend on whether the Withdrawal Agreement is ratified (in which case EU law would continue to supersede domestic law for the duration of a transitional period), and the timing of its formal adoption. We have set out our assessment of the potential implications of the RRM package for the UK banking industry in more detail in paragraphs 19 to 25 below.

Substance of the RRM agreement

2.11 With respect to the **amendments to the Capital Requirements Directive and Regulation**, the Minister writes that the UK has "largely achieved [its] objective on international harmonisation with outcomes broadly consistent with Basel standards or moving towards full implementation in the future". More specifically, the Parliament and the Council have agreed on the following:

- The implementation of the **Fundamental Review of the Trading Book** (FRTB), a new approach to reducing market risk in the banking sector,[24] has been accepted in principle. However, consistent with the Member States' position, it will not be incorporated into EU law at this point, to take into account recent changes to the international standard. Instead, the European Commission will present a further proposal to amend the EU's capital requirements legislation "as soon as [the FRTB is] finalised at international level";[25]

- The UK had been concerned that some of the European Parliament's proposals relating to supervisory flexibility to impose macro- and micro-prudential requirements on individual banks (**Pillar 2 requirements**) would "limit authorities' ability to tailor their supervisory frameworks to the specific circumstances of their national banking system".[26] However, the Minister says the agreement reached would give the Prudential Regulation Authority "sufficiently broad flexibility […] to mitigate stability risks in line with the existing Financial Policy Committee framework";

- MEPs also sought the **disapplication of certain requirements to smaller banks** and broadening existing prudential reliefs for **bank loans to infrastructure projects and SMEs**. Member States have now agreed that an explicit definition for

24 Market risk prudential requirements mean banks have to hold more regulatory capital to compensate for any substantial exposure to securities and derivatives. In this context, the FRTB sets an "own funds" requirement, which refers to funds that are available to a bank which allow it to absorb losses in a going or in a gone concern situation. The Capital Requirements Regulation (CRR) sets out the characteristics and conditions for own funds, backed up by further regulatory technical standards developed by the European Banking Authority.

25 Council document 14448/18, p. 9. This proposal, which is intended to be published by June 2020, would be subject to the ordinary legislative procedure between the Council and the Parliament in its own right.

26 The Government had particular concerns as regards the "design and calibration of the additional capital requirements" for banks not considered globally systemically-important but which nonetheless pose a potential financial stability risk ('other systemically-important institutions or O-SIIs). O-SII banks are institutions that are not considered systemically important at international level, but are systemically important within the banking system of an individual EU country. They are subject to specific additional capital requirements, which is capped under EU law. The Council wanted to increase this cap so that Member States have more flexibility to impose higher prudential requirements where considered necessary.

"small and non-complex institutions" will be included in the text, accompanied by "reduced reporting and disclosure requirements", as well as extending the 'supporting factor' for SME and infrastructure loans;[27] and

- The European Parliament and Council also found middle ground with respect to the requirement for **intermediate parent undertakings (IPUs) for third-country banks** with large-scale operations in the EU, a new obligation which the UK opposed.[28] In the final agreement, the IPU obligation would apply to non-EU banks with assets in excess of €40 billion (£36 billion) within the EU, and take effect three years after the new Capital Requirements Regulation becomes applicable (i.e. in 2022). The Minister says the final outcome "significantly increases the proportionality and operability of the measure", although it would still affect a sizable number of UK-based institutions following Brexit.

2.12 With respect to **recovery and resolution of failing banks**, the EU negotiations focussed on the framework calibrating the new international TLAC standard into the EU's MREL rules (both concerned with the level of "bail-inable" capital that banks should have to avoid the need for a taxpayer bail-out if they are at risk of collapse).

- With respect to the **subordination of liabilities to recapitalise a failing bank**, the deal now on the table would cap the statutory amount of MREL a bank must hold, but with the possibility for domestic regulators to impose additional prudential requirements above that ceiling as a firm- or sector-specific 'Pillar 2' measure.[29] The Minister described this as a "priority issue" for the UK, and the new legislation "largely maintains" the approach taken by the Member States in May 2018 (which the UK supported). Similarly, the legislation—if it takes effect in the UK—would permit the Bank of England to require UK institutions to **meet their new MREL requirements by 2022** (while other Member States would be free to defer it until 2024);

- With respect to the **eligibility criteria for liabilities that can qualify as MREL**, amendments have been made to address "significant industry concerns about [the] new MREL eligibility criteria which would have invalidated existing stocks of MREL" (i.e. it would mean bail-inable liabilities issued by banks under existing rules would not count towards their recovery and resolution obligations when these latest amendments take effect, potentially putting them in breach of their prudential obligations); and

27 The 'supporting factor' in Article 501 CRR allows banks to hold less regulatory capital against exposures related to SMEs or infrastructure projects. The amendments to the Capital Requirements Regulation now agreed would increase the total loan size to an individual SME for which this applies to €2.5 million (up from €1.5 million), and expand the list of eligible infrastructure projects.

28 Although the UK opposed this in view of its impact on British banks after Brexit, both the remaining Member States and European Parliament agreed there should be such a requirement. However, they had different views on its scope and the date it should take effect. The Parliament had wanted it to apply to banking groups with €30 billion or more in assets held in the EU, versus €40 billion for the Council. The Parliament also wanted the IPU requirement to apply to any G-SIIs with two or more subsidiaries in the EU, irrespective of their total assets. The Council called for a four year transitional period for the IPU requirement after the amended Capital Requirements Directive has begun to apply, which itself would be 18 months after it is formally adopted by the Parliament and Council.

29 The European Parliament had wanted to cap the amount of MREL—that is to say, bail-inable liabilities that must be issued by an institution to meet the statutory safety net—at 18 per cent of risk-weighted assets. This was opposed by the UK, which has argued that it "does not give resolution authorities the flexibility to require a higher level of subordination to deliver the preferred resolution strategy".

- Finally, as regards the introduction of new **moratoria powers** (which allow regulators to suspend a bank's payment obligations to prevent it from becoming insolvent), the Government's priority was to limit "the length of suspension and avoiding the consecutive application of moratoria". The Minister says these objectives have been achieved in the final compromise, "as the moratorium power lasts for two business days" (compared to the original proposal of five business days) and "cannot be applied consecutively with existing moratorium and stays powers". This, he added, "aligns with Bank of England policy, and with international standards".

Outstanding issues to be resolved

2.13 The broad agreement on the above issues notwithstanding, the Minister's letter of 17 December 2018 also indicated that "two important elements" of the package had not yet been resolved: the threshold for exempting smaller banks from restrictions on bankers' pay, and the date of application of the leverage ratio (the total permitted exposure to debt a bank can take on).

2.14 As regards remuneration, the original Commission proposal sought to lift some of the EU's rules on remuneration for bankers, relating to deferral of bonuses and pay-out in instruments, for companies with less than €5 billion (£4.5 billion) in assets or for staff in any firm with relatively low bonus payments. In June 2017, the then-Economic Secretary (Stephen Barclay MP) argued that the thresholds in proposal to determine whether the remuneration restrictions applied were not proportionate compared to the existing legislation.[30] In its general approach, the Council "largely retain[ed] the status quo",[31] given individual Member States the ability to raise or lower the asset threshold (with a maximum of €15 billion), below which banks would be exempted from the pay restrictions.[32] The European Parliament's position was to fix that threshold at €8 billion (£7.2 billion) in assets, with no flexibility for individual EU countries to vary it.[33]

2.15 With respect to the leverage ratio, which limits the total debt exposure which a bank can take on, the Minister previously told us there were differences between the European Parliament and the Council relating to its "technical calibration".[34] These appear to have been resolved, but discussions are on-going as to whether the new requirement should apply from 1 January 2020 (the Parliament's position)[35] or from two years after the new Capital Requirements Regulation takes effect, most likely in early 2021 (the Council's position).

30 Under Article 92(2) of the Capital Requirements Directive, the remuneration restrictions can be applied by Member States to banks 'in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities'. In practice, this has meant that most Member States waive the remuneration requirements for banks in their territory with a balance sheet below a certain threshold (which varies country-by-country). The Commission proposal was aimed at eliminating divergent practices and setting a common threshold for the waiver.

31 Letter from Stephen Barclay MP to Sir William Cash MP (23 January 2018).

32 Under the Council's version of Article 94 of the Capital Requirements Regulation, Member States could vary the threshold in terms of total assets of a bank which determines whether the remuneration restrictions would apply. Whereas the Commission proposal set this at €5 billion (£4.5 billion), the Council text would allow each EU country to set a threshold up to €15 billion (£13.5 billion) or anywhere below it.

33 The so-called "bonus cap", which limits bankers' bonuses to 200 per cent of their fixed salary, would not be affected by this new exemption.

34 Letter from John Glen MP to Sir William Cash MP (8 November 2018).

35 See Article 3 of the Parliament's position on amendments to the Capital Requirements Regulation, which would set the entry into force of the leverage ratio—which is contained in point 39—to 1 January 2020.

2.16 The Economic Secretary has informed us he expects negotiations on these two issues to be concluded in January 2019.

The Government's position on the agreement

2.17 The Minister's latest letter explained that the Government is broadly supportive of the elements of the agreement between the Parliament and the Council reached so far. Although the UK did not secure all the changes it had sought with respect to the other elements of the RRM package endorsed at the December 2018 ECOFIN Council meeting—especially as regards the IPU requirement for non-EU banks—the Government believed that "it was in the UK's interest to support the general endorsement at ECOFIN to support progress towards an overall deal which reduces risk and enhances financial stability".

2.18 The UK also stressed at the meeting of EU Finance Ministers in December 2018 "that [the] outstanding areas of the package should be agreed on in line with the Council General approach" (see paragraph 0.x above). The Minister also apologised for the fact the scrutiny clearance was not sought before the Chancellor endorsed the provisional outcome of the trilogue process in December last year, noting that the Austrian Presidency of the Council had amended the agenda for the meeting "unexpectedly"[36] and that "not supporting the compromise would likely have isolated the UK and we could have been viewed as an impediment to progressing risk reduction measures in the EU".

Our conclusions

2.19 **We thank the Economic Secretary for his recent updates on the EU-level negotiations to modernise Europe's prudential framework for banks. As the Minister acknowledges in his latest letter, the EU's new banking legislation remains highly relevant to the UK. We agree, for a number of reasons.**

2.20 **First, it appears likely the new legislation will be formally adopted before the European elections in May 2019. This means the new rules will take effect in stages, mostly before the end of 2022. If the Withdrawal Agreement is ratified, the RRM measures would therefore apply directly in the UK insofar as they become applicable during the post-Brexit transitional period. As the draft Agreement provides for the option of an extension of the transition until December 2022, there is a distinct possibility that many of the elements of the package will become applicable before EU law ceases to take precedence over UK law.[37] The Financial Conduct Authority has warned such an extension could pose a risk to the UK's financial services industry, given that regulation affecting one of the world's largest financial centres would be formulated without its domestic regulators' input and without voting rights for its Government.[38]**

2.21 **The continued supremacy of EU law during the transition would also extend to any regulatory and implementing technical standards which the European Commission**

36 Initially, Finance Ministers had been due to take note of a progress report on the negotiations with the European Parliament, rather than offering a political endorsement for the outline of the deal reached on the new legislation.

37 The transposition date for the new Capital Requirements Directive would be 18 months after formal adoption of the Directive, which is likely to be in early 2019. That puts the deadline for transposition into domestic law in late 2020.

38 Letter from Andrew Bailey to Nicky Morgan MP (29 November 2018).

is empowered to adopt under the new legislation. Crucially however, although this tertiary legislation would be equally binding on the UK and its banking industry during transitional period, the Treasury and Bank of England would have had no formal role in their formulation (as the UK will lose its institutional representation and voting rights within the EU on 29 March next year).

2.22 **Secondly, the shape of the RRM package is important—beyond any transitional period—because it could also form part of the regulatory baseline in a future arrangement on financial services with the EU. Under the Political Declaration accompanying the draft Withdrawal Agreement, cross-border trade in financial services between the UK and the EU would be governed by 'equivalence', a legal mechanism that allows the European Commission[39] to decide that the supervisory system of a 'third country' for a particular sector—like investment services or clearing of derivatives—achieves the same regulatory outcomes as its own. Where such a determination is made, firms from that non-EU country typically either gain preferential market access rights or (as is more common) become more attractive for EU-based financial services providers to do business with (from a regulatory and prudential perspective).[40]**

2.23 **However, equivalence as it currently exists under EU law is limited, both in the sectors that it covers and the rights that it confers on non-EU firms. Under the Capital Requirements Regulation, for example, it is possible for EU banks to obtain prudential reliefs for exposures in third countries considered 'equivalent'.[41] The assessments of whether the prudential regime of non-EU countries achieves the same outcomes will be affected by the amendments to the Regulation discussed in this Report. (It is also noteworthy that there is no right for non-EU banks to provide banking services, even wholesale, into the EU as a whole on a cross-border basis.)[42] Equivalence is also applied entirely unilaterally, with no right of appeal for the Government if equivalence is not granted or withdrawn.**

2.24 **The Government has accepted the new EU-UK relationship in financial services will be based on equivalence.[43] However, it has insisted that the EU should reform how the mechanism works to accommodate the size of the trade flows in such services between the two sides. The Political Declaration therefore commits the EU to 'reviewing' its equivalence frameworks, but without specifying what changes should be made. As we have noted elsewhere, relying on equivalence to preserve UK-EU trade flows in financial services in any event carries the risk that the UK could become a de facto rule-taker in some areas, to avoid losing more market access (since any regulatory divergence could**

39 Decisions taken by the European Commission relating to equivalence need to be approved by a qualified majority of Member States. Once it ceases to be an EU Member State and the transitional period is finished, the UK will be able to take its own 'equivalence' decisions to govern access to the UK market for financial services.

40 For example, EU banks can generally hold less capital against exposures to other banks in 'equivalent' jurisdictions. See for more information "Equivalence in a future EU-UK trade framework for financial services" by UK Finance (accessed 20 December 2018).

41 See Articles 107(4), 114(7), 115(4), 116(5) and 142(2) of the Capital Requirements Regulation.

42 In absence of such changes, cross-border market access into for credit institutions is on a country-by-country "host state rules" basis. Other sectoral EU financial services legislation can theoretically grant 'passport-like' rights to non-EU firms on the basis of equivalence, notably for investment services (MiFIR) and hedge funds (AIFMD).

43 At some point in 2018, the Government abandoned its earlier proposals for default mutual recognition of regulatory standards by both the UK and Europe, which would have lead to automatic market access for most, if not all, financial services regulated at EU-level.

lead to the revocation of equivalence decisions by the European Commission). For this reason, the Government wants the EU's process for decisions to withdraw equivalence to be reformed as well.

2.25 **Lastly, the Risk Reduction Measures matter even in a 'no deal' scenario because of the recent Financial Services (Implementation of Legislation) Bill.[44] Under this legislation, the Government has proposed to give itself the power to implement a limited number of pending EU proposals on financial services—including the RRM package—into UK law. This would be done by Statutory Instrument in the event of a 'no deal' (that is, even if the UK is no longer under an EU legal obligation to apply this legislation, and the provisions of the European Communities Act 1972 have been repealed). The power would exist for two years after 'exit day' (29 March 2019),[45] and apply to the EU legislation within its scope irrespective of whether it is adopted at EU-level before or after 'exit day'. This means that Parliament is being asked to pre-emptively grant the Government the power to implement European legislation which currently exists only in draft form. Moreover, the proposals covered by the Bill could be implemented domestically "with any adjustments the Treasury consider appropriate". We note in this respect that the Bill could make it considerably easier for the Government to ensure the UK's prudential regime for banks remains aligned with the EU's to the extent necessary to obtain equivalence decisions after Brexit, as described above.**

2.26 **The implications for democratic scrutiny of this approach is for Members to consider as the Bill comes to the House of Commons. The question of democratic oversight when EU law is implemented in this way following withdrawal is probably less problematic for the RRM package, given that the final substance will most likely be known before 'exit day', and explicitly endorsed by the Government in the Council of Ministers subject to the scrutiny of this Committee throughout the legislative process. The same cannot be said for a number of other pending EU proposals covered by the Bill. Some of these, including the investment firm review,[46] the European Markets Infrastructure Regulation revision[47] and the European Supervisory Authorities review[48]—are still subject to intensive negotiations at EU-level, meaning it is far from clear what the eventual substance of those laws will be. The Government's approach, if accepted by Parliament, will therefore require a commensurate level of scrutiny, as the Treasury is effectively asking for the ability to implement EU legislation that does not yet exist by means of regulations.**

2.27 **As regards the substance of the RRM package itself, we have decided to retain it under scrutiny until the remaining issues around the leverage ratio and the thresholds determining the application of pay restrictions in banks are resolved in the Council's discussions with the European Parliament. We are content with his explanation for the Government's unexpected override of scrutiny in December when endorsing the partial agreement on the Risk Reduction Measures, given the fluidity of the negotiations and the last-minute changes to the agenda for the ECOFIN Council that month.**

44 Financial Services (Implementation of Legislation) Bill.
45 This Bill is effectively analogous to section 2 of the European Communities Act 1972, which empowers the Government to implement EU law by means of Statutory Instruments even where it would otherwise require primary legislation. However, the Financial Services Bill is limited in both time and scope.
46 We discussed the Investment Firm Review in our Report of 28 February 2018.
47 See our Report of 28 November 2018 for more information on the proposed amendments to EMIR.
48 See our Report of 13 December 2017 for more information on the European System of Financial Supervision.

2.28 **We also draw the attention of the Treasury Committee to this Report, in light of its potential impact of the new EU banking legislation during the post-Brexit transitional period and the inclusion of the Risk Reduction Measures in the scope of the Financial Services (Implementation of Legislation) Bill.**

Full details of the documents:

(a) Proposed Directive on loss-absorbing and recapitalisation capacity of credit institutions and investment firms: (38300), 14777/16 + ADDs 1–2, COM(16) 852; (b) Proposed Directive as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures: (38303), 14776/16 + ADDs 1–2 COM(16) 854; (c) Proposed Regulation concerning aspects of capital requirements: (38304), 14775/16 + ADDs 1–3, COM(16) 850.

Previous Committee Reports

Twenty-fifth Report HC 71–xxiii (2016–17), chapter 6 (11 January 2017); Thirty-second Report HC 71–xxx (2016–17), chapter 6 (22 February 2017); First Report HC 301–i (2017–19), chapter 19 (13 November 2017); Fifteenth Report HC 301–xv (2017–19), chapter 1 (27 February 2018); Seventeenth Report HC 301–xvii (2017–19) chapter 2 (7 March 2018); and Twenty-eighth Report HC 301–xxvii (2017–19), chapter 2 (16 May 2018).

3 Prudential requirements for investment firms

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny, but scrutiny waiver granted; further information requested; drawn to the attention of the Treasury Committee
Document details	(a) Proposal for a Regulation on prudential requirements for investment firms; (b) Proposal for a Directive on the prudential supervision of investment firms
Legal base	(a) Article 114 TFEU; ordinary legislative procedure; QMV; (b) Article 53 TFEU; ordinary legislative procedure; QMV
Department	Treasury
Document Numbers	(a) (39397), 16017/17 + ADD 1, COM(17) 790; (b) (39400), 16011/17 + ADD 1, COM(17) 791

Summary and Committee's conclusions

3.1 At present, there is no EU-wide specific prudential regulation covering the investment industry. Instead, that sector is covered by the prudential rules drafted for the banking industry under the Capital Requirements Directive and Regulation. Following a review, the European Commission in December 2017 tabled legislative proposals—a Regulation and a Directive—for a new, calibrated prudential regime for investment firms (referred to as the "investment firm review").

3.2 Based on an Explanatory Memorandum submitted by the Treasury in early 2018, we described the substance and potential implications of the proposal in more detail in our initial Report of 28 February 2018. In summary, the Commission has proposed to create a new classification system for investment firms, ranging from Class 1 (systemically-important investment banks) to Class 3 (the smallest investment firms).[49] For Class 2 and Class 3 firms, the draft legislation would create new, tailored prudential and organisational requirements, whereas Class 1 firms would remain subject to the Capital Requirements Directive for banks (as they are at present). For them, the major change would be that supervisory responsibility within the Eurozone would shift from the national regulator of their home Member State to the European Central Bank's Single Supervisory Mechanism (SSM). (This is to address suspicions that UK investment firms wishing to retain a foothold in the EU market might otherwise 'shop around' for the most light-touch national prudential approach within the Eurozone after Brexit).[50]

49 The categorisation of individual companies would be based primarily on the worth of a firm's assets, but also the specific type of investment services offered.

50 Under a separate proposal to amend the Capital Requirements Directive for banks as part of the Risk Reduction Measures package, UK investment firms which fall into class 1 (as well as large non-EU banks) could be required to establish an independently-capitalised and authorised intermediate parent undertaking (IPU) within the EU after Brexit if they had significant operations within the EU-27.

3.3 In addition, the Commission proposals would also modify the way in which non-EU firms could access the EU market for investment services. This, again, is driven to a large extent by the UK's withdrawal from the European Union. The Markets in Financial Instruments Regulation (MiFIR) currently allows the Commission, with the support of the Member States, to declare the regulatory regime of a 'third country' equivalent to the EU's.[51] If such a determination is made, firms from that country can provide investment services to EU-based professional and institutional clients on a cross-border basis (i.e. without the need for a legal presence in the EU itself).

3.4 Amid concerns that a significant volume of such services could be provided from outside the EU's direct jurisdiction if the UK were to obtain equivalence after Brexit, the draft legislation would attach more stringent conditions to the equivalence process by requiring a "detailed and granular process for the assessment" that also takes into account the third country's "supervisory convergence".[52] The clear purpose is to give the Commission more leeway to make any UK request for equivalence conditional on a very close alignment with the EU's regulatory regime for investment firm after Brexit.[53] The Commission also wants mandatory submission of information on the activities of branches[54] of non-EU investment firms operating in the EU.

3.5 The Treasury's initial Explanatory Memorandum on the proposals supported the new classification system and linked prudential and organisational requirements. However, with respect to the modifications to the equivalence process, the Economic Secretary told us in January last year the UK wanted to "agree stable, reciprocal arrangements" for trade in financial services. Indeed, for several months after that the Chancellor of the Exchequer was still insisting that equivalence should categorically *not* form the basis for the UK's future trading relationship with the EU in financial services.[55] Since then, this position has been abandoned and the Political Declaration accompanying the draft Withdrawal Agreement commits the EU to "start assessing equivalence […] as soon as possible after the United Kingdom's withdrawal" and to keep its "respective equivalence frameworks….. under review". The EU has made no specific commitments as to what

51 No 'third country' currently has an equivalence decision of this type under MiFIR. However, the Regulation only took effect in January 2018.

52 Article 61 of the Regulation as proposed by the Commission reads: "Where the services provided and the activities performed by third-country firms in the Union following the adoption of the [equivalence] decision […] are likely to be of systemic importance for the Union, the [the third country's] legally binding prudential and business conduct requirements […] may only be considered to have equivalent effect to the [EU's] requirements […] after a detailed and granular process for the assessment. For these purposes, the Commission shall also assess and take into account the supervisory convergence between the third country concerned and the Union."

53 Separately, the Commission also proposed a reporting requirement for third country firms registered with ESMA under the equivalence regime […]. They would have to inform the Authority annually about the scale and scope of their activities; their turnover and assets; the arrangement for investor protection; and their risk management policy.

54 In this context, a branch is a place of business which is a part of an authorised investment firm, but which has no legal personality of its own and is not subject to separate authorisation within the EU. Under MiFID, branches can provide services to retail and elective professional clients in those EU Member States which allow this. Wholesale services to professional and institutional investors can only take place on a cross-border basis after 'equivalence' has been granted, or via a fully-authorised subsidiary within the EU (see 'Background').

55 In March 2018, the Chancellor said that relying on equivalence as it exists under EU law would be "wholly inadequate for the scale and complexity of UK-EU financial services trade", and explicitly called for a dispute resolution mechanism if the EU and UK disagree on whether equivalence should be granted (which does not exist at present). In June 2018, he repeated that equivalence would "not provide the stability that a well-regulated market requires".

those 'reviews' should entail or lead to, and has only consented to an ambition—rather than an obligation—to conclude its assessments of the UK's regulatory approach by June 2020.[56]

3.6 We received a further update from the Economic Secretary on the state of play in the negotiations in December 2018. This indicated that the Member States had arrived at a common position with respect to the regulation of smaller (Class 2 and Class 3) investment firms, but that the treatment of the systemically-important ones (Class 1) was still being negotiated. Similarly, discussions were on-going about the 'equivalence' provisions under MiFIR, and those these should be amended in light of the UK's withdrawal from the EU, with the remaining Member States focussing on the powers of the European Securities & Markets Authority (ESMA) to supervise and regulate the activities of non-EU firms on the EU market. The Minister also informed us that the European Parliament had taken a very restrictive approach to 'third country' access, excluding certain investment activities from the scope of any equivalence decision altogether.[57]

3.7 According to the Economic Secretary, the Member States could reach a compromise on their joint position on the investment firm review—a so-called "general approach"—in early 2019. This would then form the basis for a final set of negotiations with the European Parliament on the ultimate substance of the prudential legislation for the investment industry, including the equivalence provisions. The Minister requested we grant him a scrutiny waiver to enable the Treasury to support a general approach if the files were tabled for formal consideration at a meeting of the Council, provided the Government considers the remaining issues in the discussions among the Member States are resolved to the UK's satisfaction.

3.8 If the investment firm review is agreed between the European Parliament and the Council before the European elections in May 2019, it is likely the new legislation would take effect in late 2020 or early 2021. We have set out the potential implications of that for the UK and its investment industry in our conclusions below.

Our conclusions

3.9 **We thank the Minister for his timely update on the state of play in the negotiations on the EU's investment firm review. We note that Member States are still discussing crucial areas of the proposals among themselves—including the treatment of Class 1 firms and the matter of third country 'equivalence'—and that no firm timetable exists yet for the final set of negotiations between the European Parliament and the Member States on the definitive substance of the new legislation.**

3.10 **The UK is home to Europe's largest investment services industry, with activities in the European Union and worldwide. As such, the way in which the EU regulates this sector is of direct relevance, even taking into account the UK's withdrawal from the bloc. Therefore, whatever the eventual outcome of the Brexit process, it is clear that the**

56 If the Withdrawal Agreement is not ratified, the EU has given no indication that it will consider any short-term equivalence decisions in relation to the UK financial services industry, other than for clearing of over-the-counter derivatives by British central counterparties under European Markets Infrastructure Regulation (EMIR) until the end of 2019.

57 The Parliament's position would bar non-EU firms from dealing on own account and underwriting, even if their home country had an equivalence decision under MiFIR.

new prudential framework for investment firms—once approved by the Council and the European Parliament—is likely to have a direct impact on firms in the UK for a number of reasons.

3.11 **First, the draft Withdrawal Agreement provides for a post-Brexit transitional period during which EU law, including new legislation, would continue to apply in the UK as if it were still a Member State. Although it has an initial end date of 31 December 2020, it could be extended—at the UK's request, and with the EU's consent—for another two years.**

3.12 **The investment firm review could be agreed between the Member States and the European Parliament before the EU elections in May 2019. If so, the new prudential framework would take effect 18 months later, in late 2020 or early 2021. Should the transition be extended, it is therefore possible that the new legislation would apply directly in the UK. Whether the Government has a vote over the final substance of the new rules will depend on whether formal adoption takes place before it ceases to be a Member State on 29 March 2019. In any event, Qualified Majority voting rules mean the Government cannot veto the legislation even before that date if a sufficient number of other Member States are in favour of a deal struck with the Parliament.**

3.13 **Secondly, the investment firm review will amend the mechanism for 'equivalence' under which UK investment firms could seek to access the EU market after withdrawal from the Single Market. The Political Declaration accompanying the Withdrawal Agreement makes specific reference to the need to begin equivalence assessments as soon as possible after 29 March 2019, and that will include the extent to which the UK's post-Brexit regulatory approach to investment services remains aligned with the EU's under these pending proposals. We note in this respect that negotiations among the Member States on the exact conditions relating to the granting, monitoring and withdrawal of equivalence for investment services are still on-going, and that the Parliament has proposed certain restrictions on the types of services covered (which the Government opposes).**

3.14 **The technical conditions for equivalence, whether or not amended by the investment firm review, are nevertheless only part of the picture. The European Commission's recent decision to grant Switzerland only a six-month extension to its equivalence for stock exchanges under EU law to pressure it to accept a broader treaty on the bilateral EU-Swiss relationship is instructive.**[58] **It demonstrates the possibility, if not likelihood, that discussions between the UK and the EU on equivalence in financial services could become politicised by the wider negotiations on a future economic and security partnership. It cannot be ruled out that the EU would, for example, insist on a trade-off between equivalence for the UK investment industry and EU fishermen's access to British waters.**

3.15 **Lastly, the investment firm review proposals are also relevant under the recent** Financial Services (Implementation of Legislation) Bill**. This would give the Government the power to implement a limited number of pending EU proposals on financial services—including the prudential regime for the investment industry—into UK law**

58 European Commission press release, "Commission proposes to extend equivalence for Swiss share trading venues for six months" (17 December 2018).

by Statutory Instrument in the event of a 'no deal' (that is, even if it is no longer under an EU legal obligation to apply this legislation). This power would exist for two years after 'exit day' (29 March 2019).[59]

3.16 **The powers under the Financial Services Bill apply irrespective of whether the EU legislation is adopted before or after 'exit day', meaning Parliament is being asked to pre-emptively grant the Government the power to implement EU legislation which currently exists only in draft form. Moreover, the EU proposals covered by the Bill could be implemented domestically "with any adjustments the Treasury consider appropriate". Whether this could prove problematic from a democratic and accountability perspective in relation to the investment firm review is not yet clear: if the final substance of the legislation is agreed between the Parliament and the Council before the UK leaves the EU, there would be more clarity about what the Government could implement domestically under the Bill.**

3.17 **However, if the proposals are not adopted until well after the UK ceases to be a Member State, the substance of the legislation could diverge substantially from the current situation (as the Treasury and Prudential Regulation Authority would no longer be part of the negotiations, nor have a vote). In any event, the Treasury's power to make "any adjustments" when implementing pending EU proposals in a 'no deal' scenario is very wide, and any Statutory Instruments made under the future Act should be scrutinised carefully. We note in this respect that the Bill could make it considerably easier for the Government to ensure the UK's investment services regime remains aligned with the EU's to the extent necessary to obtain an equivalence decision after Brexit, as described above.**

3.18 **In light of the likely impact of these proposals in the UK, whether by virtue of the continued applicability of EU law during transition, the conditions attached to any future equivalence agreement, or the domestic implementation of the investment firm review by Statutory Instrument, we retain them under scrutiny. However, we are content to grant the Minister a scrutiny waiver to enable the Government to support a general approach at a future Council of Ministers meeting, if doing so is considered to be in the UK's interest. We would expect to be informed of the outcome of any ministerial discussions, and other developments in the legislative process, at the earliest opportunity.**

3.19 **We also draw these developments to the attention of the Treasury Committee, given its interest in the regulation of the UK's financial services industry.**

Full details of the documents:

(a) Proposal for a Regulation on prudential requirements for investment firms: (39397), 16017/17 + ADD 1, COM(17) 790; (b) Proposal for a Directive on the prudential supervision of investment firms: (39400), 16011/17 + ADD 1, COM(17) 791.

59 This Bill would effectively be analogous to section 2 of the European Communities Act 1972, which empowers the Government to implement EU law by means of Statutory Instruments even where it would otherwise require primary legislation. However, it is limited in time and scope.

Background

3.20 The European Commission in December 2017 published legislative proposals for a prudential regime for investment firms across the European Union, after a review found that the current capital requirements for the smaller companies in the industry, based on the prudential regime for banks, was too complex and did not adequately take into account the specific prudential risks faced by investment firms.[60]

3.21 As we described in more detail in our initial Report of 28 February 2018, the Commission has proposed to create a new classification system for investment firms governed by the Markets in Financial Instruments Directive and Regulation (MiFID II and MiFIR), consisting of:

- **class 1 investment firms** (systemically-important investment banks);
- **class 2** (important but non-systemic investment companies); and
- **class 3** (the smallest investment firms).

3.22 The categorisation of individual companies would be based primarily on the worth of a firm's assets, but also the specific type of investment services offered. Class 2 and 3 firms would fall under a new prudential framework calibrated specifically to the risks of the investment industry. There would also be a new set of prudential and governance requirements for the Class 2 firms, including on remuneration policies.[61] (Although there is no equivalent to the "bonus cap" that applies to banks under the Capital Requirements Regulation, the proposal would require investment firms to set "appropriate ratios" for variable remuneration.)

3.23 Class 1 firms would remain subject to stricter prudential rules applicable to the banking industry as they are now. However, in anticipation of an expected shift of operations by UK-based large investment banks to the Eurozone due to Brexit, the Commission also proposed to make class 1 firms subject to centralised supervision by the European Central Bank's Single Supervisory Mechanism (SSM). The logic behind this move is that it would prevent UK investment firms from 'shopping around' for the most light-touch national prudential approach within the Eurozone, because the ECB would be the supervisory authority in any event.[62]

3.24 The Economic Secretary to the Treasury (John Glen MP) submitted an Explanatory Memorandum on the proposals in January 2018. Overall, the Minister welcomed the approach taken by the Commission, which he said would "provide a good basis for a new prudential regime for investment firms" and could "have significant benefits for UK

60 In particular, the European Banking Authority and the European Securities & Markets Authority concluded that the application of banking prudential rules to all investment firms was a source of regulatory complexity, especially for smaller firms; it did not accurately reflect the prudential risks that exist in the investment industry; and there was a fragmented approach to the implementation of the rules by different Member States.

61 Class 3 firms will remain subject to the governance requirements laid down in MiFID II, but would not face any additional requirements in this area under the Commission proposals.

62 Under a separate proposal to amend the Capital Requirements Directive for banks as part of the Risk Reduction Measures package, UK investment firms which fall into class 1 (as well as large non-EU banks) could be required to establish an independently-capitalised and authorised intermediate parent undertaking (IPU) within the EU after Brexit if they had significant operations within the EU-27.

industry" given the concentration of such firms in the UK. He added that the reforms were especially important to the UK, which currently host "around 55% of EU investment firms […], including all eight systemic investment firms".

Equivalence for UK investment firms after Brexit

3.25 The final element of the Commission proposals for the regulation of investment firms in the EU is driven directly by the UK's withdrawal: it wants to apply more stringent assessments before non-EU investment firms' can access the EU market without setting up a full subsidiary within a Member State. Such access by 'third country' firms can take place either via a branch,[63] or under an "equivalence" decision under the Markets in Financial Instruments Regulation (which would allow them to provide investment services cross-border basis from their home country). Equivalence in particular offers a potential legal route under which UK firms could service professional customers within the EU after Brexit if they do not want to establish a separate presence within the EU itself.[64]

3.26 In anticipation of the UK's eventual application for equivalence under the Markets in Financial Instruments Regulation (MiFIR)—which can only be made once it has become a 'third country'—the Commission proposed to modify the articles of that Regulation which govern how, and under which conditions, it can be granted. As we explained in our previous Report:

> [The Commission] wants to attach more stringent conditions to the equivalence process by requiring a "detailed and granular process for the assessment" that also takes into account the third country's "supervisory convergence".[65] It is unclear what the practical effect of this amendment would be if the UK were to apply for equivalence under Article 47 MiFIR, as the regime is untested: the Regulation only took effect in January 2018 […]. However, the clear purpose is to give the Commission more leeway to reject the request or seek to put pressure on the UK to keep its regulatory regime for investment firm aligns with that of the EU after Brexit.
>
> Separately, the Commission has also proposed a reporting requirement for third country firms registered with ESMA under the equivalence regime […]. They would have to inform the Authority annually about the scale and scope of their activities; their turnover and assets; the arrangement for investor protection; and their risk management policy.

3.27 In addition, the Commission is worried UK firms might use branches in the EU (which are a place of business, but not a separate legal entity) to provide significant cross-

63 In this context, a branch is a place of business which is a part of an authorised investment firm, but which has no legal personality of its own and is not subject to separate authorisation within the EU.

64 The equivalence regime under MiFIR is unusual in that it specifically creates a market access regime for cross-border operations where the relevant conditions are met. Many other equivalence regimes under EU financial services law instead provide derogations from the typically stricter requirements when EU-based companies deal with foreign financial services providers.

65 Article 61 of the Regulation as proposed by the Commission reads: "Where the services provided and the activities performed by third-country firms in the Union following the adoption of the [equivalence] decision […] are likely to be of systemic importance for the Union, the [the third country's] legally binding prudential and business conduct requirements […] may only be considered to have equivalent effect to the [EU's] requirements […] after a detailed and granular process for the assessment. For these purposes, the Commission shall also assess and take into account the supervisory convergence between the third country concerned and the Union."

border investment services, ostensibly from within the EU but in actuality from the UK. Branches operate under 'host state' rules—meaning they can only operate within the EU country where they are based—but many Member States do allow them (subject to restrictions under national law).[66] To avoid a proliferation of branches after Brexit, the Commission wants to amend the Markets in Financial Instruments Directive to report annually on the scale and scope of their activities; their turnover and assets; the arrangement for investor protection; and their risk management policy. The information gathered if the amendment is approved would then be used to assess to what extent non-EU investment services were provided subject to effective supervision within the EU itself, and if necessary form the basis for further regulatory action.

3.28 With respect to these elements of the proposals, the Minister's original Explanatory Memorandum stated only that the Government will seek to "agree stable, reciprocal arrangements" for trade in financial services which would by-pass the need for the UK industry relying on equivalence provisions after Brexit. Indeed, when we last considered the investment firm proposals, the Chancellor of the Exchequer was still insisting that equivalence should categorically *not* form the basis for the UK's future trading relationship with the EU in financial services. In March 2018, the Chancellor said that relying on equivalence as it exists under EU law would be "wholly inadequate for the scale and complexity of UK-EU financial services trade", and explicitly called for a dispute resolution mechanism if the EU and UK disagree on whether equivalence should be granted (which does not exist at present). Three months later, in his Mansion House speech of 21 June 2018 he repeated that equivalence would "not provide the stability that a well-regulated market requires".

3.29 However, following the rejection by the EU of any suggestion of horizontal mutual recognition of regulatory standards for financial services with the UK, the Government has since conceded equivalence will be the main mechanism for obtaining preferential UK access to the Single Market.[67] As hinted at in the Political Declaration that accompanies the draft Withdrawal Agreement, the Government wants to use the post-Brexit transitional period to secure changes to the way equivalence operates to make it more stable and less easy for the EU to withdraw unilaterally. The EU has made no explicit or implicit concessions on this point, which would require the agreement of both the Member States and the European Parliament. The positive outcome of any negotiations as far as the UK is concerned is therefore far from assured, and indeed the Declaration is entirely ambiguous (stating only that both sides will keep their "respective equivalence frameworks […]under review"). As the EU has consistently said it will retain autonomy over whether or not to grant, refuse or withdraw equivalence, it is unlikely that it would ever agree to a system where the UK might appeal such decisions to an independent body to overrule the EU.

3.30 If the Withdrawal Agreement is not ratified, the EU has given no indication that it will consider any short-term equivalence decisions in relation to the UK financial services industry, with the major exception of clearing of over-the-counter derivatives by British central counterparties under European Markets Infrastructure Regulation (EMIR) until

66 Under article 39 of MiFID, EU Member States can authorise non-EU investment firms intending to provide services to retail or elective professional clients within their territory to establish a branch (i.e. a presence that has no legal personality of its own). A branch, since it is not an EU establishment, does not have the right to "passport" its services to other EU countries. After Brexit, UK investment firms that do not want to establish an independently-capitalised and authorised subsidiary in the EU may have to establish branches in every EU country where they wish to service retail or elective professional clients, subject to national laws.

67 DExEU, "The future relationship between the United Kingdom and the European Union" (12 July 2018).

the end of 2019. We discussed the EU's approach to trade in financial services with the UK in a 'no deal' scenario in our Report of 12 December 2018, and will publish a further Report shortly in light of the European Commission's 'no deal' Communication of 19 December 2018.

Developments in the legislative process since February 2018

3.31 On 13 December 2018, the Economic Secretary wrote to us with a further update on the state of play in the discussions on the investment firms review.

3.32 In his letter, the Minister explained that the Austrian Presidency of the Council had "made considerable progress on the technical aspects of the file" in relation to crafting a unified Member State position on the new, specific prudential regime for Class 2 and Class 3 firms, ahead of negotiations with the European Parliament on the final substance of the legislation. According to the Minister, Member States have called for "technical amendments [...] focussed on injecting more proportionality for all firms" as regards governance, reporting and remuneration requirements. These suggested changes are "in line with Government objectives". In particular, some EU countries want to retain national flexibility to introduce bonus caps for their investment industries (which the UK would oppose if mandatory, but which it is willing to accept "in the spirit of compromise" if it remains a policy choice for individual Member States).

3.33 However, two major political issues remain outstanding in the negotiations: treatment of systemic, Class 1 investment firms and the third country equivalence regime under MiFIR.

3.34 On Class 1 investment firms, the Government continues to advocate for a regulatory approach "which would not unduly impact the [Prudential Regulation Authority's] approach to systemic investment firms' designation and supervision". Among the solutions proposed so far, the Minister says, there are some that would "introduce some flexibility for supervisors to keep large investment firms under the banking rules".

3.35 On equivalence for non-EU investment firms, the discussions in Council are currently focussing on giving a stronger supervisory role to the European Securities and Markets Authorities in relation to third country access. The Minister's letter explains that the most recent compromise proposals would extend ESMA's existing powers to third country firms so that it can temporarily prohibit or restrict a third country firm from marketing, distribution or sale in the Union of certain financial instruments or a type of financial activity or practice if it presents a risk to the EU market. The proposal also "outlines the actions ESMA can take in collaboration with third country supervisors, in the event it has evidence to believe that EU investors' interests and EU markets' order are being put at risk", including the withdrawal of a third country firm's registration (which would bar it from operating in the EU on a cross-border basis). Finally, it introduces some changes to the 'reverse solicitation' regime which allows third country firms to service European clients at the solicitation of such clients.

3.36 The Minister's letter explains that the European Parliament, which adopted its position on the proposals in September 2018, has "taken a different approach" to equivalence. MEPs want to limit the scope of equivalence under MiFIR to certain investment activities only, excluding dealing on own account and underwriting from the types of services a non-EU

firm could provide within the EU even if its home country is deemed 'equivalent'.[68] The UK opposes this, and the Economic Secretary says the Treasury is "working with other Member States and the Commission on a robust position […] to counter such proposals during trilogue negotiations" with the Parliament in the future.

Next steps in the legislative process

3.37 The Economic Secretary has told us he believes there is a "pathway to reaching a compromise on [the] outstanding issues" which would meet the UK's negotiating objectives as outlined in the Treasury's original Explanatory Memorandum in January 2018. He therefore expects that the Member States will agree on a "general approach"—a mandate for the Presidency's negotiations with the European Parliament on the final substance of the legislation—in January 2019. The Minister therefore asked the Committee to grant a scrutiny waiver, which would enable the Government to support a general approach in the Council if the outstanding issues were resolved to its satisfaction.

3.38 The Committee has been content to grant such a waiver, given the need for the UK to be able to take a constructive role in these discussions in Brussels. As we have set out in our conclusions, the impact of the investment firm review in the UK—once agreed at EU-level—remains unclear. We have therefore retained it under scrutiny, and asked the Minister to keep Parliament informed of further developments in the legislative process (and the Treasury's assessment of their implications for the British financial services industry).

Previous Committee Reports

See (39397), 16017/17 + ADD 1, COM(17) 790: Sixteenth Report HC 301–xvi (2017–19), chapter 8 (28 February 2018).

68 If the Parliament's proposals were approved, third country firms which carry out such activities would have to set up a subsidiary in the EU even if their home regime is deemed 'equivalent' to the EU's.

4 Improving cross-border law enforcement access to financial information

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the Justice Committee
Document details	Proposal for a Directive laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA
Legal base	Article 87(2) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(39666), 8411/18 + ADDs 1–2, COM(18) 213

Summary and Committee's conclusions

4.1 The European Commission has proposed a Directive which is intended to make it easier to gather the evidence needed to advance a criminal investigation or prosecution by improving access to financial information for law enforcement purposes. Our earlier Reports (listed at the end this chapter) provide a detailed overview of the proposal and the Government's position. In summary, the proposed Directive would require Member States to:

- give designated national law enforcement authorities and Asset Recovery Offices *direct* access to bank account information held in their Member State's central bank account registries (or electronic data retrieval systems) where necessary to prevent, detect, investigate or prosecute a serious criminal offence;
- strengthen the exchange of financial information and analysis between their own designated national law enforcement authorities and Financial Intelligence Units (national centres which collect information on suspicious or unusual financial activity) as well as between Financial Intelligence Units in different Member States;[69]
- introduce a three-day time limit for the exchange of information between Financial Intelligence Units in different Member States (24 hours in "exceptional and urgent cases"); and
- give Europol indirect access to bank account and other financial information or analysis via each Member State's National Europol Unit.

69 Whilst it would be for each Member State to designate the relevant national law enforcement authorities, they must include the National Europol Unit.

4.2 As the proposed Directive is a criminal law measure, it is subject to the UK's Title V (justice and home affairs) opt-in and will only apply to the UK if the Government decides to opt in. In his Explanatory Memorandum of 12 June, the Minister for Security and Economic Crime (Mr Ben Wallace MP) indicated that the proposal was "broadly in line with existing UK legislation and practice on the sharing of financial information" but expressed concern that it might compromise the operational autonomy of national Financial Intelligence Units (FIUs) and questioned whether a request from a FIU in another EU Member State should be handled with greater urgency than a request from a FIU in a non-EU country. In his letter of 24 July 2018, he told us that "all other Member States have similar concerns to the UK" and that he was "hopeful that the changes we wish to see made to the text will be made".

4.3 The Minister's letter of 20 September 2018 confirmed that the Government had decided to opt in as participation in the proposed Directive would "bring benefits to the UK through ensuring that our operational agencies are able to seek and receive financial intelligence, including bank account details, where appropriate, in order to tackle both money laundering and wider criminality". A further letter of 19 November 2018 assured us that the Government's concerns had been addressed and that the Presidency intended to seek a "General Approach" at a meeting of Member States' Permanent Representatives to the EU (COREPER) on 21 November. He invited us to clear the proposed Directive from scrutiny or grant a scrutiny waiver to enable the Government to vote for the proposal, failing which the Government would abstain.

4.4 Although our scrutiny reserve only applies to decisions taken by Ministers within the EU's Council of Ministers, not to decisions taken by officials within COREPER, we reminded the Minister that we expect the Government to ensure that we have an opportunity to examine in good time any Presidency compromise text brought to COREPER for agreement. We made clear that it was wholly unrealistic to expect scrutiny clearance or a scrutiny waiver to be granted with only two days' notice of the COREPER meeting. We asked the Minister to provide a copy of any compromise text agreed by COREPER with details of how the UK voted. We noted also that we had requested regular reports on the prospects for concluding a new post-exit internal security treaty with the EU and invited him to provide an update following publication of the Political Declaration setting out the framework for the future relationship between the EU and the UK.

4.5 In his letter of 17 December 2018, the Minister reiterates the Government's strong support for the aims of the proposed Directive and confirms that the General Approach text was "sufficiently acceptable" for the UK. The Government nonetheless abstained from the vote at COREPER as the proposal remained under scrutiny. The Minister draws our attention to the amendments agreed to the Commission's original proposal which "ensure that the decision on whether to share financial information with the Financial Intelligence Unit (FIU) of another Member State is now a matter for the FIU".[70] The provision setting out specific time limits for a FIU in one Member State to exchange information with a FIU in another Member State has been deleted.[71] The Minister undertakes to provide a further update once the European Parliament has agreed its position on the proposed Directive.

70 Article 7 of the General Approach removes the obligation on FIUs to share financial information with other designated competent authorities.

71 Article 9 in the Commission's original proposal.

4.6 Turning to the prospects for concluding a new post-exit internal security treaty with the EU, the Minister says that the Political Declaration accompanying the draft EU/UK Withdrawal Agreement "confirms that there is important consensus on key elements of our future internal security partnership and on the scope of our future relationship". He continues:

> The text reflects a shared commitment by the UK and the EU to ensure our future partnership in this area delivers strong operational capabilities to tackle serious crime and terrorism, including swift and effective data exchange; streamlined surrender arrangements; and continued close cooperation with Europol and Eurojust.

Our Conclusions

4.7 **We recognise that the General Approach text addresses the Government's concerns. We would welcome the Minister's view on additional changes agreed to by COREPER. The first, in Article 17, would appear to constrain the ability of Member States to negotiate and conclude new bilateral or multilateral agreements with third (non-EU) countries concerning the exchange of information and mutual legal assistance by introducing new requirements to notify the Commission before entering into negotiations and to obtain authorisation before provisionally applying or concluding such agreements. The second, in Article 19, stipulates that Member States will be required to implement the Directive within 24 months of the date on which it enters into force. This would take the implementation date beyond the initial transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement (ending in December 2020) during which EU law would continue to apply but within any further extension of that period to December 2022. In light of these changes, we ask the Minister:**

- **whether the notification and authorisation procedure envisaged in Article 17 is being (or has been) replicated in other EU instruments which contain provisions on the negotiation and conclusion of agreements with third countries;**
- **what assessment he has made of the impact that Article 17 may have on the UK's ability to conclude bilateral agreements with individual EU Member States on information sharing and mutual legal assistance post-exit; and**
- **how the Government intends to approach implementation of the proposed Directive (once adopted) given that the length of any post-exit transition/ implementation period and the extent of any obligation on the UK to implement the measure is as yet uncertain.**

4.8 **We welcome the Minister's undertaking to provide a further update on any changes proposed by the European Parliament. We ask him to ensure that we have the information requested in sufficient time for us to consider clearing the proposed Directive from scrutiny before its formal adoption by the Council. We draw this chapter to the attention of the Home Affairs Committee and the Justice Committee.**

Full details of the documents:

Proposal for a Directive laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA: (39666), 8411/18 + ADDs 1–2, COM(18) 213.

Previous Committee Reports

Forty-sixth Report HC 301–xlv (2017–19), chapter 15 (28 November 2018), Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 17 (5 September 2018) and Thirty-third Report HC 301–xxxii (2017–19), chapter 6 (27 June 2018).

5 Preventing the dissemination of terrorist propaganda online

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee, the Justice Committee, the Digital, Culture, Media and Sport Committee and the Joint Committee on Human Rights
Document details	Proposal for a Regulation on preventing the dissemination of terrorist content online
Legal base	Article 114 TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(40069), 12129/18 + ADDs 1–3, COM(18) 640

Summary and Committee's conclusions

5.1 The European Commission's proposal for a Regulation seeks to fulfil the commitment made by its President, Jean-Claude Juncker, in his State of the Union speech in September 2018 to put forward "new rules to get terrorist content off the web within one hour—the critical window in which the greatest damage is done".[72] The proposal would require online platforms to take proactive measures to prevent the dissemination of terrorist content; empower national authorities to issue a legally binding order for the removal of terrorist content from the web within an hour; introduce penalties for platforms which fail to act promptly; and strengthen cooperation amongst Member States and with Europol. The new power to issue a removal order would operate alongside existing voluntary referral mechanisms, but with a clear obligation on hosting service providers to put in place the necessary operational and technical measures to ensure that referrals are dealt with expeditiously.[73] The proposed Regulation also includes a range of safeguards in recognition of "the fundamental importance of freedom of expression and information in an open and democratic society".[74] Our Report agreed on 24 October 2018 provides a detailed overview of the proposal.

5.2 In his informative Explanatory Memorandum (see part one and part two), the Minister for Security and Economic Crime (Mr Ben Wallace MP) welcomed the prospect of EU regulatory action to tackle online terrorist content. Whilst acknowledging the value of voluntary cooperation with service providers, he considered that tech companies had "not gone far enough or fast enough" and that the approach taken by the Commission in seeking to balance public security and fundamental rights (notably, freedom of expression and freedom to conduct a business) established "a helpful precedent" and would "lay the groundwork and support our own intention to legislate on illegal online content". He shared the Commission's view that a fragmented framework of national rules would

72 For an overview of the Commission's proposal, see the European Commission's fact sheet published on 12 September 2018, A Europe that protects: Countering terrorist content online.

73 Article 5.

74 See Articles 3(1) and 6(4).

be burdensome for companies operating within the EU's digital single market and that Article 114 TFEU, rather than EU Treaty provisions on justice and home affairs matters, was the appropriate legal base for EU action.

5.3 The Commission is keen to secure the adoption of the proposed Regulation before the next European Parliament elections in May 2019. Negotiations within the Council have proceeded at a rapid pace. In his letter of 7 November 2018, the Minister provided further information on the Government's approach to negotiations, the impact of the proposal on UK domestic law and its implications for freedom of expression, and consistency with other EU legislation applicable to online platforms. Our Report agreed on 28 November 2018 provides further details. The Minister informed us of the Presidency's intention to seek a general approach at the Justice and Home Affairs Council on 6/7 December. Given the Government's support for regulatory action at EU level to tackle online terrorist content, we considered that there would be some advantage in bringing the matter to the Council before the UK's exit from the EU, thereby ensuring that the UK would be able to influence and vote on any compromise text. We granted a scrutiny waiver to enable the Government to express its support for the general approach but asked the Minister to:

- report back to us on the outcome of the Council;
- explain whether any decision had been made to set up a central oversight mechanism at EU level to monitor removal orders being sent to hosting service providers; and
- provide a summary of any changes sought by the European Parliament once it has agreed its position.

5.4 In his letter of 20 December 2018, the Minister confirms that a majority of Member States, including the UK, were able to support the general approach which the Austrian Presidency considered to be "a good and responsible compromise text". Whilst there was a general recognition of the urgency of the threat posed by online terrorist content and a shared determination to strengthen the EU's "toolbox" of counter-measures, some Member States were nonetheless unable to support the text. Finland and Denmark cited a conflict with their own national constitutions, the Netherlands questioned whether the general approach struck "the right balance between removal of content and fundamental rights", and Slovakia, Slovenia, the Czech Republic and Poland expressed concern that an agreement at this stage was "premature" and called for further analysis at expert level. The Presidency offered assurance that "various points of objection" could be addressed in trilogue negotiations with the European Parliament (expected to begin early in 2019). The European Commission also urged Member States to use the EU Internet Forum as a platform "to iron out implementation issues".

5.5 The Minister considers that revisions made to the proposed Regulation during negotiations within the Council have gone some way to addressing Member States' concerns. He highlights two changes sought by the Government:

- additional language in Article 13(4) of the proposed Regulation to ensure that hosting service providers bring any evidence of terrorist offences to the attention of the relevant authorities as soon as possible; and

- affirmation (in a recital, rather than the operative part of the text) that the proposed Regulation "does not apply to activities related to national security as this remains the sole responsibility of each Member State".[75]

5.6 The Government also supports changes to Article 15(1) and recital (34) which now make clear that "for reasons of effective implementation, urgency and public policy, any Member State has jurisdiction to issue removal orders and referrals to any hosting service provider, irrespective of the Member State where it is established or where it has designated a legal representative". The Minister considers that this change will ensure the Regulation is "as robust as possible", giving all Member States the authority to issue a removal order directly to a hosting service provider. To address the concerns expressed by some Member States, the general approach includes a new consultation procedure requiring a Member State issuing a removal order to send in parallel a copy of the order to the Member State in which the hosting service provider is established or has its legal representative.[76] The Government was willing to support the new text "as a means to unblock an impasse".

5.7 The Minister does not consider that it will be feasible to establish a central oversight mechanism at EU level to monitor removal orders being sent to hosting service providers, since "the obvious candidate for the role" would be the EU Internet Referral Unit based in Europol. The European Commission cannot mandate a justice and home affairs agency, such as Europol, to support or oversee the implementation of a single market measure. The EU Internet Referral Unit will nonetheless continue ongoing work to develop and scale up methods and tools to "facilitate better cooperation between Member States on referrals of online terrorist content". The general approach encourages the use of Europol tools, such as the Internet Referral Management application, and provides for hosting service providers to transmit any evidence of terrorist offences to Europol in certain circumstances. As Europol's current mandate "does not allow for transmission or channelling of removal orders themselves", the Minister adds that the EU Internet Referral Unit has focussed on the (voluntary) referral mechanism. He continues:

> Recognising the limitations of what can be asked of Europol, efforts have been made to ensure the removal order process outlined in the Regulation is as effective as possible. For example, Article 13(3) and recitals (27) and (30) have been amended to ensure that Member States coordinate before issuing removal orders—clarifying how duplication and interference with investigations should be avoided.

5.8 Finally, the Minister anticipates that the European Parliament's Committee on Civil Liberties, Justice and Home Affairs will issue its report on the proposed Regulation early in 2019. The Government has already begun to engage with the Committee's rapporteur, Daniel Dalton (a UK member of the European Conservatives and Reformists grouping—"ECR"), "to support his understanding of the threat and share our position on the Regulation".

Our Conclusions

5.9 **We thank the Minister for his prompt update on the outcome of the December Justice and Home Affairs Council and on the main elements of the general approach**

75 See recital (5) of the general approach text.

76 See Article 4(a) of the general approach text.

agreed. The proposed Regulation must strike a delicate balance between the public interest in freedom of expression, on the one hand, and the need to act pre-emptively against online terrorist content which may threaten public safety and national security, on the other. We acknowledge the urgency of the threat and the need to act quickly. It is nonetheless disappointing that the Presidency was unable to put forward a compromise text capable of commanding the support of all Member States. The possibility that elements of the proposed Regulation may conflict with the national constitutions of some Member States, or raise censorship concerns, is no small matter. Even though the Government supports the general approach, we trust that it will seek to play a constructive role in addressing these wider concerns. We ask the Minister to write to us again once the European Parliament has agreed its negotiating position on the proposed Regulation with details of:

- **the main changes sought by the European Parliament and the Government's position on them;**
- **how the Presidency intends to overcome the constitutional or other obstacles raised by some Member States; and**
- **whether the Government would be willing to support (and vote for) a final text which fails to address the constitutional concerns of these Member States.**

5.10 **We note that the new consultation procedure for removal orders set out in Article 4(a) of the general approach would require a copy of a removal order to be sent at the same time to the service provider hosting terrorist content and to the relevant authority of the Member State in which the service provider is established. The aim is to ensure that the Member State of establishment has an opportunity to inform the issuing Member State if the removal order would "impact [its] fundamental interests". We ask the Minister how effective this consultation procedure is likely to be in practice, given that a hosting service provider will be under an obligation to act within one hour, leaving little time for the Member State of establishment to voice an objection or set out the grounds for believing that a removal order would be unjustified.**

5.11 **Pending further developments within the European Parliament, the proposed Regulation remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee, the Justice Committee, the Digital, Culture, Media and Sport Committee and the Joint Committee on Human Rights.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online: (40069), 12129/18 + ADDs 1–3, COM(18) 640.

Previous Committee Reports

Forty-sixth Report HC 301–xlv (2017–19), chapter 16 (28 November 2018) and Forty-first Report HC 301–xl (2017–19), chapter 6 (24 October 2018).

6 EU climate change strategy

Committee's assessment	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	Commission Communication—A Clean Planet for all. A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy
Legal base	—
Department	Business, Energy and Industrial Strategy
Document Number	(40225), 15011/18, COM(18) 773

Summary and Committee's conclusions

6.1 In the light of evolving scientific advice, the Commission's document sets out the EU's strategic approach to greenhouse gas (GHG) emissions reductions, including pathways to reaching "net zero"[77] emissions by 2050.

6.2 The 2015 Paris Agreement[78] under the United Nations Framework Convention on Climate Change (UNFCCC) set the goal to contain the rise in average global temperatures to well below 2°C above pre-industrial levels and to pursue efforts to limit it to 1.5°C. The Parties to the Agreement also sought to achieve "net zero" carbon emissions in the second half of this century. At the recent Katowice climate summit, the Parties agreed on a common rulebook to implement the Paris Agreement, delivering greater transparency to ensure scrutiny of progress toward national targets.

6.3 In October 2018, the Intergovernmental Panel on Climate Change (IPCC) published their special report on the impacts of global warming of 1.5 degrees above pre-industrial levels.[79] It concluded that carbon dioxide emissions must be reduced to net zero globally by around 2050 to have a reasonable chance of limiting global warming to 1.5°C. Emissions of other GHGs would need to be close to net zero. This scenario would still create climatic difficulties but would have markedly better results for the planet than rises above 1.5°C.

6.4 Building on the IPCC report, the aim of the Commission's document, modelling eight different scenarios, is to "present a vision that can lead to achieving net zero greenhouse gas emissions by 2050 through a socially-fair transition in a cost-efficient manner". It was

77 'Net zero' means that total emissions are equal to or less than the emissions removed from the environment. This can be achieved by a combination of emission reduction and removal by offsetting. Emissions can be removed or absorbed by natural processes such as tree planting or by using technologies like carbon capture.

78 Paris Agreement, UNFCCC, 2015.

79 IPCC, 2018: Summary for Policymakers. In: "Global warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty" [V. Masson-Delmotte, P. Zhai, H. O. Pörtner, D. Roberts, J. Skea, P. R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J. B. R. Matthews, Y. Chen, X. Zhou, M. I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, T. Waterfield (eds.)]. World Meteorological Organization, Geneva, Switzerland, 32 pp.

requested by the March 2018 European Council[80] and also responds in part to a joint letter from 11 Member States (not including the UK) encouraging the Commission to set a clear direction towards net zero GHG emissions by 2050.[81]

6.5 The Commission believes that the transition towards the net zero objective gives energy a central role as it is currently responsible for more than 75% of the EU's greenhouse gas emissions. As such, in all options analysed the energy system moves towards net zero GHG emissions. This, says the Commission,

> relies on a secure and sustainable energy supply underpinned by a market-based and pan-European approach. The future energy system will integrate electricity, gas, heating/cooling and mobility systems and markets, with smart networks placing citizens at the centre.

6.6 The Commission concludes that the deployment of no-regret options such as renewables (including sustainable advanced biofuels), energy efficiency, and new approaches to mobility (electrification, hydrogen and alternative fuels) are not sufficient for a net zero GHG economy by 2050. Reaching that goal, says the Commission, will require maximising the potential of technological and circular economy options, the large-scale deployment of natural land-based carbon sinks—including in the agricultural and forestry sectors—as well as shifts in mobility patterns.

6.7 Having assessed the various scenarios, the Commission concludes that, in order to respond to the recent IPCC report and contribute to stabilising the climate in this century, the EU should by 2050 be among the first to achieve net zero greenhouse gas emissions and lead the way worldwide. To do so, the EU needs to step up its efforts. Seven main strategic building blocks are identified:

- maximise the benefits from energy efficiency including zero emission buildings;
- maximise the deployment of renewables and the use of electricity to fully decarbonise Europe's energy supply;
- embrace clean, safe and connected mobility;
- a competitive EU industry and the circular economy as a key enable to reduce greenhouse gas emissions;
- develop an adequate smart network infrastructure and inter-connections;
- reap the full benefits of the bio-economy and create essential carbon sinks; and
- tackle remaining carbon dioxide emissions with carbon capture and storage.

6.8 In terms of costs and benefits, additional investment of between €175 to €290 billion (approx. £196 to £325bn) a year is expected to be required (an increase in investment from 2% to 2.8% of EU GDP) relative to the baseline. The Commission highlights that, overall, a net zero transition is expected to have limited impacts on EU GDP when compared with the baseline scenario—some modelling scenarios suggest that impact of decarbonisation

80 European Council Conclusions, 22 March 2018, p.3.
81 Joint letter to Commissioner Miguel Arias Cañete on the Climate ambition of the future EU long-term strategy, 14 November 2018.

efforts beyond the baseline on GDP could be moderately positive—however cost estimates do not incorporate the avoided damages of tackling climate change. The strategy states that a net zero target would help reduce pre-mature deaths due to particulate matter by 40% and spur growth in green jobs.

6.9 The Minister of State for Energy and Clean Growth (Rt Hon Claire Perry MP) welcomes[82] the strategy as it sends a positive signal of the EU's commitment to continue to drive forward the debate on climate change and provides an important evidence base to inform discussions of the EU's contribution to meeting the objectives of the Paris Agreement. Whatever the future shape of UK-EU relations on climate change, she says, the UK will retain its global leadership on this agenda, and the EU will remain an important partner.

6.10 Domestically, says the Minister, the Government has put Clean Growth[83] at the heart of its Industrial Strategy, recognising that the move to cleaner economic growth—through low carbon technologies and the efficient use of resources—is a huge economic opportunity. In addition, following publication of the IPCC's report on 1.5°C global warming, the Government commissioned advice from the Committee on Climate Change on the implications of the Paris Agreement for the UK's long-term emissions reductions targets, including on setting a net zero target. Both the Welsh and Scottish governments have also sought the advice of the CCC. The Government will consider the CCC's advice carefully when it is received.

6.11 **While the Minister welcomes the Strategy, including the positive signal that it sends, she makes no direct reference to its potential implications for the UK post-Brexit. The Withdrawal Agreement negotiated by the Government, however, includes two salient aspects: first, a transition period that will potentially apply until 31 December 2022; and, second, a fall-back arrangement (known as "the Backstop") to protect the open border on the island of Ireland. Relevant provisions within the Backstop arrangements include: Northern Irish dynamic application of the EU Emissions Trading System; Northern Irish dynamic application of most EU energy legislation; minimum UK-wide commitments on air quality; UK-wide adherence to the principle of environmental non-regression. These provisions will only be superseded in full by an agreement establishing alternative arrangements for ensuring the absence of a hard border.**

6.12 **As regards the future UK-EU relationship, the Political Declaration includes provisions on a "level playing field" for the environment and climate change, cooperation to support the delivery of cost-efficient, clean and secure supplies of electricity and gas and continued science and innovation collaboration.**

6.13 **We conclude that at least some of the EU policy flowing from this Strategy will therefore form the minimum basis for UK climate policy going forward. We ask the Minister to confirm this interpretation of the Withdrawal Agreement and to explain with reference to the text of the Withdrawal Agreement any aspect of the above comments with which she disagrees.**

82 Explanatory Memorandum dated 19 December 2018.
83 The Government published a Clean Growth Strategy in October 2017.

6.14 **We note that the UK has generally been a proponent of a strong EU climate policy, but that it did not sign the recent letter from 11 other countries urging the European Commission to set a clear direction towards net zero GHG emissions in the EU by 2050. We ask the Minister to explain whether the UK was involved at all in the preparation of the letter and why the UK did not co-sign it.**

6.15 **Given that the UK and EU approaches to climate change are likely to remain closely intertwined, we would welcome responses to the following queries:**

- **how the UK is currently (pre-exit) engaging on the EU's future climate policy plans;**
- **what plans the UK has for engagement post-exit; and**
- **what, if any, aspects of the Communication that might influence the UK's direction of travel in terms of domestic climate policy.**

6.16 **We clear this non-legislative document from scrutiny and ask for a response to our queries within ten working days. We draw this chapter to the attention of the Business, Energy and Industrial Strategy Committee.**

Full details of the documents:

Commission Communication—A Clean Planet for all. A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy: (40225), 15011/18, COM(18) 773.

Previous Committee Reports

None.

7 The Commission Work Programme 2019

Committee’s assessment	Politically important
Committee’s decision	Cleared from scrutiny

Document details	Commission Communication on The Commission Work Programme 2019 *Delivering what we promised and preparing for the future.*
Legal base	—
Department	Exiting the European Union
Document Number	(40152), 13590/18+ADD1, COM(18) 800

Summary and Committee’s conclusions

7.1 Each year the European Commission sets out its policy and legislative priorities for the year ahead in what is called the Commission Work Programme (CWP). The latest one was published on 23 October 2018. It is the last CWP of Jean-Claude Juncker, the current president of the Commission. It builds on his 2018 ‘State of the Union’ speech and ‘Letter of Intent’ and focuses on finalising outstanding dossiers.

7.2 This CWP is noticeably smaller than those released in previous years and contains 15 new initiatives, only two of which are legislative proposals. Both proposals relate to ‘Brexit preparedness’. The Programme also outlines 10 so-called ‘REFIT initiatives’,[84] 84 ‘Priority pending proposals’ (three of which are Brexit preparedness legislative proposals), and 17 proposals and legislative acts that the Commission intends to withdraw or repeal.

7.3 The proposals span a wide range of policy areas, including the Commission’s 10 priorities:

- A new boost for jobs, growth and investment
- A connected digital single market
- A resilient energy union with a forward-looking climate change policy
- A deeper and fairer internal market with a strengthened industrial base
- A deeper and fairer economic and monetary union (EMU)
- A reasonable and balanced free trade agreement with the United States
- An area of justice and fundamental rights based on mutual trust
- Towards a new policy on migration
- Europe as a stronger global actor
- A union of democratic change.

84 Which assess the adequacy of EU legislation in force

7.4 The CWP also sets out the Commission's intentions on 'Offering all Europeans a strong perspective for the future', 'Better regulation and the implementation and enforcement of EU Law' and 'Brexit and Preparedness'. On the latter, this is the last CWP to be published before the UK leaves the European Union on 29 March 2019. While negotiations on the potential post-exit transition period continue, the CWP remains important in setting out future legislation that might enter into effect after the UK has left the European Union, but during a transition period in which it may need to comply with and implement new EU law. Additionally, the initiatives presented that look further forward, towards 2025 and beyond, will be an important indicator of the future priorities of a key partner of the UK as a third country.

7.5 The Commission's plans in terms of 'Brexit and Preparedness' include the announcement that a number of delegated and implementing acts[85] will be presented to prepare for the withdrawal of the United Kingdom but no details about the specific content of these acts.

Brexit preparedness proposals

7.6 The CWP proposals most relevant to the UK are those related to Brexit preparedness. Two new initiatives aimed at addressing "the visa status of UK nationals after the withdrawal of the United Kingdom and the adjustment of figures for primary and final energy consumption in the energy efficiency legislation"[86] have now been published[87] and are being scrutinised separately by the Committee.[88] The Government's Explanatory Memorandum does not comment in detail on either proposal but welcomes their introduction.[89]

7.7 The Government's EM also does not comment on the three pending Brexit preparedness proposals.[90] Two of those are part of the 'A new boost for jobs, growth and investment' priority and are proposals for regulations on Connecting Europe Facility 2014–2020[91] and Common rules and standards for ship inspection ad survey organisations.[92] The third one is part of the 'A deeper and fairer internal market with a strengthened industrial base' priority and is a proposal for a regulation on EU type-approval with regard to the withdrawal of the United Kingdom from the EU.[93]

85 Implementing and delegated acts are tertiary legislation under EU law. Implementing acts must be approved by a qualified majority of Member States expert representatives in a technical ('Comitology') Committee. Delegated acts take effect unless they are explicitly vetoed by Council (by qualified majority voting) or by the European Parliament (by simple majority).

86 Commission Work Programme 2019, Delivering what we promised and preparing for the future, COM(2018) 800 final, p.10

87 COM/2018/744 final and COM/2018/745 final

88 European Scrutiny Committee, Forty-Seventh Report of Session 2017–19 (HC 301–xlvi), Chapters 6 and 9

89 Department for Exiting the European Union, Explanatory Memorandum for European Union Documents, 13590/18, COM(2018)800, para. 32

90 Annex III: Priority Pending Proposals, Annexes to the Commission Work Programme 2019, proposals 6, 7 & 43

91 COM(2018)568

92 COM(2018)567

93 COM(2018)397

The Commission's 10 priorities

7.8 The Minister of State for the Department for Exiting the European Union (Lord Callanan) is supportive of the Commission's proposals regarding the next Multiannual Financial Framework (MFF) for 2020–27 but highlights that "The details of UK involvement in post-2020 EU programmes will need to be subject to the wider decisions of the MFF package".[94]

7.9 On the Commission's proposals for 'A connected Digital Single Market', the Government is broadly supportive of all proposals except for the Regulation on Certain Online Transmission and Retransmission and the EU Agency for Network and Information Security mandate renewal where the Government's position differs slightly from the original proposals.[95] The EM does not cover exit implications.

7.10 On the Commission's 'A resilient Energy Union with a forward-looking climate change policy' proposals, the Minister is satisfied that "entry-into-force [of the Clean Energy Package] is likely to happen prior to UK exit" and is consistent with the UK's domestic objectives under the Climate Change Act.[96] The EM notes that the application of the provisions for the 'Europe on the Move Mobility packages' to the UK will be dependent on the outcome of exit negotiations.

7.11 Proposals for 'A deeper and fairer Internal Market with a strengthened industrial base' have implications for the UK post-exit according to the Government:

- The upcoming agreement on the European Market Infrastructure Regulation (EMIR Supervision) may apply to the UK depending on the outcome of a future EU-UK Free Trade Agreement;[97]
- The review of the European System of Financial Supervision will tackle issues around the UK's exit from the EU, among other things;[98] and
- The Investment Firms Review has the potential to allow third-country investment firms to access the EU's market without a presence in the EU. This could therefore apply to the UK once it becomes a 'third country'.[99]

7.12 The Minister's view on an amending Regulation concerning the Supplementary Protection Certificate for Medicinal Products is that more negotiations are needed to:

> ensure the measure remains targeted and evidence-based does not place an undue burden on SPC holders, generics manufacturers or national authorities, and has sufficient safeguards to prevent illicit diversion of SPC protected medicines onto the EU market.[100]

94 Department for Exiting the European Union, Explanatory Memorandum for European Union Documents, 13590/18, COM(2018)800, para. 18
95 Same as above, para. 23–24
96 Same as above, para. 30
97 Same as above, para. 36
98 Same as above, para. 37
99 Same as above, para. 38
100 Same as above, para. 41

7.13 On 'A deeper and fairer Economic and Monetary Union', the Government does not cover exit implications but is keen to ensure that the interests of non-participants in Banking Union, such as the UK, are respected.[101]

7.14 The Government is supportive of proposals related to 'A balanced and progressive trade policy to harness globalisation' but remains concerned about the impact of the International Procurement instrument on EU businesses reliant on global supply chains.[102] Exit implications are not mentioned.

7.15 The UK has the right to determine which of the measures set out under the headings 'An area of Justice and Fundamental Rights based on mutual trust' and 'Towards a new policy on migration' it wishes to participate in as most are subject to the UK's justice and home affairs opt-in or Schengen opt-out Protocols. The Government supports the Commission's efforts to improve the EU's internal security and strengthen external border controls. However, the Explanatory Memorandum has little to say on the Brexit implications of these policy areas.

7.16 On the proposals relating to the European Defence Fund, the UK is seeking to "improv[e] the general third country terms in the regulation and are keen to ensure that discussions currently taking place in Brussels do not preclude future UK-EU cooperation".[103]

7.17 The CWP proposals concerning the European Parliament elections will not be applicable to the UK.

7.18 Finally, regarding the 'Better regulation and the implementation, enforcement of EU law and REFIT' proposals, the Government expresses no view on potential exit implications.

Conclusions

7.19 **Although we note the lack of emphasis and detail on the exit implications of the Commission Work Programme 2019 in the Government's Explanatory Memorandum, we accept the argument made by the Minister that "the Government's position will develop when these proposals are put forward in 2019 and their precise implications become clearer." Moreover, the Committee will have an opportunity to scrutinise the Commission Work Programme proposals and the Government's views on them when they are introduced.**

7.20 **We are satisfied with the assurances we have received from the Government that all proposed 'Brexit and Preparedness' delegated acts and those implementing acts raising important policy implications will be flagged to our Committee and deposited for scrutiny where appropriate.**

7.21 **We are not recommending the Commission Work Programme 2019 for debate and we are content to clear the Communication from scrutiny. We reserve the right to recommend for debate individual proposals arising from the Commission Work Programme when we consider them in more detail in the future.**

101 Same as above, para. 46
102 Same as above, para. 50
103 Same as above, para. 60

Full details of the documents:

Commission Communication on The Commission Work Programme 2019 Delivering what we promised and preparing for the future: (40152), 13590/18+ADD1, COM(18) 800.

Previous Committee Reports

None.

8 EU - Singapore Partnership and Cooperation Agreement

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part
Legal base	Article 212 TFEU in conjunction with Article 218(6)(a)
Department	Foreign and Commonwealth Office
Document Number	(40247), 15223/18, COM(18) 784

Summary and Committee's conclusions

8.1 This Partnership and Cooperation Agreement (PCA) provides a framework for relations between the EU, its Member States, and Singapore; covering issues such as health, environment, climate change, energy tax, education and culture, labour, employment and social affairs, science and technology, and transport. It also addresses legal and illegal migration, money laundering, illicit drugs, organised crime and corruption. It runs in parallel with a Free Trade Agreement and an Investment Protection Agreement with Singapore.

8.2 The PCA is a "mixed" agreement, which means that it is entered into by both the EU and, separately, its Member States, each in their own right and each exercising their respective competence to do so. For matters where the EU has exclusive competence only it can enter the PCA. Where competence is "shared" either the EU or the Member States may exercise it—the choice is political.

8.3 This proposal would enable the EU to conclude (ratify) the PCA. It has already signed it, as have the Member States.[104] This proposal is intended to be agreed in principle by the Council in order that the necessary consent of the European Parliament can be secured.

8.4 When we considered and cleared the proposal authorising the EU to sign the agreement we raised, amongst other matters, the following legal issues:

- The Government considered that the UK opt-in was engaged in respect of the Article 19(6) of the PCA, concerning readmission, and claimed that the Decision authorising the EU to sign the PCA did not apply in respect of this provision. It lodged a minute statement to that effect. The EU institutions and all the other Member States do not agree that the UK opt-in is engaged—a position with which we agree.

104 Decision 2018/1047.

- Neither the text of the Decision to sign the PCA nor any other step taken by the Government provided any indication of the extent to which the EU or the Member States were exercising shared competence. The Governments stated policy is that normally Member States should exercise shared competence, leaving the EU to exercise only its exclusive competence. This policy is frequently undermined, as in this case, by a lack of transparency on this issue.
- Under the draft Withdrawal Agreement with the EU on the UK's exit from the EU the UK would be bound by its obligations to Singapore during any transitional/implementing period, but not automatically entitled to the benefits of the agreement, at least not without the agreement or acquiescence of Singapore.

These issues also arise in respect of this proposal.

8.5 In his Explanatory Memorandum of 20 December 2018 the Minister for Europe and the Americas (Rt Hon Sir Alan Duncan MP) explains that the PCA had been signed on 19 October 2018 and that proceeding to conclusion (ratification) of the PCA is to the benefit of the UK, which has been a champion of it and also wishes to maintain Singapore as a key partner in leveraging ASEAN and regional partners on key security issues. To this end the Foreign Secretary will be embarking on a wide-reaching "Partnership for the Future" programme.

8.6 On the procedural side he indicates that it is unlikely that the UK will ratify the PCA in its own right, as this could not be done before the UK leaves the EU on 29 March 2019 (either with or without a Withdrawal Agreement).

8.7 It follows that the PCA cannot come into force before then as all Member States and the EU will not have concluded or ratified it. It is however possible that the PCA could come into force during the transitional/implementing period of any Withdrawal Agreement. Under Article 126 of that Agreement the UK would then be bound to fulfil obligations arising under "the international agreements concluded by the Union….or by the Union and its Member States acting jointly…."

8.8 By letter of 20 December 2018 the Minister explains the circumstances that could give rise to an override of scrutiny on 7 January 2019.

8.9 **We clear this document from scrutiny and take no issue on any scrutiny override.**

8.10 **We note that this PCA will not legally affect the UK unless there is in place a Withdrawal Agreement with the EU. In the event of there being such an Agreement we ask the Minister:**

- **To clarify whether Article 129 of the draft Withdrawal Agreement will have the effect of binding the UK to *all* obligations arising from the PCA (including those falling under shared and/or Member State only competence, and those relating to readmission) during the transitional/implementing period despite the fact that the UK will not have ratified the PCA in its own right and purports not to have opted in to the provision on readmission. If not, what steps will be taken to make it clear which obligations of the PCA bind the UK;**

- **Whether Singapore has indicated that it has agreed that the UK can benefit from the PCA during the transitional/implementing period.**
- **We ask for a response to these questions in ten working days.**

Full details of the documents:

Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part: (40247), 15223/18; COM(18) 784.

Previous Committee Reports

None, but see in respect of the authorisation for the EU to sign the PCA: Thirty-third Report (2017–19) HC 301–xxxii, chapter 10 (27 June 2018).

9 Duty on alcohol, tobacco and fuel: EU excise reforms

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Business, Energy and Industrial Strategy, Northern Ireland Affairs and Treasury Committees
Document details	(a) Proposal for a Council Directive laying down the general arrangements for excise duty ; (b) Proposal for a Decision on computerising the movement and surveillance of excise goods (recast); (c) Proposal for a Council Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register; (d) Proposal for a Council Directive amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages
Legal base	(a), (c) and (d) Article 113 TFEU; special legislative procedure; unanimity; (b) Article 114 TFEU; ordinary legislative procedure; QMV
Department	Revenue and Customs AND Treasury
Document Numbers	(a) (39854), 9571/18 + ADDs 1–3, COM(18) 346; (b) (39847), 9567/18 + ADD 1, COM(18) 341; (c) (39840), 9568/18, COM(18) 349; (d) (39836), 9570/18 + ADDs 1–2, COM(18) 334

Background and Committee's conclusions

9.1 Within the EU, there is an extensive legal framework for the application of excise duty to certain goods (alcoholic products, tobacco products and oils), as well as the rules for moving such goods between Member States. These rules are set by EU Directives and implemented by domestic law in each EU country. Although EU law specifies the minimum duty rates that must be applied to many products, these have not been updated since the early 1990s and most Member States—the UK included—exceed the thresholds by substantial margins.[105] Excise duty revenues amounted to £48 billion in the UK in 2016–17.[106]

9.2 The EU's current legal system and electronic infrastructure for excise were created specifically to allow for the complete abolition of border controls on goods moving between EU Member States within the internal market: a core feature to ensure duty is paid without physically checking goods as they are moved between Member States is a compulsory tracking mechanism that businesses have to use (the Excise Movement & Control System or EMCS). This system enables excise goods to be moved across the EU without duty

105 For example, there is no minimum level of excise duty on wine under EU law, but the UK applies a standard rate of £288,65 per hectolitre of still wine.

106 The total £48 billion excise duty tax take for 2016–17 can be divided into fuel (£28 billion), alcohol (£11.5 billion) and tobacco (£8.9 billion).

being paid—called 'duty suspension'—until they reach their final destination. Goods that enter the EU from outside the Customs Union must first clear customs controls before they can be entered into that system.

9.3 In May 2018, following an evaluation exercise, the European Commission proposed a number of legal changes to the EU's Excise Directives, affecting duty on alcoholic drinks (especially cider) and the broader functioning of the EMCS. The proposed reforms, which we have described in more detail in our previous Report of 27 June 2018, include:[107]

- Allowing individual Member States to apply a reduced rate of duty to cider produced by small cider makers (in line with similar exceptions for beer and spirits), using a new EU-wide statutory definition of 'cider';
- Extending the optional reduced rate of duty for low-alcoholic beers to a larger range of products (by increasing the maximum alcohol content from 2.8% to 3.5% ABV);
- Creating an EU-wide certification system for small drinks producers, allowing them to prove more easily that they are entitled to benefit from the reduced excise rates for small brewers and cider makers when exporting their products to other EU countries; and
- Extending the use of the electronic Excise Movement and Control System (EMCS) to movements of excise goods between EU countries where duty has already been paid, to counter the high proportion of fraud affecting this trade (which currently uses paper-based procedures).[108]

9.4 The Exchequer Secretary to the Treasury (Robert Jenrick MP) submitted an Explanatory Memorandum on the proposals in June 2018, in which he broadly welcomed the proposed changes (with some reservations with respect to the interaction between the proposed EU definition of 'cider' and the reduced duty rates with current UK practice, as well as the cost-benefit analysis of extending the EMCS to 'duty paid' intra-EU movements).[109] When we considered the proposals in June 2018, we concluded that the proposals were mainly technical in nature, and that various areas would need to be clarified to address concerns expressed by the Government in its Explanatory Memorandum.[110]

107 The Commission is also consulting on possible changes to the excise treatment of tobacco products and e-cigarettes, but it has not yet tabled any specific legislative proposals in that area yet.

108 The EMCS supervises the cross-border intra-EU movement and export of excise goods under duty suspension; each movement in EMCS must be declared to the system, before the dispatch of the goods, via an "electronic Administrative Document" (e-AD) and is uniquely identified by its "Administrative Reference Code" (ARC).

109 'Duty paid' movements of excise goods constitute only account for three per cent of cross-border excise movements in the EU.

110 When we first considered the proposals, we asked the Minister for a number of clarifications related to their impact in the UK (if they applied here), in particular in relation to the optional reduced rate for cider produced by small cider makers and the validity of another Member State's certificate of a brewer or cider maker's annual production volumes, to prove their entitlement to a reduced rate of duty. The Minister answered these by letter dated 26 July 2018.

9.5 On 13 December 2018, the Minister wrote with a further update on the negotiations within the Council on the excise reform package. He notes that there is now broad agreement on the technical finishes to the proposals, and that the UK is "in favour [of] or neutral" on the legal texts, with "no 'red line' issues".[111]

9.6 The Minister's letter concludes by saying that discussions on the excise reform proposals have now progressed to the point where the EU Member States are likely to reach full agreement on the final substance of the legislation in early 2019. (As the proposals concern matters of taxation, they need to be agreed by all Member States unanimously.)[112] In light of this, he has requested the legislative proposals be cleared from scrutiny, so the Government can vote in favour of them as and when they are present to the Council for formal adoption. Given this legislative timetable, it appears the reforms may take effect within a few years after the UK's formal withdrawal from the European Union. We have assessed the potential implications of EU excise law for the UK in the post-Brexit period in more detail below.

Implications of EU excise legislation for the UK after Brexit

9.7 As we noted in our previous Report on the EU excise reforms, as and when the UK leaves the common excise area, excise goods exported to the EU will no longer benefit from the systems that allow such trade to happen without border controls.[113] In particular, as a non-Member State the UK will automatically cease to have access to the Excise Movement and Control System. Consequently, goods moved from the UK—with the potential exemption of Northern Ireland, see below—to the EU could only enter duty suspension after they entered an EU Member State. This will involve proof of export to HM Revenue & Customs to discharge any duty liability in the UK, as well as undergoing the applicable customs, safety and security checks at the point of entry into the EU (these are not all excise-related, but are also currently absent while the UK is a member of the Customs Union and Single Market).

9.8 However, under the draft Withdrawal Agreement the UK would initially enter a transitional period, potentially lasting until December 2022, during which it would continue to implement EU law, including its excise legislation. As the reforms described above are scheduled to take effect between January 2020 and April 2021, it is likely they would have to be applied at least in part in the UK if the Withdrawal Agreement is ratified. The current absence of border controls on goods exported from the UK to the EU would continue during that period.

9.9 Moreover, the Government still has not provided clarity about the potential implications of these proposals (and the effect of EU excise law in the UK more generally) *after* the scheduled end date of the transitional period. The possibility of continued application of EU excise law beyond the end of the transition arise from two related

111 More detail on the technical issues explored during the negotiations can be found in the Minister's letter of 13 December 2018. It includes for example the definition of 'cider', the liability for the payment of excise duty on distance sales, and the possibility of introducing a reduced rate of cider duty.

112 See Article 113 of the Treaty on the Functioning of the European Union.

113 Instead, the European Commission has said, "movements of excise goods from the United Kingdom to the EU will have to be released from customs formalities before a [duty suspension] movement under EMCS can begin". The same will apply in respect of customs duty, import VAT and regulatory standards for goods, meaning excise duty cannot be seen in isolation when considering possible options to keep UK-EU trade—in particular across the border with Ireland—free of the need for physical controls, which is a key Government objective in the trade negotiations with the EU.

issues: the substance of the 'backstop' to keep the border with Ireland free of customs infrastructure, and the Government's desire to supersede the need for the backstop as quickly as possible with a UK-EU free trade agreement.

9.10 Under the Protocol on Ireland/Northern Ireland as appended to the draft Withdrawal Agreement, Northern Ireland would continue to be bound by "provisions of Union law" as set out in the EU's various Excise Directives. The purpose of this is to keep Northern Ireland fully part of the EMCS, and avoid the need for physical excise controls on goods—like whiskey—moving across the border between the two parts of the island. By contrast, the rest of the UK would leave the common excise area; as a result, excisable goods shipped from Great Britain to Northern Ireland would need to undergo customs controls of some description before they could be cleared for free circulation and enter 'duty suspension' in the EMCS. Those conditions would apply "unless and until they are superseded" by a subsequent trade agreement between the UK and the EU.[114] It is likely the UK and EU will have different interpretations of what the substance of such an agreement would need to be in relation to excise duty for it to effectively supersede this element of the 'backstop'.

9.11 By contrast, in a 'no deal' scenario (where the Withdrawal Agreement is not ratified by 29 March 2019), EU excise law would cease to apply to the UK overnight. In such an eventuality, the EU has said full customs and excise controls would take place on excise goods entering the Union from the UK, and HM Revenue & Customs would be blocked from using the Excise Movement and Control System immediately. The overall effect would be to slow down the process of moving alcohol, tobacco and fuel from the UK into the EU (likely to be exacerbated further by the need for other customs and regulatory controls, including tariffs, VAT and product safety checks). It appears the Government envisages applying the same approach to excise goods entering the UK from the EU.[115]

9.12 Furthermore, once it ceases to be bound by EU excise legislation, the UK will not be part of the new certification system proposed for small cider producers (see paragraph 3 above, and paragraphs 38 and 39 of our previous Report). This means documentation issued by UK authorities to certify that a small producer qualifies for reduced rates of duty when exporting to the EU will not automatically be recognised by the remaining Member States.

Our conclusions

9.13 **We thank the Minister for his update on the state of play in the negotiations on the EU's excise reforms. We are content to now clear the proposals from scrutiny, given the Minister's reassurance that the Government has no concerns about the direction of travel and the technical nature of the amendments.**

9.14 **However, we remain concerned about the potential for the UK to become bound by EU tax legislation during the post-Brexit transitional period, should the Withdrawal Agreement be ratified. While it now appears the excise reforms will be agreed before the UK ceases to be a Member State, meaning it retains a veto until 29 March 2019, it**

114 See Articles 1 and 9 of the Protocol on Ireland/Northern Ireland.

115 HM Revenue & Customs has said that a domestic version of EMCS "would continue to be used to control the movement of duty suspended excise goods within the UK, including movements to and from UK ports".

is unclear for how long the changes would apply here (which would depend firstly on the ratification of the Withdrawal Agreement, and on the length of the subsequent transitional period.)

9.15 **At the end of the transition, the Irish 'backstop' would become operational unless a free trade agreement had already been agreed with the EU which must the Protocol entirely redundant. We consider this extremely unlikely, especially by December 2020, given the scope of the agreement that must be negotiated and the many politically difficult issues that will need to be addressed. In the area of excise specifically, the Government has refused repeatedly to provide any clarity about its proposals for a future arrangement with the EU that would obviate the need for excise controls on goods transported between the Great Britain and Europe (and, by extension, supersede the relevant parts of the Irish Protocol). Under the backstop, the excise reform proposals we have described in this Report would automatically apply in Northern Ireland as they amend existing EU legislation which is explicitly listed in the Withdrawal Agreement.**[116]

9.16 **We presume that, at a minimum, an overarching UK-EU arrangement on excise would need to keep the UK in the EU's Excise Movement and Control System and apply the European legislation that underpins its operations. To what extent the specific provisions on the EMCS are severable from the wider EU statutory framework on excise duty—for example minimum duty rates—will be a key point in the negotiations, and one where the UK and the EU are likely to take different interpretations. Indicative of the potential problems ahead in negotiations in this area is the fact that the European Commission, in response to the Government's initial proposal for the excise-related elements of the Irish backstop in summer 2018, said it would lead to "piecemeal application of EU […] excise rules [and] serious risks of fraud".**[117] **(As we have noted before, a similar—and more difficult issue—is likely to arise in relation to Value Added Tax, and the UK's access to the VAT Information Exchange System that is an integral part of the EU's way to avoiding the need for VAT controls on intra-EU movements of goods.)**[118]

9.17 **Since then, the Government has not publicly provided any further detail on how it wants to approach matters of excise on trade with the EU in the future. In the Chequers White Paper, the Treasury only said that it wants to put in place "common cross-border processes and procedures for VAT and Excise" to "ensure that [no] new declarations and border checks between the UK and the EU […] need to be introduced" for those purposes.**[119] **Despite repeated requests, the Government has been unable or unwilling to specify what those 'processes and procedures' might be, and to what extent they could require the UK to continue applying EU excise legislation. The Minister's latest letter provides no further information in this regard, except to say that "it is not possible to definitively answer the Committee's Brexit-related questions on these proposals while negotiations on the UK's withdrawal from the EU are continuing".**

9.18 **In a 'no deal' scenario, or at the end of any transitional period, the UK will automatically leave the EU's common excise area on 30 March 2019. At that point, excise controls would need to be carried out by customs officials on British goods**

116 See Annex 6 to the Protocol on Ireland/Northern Ireland, section 2 ('Excise').

117 European Commission presentation on UK technical note on temporary customs arrangements (11 June 2018).

118 See our Report of 3 April 2018 for more information on the VAT-related Brexit implications for trade with the EU.

119 DExEU, "The future relationship between the United Kingdom and the European Union" (12 July 2018).

shipped to the EU (and to Northern Ireland, if the 'backstop' were to take effect). The Government would also need to carry out such checks on excise goods entering from the EU to ensure duty was not evaded. Although at that point the UK could also theoretically lower excise duty below the EU's minimum levels, it appears unlikely that this will happen given that the current rates are already well above those European limits.

9.19 **Whatever the outcome of the EU exit process, we hope—most likely against our better judgement—that the Minister will soon be able to provide more details of the Government's approach to avoid as much as possible the need for VAT and excise checks on trade with the EU beyond the UK's exit from the Customs Union. The Treasury's proposals in this area will remain relevant even if the Withdrawal Agreement is not ratified. The immediate disruption of a 'no deal' scenario will not negate the need for the UK and the EU to eventually return to the negotiating table, to agree on a new economic partnership that facilitates trade as much as possible, even with the UK outside the Customs Union and the Single Market. That will, we expect, include discussions around VAT and excise controls.**

9.20 **Given the potential applicability of these EU excise reforms in the UK, and in Northern Ireland in particular, we draw these developments to the attention of the Business, Energy and Industrial Strategy, Northern Ireland Affairs and Treasury Committees.**

Full details of the documents:

(a) Proposal for a Council Directive laying down the general arrangements for excise duty: (39854), 9571/18 + ADDs 1–3, COM(18) 346; (b) Proposal for a Decision on computerising the movement and surveillance of excise goods (recast): (39847), 9567/18 + ADD 1, COM(18) 341; (c) Proposal for a Council Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register: (39840), 9568/18, COM(18) 349; (d) Proposal for a Council Directive amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages: (39836), 9570/18 + ADDs 1–2, COM(18) 334.

Previous Committee Reports

See (39854), 9571/18 + ADDs 1–3, COM(18) 346: Thirty-third Report HC 301–xxxii (2017–19), chapter 5 (27 June 2018).

10 Green finance: sustainability disclosure requirements for investment advisors and asset managers

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Environmental Audit and Treasury Committees
Document details	Proposal for a Regulation on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341
Legal base	Article 114 TFEU; ordinary legislative procedure; QMV
Department	Treasury
Document Number	(39805), 9357/18, COM(18) 354

Background and Committee's conclusions

10.1 In May 2018, the European Commission introduced draft EU legislation with the aim of ensuring that the financial services industry plays its part in the fight against climate change. The Commission argues this would benefit the environment and lead to more sustainable economic growth (as well as being in the industry's own interest by reducing insurance claims related to environmental damage and ensuring the viability of long-term investments). The overall aim of the proposals is to channel more investment into sustainable activities by incorporating 'Environmental, Social and Governance' (ESG) considerations into investment industry practices.

10.2 Concretely, the European Commission tabled three legislative proposals as part of its 'Green Finance' package. The first two of these would create a 'Sustainability Taxonomy', to aid the assessment of how environmentally-friendly a given investment is, and new rules on financial benchmarks that purport to show how whether the carbon footprint of a specific investment is greater or smaller than a baseline—the benchmark—of a hypothetical portfolio of 'low carbon' investments.

10.3 The third proposal, on which this chapter focuses, would establish new mandatory Environmental, Social and Governance (ESG) disclosure requirements for asset managers, institutional investors and investment advisors, requiring them to be transparent with their customers about the environmental footprint of their investment decision-making or advisory process. In making its proposal, the Commission argued that financial market participants and financial advisors lack regulatory incentives to disclose to end—investors "how they should integrate sustainability factors in their investment decision process" which in turn "makes it more difficult and costly for end-investors to make informed investment choices". It therefore wanted to make it mandatory for financial market

participants[120] to publish written policies on how they incorporate environmental and social factors into their investment processes, and require them to make certain pre-contractual disclosures to "demonstrate how their investments are aligned with ESG objectives and disclose how they comply with these duties".[121]

10.4 Based on an Explanatory Memorandum submitted by the Treasury in summer 2018, the European Scrutiny Committee considered the proposed ESG disclosures requirements in some detail in its Report of 18 July 2018. We concluded the precise impact of the new Regulation was difficult to ascertain, given that the substance of the legislation was likely to be amended by the Member States and the European Parliament before its formal adoption.[122]

10.5 Similarly, when we last considered the Regulation there was a large degree of ambiguity around the implications of the EU's Green Finance proposals for the UK specifically, given that there was (and is, as of January 2019) no certainty about the legal relationship between the UK financial services industry and the EU's Single Market after March 2019. We noted that the new ESG disclosure requirements might apply to the UK investment industry directly during the proposed post-Brexit transitional requirement, and also have an impact on UK domestic regulation if the Treasury wanted to obtain an 'equivalence' decision from the Commission which would give British investment firms preferential access into the Single Market as 'third country' providers. We have made a fuller assessment of the potential implications of the ESG Disclosures Regulation for the UK in paragraphs 11 to 22 below in light of the most recent developments in the Brexit process.

Developments in the legislative process since July 2018

10.6 In December 2018, the Economic Secretary to the Treasury (John Glen MP) provided us with an update on the negotiations among EU Member States on the ESG Disclosures Regulation. The Minister's letter describes the changes the Member States are seeking to make to the text of the legislation in negotiations with the European Parliament. These include:

- An explicit clarification that the scope of the disclosure requirements extends to banks ("credit institutions") where they offer portfolio management or investment advisory services.[123] The Government supports this, as long as other banking activities, like corporate lending, should not be subject to the new disclosure requirements;

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120 The new transparency obligations would apply, in whole or in part, to financial market participants (alternative investment funds and investment advisors engaging in portfolio management), insurance intermediaries which provide insurance advice on insurance-based investment products ('IBIPs') and investment firms which provide investment advice (financial advisors).

121 European Commission press release, "Sustainable finance: Making the financial sector a powerful actor in fighting climate change" (24 May 2018).

122 With respect to the 'Sustainable Taxonomy' specifically, we concluded that it was unclear what "the practical effect" was intended to be, since "the sustainability criteria it would establish would not be binding, but financial services providers would be encouraged to meet those criteria when offering 'green' investment products".

123 The original Commission proposal would have applied to "financial market participants", defined broadly as insurers, hedge funds, UCITS fund management companies, investment firms offering portfolio management under the second Markets in Financial Instruments Directive, workplace pension schemes (IORPs) and providers of personal pension products. See article 2 of the draft Regulation.

- A more defined approach to what could constitute a 'sustainable investment' for the purposes of the Regulation, taking "account of current market practice and initiatives which are working well" by adding specific references to resource efficiency indicators on issues such as energy, carbon emissions and biodiversity;[124] and
- Requiring the periodic report by firms offering 'green' investment products on the sustainability-related impact of those products to be published once a year (compared to every six months under the Commission proposal).

10.7 In early December 2018, the "most significant issue" still to be resolved, in the Government's view, was the fact the new disclosure requirements would apply to *all* workplace pension schemes, including the smallest ones. (These schemes are caught by the Regulation because the invest their members' pension contributions on their behalf.) The Department for Work & Pensions had "strong reservations" about this approach, which is different from the approach taken under the sectoral EU legislation governing such schemes (the IORP Directive).[125] That Directive allows individual Member States to exempt schemes with fewer than 100 members from the "vast majority" of its provisions for reasons of proportionality (a policy discretion exercised by the UK and a number of other Member States). The Government was therefore pushing "for the same proportionality to be introduced in the final text of this proposal" on ESG disclosures.[126] We understand that this approach has been successful, with the other Member States now supporting an exemption for smaller workplace schemes caught from the scope of the disclosure requirements.

10.8 We note that the European Parliament's Economic & Monetary Affairs Committee adopted its position on the proposal on 5 November 2018, which recommended some changes to the Regulation that are not wholly in line with the Member States' position as described by the Minister in his letter.[127] Notably, MEPs are seeking to include more banking activities within the breadth of the disclosure requirements, although their amendments would not extend the scope of the Regulation to corporate lending.[128] The Parliament also wants additional powers for the European Commission to adopt Delegated Acts to specify minimum standards for financial services providers' ESG and due diligence policies, and to establish a binding format for pre-contractual disclosures.

Next steps

10.9 The Economic Secretary explained that the EU Finance Ministers are expected to formally adopt a 'general approach'—a mandate for negotiations with the European Parliament on the final text of the ESG Disclosures Regulation—in January 2019 to reflect

124 In the Regulation as proposed, "sustainable investments" are defined in point (o) of Article 2.

125 Directive 2016/2341.

126 The Member States have already supported removing an amendment to the IORP II Directive from the draft Regulation, which would have enabled the European Commission to adopt further Delegated Acts specifying how such schemes make investment decisions and assess risks in order to take into account ESG considerations.

127 European Parliament document A8–0363/2018.

128 The European Parliament's Report would amend Article 2 of the Regulation to extend the definition of "financial market participants" to "a credit institution [...] which provides investment or credit risk-management processes". The analogous section of the Council's position reads "a credit institution which provides portfolio management".

their suggestions and concerns as described above.[129] The Minister noted that the Member States are close to a "compromise that provides for a robust EU framework for sustainable disclosures, and reflects the aims and needs of the UK sustainable finance market". He therefore asks the European Scrutiny Committee for scrutiny clearance, to enable the Government to support an agreement "depending on the outcome" on the applicability of the Regulation to workplace pension schemes as outlined above.

10.10 The final text of the Regulation will be negotiated between the Romanian Presidency of the Council and the European Parliament, with a view to reaching agreement before the dissolution of the Parliament in April 2019.

Our conclusions

10.11 **We are grateful to the Economic Secretary for his latest helpful update on the state of play in the negotiations on the new ESG Disclosures Regulation, and the potential impact it could have on the UK investment services industry. The Government appears broadly supportive of the objectives of the new legislation, but has voiced concerns in particular about using a Regulation to set binding EU-wide disclosure requirements on sustainability (and initially said it would explore with other Member States the possibility of using non-binding guidance for the financial sector instead). By October 2018, the Minister had told us however that the UK was "not opposed to a new Regulation if that is the best method through which we can achieve best practice across industry for the benefit of investors".[130]**

10.12 **It is interesting therefore that the recent Financial Services (Implementation of Legislation) Bill, which would allow the Government to implement proposed ("in-flight") EU financial services legislation in the event of an exit from the EU without a Withdrawal Agreement, does not cover the ESG Disclosures Regulation or the Sustainability Taxonomy.[131] Overall, this suggests the Government's support for the proposal is lukewarm, and that the Treasury is not in fact persuaded that regulatory action is the "best method" to achieve the aims of the disclosure requirements, nor that the Sustainability Taxonomy offers sufficient added value for it to be copied into UK law.**

10.13 **The Government's position on the substance of the new Disclosures Regulation not withstanding, the legislation—once adopted at EU-level—could still be relevant for the UK despite its exclusion from the Financial Services Bill (in both a 'deal' and 'no deal' scenario).**

10.14 **First, if the UK's Withdrawal Agreement is ratified, a transitional period would occur—possibly lasting until the end of 2022—during which all EU law, including new financial services legislation, would apply to the UK as if it were still a Member State. If there is such a transition, it is likely to include this the ESG Disclosures Regulation: the Minister indicates formal adoption is expected before the European Parliament elections in May 2019, meaning the new rules would take effect at some point in 2020.[132]**

129 The Council's positions were informally signed off by the Member States' Permanent Representatives in COREPER before the 2018 Christmas recess.

130 Letter from John Glen to Sir William Cash (3 October 2018).

131 See the Financial Services (Implementation of Legislation) Bill [HL] 2017–19.

132 The original Commission proposal foresees a date of application of 12 months after the Regulation is adopted.

10.15 **Moreover, the Withdrawal Agreement contains the controversial Protocol on Ireland and Northern Ireland (the 'backstop') to keep the land border with Ireland free from any customs and regulatory infrastructure, even if no UK-EU trade agreement is in place by the end of the transition. It includes a *de facto* customs union between the EU and the whole of the UK, coupled with "level playing field" provisions in a number of areas to ensure goods that which can be traded tariff- and quota-free between the UK and EU are produced to the same basic environmental and social standards.[133] In particular, Article 2 of Annex 4 of the Protocol states that, should the backstop take effect:**

> **"The United Kingdom shall ensure that the level of environmental protection provided by law, regulations and practices is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the transition period in relation to […] climate change".**

10.16 **This Article does not list the specific EU legal acts which would constitute the 'common standards' it refers to, and it is also explicitly excluded from the scope of the dispute resolution mechanism created by the Agreement, which can refer questions of EU law to the Court of Justice. It is therefore not clear if the measures in the Green Finance package, which are explicitly linked to the EU's implementation of the Paris Climate Change Accord,[134] fall within the scope of Article 2 of Annex 4 to the Protocol (although they are based on Article 114 of the EU Treaty, relating to the Single Market, and not Article 192, which governs EU rules on environmental protection). We have asked for clarification of the Government's interpretation of this aspect of the backstop in relation to these proposals.**

10.17 **Second, the ESG Disclosures Regulation could also affect the UK's domestic approach to the investment services industry after the end of the post-Brexit transition, depending on the level of market access into the EU the industry wants to maintain after the withdrawal from the Single Market (whether in March 2019 in a 'no deal' scenario, or at the end of any transitional period if the Withdrawal Agreement is ratified).**

10.18 **The UK's access to the EU's market for financial services as a 'third country' (and vice versa) will be based on the EU legal concept of equivalence.[135] This is the mechanism by which the European Commission can officially determine that the regulatory system of a non-EU country in a specific financial services sector achieves broadly the same outcomes as its own, in which case barriers to trade between the EU and the sector in question in that country are lowered. Although the exact effects of an equivalence determination vary sector-by-sector, for the investment industry it could**

133 The Protocol excludes fisheries and aquaculture products from the scope of the UK-EU customs union unless a specific agreement on access to fishing waters is concluded.

134 For example, the first recital to the ESG Disclosures Regulation refers to the Paris Accord and the need for "making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development".

135 Despite an earlier Government push for horizontal mutual recognition of financial services standards between the UK and the EU from 'day 1' after the transition, the Political Declaration on the future UK-EU relationship accompanying the Withdrawal Agreement states explicitly the future trading arrangements in financial services will be based on equivalence (i.e. the same preferential access theoretically available to any non-EU country under EU law).

potentially create a general 'passporting' right for UK firms to provide certain services throughout the EU without the need to establish a legal presence there (to some extent preserving their current rights as part of the Single Market).[136]

10.19 **Given the size of the UK's investment services industry, it is likely to want to obtain equivalence after the UK formally leaves the Single Market.**[137] **The regulatory baseline on which the EU's assessment would be made are the Markets in Financial Services Regulation (MiFIR) for investment firms and the Alternative Investment Fund Managers Directive (AIFMD) for hedge funds. The proposed ESG Disclosures Regulation would supplement the regulatory requirements for firms set out in those laws. As such, it is possible that the European Commission would expect the UK to observe similar disclosure requirements related to sustainability in its domestic legislation in order to achieve equivalence, and gain access to the EU market from the UK.**[138]

10.20 **Aside from the need to maintain aligned to some extent with EU law without having a say over it to gain—and maintain—equivalent status in various areas of the financial services sector, there are other risks in relying on equivalence to gain preferential market access to Europe from outside the Single Market. The EU's decision to introduce a time-limit its recognition of the equivalence of Switzerland's regulation of stock exchanges, to put pressure on the Swiss to accept a new political partnership with the EU, is illustrative.**[139] **It shows how equivalence assessments—and other areas of the trade talks—could easily become caught up in broader political events, rather than being a straightforward technical and legal exercise.**

10.21 **In recognition of these potential pitfalls, the Government wants to discuss wider reforms of the 'equivalence' process with the EU as part of future trade talks, to put market access rights on a more stable footing and introduce some form of dispute resolution if the EU wanted to modify or withdraw equivalence in a particular sector. It is unclear to what extent the EU would be willing to accommodate those requests. As we have discussed in a separate chapter of this Report, the EU is already undertaking its own comprehensive review of the conditions for 'equivalence' for investment services regulated by its Markets in Financial Instruments legislation, driven largely by the UK's withdrawal and its anticipated request for equivalence in the near future. The Treasury will be excluded from those discussions when the UK ceases to be a Member State on 29 March 2019.**[140]

136 The precise legal consequences of an equivalence decision vary on a sector-by-sector basis. They do not always offer market access rights, but in many cases provide EU-based institutions with prudential or regulatory reliefs when interacting with 'third country' institutions covered by the equivalence decision.

137 If there is no Withdrawal Agreement, UK-EU trading arrangement for financial services would be based on 'equivalence' immediately from March 2019. The European Commission has said it will implement contingency (temporary) equivalence decisions in only two areas—clearing of derivatives by UK central counterparties and reporting of derivatives trade to UK-based trade repositories. As such, a 'no deal' Brexit means the current legal basis for UK market access into the EU for a range of financial services, including investment and advisory services, would disappear overnight.

138 In October 2018, the Economic Secretary confirmed that the ESG Disclosures Regulation could therefore affect the regulatory baseline for any 'equivalence' decisions relating to the UK after it has exited the Single Market.

139 The Commission, with the support of all Member States including the UK, in December 2018 extended equivalence of Swiss stock exchanges for a period of only 6 months after the Swiss Government refused to endorse a new EU-Switzerland institutional arrangement.

140 We have discussed the 'investment firm review' in a different chapter of our Report of 9 January 2019.

10.22 **In light of the above, it is clear that the new ESG Disclosures Regulation could impact on the UK financial services industry directly and indirectly for a number of years. We are however content to now clear the proposal from scrutiny, as the legislative process is likely to be finalised in the coming months. We do however ask the Minister to confirm whether, in the Government's view, any of the 'Green Finance' proposals would or could fall within the scope of Article 2 to Annex 4 of the Irish Protocol, establishing the 'level playing field' conditions for the UK and EU in relation to environmental protection if the 'backstop' were ever to take effect.**

10.23 **We also draw these developments to the attention of the Environmental Audit and Treasury Committees. We will shortly be considering a separate update we have recently received from the Minister in relation to the Low Carbon Benchmarks proposal, and report our findings to the House. We understand that negotiations on the final proposal in the Green Finance package, relating to the Sustainability Taxonomy, are still on-going within the Council. No agreement expected in the short-term, and it therefore remains under scrutiny.**

Full details of the documents:

Proposal for a Regulation on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341: (39805), 9357/18, COM(18) 354.

Previous Committee Reports

See (39805), 9357/18, COM(18) 354: Thirty-sixth Report HC 301–xxxv (2017–19), chapter 4 (18 July 2018).

The Committee also published a Report earlier in 2018 on the European Commission's "Action Plan on Financing Sustainable Growth", which announced the Green Finance legislative proposals. See 39560, 7216/18, COM(18) 97: Twenty-sixth Report HC 301–xxv (2017–19), chapter 12 (2 May 2018).

11 EU budget 2019

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Treasury Committee and the Public Accounts Committee
Document details	(a) Statement of Estimates of the European Commission for the financial year 2019; (b) Letter of amendment No 1 to the draft general budget for 2019
Legal base	Article 314 TFEU; special legislative procedure; QMV
Department	Treasury
Document Number	(39886), 10365/18, COM(18) 600; (40120), 13199/18, COM(18) 709

Summary and Committee's conclusions

The 2019 EU budget

11.1 In June 2018 the European Commission presented its draft budget for the European Union for the 2019 calendar year. As proposed, the budget would allow the EU to make €166 billion (£147 billion) of spending commitments next year (a 3 per cent increase compared to the 2018 budget). Payment appropriations—the amount the EU can actually pay out in 2019—were provisionally set at €148.7 billion (£132.3 billion).

11.2 The Commission described its priorities for the 2019 budget as "investing in a stronger and more resilient European economy" and—given the continued political controversy around inflows of people via the EU's southern and eastern borders—"promoting solidarity and security on both sides of the EU's borders". For the latter, proposed spending in 2019 exceeded the initial limit for that year set by the Member States back in 2013—under the long-term Multiannual Financial Framework—by nearly a billion euros, resulting in extensive use of the Flexibility Instrument to make up the shortfall.[141]

11.3 The annual EU budget remains of interest for the UK taxpayer despite the Brexit process because the draft Withdrawal Agreement, if ratified, would require the Treasury to continue making normal contributions until the end of 2020. After that, the UK would pay off a steadily decreasing share of the EU's outstanding expenditure commitments made under annual budgets up to and including the 2020 EU budget, as well as for other liabilities (like EU staff pensions accrued during the UK's membership and, should they crystallise, contingent liabilities on the EU's books). If the Withdrawal Agreement is

141 The Flexibility Instrument is an EU budgetary mechanism, which can be used to provide funding in a given financial year for "clearly identified expenses which could not be covered by one or more budget headings without exceeding their expenditure ceilings".

not ratified, both the Chancellor and the previous Secretary of State for Exiting the EU have hinted that the UK could still be liable for payments to the EU in respect of historic financial commitments.[142]

11.4 Moreover, for 2019 the European Commission has also started proposing the use of EU funding for projects directly related to Brexit. For example, it is planning EU investment in a new shipping route between Ireland and the continent that would allow some freight transports to by-pass the UK more easily. It is difficult to see how that is a good use of UK public funds, given that the Treasury would effectively part-finance any projects which start before the end of the transitional period in December 2020. The Commission has also earmarked €10 million for the creation of an EU 'delegation' to the UK following the closure of the current EU 'representations' in London, Cardiff, Edinburgh and Belfast (which will result in much smaller savings of €700,000). Under the Withdrawal Agreement, the UK would therefore pay towards the establishment of a new EU diplomatic mission in London. We have described some of the most politically relevant areas of spending in our initial Report on the draft budget, published in July 2018.

11.5 In its initial position, the Member States proposed to reduce the draft EU budget for 2019 by €1.6 billion (£1.4 billion) for new commitments, and by €500 million (£445 million) for actual payments.[143] Compared to the original Commission proposal they sought cuts to a number of programmes, including most prominently the Agricultural Guarantee Fund (which covers direct payments to farmers), the EU's research programme Horizon 2020,[144] the Connecting Europe Facility for transport and energy infrastructure, and the fund for countries seeking accession to the EU. The European Parliament, by contrast, in October 2018 sought to restore almost all the funding commitments cut by the Council.[145] That same month, the European Commission published an amendment to the draft budget to reflect a number of recent developments, including a decision to maintain a European Commission office in Belfast after Brexit (at a cost of €900,000 in 2019).[146]

11.6 As is the case every year, it the Parliament's proposed increases to the EU budget were not acceptable to the Member States and therefore triggered the statutory 21-day 'conciliation period' under the Treaties, during which representatives of the Parliament and the Member States have to negotiate an agreement on the budget for next year, (which must be in place by the end of 2018). The Chief Secretary to the Treasury (Rt Hon Elizabeth Truss MP) informed us of the outcome of the conciliation process by letter dated 20 December 2018. This explained that negotiations initially foundered in mid-November, centred on the Parliament's insistence that de-committed research funding

142 In evidence to the House of Lords EU Committee on 29 August 2018, Dominic Raab said there was still a "question around quite what the shape of those financial obligations were" if the UK left with no deal, and that the UK "always pays its dues". Similarly, Philip Hammond is reported to have told Cabinet that the EU could have a strong legal case for demanding payments.

143 See Council document 11737/18 ADD 1 (7 September 2018).

144 Although the Council wanted to reduce the commitment appropriations for Horizon 2020 by €300 million compared to the Commission proposal, this would still be a €648 million increase compared to 2018.

145 The Parliament's position set the overall level of appropriations for 2019 at €166.3 billion in commitment appropriations and €149.3 billion in payment appropriations (an increase of €721 million for commitments compared to the original Commission proposal). See European Parliament document P8_TA(2018)0404 (25 October 2018).

146 The European Commission's offices in Edinburgh and Cardiff are due to be closed from March 2019. A proposal to formally open an EU delegation in London to replace the current 'representation' is being prepared.

appropriations—money initially set aside for EU research funding which was subsequently cancelled for any reason—should be added to the pool of available funding for future scientific research projects.[147]

11.7 To solve the impasse in the talks, the European Commission then presented a new draft budget to kick-start the talks, which led to an informal agreement on the 2019 EU budget on 4 December 2018. The Chief Secretary to the Treasury (Elizabeth Truss) informed us of these developments by letter dated [date]. The final budget will consist of €165.8 billion (£148.9 billion) in commitment appropriations, and €148.2 billion (£133.1 billion) in payment appropriations, 3.2 and 2.4 per cent more respectively than under the 2018 budget.

11.8 Under the final agreement, the Parliament withdrew its demand to recycle the research funds, in return for higher levels of funding for "programmes […] considered key to boosting growth and jobs", including Erasmus+ (€240 million), and the research programme Horizon 2020 (€150 million). These two budgets will receive a further funding boost through an amending budget in 2019, adding an additional €100 million. The Minister's letter explains that these increases will be offset by reductions in appropriations in other headings, particularly in the EU's external action (for example by reducing pre-accession assistance for Turkey, in view of the suspension of its negotiations to become an EU Member State).

11.9 The Member States and MEPs also agreed on a substantial boost for the 'Security and citizenship' heading of the budget, using the EU's Flexibility Instrument. As had been proposed by the Commission, this will allow the EU to fund nearly €1 billion more for policies related to the "refugee, migration and security crisis" than originally planned when the Union's current long-term budget was adopted in 2013.

11.10 The 2019 EU budget was formally approved by the Member States on 11 December 2018, to allow for final adoption by the European Parliament at its last Plenary Session of 2018 that same week. No override of scrutiny occurred, because the UK Government abstained when the budget was put to the Member States for approval.[148]

11.11 Separately, the Government has also approved the budget for the European Defence Agency (EDA) for the first three months of 2019. The Agency's role is to support the Member States[149] in developing their military capabilities, but it has no executive or operational role. As the general EU budget cannot be used for any expenditure with 'defence or military implications', the EDA is instead funded by direct contributions from

147 The possibility to add de-committed EU research funding to its budget for scientific research in a subsequent year was made possible by amendments to the EU's Financial Regulation, adopted in 2018. See Article 15(3) of Regulation 1046/2018. The Member States were opposed to making use of this option because they were of the view that the "agreed capacity of each budget heading should be used before the recycling of lapsed funds is considered".

148 See Council document 15491/18, in which the voting result is recorded. The UK was the only Member State not to vote in favour of the budget. In her letter of 20 December 2018, the Chief Secretary motivated the UK's vote by saying that the UK has "consistently argued for further commitments cuts across all headings and a higher commitments margin to allow space in the budget to respond to the uncertainty facing the EU. […] In recognition of the compromises made by all sides, including the removal of the reuse of recommitments, and the budget's overall compliance with the 2013 MFF deal, we decided not to vote against".

149 Denmark is not part of the European Defence Agency because of its opt-out from the Common Security & Defence Policy (CSDP).

the Member States. As with most defence-related decisions taken at EU-level, each country has a veto over the Agency's financial endowment. The UK is responsible for 16 per cent of the EDA budget.

11.12 On 13 December 2018, the Minister for Defence Procurement (Andrew Stuart MP) informed us that the UK had unilaterally blocked a proposed 7.7 per cent increase for the Agency's budget for 2019, which would have taken it to €35 million (£31.4 million).[150] The Secretary of State for Defence viewed this proposed increase as "unacceptable". Instead, the Government had approved of a continuation of the EDA's 2018 budget on a monthly basis until the end of March 2019.[151] However, in his letter the Minister also conceded that the remaining Member States could push through an increase as soon as the UK loses its veto on 29 March 2019, and that the Withdrawal Agreement would require the Treasury to pay for the UK's share of the additional funding (irrespective of whether the Government would have blocked the budget if it still had the power to do so). Given that the UK was the only Member State to veto the budgetary increase, this is a likely outcome if the Agreement is ratified and the UK remains a contributor to the Agency's budget until the end of 2020.[152]

Implications of the 2019 EU budget for the UK

11.13 Despite the UK's formal withdrawal from the EU in March next year, the 2019 EU budget will have significant financial implications for the UK. The financial settlement under the draft Withdrawal Agreement requires the Treasury to pay for a share of all EU expenditure to be committed under the Union's general budgets up to and including 2020.[153] However, as the UK will lose its voting rights in the Council on 29 March 2019—well before the 2020 EU budget will be negotiated and agreed—this 2019 budget is the last general EU budget over which the Government is likely to have a vote.

11.14 The Chief Secretary previously explained that the UK's financing share for the 2019 EU budget—should the Withdrawal Agreement be ratified—is expected to be 11.4 per cent. The UK's net contribution would be lessened by EU investment in the UK and the application of the UK rebate. The disentangling of the UK and EU's financial obligations to each other if the Withdrawal Agreement is not ratified will be a matter for debate, although—as we noted earlier—both the Chancellor and the previous Secretary of State for Exiting the EU have indicated that, even in such a scenario, the UK may be under an obligation to make payments to the European Union in respect of historical commitments.[154]

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150 Letter from Andrew Stuart to Sir William Cash (13 December 2018). Officials subsequently confirmed the UK was the only EDA Member State to vote against the proposed budget.

151 The EDA's budget for 2018, approved by the UK and the other Member States in November 2017, was €32.5 million (£29.2 million). Concretely, this means the Agency will have a budget of €8.13 million from January to March 2019 (compared to the €8.75 million it would have had under the proposed budget for the same period).

152 We understand the Government also vetoed the proposed 2019 budget for the EU Satellite Centre (SatCen), which must likewise be approved by all participating Member States.

153 The reason provided by the Government is that none of the remaining Member States should receive less or contribute more over the lifetime of the current Multiannual Financial Framework (MFF), which runs from 2014 until 2020 and was adopted unanimously—i.e. with the UK's agreement—in 2013.

154 In evidence to the House of Lords EU Committee on 29 August 2018, Dominic Raab said there was still a "question around quite what the shape of those financial obligations were" if the UK left with no deal, and that the UK "always pays its dues". Similarly, Philip Hammond is reported to have told Cabinet that the EU could have a strong legal case for demanding payments.

11.15 The Chief Secretary has also said that, during the transitional period, the UK will get a "fair share of receipts" from the EU budget. However, this is not something the Government can unilaterally guarantee, there are a number of reasons to be sceptical of this claim.

11.16 First, we remain concerned that the uncertainty about the UK's long-term relationship with the EU is already leading to a reduction in EU research funding for the UK (a major source of discretionary EU receipts that flow to the UK), because potential partners in other Member States are foregoing cooperation with British researchers for consortia elsewhere.[155] Moreover, from March 2019, the Government will also lose its voting rights over EU work programmes that determine how the 2019 and 2020 budgets will be spent under particular EU programmes, and in some cases even its right to vote on individual funding decisions (for example under the European Defence Industrial Development Programme).[156] The 2020 EU budget, and therefore the Union's funding priorities for that year, will also be decided without the UK in the room. As can be seen from the developments around the European Defence Agency budget, expenditure is likely to be increased in areas where the UK would otherwise have argued for budgetary restraint.

11.17 Moreover, as we noted in July 2018, the Brexit financial settlement also means British taxpayers would pay towards some of the EU's own preparations for the UK's withdrawal (in addition, of course, to paying for the Government's domestic preparations). If the Withdrawal Agreement is ratified, the UK would contribute to the EU's 2019 budget and, consequently, part-finance several areas of Brexit-related expenditure. These include, for example, investment in a shipping route between Ireland and the continent by-passing the UK; the staffing of a 'UK desk' in the European External Action Service, including of a larger EU delegation in London (at a net cost of €9.3 million);[157] and the relocation of the European Medicines Agency and the European Banking Authority away from London. Other potential expenses partially borne by the UK will include the removal of the UK's access from various EU IT systems, particularly those in the area of customs (to be funded from the 2014–2020 Customs Programme and, potentially, its successor).

Our assessment

11.18 **We thank the Chief Secretary for the information she has provided about the finalised 2019 EU budget. The UK would remain a significant net contributor to EU expenditure in 2019 should the Withdrawal Agreement be ratified, and we will continue to scrutinise information we receive from the Government about the implementation of the budget as necessary. We will also continue to press the Government about the financial implications of the post-Brexit transitional period, especially in relation to**

155 To qualify for EU research funding, projects must typically be undertaken by participants from at least three EU Member States or 'associated' countries. Given that the UK's position in the Framework Programme for 2019–2020 will not be certain until the Withdrawal Agreement is ratified, it remains unclear what would happen to EU-funded research projects involving UK organisations on 29 March 2019.

156 Similarly, while not strictly speaking a budgetary receipt, lending to the UK from the European Investment Bank (which the UK part-funds) has also decreased sharply since the referendum, which may be indicative of a wider issue.

157 The costs of the larger EU delegation are partially offset by savings generated by the closure of the much smaller 'representations' that the European Commission maintains in Cardiff and Edinburgh at present. The representation in Belfast is to remain open given the controversy around the position of Northern Ireland.

the 2020 EU budget—to which the UK, uniquely among all countries paying into it, will contribute without having a vote over its substance—and the post-2020 Multiannual Financial Framework.

11.19 **The UK's exit from the EU also does not, by the Government's own admission, mean that there will be no further UK payments to the EU budget in addition to the Brexit financial settlement as described above.**

11.20 **First, the draft Withdrawal Agreement explicitly provides for the possibility of an extension of the post-Brexit transitional period beyond 31 December 2020. Although the Agreement makes clear the UK would not be bound by the Own Resources Decision—the EU law that governs Member State contributions to its budget and considered a 'third country' for the purposes of EU spending programmes—the extension would be subject to an agreement with the Union about further payments on top of the existing financial settlement.[158] Obviously, a decision to extend transition would therefore inflate the size of the UK contribution to the EU budget after Brexit further, into the next Multiannual Financial Framework (2021–2027).[159] Secondly, beyond the transitional period, the Government wants to stay involved in various EU programmes, including the Framework Programme for Research, which could require a continued financial contribution on an ad hoc basis that could run into billions of pounds annually.**

11.21 **We also note with concern the developments around the 2019 budget for the European Defence Agency. While the Government has blocked the proposed increase for the Agency's budget to €35 million for now, it only has the power to do so until 29 March 2019. The Ministry of Defence has acknowledged that the Withdrawal Agreement as drafted will allow the remaining Member States to increase the EDA's 2019 budget to a higher level at any point after 29 March 2019, and the UK would be legally obliged to pay for a 16 per cent share (even if it considers it, as the Defence Minister put it in relation to the draft 2019 budget for the Agency, an "unacceptable" amount). Similar issues are likely to arise in relation to the general EU budget and the European Defence Agency funding arrangement for 2020: when those are decided, the UK will no longer have a vote or even a right representation during the preliminary negotiations, but the Treasury will nonetheless have to pay for a substantial share of whatever the remaining Member States decide are their EU funding priorities for that year.**

11.22 **A detailed examination of these broader issues is, however, beyond the scope of this Report. We have already expressed our concerns about the financial implications of the Withdrawal Agreement, and the Government's control over EU budgetary decisions that will have a significant impact on UK taxpayers, on numerous occasions.[160] In view of the fact that agreement has been reached between the European Parliament and the Council on the 2019 budget, and given that the Government abstained from the vote when formal adoption took place on 10 December 2018, we are content to now clear next year's EU budget from scrutiny.**

158 See Article 132 of the Withdrawal Agreement.

159 For more information on the EU's next Multiannual Financial Framework, see our Report of 12 September 2018.

160 See for example our Reports of 19 December 2017, 4 July 2018 and 21 November 2018.

11.23 **We also draw the EU budgetary agreement to the attention of the Treasury and Public Accounts Committees, given its financial and political implications for the UK.**

Full details of the documents:

(a) Statement of Estimates of the European Commission for the financial year 2019: (39886), 10365/18, COM(18) 600; (b) Letter of amendment No 1 to the draft general budget for 2019: (40120), 13199/18, COM(18) 709

Previous Committee Reports

See (39886), 10365/18, COM(2018) 600: Thirty-sixth Report, HC 301–xxxv (2017–19), chapter 5 (18 July 2018).

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

Committee's assessment	Politically important
Committee's decision	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

12.1 In October, the European Commission put forward a proposal to amend the 2014 Regulation establishing the EU Asylum, Migration and Integration Fund ("AMIF"). The purpose of the proposal is to ensure that Member States can continue to benefit from unspent commitments made in 2016 to support the implementation of EU relocation measures. As the relocation of asylum seekers has taken place at a slower pace and in smaller numbers than was anticipated in 2015 (at the height of the refugee crisis), the Commission estimates that around €567 million made available for relocation has not been used. Unless the AMIF Regulation is amended, this funding would be "decommitted" at the end of 2018 and would no longer be available to support Member States' national AMIF programmes.

12.2 The UK participates in the EU Asylum, Migration and Integration Fund but, as the Government opposes the mandatory relocation of asylum seekers within the EU, chose not to participate in EU relocation measures. The proposed Regulation would enable Member States to revise their national AMIF programmes so that the unspent funds committed in 2016 would continue to be available, either for relocation or to support other EU priorities in the asylum and migration field. To achieve this, the proposal must be adopted and take effect before the end of 2018.

12.3 In her Explanatory Memorandum of 7 November 2018, the Immigration Minister (Rt Hon Caroline Nokes MP) confirmed that the UK's Title V (justice and home affairs) opt-in Protocol applied to the proposed Regulation but told us that the Government had yet to determine whether there would be any 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.

12.4 She expected the Presidency to seek a mandate for negotiations with the European Parliament at a 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 meant that the Government would 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 expired or seek to opt in after the Regulation had been formally adopted.

12.5 In our Report agreed on 21 November 2018, we asked the Minister to update us on the outcome of the COREPER meeting on 7 November, provide details of any negotiating mandate agreed, indicate how soon she expected the Government to take an opt-in decision and, if the decision was to opt in, whether she agreed with the changes proposed to the 2014 AMIF Regulation and intended to support them at the December Justice and Home Affairs Council. We also asked her to explain:

- whether the outstanding figure of €567 million related to unspent commitments which were made solely for the purpose of implementing EU relocation measures or also included the wider 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 had 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 was not adopted before the end of 2018; and
- whether, as a matter of general policy, the Government considered that unspent commitments should continue to be made available to Member States if payments were not made within the agreed deadline.[161]

12.6 In her letter dated 20 December 2018, the Minister confirms that COREPER agreed a negotiating mandate in November and that negotiations with the European Parliament were concluded in time for the proposed Regulation to be formally adopted by the Foreign Affairs Council on 10 December. She adds that "the UK had not opted in before that meeting and therefore had no vote".

12.7 Turning to the questions raised in our earlier Report, the Minister explains that the proposed Regulation applies only to unspent amounts committed to Member States' national AMIF programmes under the EU relocation measures adopted in 2015. As the UK did not participate in these measures, and receives no EU funding for relocation, the

161 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.

Commission has confirmed that there is no money to be recommitted to the UK. The Minister states that there would, therefore, "be no impact on current UK access to (non-relocation related) AMIF funding if the UK chose not to opt into this proposal".

12.8 The Minister explains that, if the proposed Regulation had not been adopted in time for the relocation funds committed in 2016 to be reallocated, the unspent funds would have been paid into the general EU budget under the EU's de-commitment rules and "will therefore not draw on Member States' budget contributions".

Our Conclusions

12.9 **We thank the Minister for her explanation. As the proposed Regulation has been adopted, we are clearing it from scrutiny. We note, however, that the Minister does not address the possibility, first raised in her Explanatory Memorandum, of a post-adoption opt-in. Given that there would appear to be no benefit for the UK from opting into the Regulation, we ask the Minister to clarify the Government's intentions.**

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 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

Forty-fifth Report HC 301–xliv (2017–19), chapter 9 (21 November 2018).

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

Department for Environment, Food and Rural Affairs

(40237) 15157/18 COM(18) 778	Report from the Commission on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (FLEGT Regulation)
(40248) 15294/18 + ADD 1 COM(18) 788	Report from the Commission to the European Parliament and the Council Interim Report in accordance with Article 26(1) of Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008.

Department for Exiting the European Union

(40238) 14536/18 COM(18) 783	Proposal for a Council Decision determining the composition of the European Economic and Social Committee.
(40239) 14531/18 COM(18) 782	Proposal for a Council Decision determining the composition of the European Economic and Social Committee.

Department for International Trade

(40161) 13801/18 COM(18) 728	Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Implementation of Free Trade Agreements 1 January 2017—31 December 2017.

Foreign and Commonwealth Office

(40270) — —	Council Decision (CFSP) 2018/1930 of 10 December 2018 amending Decision 2014/145/CFSP concerning restrictive measures directed against actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

(40271) — —	Council Implementing Regulation (EU) 2018/1929 of 10 December 2018 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
(40283) — —	Council Decision amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA).

HM Treasury

(39981) 11049/18 COM(18) 513	Report from the Commission on the Guarantee Fund For External Action and its Management in 2017
(40245) 15243/18 + ADD 1 COM(18) 767	Communication from the Commission Capital Markets Union: time for renewed efforts to deliver for investment, growth and a stronger role of the euro.

Office for National Statistics

(40227) 14980/18 COM(18) 754	Report from the Commission on the exercise of the power to adopt delegated acts conferred on the Commission under Regulation (EC) No 638/2004 of the European Parliament and of the Council on Community statistics relating to the trading of goods between Member States
(40232) 15112/18 COM(18) 768	Report from the Commission on the suitability of the owner-occupied housing (OOH) price index for integration into the harmonised index of consumer prices (HICP) coverage

Formal Minutes

Wednesday 9 January 2019

Members present:

Sir William Cash, in the Chair

Martyn Day	Darren Jones
Marcus Fysh	Mr David Jones
Kate Hoey	Andrew Lewer
Kelvin Hopkins	

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 13 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 16 January at 1.45pm

Standing Order and membership

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

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

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

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

The expression "European Union document" covers—

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

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

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

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

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

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

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

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

Current membership

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

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*)