House of Commons

European Scrutiny Committee

Forty-seventh Report of Session 2017–19

Documents considered by the Committee on 5 December 2018

Report, together with formal minutes

Ordered by the House of Commons
to be printed 5 December 2018

HC 301-xlvi
Published on 10 December 2018
by authority of the House of Commons

Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Staff

The staff of the Committee are Jessica Mulley (Clerk), Kilian Bourke, Alistair Dillon, Leigh Gibson, Foeke Noppert, Sibel Taner and George Wilson (Clerk Advisers), Arnold Ridout (Counsel for European Legislation), Joanne Dee and Emily Unwin (Deputy Counsels for European Legislation), Jeanne Delebarre (Second Clerk), Daniel Moeller (Senior Committee Assistant), Sue Beeby, Nat Ireton and Beatrice Woods (Committee Assistants), Ravi Abhayaratne and Paula Saunderson (Office Support Assistants).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is (020) 7219 3292/5467. The Committee's email address is escom@parliament.uk.

Contents

Meeting Summary

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

Brexit-related issues

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

- How the UK will be involved in fisheries decision-making during the post-Brexit implementation period
- Whether the EU will reciprocate the UK's commitment that 2019 quotas will apply for the whole year regardless of the outcome of Brexit discussions, including "no deal"
- How UK implementation of the fisheries discard ban post-Brexit will be any different to arrangements under the Common Fisheries Policy

Summary

Fisheries: 2019 Quotas and Brexit issues

The Committee considered proposals for fishing quotas in 2019, implementation of the discard ban and long-term fisheries management. The quotas for 2019 are notable for two reasons. First, 2019 marks the full implementation of the discard ban, introduced following the "Big Fish Fight" campaign led by Hugh Fearnley-Whittingstall. Implementation has an impact on quotas, requiring slightly higher quotas in some instances or targeted exemptions. The Committee notes the Government's commitment both in the negotiation of the 2019 quotas, and in the specific measures to implement the discard ban, to deliver outcomes that make the ban workable for the fishing industry. The Committee also notes the Government's observation that it will be able to implement the ban differently post-Brexit and asks what this might look like, including any UK ideas that have been opposed in the recent EU negotiations. Second, the UK will leave the EU three months into the quota year. The Government says that, even in a no-deal scenario, it will respect the quota agreement for the whole of 2019. As the EU has not made a similar commitment, the Committee invites the Minister to advocate its inclusion in the final Regulation or, at the very least, negotiate a joint declaration to the same effect to be attached to the Council minutes. The Committee also presses for information on how the UK will be involved in the adoption of detailed fishing rules affecting the UK when it is out of the decision-making room. To date, the Minister has only set out the Government's expectations in this regard rather than clear arrangements. Turning to longer-term issues, the Government considers the new Multi-Annual Plan for fishing in the Western Waters (all UK waters

apart from the North Sea) to be a valuable framework for fisheries cooperation between the UK and the EU post-Brexit. The Committee notes the relevance of this in the context of the recent commitment to cooperate on fisheries management measures.

Not cleared (scrutiny waiver granted); drawn to the attention of the Environment, Food and Rural Affairs Committee

Interoperable EU information systems for security, border control and migration management

The European Commission has proposed two Regulations to make EU security, border and migration information systems interoperable so that information on cross-border security threats and irregular migration can be shared more rapidly. The main features are the creation of a European search portal (a "one-stop shop" enabling multiple EU information systems to be searched simultaneously), a shared biometric matching service, a common identity repository and a multiple identity detector. All four features are intended to be mutually reinforcing, making it quicker and easier to spot individuals using multiple identities to evade detection. The UK is only entitled to participate in the proposed Regulation covering the EU information systems in which the UK takes part (the cross-border law enforcement elements of the Schengen Information System—"SIS II", the EU's asylum database—"Eurodac", and an information system provision for the exchange of criminal records—"ECRIS-TCN"). The UK cannot participate in the proposed Regulation covering other Schengen-related information systems from which the UK is excluded. The Council agreed a general approach on both proposals in June. The new interoperability framework is unlikely to be up and running until around 2023, after the expiry of the transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement. Recent scrutiny has focussed on third country access to data obtained through the interoperability framework (and the underlying EU information systems) and the impact of the proposals on British citizens post-exit/transition—once they cease to be EU citizens, their data will be held on EU Information systems covered by the interoperability framework. In its latest update, the Government concedes that it is unlikely to secure more favourable terms for third country access to personal data obtained through the interoperability framework. The Government expects the Justice and Home Affairs Council to agree a compromise text at its next meeting on 6/7 December 2018. The European Scrutiny Committee agrees to grant a scrutiny waiver to enable the Government to support a satisfactory compromise text but requests a further update on the outcome of the Council with a view to considering final clearance from scrutiny.

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

Documents drawn to the attention of select committees:

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

Environment, Food and Rural Affairs Committee: Multi Annual Plan for fishing in Western Waters [Proposed Regulation (C)]; Import from the US of beef not treated with growth-promoting hormones [Recommended Council Decision (C)]; Fisheries catch quotas for 2019 [Proposed Regulation (NC; scrutiny waiver granted)]; Fisheries Discard Plans 2019–21 [Delegated Regulations (C)]

Home Affairs Committee: Interoperable EU information systems for security, border control and migration management [Proposed Regulations (NC; scrutiny waiver granted)]; Strengthening the European Union Agency for Asylum [Amended Proposal for a Regulation (NC)]

International Trade Committee: Import from the US of beef not treated with growth-promoting hormones [Recommended Council Decision (C)]

Justice Committee: Interoperable EU information systems for security, border control and migration management [Proposed Regulations (NC; scrutiny waiver granted)]

Public Accounts Committee: EU budget: discharge for 2017 [European Court of Auditors' Annual Reports (C)]

Treasury Committee: EU budget: discharge for 2017 [European Court of Auditors' Annual Reports (C)]; SEPA: cost of cross-border money transfers [Proposed Regulation (C)]

1 Fisheries catch quotas for 2019

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; but scrutiny waiver granted; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Proposal for a Council Regulation fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters
Legal base	Article 43(3) TFEU, QMV
Department	Environment, Food and Rural Affairs
Document Number	(40168), 13731/18 + ADDs 1–2, COM(18) 732

Summary and Committee's conclusions

1.1 Catch limits for fishing in EU waters, and for EU vessels fishing in certain other waters, are set in December each year to take effect from 1 January. The annual approach is combined with multi-annual management plans and long-term principles for setting TACs (Total Allowable Catches) and limits to the number of days at sea in limited circumstances, such as sole in the Western Channel. TACs are proposed by the Commission on the basis of international scientific advice from ICES (International Council for the Exploration of the Sea) and they are also subject to the outcome of negotiations with third countries including Norway, Iceland, the Faroe Islands and Greenland.

1.2 This year, two further factors feature. Most significantly, 2019 will be the first year when the landing obligation ("discard ban") will apply to all species subject to catch limits. Second, this is the last time that the UK will be involved in the December Fisheries Council. We explore Brexit-related issues below.

1.3 The Minister for Agriculture, Fisheries and Food (George Eustice) explains in his Explanatory Memorandum (EM) that the UK's overall position will be to negotiate in line with established principles: science (consistency with scientific advice);[1] sustainability (ensuring that an increased number of stocks are fished at Maximum Sustainable Yield—MSY); and discard reduction.

1.4 The key implication of the full application of the discard ban is that quotas need to mitigate the "choke" danger—the risk that a lack of quota for a bycatch species in a mixed fishery can halt the fishing of commercially important target species. The UK's approach to Council will be focused around reducing this risk. The Government will support setting TACs in line with MSY, ensuring accurate calculation of quota uplifts for stocks subject to the landing obligation, and delivering acceptable outcomes for other stock-specific issues in the different sea basins fished by the UK. In some cases, says the Minister, this may require the use of spatial management measures, a stepped approach to

1 Scientific advice sets a range of fishing mortality (F) that will deliver Maximum Sustainable Yield (MSY). The limits are known as FMSY (upper) and FMSY (lower).

fishing at MSY or longer term improvements in gear selectivity to ensure that choke issues are appropriately mitigated. While some of the detail of the Commission proposals will not be finalised until early in December, the Minister considers that these are unlikely to have a significant bearing on the overall shape of the UK negotiating position.

1.5 For those stocks where data is limited—so-called "Data-limited stocks" (DLS)—the UK considers that decisions on TACs should be informed by all available evidence, including trends in mortality, biomass and fishing effort. For that reason, the UK opposes the automatic precautionary reductions proposed for pollack, plaice and anglerfish in area 7 (West of Ireland, Celtic Sea, Irish Sea and English Channel).

1.6 A synopsis of the UK's intended approach to key species is set out in the background section below. We draw particular attention to the comments on Celtic Sea stocks (including proposals for pooled TACs),[2] North Sea cod, North Sea herring and seabass.

Brexit

1.7 Under the terms of the draft Withdrawal Agreement and the proposed implementation period lasting until 31 December 2020, the TACs for both 2019 and 2020 will apply to the UK. While the UK will not be formally involved in adoption—during the implementation period—of the catch limits to which its fleets will be subject, the Commission will consult the UK. If the implementation period is not extended beyond 31 December 2020, the UK will be able to negotiate fishing opportunities for 2021 as an independent coastal state. Arrangements for consultation of the UK during the implementation period have yet to be established.

1.8 The Minister indicates that the agreed 2019 TACs will apply for the whole year regardless of EU Exit scenarios, including "no-deal". While such an approach would provide helpful clarity for the both the UK and the EU and would avoid potentially unsustainable fishing in the first quarter of the year, we are unaware of any similar EU commitment. Even if supported by the EU, an extension of the agreed arrangements beyond 29 March 2019 would require legislative change by both the UK and the EU.

Conclusions

1.9 **We note that a key feature of this year's negotiation will be the full application of the landing obligation to quota species. The Minister's detailed stock-by-stock analysis of the proposal is extremely helpful, particularly in the context of the landing obligation. We note challenging discussions around the proposals for pooled TACs as well as challenges on North Sea cod, North Sea herring and seabass. We support the approach being taken by the Government to these matters as well as the overall UK approach to the negotiations.**

1.10 **Regarding the UK's withdrawal from the EU, we note the UK assumption that the agreed fishing opportunities will apply for the whole of 2019, even in a "no-deal" scenario. While the certainty ensured by such an approach would clearly be in the interest of both the UK and the EU, it is unclear to us whether the EU agrees and whether there is any prospect of the final Regulation including this guarantee. We**

2 Communal TACs which are currently un-allocated among Member States.

suggest that the Government should propose either such an inclusion or, at the very least, negotiate a joint declaration to the same effect to be attached to the Council minutes.

1.11 **We note that the proposed Regulation is expected to be adopted at the 17–18 December Council. We are content to waive the document from scrutiny but we look forward to an update on the Council outcome, including on Brexit-related issues. We draw this document to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents:

Proposal for a Council Regulation fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters: (40168), 13731/18 + ADDs 1–2, COM(18) 732.

Background: UK approach to negotiations on catch limits for individual species

Celtic Sea stocks (cod, haddock and plaice)

1.12 In the Celtic Sea, the UK needs to balance avoiding high-risk chokes with achieving an overall approach which is sustainable and delivers increases in stock biomass. The UK notes that the Commission has proposed (or intends to propose) a bycatch TAC for cod and plaice which is allocated to the Union.

1.13 For cod, the Commission is proposing a Union level pool TAC at a level to be determined, but which would aim to address the large majority of unavoidable discards. As yet it is unclear how or whether such a pool would be allocated to Member States. The UK will be seeking that the TAC is set at a level and allocated and managed in a way that allows the UK to cover unavoidable bycatches in the Celtic Sea while also significantly reducing the risk of choke.

1.14 For plaice, the optimum outcome for the UK is a TAC set at a level which covers discards sufficiently. The UK calculates this to mean a quota for the UK of at least five tonnes after the high survivability exemption for the beam trawl segment is applied.

1.15 For haddock, the UK is seeking an increased TAC which fixes a fishing mortality of 7,600 tonnes. This approach would allow MSY to be achieved by 2020 by applying a stepped approach. In addition, it leaves headroom for moderate application of inter species flexibility (ISF) by the UK, without breaching the upper level of MSY and ensuring that haddock does not choke other species in the Celtic Sea.

1.16 The UK has sought to work collaboratively with other Member States developing a "closed pool TAC" option as a solution. This is intended to help a number of Member States address their challenges of low or no quota availability creating a choke and to begin to better quantify mortality of bycatch species. However, as some other Member States wanted to use relative stability shares as an allocation key (rather than discard

rates), the UK now has concerns about this option because it will not provide enough haddock or cod quota for the UK unless, like Spain and the Netherlands, the UK receives an allocation in line with its discards.

1.17 As further mitigation, the UK is also considering implementing new technical measures to improve selectivity as well as examining the feasibility and benefits of possible spatial measures.

Irish Sea whiting

1.18 The Commission has proposed a common TAC of 612 tonnes for this bycatch species. The UK's analysis shows that, over the last ten years, Member State discards of whiting in this area have ranged from 765 tonnes to 2,000 tonnes. The Commission proposal therefore risks a choke for the Irish Sea nephrops fishery which would impact both on the Northern Irish and Cumbrian fishing industries, as well as associated processing businesses. Most of the bycatch is under the minimum conservation reference size which makes it very difficult to apply selectivity or avoidance measures which could separate it from nephrops.

1.19 At present, the UK's preferred option is a temporary prohibition on whiting, which would defer the stock from inclusion in the landing obligation. It would be supported by a package of measures aimed at improving selectivity and rebuilding the stock.

1.20 Further proposals to reduce whiting mortality are:

- continued use of highly selective gears by all UK nephrops vessels operating in the Irish Sea;
- extension of the selective gear trial project for a further two years;
- primary research project specifically to investigate the effect of lights on whiting behaviour; and
- benchmarking of discard reduction performance across the Nephrops fleet and transfer of best practice through a dedicated gear technologist to ensure all vessels are performing as well as they can.

1.21 Initial discussions with the Commission suggest a preference for further consideration of a combined "de minimis"[3] option (allowing a minimal level of discards). However, this option may also be restrictive in terms of the amount of by-catch it would permit and loss of other valuable quotas.

West of Scotland cod and whiting

1.22 The UK priority is to set the TACs which will allow legitimate fishing (nephrops, haddock, monkfish) on the west of Scotland to continue. Marine Scotland is in discussion with industry about measures which can be taken to ensure that fishing mortality will decline in 2019 compared to 2018.

3 Allowing a minimal level of discards.

1.23 If the UK is unable to agree TACs which will prevent a choke situation, in order to allow other fisheries to continue the UK may support a temporary prohibition on landings of cod and whiting from this area.

Northern hake

1.24 There is evidence of a significant change in the distribution of the northern hake stock and that more could now be found in the North Sea. The UK has requested that ICES formally quantify the change in distribution of the northern hake stock. The North Sea component receives only 3.5% of the total TAC, which often results in high quota uptake/quota shortages. The UK notes that, for 2019, the Commission has adjusted the proportional increase in the TAC for North Sea hake and proposed a 37% increase. The UK welcomes this proposal as it will not impact on fishing operations by UK fishers in other areas or compromise sustainability.

Ling

1.25 The positive stock trends for North Sea and Western ling support an increase in the TAC. While ling in these areas are part of the same biological stock, fishing opportunities in the different areas are not well aligned with the observed abundance and current discrepancies hinder its rational exploitation. The UK will therefore seek a revised flexibility arrangement to permit quota to be transferred from the western ling stock to the North Sea stock for Member States with quota in both areas. The UK expects that such a provision of west to east flexibility would remove North Sea ling as a choke species in terms of the landing obligation.

Eastern Channel sole.

1.26 The Commission has proposed a TAC cut of -24% in line with the ICES advice to allow the stock to be fished at its MSY in 2019. Eastern Channel sole underpins the viability of the artisanal fleet in the Eastern Channel. The UK notes that ICES advice also provides an option which would deliver a 15% cut in the TAC which would still enable the stock to be taken within sustainable limits. The resulting level of TAC would produce a UK quota consistent with quota levels in 2017 which did not cause the fleet significant issues.

North Sea cod

1.27 The ICES advice recommends a -47% cut to the North Sea cod biological stock which includes the TACs for cod in the North Sea and in the Eastern Channel. It is of particular concern and likely to create a significant choke risk for all vessels fishing in the North Sea mixed demersal fishery. The cut is proposed because the perception of stock size has changed, spawning stock biomass (SSB) remains below Btrigger (the level of SSB which triggers action), and poor recruitment is estimated for 2018 (the lowest in the time series to date).

1.28 The UK is aware that Danish industry has proposed limiting the cut to -20% and UK industry requested that the Government consider this option. Based on advice from CEFAS (UK fisheries scientists), the UK considers that the only scientifically justifiable

alternative to reduce the cut would be to follow the ICES F=MSY catch option.[4] This would result in a -33% cut but ensure the stock continues to be fished within sustainable limits. However, whilst fishing mortality would be within CFP requirements, this would defer the recovery of cod biomass above Btrigger until 2022. In effect, this would be a fisheries management decision to suspend the MSY rule that applies to stocks below Btrigger on the basis that the risk of negative impact to the fleet outweighs the longer-term risk to the stock.

1.29 The UK tested the appetite for alternative catch options for North Sea cod with the Commission during recent meetings. The Commission indicated that they would be prepared to consider a -33% cut on the basis that the stock would remain at MSY. A number of Member States also expressed views indicating support for a lesser cut. The UK therefore considers proposing a cut of -33% to be scientifically justifiable, suitably precautionary, and in line with UK principles on ensuring sustainable fishing. On this basis the UK expects to press for a -33% cut to maintain fishing at MSY, falling back to the full -47% if necessary.

North Sea whiting

1.30 The ICES advice for North Sea whiting recommends a cut of -22%. The Commission has indicated its desire to accept the full cut and bring a further stock to MSY. However, in previous negotiations the UK successfully proposed a front-loaded, stepped approach which would deliver MSY by 2020. The UK has flagged to the Commission that not following this agreement through would send a poor signal to industry and damage trust. UK scientists have confirmed that the most appropriate TAC reduction to maintain this trajectory would be in the region of -10% leaving a smaller reduction in 2020. The UK expects to press for a -10% cut to maintain progression towards achieving MSY by 2020, falling back to the full -18% if necessary.

North Sea Herring

1.31 ICES has recommended a TAC reduction of -51% for herring in the North Sea. This is also of significant concern to industry, magnified by a particularly challenging advice year for the majority of pelagic stocks. Despite ICES assessing the stock as healthy, a cut is necessary following MSY rules in light of a weak year class in 2014 risking a drop in SSB below Btrigger. This cut comes after a significant increase was agreed for this year's fishing season.

1.32 The UK has considered whether there are options for mitigating this cut. Because there is no significant choke risk associated with the fishery and the ICES advice is considered sufficiently robust, options are limited. However, F=MSY could be followed, which would result in a -43% cut and slightly larger (2%) decrease in SSB than the headline cut.

1.33 The UK is aware that the Dutch industry is pressing for the EU to strike a deal with Norway to agree to a lesser cut in exchange for increasing Norwegian access to fish herring in EU waters (potentially up to full access). Practically, Norway would utilise any increased access in UK waters, competing against UK vessels for the best quality fish. Any deal to mitigate the cut by providing an increase in access to EU (UK) waters would be hugely controversial and would sit uncomfortably with UK principles on sustainable fishing, and risk setting a difficult precedent post-EU exit. The UK is therefore minded to oppose this.

4 This means fishing at the highest level of MSY irrespective of the level of SSB.

1.34 The UK proposes to support a minimum of -43% cut and would not support any deal that would open up increased access to UK waters by Norway in exchange for a lesser cut.

Nephrops (area 7) [5]

1.35 This is the most important stock for the Northern Ireland fishing fleet. The Commission proposal is for a -32% reduction compared to the 2018 TAC. This is lower than expected and is based on the ICES "wanted catch" advice (landings). The UK contends that the Commission should follow the same approach as they have for other stocks. Their proposal should be based on the ICES "total catch" advice with a deduction for those permitted discards which do not survive. This has been proposed for other stocks this year.

Seabass

1.36 While the stock has improved to a level allowing some catch, the stock is nevertheless below the level where reproduction is compromised, so the Commission advocates a precautionary approach to continue to limit directed fishing, and maintain controls on unavoidable by-catches. These recovery measures are considered to be incompatible with the landing obligation which will not therefore apply for bass fisheries next year. The unavoidable by-catch limits proposed for trawl and seine for next year are proposed to be the same as has applied this year—the same monthly limits respectively for retention of bass at 1% of the weight of the total catches of marine organisms on board in any single day. Based on experience this year, however, the UK will be seeking better flexibility for trawl/seines to prevent undue levels of discarding of unavoidable by-catches—i.e. on the basis that the restrictions need to ensure an optimum balance is achieved between preventing targeting activity, but not actually driving discarding by applying overly restrictive percentage limits. The UK will also be seeking to apply the same principle to address what has been proposed for fixed gillnetting for next year, namely for a new and additional 1% per day limit against the same annual cap of 1.2 tonnes that has applied this year. The UK believes this 1% limit would be overly restrictive, and will be seeking a more appropriate approach to ensure sufficient flexibility in order to avoid discards that have a low survivability probability.

1.37 In relation to the recreational daily bag limit for bass catches, the Commission's proposal is for anglers to retain one fish a day per person from April to October, which is an improvement on last year's proposal for 2018 for catch and release only all year. The UK will be working with angling organisation representative interests to develop a negotiation position to ensure a better balance for the recreational sector in the overall package of measures for next year. There may be more advantageous alternatives in terms of seasonal or quantitative adjustments during the proposed period when some catch retention is allowed that will be in line with UK scientific analyses on bag limit options and fishing mortality implications, while maintaining the path to recovery of this important stock.

Previous Committee Reports

None.

5 Irish Sea, West of Ireland, Porcupine Bank, Eastern and Western English Channel, Bristol Channel, Celtic Sea North and South, and Southwest of Ireland—East and West.

2 Interoperable EU information systems for security, border control and migration management

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; scrutiny waiver granted; further information requested; drawn to the attention of the Home Affairs Committee and the Justice Committee
Document details	(a) Proposal for a Regulation establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration) (b) Proposal for a Regulation establishing a framework for interoperability between EU information systems (borders and visas)
Legal base	(a) Articles 16(2), 74, 78(2)(e), 79(2)(c), 82(1)(d), 85(1), 87(2)(a) and 88(2) TFEU, ordinary legislative procedure, QMV (b) Articles 16(2), 74, 77(2)(a), (b), (d) and (e) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(a) (39366), 15729/17 + ADDs 1–3, COM(17) 794; (b) (39368), 15119/17 + ADDs 1–3, COM(17) 793

Summary and Committee's conclusions

2.1 The proposed Regulations are intended to close the information gaps and "blind spots" which hinder effective cross-border security cooperation by making existing and planned new EU information systems in the field of migration and security interoperable so that information on cross-border security threats and irregular migration can be shared more rapidly. The UK has opted into the first proposed Regulation on the interoperability of EU asylum and law enforcement information systems,[6] document (a), which covers two existing EU information systems in which the UK takes part (the Eurodac asylum database and the police cooperation parts of the Schengen Information System—"SIS II") and one new EU information system which is expected to be agreed shortly (the European Criminal Records Information System for Third Country Nationals—ECRIS-TCN).

2.2 The second proposed Regulation on the interoperability of EU border control and visa information systems, document (b), covers existing or proposed new EU information systems in which the UK is unable to participate as they are based on parts of the Schengen rule book dealing with border control and visas which do not apply to the UK. These

6 See the letter of 30 May 2018 from the Minister for Policing and the Fire Service (Nick Hurd) informing the Chair of the European Scrutiny Committee of the Government's opt-in decision.

are the border control provisions of SIS II, the Visa Information System (VIS), the EU Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS).

2.3 The proposed Regulations would establish a framework for interoperability based on four key elements:

- a **European search portal** which would operate as a "one-stop shop", enabling authorised users to carry out a simultaneous search on multiple EU information systems (as well as relevant Interpol systems and Europol data) using both biographical and biometric data;
- a **shared biometric matching service** which would use biometric data (fingerprints and facial images) to discover links between information on the same person held in different EU information systems;[7]
- a **common identity repository** which would contain biographical and biometric information on third country nationals whose data are recorded in Eurodac, VIS and (in the future) the EES, ETIAS and ECRIS-TCN, providing a quick and efficient means of checking identity; and
- a **multiple identity detector** which would check whether identity data exist in different EU systems and help combat identity fraud.

2.4 Our earlier Reports listed at the end of this chapter provide a detailed overview of the proposed Regulations, the concerns we have raised and the Government's position.

2.5 The Commission anticipates that it may take until the end of 2023 to develop and test all the technical components needed to make EU border, migration and security information systems interoperable.[8] The new interoperability framework is therefore unlikely to be up and running before the end of the transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement. The Government nonetheless supports the aims of the proposed Regulations which it says should "prevent incorrect or fragmented data amongst JHA [justice and home affairs] databases and improve their efficiency and usage by law enforcement". It considers that opting into document (a) should "maximise the benefits to the UK from access to these databases", even though it is not yet clear whether the UK will retain access to EU databases post-exit.[9]

2.6 The Council agreed a general approach on the proposed Regulations in June (the UK abstained), paving the way for trilogue negotiations with the European Parliament. Whilst some technical issues still needed to be clarified, the Minister for Policing and the Fire Service (Nick Hurd) anticipated that the proposals were likely to be adopted before the end of the year.[10] Responding to our concern that the provisions in the proposed Regulations on cooperation with third (non-EU) countries were highly restrictive,[11] the

7 This service would not apply to the European Travel Information and Authorisation System—ETIAS—as it will not contain biometric data.

8 See the timeframe set out on p.96 of the Commission's legislative financial statement attached to document (a).

9 See the Written Ministerial Statement issued by the Minister for Policing and the Fire Service (Mr Nick Hurd) on 5 June 2018.

10 See the Minister's letter of 28 June 2018 to the Chair of the European Scrutiny Committee.

11 Article 48 of the original Commission proposals provides: "Personal data stored in or accessed by the interoperability components shall not be transferred or made available to any third country, to any international organisation or to any private party [...]".

Minister told us that the UK had repeatedly raised this issue in negotiations and advocated the inclusion of provisions similar to those contained in the Eurojust Regulation on the sharing of "operational personal data".[12]

2.7 We asked the Minister how confident he was that the European Parliament would support the Government's efforts to secure data sharing arrangements similar to those provided for in the recently agreed Eurojust Regulation.[13] We also asked what assessment he had made of the operational impact of reduced access and data sharing post-exit/transition if the current provisions on third country sharing of personal data were not amended. In his latest letter of 28 November 2018, the Minister concedes that the trilogue process is unlikely to deliver the changes sought by the Government:

> There has been no appetite to lift the absolute bar on sharing with third countries despite the concerns raised by several Member States particularly in regard to matters of effectively working with other nations to combat terrorism or serious organised crime. Any ongoing access to the interoperability components or the underlying systems will form part of our negotiations for our future relationship.

2.8 Whilst he says there would be "no specific operational impact" if the UK were unable to access the interoperability system, loss of access to the underlying EU information systems in the event of a "no deal" exit would harm security cooperation between the EU and the UK, " both in terms of the quality and quantity of information sharing", and reduce data flows in both directions.

2.9 The Minister also seeks to address the concerns we raised in our earlier Report (agreed on 14 November 2018) about the impact of the proposed Regulations on British nationals post-exit if they are to be treated in the same way as other (non-EU) third country nationals for the purpose of EU asylum, migration and security databases post-exit/transition. We had in mind an Opinion issued by the European Data Protection Supervisor ("EDPS"—Giovanni Buttarelli) which suggested that "information about millions of third country nationals, including their biometric data" would be held in a centralised database and that "the consequences of any data breach could seriously harm a potentially very large number of individuals".

2.10 The Minister does not comment on the status of British citizens (for immigration and law enforcement purposes) post-exit/transition, simply noting that "this will depend entirely on our future relationship with the EU". He does not share the concerns of the EDPS that the data of British citizens (or other third country nationals) would be at greater risk under the interoperability proposals as "the data is already held in systems managed by eu-LISA". He adds that the proposed Regulations include "a strong data protection regime [….] based on the models used in the [EU] Law Enforcement Directive and UK domestic legislation".

2.11 The Minister notes that the trilogue process "has progressed at pace" and says that "police access and time limits on processing" are the remaining points of contention. The Government is resisting the European Parliament's attempts to curtail police access or impose more onerous access conditions, with the Minister making clear that the

12 See the Minister's letter of 28 August 2018 and letter of 18 October 2018 to the Chair of the European Scrutiny Committee.

13 See Articles 55–9 of the final text agreed on 6 November 2018.

interoperability framework would be of limited benefit to the UK if it does not result in improved police access to the underlying EU information systems. Whilst recognising the need to ensure that the interoperability system works effectively, without causing delays at the border, the Minister says that "legally binding deadlines and requirements would not be sensible".

2.12 The Minister anticipates that it will be possible to reach a satisfactory compromise on document (a) which ensures that the proposed Regulation provides "added value" for the UK. He expects the Austrian Presidency to seek a political agreement at the Justice and Home Affairs Council on 6/7 December 2018 and invites us to grant a scrutiny waiver so that the Government is be able to support the final compromise text.

Our Conclusions

2.13 **We are grateful for the Minister's latest update. We note that the Government's efforts to secure less restrictive provisions on third country access to personal data stored in or obtained through the interoperability framework have made little headway. We are surprised that the Minister nonetheless considers there would be "no specific operational impact from losing access to the interoperability system", as opposed to the underlying EU information systems. His assessment seems to be at odds with the Government's reasons for deciding to opt into document (a) which cited "benefits for UK policing being able to identify third country nationals who are victims, witnesses or suspects to crimes and terrorist incidents" as well as access to more and better quality data for asylum officials.**[14]

2.14 **We are not entirely reassured by the Minister's brief response to the concerns voiced by the European Data Protection Supervisor. Given that the benefits of the interoperability framework, as described by the Minister in his statement notifying Parliament of the Government's opt-in decision, are to "link together matching biometric information" held in different EU databases and to "create links between related records", the consequences of a data breach may well be more damaging for the individuals concerned. Even if, as the Minister suggests, "there is no greater or lesser risk" of a mass data breach than under the current systems, it nonetheless remains the case that substantially more data on British citizens will be held on EU information systems post-exit (once they become non-EU, third country nationals) than is currently the case.**

2.15 **We note the Minister's confidence that a satisfactory compromise text can be agreed with the European Parliament, but wo do not have a clear sense of how far the Government would be willing to move to accommodate the changes sought by the European Parliament without losing the benefits which prompted it to opt into document (a). Given this uncertainty, we are not willing to clear the proposed Regulations from scrutiny ahead of the December Justice and Home Affairs Council. We are, however, willing to grant a scrutiny waiver so that the Government has the flexibility to support a political agreement if a satisfactory compromise text is brought to the Council. We ask the Minister to report back to us afterwards, explaining:**

- **whether a political agreement was reached and, if so, how the UK voted;**

14 See the Minister's letter of 30 May 2018 to the Chair of the European Scrutiny Committee.

- **the specific wording agreed on the communication of personal data to third countries;**
- **how any compromise text agreed addresses the Government's concerns about the conditions for police access and time limits; and**
- **what operational benefits there will be for UK law enforcement.**

2.16 **We will consider clearing the proposed Regulations from scrutiny once we have received the information requested and a copy of the final compromise text agreed by the Council and European Parliament. We draw this chapter to the attention of the Home Affairs Committee and the Justice Committee.**

Full details of the documents:

(a) Proposal for a Regulation establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration): (39366), 15729/17 + ADDs 1–3, COM(17) 794.

(b) Proposal for a Regulation establishing a framework for interoperability between EU information systems (borders and visas) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399 and Regulation (EU) 2017/2226: (39368), 15119/17 + ADDs 1–3, COM(17) 793.

Background

2.17 The proposed Regulations encompass six centralised EU information systems, of which three (Eurodac, SIS II and VIS) are already operational and three are "on the brink of development" (the EES, ETIAS and ECRIS-TCN). With the exception of SIS II, the remaining five information systems are "exclusively focussed on third country nationals", meaning that post-exit, they are likely to include the data of British citizens.[15] A new EU Agency—eu-LISA—was set up in 2012 to oversee the operational management of large scale justice and home affairs information systems and will be responsible for making the systems interoperable.[16] Each system has its own founding instrument which contains detailed rules on the information that can be stored in each database, the purposes for which it may be used, and data protection requirements. The systems cannot communicate with one another through the exchange of data or sharing of information unless their founding instruments allow them to do so.

15 See p.5 of the Commission's explanatory memorandum on document (a),

16 See Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, as amended by Regulation (EU) No 603/2013 establishing Eurodac.

2.18 The table shows which of the existing or proposed EU information systems are open to UK participation.

Information system	Schengen or non-Schengen	UK position
Visa Information System—VIS	Schengen	UK excluded
Schengen Information System—SIS II (border control component)	Schengen	UK excluded
Schengen Information System—SIS II (law enforcement)	Schengen	UK participates
EU Entry/Exit System—EES	Schengen	UK excluded
European Travel Information and Authorisation System—ETIAS	Schengen	UK excluded
Eurodac	Non-Schengen	UK participates
European Criminal Records and Information System—extension to third country nationals (ECRIS-TCN)	Non-Schengen	UK participates in ECRIS and has opted into a supplementary proposal extending ECRIS to third country national offenders

Previous Committee Reports

Forty-fourth Report HC 301–xliii (2017–19), chapter 9 (14 November 2018), Thirty-eighth Report HC 301–xxxvii (2017–19), chapter 22 (12 September 2018), Thirty-fifth Report HC 301–xxxiv (2017–19), chapter 5 (11 July 2019) and Sixteenth Report HC 301–xvi (2017–19), chapter 9 (28 February 2018).

3 Strengthening the European Union Agency for Asylum

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

Summary and Committee's conclusions

3.1 In response to the unprecedented surge in irregular migration to the EU, which reached its peak in 2015, the Commission put forward a package of asylum reforms in 2016, as well as a raft of other measures to strengthen the EU's external borders. The asylum reforms included a proposed Regulation to transform the existing European Asylum Support Office into a fully-fledged EU Agency for Asylum with stronger powers to monitor the application of EU asylum rules and provide operational and technical assistance to Member States. The Government decided *not* to opt in, expressing concern that the proposal would give the new Agency "a significant degree of oversight over national asylum systems" and stating that the functioning of the UK's asylum system was "a sovereign matter".[17] The Council and the European Parliament reached a provisional agreement on the proposed Regulation in June 2017, but it can only be formally adopted once all the other elements of the Commission's asylum reform package have been agreed. The central element of that package—the reform of the Dublin rules determining the Member State responsible for examining an application for international protection made in the EU—has also proved to be the most intractable to negotiate, with Member States unable to agree a new "solidarity" mechanism to share responsibility for asylum seekers more equitably.[18]

3.2 The Commission's latest proposed Regulation is part of a wider effort to break the deadlock in negotiations by identifying a range of support measures to relieve pressure on Member States facing disproportionate migratory flows and "strike the right balance between solidarity and responsibility".[19] It would amend the Commission's 2016 proposal to increase the operational and technical support that the Agency can provide to Member

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

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

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

States so that they are able to apply EU asylum rules more effectively and facilitate the return of individuals who do not qualify for international protection. It would also strengthen cooperation with other EU agencies, notably the European Border and Coast Guard Agency. Our earlier Report (agreed on 31 October 2018) sets out the main changes proposed by the Commission and the additional funding that the Agency would need.

3.3 In her Explanatory Memorandum of 9 October 2018, the Immigration Minister (Caroline Nokes) told us that the UK's Title V opt-in Protocol applied to the Commission's latest proposal in the same way that it applied to its earlier Regulation, proposed in 2016 and not yet formally adopted by the Council and European Parliament, and set out the factors which would inform the Government's opt-in decision. She made clear that "the UK Government should retain sovereignty over the management of UK borders" and that monitoring by the Agency or intervention in asylum procedures in the UK would be "unacceptable".

3.4 As the Government had decided *not* to opt into the Commission's original (2016) proposal for a Regulation establishing the European Union Agency for Asylum, and the amendments proposed by the Commission would further strengthen the Agency's powers, we considered that there was little prospect of the Government reversing its earlier decision and opting in. We questioned whether the Government would, in any case, be entitled to do so as:

- the proposed Regulation seeks neither to amend nor replace the recital in the earlier (2016) proposal stating that the UK's Title V opt-in Protocol applies—as the Government decided not to opt in, it is not clear why it should have another bite at the same cherry and assert that the UK has a right to revisit its earlier opt-in decision; and

- whilst the UK's Title V opt-in Protocol applies to amending measures proposed "pursuant to Title V" of the Treaty on Functioning of the European Union concerning the area of freedom, security and justice, it only bites on those measures which are "amending an existing measure by which [the UK and/or Ireland] are bound"—the proposed Regulation would make targeted amendments to the Commission's earlier 2016 which has not been formally adopted and, even once adopted, would not be binding on the UK because the Government has already decided not to participate.

3.5 We asked the Minister whether she shared our analysis and, if not, to substantiate her reasons for considering that the UK's Title V Protocol applied and to indicate whether she would press for the inclusion of a separate recital to this effect. We also asked whether the Commission and the Council agreed with the Government's position.

3.6 The Minister sets out the reasons underpinning the Government's position in her letter dated 26 November 2018:

- the proposed Regulation would amend an earlier (2016) Commission proposal which has not been adopted;

- as Article 4a of the UK's Title V opt-in (concerning amending measures) only applies to a proposal amending an existing measure which has been adopted and is binding on the UK, it is not relevant in this case;

- Article 3 of the UK's Title V opt-in applies to any proposal citing a legal base in Title V of Part Three of the Treaty on the Functioning of the European Union, including the proposed amending Regulation;[20] and

- any formal amendment of an existing Commission proposal (in this case the 2016 proposal to establish the EU Agency for Asylum) "retriggers the UK's JHA opt-in process", giving the UK a further opportunity to reassess its earlier opt-in decision and determine whether the proposal, as amended, would be in the national interest.

3.7 The Minister says that there is precedent for the Government's approach, citing the example of a proposed EU Directive on asylum procedures put forward by the Commission in 2009 which was followed by a subsequent amending proposal in 2011. She notes that "the Government at the time took JHA opt-in decisions on both measures".

3.8 The Minister anticipates that the latest amendments in the proposed Regulation will be "factored into" the 2016 Commission proposal on the EU Agency for Asylum that remains under negotiation. She continues:

> As we expect there will only be one adopted measure, the Government considers that any decision to opt in to the current amended proposal would bind the UK to participate in the entire adopted measure. Whilst the Government is yet to formally take a position, we will take into account that we did not opt into the original proposal, and this amended proposal does not substantively differ. The Government will ensure that the relevant recital reflects the UK position.

3.9 We also asked the Minister to explain:

- how UK participation in the EU Agency for Asylum would affect the UK during a post-exit transition/implementation period, if the Government were to decide to opt into the proposed Regulation; and

- what relationship the Government envisaged seeking with the Agency (if established) post-exit/transition.

3.10 The Minister does not expect the Agency will have been agreed or be up and running before the UK leaves the EU, but adds that "the UK is committed to continued engagement and cooperation with the EU on refugee and migration issues" and will continue to participate in those EU asylum Regulations and Directives which the UK has opted into before exit day throughout the post-exit transition/implementation period. If the UK were to opt into the EU Asylum Agency Regulation, it would "continue to provide support and resource to the Agency where needed" and might also be subject to "monitoring and intervention in asylum processes" by the Agency under the increased scope of the amended Regulation.

20 Article 3 of Protocol 21 gives the UK the right to opt into "a proposal or initiative [which] has been presented to the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union".

3.11 Turning to the UK's longer-term future relationship with the Agency, the Minister makes clear that "cooperation on asylum and migration issues is in the interests of the UK and the EU" and that the Government is considering "whether there are desirable options for future cooperation" post-exit/transition.

Our Conclusions

3.12 **We thank the Minister for her considered response. We would still like to hear whether the Commission and the Council agree with her analysis of the application of the Title V (justice and home affairs) opt-in Protocol to the proposed amending Regulation and would welcome confirmation that the Government has secured the addition of a recital to make the position clear. We ask the Minister to inform us of the Government's opt-in decision at the earliest opportunity.**

3.13 **We note that the Government is considering "whether there are desirable options for future cooperation" with the Agency after the UK has left the EU and any post-exit transition/implementation period has ended. The** Political Declaration setting out the Framework for the Future Relationship between the EU and the UK **accompanying the draft EU/UK Withdrawal Agreement includes a commitment to "cooperate to tackle illegal migration, including its drivers and its consequences, whilst recognising the need to protect the most vulnerable", but makes no reference to continued cooperation on asylum and other forms of international protection. We ask the Minister to explain the reasons for this omission and the "options for future cooperation" she is examining.**

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

Full details of the documents:

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

Background

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

- enhance practical cooperation and the exchange of information on asylum matters;
- provide country of origin information;
- develop operational standards and guidelines to ensure the effective implementation of EU asylum laws;

- monitor and assess how Member States implement the Common European Asylum System; and
- provide operational and technical assistance to Member States.

Previous Committee Reports

Forty-third Report HC 301–xlii (2017–19), chapter 8 (31 October 2018). The following Reports on the Commission's original (2016) proposal on the European Union Agency for Asylum are also relevant: Seventh Report HC 71–v (2016–17), chapter 1 (6 July 2016), Twenty-fifth Report HC 71–xxiii (2016–17), chapter 7 (11 January 2017), Thirty-second Report HC 71–xxx (2016–17), chapter 7 (22 February 2017), Thirty-ninth Report HC 71–xxxvi (2016–17), chapter 2 (19 April 2017).

4 Multiannual Plan for fishing in Western Waters

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Proposal for a Regulation of the European Parliament and of the Council establishing a multiannual plan for fish stocks in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulation (EU) 2016/1139 establishing a multiannual plan for the Baltic Sea, and repealing Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) 509/2007 and (EC) 1300/2008
Legal base	Article 43(2) TFEU, QMV, Ordinary legislative procedure
Department	Environment, Food and Rural Affairs
Document Number	(39598), 7245/1/18 + ADDs 1–2, COM(18) 149

Summary and Committee's conclusions

4.1 Multiannual plans (MAPs) set a management framework establishing rules and criteria under which Total Allowable Catches (TACs) and other management measures are adopted. Under the reformed Common Fisheries Policy (CFP), MAPs should cover multiple stocks where those stocks are jointly exploited (i.e. a mixed fishery). On that basis, the Commission proposed this new MAP incorporating Western Waters stocks into a single management plan. Like the earlier North Sea Plan, the Government told us that it considered the new MAP to provide a valuable framework for future cooperation between the UK and the EU.

4.2 Since we last reported this document to the House,[21] the Minister for Agriculture, Fisheries and Food (George Eustice) has written to us on two occasions in response to our request to be updated on the progress of negotiations. His letter of 1 September focused largely on amendments submitted for debate in the European Parliament, with the exception of the UK's unsuccessful push for seabass to be included in the MAP. His more recent letter of 18 November confirms that the Council reached provisional agreement through COREPER.[22] The UK is largely content, but he highlights a few other technical points raised unsuccessfully thus far by the UK:

- a definition of "demersal stocks" should be included in Article 1;
- pollack in the area off the west of Scotland should not be included as this stock is not being targeted by any Member States; and,

21 Thirty-second Report HC 301–xxxi (2017–19), chapter 4 (20 June 2018).

22 The Committee consisting of the 28 Member States' Permanent Representatives to the EU.

- where scientific knowledge is low, the MAP should allow for the adoption of "FMSY" proxy points[23] that, when available, are an alternative to the automatic reversion to a precautionary approach.

4.3 Attached to the Minister's letter are the text adopted by the Council and the amendments adopted by the European Parliament. Negotiations between the institutions have now begun and the Presidency hopes to conclude negotiations by the end of the year, a timetable which the Minister considers to be ambitious.

4.4 The UK is largely content with the progress of this file and would like to push for an early agreement. The Minister asks that the Committee considers clearing the proposal from scrutiny in order that the UK is in the best position to support the Presidency in its endeavours.

4.5 **On the UK's withdrawal from the EU, we recall the Minister's original observation that this MAP would provide a valuable framework for cooperation between the UK and the EU post-Brexit. This is relevant, we note, in the context of the joint UK-EU commitment under the recently agreed Political Declaration on the future UK-EU relationship that the UK and EU will use their best endeavours to cooperate on the development of measures for the conservation, rational management and regulation of fisheries. Following agreement to the Political Declaration, we would welcome the Minister's re-assurance that he still considers this MAP to provide a valuable framework for post-Brexit fisheries cooperation between the UK and the EU.**

4.6 **Another matter relating to Brexit which we have previously raised is the provision in the MAP for the development of technical and discard measures by affected Member States. In response to our observation, the Minister expressed his confidence that UK will continue to play an active role in the management of these areas both during the implementation period and beyond. We would welcome an update on the arrangements that are being put in place to ensure the UK's active role in such management during the implementation period specifically.**

4.7 **We note the Government's support for this MAP and that there do not appear to be significant outstanding issues for the UK. We are content to clear the proposal from scrutiny on that basis and request both responses to the queries highlighted above and an update on the negotiations by 8 January 2019 at the latest. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council establishing a multiannual plan for fish stocks in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulation (EU) 2016/1139 establishing a multiannual plan for the Baltic Sea, and repealing Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) 509/2007 and (EC) 1300/2008: (39598), 7245/1/18 + ADDs 1–2, COM(18) 149.

Previous Committee Reports

Thirty-second Report HC 301–xxxi (2017–19), chapter 4 (20 June 2018); Twenty-sixth Report HC 301–xxv (2017–19), chapter 2 (2 May 2018).

23 Estimation (proxy point) of the level of fishing mortality (F) which would result in maximum sustainable yield (MSY).

5 Import from the US of beef not treated with growth-promoting hormones

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny (decision reported on 17/10/2018); drawn to the attention of the Environment, Food and Rural Affairs Committee and the International Trade Committee
Document details	Recommendation for a Council Decision authorising the opening of negotiations on an agreement with the United States of America Regarding the Importation of High Quality Beef from animals not treated with certain growth-promoting hormones
Legal base	Articles 207, 218(3) and 218(4) TFEU, QMV
Department	Environment, Food and Rural Affairs
Document Number	(40041), 11801/18 + ADD 1, COM(18) 332

Summary and Committee's conclusions

5.1 In order to settle a longstanding World Trade Organisation (WTO) dispute on the export of US beef to the EU, the Council has agreed to open negotiations with the US on the tariff rate quota (TRQ)[24] for the import of high-quality, hormone-free beef from the US. We set out details on the background to this proposal, including the EU's ban on beef treated with growth-promoting hormones, in our Report of 17 October 2018.

5.2 We noted that the continuing trade wrangles in this area demonstrate that the trade in beef treated with growth-promoting hormones is politically contentious and is an area of interest in the Brexit context as the US may push in the future for access for such products to the UK market.

5.3 Our queries to the Minister were twofold. Noting that the current TRQ for imports into the EU is shared between the US and other countries, we asked about engagement with other supplier countries and about the implications of a higher exclusive allocation for the US. We also asked what the expected outcome would be if negotiations with the US failed.

5.4 The Minister of State for Agriculture, Fisheries and Food (George Eustice) has written to confirm that the Decision was adopted, with the support of the UK. Regarding country allocations and the World Trade Organization (WTO) compatibility of this Decision, he says that allocations within TRQs can be set consistently with WTO principles by reaching agreement with significant beef exporters or by allocating shares representatively. Indeed,

24 A specific amount which can be imported at low or zero tariff—45,000 tonnes annually at zero tariff in this instance.

says the Minister, many existing quotas already contain exclusive country allocations in addition to portions that are open to all members. He notes that the Decision would authorise the EU to start talking to the relevant countries to secure such an agreement.

5.5 As to the implications of unsuccessful negotiations, the Minister expects that the US would continue to pressure the EU to provide adequate compensation for the hormone-treated beef ban. If agreement was not reached, the US would retain their rights to take retaliatory measures against the EU, with the aim of nullifying the impairment. Any action would be preceded by a request to the WTO's dispute settlement body.

5.6 **We thank the Minister for his response. Whilst noting that the Minister has not addressed our query as to the expected outcome if agreement with other supplier countries is not reached, we recognise that this is fundamentally uncertain and so do not press the Minister further at this stage. We have no outstanding issues. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee and the International Trade Committee.**

Full details of the documents:

Recommendation for a Council Decision authorising the opening of negotiations on an agreement with the United States of America Regarding the Importation of High Quality Beef from animals not treated with certain growth-promoting hormones : (40041), 11801/18 + ADD 1, COM(18) 332.

Previous Committee Reports

Fortieth Report HC 301–xxxix (2017–19), chapter 9 (17 October 2018).

6 Fisheries Discard Plans 2019–21

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	(a) Commission Delegated Regulation of 18 October 2018 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019–21; (b) Commission Delegated Regulation of 18 October 2018 establishing a discard plan for certain demersal fisheries in North-Western Waters for the period 2019–21.
Legal base	(a) Article 11 of Regulation (EU) 2018/973; (b) Articles 15(5), 18(1) and 18(3) of Regulation (EU) No 1380/2013
Department	Environment, Food and Rural Affairs
Document Numbers	(a) (40157), 13413/18, C(2018) 6793; (b) (40158), 13457/18, C(2018) 6789

Summary and Committee's conclusions

6.1 As part of the 2013 reform of the Common Fisheries Policy (CFP) it was agreed to phase in a landing obligation ("discard ban") on stocks subject to quotas in order to end the practice of discarding fish. Implementation of the discard ban was foreseen through either regional multiannual plans or a series of regional discard plans. In each instance, the detailed arrangements are drawn up by the Member States concerned as "joint recommendations". This is an example of the regionalised approach to decision-making under the reformed CFP, whereby rules are more tailored to the needs of the specific sea area than was previously the case.

6.2 These two documents concern the arrangements for implementation of the discard ban in the demersal[25] fisheries of the North Sea (North Sea, Norwegian Sea and Kattegat and Skagerrak) and North Western Waters (West of Scotland, Irish Sea, English Channel and Celtic Sea) for 2019–21. The demersal discard ban in both areas will apply to all species subject to quota restrictions from 1 January 2019. While presented as Commission Regulations, the documents are based on the Joint Recommendations prepared by the concerned Member States.

6.3 The plans set out:

- the precise geographical areas covered, the species involved and the fishing gears that are employed;

25 The demersal fisheries concerned are those targeting largely flatfish (such as sole, plaice and flounder) and whitefish (such as cod, hake, haddock and whiting). Norway lobster (scampi) are also included. Some of the exemptions apply to pelagic fish (such as mackerel) caught as bycatch in the demersal fishery.

- scientifically justified exemptions to the discard ban based on high survival rates when fish that have been caught are returned to the sea post-capture; and
- a small number of scientifically justified "de minimis" exemptions to the discard ban, where landing unwanted fish would have resulted in a disproportionate cost for the businesses affected or where further selectivity was not possible in the short term.

6.4 The Minister for Agriculture, Fisheries and Food (George Eustice) sets out details of the measures in his Explanatory Memorandum (EM) on the North Sea plan and in his Explanatory Memorandum (EM) on the North-Western Waters plan. In summary, the plans extend current exemptions to a number of new stocks, reflecting the inclusion of all quota species in the discard ban from 1 January 2019. In the light of the UK's withdrawal from the EU, it is noteworthy that some of the exemptions are applicable for one year only, such as the de minimis exemption for horse mackerel and mackerel caught by bottom trawls in the North Sea and the high survivability exemption for all skates and rays caught in the North Sea. In the North Western Waters plan, there is a one year de minimis exemption for haddock, cod, horse mackerel and mackerel caught by bottom towed gears in the Celtic Sea and Channel.

6.5 The Minister explains that the plans were developed by Member States in the relevant regional groupings in consultation with relevant regional Advisory Councils, representing stakeholders, and scientific bodies. The Government also consulted environmental and industry stakeholders directly. He confirms that the devolved administrations were consulted and that the Scottish Government actively contributed to the development of the North Sea plan. Generally, he says, the fishing industry was supportive of the plans as they should provide the flexibility required to implement the discard ban.

6.6 The Minister notes that, under the planned post-Brexit implementation period, the existing body of EU law (including these Regulations) will continue to apply to the UK until 31 December 2020. After that, the UK will have the flexibility to introduce measures not contained within the CFP toolkit to reduce discarding whilst preventing choke.[26] We note that the Withdrawal Agreement makes provision for an extension of the implementation period for a maximum of two years and does not exclude fisheries policy from any such extension.

6.7 We considered similar documents last year to cover arrangements for 2018. At that time, we raised issues relating to stakeholder engagement and specifically to continued involvement of those UK stakeholders currently engaged in EU fisheries policy through the Advisory Councils.[27]

6.8 **On the substance of the plans, we would welcome confirmation that the Government considers them in all respects to be in line with scientific evidence and advice. We note that the North Sea highly survivable exemptions for plaice and for skates and rays are in place for a year and include a requirement for additional evidence to be supplied, which will be assessed by 1 August 2019. This provisional exemption suggests a degree of uncertainty. We ask for the Government's assessment as to how robust it considers**

26 "Choke" is a situation where the exhaustion of one quota prevents fishing continuing for other species.

27 Eleventh Report HC 301–xi (2017–19), chapter 8 (24 January 2018); Third Report HC 301–iii (2017–19), chapter 28 (29 November 2017).

the process for deciding on highly survivable exemptions in particular to be. We ask too for how long a species must be able to survive before being returned to the sea in order to be considered highly survivable.

6.9 **The Government appears to be content with the plans, noting that they have been developed with other Member States, devolved administrations, scientists and stakeholders. On the other hand, the Minister suggests that the UK will in the future (after the post-Brexit implementation period) be able to prepare better plans as it would no longer be restricted by the "CFP toolbox". It would be helpful if the Minister could set out:**

- **how much of the content of the plans reflects UK suggestions;**
- **what UK suggestions were rejected;**
- **any aspects that were unsuccessfully contested by the UK;**
- **over which elements of the plans the UK has outstanding concerns;**
- **what ideas would be helpful outside of the "CFP toolbox"; and**
- **to what extent the UK has proposed that those ideas be integrated into the CFP toolbox.**

6.10 **We are separately scrutinising the Commission's proposal for fishing opportunities in 2019 and note that the Government's focus is to ensure that the fishing opportunities are aligned with the discard ban. It would be helpful if the Minister could assist us in explaining the relationship between the three-year discard plans on the one hand and the annual fishing opportunities Regulation on the other. Might it not be the case, for example, that decisions made on the latter would have implications for aspects of the discard plan? If so, how would such implications be taken into account?**

6.11 **We turn now to the post-Brexit implementation period lasting at least until 31 December 2020, and potentially until 31 December 2022 as the Withdrawal Agreement does not exclude fisheries from any extension of the implementation period. During that period, the UK will apply EU law adopted both before its withdrawal and after if applicable. We have cited above examples of exemptions in these plans that are proposed for one year, but there are others in both plans. To what extent does the Minister consider it likely that the plans will be amended for 2020 to reflect experience and new information? Should there be any such amendments, does the Minister accept that they would apply to the UK?**

6.12 **We have tried and failed to elicit information from the Department on how the UK will be involved in fisheries decision-making during the implementation period but have been unable to get beyond expectations.**[28] **With less than four months to go before the UK leaves the EU and its institutions, does the Minister still only "expect" the UK to be involved or has he worked out specific arrangements with the Commission? We ask that he share with us the latest details on how the UK will be involved, or at the very least the process in which the Government is engaged with a view to establishing working arrangements.**

28 Thirtieth Report HC 301–xxix (2017–19), chapter 16 (6 June 2018).

6.13 **Finally, we noted last year the valuable role of the regional Advisory Councils, allowing UK stakeholders to work with stakeholders from other EU countries to identify potential fisheries management issues and solutions. It is our understanding that UK stakeholders will no longer participate in the Advisory Councils after 29 March 2019. To what extent have any other arrangements been made for continued structured stakeholder engagement in fisheries decision-making during—and after—the implementation period?**

6.14 **As these plans are made under the Commission's delegated powers and have already been agreed, we clear them scrutiny. We look forward to a response to our queries by 14 January 2019. This chapter is copied to the Environment, Food and Rural Affairs Committee.**

Full details of the documents:

(a) Commission Delegated Regulation of 18 October 2018 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019–21: (40157), 13413/18, C(2018) 6793; (b) Commission Delegated Regulation of 18 October 2018 establishing a discard plan for certain demersal fisheries in North-Western Waters for the period 2019–21: (40158), 13457/18, C(2018) 6789.

Previous Committee Reports

None.

7 SEPA: cost of cross-border money transfers

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Treasury Committee
Document details	Proposal for a Regulation amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges
Legal base	Article 114 TFEU; ordinary legislative procedure, QMV
Department	Treasury
Document Number	(39616), 7844/18 + ADDs 1–2, COM(18) 163

Summary and Committee's conclusions

7.1 Most electronic payments in euros sent between different European countries are governed by the standardised rules and technical specifications of the Single Euro Payments Area (SEPA). The core of SEPA are its payment schemes, which provide the technical infrastructure for the rapid and low-cost cross-border credit transfers and direct debits in euro in participating countries. These schemes are operational in all EU Member States, plus the four EFTA countries (Norway, Switzerland, Iceland and Liechtenstein), and Andorra, San Marino and Monaco. The legal foundations for SEPA are set out in EU law, principally the SEPA Regulation and the second Payment Services Directive, which are also implemented by the non-EU participating countries. The UK, as a major international financial centre, makes extensive use of SEPA for the processing of euro-denominated transactions.

7.2 Within the Single Market of the European Economic Area, additional protections apply for users of cross-border payment services.[29] The EU's Cross-Border Payments Regulation (CBPR)[30] limits the fee payment services providers (PSPs) can charge someone for the act of making or receiving a cross-border transfer in euros between two EEA countries (for example paying by debit card while on holiday or when making a purchase from a website in another Eurozone country).[31] It does so not by imposing a specific cap, but by requiring PSPs to charge the same for a cross-border euro transaction as they would for a domestic one of the same value. While this has led to a sharp decrease in the cost of

29 See for the extension of these protections to the EFTA-EEA countries (Norway, Iceland and Liechtenstein) Decision 86/2013 of the EEA Joint Committee.

30 Regulation 924/2009.

31 Overall, SEPA has lead to a significant reduction in the cost of transferring money within the single currency area for businesses and consumers: while sending €100 between Eurozone countries cost nearly €20 in 2011, it is virtually free of charge now. See Commission Impact Assessment SWD(2018) 84, p. 85.

cross-border payments within the Eurozone, the benefits have been limited in most[32] non-Eurozone EU Member States, including the UK (because they can continue to be priced at a higher rate than transactions in the domestic currency).[33]

7.3 To bring the costs of euro payments down for consumers and businesses in non-Eurozone Member States, the European Commission in April 2018 proposed a new Regulation that would require them to ensure that PSPs in their territory equalise fees for sending or receiving a payment in euros with those for domestic transfers in their *national* currency.[34] In parallel, the Commission also recommended the introduction of new transparency requirements for intra-EU currency conversions (i.e. the additional charge consumers face when making a card payment or cash withdrawal in a country that uses a different currency than their home country, ostensibly to cover the cost of converting the local currency into the currency of their payment account).[35] The proposal is referred to as the second Cross-Border Payments Regulation or CBPR2.

7.4 The Economic Secretary to the Treasury (John Glen) submitted an Explanatory Memorandum in April 2018 setting out the Government's position on the proposal. In it, he notes the UK is "broadly supportive" of the new Regulation because it would "make financial services more affordable". He provided further updates on the consideration of the proposal by both the EU's Member States and the European Parliament by letters in June, September and November 2018. The European Scrutiny Committee reported on the substance of the proposal, and its potential implications for the UK, on 6 June and 4 July 2018.

7.5 In his latest update, the Minister explains that both the Council and the European Parliament have broadly endorsed the Commission's approach.[36] However, MEPs have sought a more expansive application (extending the cap on cross-border currency conversion fees to all EU currencies, not just the euro). This is unlikely to be accepted by

32 Sweden has made use of a voluntary opt-in under Regulation 2009/924, under which it has by force of law equalised the pricing of domestic and cross-border transactions in Swedish krona.

33 PSPs in the non-Eurozone EEA countries other than Sweden can price cross-border transactions in euros as they would a domestic transfer in euros, which are obviously not common and usually more expensive than a domestic transfer in the local currency. This is despite the fact that PSPs in all EEA countries, irrespective of their domestic currency, also have access to the technical payments infrastructure used within the Eurozone to keep the costs of euro-denominated transfers low.

34 This means, for example, that the UK—while covered by the Regulation under the terms of its EU membership or the post-exit transitional arrangement—will have to ensure that British banks treat an incoming or outgoing payment in euros as if it were in sterling (which, all other things being equal, would significantly reduce or altogether eliminate the fee charged for such transfers, card payments or cash withdrawals).

35 Under the Commission proposal, the new requirements would apply irrespective of whether the transaction is already denominated in the currency of the customer's payment card (so-called dynamic currency conversion) or takes place in the currency of the country of transaction. These rules would be given force of law via a future Delegated Act of the Commission in 2022, with a maximum currency conversion charge applying in the interim. The Member States want to apply the new requirements to dynamic currency conversion only, and without an interim cap. This means the new rules would not apply where the consumer opts to pay in the local currency, and their bank converts the payment into the consumer's home currency at a later stage.

36 The joint position of the Member States is set out in Council document 10345/18.

the Member States.[37] The final stretch of negotiations between the Parliament and the Council to resolve their differences on the text of the new Regulation is already underway,[38] and the Austrian EU Presidency is hoping to secure an agreement before the end of 2018.

7.6 Formal adoption of the legislation would then take place in early 2019, and the new cap on the cost of sending or receiving euro-denominated payments and the transparency requirements would then take effect in 2020. In light of the impending end of the legislative process, the Minister has requested the Committee clear the proposal from scrutiny so that the Government can support the final agreement when it is presented to the Council for adoption.

Brexit and UK participation in SEPA

7.7 Our scrutiny of the CBPR2 proposal has raised two separate, but linked, issues related to the UK's exit from the EU: the applicability of the proposed cap on the cost of receiving or sending euros between the UK and the rest of the European Economic Area, and the UK's membership of the SEPA payments infrastructure for euro-denominated transactions more generally.

7.8 Under the terms of the draft Withdrawal Agreement, the UK would remain part of the Single Market—and, by extension, of SEPA—for the duration of a transitional period which could last until December 2022.[39] During that time, the CBPR as amended would also apply, limiting what PSPs can charge to UK consumers and businesses for sending or receiving euro-denominated payments.

7.9 However, automatic participation in the Single Euro Payments Area is limited to the Member States of the EEA. In the absence of a Withdrawal Agreement, or at the end of any subsequent transitional period, the UK would therefore automatically leave SEPA. While 'third countries' can apply for membership of the SEPA payment schemes, this requires the approval of the European Payments Council (an international not-for-profit organisation tasked with the practical implementation of schemes). Crucially, the EPC can only grant 'third country' participation to countries which are deemed "functionally equivalent" with specific elements of EU legislation that underpin the pan-European payments infrastructure.

7.10 The Government has the objective of making use of this option to retain UK membership of SEPA after full withdrawal from the European Union. As this would be dependent on equivalence with parts of EU law indefinitely, the European Scrutiny Committee asked the Economic Secretary in October 2018 to which specific provisions of EU payment services legislation the equivalence requirement applied.[40] Subsequently, he

37 The Commission explicitly rejected this option in its proposal, because of the low volume of transactions in non-euro currencies that would benefit (as only 0.5 per cent of cross-border transfers made from non-Eurozone EU countries to another EU Member State are not denominated in euro), and the high costs it would impose on payment services providers when creating the necessary clearing and settlement infrastructure.

38 The Minister explains that the main areas of contention between the Parliament and the Member States relate to the scope of rules on costs for cross border payments (with MEPs supporting an extension to cover not only the euro but any EU currency); the extension of the transparency rules for overseas card transactions involving a currency conversion; and the Parliament's support for the Commission's original proposal to impose an interim price cap on currency conversion charges.

39 The transitional period would initially last until 31 December 2020, but could be extended by two years by mutual agreement between the UK and the EU under article 132 of the Withdrawal Agreement.

40 Letter from Sir William Cash to John Glen (17 October 2018).

informed us that 'third country' membership of SEPA would require the UK to maintain equivalence with large sections of the second Payment Services Directive[41] as well as the entirety of the 2012 SEPA Regulation.[42] A position paper by the EPC further clarifies that the equivalence requirement also encompasses EU prudential regulation for banks (the Capital Requirements Directive), money laundering rules (the Anti-Money Laundering Directive) and EU competition laws.[43]

7.11 In a 'no deal' scenario, where the UK would automatically cease to be part of SEPA on 29 March 2019, the Minister notes that UK Finance (an industry body) has made an application for the UK to participate in the payment schemes as a non-EEA country from that date onwards. The EPC "would plan to determine the outcome of such an application before the UK leaves the EU", which it has previously said that it "supports […] provided that the criteria for participation in the SEPA schemes continue to be met".[44] Although the EU has no formal role in this equivalence assessment, it appears that the European Commission does possess a veto over the extension of SEPA membership to the UK as a 'third country', even if all the technical criteria are otherwise satisfied.[45] That may complicate the EPC's decision-making process in the event of a disorderly Brexit in March 2019, given that the relationship between the UK and the EU would be extremely strained politically.[46]

7.12 Moreover, whether the UK maintains functional equivalence will also be assessed over time, including the need to reflect any changes made to EU law in the interim. With the European Payments Council stating that it "reserves the right to carry out periodic checks on a [third country's] continuing compliance". Therefore, UK law might need to be adapted in the future to retain equivalence with amendments to the Payment Services Directive (PSD) and the SEPA Regulation, which would have been made by the remaining Member States and the European Parliament without any formal role for the UK, the Bank of England or the UK Payment Services Regulator in the legislative process. Although the PSD was comprehensively revised as recently as 2015, a review by the European Commission is due by January 2021, potentially accompanied by draft amendments to the Directive.[47]

7.13 With respect to the cost of cross-border transactions in euro, the CBPR (including the pending amendment described in this Report) is not part of the package of legislation covered by the 'functional equivalence' requirement for third country participation. Therefore, after the UK leaves the Single Market (either on 29 March 2019 in the case of a 'no deal' Brexit, or at the end of any subsequent transitional period under the Withdrawal Agreement), the Regulation would cease to have effect in the UK. The Government has previously confirmed that it will repeal the CBPR when the UK leaves the Single Market, because maintaining it unilaterally while outside the European Economic Area would

41 Directive (EU) 2015/2366.
42 Regulation (EU) 260/2012.
43 European Payments Council, "Position on Brexit and UK PSPs' participation in SEPA schemes" (accessed 5 December 2018).
44 Idem.
45 The EPC's "criteria for participation in the SEPA schemes for communities of banks or financial institutions outside the European Economic Area (EEA)" state that "the European Commission [has] been consulted and raised no objection to the inclusion of the Applicant within the geographical scope of the SEPA Schemes".
46 The European Commission's recent 'contingency plan' for a disorderly Brexit does not mention SEPA or its position on continued UK membership of the SEPA schemes as a 'third country'.
47 Article 108 of the second Payment Services Directive.

put UK payment services providers at a "competitive disadvantage".[48] Consequently, the proposed caps on fees for sending or receiving euros electronically in the UK would apply only for the duration of the transitional period,[49] after which the restrictions on the charges on UK PSPs would be removed from the statute book.[50]

7.14 It is not yet clear whether the new transparency requirements for currency conversions (for example, the cost of converting a payment in euros made in France with a UK debit card back into sterling) will only apply to UK-issued cards used elsewhere in the EU while the UK remains in the Single Market during the transitional period. The original Commission proposal limited these new provisions to "cross-border payments […] denominated in euro or in a national currency of a Member State", but the Member States' version of the same article would instead supplement an existing transparency provision of the second Payment Services Directive which appears to apply to conversion to non-EU currencies as well.[51]

Our conclusions

7.15 **We thank the Minister for his very helpful update on the negotiations on the CBPR2, and we are content to now clear the proposal from scrutiny. However, given that the new Regulation is likely to be adopted in early 2019 and take effect in the UK during that transitional period (pending ratification of the Withdrawal Agreement), we ask the Minister to write to us when final agreement has been reached between the European Parliament and the Member States, to clarify the final compromise reached on both the charges for cross-border payments and the new transparency requirements for currency conversions.**

7.16 **We note that the costs of receiving or sending euros via UK-based payment services providers would potentially increase again after the transitional period, because the statutory price equalisation with the cost of sending or receiving sterling would fall away. We would however be grateful if the Minister could confirm in his final update on this proposal whether the transparency requirements for overseas currency conversions will apply to UK consumers making a card payment in an EU country, even when the UK is no longer part of the European Economic Area.**

7.17 **The broader issue of UK equivalence with the relevant provisions of EU financial services legislation that underpin 'third country' participation in the Single Euro Payments Area remains an area of concern to the Committee. It appears to require the UK to keep elements of its domestic financial regulatory architecture in line with future changes to EU law (over which it will have no say), in particular the SEPA Regulation and the second Payment Services Directive. Not maintaining equivalence would create a risk that the UK would be shut out from a critical part of pan-European payments infrastructure that matter greatly to its financial services industry.**

48 Letter from John Glen to Sir William Cash (18 September 2018).

49 While the Regulation applies to the UK, the Treasury has calculated (using trade in goods and services between the UK and the EU as a proxy) that savings from the proposal to UK businesses and consumers who send or receive euros will amount to €74 million (£65 million) per year.

50 The Minister confirmed this to us in his letter dated 18 September 2018 that the Government has decided not to maintain the effects of the CBPR unilaterally for UK payment services providers, because—being outside of the legal framework that requires reciprocity throughout the European Economic Area—to do so would place them at a "competitive disadvantage" by potentially having to offer cross-border payments services with EEA countries at a loss.

51 Article 59 of Directive 2015/2366.

7.18 **Although no amendments to the SEPA Regulation or Payment Services Directive are currently under consideration at EU-level, the latter has a statutory evaluation clause which requires the European Commission to present a review (with legislative proposals if necessary) by early January 2021. Therefore, whether the UK can and should maintain equivalence with this legislation as it develops could become an issue in the future. At that point, a cost-benefit exercise will need to be undertaken to determine what the implications of the proposed amendments are for the British payment services industry, and whether pursuing continued 'functional equivalence' is in the national interest.**

7.19 **We also note that the European Commission would have to approve the UK's membership of the SEPA payment schemes as a 'third country' from March 2019 in the event the Withdrawal Agreement is not ratified. Should this 'no deal' contingency measure become necessary, we ask the Minister to inform us, if necessary, when the Commission has provided the European Payments Council with its favourable assessment of the UK's application.**

7.20 **We draw these developments to the attention of the Treasury Committee.**

Full details of the documents:

Proposal for a Regulation amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges: (39616), 7844/18 + ADDs 1–2, COM(18) 163.

Previous Committee Reports

See (39616), 7844/18 + ADDs 1–2, COM(18) 163: Thirtieth Report HC 301–xxix (2017–19), chapter 13 (6 June 2018) and Thirty-fourth Report HC 301–xxxiii (2017–19), chapter 5 (4 July 2018.

8 EU budget: discharge for 2017

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Public Accounts and Treasury Committees
Document details	(a) European Court of Auditors' Annual Reports concerning the financial year 2017; (b) Court of Auditors Report Annual report on EU agencies for the financial year 2017
Legal base	(a) and (b): Articles 287(1) and (4) TFEU
Department	Treasury
Document Numbers	(a) (40100), 12833/18; (b) (40127),—

Background and Committee's conclusions

Background

8.1 On 4 October 2018, the European Court of Auditors (ECA) published its annual report on the implementation of the EU budget in 2017. This report informs the process through which the European Parliament decides whether it will sign off the EU budget accounts for that year, and thereby discharge the Commission from its responsibility for management of the relevant annual EU budget. The Chief Secretary to the Treasury (Elizabeth Truss) submitted an Explanatory Memorandum on the report on 28 November 2018.

8.2 The purpose of the Auditors' report is to assess the reliability and accuracy of the EU's accounts, and how well the underlying transactions comply with the relevant regulations (known as the 'regularity' of the transactions). It also looks at the performance of the EU budget and results achieved by EU spending. The auditors concluded that the accounts are "accurate and fairly represent the financial position of the EU, the results of its operations and its cash flows for [2017]".

8.3 With respect to EU expenditure, the Auditors found that there continued to be a "material level of error in spending", which—although not considered to be "pervasive"—was estimated at 2.4 per cent (affecting €2.4 billion in expenditure). This represents a significant reduction from the 3.1 per cent error rate reported for the previous financial year, but remains well above the 'materiality' threshold of 2 per cent. According to the auditors, the overall error rate is driven primarily by erroneous "reimbursement-based" payments. This refers to expenditure in pursuit of an EU policy objective, where recipients recoup some of their costs from the EU budget under pre-agreed conditions. These payments—which are managed by the Commission in some areas, and by individual Member States in others—represented 47 per cent of total EU spending in 2017, including for example funding for research, development assistance and rural development.[52] As the

52 The error rate for the second category of EU expenditure, called 'entitlement-based payments' (such as direct support for farmers under the Common Agricultural Policy) was below the materiality threshold of 2 per cent. One of the reasons is that CAP subsidies are calculated primarily by reference to agricultural land surface, which can normally be objectively measured.

estimated error rate for this type of EU spending reached 3.7 per cent (affecting €1.3 billion in expenditure), the Court of Auditors therefore issued a qualified opinion on payments from the EU budget.[53] The report also contains a number of technical recommendations to further reduce the levels of error.[54]

8.4 On the revenue side, the auditors found that the EU's systems for collecting revenue—which consists of customs duties collected by the Member States, a share of their VAT base, and a contribution based on their Gross National Income was "effective" overall. However, the report also refers prominently to the infringement procedure brought by the European Commission against the UK in March 2018, for alleged large-scale customs duty evasion on Chinese textiles entering the Customs Union via UK ports. As 80 per cent of customs duties collected by EU countries are by law passed to the EU budget as a 'traditional own resource', the evasion has allegedly led to a loss of €2.1 billion (£1.85 billion) in duty that should have been collected by the UK on the EU's behalf.[55] Any such losses would have been compensated for via the GNI-based contributions, meaning that the other 27 Member States paid a higher EU contribution in recent years to balance out the duty loss that occurred at UK ports. The Government has consistently rejected these allegations, and it is currently engaged in discussions with the European Commission to resolve the dispute. The latter could yet refer the matter to the European Court of Justice in an attempt to force the Government to compensate the EU for the duty loss.[56]

8.5 The Auditors' report also refers a number of times to the budgetary implications for the EU of the UK's withdrawal in March 2019. It notes that the financial settlement contained in Part Five of the draft Withdrawal Agreement would see the UK pay into the EU budget for 2019 and 2020 as if it were still a Member State, and thereafter take on a share of outstanding funding commitments and liabilities as they existed on 31 December 2020. In light of this, the Court of Auditors concluded that the EU's accounts "correctly reflect the situation at hand, subject to the outcome of the withdrawal process". It has not attempted to assess the impact on the EU's budgetary situation if the Withdrawal Agreement is not ratified, at which point the size and timing of any further UK payments to the EU budget would be highly uncertain, although the Government appears to have conceded some further UK contributions would be made even if there was no overall Agreement.[57] The Auditors' report also does not refer to the budgetary implications of an

53 The error rate does not mean the EU budget is materially affected by fraud. Claims for ineligible costs can arise due to the complexity of the rules underpinning EU funding agreements, which is cited as one of the key drivers behind the high rate of errors in payments under EU research grants. In 2017, the Court of Auditors referred 13 cases of suspected fraud to the EU's anti-fraud body OLAF.

54 The Court of Auditors' recommendations include clarifications about the eligibility rules governing reimbursement-based expenditure, so that ineligible claims are not made and paid out; increase regulatory checks on the effectiveness of audits carried out in relation to EU cohesion funding; and more effective checks of the ways in which Member States address errors in payment of rural development funding.

55 The full amount of customs duty loss is alleged to be €2.7 billion. The €2.1 billion figure is minus the 20 per cent collection costs retained by Member States, but inclusive of an interest penalty to reflect late payment.

56 The original deadline for the UK's response to the Commission's Reasoned Opinion expired on 26 November 2018. It is unclear what, if any, action the Commission will take in the near future, especially given that the ratification process of the draft Withdrawal Agreement is now underway and any infringement procedure before the Court of Justice will only be binding on the UK if the Agreement is ratified.

57 On 29 August 2018, the then-Secretary of State for Exiting the EU (Dominic Raab) told the House of Lords EU Select Committee that "if [the UK] left with no deal, [,,,] there be a question around the shape of those financial obligations as a matter of strict law […]. It would be safe for either side to assume that the financial settlement as agreed as part of the withdrawal agreement would then be paid in precisely the same shape, with the same speed or at the same rate if there was no deal". See also *the Daily Telegraph*, "Britain will face up to £36 billion Brexit bill if it fails to agree a trade deal with EU, Chancellor warns MPs" (16 October 2018).

extension of the post-Brexit transitional period until as late as December 2022, which is now an explicit possibility under Article 132 of the draft Withdrawal Agreement. During any such extension from 1 January 2021 onwards, the UK would again be required to make *further* contributions to the EU (but without being automatically eligible for EU expenditure like research or regional development funding).

8.6 The Court's detailed findings in different areas of EU expenditure are set out in expansively in its full report, and are also summarised in the Chief Secretary's Explanatory Memorandum submitted to us in late November 2018. The ECA has also issued a separate report dealing exclusively with the financial management of the EU's agencies in 2017. Overall, the Auditors' findings with respect to the Agencies confirmed the positive results reported in previous years, with unqualified—clean—opinions on their accounts, revenue and payments (with the exception of an adverse opinion for the payments made by the European Asylum Support Office).[58]

8.7 As regards the Government's position on the Auditors' findings, the Chief Secretary's Explanatory Memorandum reiterates that the Government "takes financial management of the EU budget very seriously" so that "taxpayers need to have confidence that their funds are being effectively managed and implemented at an EU level, and that every effort is being made to improve standards". The Minister added that there is "still room for improvement", given that the error rate remains about the 2 per cent materiality threshold.

Our conclusions

8.8 **We thank the Chief Secretary for her helpful summary of the Auditors' main findings in relation to the 2017 EU budget. We note that the rate of error in payments from the budget remained material, even if it has been decreasing in recent years.**

8.9 **The Court's findings are relevant for the UK despite its withdrawal from the European Union in three ways. First, pursuant to Part Five of the draft Withdrawal Agreement (if ratified), the UK will enter into a financial settlement with the EU, under which it will pay off a share of unpaid funding commitments—the so-called *reste à liquider* or RAL—entered into by the Union before 31 December 2020 (the end date of the 2014–2020 Multiannual Financial Framework). That includes a sizable proportion of EU expenditure commitments made under the 2017 budget, with the auditors noting that "outstanding budgetary commitments exceeded [the 2016] record and are likely to rise even higher by the end of the current [Multiannual Financial Framework]" in December 2020." The size of the RAL has an effect on the amount the UK will be expected to pay under the financial settlement from January 2021 onwards.[59] More generally, given the UK Government has accepted an obligation towards EU budgetary commitments and other financial liabilities entered into before 31 December 2020, the rate of errors and fraud recorded in the Court of Auditors report is of material interest to the Treasury and the UK taxpayer.**

8.10 **Secondly, the Auditors' report refers to the on-going dispute between the European Commission and the Government about the alleged evasion of nearly €3 billion (£2.7 billion) in customs duty on Chinese imports at British ports. The Commission issued**

58 This was due to "material and systematic instances of non-compliance with payments with the Office's Financial Regulation", mainly related to public procurement and recruitment procedures underlying payments.

59 See for more information our Report of 21 November 2018.

a Reasoned Opinion as part of a formal infringement procedure in late September 2018, calling on the Government to make the necessary amounts available out of the public purse. As the UK has rejected the allegations altogether, it remains unclear if the dispute can be resolved without a formal referral to the Court of Justice. Under the Withdrawal Agreement, should the Court eventually find against the UK and order it to compensate the EU budget for the alleged duty loss, that judgement would be binding on the UK (even if it is delivered after the end of the post-Brexit transitional period). This is a matter that we will continue to monitor on behalf of Parliament, given the potential cost to the UK taxpayer if the Treasury must compensate the EU for the alleged duty loss.

8.11 **Lastly, we note that the Court of Auditors has assumed for the purposes of assessing the accuracy of the EU's financial position that the UK will ratify its Withdrawal Agreement, and the financial settlement set out in it. Although the EU budget represents a relatively small fraction of public spending in its Member States, the impact that a sudden end to UK contributions would have—if the Withdrawal Agreement is not ratified—would be substantial for EU spending programmes. While the former Secretary of State for Exiting the EU and the Chancellor of the Exchequer have both indicated the Government would continue to make some payments to the EU in the event of a 'no deal' Brexit, the legal basis for, and size of, any such contributions have not so far been made public.**

8.12 **Although the Court of Auditors report is clearly politically important, by the time we considered the documents a number of debates had already been scheduled to take place in the House of Commons around the Withdrawal Agreement, including its financial settlement. We have also already requested further information from the Chief Secretary about the impact that the Commission's separate forecast for EU expenditure in the coming years will have on the size of the Brexit financial settlement after 2020, and to be kept informed of the dispute over customs duty loss. As such, we have not recommended the 2017 Court of Auditors Report for debate on the floor of the House.**

8.13 **We are content to now clear the documents from scrutiny, and draw the Auditors' findings and our assessment thereof to the attention of the Public Accounts and Treasury Committees. We will keep the implementation of the financial settlement provisions of the draft Withdrawal Agreement, and the financial implications of any extension of the post-Brexit transitional period into 2021, under constant review.**

Full details of the documents:

(a) European Court of Auditors' Annual Reports concerning the financial year 2017: (40100), 12833/18; (b) Court of Auditors Report Annual report on EU agencies for the financial year 2017: (40127),—.

Previous Committee Reports

None.

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

Department for Business, Energy and Industrial Strategy

Other

(40176)	Report on the annual accounts of the Innovative Medicines Initiative Joint Undertaking for the financial year 2017 together with the Joint Undertaking's reply
–	
–	

Department for Environment, Food and Rural Affairs

(40159)	Report from the Commission to the European Parliament and the Council EU and the Paris Climate Agreement: Taking stock of progress at Katowice COP (required under Article 21 of Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC).
13696/18	
ADDs 1–6	
COM(18) 716	

Department for International Development

(40130)	Report from the Commission to the European Parliament and the Council Implementing EU food and nutrition security policy commitments: Third biennial report.
13302/18	
+ ADD 1	
COM(18) 699	

Foreign and Commonwealth Office

(40187)	Report from the Commission to the European Parliament and the Council On Progress in Romania under the Cooperation and Verification Mechanism.
14335/18	
+ADD 1	
COM(18) 851	

(40188) 14332/18 + ADD 1 COM(18) 850	Report from the Commission to the European Parliament and the Council On Progress in Bulgaria under the Cooperation and Verification Mechanism.
(40221) — —	Council Decision amending the Council Decision (CFSP) 2016/610 on a European Union military training mission in the Central African Republic (EUTM CAR).
(40224) — —	Council Decision amending Decision 2012/389/CFSP on the European Union Mission on Regional Maritime Capacity Building in the Horn of Africa (EUCAP Somalia)

Formal Minutes

Wednesday 5 December 2018

Members present:

Sir William Cash, in the Chair

Martyn Day	Stephen Kinnock
Kelvin Hopkins	Andrew Lewer
Mr David Jones	Michael Tomlinson

Scrutiny Report

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 9 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 12 December 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*)