House of Commons

European Scrutiny Committee

Forty-eighth Report of Session 2017–19

Documents considered by the Committee on 12 December 2018, including the following recommendations for debate:

UK participation in the EU Agency for Criminal: Justice Cooperation (Eurojust): post-adoption opt-in decision

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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Meeting Summary

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

Brexit-related issues

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

- Visa arrangements for UK nationals travelling to the EU after Brexit
- Potential post-Brexit impact on the UK of the Commission's proposal to regulate unfair trading practices in the food supply chain

Summary

EU's "no deal" Brexit planning

The Committee has assessed a recent paper by the European Commission on the EU's preparations for a UK withdrawal without an agreement in place.

Unlike the UK Government's "no deal" planning, the EU will not implement any version of the transitional period unilaterally if the UK does not ratify the Withdrawal Agreement. The Commission has said that it will only put in place emergency measures to give restricted air traffic rights to British airlines and limited permissions for cross-border trade in derivatives on the financial markets. As a result, the Committee considers that trade in goods and services with the EU would be severely disrupted in March 2019 if no further agreement is reached with the EU-27. It has published this assessment to inform Parliament's thinking following the "meaningful vote" on 11 December.

Cleared from scrutiny; drawn to the attention of the Business, Energy and Industrial Strategy Committee, the Environment, Fisheries and Rural Affairs Committee, the Exiting the European Union Committee, the Transport Committee and the Treasury Committee

Visa exemption for UK nationals travelling to the EU after Brexit

The proposed Regulation is one in a series of measures put forward by the European Commission to prepare for the UK's withdrawal from the EU. It would amend the EU Visa Regulation to include the UK in the list of third countries whose nationals do not require an entry visa for short stays within the Schengen area once the UK has left the EU and any post-exit transition/implementation period has ended. The European Commission makes clear that progress in agreeing the Regulation will depend on the Government "formalising" its commitment to grant EU nationals reciprocal visa-free access for short stays in the UK. The European Scrutiny Committee asks the Government when it expects to introduce the necessary changes to UK immigration rules. It also notes that granting visa-free travel, whilst welcome, does not mean that there will be no changes for UK

nationals travelling to the EU post-exit/transition. The Government is asked to explain how the recently agreed European Travel Information and Authorisation System (ETIAS) will affect UK nationals and whether the UK intends to introduce a similar system for EU nationals travelling to the UK post-exit.

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

UK participation in the EU Agency for Criminal Justice Cooperation (Eurojust): post-adoption opt-in decision

The UK currently participates in Eurojust, an EU body bringing together representatives of national prosecuting authorities to help coordinate investigations and prosecutions concerning serious cross-border crime, particularly in cases involving multiple jurisdictions. In November this year, the Council and European Parliament agreed a Regulation establishing a new legal framework for Eurojust. The UK did not opt into the proposed Regulation when it was first put forward by the European Commission in 2013 for two reasons. First, it expressed concern that UK participation might undermine its decision not to take part in the proposed new European Public Prosecutor's Office ("EPPO"), given that the precise relationship between the two bodies had yet to be determined. Second, it wished to ensure that the powers given to UK prosecutors participating in Eurojust respected the separation of powers between the police and prosecuting authorities under UK law. The Government considers that the final text of the Regulation addresses both concerns and that there would be "operational value" for the UK if it were to opt in. The Government's Code of Practice on parliamentary scrutiny of opt-in decisions states that the EU scrutiny committees should have eight weeks in which to express a view on a post-adoption opt-in decision and may recommend a debate. The European Scrutiny Committee considers that opting into the new Eurojust Regulation at this late stage in the UK's exit negotiations raises substantial policy and legal issues which should be explored in a European Committee debate. The Committee calls for more information on the operational value of opting in—the Regulation will take effect in December 2019, after the UK's exit but during a transition period in which EU law will continue to apply to the UK under the terms of the draft EU/UK Withdrawal Agreement—as well as the operational risk of failing to opt in. The Committee also asks the Government to clarify how the draft EU/UK Withdrawal Agreement would affect the operation of the UK's Justice and Home Affairs Opt-in Protocol and to explain how significant an impact there would be on cross-border operational capability if the UK ceased to participate in Eurojust.

Not cleared from scrutiny; further information requested; recommended for debate in European Committee B; drawn to the attention of the Exiting the European Union Committee, the Home Affairs Committee and the Justice Committee

Unfair trading practices in the food supply chain

The European Commission's proposal to tackle unfair trading practices in the food supply chain has proven contentious. Intended to protect agricultural producers against unfair practices imposed by buyers, the UK was initially opposed to it as a matter of principle, considering that this is not an area where EU regulation is appropriate. Following negotiations, though, the UK has moved towards a position where it would like to be able

to support the final compromise as long as the extended transposition period of 24 months is retained. That would mean that the UK would not need to apply the legislation unless the post-Brexit implementation period is extended. That said, the Committee highlights two caveats. First, it may not be clear until mid-2020 whether the implementation period will be extended and so the UK may need to undertake preparatory work in case of the need to implement. Second, it appears that the territorial scope of the Directive may be extended to third countries (i.e. non-EU countries, including the UK post-Brexit). The Minister downplays the significance of this, even in the Brexit context, but the Committee presses him on the potential impact on the UK post-Brexit.

Not cleared; scrutiny waiver granted; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee

Proposed Regulations on (a) the taking of evidence (b) service of documents in civil and commercial proceedings

These new proposals would amend existing Regulations on the taking of evidence and service of documents in civil and commercial proceedings in the EU to keep pace with technological developments and to make other improvements.

The Justice and Home Affairs (JHA) opt-in applies to both proposals. The opt-in date for the proposed Regulation on the taking of evidence (document (a)) was 17 October and on the service of documents (document (b)) was 24 October. The UK has now notified the EU that it will be only opting into document (b). But it has not ruled out a post adoption opt-in to document (a), even if during a transition/implementation period.

The Government considers that it is "highly unlikely" that the proposals will be adopted before UK exit but possible that they could apply towards the end of, or after the proposed transition/implementation period. The UK already participates in both existing Regulations which these new proposals will amend. Under the opt-in Protocol (Article 4(a)), there is a risk that if the UK does not opt-in, it could be excluded from the underlying Regulations (if it makes the amended Regulation inoperable for other Member States) and bear any consequential financial costs.

Our Report chapter covers two Ministerial updates of 18 September and 27 November. In conclusion, we ask the Government for more information concerning:

- whether the UK risks being ejected from the existing Regulation on the taking of evidence or bearing the financial costs of its non-participation in the new measures;
- the availability of and process for post-adoption opt-ins during the planned transition/implementation period and implications for Parliamentary scrutiny; and
- how future civil justice cooperation between the UK and the EU features in the Political Declaration and whether this is reflected at all in the opt-in decisions taken.

Not cleared from scrutiny; further information requested; drawn to the attention of the Justice Committee and the Joint Committee on Human Rights

Documents drawn to the attention of select committees:

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

Business, Energy and Industrial Strategy Committee: EU Electricity Market Design [Proposed (a)(b)(d) Regulations; (c) Directive (C)]; Brexit: EU contingency planning in a 'no deal' scenario [Commission Communication (C)]

Environment, Food and Rural Affairs Committee: Transparency of EU food safety risk assessment [Proposed Regulation (NC)]; Brexit: EU contingency planning in a 'no deal' scenario [Commission Communication (C)]; Unfair trading practices in the food supply chain [Proposed Directive (NC; scrutiny waiver granted)]; Tariff quotas for EU imports of fishery products 2019–20 [Proposed Regulation (C)]

Environmental Audit Committee: Reduction in the impact of single-use plastic items [Proposed Directive (C)]

Exiting the European Union Committee: Visa exemption for UK nationals travelling to the EU after Brexit [Proposed Regulation (NC)]; Brexit: EU contingency planning in a 'no deal' scenario [Commission Communication (C)]; UK participation in the EU Agency for Criminal Justice Cooperation (Eurojust): post-adoption opt-in decision [Proposed Regulation (NC; recommended for debate)]

Health and Social Care Committee: Transparency of EU food safety risk assessment [Proposed Regulation (NC)]

Home Affairs Committee: Visa exemption for UK nationals travelling to the EU after Brexit [Proposed Regulation (NC)]; UK participation in the EU Agency for Criminal Justice Cooperation (Eurojust): post-adoption opt-in decision [Proposed Regulation (NC; recommended for debate)]

Joint Committee on Human Rights: Taking of evidence and service of documents in civil or commercial proceedings [Proposed Regulations (NC)]

Justice Committee: UK participation in the EU Agency for Criminal Justice Cooperation (Eurojust): post-adoption opt-in decision [Proposed Regulation (NC; recommended for debate)]; Taking of evidence and service of documents in civil or commercial proceedings [Proposed Regulations (NC)]

Northern Ireland Affairs Committee: Brexit: EU contingency planning in a 'no deal' scenario [Commission Communication (C)]

Transport Committee: Brexit: EU contingency planning in a 'no deal' scenario [Commission Communication (C)]

Treasury Committee: Brexit: EU contingency planning in a 'no deal' scenario [Commission Communication (C)]

1 UK participation in the EU Agency for Criminal Justice Cooperation (Eurojust): post-adoption opt-in decision

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; recommended for debate in European Committee B; drawn to the attention of the Exiting the European Union Committee, the Home Affairs Committee and the Justice Committee
Document details	Regulation (EU) 2018/1727 on the European Agency for Criminal Justice Cooperation (Eurojust) and replacing and repealing Council Decision 2002/187/JHA
Legal base	Article 4 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice
Department	Home Office
Document Number	(35216),—

Summary and Committee's conclusions

1.1 Eurojust was established in 2002 to support cooperation between Member States in cross-border criminal investigations and prosecutions, particularly in cases involving multiple jurisdictions. Based in The Hague, Eurojust bring together representatives of each Member State's national prosecuting authorities to strengthen coordination and enhance their capacity to tackle serious cross-border and organised crime. It facilitates judicial cooperation by advising on the requirements of different legal systems, supporting mutual legal assistance requests and the execution of mutual recognition instruments (such as the European Arrest Warrant), hosting coordination meetings, providing logistical support (such as interpretation and translation), and funding Joint Investigation Teams. There is also an important international dimension to Eurojust's work. It has an extensive network of contact points in 44 countries outside the EU, has concluded ten cooperation agreements which provide for the exchange of information (including personal data), and hosts liaison officers from six non-EU countries.[1] Eurojust also works closely with other crime-fighting bodies, notably the EU's law enforcement agency (Europol), the EU's anti-fraud office (OLAF) and the European Judicial Network.

1 See the Eurojust website. Eurojust has concluded cooperation agreements with the Schengen associated countries (Iceland, Norway, Liechtenstein and Switzerland), the former Yugoslav Republic of Macedonia, Montenegro, Moldova, Albania, Ukraine and the USA. It hosts liaison prosecutors from Norway, Switzerland, the USA, Montenegro, the former Yugoslav Republic of Macedonia and Ukraine.

1.2 The rules governing Eurojust's operation and its core tasks are set out in three Council Decisions, the latest dating back to 2009.[2] Eurojust can act individually, through its national members sent by each Member State, or collectively, as a "College" composed of all the national members. Eurojust may ask, but cannot compel, Member States to investigate or prosecute specific acts, coordinate with one another, accept that one Member State is better placed than another to lead an investigation or prosecution, set up a Joint Investigation Team, and provide the information needed for Eurojust to carry out its work. As well as ensuring that Member States are informed of investigations and prosecutions in which it is involved, Eurojust is also required to provide logistical support if they request its assistance.

1.3 Article 85 of the Treaty on the Functioning of the European Union (TFEU) provides that "Eurojust's structure, operation, field of action and tasks" should be set out in a Regulation agreed by the European Parliament and the Council. The European Commission published a proposal for a Regulation in July 2013. The proposal would repeal and replace the earlier Council Decisions and establish a new legal framework for Eurojust. The Commission's objectives were to:

- update Eurojust's governance structure, reducing the administrative burden on the Eurojust College to enable it to focus on its core tasks;
- clarify the status and operational powers of Eurojust's national members; and
- fulfil the requirement in Article 85 TFEU to establish "arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities".

1.4 A separate Regulation was proposed at the same time to establish a European Public Prosecutor's Office ("EPPO") responsible for investigating and prosecuting "offences against the Union's financial interests". Article 86 TFEU provides for the Council to establish the EPPO "from Eurojust". The proposed Eurojust Regulation therefore also included provisions on cooperation with the EPPO. As both the proposed Regulations cited a criminal justice legal base, they were subject to the UK's Title V (justice and home affairs) opt-in Protocol. The Government has consistently opposed the creation of the EPPO and made clear that it would not participate. After protracted negotiations, the "enhanced cooperation" procedure (which enables a subset of Member States to take forward a legislative proposal which cannot command the support of all Member States) was used to agree a Regulation establishing the EPPO.[3] It is expected to start operations in late 2020 or early 2021.

1.5 The UK has participated fully in Eurojust since its inception, with the Government describing it as "a positive model of cross-border cooperation".[4] Whilst recognising that the Regulation proposed by the Commission retained many of Eurojust's core functions, the Government recommended that the UK should *not* opt in at the outset of negotiations (and so would not be bound by the outcome) for two reasons. First, the proposed Regulation would have extended the mandatory powers of Eurojust's national members, removing

2 See this consolidated version of the three Council Decisions.

3 See Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'). 20 Member States are participating in the EPPO. The Netherlands has notified its intention to join. See the European Commission's website.

4 See the Explanatory Memorandum of 7 August 2013 submitted by the then Immigration Minister (Mark Harper).

Member States' discretion not to grant certain powers where to do so would be contrary to the fundamental aspects of their criminal justice systems. The Government explained that it had exercised this discretion by not giving its national Eurojust members the power to order investigative measures (such as orders for search warrants, orders to produce evidence, or surveillance), authorise and coordinate controlled deliveries or execute mutual legal assistance or mutual recognition requests themselves as this would cut across the separation of powers between the police and prosecuting authorities. Second, the Government expressed concern that participation in the proposed Regulation might undermine its decision not to take part in the EPPO, given that the precise relationship between the two bodies had yet to be determined. The Government wanted to be sure that the UK "would not fall under obligations in respect of the EPPO, such as to exchange data, as a consequence of participating in Eurojust".[5] Following a debate on 29 October 2013, the House of Commons agreed to a Government motion stating that the UK should not opt into the proposed Eurojust Regulation but "should conduct a thorough review of the final agreed text to inform active consideration of opting into the Eurojust Regulation post-adoption, in consultation with Parliament".[6]

1.6 Negotiations on the proposed Eurojust Regulation concluded in June 2018 and the final text was formally adopted on 6 November. The Regulation was published in the EU's Official Journal on 21 November 2018.[7] It formally establishes Eurojust as the EU Agency for Criminal Justice Cooperation. The Regulation is directly applicable in Member States and will replace the current Eurojust Decisions from 12 December 2019. It preserves Eurojust's core task—supporting national authorities in investigating and prosecuting serious and organised crime which has an international dimension—whilst:

- revising Eurojust's governance structure: a new Executive Board will be responsible for administrative matters, enabling the Eurojust College to focus on operational issues;
- aligning the provisions on the processing and protection of personal data with the EU's General Data Protection Regulation;
- establishing a set of general principles for the transfer of operational personal data to a third (non-EU) country and new rules for concluding international agreements;
- clarifying the relationship between Eurojust and the EPPO; and
- strengthening democratic oversight of Eurojust by providing for the joint evaluation of its activities by the European Parliament and national parliaments within the framework of an annual interparliamentary committee meeting.

1.7 The Minister for Policing and the Fire Service (Nick Hurd) has submitted a Supplementary Explanatory Memorandum dated 22 November 2018 in which he notifies us of the Government's intention to *opt into* the new Eurojust Regulation now that it has been adopted and seeks our view. The possibility of a post-adoption opt-in is provided for in Article 4 of the UK's Title V opt-in Protocol. The UK must notify the Council and

5 See the letter of 21 October 2013 from the then Security Minister (James Brokenshire) to the Chair of the European Scrutiny Committee.

6 See Hansard, 29 October 2013 from col. 873

7 Regulation (EU) 2018/1727, OJ L No. 295, p.138.

Commission of its intention. The Commission then has up to four months to confirm the UK's participation, subject to the UK having fulfilled any conditions necessary for its participation.[8]

1.8 The Minister reiterates the Government's view that Eurojust involvement "can lead to improved criminal justice system outcomes by ensuring that investigators and prosecutors share information and evidence, agree strategies and co-ordinate activity to tackle cross-border criminality in a more efficient and effective manner". He considers that the concerns which prevented the UK from opting into the proposed Regulation in 2013 have been addressed during negotiations. Turning first to the powers of Eurojust national members, he observes:

> In terms of compatibility with UK law enforcement and judicial systems, the agreed text contains drafting similar to the existing Eurojust Council Decision. The drafting indicates that national members may act to the extent they are competent to do so under their national law. Eurojust also cannot order Member States to initiate investigations and the operational independence of law enforcement in the UK is maintained.[9]

1.9 The Minister is also satisfied that "there is now a clear separation of functions between Eurojust and [the] EPPO", that the EPPO will not generate an unsustainable workload for Eurojust and that the UK's contribution to Eurojust will not be used to fund work that supports the EPPO. Moreover, there will be a physical separation between the two bodies, with the EPPO based in Luxembourg and Eurojust remaining in The Hague.

1.10 The Government considers that there would be "operational value" in opting into the Eurojust Regulation:

> Opting in will maintain operational continuity and minimise disruption for UK law enforcement and prosecution authorities ahead of the UK exiting the EU. This would help demonstrate our ongoing commitment to Eurojust and to the continuation of close internal security cooperation through the Implementation Period provided for in the draft Withdrawal Agreement and beyond.

1.11 The Minister does not anticipate that the Regulation would require any changes to domestic law. He is satisfied that any interference with fundamental rights, in particular the right to private and family life and protection of personal data, would be "proportionate" and only take place "to the extent necessary".

Our Conclusions

1.12 **Much has changed since October 2013 when the House resolved that the Government should "conduct a thorough review of the final agreed text to inform active consideration of opting into the Eurojust Regulation post-adoption". There is little acknowledgment in the Minister's Supplementary Explanatory Memorandum**

8 The procedures and conditions for participation are set out in Article 331 TFEU and are the same as those governing a request to participate in a measure which has been agreed under the EU Treaty provisions on enhanced cooperation.

9 See Articles 4 and 8 of the Regulation.

of the changed context in which the Government's post-adoption decision is being considered. Nor is there any meaningful analysis of the operational value of opting in or the operational risk of failing to do so.

1.13 **Given the imminence of the UK's exit from the EU, and continued uncertainty as to the terms of the UK's withdrawal, as well as the risk that the UK may leave without a deal, we consider that the House should have the opportunity to question the Minister on the Government's reasons for recommending that the UK opt into the new Eurojust Regulation. The Government's Code of Practice on scrutiny of opt-in decisions states that the Scrutiny Committees in both Houses "will normally have" an eight-week period in which to offer their views on a post-adoption opt-in, subject to "a degree of flexibility in cases where an earlier opt-in is considered in the national interest".[10] Accordingly, we recommend that the Government schedule a debate in European Committee B before taking a decision to notify the Commission and Council of its intention to opt in post-adoption. We set out in the following paragraphs the issues that a debate could usefully address. We ask the Minister to clarify the Government's position on the application of Article 4 of the Title V opt-in Protocol (see paragraphs 14–15 below) ahead of the debate.**

Application of Article 4 of the Title V opt-in Protocol

1.14 **Should the Government decide to "notify its intention" to opt into the Eurojust Regulation under Article 4 of the Protocol, the European Commission has four months in which to "confirm" the UK's participation. This four-month period would extend beyond exit day—29 March 2019. Although most EU law would continue to apply to the UK during a post-exit transition period under Article 127(1) and (5) of the draft EU/UK Withdrawal Agreement, the procedures for opting into an EU criminal justice measure after it has been adopted are governed by Article 331(1) TFEU on enhanced cooperation. Article 127(4) of the draft EU/UK Withdrawal Agreement provides that the United Kingdom "shall not participate in any enhanced cooperation in relation to which authorisation was granted after the date of entry into force of this Agreement" (expected to be exit day). In light of these provisions, we ask the Minister whether the UK would be able to participate in the Eurojust Regulation (subject to fulfilling any necessary conditions) if the Commission failed to reach a decision before the date on which the UK leaves the EU.**

1.15 **This raises a broader question about the application of the UK's Title V opt-in Protocol during a post-exit transition/implementation period. We ask the Minister:**

- **whether Article 127(5) of the draft EU/UK Withdrawal Agreement would allow the UK to invoke all the provisions of the Protocol, including Article 4 on post-adoption opt-ins, for new EU justice and home affairs measures proposed post-exit which amend, build on or replace measures in which the UK participated before exit day;**
- **whether/how Article 127(4) of the draft EU/UK Withdrawal Agreement would affect the operation of Article 4 of the Protocol; and**

10 The Code of Practice is contained in Annex S to the Guidance issued by the Cabinet Office on Parliamentary scrutiny of EU documents.

- **whether the Government intends to honour the commitments contained in its Code of Practice on parliamentary scrutiny of opt-in decisions—including scheduling opt-in debates—post-exit.**

Factors informing the Government's opt-in decision

1.16 **The Minister makes no reference to Article 4a of the Title V opt-in Protocol which provides a mechanism for ejecting the UK from existing measures (in this case the earlier Eurojust Council Decisions) if its non-participation in a subsequent replacement measure (the new Eurojust Regulation) would make it inoperable for other Member States or the EU. We ask the Minister:**

- **what assessment he has made of the risk of ejection from Eurojust if the UK does not opt into the new Eurojust Regulation before it becomes applicable on 12 December 2019;**
- **how significant a factor this risk is in recommending that the UK opt in; and**
- **whether there are any parallels with the 2016 Regulation establishing the EU Agency for Law Enforcement Cooperation (Europol)—in that case, the UK was only able to continue to participate in Europol because it decided to opt in post-adoption.**[11]

Brexit implications

1.17 **We recognise that opting into the new Eurojust Regulation would remove any risk of the UK being ejected from Eurojust, or participating on less advantageous third country terms, at least until the end of 2020 (under the draft EU/UK Withdrawal Agreement) and would, to that extent, "maintain operational continuity and minimise disruption for UK law enforcement and prosecution authorities". We recognise also the Government's desire to "demonstrate our ongoing commitment to Eurojust and to the continuation of close internal security cooperation" with the EU once any post-exit transition/implementation period ends.**

1.18 **The Government's White Paper on the Future Relationship Between the United Kingdom and the European Union held out the prospect of continued UK participation in Eurojust. The Political Declaration Setting out the Framework for the Future Relationship between the European Union and the United Kingdom contains a much looser commitment to "work together to identify the terms for the UK's cooperation via [Europol and] Eurojust". We ask the Minister:**

- **whether opting into the new Eurojust Regulation would make it more likely that the UK would be able secure more favourable terms than other third countries once EU law ceases to apply to the UK;**

11 See Regulation (EU) 2016/794. We infer this to be the case as Denmark's non-participation in the new Europol Regulation meant that it had to conclude a separate agreement on operational and strategic cooperation with Europol.

- **whether the provisions of the Eurojust Regulation on working arrangements and transfers of operational personal data to third countries provide an adequate basis for the UK's future cooperation with Eurojust;[12] and**
- **how operational cooperation on standard third country terms would compare with the UK's current level of cooperation with Eurojust and what assessment the Government has made of the impact on cross-border investigations and prosecutions.**

1.19 **We recall that the Coalition Government, in July 2014, published detailed Impact Assessments of the costs and benefits of participating in a range of EU criminal justice measures, including Eurojust.[13] It concluded that bilateral cooperation (outside the Eurojust framework) would be more costly, time-consuming and inefficient in complex cross-border cases. Given that exiting the EU without a withdrawal agreement and transition period remains a possibility, we ask the Minister whether the Government's assessment has changed since 2014 and how significant an impact there would be on cross-border operational capability if the UK ceased to participate in Eurojust.**

Parliamentary oversight

1.20 **The new Eurojust Regulation envisages a role for national parliaments in evaluating Eurojust's activities through participation in an interparliamentary committee involving the European Parliament.[14] On leaving the EU, Article 128(2) of the draft EU/UK Withdrawal Agreement provides that "the UK parliament shall not be considered to be a national parliament of a Member State" and so will not be entitled to take part in the work of interparliamentary committees. We ask the Minister how the Government intends to address this apparent gap in oversight and accountability to Parliament, particularly during a post-exit transition period in which EU laws and the activities of EU Agencies continue to apply to the UK.**

1.21 **Pending the debate we have recommended, the Regulation remains under scrutiny. We draw this chapter to the attention of the Exiting the European Union Committee, the Home Affairs Committee and the Justice Committee.**

Full details of the documents:

Regulation (EU) 2018/1727 of the European Parliament and of the Council on the European Agency for Criminal Justice Cooperation (Eurojust) and replacing and repealing Council Decision 2002/187/JHA: (35216),—.

Previous Committee Reports

Fifteenth Report HC 83–xv (2013–14), chapter 2 (11 September 2013), Nineteenth Report HC 83–xviii (2013–14), chapter 7 (23 October 2013) and Thirty-fifth Report HC 219–xxxiv (2015–16), chapter 8 (4 March 2014–15).

12 See Articles 47 and 56–9 of the Eurojust Regulation.
13 See Command Paper 8897.
14 See Articles 67 and 69 of the new Eurojust Regulation.

2 Cybersecurity

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council establishing the European Cybersecurity Industrial, Technology and Research Competence Centre and the Network of National Coordination Centres
Legal base	Article 187 & 188 TFEU (research, technological development and demonstration programmes); Article 173 TFEU (industrial competitiveness); Ordinary Legislative Procedure; QMV
Department	Digital, Culture, Media and Sport
Document Number	(40070), 12104/18, COM(18) 630

Summary and Committee's conclusions

2.1 To improve the EU's industrial competitiveness in the area of cybersecurity, the European Commission has brought forward a proposal for a Regulation which would establish a European Cybersecurity Industrial, Technology and Research Competence Centre supported by a network of National Coordination Centres.

2.2 The Competence Centre would be the Union's main instrument to pool investment in cybersecurity research, technology and industrial development. It would take the form of a European Partnership, as provided for in the proposed Horizon Europe Regulation,[15] in order to facilitate joint investment by the Union, Member States and industry, and would scale-up the existing 2016 European contractual Public Private Partnership on cybersecurity ('cPPP').

2.3 The Centre would be responsible for implementing the cyber security aspects of the Digital Europe[16] and Horizon Europe[17] Programmes of the European Union's multiannual financial framework (proposed to be €2bn and €2.8bn, respectively) and would be tasked, more widely, with driving the cybersecurity technology agenda, supporting the deployment of innovative cybersecurity products, and coordinating the activities of the cyber security competence community—a diverse network of industry, academic and non-profit research organisations and associations accredited by the Member States.

15 A 'European Partnership', as defined in the proposed Horizon Europe Regulation (EU) 2018/0224, means an initiative where the Union, together with private and/or public partners (such as industry, research organisations, bodies with a public service mission at local, regional, national or international level or civil society organisations including foundations), commit to jointly support the development and implementation of a programme of research and innovation activities, including those related to market, regulatory or policy uptake.

16 Proposal for a Regulation of the European Parliament and of the Council establishing the Digital Europe programme for the period 2021–2027 COM/2018/434 final.

17 Proposal for a Regulation of the European Parliament and of the Council establishing Horizon Europe—the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination COM/2018/435 final.

2.4 The membership of the Competence Centre would consist of the Union, represented by the Commission, and the Member States. The Centre's governing board would consist of one representative per Member State and five Commission representatives, with ENISA (the EU cybersecurity agency) acting as an observer. The provisions of the Regulation on voting rights are somewhat convoluted. It appears that only those Member States which make an additional financial contribution to the Centre (separately from the Digital Europe and Horizon Europe programmes) have voting rights on the governing board. Commission representatives would hold 50per cent of the voting rights (in view of the Commission's responsibility for the Union budget) and those Member States with voting rights would each hold one vote. Votes would follow a double majority principle requiring both 75 per cent of the financial contribution and 75per cent of the votes. However, the wording of the Regulation is not entirely clear on how the "financial contribution" would be calculated.

2.5 The Regulation would also require Member States to nominate a National Coordination Centre, which would form part of a network of these coordination centres supported by the European Competence Centre. National centres would act as the national contact point and would help the Competence Centre to deliver its tasks at a national and regional level, and would receive funding from the Competence Centre which they could pass on.

2.6 Member States would also be required to accredit organisations and associations to be part of the cybersecurity competence community.

2.7 The Regulation anticipates that Member States would choose to make additional financial contributions to the project, and its preamble states that their financial participation "should be commensurate to the EU financial contribution to this initiative and is an indispensable element for its success".

2.8 The Centre is to be established for the period January 2021 to December 2029.

2.9 In an explanatory memorandum submitted to Parliament,[18] the Parliamentary Under Secretary of State at the Department of Digital, Culture, Media and Sport (Margot James) states that negotiation on the proposal are unlikely to conclude before the UK leaves the EU on the 29th March 2019, and that, as the UK will not be a Member State at the point at which this legislation comes into force it would not have a role on the Governing Board of the Competence Centre, nor would it be required to have a National Coordination Centre or be part of the Competence Community.

2.10 The Minister's reasoning regarding the non-applicability of the proposed Regulation to the UK is somewhat unclear. That negotiations are unlikely to conclude while the UK is a Member State is not obviously material, as under the implementation/transition period provided for in the Withdrawal Agreement,[19] including the draft version which was available when the Explanatory Memorandum was drafted, "during the transition period, any reference to Member States in the Union law applicable pursuant to paragraph 1, including as implemented and applied by Member States, shall be understood as including the United Kingdom" (Article 127(6)).

18 Explanatory Memorandum from the Minister of State at the Department of Digital, Culture, Media and Sport (2 October 2018).

19 HM Government, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018 (25 November 2018).

2.11 Although the Withdrawal Agreement provides that the UK should be treated as a Member State with respect to EU law during the transition period, there are exceptions to this, which are set out in Articles 7 and 8, which limit UK participation in the institutions, bodies, offices and agencies of the Union as well as networks, information systems and databases, and Article 132, which specifies a number of types of EU provision which will not apply to the UK during the implementation period, as well as areas from which the EU can limit UK involvement if it wishes to. It is unclear to what extent these provisions would apply to the proposed Regulation, although it is clear that (as the Minister states) the Government could not have a role on the Governing Board of the Competence Centre.

2.12 If the regulation were to apply to the UK—whether during an extended implementation period or under any other circumstances—it appears that there would be a number of implications. UK stakeholders would have to exercise the functions designated in the Regulation and, the Minister notes, "would potentially incur a cost in order to undertake the proposed tasks and activities." The Government would have to nominate a National Coordination Centre and accredit organisations and associations to be part of the cybersecurity competence community. Although the UK would not, as the proposal is drafted, be obligated to make an additional contribution to the Programme, it would presumably continue to make financial contributions to the Digital Europe and Horizon Europe programmes, which provide the funds which would be administered by the Centre.

2.13 On subsidiarity, the Minister notes that the Commission argues that the subsidiarity principles are met because the nature and scale of technological challenge require expertise that cannot be provided individually by a Member State, and with reference to cross-border cyber incidents such as WannaCry and NonPetya; however, the Minister states that the draft Regulation does not provide sufficient detail to say whether the proposals would realise this benefit above what is provided by other EU cyber security tools and measures, and that the Government intends to review its position on subsidiarity during the negotiation process.

2.14 The Minister adds that the Commission has indicated a preference for negotiations to conclude by the second quarter of 2019, with the preparatory phase taking place between 2019–2020, and full implementation from 2021.

2.15 **The proposed Regulation seeks to foster Europe's industrial competitiveness and technological capabilities in cybersecurity through the more effective coordination of existing expertise, by establishing a European Cybersecurity Industrial, Technology and Research Competence supported by a network of National Coordination Centres and organisations, accredited by the Member States. The Centre has a broad range of tasks, in which it would be supported by the network. The Centre would implement the cybersecurity elements of the Digital Europe and Horizon Europe Regulations with Member States expected to contribute a commensurate amount of additional funding.**

2.16 **We note that the Government is not yet persuaded by the Commission's justification regarding the conformity of the proposal with the principal of subsidiarity, on the basis that the Regulation "does not provide a level of detail sufficient to say whether the proposals would realise this benefit above what is provided by other EU cyber security tools and measures."**

2.17 **Regarding the proposal, we ask the Government to clarify:**

- **What the essential differences would be, in terms of benefits and obligations deriving from the proposed Regulation, between Member States who made an additional financial contribution to the activities of the Centre and of the Network and those who chose not to do so?**
- **Can the Government provide a more precise account of the proposed voting arrangements (see paragraph 4) and how they have been received in working parties?**
- **Has the Government reached a view regarding whether the proposed Regulation conforms to the principal of subsidiarity, and adds sufficient value alongside other existing cybersecurity programmes for EU action to be justified?**

2.18 **On EU exit, we note the Minister's assessment that negotiations on the proposed regulation are unlikely to conclude before the UK leaves the EU on the 29th March 2019 and that "if the UK is not a Member State at the point at which this legislation comes into force it would not have a role on the Governing Board of the Competence Centre, nor would it be required to have a National Coordination Centre or be part of the Competence Community".**

2.19 **We question the Government's assessment that the proposed Regulation would not apply to the UK were it no longer a Member State when the Regulation entered into force. The current version of the Withdrawal Agreement[20]—like its predecessor,[21] which was available at the time of the publication of the Government's memorandum—states that "unless otherwise provided in this Agreement, Union law shall be applicable to and in the United Kingdom during the transition period",[22] meaning that much EU law will continue to apply directly to the UK during the transition period, when it has ceased to be a Member State. Although a number of exceptions to this are provided for in the Withdrawal Agreement, it is not clear to us whether any of these mean that the entirety of the Regulation would not apply to the UK. The addition in the latest version of the Withdrawal Agreement of the possibility to extend the implementation period for up to two years means that, unless such an exemption exists, the UK could potentially have to implement its provisions until the end of 2022.**

2.20 **We therefore ask the Government, in its next update to the Committee, to clarify whether, on the basis of the Withdrawal Agreement recently agreed by UK and EU negotiators, it considers that the proposed Regulation would apply either in part or in whole to the UK during the implementation period, if it were extended until the end of 2022. We ask for the Government to provide as much detail as possible on this point.**

2.21 **We retain the proposal under scrutiny. We ask for the Government to respond to these points in due course, and not later than 16 January 2019.**

20 HM Government, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018 (25 November 2018).

21 European Commission, Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community highlighting the progress made (coloured version) in the negotiation round with the UK of 16–19 March 2018 (19 March 2019).

22 Article 127(1) of the withdrawal agreement.

Full details of the documents:

2.22 Proposal for a Regulation of the European Parliament and of the Council establishing the European Cybersecurity Industrial, Technology and Research Competence Centre and the Network of National Coordination Centres: (40070), 12104/18, COM(18) 630.

Previous Committee Reports

None.

3 Unfair trading practices in the food supply chain

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 Directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain
Legal base	Article 43(2) TFEU, QMV, Ordinary legislative procedure
Department	Environment, Food and Rural Affairs
Document Number	(39625), 7809/18 + ADDs 1–3, COM(18) 173

Summary and Committee's conclusions

3.1 With the aim of improving farmers' and other small and medium sized enterprises' (SMEs) position in the food supply chain, the European Commission proposed new legislation on unfair trading practices (UTPs), which are business-to-business practices that deviate from good commercial conduct and are contrary to good faith and fair dealing.

3.2 We last reported this proposal to the House at our meeting of 10 October 2018, when we noted that the Council position included a 30-month transposition period—rather than the originally proposed 12 months—which we considered particularly notable in the light of the UK's withdrawal from the EU. We reiterated our observation that, regardless of UK application, the legislation would remain salient to UK producers supplying non-UK buyers.

3.3 Since then, the Parliamentary Under Secretary of State for Food and Animal Welfare (David Rutley) has written twice. In his letter of 16 November, he told us that there had been no signal that the European Parliament had concerns with the proposed change to the transposition period. He also emphasised that UK officials were actively engaging in the proposal.

3.4 Most recently, he has written[23] to update the Committee on the latest developments, explaining that negotiations with the European Parliament are progressing swiftly and that a compromise deal may be considered by the 17–18 December Agriculture and Fisheries Council. He therefore asks that the Committee considers clearing the proposal from scrutiny in order that the UK may support the compromise providing that the Government secures the UK's interests in the areas which remain outstanding. Those are: transposition timeline; scope; and geographical coverage.

23 Letter from David Rutley to Sir William Cash, dated 6 December 2018.

3.5 Regarding the transposition timeline, the UK has secured a substantial extension from the original proposition of six months for transposition and a further six months for application. The UK would not support a final text where the deadline for adoption and publication of the implementing legislation falls below 24 months. Such a deadline would mean that the UK would not be obliged to transpose the Directive unless the post-Brexit implementation period is extended beyond 31 December 2020. Given that the decision on extending the implementation period need only be taken by 1 July 2020, however, the Government may still need to work on the assumption that it would apply the legislation.

3.6 On the scope, the original proposal was to regulate the relationship between SMEs[24] and buyers ("large" companies). The European Parliament had pushed for it to be extended to cover any actor involved in the agri-food supply chain, regardless of size and role, meaning that it could apply to the relationship between two "large" companies. An emerging compromise is to apply a dynamic approach whereby any micro, small, medium or mid-range supplier would be protected by the Directive in any of their dealings with a larger supplier as well as their dealings with "large" buyers. The threshold between "mid-range" and "large" businesses is yet to be agreed, but the Government will not support any threshold higher than a €1 billion (£0.89 billion) turnover. This is akin to the UK's own domestic arrangements, where the Groceries Code Adjudicator (GCA) covers the direct relationships between suppliers and retailers with a UK annual groceries (food and non-food) turnover of more than £1 billion.

3.7 Regarding the geographical scope, there has been some discussion about extending its scope beyond the boundaries of the EU so that it would offer protection to operators outside the European Union, where they are supplying to, or buying from, operators inside the EU. The UK has expressed some concerns about this, but nevertheless believes that the burden of compliance for third country coverage as proposed would be manageable. The Minister notes that third country suppliers may already lodge complaints against those buyers covered by the UK's GCA. He adds that the provision would allow UK suppliers to claim against EU buyers post-Brexit. While the UK will continue to argue against extension of the scope to third countries in negotiations, the Minister does not propose that inclusion of such an extension should prevent the UK supporting the Directive.

3.8 **We welcome the clear summary of outstanding issues set out by the Minister and can support the approach that the Government intends to take to any vote in Council on 17–18 December. As set out below, we have a number of outstanding queries and so we retain the document under scrutiny while waiving the scrutiny reserve in order that the Government may support an appropriate compromise at Council.**

3.9 **On the question of the scope, we look forward to confirmation as to the agreed threshold for "large" businesses. We would also welcome clarification on any definitions of the distinct types of smaller company (micro, small, medium and mid-range).**

3.10 **Concerning the territorial scope of the proposal, the Minister appears relaxed as to the extension to cover third countries. Our understanding of the original proposal was that it would in any case cover third country suppliers to EU buyers. More significant, we consider, is the potential for EU suppliers to seek redress against UK buyers based on this Directive post-Brexit. The dynamic approach means that a "small" EU supplier**

24 Defined as a business employing fewer than 250 persons and with an annual turnover not exceeding €50 million (£44.5 million) and/or an annual balance sheet not exceeding €43 million (£38.3 million).

to a "medium" UK buyer could expect to instigate proceedings under this legislation. This would clearly go beyond the terms of current UK arrangements. Should the scope be expanded to include third countries, we look forward to a clear explanation of the provisions and an assessment of their impact upon the UK post-Brexit.

3.11 **Regarding the transposition period, we note that the deadline would fall outside the post-Brexit implementation period if a minimum of 24 months is indeed agreed. It is also the case, however, that it may not be clear until mid-2020 whether the implementation period will be extended beyond 31 December 2020. That being the case, we ask the Minister to confirm whether the Department will undertake preparatory work on implementation.**

3.12 **We look forward to responses to our queries following the Council meeting. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents:

Proposal for a Directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain: (39625), 7809/18 + ADDs 1–3, COM(18) 173.

Previous Committee Reports

Thirty-ninth Report HC 301–xxxviii (2017–19), chapter 3 (10 October 2018); Thirty-third Report HC 301–xxxii (2017–19), chapter 4 (27 June 2018); Twenty-eighth Report HC 301–xxvii (2017–19), chapter 1 (16 May 2018).

4 Brexit: EU contingency planning in a 'no deal' scenario

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; drawn to the attention of the Business, Energy and Industrial Strategy Committee, the Environment, Fisheries and Rural Affairs Committee, the Exiting the European Union Committee, the Northern Ireland Affairs Committee, the Transport Committee and the Treasury Committee
Document details	Communication from the European Commission: Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019—a Contingency Action Plan
Legal base	—
Department	Exiting the European Union
Document Number	(40190), 14272/18, COM(18) 880

Background and Committee's conclusions

4.1 The UK is due to leave the European Union on 29 March 2019. Although the draft Withdrawal Agreement published in November 2018 provides for a transitional period lasting until at least December 2020, during which the UK's trading relationship with the EU would remain unchanged, both sides are also engaged in preparations for the possibility of a UK exit without an Agreement in place. There is still a significant possibility that ratification of the deal could founder, given the continued controversy over many of its provisions (and in particular the Protocol on Northern Ireland).

4.2 If the Withdrawal Agreement is not ratified, the orderly winding up of cross-border trade issues currently governed by EU law, and the transitional period foreseen in Article 126 of the Agreement, will not take effect. This would mean immediate, serious and widespread disruption to trade and transport links between the UK and the EU-27, as is clear from some of the 'no deal' preparations being taken by the Government.[25] They are also echoed by industry associations, including the Road Haulage Association which has warned of "chaos" for freight transport in the event of 'no deal'.[26] In addition, it would leave many of the other separation issues covered by the draft Agreement—including the ownership of nuclear materials, the position of UK and EU citizens, and the protection of previously granted intellectual property rights—unresolved. Moreover, in the absence of agreed UK-EU solutions, the implications for the border with Ireland—which would

25 See for specific examples the 'Brexit preparedness' notices published by the European Commission in recent months.

26 See Road Haulage Association, 'No-deal plans are a recipe for post-Brexit chaos' (24 September 2018).

become the frontier between two wholly separate customs and regulatory jurisdictions for goods for the first time since the establishment of the Single Market in 1993—would be unclear.[27]

Preparations for a 'no deal' outcome

4.3 Both the European Commission and the UK Government have published a series of 'no deal' notices covering different policy fields, attempting to outline the consequences of such a scenario for businesses and citizens in a range of areas.

4.4 The Commission has also tabled a number of 'Brexit preparedness' legislative proposals since early 2018, which aim to modify EU law as necessary to take into account the UK's withdrawal.[28] These, it has said, should not be considered contingency measures because they would need to be adopted "irrespective of whether the UK's withdrawal is orderly or otherwise". They have included for example the relocation of EU bodies, institutions and infrastructure from the UK to the EU-27; the proposed division of UK and EU tariff rate quotas for the purposes of their respective World Trade Organization schedules; and the transfer of vehicle type approvals granted by the UK under Single Market legislation to one of the remaining Member States.[29] Some take effect on 29 March 2019 even if the Withdrawal Agreement is ratified and the transitional period becomes operational; others will have their date of application deferred until the end of that period, mostly where they relate to the UK's participation in the EU's economic and trading structures during transition.

4.5 More recently, in a formal Communication dated 13 November 2018, the European Commission announced that it would propose further contingency measures. These would specifically aim to mitigate the immediate impact of a disorderly UK withdrawal from the EU in March 2019, if the Withdrawal Agreement is not ratified. While it recognises that these preparations would also "be the same with or without a Withdrawal Agreement providing [for] a transition period", much like the preparedness measures referred to above, they are considered contingency measures because they "would need to take place at a much faster pace".

27 This also applies to a lesser extent for the border of Gibraltar with Spain, and of the Sovereign Base Areas with the Republic of Cyprus.

28 See for example our recent Reports on Brexit and vehicle type approval; the relocation of the European Banking Authority and the European Medicines Agency; and the splitting of UK and EU tariff rate quotas at the WTO.

29 Further 'Brexit preparedness' measures are still under preparation, including the relocation of Galileo ground infrastructure away from its current location in the British Overseas Territories (the Falkland Islands and Ascension).

4.6 In summary, the steps being taken by the EU in preparation for Brexit—orderly or otherwise—can be categorised as follows:

Type of measure	When would it take effect	Examples
Preparedness measures	29 March 2019, in both a 'deal' and 'no deal' scenario	Relocation of the European Medicines Agency and Galileo infrastructure from the UK to the EU
	At the end of the transitional period (or 29 March 2019 in a 'no deal' scenario)	Division of UK and EU tariff rate quotas at the WTO; Recalculation of the EU's energy efficiency targets; transfer of EU vehicle type approvals from the UK Vehicle Certification Agency to EU type approval authorities
Contingency measures	29 March 2019, in a 'no deal' scenario	Equivalence decision for central counterparties; Air traffic rights for UK airlines

4.7 The purpose of the contingency measures referred to in the table above is to tackle what the Commission views as the most undesirable immediate consequences of a 'no deal' Brexit. These are issues that could otherwise have been dealt with through the negotiations with the UK on a new post-transition partnership, following ratification of the Withdrawal Agreement. It identified seven priority areas that require "specific attention" at this stage, including the residency rights of UK nationals in the EU, air transport links, and the provision of financial services by UK companies to EU-based customers. However, even in the areas identified as priorities, the Commission has not always proposed that specific new EU legislation will be needed to avoid disruption in trade with the UK. It has strictly limited itself to what can be achieved to facilitate an economic relationship with the UK as a 'third country' under existing EU law, and then only where considered necessary.

4.8 For example, with respect to citizens' rights, the Commission has told Member States that it believes the periods of time UK nationals have spent living in EU Member States *before* the withdrawal date should count towards the qualifying period for obtaining the status of long-term residence as a 'third country' (non-EU) national under EU law.[30] Such status confers a number of legal benefits in terms of non-discrimination and protection from removal. It has, separately, proposed an amendment to the EU Visa Regulation to exempt UK nationals from the requirement to obtain a short-stay visa.

Contingency measures related to UK access to the EU market

4.9 As regards trade and transport links with the UK, the Commission's overall approach is that it will only propose measures to prevent the most severe disruption insofar as possible under existing EU law. This effectively means the contingency measures are limited to what is available to any other 'third country' seeking access to the Single Market, without any special derogations or exemptions from restrictions to market access that usually apply. In most cases, the Commission has therefore decided against any specific

30 See Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. The Directive does not apply in Ireland, the UK and Denmark.

contingency measures at all, simply reiterating that EU law will need to be applied to trade with the UK as a 'third country', including the full imposition of customs, VAT and excise formalities to goods entering from Britain.

4.10 However, the Commission is proposing to put in place certain legislative measures[31] as a matter of urgency to preserve some level of continuity in a limited range of sectors. As we have described in more detail below, these would relate to:

- **air traffic rights**, to allow UK airlines to continue flying directly between British and EU airports when the UK leaves the European Common Aviation Area (albeit with more restrictions on the types of route they could service, as described further in the Annex to this Report).[32] In addition, passengers transiting through an EU airport from the UK would be exempted from undergoing a second security screening;

- **aviation safety**, to enable certificates issued by the UK for aeronautical products or companies to continue to be recognised within the EU until they can be re-issued by the European Aviation Safety Agency (EASA). Likewise, the Commission will propose that aeronautical parts and appliances put on the EU market based on a UK-issued certificate "may still be used under certain circumstances";[33]

- **clearing services by UK-based central counterparties on financial markets**, allowing them to continue to clearing over-the-counter derivatives transactions involving an EU-based counterparty, under a key piece of EU post-crisis financial legislation (the European Markets Infrastructure Regulation or EMIR);[34] and

- **exports of animals and animal products**, to minimise the time during which there would be an automatic ban on any imports of such products from the UK into the EU (which requires the European Commission to approve the UK's post-Brexit food safety and animal health regime, which it says it will do "swiftly" but only "if justified").

4.11 As can be seen, the Commission has attempted to balance avoidance of disruption with the need to "not replicate the benefits of membership of the Union, nor the terms of any transition period" for the UK. As such, the unilateral EU measures are very limited and will also not seek to address problems that firms or citizens "could have […] avoided by [taking] preparedness measures" themselves, including by relocating economic activities to the EU.

4.12 The Commission's limited set of targeted 'no deal' measures are, moreover, not a preservation of the status quo for the sectors concerned. In general, non-Member States can access the EU Single Market for aviation, clearing and animal products, but only when the necessary approvals from the European Commission are in place. The contingency

31 These measures, where they take the form of Implementing Acts under existing EU law, will need to be approved be a qualified majority of the remaining Member States before they can take effect.

32 The limits on UK airlines' rights means for example that flights will be effectively limited to direct flights between a UK and EU airport.

33 The contingency measures related to aviation safety are made conditional on reciprocal treatment by the UK in a 'no deal' scenario.

34 For more information on the implications of Brexit for UK-based central counterparties, please see our Report of 28 November 2018.

measures now announced would put such approvals in place, and stop an outright ban on UK exports of these goods and services to the EU from occurring in March 2019 (which would be the case if the Commission's normal timetables for putting in place the necessary permissions for the UK's 'third country' access were observed). There would still be notable differences on the terms of market access before and after 29 March, including in the following ways:

- UK airlines and clearinghouses would **need to apply for individual permission to continue servicing the EU market** from the relevant European authority,[35] whereas at present they have the automatic right to access that market by virtue of the UK's EU membership. The extent to which such individual applications will be rubberstamped or substantively assessed remains unclear;

- The equivalence decision for UK central counterparties under EMIR would be **limited in time**, putting pressure on UK firms to relocate activities to the European Union to avoid being shut out of the market for clearing euro-derivatives;

- The **export of animals and animal products** from the UK would come to a complete halt from 30 March 2019 while the Commission decides whether to 'list' the UK as a safe country of export, taking into account how the Food Standards Agency and DEFRA are functioning in the post-Brexit environment;

- Even if the UK is listed as a safe country for live animals and animal products, any exports to the EU would still be subject to **tariffs and import VAT**, and would need to be routed into the EU **via approved veterinary Border Inspection Posts** only;[36] and

- As regards the measures related to air traffic rights, the **types of services UK carriers could provide within the EU would be restricted** compared to their current rights as part of the European Common Aviation Area (ECAA). The Commission has proposed that, as a contingency, British airlines could have the first four freedoms of the air in EU airspace, rather than the full set of nine freedoms which apply within the ECAA.[37] The difference between the two is described in the Annex to this Report.

4.13 The Department for Exiting the EU was due to submit an Explanatory Memorandum on the Commission Communication by the end of November 2018. As of 12 December 2018, no Memorandum was received and no satisfactory reason for its delay communicated to the Committee.

35 For example, UK providers of aeronautical products will need to apply for a licence from the European Aviation Safety Authority (EASA), although they are normally expected to be granted as a matter of routine. Clearinghouses wanting to operate in the EU under the equivalence regime need to apply for regulatory permission from the European Securities & Markets Authority.

36 Individual UK establishments where animals or animal products are "dispatched from, [or] obtained or prepared in" would also normally need to be on an approved list, but this does not require them to apply individually. See article 12 of Regulation 854/2004.

37 See Institute for Government, 'Aviation and the European Common Aviation Area (ECAA)' (accessed 10 December 2018).

Brexit impacts not covered by the proposed contingency measures

4.14 As the Commission notes in its policy paper, the proposed contingency measures would not actually mitigate many of the expected 'no deal' disruptions in UK-EU trade and transport. That includes many aspects of Brexit that would have been dealt with by the Withdrawal Agreement (either by keeping the status quo until at least December 2020 via the transitional period, and in some cases also by means of a gradual managed UK exit from specific EU systems and schemes at the end of that period).[38]

4.15 Indeed, the Commission Communication itself refers to several areas requiring "specific attention", where nonetheless no specific EU contingency measures are foreseen. This includes disruption to road transport, when UK firms lose their current access to the EU's haulage market when it leaves the Single Market; the automatic legal restrictions on transfers of personal data from the EU-27 to the UK;[39] and the full applicability of the EU customs and VAT legislation to imports from the UK. Similarly, no contingency measures are foreseen in relation to the ownership of Euratom's nuclear materials in the UK, or for the area of justice and home affairs (for example relating to the continued recognition of UK judgements and arrest warrants, or access by British police to EU databases like the Schengen Information System). It should be noted that these changes would probably have taken place in any event at the end of the transitional period under the Withdrawal Agreement, because they relate to systems of mutual recognition of regulatory regimes for goods, services and decisions of which the UK was unlikely to remain part once it leaves the Single Market.[40]

4.16 While the Commission's approach has the overall effect of *limiting* rather than *avoiding* disruption, the Communication argues this is necessary because the UK "from 29 March 2019 would not be bound by any EU rules and could rapidly start diverging from them" (for example in relation to tariffs, VAT or product standards). Therefore, in the Commission's view, the normal application of 'third country' restrictions on UK trade with the EU cannot be waived to avoid giving it a sudden competitive advantage. Where the contingency measures involve the need for legal changes, they would typically take the form of Implementing Acts—a form of EU tertiary legislation under existing

38 The phasing out of UK participation in EU schemes or systems applies for example in relation to protection of intellectual property rights, mutual recognition of judgements, and access to the VAT Information Exchange System for historic cross-border sales.

39 Though, as the Government points out in its no-deal technical notice on data, in the event of "no deal" and no adequacy decision being in place between the UK and the EU, alternative legal bases would need to be used for the transfer of data from the EU27 to the UK as a third country, such as standard contractual clauses. These legal bases are likely to be less comprehensive than a data adequacy decision and more burdensome from an administrative point of view. The various legal bases "subject to appropriate safeguards" set out in the GPDR are outlined on the Information Commissioner's website.

40 The Political Declaration accompanying the draft Withdrawal Agreement made clear that the UK and the EU would constitute legally-separate markets. This means, for example, that exports of animals and animal products from the UK to the EU will have to enter the latter via approved Border Inspection Posts, to enable veterinary and sanitary checks to be made (whereas at present they can enter the EU from the UK via any port, as long as they are accompanied by an animal health certificate).

secondary EU legislation such as Regulations and Directives.[41] No substantive changes to EU legislation are foreseen to provide the UK with a derogation or exemption from the usual 'third country' restrictions on access to the Single Market.

4.17 As regards to aviation, the Commission has also insisted that the EU's rules on ownership of airlines based in the EU—and which therefore have full Single Market air traffic rights—will still apply. This legislation requires a carrier to be majority-owned by EU Member States or EU nationals. If it ceases to meet this requirement, its Community operating licence automatically becomes invalid.[42] This will affect those EU-based airlines that currently meet that criterion, but will cease to do so once UK shareholders stop contributing to the majority EU ownership threshold.[43] The rule will not directly affect UK-based airlines, as the Government has announced that it will remove the ownership criterion from domestic law on EU exit. However, the practical effect of this liberalising measure is questionable, as the Department for Transport has simultaneously acknowledged that any bilateral aviation agreements with third parties, including the EU, are likely to include ownership and control restrictions to restrict their scope.[44] In addition, irrespective of the background of their owners, UK-registered airlines would lose full access to the European aviation market in a 'no deal' scenario (as set out in the Annex to this chapter).

4.18 With respect to the risks to financial stability arising from the UK's new status as a 'third country' (with far lesser rights to provide banking, insurance and market infrastructure services to EU-based customers), the Commission's paper notes that "many EU financial services firms have prepared for a [no deal] scenario […], for example by adjusting their contracts or relocating capacities and activities to EU27". It adds that, while this "could cause risks to financial stability […], the risks in this sector linked to a no deal scenario have diminished significantly". It refers explicitly to the transfer of insurance contracts to entities within the EU from the UK,[45] and the impact on 'uncleared' over-the-counter derivatives (where the risk of the transaction is borne entirely by the two counterparties, without the use of a central counterparty), for which it says "there does not appear to be any generalised problem of contract performance in the case of a no-deal scenario".[46] The Bank of England has repeatedly expressed its disagreement with this Commission's assessment of the risks of a 'no deal' Brexit for financial markets. For example, on 20

41 Implementing and Delegated Acts can be compared to UK secondary legislation such as statutory instruments because they are made under parent legislation and often to address technical issues. Delegated Acts, another form of EU tertiary legislation, which take effect unless they are explicitly vetoed by the Council (by QMV) or by the Parliament (by simple majority); Implementing Acts, which must be approved by a qualified majority of Member State expert representatives in a technical ('Comitology') Committee. Measures requiring national action by individual Member States will need to be taken in the context of their own respective constitutional and legal structures.

42 See Regulation 1008/2008.

43 The document states: "Regarding the requirement in EU law that air carriers must be majority-owned and controlled by EU legal or natural persons, the Commission underlines that it is essential for companies that wish to be recognised as EU air carriers to take all the necessary measures to ensure that they meet this requirement on 30 March 2019".

44 See the Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018. In particular, membership of the European Common Aviation Area requires implementation of Regulation 1008/2008 by the non-EU parties, including analogous provisions on ownership and control.

45 The Commission also notes that the "European Insurance and Occupational Pensions Authority (EIOPA) is working with national authorities to address residual risks for certain EU27 policyholders".

46 The Commission nonetheless admits that "certain so-called life-cycle events (for example contract amendments, roll-overs and novations) may however in certain cases imply the need for an authorisation or an exemption, given that the counterparty is no longer an EU firm. Market participants are encouraged to continue preparing for this situation by transferring contracts and seeking the relevant authorisations".

November 2018 its Governor told the Treasury Committee that "there is some difference of opinion between us and the European authorities on the potential financial stability risk […] around uncleared derivatives, which are material in our judgment and will grow".[47]

4.19 It also remains unclear what the European Commission—and the other Member States—expect to happen at the Irish border in the event of a 'no deal'. European law would ordinarily require the Irish Government to apply the full range of checks that normally take place at the EU's external border for goods entering from Northern Ireland (for example in relation to customs controls and the sanitary checks on animal products). The Commission, in its Communication of 13 November, notes that it will in particular "support Ireland in finding solutions addressing the specific challenges of Irish businesses". However, the proposed contingency measures do not envisage any Ireland-specific waivers for its EU customs and security obligations at the border with the UK as a 'third country'.

The UK's contingency measures

4.20 The UK is going considerably further than the EU in taking unilateral steps to avoid trade and transport disruption. In particular, in areas like food safety, product standards and VAT liability on imports, the Government will continue to waive the need for border controls on imports from the EU. Examples of this include:

- Under the draft Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018, the Government has proposed to continue exempting animals and animal products entering from an EU country without the food safety and animal health controls that apply to such imports from other countries;[48]
- Similarly, the Government will accept the testing and safety approvals of existing medicines carried out in an EU country;
- As referred to above, the Government will drop existing restrictions on the nationality of shareholders in UK-based airlines, so that EU-based shareholders will not be forced to sell their shares for a carrier to retain its operating licence;[49]
- The Government has said it will honour the EU's fisheries allocations for the UK fleet in 2019 for the entire year, even in the event of a 'no deal' Brexit by March;[50] and
- The Treasury has put in place a unilateral transitional period for EU financial services firms (a 'temporary permissions regime') enabling them to continue

47 Treasury Committee, Oral evidence: Bank of England Inflation Report, HC 596 (20 November 2018), Q318.

48 The European Commission has explicitly ruled out granting similar treatment to imports of animal products from the UK: sanitary controls carried out here will not be recognised by the remaining Member States, and animal products will therefore have to enter the EU via Border Inspection Posts and undergo controls.

49 See Schedule 2 to the Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018. The operative part is the removal of point (f) from article 4 of Regulation 1008/2008 as it will apply in the UK after EU exit.

50 In our Report of 10 December 2018, we noted the Government's assumption but expressed uncertainty as to whether the EU agreed and whether there was any prospect of the final Regulation including this guarantee. We suggested 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.

operating in the UK for a period of time after they lose their right to do so under the EU Treaties, going far beyond the scope of the equivalence decision proposed by the Commission in relation to clearing of derivatives.

4.21 The Government appears to have held out hope for a number of months that this approach would eventually be matched by the EU, to avoid the severe economic dislocation that could result from a disorderly UK withdrawal. For example, the first Secretary of State for Exiting the EU (David Davis) told the Exiting the EU Committee in October 2017 that 'no deal' would in practice most likely mean falling back on "WTO arrangements but [with] a bare-bones deal on […] aviation, data and maybe nuclear". He went on to describe a "complete failure to agree" any deals ahead of 29 March 2019 as "so incredible that it is off the probability scale". His successor (Dominic Raab) went a step further in August 2018, when he said that the Government hoped that the EU would offer mutual recognition of regulatory standards and permissions for UK goods and services in the absence of the Withdrawal Agreement, effectively making them equivalent to those issued within the Single Market.[51]

4.22 However, as can be seen from the preceding sections, the European Commission's latest Communication makes no attempt to make such wide-ranging facilitation arrangements for trade with the UK if the Agreement is not ratified by March 2019. Even the contingency measures to preserve air traffic cannot be described as a 'deal', since they would be taken by the EU unilaterally and not formalised in a legal agreement with the UK Government.

Our conclusions

4.23 **The Commission Communication of 13 November 2018 sets out in clear terms in which areas the EU is likely to take collective action to mitigate the disruption of a UK withdrawal without an agreement, and which areas it is willing to risk severe disruption to make a broader political point about a departure from the Single Market. We are extremely disappointed the Department for Exiting the European Union felt unable to produce an Explanatory Memorandum on the EU's approach to handling the disruption that would result if the UK leaves the EU without a deal in the usual timeframes, given the importance of the EU's position to Parliament's debate on the draft Withdrawal Agreement. We expect the Department to deposit its Memorandum, setting out the Government's views on the Commission's contingency plans, without delay.**

4.24 **Even without the benefit of the Government's assessment, it is clear that the European Commission, apparently with the support of the remaining Member States, has taken an extremely narrow approach to what can be done to mitigate disruption to trade and transport links with the UK if the Withdrawal Agreement is not ratified. The specific contingency measures described in the Communication of 13 November are limited to keeping planes flying, ensuring EU banks can continue to clear derivatives via UK-based central counterparties until alternative capacity is built up within the**

51 Secretary of State Dominic Raab's speech on no deal planning (23 August 2018): "Of course, given that we start from a position of common rules, we would also hope and I think expect, in good faith between close partners. That the EU would recognise medicines from this country with our regulatory approval."

Eurozone, and limiting the time period during which there would be a complete ban on UK exports of animal products to the EU when it crashes out of the common food safety regime.

4.25 **In addition, even in the areas covered by the contingency measures many of the relevant economic operators—in particular aeronautical organisations, airlines, and central counterparties—will still need to apply for individual permission from the relevant EU authority to service the European market, and such market access can also be withdrawn unilaterally at any stage.**[52]

4.26 **The key conclusion that must be drawn is that the Commission is not going to propose any substantive changes to EU legislation to provide the UK with a derogation or exemption from the usual 'third country' restrictions on access to the Single Market, even on a temporary basis to avoid immediate disruption. For trade flows in particular, this is likely to mean that the imposition of border controls on goods could severely limit the capacity of the EU's ports nearest the UK (including Calais and Rotterdam), which in turn would affect movements of goods back into Britain. Until the UK is listed as a safe country of export for animals and animal products, the flow of such exports into the EU could grind to a halt completely for an undetermined period of time. The economic consequences for the agricultural sector, especially those which are export-led, like lamb, would be severe.**

4.27 **The decision to limit the EU's 'no deal' response in this way is political, as the Commission itself acknowledges in its Communication. This notes that the EU will not take any action that would effectively replicate for the UK the benefits of membership of the Single Market, the costs of which it apparently believes would outweigh the economic consequences of its chosen approach.**[53] **It also means that many of the other forms of disruption that flow from the UK's new status as a 'third country' as described above, and which are not covered by the EU's limited set of contingency measures, would still occur in March 2019. While describing the full range of the potential impacts is beyond the scope of this Report, they would be vast, affecting trade in goods and services, as well as bilateral cooperation on criminal and security matters. Mitigating those impacts is not within the gift of the Government, and absent an extremely unlikely softening of the EU's position, they are likely to be the inevitable consequence of a 'no deal' Brexit.**[54]

4.28 **We also note again the extreme asymmetry between the UK and EU approach to mitigating the trade-related disruption of an EU exit without a Withdrawal Agreement. The Government is in many ways continuing to waive the need for border controls on trade coming in from the EU, as if the UK were still in the Single Market. It is doing so, for example, in relation to import VAT and sanitary controls on food. A similar approach has been taken in the area of services, where the Treasury has put in place**

52 For example, under Regulation 854/2004 on official controls on animal products for human consumption, the UK "establishment" from which a food of animal origin is "dispatched, and obtained or prepared in" must be individually 'listed' (approved) by the Commission for public health purposes once the UK becomes a third country. See for more information the European Commission's Brexit preparedness notice on food law, p. 6.

53 The Commission notes that full customs, excise and VAT controls will be applied to UK imports will be "particularly challenging" for countries like Ireland, France, the Netherlands and Belgium.

54 These frictions to bilateral trade would otherwise have occurred anyway, but only at the end of the post-Brexit transitional period (and their impact could potentially have mitigated by a new UK-EU trade agreement, for example in relation to the intensity and frequency of customs controls).

a unilateral transitional period for EU financial services firms to continue operating in the UK after they lose their right to do so under the EU Treaties.[55] By contrast, despite repeated requests from the Government, the Commission is not planning to reciprocate: there will be no automatic EU recognition of UK regulatory standards for either goods or services from March 2019, meaning the EU's normal restrictions and border controls on UK exports as a 'third country' will apply in full.

4.29 **The scale of the bilateral matters of interest that would be unresolved in a 'no deal' scenario are of a nature that it is unavoidable the EU and UK would need to return to the negotiating table at some stage. The timetable and process for such discussions would be unclear, taking place in an extremely difficult political context, and with the EU likely to insist simply on the UK accepting many of the elements of the draft Withdrawal Agreement.**

4.30 **Although the Commission Communication on the EU's Brexit contingency measures is a policy paper and not a formal legislative proposal, we have decided to retain it under scrutiny in anticipation of the Government's Explanatory Memorandum on the EU's 'no deal' contingency plans. If necessary, we will re-assess the Communication in light of the Government's views thereon if necessary.**

4.31 **We already have an undertaking from the Government that any specific proposals outlined in the Commission's policy paper, including Implementing Acts, will be deposited for scrutiny where considered appropriate. We will report those to the House where this would benefit the parliamentary scrutiny of the Brexit process.**

4.32 **We are also drawing this document to the attention of the Business, Energy & Industrial Strategy Committee, the Environment, Fisheries and Rural Affairs Committee, the Exiting the European Union Committee, the Northern Ireland Affairs Committee, the Transport Committee and the Treasury Committee, in view of the specific contingency measures proposed in relation to air transport, trade in animal products, and the provision of cross-border financial services.**

Full details of the documents:

Communication from the European Commission: Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019—a Contingency Action Plan: (40190), 14272/18, COM(18) 880.

Previous Committee Reports

None. The Committee previously published a Report on the EU's planning for a 'no deal' Brexit in October 2018. See: Fortieth Report HC 301–xxxix (2017–19), chapter 10 (17 October 2018).

Annex: Market access of UK airlines in the EU under a 'no deal' Brexit

4.33 The table below shows the difference in the levels of market access UK airlines would have in the EU under the Withdrawal Agreement (during transition) and in a 'no deal'

55 The so-called 'Temporary permissions regime'.

scenario, based on the Institute for Government's overview of the nine freedoms of the air. In particular, UK carriers would lose their rights to the fifth to the ninth freedoms under the Commission's proposed contingency measures.

4.34 The extent to which these new limits would make a practical difference to UK airlines is unclear from the Government's Memorandum. However, it appears that the proportion of flights by UK carriers that fall within the fifth to the ninth freedoms is relatively small, and therefore the impact is limited.

4.35 While the UK of course can negotiate re-entry into the European Common Aviation Area at a later stage to expand the access rights of its airlines, the restrictions on its carriers as described above would apply in the interim. The political context in a 'no deal' scenario might also preclude meaningful negotiations from taking place for some time after March 2019. The rights of UK air carriers in territories outside of the European Common Aviation Area would be a matter for the Government to negotiate, as it has recently done for the United States and Canada.

Freedom of the air	Example	As part of the ECAA and during the post-Brexit transitional period	Under the EU contingency measures from March 2019 in a 'no deal' Brexit
1st: Fly over an EU country without landing	London to Moscow	Yes	Yes
2nd: Refuel or carry out maintenance in an EU country without embarking or disembarking passengers	London to Moscow, with a maintenance stop in Frankfurt	Yes	Yes
3rd: Fly from the UK to an EU airport	London to Paris	Yes	Yes
4th: Fly from an EU airport to the UK	Paris to London	Yes	Yes
5th: Fly from the UK to an EU country, with an intermediate stop in another EU country	London to Athens, with a stop in Vienna	Yes	No
6th: Fly from an EU country to another EU country, with an intermediate stop in the UK	Dublin to Budapest, via London	Yes	No
7th: Fly from an EU country to another EU country, without an intermediate stop in the UK (intra-EU cabotage)	Dublin to Budapest	Yes	No

8th: Fly from the UK to an EU country, with an intermediate stop in that same EU country	London to Mykonos, via Athens	Yes	No
9th: Fly internally within an EU country (cabotage)	Frankfurt to Berlin	Yes	No

5 Transparency of EU food safety risk assessment

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee and the Health Committee
Document details	Proposal for a Regulation of the European Parliament and of the Council on the transparency and sustainability of the EU risk assessment in the food chain amending Regulation (EC) No 178/2002 [on general food law], Directive 2001/18/EC [on the deliberate release into the environment of GMOs], Regulation (EC) No 1829/2003 [on GM food and feed], Regulation (EC) No 1831/2003 [on feed additives], Regulation (EC) No 2065/2003 [on smoke flavourings], Regulation (EC) No 1935/2004 [on food contact materials], Regulation (EC) No 1331/2008 [on the common authorisation procedure for food additives, food enzymes and food flavourings], Regulation (EC) No 1107/2009 [on plant protection products] and Regulation (EU) No 2015/2283 [on novel foods]
Legal base	Articles 43, 114 and 168(4)(b) TFEU, QMV, Ordinary legislative procedure
Department	Food Standards Agency
Document Number	(39676), 8518/18 + ADD 1, COM(18) 179

Summary and Committee's conclusions

5.1 To address concerns about the transparency of the EU's food safety risk assessment process and the effectiveness of risk communication, the Commission proposed a number of improvements to the General Food Law (GFL) Regulation[56] and consequential amendments to a series of sectoral laws relating to specific types of food.

5.2 We first considered the proposal at our meeting of 13 June 2018,[57] when we raised a series of queries relating largely to the interaction between this proposal and the UK's withdrawal from the EU. The Parliamentary Under Secretary of State for Public Health and Primary Care (Steve Brine) has since written to us on two occasions.

5.3 In his letter of 28 September, the Minister provided little further detail on Brexit-related issues, but it is clear that, irrespective of the outcome of Brexit deliberations, elements of this proposal will be relevant to the UK. The degree of relevance is very dependent on that outcome. In his letter, the Minister appeared to resile from the earlier suggestion that the Government might prepare a UK-specific impact assessment, noting that the implications of the proposal for the UK will depend on the future UK-EU relationship.

56 Regulation No 178/2002.

57 Thirty-first Report HC 301–xxx (2017–19), chapter 3 (13 June 2018).

5.4 More recently, the Minister has written[58] to update us on the progress of negotiations, where the UK's key concerns around the independence of scientific experts and the approach to the provision of data not considered to be commercially sensitive are being partially addressed:

- Member States are widely supportive of an amendment to remove the requirement in the proposal for Member States to nominate experts and, instead, to maintain the current centralised arrangements based on merit—the European Commission, though, continues to have reservations about this amendment; and
- some changes have been proposed regarding the release of non-commercially sensitive data, such as the addition of an internal appeal process and provision that data will only be released to individuals or organisations which register and sign a non-commercial use declaration. The UK and other Member States have expressed concern that the suggested changes may not go far enough to provide the right balance between transparency and commercial interests.

5.5 On the timetable for the negotiations, the Minister indicates that trilogue negotiations with the European Parliament (EP) may begin before the end of 2018, with a view to final agreement before the EP elections in May 2019.

5.6 Since the Minister wrote, the UK and EU have published a draft Agreement on the UK's withdrawal from the EU. Under the proposed "Northern Ireland backstop" arrangement, Northern Ireland would be required to continue to apply EU food law. The Protocol will continue to apply unless and until it is superseded, in whole or in part, by a subsequent agreement. In the absence of a future agreement, the EU and UK could agree to extend the implementation period until December 2022 at the latest, which would mean that EU food law would continue to apply to the whole of the UK until that date.

5.7 **We are grateful for the update on negotiations of this proposal. While the outcome of deliberations over the UK's withdrawal from the EU remains uncertain, it seems likely that EU food law will continue to apply to at least Northern Ireland. In that light, it is clearly important to continue to engage in discussions on this draft legislation.**

5.8 **We noted in our Report of 13 June the Minister's consideration of a possible UK-specific impact assessment. We would welcome clarity on whether any such impact assessment is indeed planned.**

5.9 **The proposal remains under scrutiny. We look forward to an update in due course on the progress of negotiations. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee and the Health and Social Care Committee.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council on the transparency and sustainability of the EU risk assessment in the food chain amending Regulation (EC) No 178/2002 [on general food law], Directive 2001/18/EC [on the deliberate release into the environment of GMOs], Regulation (EC) No 1829/2003 [on

58 Letter from Steve Brine to Sir William Cash, dated 13 November 2018.

GM food and feed], Regulation (EC) No 1831/2003 [on feed additives], Regulation (EC) No 2065/2003 [on smoke flavourings], Regulation (EC) No 1935/2004 [on food contact materials], Regulation (EC) No 1331/2008 [on the common authorisation procedure for food additives, food enzymes and food flavourings], Regulation (EC) No 1107/2009 [on plant protection products] and Regulation (EU) No 2015/2283 [on novel foods]: (39676), 8518/18 + ADD 1, COM(18) 179.

Previous Committee Reports

Thirty-first Report HC 301–xxx (2017–19), chapter 3 (13 June 2018).

6 Visa exemption for UK nationals travelling to the EU after Brexit

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Committee on Exiting the European Union and the Home Affairs Committee
Document details	Proposal for a Regulation amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the EU
Legal base	Article 77(2)(a) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(40192), 14329/18, COM(18) 745

Summary and Committee's conclusions

6.1 Under EU law, nationals of the United Kingdom who are British citizens have a right to live and move freely within the EU and the wider Schengen area (covering Iceland, Norway, Switzerland and Liechtenstein), without obtaining an entry visa, because of their status as EU citizens. Official data cited by the European Commission indicate that residents in the UK undertook 53 million trips to the other 27 EU Member States in 2016, reflecting the EU's importance as a tourist destination, business and trading partner.[59]

6.2 The EU has a common visa policy for "short-stay" visits which do not exceed 90 days in any 180-day period. The EU Visa Regulation adopted in 2001 sets out the criteria for deciding whether nationals of third (non-EU and non-Schengen) countries need a visa to enter and move within the Schengen free movement area for short stays and establishes a list of third countries whose nationals do need a visa and a list of those who are exempt and enjoy visa-free access.[60] The UK and Ireland do not participate in this Regulation, or in the EU's common visa policy, and have their own arrangements for the admission of third country (non-EU and non-Schengen) nationals as part of their Common Travel Area.[61] The UK is not therefore entitled to take part in, or vote on the adoption of, any changes to the EU Visa Regulation.

6.3 When the UK leaves the EU, UK nationals who are British citizens will lose their status as EU citizens. Under the draft EU/UK Withdrawal Agreement, their right to enter and move freely within the Schengen would nonetheless continue to apply until

59 See the data published by the Office for National Statistics on travel to and from the UK, taken from the International Passenger Survey.

60 Regulation (EC) No 539/2001. The Regulation has been frequently amended. The link is to the latest consolidated text of the Regulation.

61 The UK and Ireland do not participate in the EU Visa Regulation as they are not part of the Schengen free movement area.

the end of a post-exit transition/implementation period.[62] If the UK were to leave the EU without a deal , this right would end on 30 March 2019. As part of its preparations for the UK's withdrawal from the EU, the European Commission has put forward a proposed Regulation which would exempt UK nationals who are British citizens from the requirement to obtain an entry visa for short-stays within the Schengen area. The Regulation would enter into force on 30 March 2019—exit day—but only take effect when EU law ceases to apply to the UK. This could be any date between 30 March 2019 (if there is no deal) and 1 January 2023 (if the draft Withdrawal Agreement is ratified and there is a further extension of the post-exit transition period). The visa exemption would depend on the UK similarly allowing visa-free entry post-exit for the nationals of the remaining 27 EU Member States.

6.4 Granting visa-free travel for short stays does not mean that there will be no changes for UK nationals travelling to the EU post-exit, as the European Commission makes clear in its explanatory memorandum accompanying the proposed Regulation. Two new EU information systems—the EU Entry/Exit System ("EES") and the European Travel Information and Authorisation System ("ETIAS")—will apply once they become fully operational (likely to be in 2020). These systems will make it easier to detect and remove third country nationals who "overstay" by logging the length of their stay within the EU (the EES) and ensure that there is an initial screening before they travel to mitigate any security, illegal immigration or public health risk (ETIAS).

6.5 In her Explanatory Memorandum of 30 November 2018, the Immigration Minister (Caroline Nokes) confirms that the proposed Regulation would include the UK in the list of visa-exempt countries for the purpose of short (90 day) stays in the EU. She emphasises that *all* British citizens, including UK nationals who are not British citizens (for example, British Overseas Territory citizens and British subjects) would have visa-free access to the EU.[63] The proposed Regulation would not affect "the reciprocal status of Irish citizens in the UK, and British citizens in Ireland" under the Common Travel Area arrangements. As it only concerns short stays, it "does not touch on issues of labour mobility".

6.6 The Minister refers us to the Government's July 2018 White Paper, *The Future Relationship Between the United Kingdom and the European Union*, in which the Government envisages reciprocal arrangements to enable citizens to travel freely, without a visa, for tourism and temporary business activity. She adds that the Political Declaration on the Framework for the Future Relationship accompanying the draft EU/UK Withdrawal Agreement states that the EU and the UK "aim to provide, through their domestic laws, for visa-free travel" for short-term visits. The proposed Regulation is consistent with this objective.

6.7 The Minister expects the proposed Regulation to move quickly through the legislative process "so that it is in place in advance of the UK's withdrawal from the EU".

62 See Articles 127 and 132 of the draft Withdrawal Agreement. EU free movement law could apply until end December 2020 or end December 2022 if the transition period is extended for a further two years.

63 British nationals (Overseas), British overseas territory citizens, British overseas citizens, British protected persons and British subjects have enjoyed visa-free access to the EU since 2014. The proposed Regulation would not change their status.

Our Conclusions

6.8 **We welcome the proposed Regulation which will ensure visa-free access for short stays in the EU and wider Schengen area for UK nationals once the UK leaves the EU and EU free movement law ceases to apply. Whilst the Minister says she expects the proposal to move swiftly through the EU legislative process, the European Commission makes clear that progress will depend on the Government "formalising" its commitment to grant EU citizens reciprocal visa-free access for short stays in the UK. We ask the Minister to confirm that this will necessitate a change to the UK's Immigration Rules and when she expects to announce and give effect to this change.**

6.9 **We have previously reported on the Commission's proposal (now agreed) to introduce a European Travel Information and Authorisation System—ETIAS—which would require nationals of visa-exempt third countries to complete an online application form and undergo security screening before being granted authorisation to travel. In our last** Report on the ETIAS proposal (dated 13 November 2017)**, we noted that the ETIAS Central System would contain the personal data of a large number of UK nationals once the UK had left the EU. We asked the Minister to press for "extremely robust safeguards" and requested regular progress reports on the negotiations. We have had no response. We expect the Minister to explain how the ETIAS system will affect UK nationals post-exit and whether the Government intends to introduce a similar system for EU nationals travelling to the UK post-exit.**

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

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the EU: (40192), 14329/18, COM(18) 745.

Background

6.11 The inclusion of a third country in the visa-required or visa-exempt list annexed to the EU Visa Regulation must be based on a case-by-case assessment of various criteria, notably:

- the risk of illegal immigration;
- public policy and security;
- economic benefit from tourism and foreign trade;
- external relations considerations, such as respect for human rights and the implications for regional coherence; and
- reciprocity.

6.12 The Regulation contains a suspension mechanism enabling the EU to review and suspend visa-free travel in the event of a "substantial and sudden increase" in the number of illegal immigrants or asylum applicants from a visa-exempt third country. It also contains a reciprocity mechanism to ensure that the EU can respond swiftly if a visa-exempt third country imposes a visa requirement on the nationals of any EU Member State.

6.13 The latest proposed Regulation would include the UK in the list of visa-exempt third countries in recognition of the UK's geographical proximity to the EU, close trading links, high volume of travel and shared commitment to human rights, democracy and the rule of law.[64]

Previous Committee Reports

None.

64 See the European Commission's explanatory memorandum accompanying the proposed Regulation.

7 Taking of evidence and service of documents in civil or commercial proceedings

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Justice Committee and the Joint Committee on Human Rights
Document details	Proposed Regulations (a) amending Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in taking of evidence in civil and commercial matters; (b) amending Regulation (EC) No 1393/2007 on the service in the Member States of Judicial and Extrajudicial documents in civil or commercial matters
Legal base	Article 81 TFEU; ordinary legislative procedure; QMV
Department	Ministry of Justice
Document Numbers	(a) (39870), 9620/18 + ADDs 1–3, COM (18) 378; (b) (39869), 9622/18+ ADDs 1–3, COM (18) 379

Summary and Committee's conclusions

7.1 These two proposals would amend the existing Regulations on taking evidence (Regulation (EC) No 1206/2001) and on service of documents (Regulation (EC) No 1393/2007). The UK participates in both Regulations.[65] Both were modelled on Hague Conventions relating to civil and commercial proceedings: the 1970 Convention on the Taking of Evidence and the 1965 Convention on Service Abroad of Judicial and Extrajudicial documents. It is a common aim of both new EU proposals to incorporate modern communications technology, by making it mandatory to transmit all documents between Member States through a decentralised IT system composed of national IT systems. The Commission considers that this would improve the speed, security and reliability of processing requests. A detailed account of both proposals and the Government's view of them was provided in our last Report.[66]

7.2 The Government considers it "highly unlikely" that the proposals will be adopted before the UK leaves the EU on 29 March 2019 but possible that they might apply towards the end of the transition/implementation period. Negotiations on both proposals are expected to commence during the Austrian Presidency. The UK's Justice and Home Affairs (JHA) opt-in applies to both proposals. The Government had to notify its decision by 17 October in the case of taking of evidence proposal and by 24 October for the service of documents

65 See also that Article 64 of the draft Withdrawal Agreement (ongoing judicial cooperation procedures) provides for how these two measures, as well as others, will be deal with as a separation issue in view of UK exit from the EU.

66 Thirty-fifth Report, HC 301–xxxiv (2017–19), chapter 8 (11 July 2018).

proposal.[67] Article 4(a) of the UK's opt-in Protocol[68] applies to these amending proposals. This means that the UK could be excluded from the existing Regulations if it does not opt-in and that decision makes the amending proposals inoperable for other Member States. It might also have to bear any consequential financial costs.

7.3 In our last Report we asked the Government for an early indication before the Summer recess of the likely opt-in decisions, but anticipated that the UK would opt-in. Not least because of the potential relevance of the proposals to future EU-UK civil judicial cooperation and the risk that non-participation could result in expulsion from the current Regulations. We also asked for more details of the kind of future partnership sought, using the EU-Denmark international agreements on service of documents and on recognition and enforcement of judgments as a benchmark, though also mindful of the Lugano Convention. We noted that Court of Justice (CJEU) jurisdiction is a feature of both the Denmark examples.

7.4 We also asked questions about the substance of the proposals, including questions about whether compulsion to give direct evidence to another Member State court could breach the fundamental right to a fair trial (Article 47 Charter, Article 6 ECHR); restrictions on courts' discretion about how to take and assess evidence; differences between the EU proposals on service of documents electronically and existing domestic rules; the impact on the Scottish system for service of documents; and costs implications for Member States arising from centralised and national databases for transmission of documentation.

7.5 In a letter of 18 September, the Lord Chancellor and Secretary of State for Justice (David Gauke) updated us on progress of the proposals and confirmed the deadlines for the opt-in decisions. In a subsequent letter of 27 November, he now informs us of the opt-in decisions that the Government has taken and which will be reflected in a Written Ministerial Statement. It has only opted into the proposal relating to the service of documents. However, it is still considering the possibility of a post-adoption opt-in in respect of the taking of evidence proposal during the transition/implementation period. This depends on whether the issue of the removal of the current right of a witness to refuse to give evidence directly to another Member State court without coercion is resolved. In the meantime, the Minister says that the Government will continue to participate in the negotiation of both proposals.

7.6 We outline the key points from the Minister's response in both letters to the various questions raised in our last Report at paragraphs xx below. We also set out the Minister's more detailed account of Government concerns about coerced evidence provisions in document (a) at paragraphs xx.

Our conclusions

7.7 **We note that the Government has only decided to opt into the proposal on the service of documents (document (b)) but may yet consider a post-adoption opt-in to the proposal on the taking of evidence (document (a)), even if that is during a transition/implementation period. As the opt-in decisions were due in October, we consider**

67 See the letter from the Justice Secretary to our Chairman of 27 November 2018.

68 Protocol 21 to the EU Treaties on the position of the UK and Ireland in respect of the area of Freedom, Security and Justice.

that we should have been informed more expeditiously about those decisions and the reasons for them. We also observe that the expected Written Ministerial Statement to Parliament had not been laid by the time of writing of this chapter.

7.8 **As regards post adoption opt-ins during the proposed transition/implementation period in respect of amending measures specified in Article 4a of the opt-in Protocol, can the Minister confirm:**

a) **Whether Article 127(5) of the draft Withdrawal Agreement applies all relevant provisions of the UK's opt-in Protocol to those measures, including the option of a post-adoption opt-in?**

b) **Whether Article 127(4) of the draft Withdrawal Agreement alters the procedure for a post adoption opt-in as compared to that currently followed under the UK's opt-in protocol? and**

c) **What the implications are for Parliamentary scrutiny of those decisions?**

7.9 **We understand that the Government's opt-in decisions are based on the extent of its reservations about the text of the respective proposals. On the taking of evidence proposal, we understand those concerns relating to coercive measures and the proposed deletion of Article 17(2) of the existing Regulation. But we wonder to what extent the Government has also been influenced by its aspirations for future UK-EU cooperation on civil justice? We note that the Political Declaration provides the following statements that are either specifically about future civil justice cooperation or could extend to it:**

- **paragraph 57 of the Declaration states that the Parties confirm their commitment to "the existing international family law instruments to which they are parties" and that the EU notes the "UK's intention to accede to the 2007 Hague Maintenance Convention to which it is currently bound through its Union membership";**
- **paragraph 58, it states that "the Parties will explore options for judicial cooperation in matrimonial, parental responsibility and other related matters".**
- **paragraph 3 refers to "wider areas of cooperation" beyond the trade and economic**

Could the Minister comment on why the Political Declaration significantly falls short of the aspirations for future EU-UK civil justice cooperation as set out in the Government's White Paper on the Future Relationship, both in terms of scope and specificity.

7.10 **We ask when the Minister next updates us on the negotiations that he continues to consider the concerns we raised in our last Report.**

7.11 **In the meantime, we retain the documents under scrutiny. We draw them and this chapter to the attention of the Justice Committee and the Joint Committee on Human Rights.**

Full details of the documents:

(a) Proposal for a Regulation of the European Parliament and the Council amending Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in taking of evidence in civil and commercial matters: (39870), 9620/18, COM (18) 378; (b) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 on the service in the Member States of Judicial and Extrajudicial documents in civil or commercial matters: (39869), 9622/18+ ADD 1–3, COM(18) 379.

Key points from the Minister's letters

7.12 Key points from the Minister's response in his letters to the questions raised in our last Report include the following:

- He reiterates that it is unlikely that the proposals will have been adopted before UK exit from the EU.
- There are international precedents for agreements that refer to EU law without CJEU jurisdiction. This includes the Lugano Convention which only requires the courts of the Lugano states and the EU Courts to "take into account "of each other's case law; and
- As stated in the Government's technical notice of 13 September, without a new agreement in this area the Government would revert to The Hague Service of Documents and Taking of Evidence Conventions but those would not be as comprehensive or modernised as the corresponding EU Regulations.[69]

7.13 On document (a) the proposal on taking of evidence, the Minister adds that:

- The evidentiary value of digital evidence will not be undermined by the proposed Article 18a. This only provides that the quality of digital evidence should not questioned solely due to its digital nature. That does not prevent such evidence from ever being inadmissible or a UK court from exercising its discretion under the Civil Procedure Rules to control or exclude the evidence.
- Concerning the default provision for evidence by videoconferencing, the proposal does afford discretion to courts not to use such technology where it would be inappropriate in the specific circumstances of the case. However, the Government intends to clarify in negotiations whether it is intended that the courts should continue to have discretion as to whether they could still require a party to attend in person.
- The coercive taking of evidence is already permitted in the current "taking of evidence" Regulation by a court of the Member State at the request of a court in another Member State. Any resulting interference with fundamental rights such as the right to a fair trial and the right to respect for family and private life is permissible if justified, proportionate interfere. However, the Government

69 Also, the Minister reminds us that neither Belgium nor Ireland applies the 1970 Convention on Taking of Evidence and Austria does not apply either Convention.

will raise concerns in the negotiations that proposed amendments to Article 17 remove safeguards and the use of coercive measures would be less restricted than is currently the case.

7.14 On the service of documents proposal (document (b)), the Minister says:

- For the purposes of electronic service, the proposal requires that an addressee must give express consent to a court to use a certain user account. However, electronic service is also allowed where the documents are sent and received using qualified electronic registered delivery services.[70] The Government intends to clarify the relationship between these alternative conditions. It is also unclear how the electronic service provisions are meant to work. For example, will court authorities be responsible for the service or the parties themselves and to which of them is discretion afforded under the proposal? To address these issues, the Government suggests that similar wording from the revised Small Claims Regulation could assist: electronic service can be used where technically available and admissible according to the procedural rules of the receiving Member State.
- The Government will update us once the likely cost of the proposed decentralised and national IT systems to support requests for the service of documents and the taking of evidence becomes clearer as negotiations progress.

Detailed concerns: coercive measures on taking evidence and deletion of Article 17(2)

7.15 We provide in more detail here the Government concerns about availability of safeguards in respect of coercive measures to take evidence, resulting from the proposed deletion of Article 17(2) of the existing Regulation.

- The coercion permitted in section 3 of the existing "taking of evidence" Regulation is subject to several safeguards. The person from whom the evidence is sought and the courts of the Member States can refuse to comply with a request on several grounds. Moreover, evidence must be taken in accordance with the law of the requested court's Member State.
- However, Section 4 of the existing Regulation which contains Article 17 and deals with the direct taking of evidence by the courts of a Member State from a person located in another Member State, does not include such comprehensive safeguards. It provides for the competent authority of the requested Member State to confirm whether the request to take direct evidence is accepted and subject to what conditions under national law. It also contains limited grounds on which that competent authority may refuse the request. It does not contain any basis on which the person from whom the evidence is sought may refuse to comply with the request. This has not been necessary because Article 17(2) provides that the taking of evidence can only take place on a voluntary basis, without the need for coercive measures.

70 Within the meaning of Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market.

- Should Article 17(2) be deleted as is proposed, a person from whom direct evidence is sought is left with no grounds under Section 4 for non-compliance.
- As the Regulation currently stands, there is currently no time limit within which a requested Member State must respond to a request to take direct evidence. Under the proposed amendments, if the requesting court has not received a response to its request within 30 days of sending it, it will be deemed to be accepted. The Government is concerned that the introduction of this "deemed acceptance" provision will erode the existing safeguards Section 4 safeguards.
- This means that the only opportunity to refuse the request or impose any conditions (required by the law of the Member State in which the evidence is to be taken) will be automatically lost after 30 days—leaving the requesting court to apply coercive measures and obtain direct evidence in accordance with its own national law, which may differ significantly from the law of the Member State in which it is taking the evidence. It is unclear whether the presumption of acceptance will subsequently be rebuttable, or conditions will be able to be imposed after the expiry of the 30 days.

Previous Committee Reports

Thirty-fifth Report, HC 301–xxxiv (2017–19), chapter 8 (11 July 2018).

8 EU Electricity Market Design

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny (document (d) cleared from scrutiny on 29/11/2017); further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	(a) Proposal for a Regulation on the internal market for electricity (recast); (b) Proposal for a Regulation establishing a European Agency for the Cooperation of Energy Regulators (recast); (c) Proposal for a Directive on common rules for the internal market in electricity; (d) Proposal for a Regulation on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC
Legal base	(a) Article 194(2) TFEU, ordinary legislative procedure, QMV; (b) Article 194(2) TFEU, ordinary legislative procedure, QMV; (c) Article 194(2) TFEU, ordinary legislative procedure; QMV(d) Article 194 TFEU, ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (38346), 15135/16 + ADDs 1–11; (b) (38347), 15149/16 + ADD 1, COM(16) 863; (c) (38348), 15150/16 + ADD 1, COM(16) 864; (d) (38349), 15151/16 + ADD 1, COM(16) 862

Summary and Committee's conclusions

8.1 Market design is the set of rules establishing the principles and details for participation in, and oversight of, the energy market. The four proposals considered in this Chapter represent the Commission's proposed overhaul of the rules as a response to the changing nature of the electricity market, notably the increasing volume of renewable energy. They aim to increase the efficiency and resilience of the market.

8.2 We and our predecessors have reported on these documents on a number of occasions. Full details of the Commission's original proposals were set out in the Committee's Report of 25 January 2017.[71]

8.3 The Minister for Climate Change and Industry (Claire Perry) has written[72] to update us on developments ahead of consideration at the Energy Council on 19 December. She invites the Committee to consider clearing from scrutiny the three documents which remain under scrutiny so that the UK may signal its support for the compromises.

8.4 On the proposal for a revised Electricity Regulation (document (a)), the provisions on capacity mechanisms have been the main issue for the UK, specifically the ability of Member States to be able to determine, through their own national resource adequacy assessments,

71 Twenty-ninth Report HC 71–xxvii (2016–17), chapter 4 (25 January 2017).

72 Letter from Claire Perry to Sir William Cash, dated 6 December 2018.

whether they have a resource adequacy concern to justify putting a capacity mechanism in place. Member States will be required to produce and apply an implementation plan to demonstrate that the resource concern can only be addressed by introducing a capacity mechanism and the European Agency for the Cooperation of Energy Regulators (ACER) will give an opinion on this plan. However, it will be for Member States to decide whether a capacity mechanism is needed, after giving due account to the ACER opinion.

8.5 The Minister is confident that the General Approach position on adequacy assessment and capacity mechanisms—with which the UK was content—will be retained. This will not require any change to current UK arrangements.

8.6 She also clarifies that the recent General Court judgement[73] against the European Commission Decision not to raise objections against the UK capacity mechanism was related to matters of procedure and was not a challenge to the nature of the Capacity Market itself. The Government is actively working with the Commission to reinstate the Capacity Market as soon as possible.

8.7 Concerning the proposal for a revised Electricity Directive (document (c)), including price intervention in the retail market, the Government expects that the final outcome will allow the GB price cap to be implemented and for Northern Ireland to continue apply its regulated tariff. The Minister also expects the agreed text on smart metering, electricity storage and demand-side response to be consistent with UK policy.

8.8 Turning to the proposal for a revised Regulation on the European Agency for the Cooperation of Energy Regulators (ACER) (document(b)), the Minister reports that a consensus has been reached that is acceptable to the UK, in particular by achieving the right balance of power between the Agency Director and the Board of Regulators.

8.9 On the proposal for a Regulation on risk preparedness in the electricity sector (document(d)), the Minister explains that the agreement is consistent with the UK's objectives and can therefore be supported. The framework for risk preparedness that it will put in place across the EU is broadly similar to the UK's own resilience arrangements and will reinforce UK energy security by reducing the potential for incidents in mainland Europe to affect the UK as interconnection levels are increased.

8.10 The Minister makes no comment on arrangements following the UK's withdrawal from the EU, but all elements of this package of legislation will need to be applied before the end of the post-Brexit implementation period on 31 December 2020. That period—during which the UK will be obliged to apply all EU energy legislation—may be extended until 31 December 2022 at the latest. Should the EU and UK decide to apply the Northern Ireland "Backstop" arrangement, Northern Ireland would be obliged to apply internal energy market legislation (including this package of legislation) in order to maintain the Irish Single Energy Market. Furthermore, the Parties committed under the Political Declaration on the future EU-UK relationship to facilitate technical cooperation to support the trade of electricity and security of supply.

8.11 **We note that agreement has been reached on this package of legislation to improve the design and functioning of the EU's electricity market. We note too that the UK would be obliged to apply this legislation under any post-Brexit implementation period**

73 *Tempus v Commission* Case T-793/14, 15 November 2018.

lasting at least until 31 December 2020 and that the UK in respect of Northern Ireland would be obliged to apply it should the Northern Ireland "Backstop" arrangement be applied. In this light—and given the longer term commitment to UK-EU cooperation in this area—it is welcome that the UK's negotiating objectives have been met.

8.12 **The proposal for a Regulation on risk-preparedness (document (d)) has already been cleared from scrutiny. We clear the remaining documents from scrutiny in advance of the Energy Council on 19 December 2018 and would welcome confirmation of adoption of the legislative acts in due course. This chapter is drawn to the attention of the Business, Energy and Industrial Strategy Committee.**

Full details of the documents:

(a) Proposal for a Regulation on the internal market for electricity (recast): (38346), 15135/16 + ADDs 1–11, COM(16) 861; (b) Proposal for a Regulation establishing a European Agency for the Cooperation of Energy Regulators (recast): (38347), 15149/16 + ADD 1, COM(16) 863; (c) Proposal for a Directive on common rules for the internal market in electricity: (38348), 15150/16 + ADD 1, COM(16) 864 and (d) Proposal for a Regulation on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC: (38349), 15151/16 + ADD 1, COM(16) 862.

Previous Committee Reports

Thirtieth Report HC 301–xxix (2017–19), chapter 5 (6 June 2018); Fifth Report HC 301–v (2017–19), chapter 4 (13 December 2017); Fourth Report HC-301–iv (2017–19), chapter 31 (29 November 2017); Fortieth Report HC 71–xxxvii (2016–17), chapter 6 (25 April 2017); Twenty-ninth Report HC 71–xxvii (2016–17), chapter 4 (25 January 2017).

9 EU Brexit-Preparedness: Energy efficiency

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Proposal for a Decision of the European Parliament and of the Council on adapting Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency [as amended by Directive 2018/XXX/EU] and Regulation (EU) 2018/XXX of the European Parliament and of the Council [Governance of the Energy Union], by reason of the withdrawal of the United Kingdom from the European Union
Legal base	Articles 192(1) and 194(2) TFEU, QMV, Ordinary legislative procedure
Department	Business, Energy and Industrial Strategy
Document Number	(40186), 14336/18, COM(18) 744

Summary and Committee's conclusions

9.1 Recently-agreed legislation on energy efficiency and energy governance includes an EU energy consumption reduction target of 32.5% for 2030 relative to a 2007 business-as-usual projection. This is translated into absolute values—for the EU with its current 28 Member States—of no more than 1,273 million tonnes of oil equivalent (Mtoe) of primary energy consumption and no more than 956 Mtoe of final energy consumption.

9.2 The Commission proposes to amend the absolute values of the EU's energy consumption target for 2030, to take into account the UK's withdrawal from the EU. When the UK is excluded, the 2030 32.5 per cent of absolute energy consumption projections for an EU of 27 Member States result in levels of no more than 1,128 Mtoe of primary energy consumption and no more than 846 Mtoe of final energy consumption.

9.3 The change will take effect "from the day following that on which Union law ceases to apply to the United Kingdom". In the event of a "no deal" Brexit, that would be 30 March 2019 but the change would not otherwise come into effect until the end of any post-Brexit implementation period, or thereafter, depending on the outcome of negotiations on the future relationship.

9.4 In her Explanatory Memorandum (EM), the Minister of State (Claire Perry) describes the proposal as "a minor technical adjustment" which carries no policy implications for the UK. She adds that the UK is considering the extent of its longer-term cooperation with the EU on renewable energy and energy efficiency as part of the wider EU Exit negotiations on the future energy and climate change partnership.

9.5 As the proposal is part of the EU's Brexit preparedness work and of a technical nature, it is expected to be taken forward promptly before March 2019. Council may agree a General Approach by the end of 2018.

9.6 **Like the Government, we conclude that this is an uncontentious proposal. We nevertheless draw it to the attention of the House due to its relevance to discussions on Brexit-preparedness. We clear the proposal from scrutiny and look forward to confirmation of Council agreement in due course.**

Full details of the documents:

Proposal for a Decision of the European Parliament and of the Council on adapting Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency [as amended by Directive 2018/XXX/EU] and Regulation (EU) 2018/XXX of the European Parliament and of the Council [Governance of the Energy Union], by reason of the withdrawal of the United Kingdom from the European Union: (40186), 14336/18, COM(18) 744.

Previous Committee Reports

None.

10 Persistent Organic Pollutants

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council on persistent organic pollutants
Legal base	Article 192(1) TFEU, QMV, Ordinary legislative procedure
Department	Environment, Food and Rural Affairs
Document Number	(39594), 7470/18 + ADD 1, COM(18) 144

Summary and Committee's conclusions

10.1 The Commission has proposed to recast the EU's Regulation on Persistent Organic Pollutants (POPs)[74] and has included a suggestion that the European Chemicals Agency (ECHA)—to which the UK is seeking associate membership post-Brexit—be involved in supporting the technical and reporting aspects of the Regulation. The proposed recast reflects decisions taken at the most recent meeting of the Conference of the Parties to the Stockholm Convention on POPs.

10.2 We last reported on the proposal at our meeting of 20 June, requesting an update on negotiations. In her letter of 23 July, the Parliamentary Under Secretary of State for the Environment (Thérèse Coffey) indicated that the role of the ECHA had been clarified. It would lead on implementing the Regulation in the EU, including work on the identification of POPs and compiling restriction proposals. Expert committees would be consulted where appropriate. The Minister was content that the ECHA's involvement in supporting the technical, scientific and administrative processes would enhance efficiency and improve the consistency of expert advice available to Member States on both potential and existing POPs going forward.

10.3 In a further letter of 7 November, the Minister confirmed that UK officials were continuing to engage in negotiations. For example, the UK was pressing for maximum concentration limits which facilitate industry, such as the recycling of plastics, whilst at the same time protecting the environment.

10.4 The Minister has written[75] again to explain that negotiations have accelerated and that Council agreement is close. She is satisfied that compromises that protect human health and the environment, whilst not being overly burdensome or disproportionate to UK industry, can be reached.

10.5 The Minister reports the following further developments since she last wrote:

74 POPs resist environmental degradation for long periods due to their toxic properties with the effect that they bioaccumulate in animals and humans and in terrestrial and aquatic ecosystems. Examples of POPs include pesticides such as DDT and polychlorinated biphenyls (PCBs). Now largely banned, PCBs continue to occur in the environment through the disposal of old electrical equipment.

75 Letter from Thérèse Coffey to Sir William Cash, dated 7 December 2018.

- the UK is supporting a low concentration limit for a newly banned brominated fire retardant in mixtures and recycled articles that is consistent with existing legislation—this is to create the right balance between supporting the circular economy and protecting the environment from toxic chemicals;
- it is unlikely that a European Parliament proposal to soften the 2025 deadline for the removal of Polychlorinated Biphenyls (PCBs)—one of the "dirty dozen" POPs—will be supported; and
- the UK supports as a compromise the use of implementing acts (rather than legislative acts or delegated acts)[76] to make decisions on the restrictions of chemicals and their low concentration limits.

10.6 Given the progress made, the Minister would like to support the outcome and she accordingly asks the Committee to consider clearing the proposal from scrutiny.

10.7 **We welcome the information from the Minister on the closing stages of these negotiations. Noting her satisfaction with the direction of the negotiations, we are content to clear the document from scrutiny. We ask that the Minister update us on the outcome of the negotiations in due course.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council on persistent organic pollutants: (39594), 7470/18 + ADD 1, COM(18) 144.

Previous Committee Reports

Thirty-second Report HC 301–xxxi (2017–19), chapter 3 (20 June 2018); Twenty-sixth Report HC 301–xxv (2017–19), chapter 1 (2 May 2018).

76 "Legislative acta" are based on a European Commission proposal and potentially lengthy negotiation between the European Parliament and Council. "Delegated Acts" are proposed and agreed by the European Commission, with the support of national experts, but can be vetoed by either the Council or European Parliament within two months of adoption. Implementing Acts require the support of national officials after being proposed by the European Commission.

11 Reduction in the impact of single-use plastic items

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Environmental Audit Committee
Document details	Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment
Legal base	Article 192(1), Ordinary legislative procedure, QMV
Department	Environment, Food and Rural Affairs
Document Number	(39794), 9465/18 + ADDs 1–7, COM(18) 340

Summary and Committee's conclusions

11.1 In an attempt to tackle the growing scourge of marine litter, the Commission proposed to prevention and reduce litter from certain single-use plastic items. As the legislation is largely aligned with the Government's own domestic policy in this area, the Government has been very supportive.

11.2 We last considered the proposal at our meeting of 19 October, when we held the proposal under scrutiny and requested an update on the negotiations. We noted that, should the Government's proposal for a post-Brexit common rulebook on manufactured goods come to fruition, elements of this Directive may be included and would therefore apply to the UK.

11.3 The Parliamentary Under Secretary of State (Thérèse Coffey) has since written on two occasions. In her letter of 21 November, she re-iterated the UK's support for the Directive's aims and, in line with the UK's objective to eradicate all avoidable plastic waste, the Government has been vocal in taking an ambitious approach throughout the negotiations. She explained that the negotiations had continued to move at a considerable pace, with both the Council and European Parliament keen to reach an ambitious and swift agreement, with the aim to conclude discussions by the end of the year.

11.4 In her letter of 5 December, the Minister sets out detail about the direction of a number of key articles in the text:

- consumption reduction (Article 4)—rather than a quantitative consumption reduction target, there will be wording requiring "an ambitious and sustained reduction…leading to a substantial reversal of increasing consumption trends and leading to a measurable quantitative reduction over time", with a view to establishing binding targets in the future;

- market restrictions (Article 5)—there has been agreement on the banning of items already identified (i.e. plastic cutlery, plastic plates, and beverage stirrers) and to expand the scope to food containers, beverage containers and cups for beverages that are made of expanded polystyrene;
- product requirements (Article 6)—plastic caps and lids on beverage containers (other than glass and metal containers) will only be permitted if they remain tethered to the container during its intended use stage;
- marking requirements (Article 7)—certain products will need to be marked with waste management options and information on the impact of inappropriate disposal of the product;
- Extended Producer Responsibility (EPR)(Article 8)—items (including fishing gear containing plastic) will be subject to the minimum requirements of EPR[77] set out in the Waste Framework Directive, and the schemes will additionally cover "at least the costs to clean up litter and the costs of the awareness raising measures"; and Member States will be required to take measures aiming at achieving a minimum annual collection rate of waste fishing gear containing plastic for recycling;
- separate collection (Article 9)—it is expected that, by 2025, the recycling of an amount of waste single-use plastic beverage bottles equal to 75% of such single-use plastic products placed on the market in a given year by weight will be required, rising to 90% by 2030;
- to deliver on the separate collection requirement, Member States may either establish deposit-refund schemes, or establish separate collection targets for all relevant EPR schemes; and
- awareness-raising measures (Article 10)—the text has responded to the UK's call for direct reference to behavioural change measures that would support public awareness-raising campaigns.

11.5 The Minister explains that a final trilogue negotiation between the European Parliament, Council and Commission is expected on 18 December before consideration at the Environment Council on 20 December, where the UK would like to signal its support. She therefore invites the Committee to consider clearing the document from scrutiny in advance of the Council.

11.6 **We note the likely conclusion of negotiations and the UK's ambitious approach, including support for the outcome. We are content to clear the proposal from scrutiny and look forward to a report from you on the final outcome, including an assessment of the impact upon the UK. We draw this chapter to the attention of the Environmental Audit Committee.**

77 A set of measures taken by Member States requiring producers of products to bear financial or financial and organisational responsibility for the management of the waste stage of a product's life cycle including separate collection, sorting and treatment operations.

Full details of the documents:

Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment: (39794), 9465/18 + ADDs 1–7, COM(18) 340.

Previous Committee Reports

Fortieth Report HC 301–xxxix (2017–19), chapter 3 (17 October 2018); Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 7 (5 September 2018).

12 Tariff quotas for EU imports of fishery products 2019–20

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 Council Regulation opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the period 2019–2020
Legal base	Article 31 TFEU, QMV
Department	Environment, Food and Rural Affairs
Document Number	(40073), 12082/18 + ADD 1, COM(18) 625

Summary and Committee's conclusions

12.1 As the EU relies heavily on imports of fishery products, autonomous tariff quotas (ATQs) are applied to those products in short supply, with the objective of ensuring a steady supply of raw material from third countries for the EU's seafood processing sector at reduced duties or duty-free.

12.2 We first considered this proposal for ATQs over the period 2019–20 at our meeting of 17 October 2018. We noted that there were considerable differences of opinion between the UK and the Commission on various elements of the proposal. The Minister of State for Agriculture, Fisheries and Food (George Eustice) has written[78] to update us, noting that—even though the UK has not been successful in securing all of its proposed changes—the UK processing sector is content with the compromise (see Annex). The Regulation is expected to be adopted at the 17–18 December Agriculture and Fisheries Council.

12.3 A key issue highlighted by the Minister in his original Explanatory Memorandum was the proposed removal of the 20% safeguard measure applicable to cod and Alaska Pollack. Under this measure, the quota is automatically increased by an additional 20% should uptake reach 80% by the end of September each year. The Minister indicated that the measure plays an important role in providing certainty for processors that adequate supplies of raw material will be available and avoids market turbulence arising as quotas near the point of full uptake.

12.4 In his letter, he reports that the UK was among a number of Member States that were initially calling for retention of the safeguard measure. The Presidency, however, was not prepared to compromise on this and sought the support of individual Member States through quota increases or other compromises for their key products. This ultimately left the UK alone in calling for its reinstatement and the safeguard measure will not be retained for the new ATQ regime.

78 Letter from George Eustice to Sir William Cash, dated 5 December 2018.

12.5 Looking forward, the Minister says that the UK is engaging with partner countries to transition existing EU-third country Free Trade Agreements, which are also an important source of tariff free fish for the UK market. The Government has had positive discussions with trading partners on these agreements and is working to achieve a smooth transition for businesses and consumers. The UK will also consider mechanisms such as a UK ATQ regime to ensure there is no disruption to supply chains.

12.6 **We note that the compromise does not meet all of the negotiating objectives initially set out by the Minister but that the UK processing sector is content. We clear the document from scrutiny and would welcome confirmation of the Regulation's adoption. This chapter is drawn to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents:

Proposal for a Council Regulation opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the period 2019–2020: (40073), 12082/18 + ADD 1, COM(18) 625.

Previous Committee Reports

Fortieth Report HC 301–xxxix (2017–19), chapter 4 (17 October 2018).

Annex: Compromise proposal

Species	Commission Proposal (tonnes)	UK Request (tonnes)	Presidency Compromise (tonnes)
Cod (headed and gutted)	80,000*	80,000#	95,000*
Cod (frozen fillets and meat)	38,000	42,500	50,000
Alaska Pollack	250,000*	300,000#	320,000*
Haddock	2,500	5,000	3,500
Cooked and peeled shrimps and prawns	10,000	15,000	7,000 (Pandalus borealis & Pandalus montagui) 3,000 (Pandalus jordani)
Warm water prawns	30,000	45,000	40,000
Tuna	25,000	30,000	30,000

Source: Letter from George Eustice to Sir William Cash, dated 5 December 2018

***No safeguard measure**

#Plus safeguard measure

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

(40138) 13341/18 + ADD 1 COM(18) 686	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions The annual Union work programme for European standardisation for 2019.
(40177) —	Report on the annual accounts of the Fuel Cells and Hydrogen Joint Undertaking for the financial year 2017 together with the Joint Undertaking's reply
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(40178) —	Report on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2017 together with the Joint Undertaking's reply
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(40179) —	Report on the annual accounts of the Electronic Components and Systems for European Leadership (ECSEL) Joint Undertaking for the financial year 2017 together with the Joint Undertaking's reply
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(40180) —	Report on the annual accounts of the Clean Sky Joint Undertaking for the financial year 2017 together with the Joint Undertaking's reply
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(40181) —	Report on the annual accounts of the Bio-based industries Joint Undertaking for the financial year 2017 together with the Joint Undertaking's reply
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Department for Environment, Food and Rural Affairs

(40171) 14074/18 +ADD 1 COM(18) 706	Report from the Commission to the European parliament and the Council The application of the Union competition rules to the agricultural sector.
(40183) — —	Animal welfare in the EU: closing the gap between ambitious goals and practical implementation.
(40197) 14481/18 + ADD 1 COM(18) 753	Proposal for a Council Decision on the position to be taken on behalf of the European Union at the Conference of the Parties to the Rotterdam Convention regarding compliance procedures.

Department for International Development

(40128) 13082/18 SWD(18) 444	Commission Staff Working Document on 'A revised EU International Cooperation and Development Results Framework in line with the Sustainable Development Goals of the 2030 Agenda for Sustainable Development and the New European Consensus on Development'
(40144) 13232/18 COM(18) 689	Communication from the Commission to the Council European Development Fund (EDF): forecasts of commitments, payments and contributions from Member States for 2018, 2019, 2020 and nonbinding forecast for the years 2021–2022.

Department for Transport

(40165) — —	Court of Auditors Special report No 30/2018: EU passenger rights are comprehensive but passengers still need to fight for them.
(40170) 14108/18 COM(18) 735	Report from the Commission to the European Parliament and the Council On the exercise of the delegation conferred on the Commission pursuant to Regulation (EC) No 443/2009 setting emission performance standards for new passenger cars as part of the Union's integrated approach to reduce CO2 emissions from light-duty vehicles.
(40174) — —	Report on the annual accounts of the Shift-2-Rail Joint Undertaking for the financial year 2017.

(40175) Report on the annual accounts of the Single European Sky Air Traffic Management Research Joint Undertaking for the financial year 2017.

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Foreign and Commonwealth Office

(40231) Council Decision amending Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast

14702/18

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(40235) Council Decision in support of Countering Illicit Proliferation and Trafficking of Small Arms, Light Weapons (SALW) and Ammunition and their Impact in Latin America and the Caribbean

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(40243) Proposal for a Council Decision amending and extending Decision 2014/219/CFSP on the European Union CSDP Mission in Mali (EUCAP Sahel Mali).

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(40244) Proposal for a Council Decision in support of gender mainstreamed policies, programme and actions in the fight against small arms trafficking and misuse, in line with the Women, Peace and Security agenda

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HM Treasury

(39878) Report from the Commission to the European Parliament, the Council and the Court of Auditors: 2017 Annual Management and Performance Report for the EU Budget.

988/18

+ADDs 1–2

COM(18) 457

(40185) Special Report no: 29: EIOPA made an important contribution to supervision and stability in the insurance sector, but significant challenges remain

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(39969) Report from the Commission to the European Parliament and the Council on the implementation of macro-financial assistance to third countries in 2017.

10912/18

+ADD 1

COM(18)511

(39982) 11043/18 COM(18) 497	Report from the Commission to the European Parliament and the Council Comprehensive Report to the European Parliament and the Council on the use of the European Fund for Strategic Investments (EFSI) EU guarantee and the functioning of the European Fund for Strategic Investments (EFSI) guarantee fund.
(40047) 11889/18 +ADD 1 COM(18) 609	Report from the Commission to the European Parliament and the Council on guarantees covered by the general budget—Situation at 31 December 2017.
(40129) 13166/18	Amendment of the EIB's Statute—Request to launch the Article 308 procedure.

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Formal Minutes

Wednesday 12 December 2018

Members present:

Sir William Cash, in the Chair

Richard Drax	Mr David Jones
Marcus Fysh	David Warburton

Scrutiny Report

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

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

Paragraphs 1.1 to 13 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 19 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*)