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European Scrutiny Committee

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Documents considered by the Committee on 19 December 2018

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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Meeting Summary

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

Brexit-related issues

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

- the proposal for an EU Space Programme from 2021–2027 broadly maintains the current rules regarding third country participation, which would limit future UK industrial involvement in certain parts of the programme which are restricted to EU Member States;
- concerns have emerged that the (non-EU) European Centre for Medium Range Weather Forecasting (ECMWF) can continue to provide Copernicus services from its base in Reading once the UK has left the EU; and
- the Committee has reviewed the progress of negotiations regarding future UK involvement in the EU space programmes.

Summary

MFF: EU Space Programme

The Commission's proposal for a regulation establishing the EU Space Programme 2021–2027 would consolidate the Union's diverse space-related activities within a single overarching Programme, establish a more consistent approach to governance and security arrangements, transform the Global Navigation Satellite Systems (GNSS) Agency into the EU Agency for the Space Programme with an expanded role regarding its implementation, and increase the current budget allocation by approximately 25% to €16bn. From the perspective of the UK as it prepares to leave the EU, the proposal would broadly maintain the current restrictions on third country participation, particularly in relation to the Galileo Public Regulated Service (PRS), although a more rigorous approach to defining and enforcing security requirements is proposed which could increase the overall level of restrictiveness.

The Minister of State at the Department of Business, Energy and Industrial Strategy (Chris Skidmore MP) has written to inform the Committee that the Austrian Presidency intends to seek a Committee of Permanent Representatives in the European Union (COREPER) mandate at a meeting on 19 December to enable trilogue negotiations with the Parliament and the Commission to begin in January. The Minister said that the Government did not intend to voice opposition to the mandate as "significant progress … has been made on all issues", and key UK issues have been excluded from the mandate. The Committee questioned the Government's view that substantial progress has been made: on the key

UK concerns about security restrictions and scope for third country involvement in the PRS (which are excluded from the mandate) the EU have rejected the Government's demands; the Government has provided few specifics regarding the reported progress made in relation to possible encroachment of the role of the new EU Agency for the Space Programme on the competence of the European Space Agency; and new concerns have emerged about whether the non-EU European Centre for Medium Range Weather Forecasting (ECMWF) can continue to provide Copernicus services from its base in Reading once the UK has left the EU.

The Committee also rejects the Government's view that Article 127.7(b) of the withdrawal agreement does *not* grant the Commission the power to exclude UK-based PRS providers from the PRS during the implementation period and anticipates that the derogation will be triggered during the transition period. The Withdrawal Agreement thus has the effect, for the UK space sector, of preserving UK involvement in activity related to the EU space programmes until 2020 (extendable to 2022), while simultaneously enabling the EU to exclude the UK and UK stakeholders from participating in parts of those programmes which involve the transfer of security-related sensitive information. Surrey Satellite Technology Ltd has already made preparations for this, by arranging for a German partner to conduct the PRS-related part of its work on Galileo.

The report also takes stock of EU exit negotiations in the area of the space programme. In response to the EU's refusal to allow the UK to continue to participate in the programmes on terms preferential to other partners, the Prime Minister recently announced that the UK would no longer seek access to the PRS for military or critical infrastructure related purposes and would explore options to develop its own Global Navigation Satellite System. The Committee notes that the Government's position in relation to the EU Space Programme remains ambiguous in several respects and requests further clarification.

The Committee's decision: Not cleared from scrutiny; further information requested; drawn to the attention of the Exiting the European Union Select Committee, the Business, Energy and Industrial Strategy Committee, and the Defence Committee

VAT threshold for small businesses

The Committee has published a report on EU proposals to reform the way VAT law must be applied by small businesses, with the aim of reducing the costs of compliance and enabling SMEs to operate more effectively across national borders within the EU's internal market. A major plank of the reforms is a suggestion to fix the maximum permitted VAT registration threshold for small businesses EU-wide at €85,000 (£76,000). If the Government does not succeed in removing that element from the proposals, it might require a lowering of the UK's current VAT threshold of £85,000 during the post-Brexit transitional period (when EU VAT law would continue to apply in the UK, without a veto for the Government). The new legislation would also apply in Northern Ireland if the controversial backstop in the Withdrawal Agreement ever took effect.

Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee, the Northern Ireland Affairs Committee and the Treasury Committee

EU strategy on endocrine disruptors (hormone-affecting chemicals)

Endrocrine disruptors (EDs) are chemicals that have the potential to harm people or wildlife by affecting endocrine (hormone) systems. They are found in many everyday products and are thought to pose a particular threat during prenatal and early postnatal development, although knowledge is still relatively low. Currently, EU policy on EDs is covered explicitly in chemicals regulation and indirectly through legislation such as that on the safety of toys and cosmetics. The European Commission proposes a strategy for future policy development. Noting that many of the areas concerned are likely to be the areas of continued cooperation—and potential alignment—between the UK and the EU in the future, the Committee considers the strategy of political importance. It asks how the Government intends to engage and what the Government's priorities are for future EU policy on EDs.

Cleared from scrutiny; further information requested

Creative Europe

The European Scrutiny Committee has approved a request by the Government to support a common position among the EU's Member States on a proposal to continue 'Creative Europe', the EU's funding programme for the cultural industries, beyond its current end date of 2020. The UK, which has been one of the largest recipients of funding from the current version of the programme, wants to remain a participant in Creative Europe after Brexit. However, the exact parameters for 'third country' participation won't be decided until next year. It would also require a new UK-EU legal agreement to determine the UK's financial contribution to the programme.

Not cleared from scrutiny; further information requested; but scrutiny waiver granted for the Council meeting of 20 December 2018; drawn to the attention of the Digital, Culture, Media and Sport Committee

EU-Vietnam trade agreement and investment protection agreement

The Commission has presented two separate agreements that will govern future EU trade and investment relations with Vietnam, in line with the Commission's new approach to the architecture of free trade agreements (FTAs): (a) an 'EU-only' FTA, which aims to eliminate tariffs and increase services market access, and includes provisions on intellectual property protection, public procurement, competition and sustainable development. The FTA requires the approval of the Council and European Parliament only (and not Member States) and is expected to enter into force late 2019/2020; and b) a 'mixed' investment protection agreement (IPA), covering investment protection and dispute settlement provisions. The IPA also requires ratification by individual Member States (including in some instances approval by their national parliaments) and is highly unlikely to come into effect for several years.

The Committee considers that both proposed agreements—notwithstanding the different timetables for their expected entry into force—have significant legal and policy implications for the UK, regardless of the Brexit 'endgame'.

While the Minister reiterates the Government's well-rehearsed position on the importance of continuity of trade relations with all third countries, including Vietnam, post-exit, it remains unclear whether these intentions can feasibly be implemented given continued uncertainty over possible Brexit outcomes and the pressing timescales involved. Furthermore, the Minister has still not set out the UK's approach to investment protection and dispute resolution after 29 March 2019.

With just three months until UK exit, we request urgent clarification on the implications for the UK of the proposed EU-Vietnam FTA and IPA in all currently foreseeable exit scenarios ('no deal' or negotiated withdrawal with a scheduled/extendable transition period and backstop), and on what steps the Government will take to ensure transparency in, and effective public and parliamentary scrutiny of the a) proposed agreements during any implementation/transition period or backstop, and b) the negotiation and conclusion of a future UK-Vietnam trade and investment deal.

Not cleared from scrutiny; further information requested; drawn to the attention of the International Trade Committee, the Foreign Affairs Committee and the Exiting the EU Committee

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

The proposed emission performance Regulation would set binding Carbon Dioxide (CO2) emission standards for new heavy-duty vehicles (HDVs). The proposal forms part of the Commission's 'third mobility package' of legislative initiatives and non-binding actions. The proposal marks the first attempt to regulate CO2 emissions for HDVs at EU-level. The proposal was previously considered by the Committee on 31 October 2018. Minister of State for Transport (Jesse Norman) informs us that the Austrian Presidency—despite the limited time for which Member States have been considering the proposal—is likely to seek a General Approach at the forthcoming Environment Council (to be held on 20 December 2018). As such, the Minister requests that the Committee grant the Government a scrutiny waiver to allow it to support a General Approach (if one is sought). Given the limited time for which the proposal has been under negotiation, officials at the Department for Transport have made the Committee aware that the Government is unable to provide a complete account of the Government's likely voting intentions. That having been said, the Minister makes clear the Government's desire for ambition—primarily in terms of targets and timelines—to be shown during Council negotiations. The Committee grants the requested waiver on the basis that the Government has provided a full account of its likely voting intentions and these are consistent with previous correspondence between the Department and the Committee.

Not clear from scrutiny; scrutiny waiver granted for the Environment Council of 20 December

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: VAT: exemptions for small businesses [Proposed Directive (NC)]; MFF EU Space Programme [(a) Proposed Regulation (NC); (b) (c) Council Decisions (C)]

Defence Committee: MFF EU Space Programme [(a) Proposed Regulation (NC); (b) (c) Council Decisions (C)]

Digital, Culture, Media and Sport Committee: Creative Europe Programme 2021–27 [Proposed Regulation (NC; scrutiny waiver granted)]

Exiting the EU Committee: EU-Vietnam trade agreement and investment protection agreement [Proposed Decisions (NC)]; MFF EU Space Programme [(a) Proposed Regulation (NC); (b) (c) Council Decisions (C)]

Foreign Affairs Committee: EU-Vietnam trade agreement and investment protection agreement [Proposed Decisions (NC)]

Home Affairs Committee: Strengthening the European Border and Coast Guard [Proposed Regulation (NC)]

International Trade Committee: EU-Vietnam trade agreement and investment protection agreement [Proposed Decisions (NC)]

Northern Ireland Affairs Committee: VAT: exemptions for small businesses [Proposed Directive (NC)]

Treasury Committee: VAT: exemptions for small businesses [Proposed Directive (NC)]

1 Intellectual property rights for medicinal products

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 469/2009 concerning the supplementary protection certificate for medicinal products
Legal base	Article 114 TFEU, Ordinary legislative procedure, QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39792), 9485/18 + ADDs 1–4, COM(18) 317

Summary and Committee's conclusions

1.1 In order to allow time for investment in new medicines to be recouped, medicines can be protected by patents, which are valid for a maximum of 20 years. Having been granted a patent, though, they must be authorised by regulatory authorities before being placed on the market. As this can take a number of years, the effective patent term is reduced. Supplementary Protection Certificates (SPCs) form part of intellectual property (IP) rights and can provide an additional period of protection on expiry of a patent for a further period of five years. After that, generic manufacturers can enter the market, making cheaper products available to public health systems.

1.2 The Commission has proposed to amend EU law to allow a generic version of a product protected by an SPC in the EU to be manufactured for export to third countries where no SPC or patent protection exists. This is known as an "export waiver".

1.3 When the Committee first considered this proposal at its meeting of 5 September, it looked forward to receipt of the Government's impact assessment and raised various Brexit-related queries. The then Minister for Universities, Science, Research and Innovation (Mr Sam Gyimah MP) has written to us twice. In his letter of 18 October, he made the following points:

- assessment of the impact of the legislation suggests that, based on the UK's current share of EU pharmaceutical exports, the Government would expect the export waiver to result in a small net gain to the UK—this is subject to a number of caveats as set out in the Annex to the Minister's letter;
- this legislation is unlikely to fall within the proposed Common Rulebook encompassing legislation with which the UK would need to comply in order to secure a free trade area in goods, although this remains subject to negotiations;

- the proposal is unlikely to have much effect on the UK as a third country as the UK and EU approaches are likely to remain relatively aligned, and it is improbable that an SPC would be in place on a product in the EU but not in the UK; and
- a small number of minor changes will be needed to ensure that the proposed waiver functions as domestic law post-Brexit.

1.4 In a further letter of 29 November, he set out information on the progress of negotiations as we requested and expressed the following comments on the sticking points:

- the UK would resist attempts to extend the proposal to allow EU manufacturers of generics to stockpile products for sale in the EU as soon as the SPC expires; and
- the UK was seeking to minimise any impact on SPCs already granted—such as the suggestion that the proposal should be extended to cover SPCs which already been granted.

1.5 Finally, the Minister told us that the Austrian Presidency had been unable to secure agreement, so work would pass to the incoming Romanian Presidency.

1.6 **We welcome the Government's helpful update on the progress of negotiations and look forward to a further update once discussions have recommenced under the Romanian Presidency. The document remains under scrutiny.**

Full details of the documents:

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 469/2009 concerning the supplementary protection certificate for medicinal products: (39792), 9485/18 + ADDs 1–4, COM(18) 317.

Previous Committee Reports

Thirty-seventh Report HC 301–xxxvi (2017–19), chapter 1 (5 September 2018).

2 MFF EU Space Programme

Committee's assessment	Legally and politically important
Committee's decision	(a) Not cleared from scrutiny; further information requested (b) (c) cleared from scrutiny Drawn to the attention of the Business, Energy and Industrial Strategy Committee, the Exiting the EU Committee and the Defence Committee
Document details	(a) Proposal for a Regulation of the European Parliament and of the Council establishing the space programme of the Union and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013, (EU) No 377/2014 and Decision 541/2014/EU; (b) Proposal of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a Council Decision on the security of systems and services deployed, operated and used under the European Space Programme which may affect the security of the European Union, and repealing Council Decision 2014/496/CFSP; (c) Commission Implementing Decision 2018/155 of 24 January 2018 amending, as regards the location of the Galileo Security Monitoring Centre, Implementing Decision (EU) 2016/413 determining the location of the ground-based infrastructure of the system established under the Galileo programme and setting out the necessary measures to ensure that it functions smoothly, and repealing Implementing Decision 2012/117
Legal base	(a) Article 189(2) TFEU; ordinary legislative procedure; QMV; (b) Article 28 TEU; unanimity; (c) Article 12, paragraph 3, and Article 36, paragraph 3, of GNSS Regulation 1285/2013; QMV
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (39876), 9898/18, COM(18) 447; (b) (40106),—(limité); (c) (39477),—

Summary and Committee's conclusions

2.1 As part of its proposals for its next long-term budget or Multiannual Financial Framework (MFF),[1] the European Commission has proposed a draft regulation which would establish the EU Space Programme from 2021–2027.

2.2 There are three EU Space Programmes funded by the current MFF:

1 For an overview of the Commission's proposal for a Multiannual Financial Framework, see Thirty-fourth Report HC 301–xxxiii (2017—2019), chapter 6 (4 July 2018), and Thirty Eight's Report HC 301–xxvii (2017—2019), chapter 18 (12 September 2018).

- Galileo and the European Geostationary Navigation Overlay Service, the EU's satellite navigation and positioning system: Galileo provides high precision position, navigation and timing services, similar to those provided by the US Global Positioning System (GPS). The Galileo Public Regulated Service (PRS) is essentially an encrypted version of the same service intended for government-authorised users, such as the military, police and border control.

- Copernicus: the EU's Earth Observation Programme, designed to deliver global, near real-time measurements of the Earth using a series of satellites called 'Sentinels'.

- Space Surveillance and Tracking (SST): a ground-based orbital tracking system, designed to track space debris and help protect space assets by preventing collisions. Under the new proposals, this would be expanded to include other areas of space situational awareness, including space weather and near-earth objects.

2.3 Under the proposal, the three existing programmes would be rebadged as 'components' within a single overarching Space Programme, along with a new proposal, the EU Governmental Satellite Communications initiative (GovSatCom), which aims to pool and share secure satellite communications capacities for EU Agencies and EU Member States. The new Space Programme would run from 1 January 2021 to 31 December 2027, with a proposed budget of €16 billion—a 25% increase on the allocation in the current MFF for the space programmes—comprising:

- €9.7 billion for Galileo and EGNOS;

- €5.8 billion for Copernicus; and

- €0.5 billion for SST/GovSatCom.

2.4 The draft Regulation aims to simplify and streamline rules previously contained in separate regulations or decisions, repealing and replacing a wide range of existing EU Regulations and Decisions establishing the currently separate space programmes. It also aims to establish a consistent approach to governance, funding and security arrangements across the components of the new Space Programme, although it also contains specific arrangements for each component.

2.5 It also proposes that the European Global Navigation Satellite Systems Agency (GSA), which currently manages some aspects of Galileo, should be expanded into a new 'EU Agency for the Space Programme', which would have responsibility for security accreditation across the whole Programme and would manage Galileo directly. The Regulation would also more clearly delineate European Space Agency's (ESA) role in delivering the EU Space Programme through the conclusion of a financial framework partnership agreement with the GSA, which would stipulate the conditions of the management of funds entrusted to the ESA, particularly with regard to public procurement, and require the participation of the Commission and the Agency in the Tender Evaluation Board meetings of the ESA with regard to the Programme.

2.6 In the Government's Explanatory Memorandum,[2] the then Minister (Mr Sam Gymiyah MP) indicated that the Government saw the merit of taking a more consistent approach across the EU space portfolio and noted that the expanded role for the European GNSS Agency should not result in any overlap of this new Agency's remit with that of ESA.

2.7 Regarding scope for future UK participation, the Minister said that the draft Regulation made provision for non-EU countries to participate in most of the components of the EU Space Programme, but that there were limitations around access to SST, GovSatCom and the secure Galileo signal (the PRS). The Minister provided further information regarding the restrictions to third country participation in a follow-up letter,[3] in which he noted that:

- Article 7 of the Regulation, which establishes the horizontal requirements applicable to third country participation, requires third countries seeking to participate in aspects of the Space Programme to conclude a specific agreement with the Union, which would ensure a fair balance between contributions and benefits and not confer any decisional power over the Programme on the participating country.

- Article 8, on access to the Galileo PRS, emphasises that the terms set out in Council Decision (EU) 1104/2011 will remain the principal framework for third country involvement in this part of the Programme. This would limit the involvement of UK industry in the production and operation of the PRS, although it could access the service as a passive third-party user and produce PRS receivers.

- Article 8 provides for third country access SST services where the necessary agreements have been concluded.

- Article 8(1) allows third countries to access GovSatCom where the necessary agreements have been concluded.

- Although the Minister stated that the Regulation introduced no Copernicus-specific constraints, and Copernicus data is freely available, in separate correspondence the Minister informed the Committee that restrictions apply to the Copernicus Emergency Management and Security Services.[4]

- Article 14 states that Programme procurement should foster the autonomy of the Union and ensure the security of the components of the Programme, and Article 25, on the protection of essential security interests, proposes a strict approach whereby wherever it is deemed necessary "for the protection of the essential security interests of the Union", it will be possible to restrict contracts not just to entities established within the EU, but to entities which are "effectively controlled" from within the EU. This allows for the possibility of EU companies with a parent company located outside the EU being prohibited from bidding for particularly sensitive contracts.

2 Explanatory Memorandum from the Department of Business, Energy and Industrial Strategy (25 June 2018).
3 Letter to the Chairman of the House of Lords EU Committee copied to the Chair of the European Scrutiny Committee (26 October 2018).
4 Letter from the Minister to the Chair of the European Scrutiny Committee (23 May 2018).

2.8 The Minister expressed concern that the provisions on security contained in Article 25 in particular could limit the Union's flexibility to conclude an ambitious arrangement with the UK and that the Government was seeking to mitigate this risk by securing a recognition that third country industrial and scientific involvement was both desirable and possible, even on potentially sensitive contracts. He added that he had proposed changes on the Galileo PRS consistent with the requirements set out in the UK's technical note of 24 May,[5] but that the EU had shown "little appetite" to change the draft regulation to support comprehensive UK participation.

2.9 On 17 December 2018 the Minister's successor (Chris Skidmore MP) wrote to the Committee to report that the Austrian Presidency intended to seek a Committee of Permanent Representatives in the European Union (COREPER) mandate on 19 December in order to enable trilogues with the Parliament and the Commission to begin in January.[6] The Minister said that the detail of any future UK participation in the EU Space Programme would not be set by the Regulation but by specific agreements with the UK which will be negotiated at a later date, with "only the boundaries of what is possible to be determined by this regulation". The Minister assures the Committee that the core articles relating to third country participation in the programme (Articles 7 and 8) and on industrial participation in sensitive contracts which relate to the security of the Union have been excluded from the agreement being sought at COREPER and will instead be considered as part of horizontal negotiations, alongside similar clauses across other programmes. He informs the Committee that the provisions which relate to the European Space Agency have improved on the original draft, but that Committee concerns have also been raised about whether the European Centre for Medium Range Weather Forecasting (ECMWF) can continue to provide Copernicus services from its base in Reading once the UK has left the EU. The Minister states that given the significant progress which has been made on all issues, and the fact that key UK concerns are excluded from the mandate being sought, the UK will not voice opposition to the proposals being taken forward to trilogues in the new year; however, it intends to express strong support for the autonomy of ESA at COREPER, and for the ECMWF to continue to be able to deliver Copernicus services from Reading.

2.10 Alongside the MFF proposal, the Government has deposited a proposal to update the existing rules governing how Joint Action procedures would be used to avert threats to the operation and use of any elements of the EU space programme, which the Minister states "takes a similar approach to that taken in the previous Decision".

2.11 The Committee has previously considered the implications of EU exit for UK involvement in the EU space programmes in its report[7] on Implementing Decision (EU) 2018/155 requiring the relocation of the Galileo Security Monitoring Centre from the UK to the EU. To bring together the Committee's scrutiny of the implications of EU exit for future UK involvement in the space programmes, the background section of this chapter includes a summary of the Minister's response to that report, as well as an overview of the many subsequent developments in EU exit negotiations regarding space.

2.12 **The Commission's proposal for a regulation establishing the EU Space Programme 2021–2027 would consolidate the Union's space-related activities within**

5 Department for Exiting the European Union, Technical note: UK Participation in Galileo (24 May 2018).
6 Letter from the Minister to the Chair of the European Scrutiny Committee (17 December 2018).
7 Twenty Fourth Report HC-xxiii (2017–19), chapter 1 (18 April 2018).

a single overarching programme, establish a more consistent approach to governance, funding and security arrangements, transform the GNSS Agency (GSA) into the EU Agency for the Space Programme which would take on important roles regarding the Programme's implementation and governance, and increase the current budget allocation by approximately 25% to €16bn.

2.13 **The principal point of interest for the UK in this proposal as it prepares to leave the European Union relates to the extent to which continued third country involvement in the Programme is permitted. While the Regulation does not establish the precise terms of UK participation in the space programmes, which would have to be negotiated separately between the UK and the EU, it does establish the boundaries of what is possible in terms of third country participation. In this regard, the principal EU exit implications of the proposal are:**

- **The draft Regulation broadly retains existing provisions for non-EU countries to participate in the EU Space Programme where a third country negotiates specific arrangements with the EU to do so, and extensive UK involvement in elements of the EU Space Programmes could therefore in principle be negotiated. Where restrictions to industrial involvement apply it is generally possible to negotiate access to the service outputs (e.g. the Galileo PRS; SST).**

- **A stricter approach to third country involvement is proposed where activities have a security dimension, whereby it would be possible to restrict contracts not just to EU-established entities but to entities which are 'effectively controlled' from within the EU. The precise security requirements applicable to different parts of the Programme would be specified in implementing legislation brought forward by the Agency. This stricter approach could further limit the level of industrial participation the UK could negotiate when it becomes a third country.**

- **The restrictions on third country involvement in the Galileo PRS set out in Council Decision (EU) 1104/2011, which the 2011 UK Government considered to be a negotiating success,[8] would remain in force, meaning that it would not be possible for the EU to grant the UK similar levels of participation in the PRS element of the Programme as EU Member States, although the UK could still negotiate access the PRS signal.**

- **Possibly in response to the Government's attempt to block the procurement of new satellites for the Galileo programme through its membership of the**

8 The Government's Explanatory Memoranda regarding Proposal for a Decision of the European Parliament and of the Council on the detailed rules for access to the public regulated service offered by the global navigation satellite system established under the Galileo programme COM(2010) 550, submitted by the Minister for Transport (Rt Hon Theresa Villiers MP) on 28 October 2010, stated that "the Government accepts that this project should be managed and procured at a European level and that there should be a common framework governing the access to the public regulated service." In a letter to the Committee on 21 December 2011 regarding the Council text, the Minister said that the UK "has been instrumental in taking the Decision from the original Commission proposal to the legislation that was published in the Official Journal", and that "key achievements" included "separating the rules governing manufacture and use of PRS technology, differentiating between the manufacture of the PRS security modules and other PRS equipment, and gaining agreement from Member State experts on the shape and content of the annex which defines the areas covered by the Commons Minimum Standards for access to the PRS." The documents should be available on the Department for Exiting the European Union's website for European Memoranda but do not currently appear to be accessible.

ESA, the Regulation would require the GSA, renamed the EU Agency for the Space Programme, to more clearly define ESA's role in delivering the EU Space Programme through a "financial framework partnership agreement" which would stipulate the conditions of the management of funds entrusted to the ESA, particularly with regard to public procurement, where the EU Programme is concerned. The Minister expressed concern that this aspect of the proposal encroached on ESA competence.

COREPER mandate

2.14 **We have taken note of the Minister's update that the Austrian Presidency intends to seek a COREPER mandate at a meeting on 19 December to enable trilogues with the Parliament and the Commission to begin in January, and that the text excludes the core articles (for the UK) relating to third country participation and sensitive contracts, which will be considered as part of horizontal negotiations alongside similar clauses across other programmes. The Minister assures the Committee that the provisions relating to the relationship between ESA and the Global Navigation Satellite System Agency (GSA) have much improved on the original draft, without providing any detail of these improvements. He also notes that concerns have arisen about UK participation in aspects of Copernicus and restrictions on the ability of the European Centre for Medium Range Weather Forecasting (ECMWF) to continue to deliver Copernicus services from Reading. The Minister asserts that "significant progress … has been made on all these objectives" and states that the Government therefore does not intend to voice opposition to the proposals being taken forward to trilogues in the New Year, although it will express strong support for ESA and for the ECMWF to continue to be able to deliver Copernicus services from Reading.**

2.15 **We are not persuaded on the basis of the information provided that "significant progress" has been made on all issues. No detail is provided about the extent to which the EU Agency's encroachment on the ESA has been scaled back. New concerns have emerged about the possible removal of ECMWF activities from Reading. Furthermore, although these aspects are excluded from the partial mandate, the Minister's predecessor informed the Committee that the EU27 had shown "little appetite" to provide UK stakeholders with levels of access to the space programmes which are currently restricted to Member States, or the more rigorous approach that is proposed to defining security-related aspects of the programmes.**

2.16 **To address our concerns, we ask the Government to clarify:**

- **when and in what format the myriad third country elements of the various MFF regulations, which are being dealt with "as part of horizontal negotiations", will be discussed and decided;**
- **what specific changes were secured to mitigate the Government's concerns about the expanded GSA encroaching on the competence of the European Space Agency;**
- **what changes, if any, the Government has secured to Article 25, to mitigate UK concerns;**

- **what developments have taken place which could affect the ability of Copernicus-related European Centre for Medium Range Weather Forecasting activities currently carried out in Reading; and**
- **whether any provisions in the European Parliament's first reading position on the proposal introduces any amendments which would benefit the UK.**

2.17 **We also note our regret that the Government only provided the Committee with its update two days in advance of the relevant meeting of COREPER.**

Security-related information during the implementation period

2.18 **In our previous report, we sought clarification from the Government of the legal effects of Article 122.7(b) of the draft Withdrawal Agreement,[9] which the Committee interpreted as enabling the EU to restrict UK involvement in the Galileo Public Regulated Service during the implementation period, and which is retained in Article 127.7(b) in the version of the Withdrawal Agreement subsequently agreed by the negotiators.[10] The Government disagrees with our interpretation of whether this provision could apply to Galileo but does not provide any compelling arguments to support its view, and does not appear to have received the reassurances it sought from the Commission on this point. We conclude that the clause clearly enables the EU to exclude the UK and UK stakeholders from those parts of the EU space programmes to which security-related restrictions apply during the implementation period.**

2.19 **Whereas for most sectors of the economy the Withdrawal Agreement would have the effect of preserving the status quo in terms of reciprocal market access and UK participation in EU programmes until the end of 2020 (extendable to the end of 2022), in the case of the space sector specifically, the Withdrawal Agreement would thus have the more complicated effect of preserving the status quo for the majority of UK-based space programme contracts while simultaneously granting the EU the power to exclude UK stakeholders from certain, security-related aspects of the programme.**

2.20 **Based on previous developments (including the EU's relocation of the PRS-related Galileo Security Monitoring Centre (GSMC) from the UK and its exclusion of the UK from discussions relating to the future of the PRS), we anticipate that this derogation will be applied, although the scope of the exclusions may be limited to minimise disruption to the space programme, and we note that some businesses have taken preparatory actions in anticipation of restrictions applying: for example, Surrey Satellite Technology Ltd (SSTL) has arranged for its German partner OHB System to handle the relatively small proportion of its work on Galileo which relates to the PRS.**

2.21 **In the alternative scenario of a non-negotiated exit, the legal basis for the involvement of UK businesses, academics and researchers in EU space programme-related activity would cease to exist on 29 March 2019. UK stakeholders would cease to be eligible to bid for new EU space programme contracts and there would no longer be**

9 Department for Exiting the European Union, 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 (19 March 2018).

10 Department for Exiting the European Union, 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 (14 November 2018).

a legal basis for UK stakeholders with existing space programme contracts to continue to provide these contracts in the UK. The Government's No Deal notice does not offer such contract-holders any assurances and simply advises them to contact the relevant contracting authorities in the EU GSA/ESA. It would be for the EU to decide how to enforce this situation. Businesses which have accepted the inclusion of Brexit clauses in space programme contracts would have to relocate their activities to the EU or pay for the activities to be transferred to an EU-based contractor.

The progress of EU exit negotiations[11]

2.22 **We have taken note of the following wider developments in EU exit negotiations with regards to the space sector:**

- **On 24 May 2018 the Government published a technical note in which the Government sought, as part of the future UK-EU security partnership, to retain full access to even sensitive aspects of the EU space programmes from which non-EU countries are currently excluded, and for the UK and the EU to effectively jointly develop a single European GNSS system.**
- **On 13 June 2018, on the basis of the European Council Guidelines regarding the negotiations for the framework for the future relationship, the European Commission published slides which suggested that future UK involvement in the Space Programme "should be subject to the relevant conditions for the participation of third countries to be established in the corresponding programmes", and set out the types of access sought by the UK which were incompatible with these conditions.**
- **The Government threatened to use its veto on the European Space Agency's council to delay procurement of the next batch of Galileo satellites, due to concerns that the UK space sector would be at a disadvantage in the procurement arising from uncertainty as to whether it would have a legal basis to fulfil these contracts when the UK ceased to be an EU Member State, however the EU circumvented the UK veto by agreeing to assume all of the liabilities that ESA would normally incur by taking on the contract, as a result of which only a simple majority was needed. The procurement of the satellites proceeded.**
- **On 2 October 2018 the Defence Secretary said that if the EU did not cooperate with UK requests for full involvement in the PRS it would be prevented from continuing to base Galileo ground stations in the Falklands and Ascension Island. Soon thereafter, the European Commission proposed as part of its Brexit Preparedness Work Programme to bring forward an implementing decision which would remove these ground stations from these territories (this decision has not yet been brought forward).**
- **On 25 November 2018 the negotiators published the Political Declaration setting out the framework for the future relationship between the EU and the UK, which stated that the parties would establish terms and conditions for the United Kingdom's participation in Union programmes "subject to the**

11 These developments are referenced and set out in greater detail in the Background section of this report.

conditions set out in the corresponding Union instruments". This text closely reflects the EU negotiating position. We note that these arrangements do not prevent the UK from negotiating extensive involvement in many aspects of the space programmes; they do, however, mean that the UK could not remain a substantial net financial beneficiary of the programme, would have no decisional power over it, and would have limited industrial involvement in security-related elements of the programmes. Regarding the Galileo PRS in particular, the UK could seek to negotiate access to become a passive third-party user of the signal—an arrangement currently sought by the USA—but its industrial involvement in the PRS would be substantially reduced.

- **On 1 December 2018 the Prime Minister's Office issued a statement that the UK would no longer seek to use the Galileo PRS for defence or critical national infrastructure after Brexit and that the UK would instead "explore options to build its own Global Navigation Satellite System that can help guide military drones, run energy networks and provide essential services for civilian smart phones" and "work with the US to continue accessing its trusted GPS system". Given that the Prime Minister primarily limited her remarks to a narrow aspect of the UK's involvement with the EU space programmes, we infer that the Government's position on future involvement remains a work-in-progress.**

2.23 **We ask the Government to respond to the following questions in its next update to the Committee:**

- **Please specify in greater detail the Government's position with respect to future UK involvement in the Galileo PRS: does the Government comprehensively rule out seeking passive third-party access to the secure signal for all purposes, or does this position apply only to the PRS with respect to its use for military purposes and critical infrastructure? Does the Government rule out seeking arrangements to permit UK industry to manufacture PRS receivers?**
- **What is the reasoning behind the Government's desire to continue accessing the US's "trusted GPS system" but not the EU's PRS, when the US is itself seeking access to the PRS to improve the resilience of its GPS system?**
- **If the EU were to exercise the derogation in the Withdrawal Agreement relating to security related sensitive information and the scope of the implementation period (Article 127.7(b)), which UK stakeholders would stand to be impacted and how?**
- **Does the Government have any sense of what level of involvement it seeks to negotiate with respect to other elements of the EU Space Programme?**
- **What assessment has the Government undertaken of the commercial opportunities associated with bringing a further GNSS system to the global market when several already exist? Are the commercial incentives reduced by being a late entrant to the market?**
- **How does the Government propose to evaluate whether creating a homegrown version of the EU's Galileo project is the best use of taxpayers' money?**

- **The Prime Minister stated that a number of key contracts relating to the Government's scoping work on the development of a UK GNSS are in the process of being tendered: please provide us with some further information about these contracts, their outputs, and their delivery timescales.**

2.24 **We ask the Government to provide detailed responses to the questions contained in this report by the end of January 2019. We also ask the Government to deposit any new EU documents, including tertiary legislation, which relate to the relocation of the Galileo bases from the Falklands and Ascension Island or the relocation of Copernicus-related activities from the European Centre for Medium Range Weather Forecasting in Reading.**

2.25 **We retain the proposal under scrutiny and draw this report to the attention of the Business, Energy and Industrial Strategy Committee, the Exiting the EU Committee, and the Defence Committee. We clear documents (b) and (c) from scrutiny.**

Full details of the documents:

(a) Proposal for a Regulation of the European Parliament and of the Council establishing the space programme of the Union and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013, (EU) No 377/2014 and Decision 541/2014/EU: (39876), 9898/18 + ADDs 1–4, COM(18) 447; (b) Proposal of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a Council Decision on the security of systems and services deployed, operated and used under the European Space Programme which may affect the security of the European Union, and repealing Council Decision 2014/496/CFSP: (40106),—; (c) Commission Implementing Decision 2018/155 of 24 January 2018 amending, as regards the location of the Galileo Security Monitoring Centre, Implementing Decision (EU) 2016/413 determining the location of the ground-based infrastructure of the system established under the Galileo programme and setting out the necessary measures to ensure that it functions smoothly, and repealing Implementing Decision 2012/117: (39477),—.

Background

2.26 In its report on 18 April 2018[12] the Committee considered a Commission Implementing Decision 2018/155 to relocate the back-up Galileo Security Monitoring Centre (GSMC), currently hosted in Swanwick, England, to a new location in Spain, with the replacement back-up centre to be operational by exit day March 29 2019, which the Government had initially failed to deposit to be scrutinised. The report provided a detailed overview of the EU space programmes and UK involvement in them, as well as the implications of EU exit for that involvement.

2.27 The Committee's chief conclusions regarding the possibility of continued UK participation in the programme, were that:

- Although some degree of third country involvement in the EU space programmes is possible, as evidenced by EU cooperation agreements with Switzerland and Norway, third country involvement in aspects of the Programmes which have a strong security dimension is heavily restricted. The Government acknowledged

12 Twenty-fourth Report HC 301–xxiii (2017–19), chapter 1 (18 April 2018).

this in its sectoral report on the implications of Brexit for the space sector, which stated that "some security elements of these EU space programmes are restricted to EU Member States … creating markets exclusively for EU companies".[13]

- The restrictions on third country participation are most significant regarding the Galileo Public Regulated Service (PRS)—an encrypted navigation service designed to provide service continuity for government users during emergencies or crisis situations when other navigation services are being jammed. These restrictions are primarily set out in Council Decision 1104/2011,[14] and limit third country participation to accessing the signal and manufacturing PRS receivers (not PRS infrastructure or security modules).

- The Committee concluded that it was unlikely that the UK would be excluded in the long-term from this level of involvement in the Galileo Public Regulated Service—i.e. access to the service and the ability to produce PRS receivers—because an EU Decision specifically provides for it, the EU is negotiating arrangements to participate with the US and Norway, and because it is clearly in the EU's strategic and commercial interests to promote PRS usage among its NATO allies.

- Given the high degree of involvement of UK industry in the delivery of the Galileo PRS, ending UK involvement in the EU space programmes would further disrupt the already substantially delayed rollout of the Galileo PRS service, and potentially have an adverse effect on UK and EU security.

2.28 The Committee also noted that several specific actions had already been taken to prepare the EU for the UK ceasing to be involved in the space programmes (with particular provisions regarding the PRS) in the future:

- The European Commission wrote to the UK in January to explain that it would be inappropriate to divulge sensitive information about post-2019 Galileo Public Regulated Service plans to a departing member state.[15] The Minister subsequently clarified that the Secretary-General of the European Commission had notified the UK on 24 January 2018 that it would be excluded from Galileo information exchanges and meetings involving the post-2019 design and evolution of the Galileo and EGNOS systems.[16]

- On 18 January 2018 Member States' representatives on the European GNSS Programmes Comitology Committee voted to relocate the back-up Galileo Security Monitoring Centre, which is currently hosted in Swanwick (UK), to a new location in Spain.

- The UK and the Commission agreed to the inclusion of a provision in the draft Withdrawal Agreement (Article 122, 7b) which provided for the EU to exclude the UK from procedures and programmes which would provide access to security related sensitive information that only Member States were to have

13 Department for Exiting the European Union, Sectoral Report—Space (21 December 2017).
14 Decision (EU) 1104/2011 of the European Parliament and of the Council of 25 October 2011 on the rules for access to the public regulated service provided by the global navigation satellite system established under the Galileo programme.
15 FT, 'Theresa May fights to keep UK in EU satellite project' (25 March 2018).
16 Letter from the Minister to the Chair of the European Scrutiny Committee (23 May 2018).

knowledge of. This text was highlighted in green, meaning that it was "agreed at negotiators' level" and would "only be subject to technical legal revisions in the coming weeks".[17] Under this provision, the EU must merely notify the UK of any such exclusion. Documentation showed that the UK had sought clarification of the import of this clause.[18]

- The prospect of EU exit was affecting procurement processes for future phases of the EU space programmes in a variety of ways, with UK manufacturers finding it difficult to secure contracts given the lack of clarity as to whether they would be legally able to deliver those contracts when the UK was no longer a Member State (and the default assumption being that they would not, as there is no legal precedent for such a relationship with a non-Member State), and as a consequence being required to accept the inclusion of Brexit clauses in contracts which would mean that they would no longer be able to provide that service, or would have to relocate activity to the EU, in the event of the UK ceasing to have a legal basis for its industry to deliver space programme contracts.

2.29 The Committee also asked the Government a number of questions, including whether it accepted the Committee's interpretation of Article 122.7(b) of the Withdrawal Agreement.

The Minister's response

2.30 In his response to the Committee, the Minister emphasised that it was "essential" that the UK remain closely involved in the security and Public Regulated Service elements of the system and retained access to all programme information, as this was the only way to ensure that it was delivering the UK's objectives and functioning in a way in which it could rely on for a wide range of applications including security.[19]

2.31 In his letter, the Minister also informed the Committee that:

- The EU's standard third country model for participation in Galileo would not meet the UK's requirements. Currently, "the model for third country participation can allow for the use of the PRS signal", but "access to the sensitive information which allows industry to build the PRS elements of Galileo or to fully exploit PRS when it is eventually available, is currently restricted to EU Member States only".

- For Galileo to support a strong security partnership between the UK and the EU, it was essential that the UK remain closely involved in the security and Public Regulated Service elements of the system and retains access to all programme information. The Minister indicated that, were this not the case, then Galileo would "not deliver our basic security requirements".

- The PRS signal was not currently fully operational and would not be in the near future, therefore any temporary loss of access would not affect users in the UK.

17 Department for Exiting the European Union, 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 (19 March 2018).

18 HM Government, Draft text for discussion: implementation period (7 February 2018).

19 Letter from the Minister to the Chair of the European Scrutiny Committee (23 May 2018).

- The "vast majority" of Copernicus data and Services are freely available to anyone in the world, but there are a small number of examples where access to data and services is restricted due to sensitivity and this relates to the Copernicus Emergency Management and Security Services. These services are triggered by authorised users (government agencies of programme members and some EU institutions and bodies) and any sensitive data or products produced are not made publicly available.

2.32 Regarding the Committee's interpretation of the provision in the draft Withdrawal Agreement relating to security related sensitive information, the Minister disagreed with the Committee, stating that "We do not agree that this provision should apply to Galileo". The Minister also provided a number of points in support of his view that the derogation should not apply to Galileo, which are reviewed below:

- The Minister stated that "security related sensitive information is not a formal or legal term". However, we note that language of this kind is found throughout the legal documents which relate to the Public Regulated Service, including the Implementing Decision to relocate the GSMC, which is justified with reference to the security of the European Union and its Member States as well as the rules on the protection of classified information and the restrictions on the export of cryptographic equipment and PRS technology, as well as the current legislative proposal, which would more systematically codify security-related requirements applicable to different parts of the Programme. Our assessment is that, insofar as the provision means anything, it provides the EU with ample scope to apply the derogation relating to the scope of the transition period to activities relating to the Galileo PRS.

- The Minister stated that the derogation could only be applied for an information exchange, procedure or programme "which continued to be implemented or started after the end of the Implementation Period". This is a peculiar point to make as the Galileo PRS and activities related to it will continue to be implemented after the end of the implementation period; however, it is possible that this part of the provision would mean that some PRS-related contracts which would conclude within the implementation period would therefore not fall within the scope of the derogation, and would not be excluded during the implementation period.

- The Minister stated that, as noted in the Committee's report, the EU would have to notify the United Kingdom of the application of this derogation before the UK was excluded.

- The Minister stated that "the UK's agreement to the draft withdrawal agreement text on security-related sensitive information was without prejudice to ongoing discussions with the Commission relating to Galileo" and that "the UK stressed at the time that it did not accept the Commission's position regarding UK participation in Galileo and continues to be very clear on this point". He added that the Government was in discussions with the European Commission and EU Member States to understand the implications of this clause as part of the wider security and defence negotiations currently underway.

2.33 Given the Government does not provide any legal arguments which suggest that our interpretation is wrong, and has not provided any information to suggest that the Commission shares its interpretation, we conclude that our assessment that the provision could be applied to the Galileo PRS is correct.

2.34 If the EU were to exercise this derogation and the UK chose to challenge it, it would do so within the framework of the Withdrawal Agreement's dispute settlement procedure, which would involve first raising the matter within the Joint Committee. If agreement could not be reached within the Joint Committee the UK could request that the matter be referred to arbitration, the ruling of which would be binding on the UK and EU. If the matter involved the interpretation of EU law, the arbitration panel would have to refer the matter to the ECJ, the decision of which would bind the panel.

Subsequent events

2.35 A succession of events have taken place since the Minister last updated the Committee on these points, which culminated in the Prime Minister stating on 30 November 2018[20] that the UK was walking away from negotiations regarding its future involvement in the European Union's Galileo global navigation satellite system and would explore building its own GNSS.

(i) Government technical note on UK participation in Galileo

2.36 On 24 May 2018, the Government published a technical note[21] setting out the UK's chief demands regarding continued UK involvement in the Galileo PRS post-exit. The Government sought for Galileo to be a core component of a future UK-EU security partnership, with the UK and the EU collaborating, "on mutually acceptable terms, to jointly develop a single European GNSS system". The Government accepted that the UK would have reduced influence in the programme in some respects,[22] but indicated that it required guaranteed unrestricted access to the PRS, ongoing industrial involvement in the secure elements of the programme (including PRS), and ongoing attendance at security meetings. In exchange, it indicated that it would continue to meet its financial obligations, to continue to host EU space programme facilities on UK territory, including the Falkland Islands and Ascension Islands, implying that it would not continue to do so were this participation not possible.

2.37 The Government also specified a range of actions which the Commission should take immediately and in relation to the implementation period, one of which included a request that it provide assurance that Article 122.7b in the draft Withdrawal Agreement relating to 'security-related sensitive information' would not be applicable to the exclusion of the UK in relation to Galileo and EGNOS in the implementation period.

20 HM Government, UK to tell EU it will no longer seek access to secure aspects of Galileo (1 December 2018).

21 Department for Exiting the European Union, Technical note: UK Participation in Galileo (24 May 2018).

22 The Government indicated that it did not envisage: attendance for UK officials at non-security comitology and programme meetings; UK officials' representation in non-security meetings and bodies at the European GNSS Agency (GSA); Membership of AQUA (for the evaluation of cryptographic products); An ability to trigger any restriction in the Galileo service, except where related to UK infrastructure; and Participation in discussions on European Commission third-party PRS access agreements, or programme delegation agreements, except on security grounds.

2.38 The Government stated that, if continued participation in the EU space programmes was not possible, the development of a domestic system was economically viable and made possible by the expertise of the UK space sector.

(ii) ESA Galileo procurement: The EU circumvents the UK veto

2.39 The Government subsequently sought to block the EU's plans to proceed with the procurement of the next batch of Galileo satellites, while UK stakeholders were at a disadvantage in the process due to lack of clarity regarding the level of the UK's future involvement in the EU space programmes, by requesting an immediate freeze of the procurement process.[23] The Government reportedly threatened to use its veto on the European Space Agency's council to delay procurement of the satellites, but the EU circumvented the UK veto by agreeing to assume all the liabilities that ESA would normally incur by taking on the contract, as a result of which only a simple majority was needed.[24] The procurement of the next round of Galileo satellites, which will run until 2024, therefore proceeded as planned.

(iii) EU response: technical slides

2.40 On 13 June 2018, in response to the Government's technical note, the European Commission's Brexit Task Force published a set of technical slides[25] which summarised the extent to which the UK could participate in the EU space programmes. The slides developed the EU position from the European Council Guidelines regarding the negotiations for the framework for the future relationship,[26] which were based on the Government's red lines in the negotiations, and which stated that UK participation in EU programmes "should be subject to the relevant conditions for the participation of third countries to be established in the corresponding programmes".

2.41 The slides then set out the conflicts between the UK's requests for involvement in the EU space programmes and the rules which apply to third country participation, as shown below (see: Figure 1). As regards the PRS specifically, while the applicable rules allow for, subject to the necessary agreements being in place, third country access to the signal, the rules do not permit design and development of the security-related and PRS elements, any role in upstream PRS activities, and limit the role of industry to the manufacturing of PRS receivers and certain sub-contracted work.

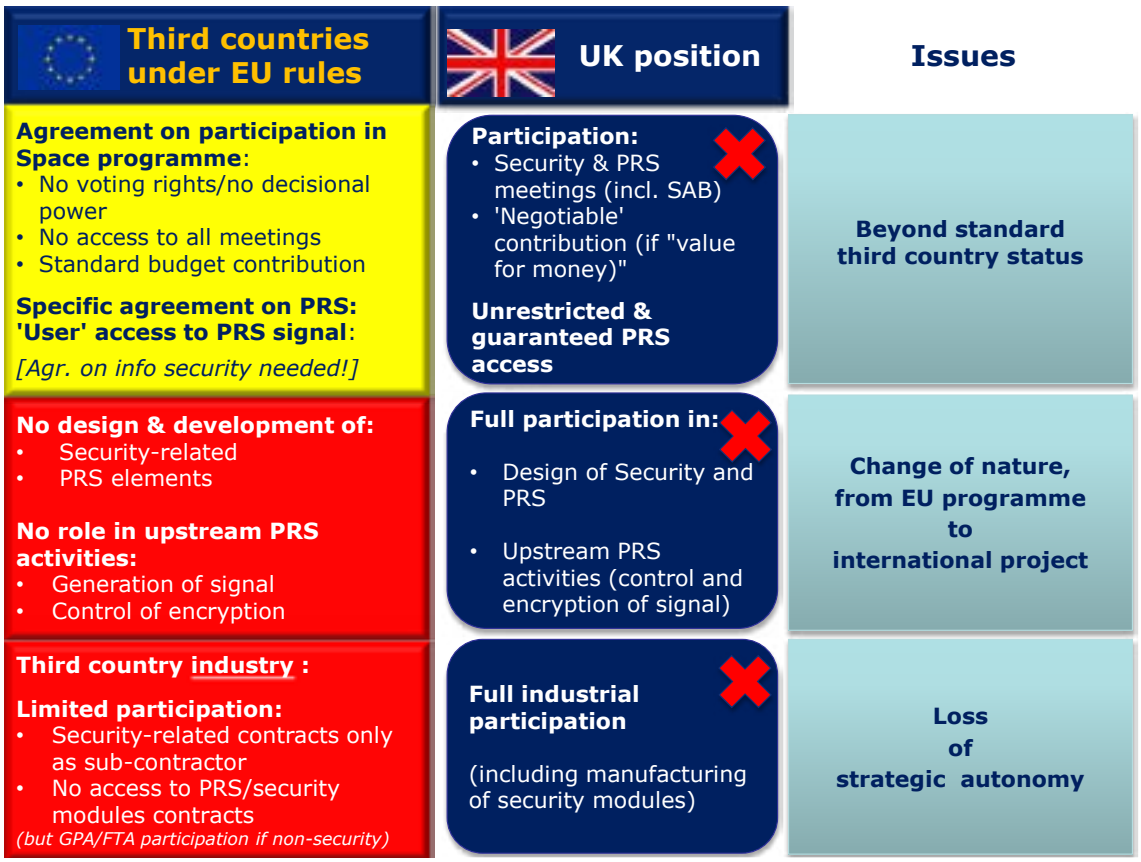
23 FT, 'Britain threatens to quit Galileo satellite project' (20 April 2018).

24 FT, 'EU outmanoeuvres UK in latest battle over Galileo' (June 5 2018).

25 European Commission, Slides: Framework for the future relationship: involvement in the EU's space-related activities (12 June 2018).

26 European Council (Art. 50) guidelines on the framework for the future EU-UK relationship (23 March 2018).

Figure 1: Incompatibilities between the UK position and EU rules regarding third country participation in the Galileo PRS



Source: European Commission presentation: Framework for the future relationship: involvement in the EU's space-related activities (12 June 2018).

(iv) UK Government: No Deal notice

2.42 On 13 September 2018 the Government published its No Deal guidance regarding the space sector.[27] The notice stated that, in the event of a "no deal" exit—or a negotiated exit which did not include preferential arrangements with regards to the EU space programmes—the UK and UK stakeholders could no longer play any part in the development of Galileo or European Geostationary Navigation Overlay programmes, and that UK businesses, academics and researchers currently contracted or expecting to carry out contracts on these programmes should contact the relevant authorities to make sure that arrangements are in place to comply with the conditions of the contract and to avoid possible penalties.

2.43 The Government said that to prepare for this scenario it was exploring alternatives to fulfil its needs for secure and resilient position, navigation and timing information, and that it would invest £92 million from the Brexit readiness fund on an 18-month programme to design a UK Global Navigation Satellite System, which would inform the decision to create an independent system as an alternative to Galileo.

2.44 Regarding Copernicus, the Government's notice acknowledges that the UK will no longer be able to participate in the Copernicus programme as an EU member state and

27 Department for Business, Energy and Industrial Strategy: Guidance: Satellites and space programmes if there's no Brexit deal (13 September 2018).

will have no role in how it is run. UK-based businesses, academics and researchers will be unable to bid for future Copernicus contracts tendered through the EU, or through any other process using EU procurement rules. The Government indicates that it is seeking to clarify with the European Commission what this will mean for those UK-based businesses, academics and researchers holding Copernicus contracts with delivery dates that run past the date of the UK's exit from the EU.

(v) European Commission: proposal to relocate Galileo infrastructure away from the Falkland Islands and Ascension Island

2.45 On 13 November 2018 the Commission proposed in its Brexit Preparedness Work Programme[28] to bring forward an implementing decision which would relocate the Galileo ground stations currently located in the Falkland Islands and Ascension Island.

2.46 This proposal followed the Secretary of State for Defence (Rt Hon Gavin Williamson MP) stating on 2 October 2018[29] that the EU would be prevented from basing ground stations for the Galileo satellite in the Falklands, Diego Garcia or Ascension Island unless Britain's demands for continued participation were met.

(vi) Publication of the Withdrawal Agreement and the Political Declaration

2.47 The withdrawal agreement[30] agreed among the negotiators was published on 14 November 2018, and the section on the transition period contains the same derogation for security related sensitive information (Article 127.7(b)).

2.48 The Political Declaration setting out the framework for the future relationship[31] was published on 22 November. On the issue of participation in the EU space programmes (as in other Union programmes) the Declaration stated that UK participation would be "subject to the conditions set out in the corresponding Union instruments", and that "the Parties should consider appropriate arrangements for cooperation on space". These passages suggest that the UK will be subject to the standard restrictions applicable to third countries and that full participation in restricted elements of the Programme will not be possible.

(vii) The Prime Minister's announcement[32]

2.49 On 30 November the Prime Minister announced that the UK would no longer seek access to the secure aspects of Galileo (the PRS) and that the UK would explore options to build its own Global Navigation Satellite System.

28 Annexes to the Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank: Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan COM(2018) 880 final.

29 The Times, 'Gavin Williamson threatens to block EU satellite bases from British territories' (2 October 2018).

30 Department for Exiting the European Union, 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 (14 November 2018).

31 Department for Exiting the European Union, Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom (22 November 2018).

32 HM Government, UK to tell EU it will no longer seek access to secure aspects of Galileo (1 December 2018).

2.50 A Government Press Release stated that the National Cyber Security Centre and Ministry of Defence had concluded that "it would not be in the UK's security interests to use the system's secure elements if it had not been fully involved in their development". The Press Release also said that the UK would "work with the US to continue accessing its trusted GPS system".

2.51 The Prime Minister, Theresa May said:

> I have been clear from the outset that the UK will remain firmly committed to Europe's collective security after Brexit.
>
> But given the Commission's decision to bar the UK from being fully involved in developing all aspects of Galileo it is only right that we find alternatives.
>
> I cannot let our Armed Services depend on a system we cannot be sure of. That would not be in our national interest.
>
> And as a global player with world-class engineers and steadfast allies around the world we are not short of options.

Previous Committee Reports

Twenty-fourth Report HC 301–xxiii (2017–19), chapter 1 (18 April 2018).

3 Creative Europe Programme 2021–27

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; but scrutiny waiver granted for the Council meeting of 20 December 2018; drawn to the attention of the Digital, Culture, Media & Sport Committee
Document details	Proposal for a Regulation establishing the Creative Europe programme (2021 to 2027)
Legal base	Articles 167(5) and 173(3) TFEU; ordinary legislative procedure; QMV
Department	Digital, Culture, Media and Sport
Document Number	(39821), 9170/18 + ADD 1, COM(18) 366

Summary and Committee's conclusions

3.1 Creative Europe is the European Union's flagship programme for investment in the creative and cultural industries of its Member States, performing a role similar to Arts Council England and Creative Scotland in the UK. Its overall objectives are to promote European cooperation on "cultural and linguistic diversity [and] heritage" and to "reinforce the competitiveness of the cultural and creative sectors", in particular the audio-visual sector for films, television and video games. The current version of the Programme, which runs from 2014 until the end of 2020, represents only a fraction of the EU budget: for that period, it has a financial endowment of €1.46 billion (£1.27 billion), representing 0.15 per cent of total planned EU expenditure.

3.2 The financial endowment of the Programme is used to support the creative and cultural sectors in two ways: through direct grants, and by means of a Guarantee Facility (which aims to compensate for the creative industries' limited access to traditional forms of finance, by providing a guarantee to banks or other investors which invest in the sector). Funding decisions are taken by the European Commission's Executive Agency for Culture, Audiovisual and Education (EACEA), with the support of sector-specific external advisors. However, any grant awards have to be in line with an annual Work Programme, which must be approved by a qualified majority of EU Member States on the 'Creative Europe Committee'.

3.3 The programme is open for participation ("association") by non-EU countries, provided they make a financial contribution and accept that funding decisions are made by the Commission. The Governments of associated countries can attend meetings of the Creative Europe Committee, but have no voting rights over the Work Programme. At present, there are 11 non-EU countries associated with Creative Europe,[33] Switzerland being the major exception due to the impasse in its political discussions with the EU over

33 EFTA-EEA countries Norway and Iceland, as well as Serbia, Montenegro, North Macedonia, Albania, Bosnia & Herzegovina, Ukraine, Moldova, Georgia and Tunisia.

freedom of movement and a new institutional architecture for the Swiss-EU relationship.[34] (It was suspended from parts of the EU's Framework Programme for Research from 2014 to 2016 for similar reasons.)

3.4 According to the Digital, Culture, Media and Sport Committee, the UK has been "disproportionately successful" in applying for Creative Europe funding while it has been a Member State.[35] UK organisations have been involved in nearly half (44 per cent) of all projects since 2014. As a result, the representatives of the UK's creative and cultural industries appear to overwhelmingly favour staying part of Creative Europe even after Brexit under a 'third country' agreement.

Creative Europe after 2020

3.5 In May 2018, as part of the wider negotiations about the EU's long-term budget (the so-called Multiannual Financial Framework), the European Commission tabled a proposal for a Regulation to continue the Creative Europe from 2021 until 2027. Under the draft legal framework, the programme would have a budget of €1.85 billion (£1.66 billion) over that period.[36]

3.6 The proposal is subject to the ordinary legislative procedure at EU-level, meaning the legal framework for the programme after 2020 must be approved jointly by the European Parliament and by a qualified majority of Member States in the Council. If the UK is still a Member State when the Regulation is submitted for final adoption (following the conclusion of negotiations between the Parliament and Council), the Government would have its normal voting rights over the finalised legal text.

Substance of the Commission proposal

3.7 As we noted when we first considered the proposal in June 2018, under the Commission proposal the 2021–27 Programme (like the current iteration) would consist of three strands:

- The **Media strand**, which supports the EU's film, television and video games sectors, would remain the largest component of Creative Europe. The Commission has proposed to give it a budget of €1.1 billion (£960 million), 60 per cent of the total. The aim is to support the development, distribution and promotion of European films, TV programmes and video games, with a greater focus on the international promotion and distribution of European works (including the creation of an online directory of EU films "to reinforce the accessibility and visibility of European works");

34 Switzerland has sought association with Creative Europe, but those negotiations are effectively stalled due to the dispute over the extension of free movement rights to Croatian nationals when Croatia joined the EU in 2013. Switzerland's recent decision to consult further on its new treaty with the EU, and to extend labour market controls over Croatian nationals, will not have helped its case.

35 Digital, Culture, Media and Sport Committee, 2nd Report of Session 2017–19, The potential impact of Brexit on the creative industries, tourism and the digital single market, 23 January 2018, p. 20.

36 This proposed budget would represent an increase compared to the 2014–20 budgetary period both in absolute terms and as a share of the total Financial Framework: it would be a nominal increase of approximately €400 million compared to the current period, which according to the Commission translates to a 17 per cent increase in real terms when the EU budget is adjusted to take account of the UK's exit from the EU.

- The **Culture strand**, which will provide €609 million (£533 million) for non-audio-visual creative and cultural industries such as publishing, performing arts and music, architecture and cultural heritage; and
- Finally, a **cross-sectoral strand** to fund cooperation between the audiovisual and other cultural sectors. As the smallest strand, this would have a financial endowment of €160 million (£140 million), and include support for media freedom and media literacy.

3.8 Unlike the current iteration, there would not be a dedicated Cultural and Creative Sectors Guarantee Facility in the Regulation itself. Instead, the EU would be able to provide investment guarantees to other financial institutions which financing for the cultural and creative industries under the overarching InvestEU programme for 2021–27. This is a horizontal budgetary instrument to be deployed by the EU incentivise investment by third parties, like the European Investment Bank, in projects that are in line with the EU's public policy objectives, but which would be too risky for such investors without a guarantee.[37]

Participation by non-EU countries

3.9 The Commission proposal also contained a mechanism—modelled on the current Programme—that allows 'third' (i.e. non-EU) countries to seek 'association' to Creative Europe. Under the terms of association, the creative and cultural industries of a third country are eligible for funding as if they were based in an EU Member State in return for an annual financial contribution by their Government to the budget for the Programme. The extent of such participation, with respect to the three strands (media, culture and cross-sectoral), can be varied on a country-by-country basis. As noted, Britain's creative industries appear to overwhelmingly favour making use of this option when the UK becomes a 'third country' vis-à-vis the EU.

3.10 However, the legal parameters for 'association' would be different under the Commission proposal for the 2021–27 programme. In particular, third countries would not have any "decisional powers" over the way Creative Europe is run. What this means in practice is unclear, but it is likely meant to establish explicitly on the face of the text that Governments of associated countries would be represented as observers only—without voting rights—on the committee where EU Member States have to approve the annual Creative Europe Work Programme (which establishes how funding will be spent and under which conditions). By setting this in stone in the Regulation itself, there would be no scope for the UK to try and negotiate a more influential role in the way Creative Europe is managed if it were to seek association in the future.[38]

3.11 In addition, participation in the media and cross-sectoral strands by some 'third countries' would be "subject to fulfilment of the conditions set out in Directive 2010/13/EU". This is the EU's Audiovisual Media Services Directive (AVMSD), governing broadcasting

37 The InvestEU programme, like Creative Europe, is still under negotiation between the Member States and in the European Parliament. It is also part of the 2021–27 Multiannual Financial Framework. Under the Commission proposal, about 10 per cent of the InvestEU Guarantee (€3.9 billion) could be used for 'social investment and skills', under which investment in the creative and cultural industries would typically fall.

38 The Government's Explanatory Memorandum on Creative Europe stated that "should the UK wish to continue to participate in Creative Europe as a third country (…), it would need to adhere to the criteria for third country participation".

throughout the Single Market, which was recently substantially amended.[39] Whether the UK would also be required to apply the AVMSD in order to participate in Creative Europe remains an open question. By letter dated 17 July 2018, the Minister clarified that this requirement would not 'expressly' apply to the UK. He explained that the draft Regulation makes the implementation of the AVSMD a pre-condition for participation only for the EFTA-EEA countries, countries seeking accession to the EU, and countries covered by the European Neighbourhood Policy in Eastern Europe, the Near East and North Africa.

3.12 Even though the Regulation as drafted does not *require* a 'third country' like the UK to apply the AVMSD, this does not rule out the possibility of it being made a requirement in any event under a specific legal agreement between the UK and the EU on participation in Creative Europe. Moreover, if the Withdrawal Agreement is ratified, the UK would be under an obligation to continue applying the Directive through its domestic law for the duration of the post-Brexit transitional period (which could last until December 2022).

Developments in the legislative process since June 2018

3.13 On 12 December 2018, the Minister (Michael Ellis MP) informed us that negotiations between the Member States on the next iteration of the Creative Europe programme had led to a draft set of amendments to the new legal framework (a so-called 'general approach'). These would put to Ministers meeting in the Council on 20 December for approval, after which they will represent the Member States' collective view on the Creative Europe proposal.

3.14 We understand that the Member States' general approach largely accepts the substance Commission proposal, but that some relatively minor changes are being sought.[40] However, two key issues—the overall budget for the programme, and the modalities for 'third country' participation—are yet to be resolved. The Member States' position is therefore referred to as a 'partial general approach', with the remaining issues to be decided horizontally as part of the overarching discussions about the allocation of EU funding from 2021, and the role non-EU countries—like the UK after March 2019—should have in European spending programmes.

3.15 The Minister's letter makes clear that the Government intends to support the Council's partial general approach because "not voting in favour risks sending a negative message to the EU about the UK's commitment to future cultural collaboration and strong cultural partnership". Although the Minister does not state explicitly the UK *will* seek 'association' with the programme, because the legal framework setting the conditions for this is not yet in place, it is clear the Government hopes to be in a position to do so. To underline the UK's support for Creative Europe, the Minister refers in this respect to:

- A letter sent recently by the Secretary of State (Rt Hon Jeremy Wright MP) to the EU Commissioner for Education, Culture, Youth and Sport (Tibor Navracsics), "outlining the UK's desire […] to explore options for future participation in Creative Europe as a third country";

39 The revised Audiovisual Media Services Directive (Directive 2018/1808) will take effect in September 2020.

40 For example, we understand that national governments want to have more oversight over the contents of annual work programmes which determine how funding is allocated. Most Member States also support the removal of the explicit references to the EU Youth Orchestra and European Film Academy as specific recipients of grants from Creative Europe.

- Remarks by the Minister for Creative Industries (Margot James MP) in Parliament in February 2018, when she said the UK remained "very committed to [its] role in Creative Europe";[41] and
- The Political Declaration on the future UK-EU relationship, which calls on the UK and EU to "establish general principles, terms and conditions for UK participation in EU programmes" in these areas of shared interest, including Creative Europe.

Next steps in the legislative process

3.16 As noted, the legal framework for Creative Europe has to be agreed jointly between the Member States (by qualified majority) and the European Parliament. The approval of a suggested set of amendments to the original Commission proposal in the Council on 20 December would therefore only be a step towards future negotiations with MEPs, not the end of the legislative process.

3.17 We understand the European Parliament's Culture & Education Committee is due to adopt its own set of possible amendments to the proposal in February 2019. As such, it is likely that the final set of negotiations on the substance of the Creative Europe legal framework from 2021 onwards will not take place until March next year. The aim for the EU institutions remains to have it formally adopted just before the European Parliament is dissolved for the EU elections in May 2019. The UK will lose its voting rights over the proposed Regulation when it ceases to be a Member State, which is due to occur on 29 March 2019.

Possibility for UK participation in Creative Europe after Brexit

3.18 As we have noted, both the current and future Creative Europe programmes allow for the possibility of 'association' by non-EU countries. That would be the mechanism by which the UK would be able to retain involvement in the programme after it ceases to be a Member State.

3.19 When we first considered the proposal in June 2018, the draft Withdrawal Agreement was in the public domain. The transitional arrangement created by Part Four of the draft Agreement would keep the UK as a participant in all EU spending programmes until the end of 2020. Accordingly, we concluded that the UK would not be an automatic participant in the post-2020 Creative Europe programme, because the transition would end the day before the version of the programme now being negotiated would become operational.

3.20 Since then, the legal provisions in the Agreement relating to the transition were amended to provide for a one-off extension that could last until the end of 2022. However, Article 132(2) of the Withdrawal Agreement provides that:

> In the event that the [UK-EU] Joint Committee adopts a decision [to extend the transition], the United Kingdom shall be considered as a third country for the purposes of the implementation of the Union programmes and activities committed under the multiannual financial framework applying as from the year 2021.

41 HC Deb, 8 February 2018, vol 635, col 1625.

3.21 As such, if the Withdrawal Agreement is ratified and *if* the transition were extended in 2021, UK entities would not be automatically eligible to receive funding from Creative Europe from 1 January 2021 onwards. However, Article 132(2) nevertheless does require the UK and the EU to agree on a "contribution to the Union budget" for the duration of the extension, "taking into account the status of the United Kingdom during that period". The size of that additional contribution, or the way it would be calculated, would be a matter for the UK-EU Joint Committee. Either way therefore, UK 'association' with Creative Europe from 2021 onwards—whether as part of an extended transition or fully as a 'third country'—would require a specific legal agreement to that effect to be in place, including modalities for UK financial contribution to the programme.

3.22 The specific conditions for UK participation in Creative Europe would be established in negotiations between the Government and the European Commission after the Regulation is formally adopted, and bearing in mind the parameters set in that statutory framework (for example in relation to the proposed restrictions on 'decisional powers' for non-EU countries).

3.23 It is clear that any decision to seek 'association' with Creative Europe (as well as other EU programmes, such as the Framework Programme for Research) would come at a financial cost in the form of an annual contribution. If the UK's hypothetical contribution were to be calculated in the same manner as Norway's under the current programme, the proposed €1.8 billion budget for Creative Europe for 2021–27 would result in a possible €288 million (£251 million) gross UK contribution over that period, or €41 million (£36 million) per year. The net contribution would be lower, especially if UK applicants retained their current high levels of success when applying for funding. The current budget rebate for the Treasury will no longer apply.

Our conclusions

3.24 **We thank the Minister for his update on the legislative deliberations to continue the Creative Europe programme beyond its current end date of December 2020.**

3.25 **We note that Council's partial general approach does not cover the provisions of greatest immediate relevance to the UK, namely the conditions for its participation in Creative Europe after it leaves the EU. This is the case for all proposed EU funding instruments under the 2021–27 Multiannual Financial Framework, as the question of 'third country' involvement in EU programmes is being looked at horizontally, rather than on a case-by-case basis. It is not yet clear at this point when the remaining Member States and the European Parliament will agree on the legal conditions for non-EU participation in those EU programmes for which it is relevant.**[42]

3.26 **As the decision to be taken by the Council does not cover these matters, but only the substance of the Creative Europe programme itself, we are content to grant the Minister a scrutiny waiver. This will enable the Government to support the partial general approach at the Ministerial meeting on 20 December 2018.**

42 In addition to Creative Europe, EU programmes under the 2021–27 budget where the UK as a 'third country' might be able to seek participation include for example the Framework Programme for Research (Horizon Europe), the European Defence Fund and the Neighbourhood, Development and International Cooperation Instrument.

3.27 **However, given the unresolved issue of 'third country' participation, as well as the budget for the Programme, we retain the proposed Regulation under scrutiny thereafter. We are grateful for the Minister's assurance that he will keep Parliament informed of further progress in the legislative process in due course, which we expect to include his Department's analysis of the 'third country' provisions once these are agreed between the Member States and the European Parliament.**

3.28 **As we described in paragraphs 18 to 23 above, the precise conditions the UK would have to adhere to in order to associate with the programme are yet to be determined. In particular, it remains unclear what the impact is, or is meant to be, of the prohibition on giving any 'third country' "decisional power" in relation to Creative Europe. We also remain concerned that the UK would have to continue applying the Audio-visual Media Services Directive as a pre-condition for participation, losing any notional flexibility for domestic regulatory reform in the areas covered by the Directive. We accept that, until there is agreement between the Member States and the European Parliament on the final text of the Regulation, it is unlikely the Government will be able to confirm whether it will seek association and make a financial contribution to the programme as a 'third country'.**

3.29 **In the event of a 'no deal' Brexit, the UK would cease to be eligible for participation in the existing (2014–20) Creative Europe programme overnight on 29 March 2019.[43] The loss of EU funding for agreed projects in the UK would then need to be compensated for by the Treasury. It is unclear what action the EU would take to compensate for the loss of the UK contribution to its budget, not least because the Government itself has indicated it could still make payments to the European Union even if the Withdrawal Agreement is not ratified.[44]**

3.30 **Overall, we consider it unlikely the Government and the EU could agree on the UK's re-entry into the current programme as a 'third country' before it ends in 2020 in a 'no deal' scenario unless the Withdrawal Agreement—including the transitional period and financial settlement—is replicated in substance at some point in 2019. However, it is *possible*, but unlikely, that the political fallout from a 'no deal' scenario might have dissipated sufficiently by 2020 to allow the Government to negotiate UK participation in or Creative Europe when the next version of the programme goes live in early 2021.**

3.31 **We remind the House in this respect that the EU's attitude towards Switzerland clearly shows that difficulties in wider political or trade negotiations, especially over issues of labour mobility and regulatory alignment, can effectively block opportunities for participation in unrelated EU programmes. Switzerland was temporarily suspended from major parts of the EU's Framework Programme for Research when it attempted to end freedom of movement, and it has been refused involvement in the**

43 The European Commission's Annual Work Programme for Creative Europe in 2019 notes explicitly that "If the United Kingdom withdraws from the EU during the grant period without concluding an agreement with the EU, the UK Creative Europe Desk will cease to receive EU funding".

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

current version Creative Europe altogether over the same issue. The ability for the UK to associate with EU funding instruments like Creative Europe as a 'third country' will therefore plainly depend on the extent of goodwill on both sides, and could easily be delayed if the wider negotiations on the future UK-EU partnership are difficult (which they are, of course, likely to be, especially if the Withdrawal Agreement is not ratified by March 2019).

3.32 **We draw these developments to the attention of the Digital, Culture, Media and Sport Committee, in view of their previous inquiry into the** "Impact of Brexit on UK Creative industries, tourism and the Single Digital Market".

Full details of the documents:

Proposal for a Regulation establishing the Creative Europe programme (2021 to 2027): (39821), 9170/18 + ADD 1, COM(18) 366.

Previous Committee Reports

See (39821), 9170/18 + ADD 1, COM(18) 366: Thirty-third Report HC 301–xxxii (2017–19), chapter 2 (27 June 2018).

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

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; but scrutiny waiver granted for a General Approach to be sought at the Environment Council of 20 December 2018
Document details	Proposal for a Regulation of the European Parliament and of the Council setting CO2 emission performance standards for new heavy-duty vehicles.
Legal base	Article 192(1) TFEU; ordinary legislative procedure; QMV
Department	Transport
Document Number	(39723), 8922/18 ADDs 1–4, COM(18) 284

Summary and Committee's conclusions

4.1 The proposal under scrutiny concerns the introduction of binding Carbon Dioxide (CO2) emission standards for new heavy-duty vehicles (HDVs). The proposal forms part of the Commission's 'third mobility package' of legislative initiatives and non-binding actions (which is focussed on ensuring that Europe's future mobility system is "safe, clean and efficient for all EU citizens").

4.2 The proposal follows on the heels of the Commission's plans—outlined in its 2016 Communication 'A European Strategy for Low-Emission Mobility'—to cut emissions from on-road freight vehicles. As such, the proposal complements the recently adopted CO2 Certification Regulation for HDVs (outlining vehicle types to be certified for CO2 reduction purposes) and the proposed Monitoring and Reporting Regulation (governing the monitoring, reporting and publication of CO2 emissions and fuel consumption information of new HDVs). The proposal marks the first attempt to regulate CO2 emissions for HDVs at EU-level. Similar measures have been introduced in the United States, Canada, China, Japan and India.

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

4.4 A full background to the proposal—including the Government's initial legal and political assessment of the Commission's plans—can be found in our first Report to the House of 31 October 2018. In response to our questions and requests for further information, Minister of State for Transport (Jesse Norman MP), wrote to the Committee on 13 December 2018. Against rather limited progress during working party negotiations,

the Minister provides a full and comprehensive account of the Government's position on the proposal and, helpfully, that of the European Parliament. The Minister informs us that the Austrian Presidency—despite the limited time for which Member States have been considering the proposal—is likely to seek a General Approach at the forthcoming Environment Council (to be held on 20 December 2018). As such, the Minister requests that the Committee grant the Government a scrutiny waiver to allow it to support a General Approach (if one is sought).

Developments since the Committee's first Report to the House

4.5 In its first Report to the House, the Committee referred to a report on the proposal by the European Parliament's Environment Committee. Since this time, the European Parliament has adopted its first reading position. This broadly endorses the findings of the Environment Committee's report and suggests that:

- From 1 January 2025 to 31 December 2029, CO2 emissions should be reduced by 20 percent (versus 15 percent in the Commission's proposal); and
- From 1 January 2030, by at least 35 percent (instead of a 30 percent indicative target) (subject to review in 2022 to account for the development and deployment of new technologies which are not yet on the market).

4.6 In a development on the Commission's proposal, the European Parliament suggests setting reference values for the proportion of zero and low-emission vehicles in all manufacturers' fleets by 2025 and 2030.[45]

4.7 Starting from 1 January 2025, the share of zero and low-emission HDVs—whose specific CO2 emissions are less than 50 percent of the value of the reference CO2 emissions determined for each vehicle subgroup—in manufacturers' fleets in a calendar year should be benchmarked against the following values:

- As of 2025, at least 5 percent; and
- As of 2030, 20 percent (subject to review).

4.8 It appears that this approach has been included as a direct replacement for the Commission's proposal of counting ZEVs and LEVs as more than one vehicle—commonly known as a 'super-credit multiplier'—when calculating average specific CO2 emissions permissible per manufacturer.

4.9 Members of the European Parliament also voted in favour of introducing an annual testing scheme for HDVs and on-road testing of vehicles. Members of the European Parliament argue that these amendments would provide a transparent way for fuel efficiency data to be verified so that test procedures are accurate and are not susceptible to manipulation.

45 Zero-emission vehicles (ZEVs) are defined as vehicles producing 0 gCO2/km and low-emission vehicles (LEVs) as 175 gCO2/km.

4.10 As negotiations have progressed, industry groups have been increasingly vocal about the potential implications of the proposal for manufacturers and customers. Recently, the European Automobile Manufacturers' Association (ACEA) suggested that the emission reduction targets proposed by the Commission were "overly-ambitious" and could not be reached due to current technological limitations.

4.11 The ACEA have also raised concerns that the infrastructure required for the successful operation of ZEV/LEV HDVs is not readily available in Member States and, therefore, ZEV/LEV HDVs are not currently commercially appealing to customers. If true, the lack of a market for ZEV/LEV HDVs would undoubtedly make it more difficult for manufacturers to meet binding share benchmarks if included under the proposal.

The Minister's letter of 13 December 2018

4.12 In his letter of 13 December, the Minister addresses the questions and request for further information raised in our first Report. Given the limited time for which the proposal has been under negotiation, officials at the Department for Transport have made the Committee aware that the Government is unable to provide a complete account of the Government's likely voting intentions. That having been said, the Minister makes clear the Government's desire for ambition—primarily in terms of targets and timelines—to be shown during Council negotiations.

4.13 In its Report of 31 October 2018, the Committee asked for the Government's view on whether the CO2 emission reduction targets proposed by the Commission were sufficiently ambitious and for further information on the potential alternative targets that it would be willing to support. The Minister skirts providing details on specific numerical values instead discussing the European Parliament Environment Committee's position—as referred to above—and the views of other Member States. The Minister welcomes the Environment Committee's report and, in particular, its recommendation for a binding 20 percent target from 2025 and *at least* 35 percent from 2030 (subject to review in 2022). He notes that other Member States are minded to support similar targets and to agree a binding target for 2030 *now* rather than include an indicative (non-binding) target in the proposal as suggested by the Commission.

4.14 On the Commission's proposal to incentivise the uptake of ZEV/LEVs, Member States are said to have expressed support for minimum sales targets (as an alternative to the suggested super-credit system). Indeed, the Minister informs the Committee that Government representatives have been working with counterparts from other Member States on the introduction of a production minima. Setting a binding target for the production of ZEV/LEVs is viewed by the Government as a more effective way of incentivising industry to invest in the uptake of such alternative technologies. It is unclear, however, as raised by the ACEA, whether the UK's strategic road network is fully equipped—or will be in the future—to support the operation of ZEV/LEV HDVs.

4.15 In a somewhat unexpected development, the Minister informs the Committee that a number of Member States have called for ZEV/LEV buses and coaches to be brought within the scope of the proposal. This would be for the purposes of the super-credits system; with the production of ZEV/LEV buses and coaches counting more than once towards the average specific CO2 emissions permissible per manufacturer (the Minister does not provide information on whether a 'multiplier' value has been suggested e.g. with

one ZEV/LEV counting as two regular HDVs). The Minister explains that the Government does not support this suggestion as the development and uptake of ZEV/LEV buses and coaches is far more complicated than for regular HDVs.

4.16 Concerns have also been raised that bringing ZEV/LEV buses and coaches within the scope of the proposal—for the purposes of super-credits—would make it easier for manufacturers to offset CO2 emissions by increasing production of such vehicles and, furthermore, potentially distort competition between manufacturers that produce ZEV/LEV buses and coaches and those that do not. It is for these reasons that the Minister does not believe that incentives for the production of such vehicles should be included within the scope of the Regulation and that alternative approaches—including the possibility of legislation—should be considered.

4.17 We also asked the Minister for the Government's views on the financial penalties to be levied on manufacturers found to have exceeded emission reduction targets and whether they are set at a sufficiently high level to deter non-compliance. In response, the Minister states that the Government believes that the fines proposed are proportionate and set at a high enough level to deter non-compliance. The Minister further explains that the level of fines proposed may change during Trilogue negotiations should higher—or lower—emission reduction targets be set.

4.18 On an interlinked point, the Committee were also interested in the Commission's proposal to include an in-service conformity procedure under the proposal. The Minister states that the Government "supports the objective of ensuring in-service performance does not deviate from reported emissions" and that "this [the inclusion of a conformity procedure] will help protect the integrity of the regulation and avoid discrepancies between reported emissions and [real-world] emissions".

4.19 The Minister also clarifies that the Regulation *could* apply to the UK during the proposed transition/implementation period under the Withdrawal Agreement. The Minister states that whether the Regulation would apply to the UK after the end of the transitionary period will depend upon the agreement reached on the future UK-EU relationship. As raised in our first Report, it is unclear why the future of any similar legislative initiative would be in doubt after transition: the proposal does not include any direct reciprocal commitments between Member States and is very similar in form and substance to its sister Regulation for light-duty vehicles (which the Government has committed to retain—or 'shadow'—after EU exit).

4.20 **We thank the Minister for his correspondence and the full and comprehensive responses he has provided to our questions and requests for further information. We note the limited information available to the Minister and are grateful for his attempts to provide the Committee with as complete a picture as possible of negotiations to-date and of the Government's positions on key aspects of the proposal.**

4.21 **We highlight the Minister's commitment to greater ambition in this area. With this in mind, we grant the scrutiny waiver requested for the December Environment Council on the understanding that the Government will maintain the high levels of ambition it has outlined to the Committee.**

4.22 **We ask the Minister to report back on the outcome of the December Environment Council by 31 January 2019. This report should provide details of any General**

Approach agreed and how the Government voted. Furthermore, in light of concerns raised by industry and the Government's support for a production target for ZEV/LEV HDVs, we request information on the Government's plans for supporting the future operation of such vehicles across the UK's strategic road network.

Full details of the documents:

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

Previous Committee Reports

Forty-third report HC-301–xlii (2017–19) chapter 2 (31 October 2018).

5 EU-Vietnam trade agreement and investment protection agreement

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the International Trade, Exiting the EU and Foreign Affairs Committees
Document details	(a) Proposal for a Council Decision on the signing, on behalf of the EU, of the Free Trade Agreement between the EU and Vietnam; (b) Proposal for a Council Decision on the conclusion of a Free Trade Agreement between the EU and Vietnam; (c) Proposal for a Council Decision on the signing, on behalf of the EU, of the Investment Protection Agreement between the EU and its Member States, of the one part, and Vietnam, of the other part; (d) Proposal for a Council Decision on the conclusion, on behalf of the EU, of the Investment Protection Agreement between the EU and its Member States, of the one part, and Vietnam, of the other part
Legal base	(a) and (b): Articles 91, 100(2), 207 and 218(11) TFEU (in accordance with Opinion 2/15 of the Court of Justice of the EU issued on 16 May 2017), in conjunction with 218(5) (on signing) and 218(6) TFEU (on conclusion) (c) and (d): Article 207 TFEU (in accordance with Opinion 2/15 of the Court of Justice of the EU issued on 16 May 2017), in conjunction with 218(5) (on signing) and 218(6) TFEU (on conclusion)
Department	International Trade
Document Numbers	(a) (40137), 13312/18 +ADDs 1–12, COM(18) 692; (b) (40136), 13313/18 + ADDs 1–12, COM(18) 691; (c) (40135), 13314/18 + ADDs 1–2, COM(18) 694; (d) (40134), 13315/18 + ADDs 1–2, COM(18) 693

Summary and Committee's conclusions

Overview

5.1 Negotiations for a free trade agreement with Vietnam started in June 2012 and concluded in December 2015. However, progress subsequently stalled pending a decision from the Court of Justice of the European Union (CJEU) on the division of competences between the EU and its Member States in the EU-Singapore Free Trade Agreement.[46]

46 See Opinion 2/15 of the Court of Justice of the EU issued on 16 May 2017.

5.2 In October 2018, the Commission presented two separate agreements covering future trade and investment relations with Vietnam—splitting the 'EU-only' trade elements (that require the approval of the Council and the European Parliament) from the 'mixed competence' elements of portfolio investment and investment protection and dispute settlement mechanisms (that also require ratification by individual Member States in line with their own domestic procedures and tends to take several years):

- The 'EU-only' EU-Vietnam free trade agreement (EU-Vietnam FTA) aims to eliminate over 99 percent of all tariffs (with 65 percent of duties being eliminated at entry into force of the agreement and the remainder over a 10-year period), remove non-tariff barriers in goods and services trade, and includes provisions on intellectual property protection, investment liberalisation, public procurement, competition and sustainable development.
- The 'mixed' EU-Vietnam investment protection agreement (EU-Vietnam IPA) aims to establish a common framework to ensure protection of direct and indirect foreign investment, including a new Investment Court System (ICS). It would replace the existing 21 bilateral investment treaties (BITs) between Vietnam and the EU member states (including one between the UK and Vietnam) once ratified by the EU and individual Member States.

The Government's position

On the EU-Vietnam FTA

5.3 The Minister of State for Trade Policy (George Hollingbery MP) sets out the Government's position on the EU-Vietnam FTA in his Explanatory Memorandum of 5 November 2018.

5.4 He considers that the UK is likely to benefit from: 99 percent tariff elimination; increased services market access and liberalisation (including business services, environmental services, postal and courier services, banking, insurance, and maritime transport; the removal or prevention of a number of technical barriers to trade and non-tariff measures, such as duplicative testing requirements; greater access to Vietnam's public procurement market as tenders will be advertised in English via a dedicated online portal, increased protection of intellectual property rights, the protection of UK GIs (including 'Scotch Whisky', 'Scottish Farmed Salmon', 'Irish Cream' and 'Irish Whiskey'), streamlined customs processes and sanitary and phytosanitary frameworks.

5.5 On the implications of the proposed FTA in the context of the UK's exit from the EU, the Minister:

- reiterates the EU's and UK's "shared aim" for international agreements to which the UK is a party by virtue of EU membership to continue to apply to the UK during the Implementation Period and that "… the EU set out in the draft Withdrawal Agreement that the UK should be treated as a Member State for the purposes of international agreements during the [Implementation Period], including the [EU-Vietnam FTA]";

- states that the Government will continue to work with the "Vietnamese government on the shape of [their] future bilateral trade relationships to come into effect after the [Implementation Period]", which includes "securing continuity of the effects of the [EU-Vietnam FTA]";
- notes that the Government is seeking to transition the EU-Vietnam Political Cooperation Agreement, including replication of the mechanism to suspend the agreements in cases of serious human rights abuses; and
- **states that the Government is preparing its own impact assessment of the EU-Vietnam FTA, which it will "make available to Parliament as soon as possible".**

5.6 The Minister anticipates that the Council will be asked to vote on the signature and conclusion of the proposed EU-Vietnam FTA before UK exit from the EU on the 29 March 2019. However, he considers it "unlikely" that the European Parliament will be asked to approve it before its elections in April 2019. His "current assessment" of entry into force of the EU-Vietnam FTA is late 2019 or 2020.

On the EU-Vietnam IPA

5.7 The Minister also sets out the Government's position on the EU-Vietnam IPA in his Explanatory Memorandum of 5 November 2018. He notes that the UK has a BIT with Vietnam, which would be:

- suspended upon its provisional application. However, in recent correspondence with the House of Lords EU Select Committee,[47] he states that the "Commission has confirmed that it does not intend to seek provisional application of the [EU-Vietnam IPA]"; and
- terminated upon entry into force of the IPA. However, noting that ratification by Member States is likely to take several years, the Minister states that it is "unlikely" that the IPA "will enter into force before the UK leaves the EU" or before the end of the transition/implementation period.

5.8 The Minister anticipates that the Council will be asked to vote on the signature and conclusion of the proposed EU-Vietnam IPA before UK exit from the EU on the 29 March 2019 and implies that the UK will support the proposal as agreement "at this time does not bring the EUVIPA [it] into force".

The Committee's conclusions and questions to the Minister

5.9 **The Committee notes that the proposed FTA is expected to enter into force in late 2019/2020 (during the scheduled transition/implementation period), but that the proposed IPA is unlikely to come into force for several years, as it requires ratification by all Member States and includes the controversial ICS.**

47 Letter from the Minister of State for Trade Policy (George Hollingbery MP) to Lord Boswell dated 7 December 2018.

5.10 **The Committee considers that both proposed agreements—notwithstanding the different timetables for their expected entry into force—have significant legal and policy implications for the UK after its withdrawal from the EU.**

5.11 **While the Minister reiterates the Government's well-rehearsed position on the importance of continuity of trade and investment relations with all third countries, including Vietnam, post-exit, it remains unclear whether these intentions can feasibly be implemented given continued uncertainty over possible Brexit outcomes and the pressing timescales involved.**

5.12 **In light of the draft Withdrawal Agreement of 14 November 2018, and noting that the Government is still preparing its own analysis of the EU-Vietnam FTA, which it will "make available to Parliament as soon as possible", we ask the Minister to provide detailed information on the implications for the UK of the proposed EU-Vietnam FTA and IPA for all currently foreseeable Brexit scenarios, and not to limit his analysis (as has been the practice to date in Explanatory Memoranda) to the scheduled transition/implementation period.**

Continuity of UK-Vietnam trade relations after UK exit, in light of the proposed EU-Vietnam FTA

5.13 **The FTA is likely to impact the continuity of UK trade and investment relations with Vietnam after UK exit on 29 March 2019, forming a point of reference (in the event of no-deal) or the basis of a future UK-Vietnam trade agreement (in the event of a negotiated withdrawal with a transition/implementation period and backstop).**[48]

No deal:

5.14 **We ask the Minister to share the Government's intended approach to future trade relations with Vietnam in the event of a no-deal (non-negotiated exit from the EU with no Withdrawal Agreement). Would the EU-Vietnam FTA form a reference/baseline for a negotiated UK-Vietnam FTA, and is its negotiation and conclusion a priority for the UK post-exit?**

Negotiated withdrawal—during the transition/implementation period, including a possible extension by a further two years:

5.15 **If the EU-Vietnam FTA enters into force during the transition/implementation period, the UK will be bound by the FTA obligations, but it is not certain that it will secure the benefits. Notwithstanding the provision in the draft Withdrawal Agreement that the UK is to be treated as a Member State for the purposes of international agreements during the transition/implementation period, we ask the Minister to set out:**

- **whether the Government considers EU notification to Vietnam is wholly sufficient to guarantee that UK businesses and consumers secure the benefit of the EU bilateral agreement during the transition/implementation period;**

48 See House of Commons Library note 'The backstop explained'.

- **whether Vietnam has confirmed that it would be prepared to apply the EU-Vietnam FTA to the UK (once it has entered into force) during any transition/implementation period, or whether it would seek any concessions in doing so; and**
- **what practical effect there would be if the UK met all EU obligations under the FTA without being able to benefit from it.**
- ***Negotiated withdrawal—the backstop applies at the end of the scheduled or extended implementation/transition period unless/until the EU and UK conclude a future relationship agreement that prevents a hard border between Ireland and Northern Ireland:***

5.16 **We ask the Minister to explain how the backstop arrangements would impact the UK's obligations and benefits under the EU-Vietnam FTA (and the extent to which they would differ for Northern Ireland and Great Britain).**

5.17 **In respect of negotiating a future UK (specific)—Vietnam trade agreement, we ask the Minister to explain:**

- **whether Vietnam has indicated that it would be willing to accept continuity of effect of the FTA beyond the transition/implementation period or backstop; or**
- **whether the UK will be seeking to negotiate a more ambitious FTA with Vietnam bilaterally during any implementation/withdrawal period or backstop and if so: a) what concessions Vietnam might seek; b) what further access to the Vietnamese market the UK is likely to seek; and c) whether the EU-Vietnam agreement contains any "most favoured nation" provisions[49] which would inhibit Vietnam giving the UK more favourable terms than the EU;**
- **whether the Government intends to run negotiations for a future UK-Vietnam FTA in parallel to, or after conclusion of, the negotiation of the future UK-EU relationship, and if the former, what consideration it has given to running negotiations in parallel; and**
- **how the backstop will impact the UK's ability to negotiate a future trade deal with Vietnam, by reference to its content/coverage (for example, would a new trade deal with Vietnam be applied to Great Britain only during the backstop or to the UK as a whole after the backstop) and given uncertainty over its end date.**

The UK's approach to investment protection and dispute resolution with Vietnam after exit in light of the proposed EU-Vietnam IPA

5.18 **We note the Minister's assessment that the IPA is "unlikely" to enter into force "before the UK leaves the EU" and that "[a]greeing to the signature and future**

49 A most favoured nation provision requires a party to the agreement (in this case either EU or Vietnam) to give to the other party any more favourable terms it accords to another state in any other agreement it enters into, as would happen if Vietnam gave the UK more favourable terms than in its agreement with the EU.

conclusion of the [EU-Vietnam IPA] at this time does not bring the [EU-Vietnam IPA] into force". We ask the Minister to confirm that the UK intends to vote in favour of the Council Decisions on signature and conclusion of the IPA and to set out its reasons for doing so. This should include the Government's position on the contents of the proposed IPA, in particular on the proposed ICS.

5.19 **The Committee considers that the proposed IPA is likely to impact future UK investment relations with Vietnam after UK exit, particularly if the UK is in an extended transition period or backstop arrangement with the EU. Yet the Minister's Explanatory Memorandum is silent on these points. In September 2018, the Minister stated that the Government was "considering a wide range of options in the design of future bilateral trade and investment agreements".[50] With just three months until UK exit, the Committee requires urgent clarification from the Minister on its intended approach to investment protection and dispute resolution agreements after 29 March 2019 and asks him to:**

- **share his analysis on the implications of entry into force of the proposed IPA during any transition/implementation period or backstop, including in relation to 'sunset clauses';[51]**
- **clarify the Government's ambitions for supporting an investment dispute resolution process that is capable of delivering fair dispute outcomes in a transparent manner, to ethical standards, and in a cost-effective manner.[52] In particular, will the Government seek to: keep or update the UK's current BIT with Vietnam after 29 March 2019; replicate the proposed IPA in its future agreement with Vietnam (and therefore replace the current UK-Vietnam BIT); and/or use the Commission's proposed multilateral investment court (MIC) (intended to replace bilateral ICS included in EU level agreements with the EU's FTA partner) as a forum for investor-state dispute settlement in its future trade agreements? and**
- **explain whether future investment relations will be covered under one 'umbrella' trade and investment agreement or split along the lines of the EU-Vietnam FTA and IPA.**

Transparency and scrutiny of trade negotiations

5.20 **We consider that transparency in, and effective public and parliamentary scrutiny of, trade negotiations, both while the UK is a member of the EU and after UK withdrawal are fundamental to ensuring the democratic accountability of trade deals that the UK intends to become party to.**

50 See, for example, debate in European Committee B on the EU-Singapore free trade agreement and investment protection agreement of 10 September 2018.

51 Most BITs contain a "sunset clause", providing for their provisions to continue in effect for a specified period following termination. Sunset clauses mean that a state will remain bound by its treaty obligations for a period of time notwithstanding a decision to terminate.

52 Explanatory Memorandum dated 5 October 2017.

5.21 **We ask the Minister to update us on what steps the Government intends to take to ensure transparency in, and effective scrutiny of a) the EU—Vietnam FTA and IPA during any implementation/transition period or backstop, and b) the negotiation and conclusion of a future UK-Vietnam trade and investment deal.**

5.22 **In the meantime, we retain these documents under scrutiny and draw them to the attention of the Committee on Exiting the EU, the Foreign Affairs Committee and the International Trade Committee.**

Full details of the documents:

(a) Proposal for a Council Decision on the signing, on behalf of the EU, of the Free Trade Agreement between the EU and Vietnam : (40137), 13312/18 +ADDs 1–12, COM(18) 692; (b) Proposal for a Council Decision on the conclusion of a Free Trade Agreement between the EU and Vietnam: (40136), 13313/18 + ADDs 1–12, COM(18) 691; (c) Proposal for a Council Decision on the signing, on behalf of the EU, of the Investment Protection Agreement between the EU and its Member States, of the one part, and Vietnam, of the other part: (40135), 13314/18 + ADDs 1–2, COM(18) 694; (d) Proposal for a Council Decision on the conclusion, on behalf of the EU, of the Investment Protection Agreement between the EU and its Member States, of the one part, and Vietnam, of the other part : (40134), 13315/18 + ADDs 1–2, COM(18) 693.

Previous Committee Reports

None.

6 VAT: exemptions for small businesses

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy & Industrial, Northern Ireland Affairs and Treasury Committees
Document details	Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises
Legal base	Article 113 TFEU; special legislative procedure; unanimity
Department	Treasury
Document Number	(39449), 5334/18 + ADDs 1–3, COM(18) 21

Summary and Committee's conclusions

6.1 Small businesses often face high costs for complying with their legal obligations related to the collection of Value Added Tax (VAT). To reduce this burden, the EU's VAT Directive—which underpins the domestic sales tax systems of all Member States—contains the option for individual EU countries to apply special derogations to small businesses. In particular, it allows for the so-called "SME exemption" which allows smaller companies not to charge VAT on their sales.[53] In the UK, this applies to firms with an annual taxable turnover of £85,000 or less (the maximum permitted by EU law).[54]

6.2 In January 2018, the European Commission presented a legislative proposal (the SME VAT Directive) to amend the VAT Directive as it applies to small companies. It is part of a wider package of EU VAT reform proposals, which also include new flexibility for individual Member States to vary their VAT rates, and the way in which VAT is accounted for on cross-border sales within the European Union. The key components of the SME VAT proposal are to:

- Allow each EU country to exempt small businesses with a maximum annual turnover of €85,000 (£76,300) from having to collect VAT,[55] removing the Member State-specific restrictions for the threshold that currently exist. This could potentially lead to a reduction in the UK's VAT registration threshold for SMEs, which is frozen at £85,000 (€94,146) until 2022 (see paragraphs 31 to 35 below);

53 The loss of revenue is minimised by the fact that it is only the tax on the value added by the SME that is lost, as the company would still have paid VAT on supplies of goods and services it purchased.

54 The SME exemption threshold varies by EU country, and EU law sets different limits for different Member States. As noted, in the UK it is £85,000, the highest of any Member State. Under the VAT Directive, the UK Treasury (and certain other Member States) can only increase this threshold to maintain its value in real terms as it was in 1977. For other Member States it is set at a fixed level, with no up-rating.

55 In many Member States this would represent an increase in their permitted VAT registration threshold. Under the VAT Directive, different thresholds apply for different Member States as a legacy of subsequent waves of EU enlargement and changes to VAT law. See articles 286 and 287 of Directive 2006/112/EC.

- Provide for a transitional mechanism allowing small companies to continue benefiting from the SME exemption, even if they exceed their domestic turnover threshold in a given calendar year; and
- enable SMEs from one Member State to make use of the VAT registration exemption in any *other* Member State (provided their total turnover EU-wide is below €100,000).

6.3 We have set out the detail of the proposals in "Background" below, as well as in our Report of 28 April 2018. The Government has engaged actively in the negotiations on the VAT reform proposals, including the new SME Directive, despite the UK's imminent withdrawal from the European Union. In a letter dated 5 December 2018, the Financial Secretary to the Treasury (Rt Hon Mel Stride MP) informed us of the state of play in the negotiations on the SME Directive, explaining that negotiations between the Member States had resulted in some initial changes to the draft legislation but not as yet to any fundamental alterations to the proposed VAT registration threshold or allowing companies from other Member States from making use of the SME exemption.[56]

Our conclusions

6.4 **We thank the Minister for his latest update on the SME exemption proposals on Value Added Tax, which will be of great interest to small businesses across the European Union. We have noted that on key issues—the harmonisation of the VAT registration threshold at €85,000, and the practical implementation of extending the SME exemption to businesses from other Member States—further negotiations are likely to take place.**

6.5 **We agree with the Government's active stance in the negotiations, because it remains unclear whether the amendments will need to be applied in the UK despite its scheduled withdrawal from the EU on 29 March 2019. The draft Withdrawal Agreement, ratification of which remains uncertain, would create a post-Brexit transitional period potentially lasting until December 2022. If the Agreement is ratified and the Directive took effect during the transition, the Treasury would have to transpose it into UK law. This could have significant implications for small businesses. It is particularly concerning in this regard that the UK will lose its veto over the proposal on 29 March next year, but it could nevertheless apply here in full.**[57]

6.6 **In terms of the practical effect, having to transpose the Directive could mean that the Government would be under a legal requirement to lower the VAT registration threshold for SMEs by nearly £10,000, as the UK limit is currently above the upper threshold of £76,700**[58] **proposed by the European Commission (and to which, so far, the remaining Member States have not objected). Any new EU legislation would, for the duration of the transition, override the UK's discretion to legislate in breach of the Directive. UK application of the Directive would also mean that British SMEs could make use of the VAT exemption when selling into any of the remaining Member States for the duration of the transition (and vice versa).**

56 See "Background" for more information on the contents of the Minister's update.

57 Under Article 113 of the Treaty on the Functioning of the European Union, the legal basis for the VAT Directive, each Member State has a veto over new EU tax legislation.

58 At current exchange rates, the proposed limit of €85,000 translates into £76,734.

6.7 **As we previously noted in our letter to the Financial Secretary of 14 November 2018, we remain concerned about the long-term implications of the Irish backstop which the Government negotiated as part of the Withdrawal Agreement (should it be ratified). The backstop would require Northern Ireland to remain aligned with EU law on VAT in respect of the provision of goods indefinitely.[59] That means the SME VAT proposal could take effect there even beyond the transitional period, although the exact extent to which the provisions of the VAT Directive relating to the small business exemption would apply in Northern Ireland under the backstop is unclear.[60] We have today sought clarification on that matter from the Financial Secretary.[61]**

6.8 **Moreover, the substance of any future UK-EU VAT Agreement—with the aim of superseding the relevant parts of the Irish backstop—could require continued UK-wide adherence to specific provisions of EU VAT law. The Government's ambition is to reach an agreement on "common processes and procedures" to avoid the need for any new VAT-related border controls on goods moving between the UK and the EU. The Financial Secretary, by letter dated 5 December 2018, has again refused to provide further detail about the Government's expectation of what such 'processes and procedures' might be, and to what extent they would be based on EU VAT law (including the exemptions the VAT Directive permits in relation to small businesses). In our view, it therefore remains a possibility that any future UK-EU VAT arrangement could lead to the UK having to apply significant elements of EU VAT legislation, even though it will lose its veto over any future amendments on 29 March next year.**

6.9 **The above concerns do not arise in a 'no deal' scenario, where the Withdrawal Agreement—and therefore the transitional period and the Irish backstop—are not ratified. In such a scenario, the UK would be free to amend or repeal elements of its VAT law as of 30 March 2019 (for example to zero-rate women's sanitary products).**

6.10 **However, without a Withdrawal Agreement UK exports would face the immediate re-imposition of VAT controls on goods destined for the EU (as the latter has refused to copy the UK's approach of deferring VAT controls at the border in a 'no deal' scenario).[62] Similarly, UK-registered businesses will immediately cease to be covered by the various simplifications to account for VAT on trade with the EU, such as the application of the 'country of origin' principle for cross-border sales below a certain value threshold.[63] These changes would also automatically occur at the end of any transitional period, barring a new agreement on VAT having already been reached with the EU by that point. To minimise the disruption resulting from the UK's exit from the common VAT**

59 See Article 9 and Annex 6 of the Irish Protocol.

60 The Irish Protocol stipulates EU law applies in Northern Ireland only insofar as the provisions 'concern goods'. The SME exemption relates to a company's turnover, irrespective of whether they sell goods, services or both. It is therefore not immediately clear whether the SME scheme as laid down in the VAT Directive would apply in Northern Ireland in its totality by force of the backstop.

61 Letter from Sir William Cash to Mel Stride (19 December 2018).

62 See for the UK Government's approach its 'no deal' technical notice of 23 August 2018 on "VAT for businesses if there's no Brexit deal". The European Commission's Brexit notice on indirect taxation, and its Communication of 13 November 2018 on the EU's 'no deal' contingency planning, make no allowance for the waiver of VAT-related customs controls on goods entering the EU from the UK as of 30 March 2019.

63 For most business-to-consumer sales between EU Member States, a company can pay VAT at their domestic rate to their national tax authority while the value of the sales is below a certain threshold. This does not apply to non-EU businesses, who must register for VAT for any sales they make within an EU Member State. See for more information our Report of 28 January 2018 on the EU's recent e-commerce package.

area, the Treasury will therefore at some stage have to engage in negotiations with the EU on matters of Value Added Tax (whether as soon as possible in a 'no deal' scenario, or during any transitional period under the Withdrawal Agreement).[64]

6.11 **In light of these political uncertainties, and the potential for the SME VAT proposal to lead to a substantial reduction in the UK's VAT registration threshold, we have decided to retain the proposed Directive under scrutiny. We thank the Minister for his commitment to provide further information as the negotiations progress, including during the transitional period should the Withdrawal Agreement be ratified.**

6.12 **Given the potential impact of the SME VAT proposal on small businesses throughout the UK, we also draw these developments to the attention of the Business, Energy & Industrial and Treasury Committees. We consider the Northern Ireland Affairs Committee may also have a special interest, given the continued applicability of EU VAT law under the proposed 'backstop'.**

Full details of the documents:

Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises: (39449), 5334/18 + ADDs 1–3, COM(18) 21.

Background

6.13 The European Union forms a Single EU VAT Area, where each Member State is required to levy value added tax on supplies of goods and services. Uniquely, within this area VAT on imports of goods between EU Member States is not checked by customs officers at the border (as is the case for goods entering from outside the EU). To enable this system to work while minimising the possibilities for tax evasion or fraud, EU VAT law imposes significant 'behind the border' administrative burdens on businesses, which are responsible for collecting the tax and paying it to the relevant tax authority. For small businesses in particular, VAT compliance costs can be significant.

6.14 To mitigate these costs, the general EU VAT Directive[65] contains several provisions designed to ease the burden on small businesses dealing with value added tax, which are collectively known as the "SME scheme". In particular, individual EU countries can use the "SME exemption", which allows them to exempt smaller businesses based domestically from charging VAT to their customers if their annual turnover is below a specific threshold.[66] Small businesses which cannot use the SME exemption, or choose not to make use of it, can also apply various other simplification regimes aimed to reduce overall VAT-related administrative burdens.

6.15 However, the current EU legal framework is not seen as ideal, because the VAT exemption threshold does not apply to businesses seeking to supply goods or services to a customer in another Member State. This means SMEs seeking to engage in cross-border

64 At present, only Norway has an agreement on VAT cooperation with the EU. This does not, however, remove the need for customs and VAT-related controls on goods entering the EU from Norway.

65 Directive 2006/112/EC, as amended.

66 Consequently, small companies which do not charge VAT can also not deduct their input VAT. They are effectively treated as a final consumer. The Netherlands and Spain are the only Member States not to use the SME exemption.

trade within the EU would have to account for VAT under that country's domestic rules for any sales, acting as a barrier to expansion and competition. That would be the case even if their turnover would qualify them for the SME exemption, if they were based in the customer's country (giving domestic firms a competitive advantage).

6.16 Moreover, at domestic level the VAT exemption for small businesses incentivises companies to remain below the turnover threshold to avoid becoming subject to additional administrative requirements relating to VAT. This effect is considered particularly pronounced in the UK, because its VAT registration threshold is the EU's highest, at £85,000.[67]

6.17 To address these issues, the European Commission presented a legislative proposal in January 2018 to amend the SME-specific provisions of the Value Added Tax Directive (as part of a wider process of reform of the Single EU VAT Area, including a proposal to allow Member States to vary their VAT rates more flexibly).[68] The main elements of the SME VAT proposal, which we set out in more detail in our Report of 3 April 2018, were to:

- remove the current divergent country-specific restrictions on the maximum VAT threshold for SMEs,[69] and instead permit all Member States to vary the SME exemption threshold at their own discretion—but only up to a limit of €85,000 (£75,000), including the possibility of different thresholds for different sectors;
- establish a transitional relief mechanism that would allow small businesses which temporarily exceed the VAT exemption threshold in a given Member State to remain covered by the exemption under certain conditions;
- enable small businesses from any EU country, when selling to consumers in any other Member State, to make use of the SME exemption if it qualifies for it under the legislation of the Member State of the customer and does not have an EU-wide turnover of €100,000 or more;[70] and
- introduce further simplifications to the VAT obligations for small businesses with a turnover of €2 million (£1.8 million), who could not avail themselves of the SME exemption to avoid having to collect VAT altogether.

6.18 The Commission wanted these changes to take effect alongside the wider reforms of the EU's VAT system in summer 2022. However, that timetable depends on the progress made by the EU's national governments on the proposals: under the Treaties, each Member State has a veto over new European tax legislation.

6.19 The Financial Secretary to the Treasury submitted an Explanatory Memorandum on the proposal for a revised VAT scheme for small businesses in February 2018. In it, he welcomed the Commission's aim of "[reducing] the burden placed on SMEs by

67 See also the report by the Office for Tax Simplification, "Value added tax: routes to simplification" (November 2017).

68 See our Report of 3 April 2018 for more detail on the full set of EU VAT reform proposals, and their potential implications for the UK.

69 The SME exemption threshold varies by EU country. As noted, in the UK it is £85,000, the highest of any Member State. Under the VAT Directive, the UK (and certain other Member States) can only increase this threshold to maintain its value in real terms as it was in 1977. For other Member States it is set at a fixed level.

70 This means, for example, that a French SME selling goods to a UK customer would qualify for the SME exemption if its turnover was below the UK threshold (not the French one).

the administration of VAT and that lessens any VAT threshold-related distortions", including the extension of the SME exemption to small businesses from other EU countries. However, the Minister also identified a number of areas of concern or which the Government thought required further clarification, in particular with respect to the interaction between the Treasury's own work on reform of the UK VAT threshold—on which it launched a consultation in March 2018—and the Commission proposals for a new maximum VAT exemption threshold, and the transitional relief mechanism where the threshold is exceeded.

Developments in the legislative process since April 2018

6.20 Negotiations on the SME VAT proposal have been taking place in Brussels for most of 2018. As draft legislation related to taxation, each Member State has a veto and negotiations are typically slow. A report prepared by the Austrian Presidency of the Council for EU Finance Ministers in November 2018 noted that "further work […] will be required, before a final agreement on this dossier can be reached among the Member States", to ensure that the proposal "does not lead to weakened tax control and increase of risks of VAT fraud/evasion".[71]

6.21 On 5 December 2018, the Financial Secretary to the Treasury provided a further update with more detail on the state of play in the discussions since his original Explanatory Memorandum. We have summarised the key points from his letter in relation to the four main elements of the Commission proposal below.

The VAT registration threshold

6.22 The original Commission proposal would allow individual EU Member States to continue to set their own national VAT registration threshold, but only up to a new harmonised limit of €85,000 (£75,415). The Minister says there has been "limited discussion on this thus far" among the Member States, and as such it is unclear if the harmonised limit will make it into the final Directive.

6.23 If this aspect of the proposal is not modified by the Member States, and the new Directive had to be applied in the UK (for example during the post-Brexit transitional period, see below), it would require a lowering of the existing VAT threshold from £85,000. No other EU country currently operates a threshold potentially affected by the proposal, so it is unclear what level of support there would be for removing or increasing the limit.[72]

Transitional relief for SMEs which exceed the VAT threshold temporarily

6.24 To remove the incentive for small businesses to artificially keep their taxable turnover below the VAT registration threshold, the Member States are agreed that they would continue to benefit from the SME exemption if their turnover exceeds the national threshold by 25 per cent or less in any given year (which would be £106,250 in the UK

71 Council document 15082/18, p. 26.

72 The Irish VAT registration threshold is the second-highest after the UK, at €75,000 for sellers of goods. This is below the proposed €85,000 limit.

if the threshold is maintained at £85,000).[73] If the threshold is exceeded by more than a quarter, or if it is exceeded by *any* amount for two consecutive years, the business has to register for VAT and the exemption ceases to apply.

6.25 This is a change from the original Commission proposal, under which the exemption threshold could be exceeded by 50 per cent without the company losing its VAT-exempt status. The Minister has called this "an improvement", but the Government remains concerned that further changes are necessary to "ensure it does not impose an undue burden on business".

Extending the VAT exemption to businesses from other Member States

6.26 The new Directive would allow businesses from one EU country selling into another to benefit from the VAT exemption, if their turnover is below the locally-applicable limit. However, to avoid larger firms from benefitting from the exemption by applying for it using only their local turnover, the proposal would set a "Union turnover threshold" of €100,000 (£88,723) for business who make supplies in more than one Member State. If a company had a cumulative EU-wide turnover above that threshold, it would be ineligible for the VAT exemption in other Member States.[74]

6.27 The Minister explains that the "mechanism and information exchange requirements to enable the application of this threshold remain unclear", and negotiations on this element of the proposal are continuing. Of particular concern has been how this new system would be monitored and enforced, given it requires each Member State to have access to information about a company's turnover in every other Member State. The Financial Secretary has noted the Government's objective is to ensure that any "obligations are proportionate and do not create undue burdens to small businesses".

SME simplifications relating to VAT returns, invoicing and interim VAT payments

6.28 In its original proposal, the European Commission had suggested creating a new set of simplified obligations for the benefit of small enterprises that do not benefit from the SME exemption (for example, those with an annual turnover above the exemption threshold that applies in their home country). It had wanted any company with a turnover lower than €2 million (£1.8 million) per year to be able to rely on simplified provisions relating to storage of invoices, the submission of VAT returns[75] and exempting them from any obligation under domestic law to make interim VAT payments throughout the financial year.

73 This presumes the UK's current limit of £85,000 is maintained. If the maximum harmonised limit of £75,000 were to apply, the maximum taxable turnover before the VAT registration requirement applied would be £93,750. For the purposes of calculating the annual turnover, the Directive would require Member States to use a calendar year (rather than a rolling 12 month period, as is the case in some countries like the UK).

74 A company would still be eligible for the VAT exemption in the Member State where it is established, provided it was below the domestic VAT registration threshold. The 'Union turnover threshold' requirement applies only in relation to the VAT exemption in other Member States. For example, a UK business with a turnover of £50,000 in the UK but £200,000 in France would remain eligible for the VAT exemption in the UK, but not in France.

75 At present, article 252 of the VAT Directive makes it optional for Member States to allow annual VAT returns for any business. The Commission proposal would make it compulsory to offer this option to small businesses.

6.29 The Minister's letter explains that the Member States have removed these provisions from the proposed Directive entirely, which avoids the legislation interfering with existing domestic schemes such as the UK's Annual Accounting Scheme and invoicing rules for small businesses.[76] The Government therefore supports this change.

Next steps

6.30 The Minister finished his latest update to us by saying that the Treasury "will continue to work with other Member States to help improve the proposal and suggest alternative approaches" and provide further updates on the progress of these discussions. There is no firm timetable for formal adoption of the new legislation on the SME VAT threshold yet, and the Government "anticipate that the dossier will now be passed onto the incoming Romanian Presidency" of the Council.

Potential applicability of the new VAT rules for SMEs in the UK

6.31 When we last considered the proposal on the VAT obligations for SMEs in April 2018, we noted that it was politically important: its substance was clearly relevant to the UK's own debate around the VAT burden for small businesses, including the VAT registration threshold.

6.32 Moreover, despite the UK's decision to leave the European Union, there is a significant possibility that the new tax legislation, once adopted, remains relevant for UK businesses and the Treasury for some time after EU withdrawal actually takes place in March 2019. This is so for several reasons:

- First, the draft Withdrawal Agreement, if ratified, creates a post-Brexit transitional period lasting until at least 31 December 2020 but potentially until the end of 2022.[77] New EU VAT legislation taking effect during that period would continue to have force of law in the UK, whether or not the Government had a vote on such laws in the Council of Ministers or not;

- Secondly, the Government has agreed an Irish 'backstop' under which Northern Ireland would have to apply EU VAT rules on goods (including the provisions of the VAT Directive relating to small businesses) indefinitely after the end of the post-Brexit transitional period, until the need for this was superseded by a UK-wide agreement with the EU on VAT matters.[78] The pending VAT reform proposals are therefore of direct interest to the Northern Irish business community; and

- Thirdly, it remains possible that any future UK-EU treaty on Value Added Tax could require continued UK adherence to European VAT legislation (including, potentially, on the application of VAT rules to small businesses). The Government has refused to provide any detail about its proposals for the future relationship in this area, other than to say that it should involve "common processes and procedures" as well as "some administrative cooperation and

76 The Annual Accounting Scheme in the UK is open to businesses with a turnover below £1.35 million, but requires businesses to make interim payments (which would have been affected by the Commission proposal). See also https://www.gov.uk/vat-annual-accounting-scheme/return-and-payment-deadlines.

77 See Article 132 of the Withdrawal Agreement.

78 Reference to WA and Protocol.

> information exchange to underpin risk-based enforcement" to "ensure that [no] new declarations and border checks between the UK and the EU […] need to be introduced for VAT and excise purposes".[79]

6.33 Whether or not the Withdrawal Agreement, including the backstop, will actually be ratified remains an open question. The Government postponed the vote on Agreement on 10 December 2018, and it is not yet clear when the House of Commons will now formally consider the legal text. The exact implications of the SME VAT proposal, and the broader package of the EU's VAT reform proposals, can therefore not yet bet determined with any certainty.

6.34 In a 'no deal' scenario, where the Withdrawal Agreement is not ratified, the UK would cease to be bound by EU VAT legislation overnight on 29 March 2019. While this would create new legal flexibility to vary VAT rates and the administrative burden on businesses of collecting the tax, it would also mean there would be no transitional period. In practice, the legal arrangements that allow UK goods to enter the EU-27 free from VAT-related customs controls would then disappear overnight. The re-imposition of such controls at French, Belgian and Dutch ports—and even, potentially, at the Irish border—are likely to add to the disruption of trade that would occur in the event of a disorderly Brexit. The need for EU businesses importing goods from the UK to navigate such VAT controls, which would not apply to goods purchased from within the EU, may also make such goods less competitive within the Single Market.

6.35 In light of the uncertainties about the potential implications of the SME proposal for UK businesses, we have decided to retain it under scrutiny in anticipation of further information and analysis from the Financial Secretary to the Treasury in due course.

Previous Committee Reports

See (39449), 5334/18 + ADDs 1–3, COM(18) 21: Twenty-Third Report HC 301–xxii (2017–19), chapter 3 (3 April 2018).

79 HM Government, "The future relationship between the United Kingdom and the European Union" (12 July 2018), p. 18.

7 Strengthening the European Border and Coast Guard

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

Summary and Committee's conclusions

7.1 The proposed Regulation would significantly enhance the operational capability of the European Border and Coast Guard Agency (the successor to Frontex) so that it is equipped to operate as "a genuine border police", providing Member States with operational and technical assistance to support the management of their external borders and the return of illegal immigrants. The European Commission's aim is to provide "a tool box of capabilities" to enable Member States to respond to "the new challenges and political realities faced by the Union, both as regards migration management and internal security" and to maximise EU support on the ground.[80] All operations involving the European Border and Coast Guard Agency would take place under the control and command of the host Member State.

7.2 Our earlier Report agreed on 31 October 2018 describes the main features of the proposed Regulation. The core element is the creation by 2020 of a "standing corps" of 10,000 operational staff within the European Border and Coast Guard Agency,[81] some directly employed by the Agency and some seconded by Member States, which could be deployed whenever needed to support Member States in managing their external borders, including as part of a larger migration management support team involving other EU agencies operating in "hotspot" areas and "controlled centres".[82] The Agency would also have a larger equipment budget to enable it to acquire, maintain and operate its own air, sea and land assets.

7.3 As the proposed Regulation builds on parts of the Schengen rule book on external border control which do not apply to the UK, the UK is not entitled to participate in (or vote on) the proposal and will not be bound by it once adopted.[83] The UK may nonetheless

80 See p.12 of the Commission's explanatory memorandum accompanying the proposed Regulation.

81 See Articles 5, 55–9 and Annexes I-IV of the proposed Regulation and p.2 of the Commission's accompanying explanatory memorandum. Members of the standing corps would include officials capable of carrying out border control or return tasks.

82 The types of deployment are set out in Articles 37 and 43 of the proposed Regulation and include "rapid border interventions", "joint operations" with Member States and/or third countries, "migration management support teams" and "return teams".

83 See recital (108) of the proposed Regulation.

be invited to attend meetings of the European Border and Coast Guard Agency's Management Board (but without voting rights) while the UK remains an EU Member State. It may also request to take part in some of the Agency's activities before it leaves the EU and afterwards for the duration of any post-exit transition/implementation period agreed in the UK's exit negotiations.[84] Once the UK leaves the EU and any post-exit transitional period has expired, cooperation with the European Border and Coast Guard Agency and with other EU Member States will be based on the third country provisions of the proposed Regulation.[85]

7.4 In her Explanatory Memorandum of 17 October 2018, the Immigration Minister (Rt Hon Caroline Nokes MP) confirmed that the UK would not take part in the adoption of the proposed Regulation or be bound by it and that it would not necessitate any changes to UK law or have any direct financial implications. She nonetheless made clear that the Government saw "great value in supporting the Agency" and was "broadly supportive" of the proposal, reiterating the Government's "strong interest in effective management of the EU's external border, not just in combating illegal migration and cross-border crime but also as part of the EU-wide counter-terrorism effort". As the proposed Regulation would entrust the European Border and Coast Guard Agency with the operation of the EU's false and authentic documents database (FADO)—a non-Schengen EU police and criminal justice measure in which the UK currently participates—she indicated that the Government would seek to clarify with the Commission how the new arrangement would affect the UK's access to the database.

7.5 We asked the Minister to update us on her discussions with the European Commission. We also asked:

- what role was envisaged for the European Border and Coast Guard within "hotspot areas" and "controlled centres"; and
- whether the Government agreed with the European Commission that a larger standing corps with enhanced operational powers to assist with border management and return operations on the ground was necessary or shared the concern expressed by some Member States that the proposed Regulation would undermine the sovereign control of national borders.[86]

7.6 We sought an assurance that the proposed Regulation included a robust set of safeguards, complaints procedures and redress mechanisms to ensure that any violations of individual rights or complaints of mis-treatment were dealt with swiftly, fairly and effectively, given that the European Border and Coast Guard Agency was likely to be a more visible presence at parts of the EU's external border and that UK nationals were far more likely to encounter Agency staff and face potentially greater bureaucracy when crossing the EU's external border once they ceased to be EU citizens with a right of free movement within the wider European Economic Area post-exit/transition.

7.7 In her letter of 10 December 2018, the Minister reiterates the Government's support for the European Commission's efforts to strengthen the European Border and Coast Guard Agency and improve the security of the EU's external border. She appreciates, however, that "Member States who do participate in the Regulation and who are bound

84 See recitals (110) and (111) and Articles 71, 98(5) and 102 of the proposed Regulation.
85 See Articles 72–79 of the proposed Regulation.
86 See p.5 of the Commission's explanatory memorandum accompanying the proposed Regulation.

by it have concerns over sovereignty and they are right to raise these concerns with the Commission". The Commission has yet to clarify how the UK would be able to continue to access the FADO database once it is "move[d] into a Regulation that we are unable to opt into". The Minister says that controlled centres "are still in the concept stage with little detail available and no legal proposal" and that she is therefore unable to provide any information on the role envisaged for the European Border and Coast Guard in these centres.

7.8 Finally, the Minister refers us to recital (20) of the proposed Regulation which states that "the extended tasks and competence of the Agency should be balanced with strengthened fundamental rights safeguards and increased accountability". The relevant provisions of the 2016 Regulation establishing the European Border and Coast Guard "have all been transferred across with some necessary updating and tweaks to relate them to staff including members of the European Border and Coast Guard standing corps".[87] The Minister undertakes to provide further updates as the proposed Regulation is examined in the Council Working Party on Frontiers.

Our Conclusions

7.9 **We noted in our earlier Report that the proposed Regulation, if agreed, would signify a substantial scaling-up of the staff and equipment available to the European Border and Coast Guard Agency, a strengthening of its operational capabilities and powers, and a large increase in its funding (totalling €11.3 billion for the period 2021–27) to enable it to act as "a genuine border police".[88] Given the scale of the ambition, we considered that the proposal Regulation should be reported to the House, even though (as a Schengen measure) the UK will not take part in its adoption or application.**

7.10 **There is nothing in the Minister's letter to suggest that much headway has been made in negotiations within the Council. By contrast, a Council press release issued on 6 December, before the Minister signed her letter, states that the Council has agreed "a partial general approach" on the proposed Regulation covering the provisions on the Agency's support for return operations and on cooperation with third (non-EU) countries. We ask the Minister to explain what has been agreed and to provide her assessment of the implications of the provisions on third country cooperation for the UK's future engagement with the European Border and Coast Guard Agency post-exit.**

7.11 **We await further information on the feasibility of, and arrangements for, continued UK access to the EU's false and authentic documents database (FADO) during any post-exit transition/implementation period agreed as part of the UK's exit negotiations and once that period ends.**

7.12 **The Minister draws our attention to various provisions in the proposed Regulation which are intended to safeguard the fundamental rights of individuals crossing the EU's external borders who have some form of interaction with the European Border and Coast Guard. Her response does not quite provide the assurance we sought. We**

87 The Minister cites Articles 81 (previously 34) on protection of fundamental rights and a fundamental rights strategy, 106 (previously 70) on a consultative forum, 107 (previously 71) on a fundamental rights officer and 108 (previously 72) on a complaints mechanism.

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

would welcome a more thorough assessment of the effectiveness of these provisions (which already form part of the existing European Border and Coast Regulation) in practice.

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

Full details of the documents

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

Previous Committee Reports

Forty-third Report HC 301–xlii (2017–19), chapter 7 (31 October 2018).

8 EU framework on endocrine disruptors

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Commission Communication—Towards a European Union framework on endocrine disruptors
Legal base	—
Department	Environment, Food and Rural Affairs
Document Number	(40172), 14204/18, COM(18) 734

Summary and Committee's conclusions

8.1 Endocrine disruptors (EDs) are chemicals that have the potential to harm people or wildlife by affecting endocrine (hormone) systems. Exposure to EDs can occur from different sources, such as residues of pesticides or consumer products used or present in daily life.

8.2 The Commission's Communication draws attention to knowledge and regulatory gaps in this area and suggests future areas of work. This document is relevant to the UK as the areas of regulatory cooperation include matters such as chemical regulation on which the UK would like to continue to cooperate with the EU post-Brexit. They also include areas underpinned by legislation to which Northern Ireland would need to remain aligned under the Northern Irish "Backstop" arrangement set out in a Protocol annexed to the Agreement on the UK's withdrawal from the EU. Any resulting change to EU legislation is therefore likely to have some impact on the UK.

8.3 Knowledge gaps identified by the Commission include:

- incomplete understanding of the impact of exposure to EDs on people and wildlife;
- whether normal toxicological principles can be used to assess the safety of EDs, including identification of a safe threshold below which no adverse effect is expected to occur;
- understanding combined exposure (i.e. exposure to a combination of different EDs may produce an adverse effect at concentrations at which individually no effect has been observed);
- the development of safer alternatives to substitute for EDs; and
- the development and validation of testing methods.

8.4 Summarising EU policy and regulation of EDs so far, the Commission explains that the EU response has focused on promoting scientific research, effectively regulating EDs and developing international cooperation. Regulation of EDs has been specifically included in legislation on pesticides, biocides, chemicals (REACH),[89] medical devices and water. Other legislation, such as that on food contact materials, cosmetics, toys or protecting workers at the workplace does not contain specific provision for EDs, but is subject to case-by-case regulatory action on the basis of the general requirements of each piece of legislation.

8.5 In particular, the Commission has recently established criteria for identifying EDs under the legislation on pesticides and biocides based on the definition of the World Health Organisation. Such criteria have never been set before in a regulatory context. EDs have also been restricted or banned under chemicals, water and cosmetics legislation.

8.6 Looking forward, the Commission proposes that the EU's overall approach should aim to:

- minimise exposure to EDs;
- accelerate the development of the scientific basis for decision-making; and
- promote dialogue between stakeholders.

8.7 The Commission also suggests further consideration of whether other legislation should include criteria for identifying EDs similar to those now included in legislation on pesticides and biocides. The Commission will carry out a "Fitness Check" to assess whether the body of EU legislation delivers its overall objective to protect health and the environment. EU-funded research will also continue and there will be co-operation with international partners as the EU approach develops.

8.8 In her Explanatory Memorandum (EM), the Parliamentary Under Secretary of State for the Environment (Dr Thérèse Coffey MP) fully accepts the importance of protecting people and wildlife from harm caused by EDs. The Government also accepts that there is a need for continuing research to help understand more about the impacts of EDs and to develop reliable tests to determine whether particular chemicals are EDs. International co-operation (for example within the OECD) is helpful, she says, in sharing information and in developing test methods.

8.9 While the Government accepts the sense in ensuring consistency of approach between different sectors, it had some reservations about the rules recently established for the regulation of EDs in pesticides and biocides. The criteria for identifying EDs which have been added to the legislation are reasonable, she says, but the supporting detailed guidance seems liable to identify as EDs a number of chemicals which are not of high concern.

8.10 The Minister notes that the UK has recently objected to some proposals to identify "Substances of Very High Concern" on the basis of endocrine disruption to the environment under the REACH Regulation. The Government took this step because these chemicals did not have properties that could be expected to lead to a high impact. Merging the

89 Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

approach to identifying EDs across regimes, says the Minister, therefore risks significantly increasing the cost of regulation and limiting the range of available chemicals, without necessarily producing benefits for health and the environment.

8.11 **We note with interest this document on an important area of public policy. We consider the document politically important as the EU's approach in this area is likely to have ongoing relevance to the UK post-Brexit.**

8.12 **We were surprised that the Minister did not set her comments in the context of the UK's exit from her EU and would ask her now to explain how EU policy in this area could be relevant to the UK in the future. We note, for example, that most of the regulatory areas highlighted are supported by legislation to which Northern Ireland would have to align should the Northern Ireland "Backstop" come into force under the Withdrawal Agreement. Those arrangements would remain in place until superseded by an agreement on the future relationship delivering a similar outcome. Furthermore, cooperation in the area of chemicals is specifically referenced in the Political Declaration on the future UK-EU relationship.**

8.13 **As it seems likely that the EU's approach will have some relevance to the UK's approach in the future, it would be helpful to understand if the UK will be engaging with the Commission at all as it seeks to develop its policy. Beyond the broad concerns expressed in the EM, we would also appreciate a sense of the UK's priorities for future EU policy on EDs.**

8.14 **We clear this non-legislative document from scrutiny and look forward to a response by 30 January.**

Full details of the documents:

Commission Communication—Towards a European Union framework on endocrine disruptors: (40172), 14204/18, COM(18) 734.

Previous Committee Reports

None.

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

Ministry of Defence

(40215)	Report by the Head of the European Defence Agency to the Council.
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Department for Environment, Food and Rural Affairs

(40184) 14249/18 COM(18) 739	Report from the Commission to the European Parliament and the Council Review of Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products with regard to substances with endocrine-disrupting properties.
(40189) 14328/18 + ADDs 1–2 COM(18) 738	Report from the Commission to the European Parliament and the Council on the implementation of the EU Strategy on adaptation to climate change.
(40201)	Court of Auditors Special report no: 25 Floods Directive: progress in assessing risks, while planning and implementation need to improve.
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(40205) 14697/18 + ADDs 1–2 COM(18) 762	Report from the Commission to the European Parliament and the Council on the Implementation of Regulation (EC) No 1013/2006 on Shipments of waste Generation, treatment and transboundary shipment of hazardous waste and other waste in the Member States of the European Union, 2013–2015; exercise of the power to adopt delegated acts.
(40207) 14681/18 COM(18) 757	Report from the Commission to the Council and the European Parliament on the development of plant proteins in the European Union.

Department of Health and Social Care

(40090) 12445/18 + ADD 1 COM(18) 651	Report from the Commission to the European Parliament and the Council on the application of patients' rights in cross-border healthcare.

Department for International Trade

(40223) 14848/18 + ADD 1 COM(18) 765	Recommendation for a Council Decision authorising the opening of negotiations of an agreement amending the existing tariff rate quota for poultry meat and poultry meat preparations and amending the existing tariff regime for other poultry cuts, set out in Annex I-A to Chapter 1 of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part.

Formal Minutes

Wednesday 19 December 2018

Members present:

Sir William Cash, in the Chair

Martyn Day	Stephen Kinnock
Richard Drax	Michael Tomlinson
Kelvin Hopkins	Dr Philippa Whitford
Mr David Jones	

Scrutiny Report

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

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

Paragraphs 1.1 to 9 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 9 January at 1.45pm

Standing Order and membership

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

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

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

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

The expression "European Union document" covers—

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

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

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

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

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

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

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

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

Current membership

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

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

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

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

Richard Drax MP (*Conservative, South Dorset*)

Mr Marcus Fysh MP (*Conservative, Yeovil*)

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

Kate Hoey MP (*Labour, Vauxhall*)

Kelvin Hopkins MP (*Independent, Luton North*)

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

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

Stephen Kinnock MP (*Labour, Aberavon*)

Andrew Lewer MP (*Conservative, Northampton South*)

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

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

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