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European Scrutiny Committee

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Documents considered by the Committee on 21 March 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:

Brexit implications

European Chemicals Agency

- Impact of UK associate membership of European Chemicals Agency on the UK's flexibility regarding post-Brexit domestic rules on biocidal products, such as disinfectants and insect repellents.

Law enforcement cooperation—Managing EU migration and security databases and strengthening the Schengen Information System

- The Government should state in clear and unambiguous terms whether it intends eu-LISA and the EU information systems it manages—including the Schengen Information System—to form part of the post-exit treaty on security, law enforcement and criminal justice which the UK wishes to negotiate with the EU.

Cross border parcel delivery services

- Non-participation in the EU's cross border parcel delivery regime will have little impact on UK stakeholders, but leaving the customs union and the single market will potentially lead to the imposition of customs duties, border formalities, and import VAT on cross-border parcel deliveries to and from the EU.

Summary

Privacy and Electronic Communications

This important proposed Regulation aims to protect sensitive personal or commercial information contained in e-comms or in related metadata (e.g. indicating websites visited or timing of phone calls). It also aligns the existing ePrivacy Directive with the new GDPR, to keep pace with technological developments. For example, it seeks to regulate "Over-The-Top" (OTT) service providers who deliver online comms via apps such as "WhatsApp".

When the previous Committee first considered this proposal in February 2017, it was expected to apply from 25 May of this year in line with the GDPR. The Government now

confirms that delays in the negotiations mean that deadline will be missed. Instead the current aim is for a General Approach to be agreed by the end of June 2018. It therefore remains unclear when, if at all, an agreed proposal would apply to the UK.

The Government tells us areas of uncertainty causing delay include:

- questions about when the GDPR or the ePrivacy proposal will apply, either exclusively or cumulatively;
- whether "ancillary services" which facilitate the provision of communication services are covered by proposal; and
- when "content data", as opposed to "metadata" is covered by the proposal.

We retain the proposal under scrutiny but ask the Government to respond to questions concerning:

- access to encrypted services and the CJEU Watson ruling—questions unanswered from previous Reports;
- any implications for the UK if the proposal cannot be agreed before the UK loses its Council vote during the implementation period; and
- possible alignment after Brexit/an implementation period with the adopted proposal to facilitate a future EU-UK trade deal.

Not cleared from scrutiny; further information requested; drawn to the attention of the Science and Technology Committee, the Digital, Culture, Media and Sport Committee and the Exiting the EU Committee.

New composition of the European Parliament

This European Council Decision is proposed by the European Parliament (EP). For the June 2019 elections due to take place after Brexit, it seeks to reduce the total number of MEPs by 45: from 750 to 705. It then seeks to reallocate those seats among Member States according to their population. The European Council needs to vote on the proposal by June 2018 and then it will return to the EP for its consent.

As the UK will no longer have MEPs after Brexit and during any implementation period, the Government considers the proposed Decision as primarily a matter for the EU. However, our conclusions probe speculation in the press that the UK might use (or threaten to use) its veto to put pressure on the Council and EP in the Brexit negotiations.

Not cleared from scrutiny; further information requested; drawn to the attention of the Exiting the EU Committee.

Managing EU migration and security databases

This proposed Regulation would entrust an EU Agency (eu-LISA) with the operational management of various new EU border and security information systems. The UK is able to participate in some, but not all, of these systems. The Government has decided to participate in the proposed Regulation, but full UK participation in eu-LISA depends

on securing a further Council Decision which would require the unanimous approval of EU Schengen States. This Decision would ensure that the UK could take part in all of eu-LISA'a activities, including those concerning information systems from which the UK is excluded because it is outside the Schengen border-free zone. Although the Government considers that it would be possible for the UK to participate in eu-LISA without a further Council Decision, it accepts that a Decision would provide greater legal certainty but appears to be in no hurry to secure one. We ask the Government to clarify the practical implications for UK participation in eu-LISA if there is no Decision. The Committee questions whether the proposed Regulation would allow non-Schengen third countries to participate in eu-LISA and reiterates its frustration at the Government's unwillingness to explain whether eu-LISA and the EU information systems it manages are amongst the measures the UK wishes to include in a post-exit treaty with the EU on security, law enforcement and criminal justice cooperation.

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

Enhancing law enforcement cooperation and border control: strengthening the Schengen Information System

This package of three proposed Regulations is intended to make the Schengen Information System—SIS II—a more effective tool for border management and law enforcement cooperation. The Government has decided to participate in the proposed police cooperation Regulation. It is unclear whether the proposed changes to SIS II will take effect during or after a post-exit transitional/implementation period. The Government does not explain how this uncertainty will affect its preparations for implementing the proposal. We suggest that these preparations will depend also on the scope and content of the treaty on security, law enforcement and criminal justice cooperation which the Government wishes to negotiate with the EU. As negotiations on the framework for the future relationship between the EU and the UK are imminent, the Committee says that the Government should state in clear and unambiguous terms whether it intends the police cooperation elements of SIS II to be amongst the measures included in the future EU/UK security treaty. The Committee adds that this information would provide some much-needed context for understanding why the Government has chosen to participate in a measure which may not apply, or only apply for a short period, during a post-exit transitional/implementation period. We also ask the Government to explain how the other two elements of the SIS II package (on border checks and returns) would affect UK citizens once they become third country nationals following the UK's exit from the EU.

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

Cross border parcel delivery services

In June 2016 the European Commission proposed a Regulation to tackle the high prices consumers and SMEs pay for cross-border parcel delivery services within the EU. Trilogue negotiations between the European Parliament and the Member States concluded with

a provisional agreement on 13 December 2017. The final text narrows the scope of the Commission's original proposal: the chief effect is to require national regulatory authorities (NRAs) to collect data on domestic and cross-border tariff rates for single piece parcel deliveries from service providers and to provide this data to the Commission, which will publish it on a central portal. The Minister (Andrew Griffiths MP) is content with the final text, and requests clearance to support its adoption at Council.

On Brexit, the implications of non-participation in this Regulation is limited, as Ofcom will continue to collect data on outbound parcel deliveries and already has the power to conduct affordability checks. The wider implications of Brexit, however, are potentially serious for both parcel delivery service providers and the businesses and customers that use them: by default, leaving the customs union and single market will lead to customs duties, border formalities, and import VAT which will lead to slower delivery times and increased costs. The question is to what extent the future relationship can mitigate these effects.

Cleared from scrutiny.

Second Mobility Package

The European Commission has adopted its Second Mobility Package. It is designed to promote integrated and sustainable transport and builds on the First Mobility Package presented in May 2017.

The Second Mobility Package includes an overview Communication, an Alternative Fuels Infrastructure Action Plan and four legislative proposals. The legislative proposals cover CO_2 standards for cars and vans, clean vehicles in public procurements, combined transport, and international coach and bus services.

The proposals could have implications for the UK's departure from the EU, because they include commitments and obligations that could extend beyond 2019. For instance, the proposal on combined transport envisages an increase in financial support for transhipment terminals, which could take a number of years to develop and would need maintaining. The proposals on clean vehicles and emission performance standards would place reporting obligations on the UK and empower the Commission to make further changes, potentially without the UK having a say after exit, whereas the proposal on international bus and coach travel liberalises terms of access which might not be reciprocated by the EU-27.

We ask the Government a series of questions to clarify whether it intends to continue these commitments and obligations beyond exit. We also ask it to inform us of any cost impacts for the UK once it has quantified them.

Not cleared; further information requested.

Documents drawn to the attention of select committees:

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

Digital, Culture, Media and Sport Committee: Privacy and Electronic Communications [Proposed Regulation (NC)]

Environmental Audit Committee: Endocrine disruptors in plant protection and biocidal products [(a) Communication, (b) and (c) Proposed Regulations (C)]

Exiting the European Union Committee: Privacy and Electronic Communications [Proposed Regulation (NC)]; Composition of the European Parliament [Proposed Decision (NC)]; Managing EU migration and security databases [Proposed Regulation (NC)]; Enhancing law enforcement cooperation and border control: strengthening the Schengen Information System [(a), (b) and (c) Proposed Regulations (NC)]

Home Affairs Committee: Privacy and Electronic Communications [Proposed Regulation (NC)]; Managing EU migration and security databases [Proposed Regulation (NC)]; Enhancing law enforcement cooperation and border control: strengthening the Schengen Information System [(a), (b) and (c) Proposed Regulations (NC)]

Justice Committee: Managing EU migration and security databases [Proposed Regulation (NC)]; Enhancing law enforcement cooperation and border control: strengthening the Schengen Information System [(a), (b) and (c) Proposed Regulations (NC)]

Science and Technology Committee: Privacy and Electronic Communications [Proposed Regulation (NC)]

1 Privacy and Electronic Communications

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Science and Technology, the Digital, Culture, Media and Sport Committee, the Home Affairs and the Exiting the EU Committees
Document details	Proposed Regulation concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications)
Legal base	Article 16 and 114 TFEU; ordinary legislative procedure; QMV
Department	Digital, Culture, Media and Sport
Document Number	(38455), 5358/17 + ADDs 1–6, COM(17) 10

Summary and Committee's conclusions

1.1 The content of electronic communications (e-comms) may reveal sensitive information about the individuals involved in the communication, including medical conditions, sexual preferences, religious and political views. Disclosure could result in personal and social harm, even economic loss. The same applies to metadata derived from e-comms, including numbers called, websites visited, geographical location, time, date and durations of calls. This allows inferences to be drawn about private lives of the persons concerned. E-comms data may also reveal commercially sensitive information concerning business.

1.2 The proposed Regulation aims to update the existing ePrivacy Directive[1] which was adopted in 2002. The Directive supplemented the 1995 Data Protection Directive[2] by providing more specific privacy rules for the e-comms sector. These included rules on itemised billing and on unsolicited marketing calls and emails. Later amendments of the Directive have added new provisions about information being stored on and accessed from the user's computer (such as cookies),[3] and requirements about reporting data breaches.[4] The Directive was transposed into UK law through the Privacy and Electronic Communications Regulations (PECR),[5] which were last updated in 2016.[6]

1 2002/58/EC.
2 95/46/EC.
3 Cookies are small pieces of data that a browser can be asked to save/store when a user visits a website. Cookies will then allow the website to recognise the device when a user visits again and so to gain a better idea of his/her preferences over time and to use the information for targeted advertising. There are many types of cookies, classified according to their lifespan or to which domain is hosting the cookies.
4 By a 2009 Directive (2009/136/EC) and Commission Regulation (611/2013).
5 SI 2003/2426.
6 SI 2016/524.

1.3 The proposal is linked to the new General Data Protection Regulation (GDPR) and is also relevant to the proposed Regulation to apply similar rules to the GDPR to EU institutions, agencies and bodies.[7]

1.4 The main changes under the new proposal are aimed at:

- removing unfair competitive advantage for providers of "Over the Top" (OTT) services (delivering comms and ancillary services via apps e.g. WhatsApp, Facetime, Skype, Xbox 360 without the direct involvement of traditional telecoms providers)[8] by bringing them within the scope of ePrivacy Regulation[9] just like traditional telecoms providers;[10]

- updating the existing framework to encompass new technologies and processing situations, amending cookie consent requirements, further restricting direct marketing calls, imposing stricter conditions on confidentiality of communications, imposing fines and harmonised enforcement, achieving greater harmonisation via a Regulation instead of a Directive; and

- expanding territorial scope to apply to providers outside the EU if they offer e-comms to EU end users, in the same way as the GDPR.

1.5 The Government now writes with an update on delays in the negotiations. Uncertainties to be resolved also overlap with the GDPR and the extent to which "ancillary services" and "content data" are covered by the proposal. On timing, the Government confirms that the Presidency is aiming for a General Approach at the end of June 2018.

1.6 **We thank the Minister for her helpful letter. We ask her to continue to keep us up-to-date as we are concerned about the implications for the UK should the Regulation not be agreed when the UK still has a vote, but during the implementation period. We ask her to comment on that eventuality. If an adopted proposal were not to apply to the UK before the end of an implementation period, could the Minister tell us whether the UK would want to align with it anyway for the purposes of its future trading relationship with the EU?**

1.7 **In our Report on the proposed Regulation to revise data protection rules applying to EU institutions[11] we asked the Minister about an aspect of the proposed ePrivacy Regulation which her current letter does not address. We set it out below and request that the Minister respond in due course:**

> **"3.8…. In particular, have there been any UK objections to restrictions in the text under negotiation or to amendments being proposed by the European Parliament (EP) to prevent or limit the ability of UK**

7 Proposed Regulation on the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC: (38446), 5034/17, COM(17) 8.

8 In other words, without having to pay them.

9 They fall outside of the definition of "electronic communications services" under the current ePrivacy Directive.

10 These have become popular substitutes for traditional telecoms services, e.g. online chat applications instead of mobile SMS, and Voice over IP technology (VoIP) instead of telephone calls.

11 38446, 5034/17: Proposal for a Regulation on data protection rules applicable to EU institutions, bodies, offices and agencies, repealing Regulation (EC) No 45/2001 and Decision 1247/2002/EC

authorities to access encrypted communications used by some "Over-the-top" (OTT) providers such as What's App for national security purposes? We note in this respect that:

- **"—the Lauristin Report of the EP's LIBE Committee, adopted by the EP on 23 October 2017, proposes a new recital to the text as follows "(26 a) In order to safeguard the security and integrity of networks and services, the use of end-to-end encryption should be promoted and, where necessary, be mandatory in accordance with the principles of security and privacy by design. Member States should not impose any obligation on encryption providers, on providers of electronic communications services or on any other organisations (at any level of the supply chain) that would result in the weakening of the security of their networks and services, such as the creation or facilitation of 'backdoors'". The proposed prohibition is contained in the amendment to Article 17 of the proposed Regulation (new paragraph 1(a)); and**

  "The Home Secretary (Amber Rudd) has spoken on many occasions about the Government's desire to access such encrypted communications, in the fight against terrorism. See for example, her interview with the BBC reported on 1 August 201719 prior to her meeting with tech companies in Silicon Valley about Counter-Terrorism".

1.8 **Related to 1.7 above, we would also be interested to hear from the Minister about any discussions in the Council concerning the extent to which, if at all, the proposed Regulation might affect Member State activities relating to national security. When she responds, we ask the Minister to take account of:**

- **the preliminary reference which has been ordered in the Bulk Datasets case,[12] and**
- **the question outstanding from our predecessors' Report[13] concerning the impact of the Court of Justice's judgment in the *Watson*[14] case.**

1.9 **In the meantime, we retain the proposal under scrutiny but draw it and this chapter to the attention of the Science and Technology Committee, the Digital, Culture Media and Sport Committee, the Home Affairs Committee and the Exiting the EU Committee.**

Full details of the documents

Proposal for a Regulation of the European Parliament and the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications): (38455), 5358/17 + ADDs 1–6, COM (17) 10.

12 Order for Reference to the Court of Justice of the European Union, Privacy International v Foreign Secretary (1) Home Secretary (2) GCHQ(3) MI5 (4) and MI6(5), 8 September 2017.

13 Thirty first Report, HC 71–xxiv (2016–17), chapter 6 (8 February 2017).

14 C-203/15 and C-698/15 Joined Cases: Tele 2 Sverige AB v Post- och telestyrelsen; Watson and Others v Secretary of State for the Home Department.

Previous scrutiny

1.10 We most recently considered this proposal as part of our Report chapter on Data Protection and the EU Institutions.[15] In that chapter we said about the current proposal:

> "Finally, the Minister also provides us with a short update on the proposed e-Privacy Regulation. Discussions have not progressed on this proposal in Council. This is partially due to great uncertainty over the text's effect and its relation to the GDPR, with many Member States yet to take a position. She adds:
>
> "In addition to the crossover with the GDPR, discussions have focused on seeking clarity about which types of processing fall under the proposal's scope, on the effects of the proposed limited range of circumstances for processing e-comms data, and on the proposed new cookies rules. The UK has posed six questions to the Commission on the effect of the proposed rules for cookies. These questions were adopted by the Presidency, and the Commission has recently produced a non-paper in response. The Government is currently analysing the Commission's answers."

The Minister's letter of 6 March 2018

1.11 The Minister for Digital and the Creative Industries (Margot James) provides us with the following update on the proposed ePrivacy Regulation. This includes responses to some of the questions asked by our predecessor Committee.

1.12 On progress in the negotiations, the Minister says:

> "There have been relatively few meetings on this proposal, as this was not a specific priority of previous Presidencies. Discussions have yet to move forward, partially due to considerable uncertainty over the proposal's effect and its relation to the General Data Protection Regulation (GDPR), with many Member States yet to take a position on the text until its impact is clarified.
>
> "Although progress has been made recently on these issues, there is unfortunately still no agreed interpretation of the measure's scope in Council. This letter sets out the Government's current understanding and we will write with further information when the position develops."

1.13 She then turns to the question of the relationship between the ePrivacy proposal and the GDPR. First, she explains the dual purpose of the ePrivacy proposal:

> "The Government understands that the draft ePrivacy Regulation aims both to complement and particularise the GDPR. However, the proposed text is not clear as to the circumstances when the ePrivacy Regulation, versus the GDPR, applies to data, and when both measures would apply at the same time."

15 (38446), 5034/17: Sixteenth Report, HC 301–xiv (2017–18), chapter 3, (28 February 2018).

1.14 She then considers each of these purposes:

> "In terms of complementing, it offers protection for areas not covered by the GDPR. These include protection for non-personal data such as that of companies, and protection against nuisance calls and spam."
>
> "In terms of particularising the GDPR, the draft Regulation provides specific rules for processing that already falls under the GDPR. This means that a GDPR article will not apply if there is a more specific, relevant article in the ePrivacy Regulation. For example, Article 6 of the proposed ePrivacy Regulation sets down the limited range of circumstances ("legal bases") under which metadata may be processed. If a provider is processing personal metadata, Article 6 of the ePrivacy Regulation displaces Article 6 of the GDPR, which sets out a wider range of legal bases for processing personal data. But as the proposed ePrivacy Regulation does not have a right to access personal data or a right to erasure, the articles in the GDPR containing these rights will still apply. In this way, both the GDPR and the ePrivacy Regulation may apply at the same time to particular processing."

1.15 However, the Minister explains that the situation is more complex, depending on the type of data involved and this is giving rise to some uncertainty:

> "However, I also understand that the Commission intended the scope of the proposal to vary, depending on the type of data. The proposal makes a distinction between the content of communications ("content data") and other data associated with the communication ("metadata"), e.g. timestamps. While the ePrivacy Regulation will always apply to processing of metadata, content data only falls under its scope during transmission. For example, when a data controller is composing an email containing a customer's personal data, it is the GDPR alone that applies to the content data. The ePrivacy Regulation will only apply while the email is being transmitted. Since this was not clear in the original proposal, the revised text published by the Estonian Presidency in December last year explicitly states when content data is in its scope.
>
> "Nevertheless, there is still lack of clarity as to whether transmission ends when the recipient receives the email, or when it is received by the provider's servers. Resolving this ambiguity is crucial since there are number of processing activities that providers currently do with content data that may be permissible under the GDPR but not under the ePrivacy Regulation. These include scanning the content of emails for spam and enabling translation, and certain accessibility features such as text to speech for users."

1.16 Additionally, there is "even greater uncertainty" concerning the proposed Regulation's application to so-called "ancillary services". These are services which enable communications to take place though not actually communication services themselves:

> "A potential example of an ancillary service is a gaming website that allows players to chat during games. The Commission's impact assessment for this proposal did not include the costs on ancillary services, nor an assessment of the potentially vast range of services this may capture.

> "Recent discussions in Council centred on what an ancillary service could be; some progress was made but there was no firm agreed outcome. The proposal's focus on merely whether the supplier enables communication to take place, rather than whether it deliberately provides a communication service, could capture a wide variety of services. This could potentially include services that allow for co-authoring of documents, and personal blogs that allow certain users to leave comments. Such services, if caught, would then need to comply with the proposal's obligations, including the limited permitted circumstances for processing electronic communications data. As the implications of the scope are considerable, the Government is highly concerned with this lack of clarity and is pushing for progress on a common interpretation in Council."

1.17 The Minister tells us that a wide range of stakeholders who are potentially affected by the proposal have been consulted on an ongoing basis over the last year. This has been through a series of roundtables, bilateral meetings, and requests for written comments. The Minister comments:

> "These have allowed the Government to gather comprehensive and diverse evidence about ePrivacy's impact, given its highly technical nature, and we recognise the concerns that have been raised by stakeholders in relation to the proposal."

1.18 Finally, the Minister refers to the Presidency's aim to secure a General Approach by the end of June 2018, so that trilogue negotiations could take place with the European Parliament before the June 2019 elections. She comments:

> "The Government's view is that the two significant areas of ambiguity outlined above need urgent resolution before there can be work on the proposal's provisions. This is not only due to the need to ensure legal uncertainty for individuals and businesses, but also because the scope of the proposal has a considerable impact on proper assessment of its provisions. The Government's priority therefore is to continue the work recently begun with other Member States towards a common interpretation of the scope in Council and reflect this in the text once discussions begin again, likely in March."

1.19 She also commits to providing us with further updates as developments emerge.

Previous Committee Reports

Thirty first Report, HC 71–xxiv (2016–17), chapter 6 (8 February 2017); also see (38446), 5034/17: Sixteenth Report, HC 301–xiv (2017–18), chapter 3, (28 February 2018).

2 Veterinary medicinal products

Committee's assessment	Politically important
Committee's decision	Document (b) cleared from scrutiny; Documents (a) and (c) not cleared from scrutiny; further information requested
Document details	(a) Proposed Regulation on the manufacture, placing on the market and use of medicated feed; (b) Proposed Regulation amending Regulation 726/2004 on Community procedures for the authorisation and supervision of medicinal products; (c) Proposed Regulation on veterinary medicinal products.
Legal base	(a) Articles 43 and 168(4)(b) TFEU, Ordinary Legislative Procedure, QMV; (b) Articles 114 and 168(4)(c) TFEU, Ordinary Legislative Procedure, QMV; (c) Articles 114 and 168(4)(b) TFEU, Ordinary Legislative Procedure, QMV
Department	Environment, Food and Rural Affairs
Document Numbers	(a) (36338), 13196/14 + ADDs 1–3, COM(14) 556; (b) (36340), 13240/14, COM(14) 557; (c) (36344), 13289/14 + ADDs 1–3, COM(14) 558

Summary and Committee's conclusions

2.1 The European Union has in place a set of rules regulating the production, marketing, distribution and use of veterinary medicines and medicated feed. In response to concerns that the current rules were burdensome, were failing to deliver a functional single market and did not assure the availability of products, especially for small markets, the Commission proposed revisions in 2014.

2.2 Among other objectives, the revisions aimed to: increase the availability of veterinary medicinal products; improve the functioning of the internal market; and address the public health risk of antimicrobial resistance (AMR).

2.3 We last considered these proposals at our meeting of 6 December 2017, when we waived all of them from scrutiny in advance of the 13 December Council meeting. We considered the proposals to be very important, with potentially significant Brexit considerations. The provisions relating to AMR, bearing in mind trade in animal products, and to restrictions on prescribing were of particular concern to us. We requested a summary of the agreed provisions on AMR and looked forward to an update on the two issues of greatest concern to the Government—proposed new restrictions on prescribing veterinary medicines and the provisions on carry-over of medicines into non-target batches of medicated feed.

2.4 On the UK's withdrawal from the EU, we sought further information on: the volume of trade between the UK and EU-27; the implications for the UK of separation from the EU's veterinary medicines regulatory framework; and whether the UK would be likely to choose to maintain alignment with EU standards post-Brexit in any case.

2.5 We have since received two letters from the Government. The first, from Lord O'Shaughnessy at the Department for Health, explains developments on the proposal to delete veterinary medicines provisions from the human medicines Regulation (document (b)). The Minister reports that negotiations on this essentially procedural proposal are at an advanced stage and he requests that the proposal be cleared from scrutiny.

2.6 The second, from the Parliamentary Under-Secretary of State for Rural Affairs and Biosecurity (Lord Gardiner) responds to the Committee's queries on the other documents. In particular, he notes that the issues of greatest concern to the UK have been addressed. Regarding the impact of Brexit, the Minister makes a number of points:

- there is little known cross-border trade in veterinary medicines;
- most veterinary medicines available on the UK market are nationally-authorised;
- a range of options are being considered to ensure the continued availability in the UK of the small percentage of EU centrally-authorised veterinary medicines;
- on AMR, the UK will seek to adopt similar measures to those in the proposals, as appropriate, post-Brexit;
- any access to the proposed new common database and any continuing involvement in, or recognition of, EU authorisation procedures will be subject to wider EU exit negotiations; and
- post-Brexit, the UK will need to consider where to maintain alignment.

2.7 Inter-institutional ("trilogue") negotiations have begun and are expected to conclude in the autumn.

2.8 **We note the satisfactory progress of negotiations on the proposal to amend the human medicines Regulation and are content to clear that proposal (document (b)) from scrutiny.**

2.9 **We are grateful for the response provided on the two veterinary medicines proposals. It is welcome that solutions were negotiated on the issues of greatest concern to the UK—i.e. proposed new restrictions on prescribing veterinary medicines and the provisions on carry-over of medicines into non-target batches of medicated feed.**

2.10 **Regarding anti-microbial resistance (AMR), we note the Minister's assurance that the UK will seek to adopt similar measures to those in the proposals, as appropriate, post exit. We would welcome a clearer analysis when the Minister next writes, including the summary of the agreed provisions on AMR as we requested in our report of 6 December 2017. It would also be helpful to understand which (if any) of those proposals it would not be "appropriate" to adopt and what the impact of such a course of action might be. We are separately considering the Government's wider approach to AMR post-Brexit through our scrutiny of the Commission's "One Health Action Plan" against AMR.[16] That document remains under scrutiny and we await a further update from the Department of Health.[17]**

16 Communication from the Commission: A European One Health Action Plan against Antimicrobial Resistance (AMR), COM(17) 339.

17 Thirteenth Report HC 301–xiii (2017–19), chapter 1 (7 February 2018).

2.11 **We retain documents (a) and (c) on veterinary medicines under scrutiny and look forward to an update on the progress of negotiations between the European Parliament and the Council well in advance of any final agreement.**

Full details of the documents

(a) Draft Regulation on the manufacture, placing on the market and use of medicated feed: (36338), 13196/14 + ADDs 1–3, COM(14) 556; (b) Draft Regulation amending Regulation 726/2004 on Community procedures for the authorisation and supervision of medicinal products: (36340), 13240/14, COM(14) 557; (c) Draft Regulation on veterinary medicinal products: (36344), 13289/14 + ADDs 1–3, COM(14) 558.

Background

2.12 Details on the background and content of the proposals, as well as on the Government's position, were set out in our Reports of 22 October 2014 and 6 December 2017.[18]

2.13 After publication of the proposals in 2014, discussions proceeded very slowly until the Estonian Presidency in the second half of 2017. At our meeting of 6 December 2017, we considered a letter from the Minister reporting expected agreement at the Agriculture Council on 13 December.

2.14 At that stage, the Minister indicated UK support for the overall package. He noted that the main concern for the UK was the requirement that veterinary medicines be dispensed only by qualified vets. This would mean that that the UK system allowing "Suitably Qualified Persons", as well as vets, to prescribe certain categories of veterinary medicines would need to be re-considered. The system is an important one for farmers in remote areas of the UK where there are insufficient numbers of vets.

2.15 The Government also had some concerns regarding proposals in the medicated feed legislation (document (a)) on limits for the "carry-over" of medicines into non-target batches of feed. While the Minister indicated support in principle, especially for antibiotics where carry-over may contribute to antibiotic resistance, there were concerns about increased costs. The other significant provisions in the proposals were those pertaining to tackling anti-microbial resistance. The proposed provisions were in line with UK policy.

2.16 On the UK's exit from the EU, the Minister commented that it was now highly likely that the UK would leave the EU before the updated legislation needed to be applied. Noting that the UK is already at the forefront of the fight against antimicrobial resistance and this would continue to be a priority beyond the UK's EU membership, the Minister indicated that the Government would look carefully at the Regulations and the elements that it may be sensible to implement post-Brexit.

2.17 At our meeting of 6 December, we considered these proposals to be very important, with potentially significant Brexit considerations. The provisions relating to anti-microbial resistance, bearing in mind the trade in animal products, and to restrictions on prescribing were of particular concern to us.

18 Fourth Report HC 301–iv (2017–19) chapter 4 (6 December 2017); Fifteenth Report(HC 219–xv (2014–15), chapter 2 and chapter 3 (22 October 2014).

2.18 We sought an update on the provisions agreed regarding: the prescribing of veterinary medicines; carry-over under the medicated feed proposal; and on anti-microbial resistance.

2.19 On the UK's withdrawal from the EU, we sought responses to the following additional points:

- the amount of trade in veterinary medicines and medicated feed between the UK and EU-27;
- the implications for the UK of separation from the EU's veterinary medicines regulatory framework, including the restrictions to tackle anti-microbial resistance, the proposed new common database and the requirements on authorisations and mutual recognition; and
- whether the UK would be likely to choose to maintain alignment with EU standards post-Brexit in any case.

2.20 We waived the proposals from scrutiny in advance of the Council meeting on 13 December.

Lord O'Shaughnessy's letter of 13 February 2018

2.21 The Minister writes to provide an update on negotiations to amend Regulation 726/2004 on the regulation of human medicines, and to seek the Committee's agreement to lift scrutiny in order for the UK to formally vote in support of the final proposal in due course. The lifting of this scrutiny, he says, would be subject to any significant changes to the text during ongoing trilogue negotiations, in which case he would write again to confirm that scrutiny remained lifted ahead of a final vote in Council. No substantial changes are expected.

Removal of references to veterinary medicines

2.22 The Minister explains that Regulation 726/2004 is currently being amended to remove references to veterinary medicines, which are being consolidated into separate legislation (documents (a) and (c)). The amended Regulation 726/2004 will remain in force and continue to provide the underpinning legislation for the European Medicines Agency (EMA), as well as setting out the procedures for the authorisation and supervision of human medicines at a centralised EU level. He clarifies that Regulation 726/2004 does not influence procedures for the authorisation and supervision of human medicines nationally licensed by the Medicines and Healthcare Products Regulatory Agency (MHRA), which comprise approximately 90% of medicines licensed for the UK market.

2.23 The Minister notes that the vast majority of changes to Regulation 726/2004 are technical textual amendments which remove references to veterinary medicines and have no wider implications for the regulation of human medicines. He has no concerns about these consequential amendments.

Update of decision making procedures

2.24 The Minister adds that, in addition to these consequential amendments, the Commission has used this opportunity to update Regulation 726/2004 to incorporate

the new decision-making procedures set out in Article 290 (delegated acts) and 291 (implementing acts) of the Treaty on the Functioning of the European Union (TFEU). He explains that implementing acts (IA) cover implementation methods, whereas delegated acts (DA) enable the Commission to amend or supplement elements of the basic legislation. Both acts are subject to scrutiny by Member States and the European Parliament.

2.25 The Minister reports that the Commission has proposed the use of IAs throughout the Regulation for all instances where the EMA and Commission are deciding to grant, vary, suspend or revoke a marketing authorisation under the centralised procedure. He notes that there was debate as to how far the scope of each of the DAs should be explicitly set out in the Regulation itself. This is a particular issue in setting the procedures for the approval of conditional marketing authorisations and variations of centrally licensed medicines. Conditional marketing authorisations allow medicines to be put on the market for a limited period without comprehensive clinical data, e.g. when the patient benefit is deemed greater than the risk of allowing on the market, while variations allow manufacturers to make changes to their medicine once it is on the market. The UK, says the Minister, successfully negotiated for the scope of this authority to be included in Regulation 726/2004 itself, to add clarity to the legislation and limit the breadth of what could be changed by DA.

EMA fees

2.26 The Commission originally proposed that the structure and level of EMA fees should be set using an IA. The UK, among other Member States, argued that this should continue to be decided through the Ordinary Legislative Procedure (OLP). The Commission separately launched an evaluation of the fee-setting methodology, and the Council working group therefore decided to postpone this decision until after the publication of the Commission's analysis in 2018. At this point, the Commission will submit a legislative proposal, to be adopted through OLP, on the structure and level of EMA fees. Therefore, any resulting change is now outside of scope of this round of amendments to 726/2004.

Lord Gardiner of Kimble's letter of 28 February 2018

2.27 As requested by the Committee in our Report of 6 December 2017, the Minister provides an update on negotiations. Regarding the proposed new restrictions on prescribing veterinary medicines, he says that the text agreed by the Council in December addressed the UK's concerns about the potential impact of the proposals on the UK system of suitably qualified persons—those individuals trained and authorised to prescribe lower risk veterinary medicines.

2.28 Concerning the provisions on carry-over under the medicated feed proposal, these no longer contain arbitrary limits on carry-over pending the completion of the necessary risk assessments by the European Food Safety Agency.

2.29 The Minister goes on to clarify that, as currently drafted, the medicated feed regulation will come into effect 36 months after the date of its entry into force (in line with the veterinary medicines legislation and rather than the proposed 12 months), so it is probable this will be after the end of any post-exit implementation period agreed with the EU.

2.30 On the other points raised by the Committee in relation to the UK's exit from the EU, the Minister says:

- while the Government does not have data on trade in veterinary medicines between the UK and the EU-27, cross-border trade in authorised veterinary medicines is not thought to be extensive as products must be labelled for individual national markets;
- the majority of veterinary medicines currently available on the UK market are authorised on a national basis, as either standalone UK authorisations or in partnership with one or more Member States—as such, the status of these nationally authorised veterinary medicines will not be affected by the UK leaving the EU; and
- while a small percentage of veterinary medicines are authorised by the European Medicines Agency on a pan-European basis, the UK intends to maintain such existing centrally authorised products on the UK market to ensure their continuing availability post-exit—a range of options are being considered to achieve this;
- the UK will seek to adopt similar antimicrobial resistance measures to those in the proposals, as appropriate, post exit;
- access to the proposed new common database and any continuing involvement in or recognition of EU authorisation procedures will be subject to the wider EU exit negotiations and withdrawal agreement and so the Minister is unable to comment at this stage; and
- upon leaving the EU, the UK will need to consider where to maintain alignment.

2.31 Finally, the Minister notes that trilogue discussions have commenced and are expected to conclude in the autumn.

Previous Committee Reports

Fourth Report HC 301–iv (2017–19) chapter 4 (6 December 2017); Fifteenth Report HC 219–xv (2014–15) chapter 2 and chapter 3 (22 October 2014).

3 Composition of the European Parliament

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Exiting the EU Committee
Document details	European Parliament proposal for a European Council Decision establishing the composition of the European Parliament
Legal base	Article 14(2) TEU; EP consent; unanimity
Department	Exiting the European Union
Document Number	(39497), 6031/18,—

Summary and Committee's conclusions

3.1 When the United Kingdom leaves the EU on 29 March 2019, the 73 UK MEPs will no longer sit in the European Parliament. It has been accepted by the UK Government that this would be one of the terms of an implementation period.[19] It is also reflected in the EU's position paper including draft legal text for transition[20] and included in the EU's proposed legal text for a Withdrawal Agreement.

3.2 The European Parliament (EP) has proposed a new system on the number and distribution of seats for the 2019 elections, partly because of Brexit, partly because it was tasked to do so by the Council in 2013. The Council requested that the EP put forward a proposal for the definition of a system based on degressive proportionality. This principle means that the greater the population of a country, the greater the number of MEPs it will have. However, each MEP in a larger country then represents proportionately more citizens than would be the case in a smaller country. The discussion occurred following the accession of Croatia, when some Member States had to give up their seats to comply with the Lisbon Treaty rules. This was a temporary solution and it was agreed the EP would come forward with a proposal for a new formula of distribution of seats to apply for the 2019 EP elections.

3.3 The Treaty on European Union lays down the criteria for the composition of Parliament, namely:

- the number of MEPs should not exceed 750 in number, plus the President;
- representation should be degressively proportional; and
- there is a minimum of six seats, and a maximum of ninety-six, per Member State.

19 See the Prime Minister's Florence Speech and the Brexit Secretary Teesport speech.

20 See the Position Paper "Transitional Arrangements in the Withdrawal Agreement" TF50 (2018) 30 and the European Commission's Draft Withdrawal Agreement TF50 (2018) 33.

3.4 The EP proposal for a decision sets out that the allocation of seats should fully utilise the minimum and maximum number of seats set out in the EU Treaties to reflect as closely as possible the relative population size of each Member State. It adjusts the number of seats to bring it more closely in line with the system of degressive proportionality.

3.5 The decision recognises that the United Kingdom will be leaving the European Union on 29 March 2019 and there will therefore will no longer require its 73 seats in the EP. It recommends that the EP reduce in size to 705 MEPs. This is a reduction of 45 MEPs and allows for the addition of new MEPs in the event of new members joining the EU. The allocation of seats per Member State, along with changes from the current composition of the EP is set out in a table in an Annex to this chapter.

3.6 The EP sent their proposal to the Council on 2 February. It is to be adopted by the European Council with a current deadline of June 2018. It will then pass back to the EP for their final consent.

3.7 The EP's decision states that if the UK does not leave the EU by the 2019 elections then the composition of seats will remain the same as in the 2014 election. The EP will bring forward further proposals on the composition of the EP ahead of the 2024 EP elections.

3.8 **We thank the Minister for his Explanatory Memorandum.**

3.9 **We note that the voting requirement for this proposal is unanimity. In other words, the adoption of this proposal would require the UK not to exercise its veto. As the Minister recognises in his Explanatory Memorandum that the issue of reallocation of seats is "primarily an issue for the EU", we ask him to confirm at this stage whether the UK intends to exercise its veto. In so doing, he could clear up any speculation in the media[21] that this is something that the UK might contemplate to put pressure on the Council and the European Parliament in the Brexit negotiations. Whilst Court of Justice jurisprudence would indicate that the duty of sincere cooperation does not apply to Member States when voting in the Council,[22] does the Minister consider that the UK would feel otherwise restrained from taking such a course of action?**

3.10 **Pending the Minister's response, we retain the proposal under scrutiny and look forward to updates on the negotiations. We draw this document and this chapter to the attention of the Exiting the EU Committee.**

Full details of the documents

European Parliament proposal for a European Council Decision establishing the composition of the European Parliament: (39497), 6031/18,—.

The Government's view

3.11 In an Explanatory Memorandum dated 27 February 2018, the Minister of State for Exiting the EU (Lord Callanan) comments:

> "As the Prime Minister has set out, the United Kingdom will cease to be a member of the European Union on 29 March 2019 and the United

21 Brexiting bad: 5 ways the UK could go rogue, Politico 28.02.18.

22 Joined Cases C-63/90 and C-67/90 Portugal and Spain v Council, [1992] ECR i-5073, paras 52–53.

> Kingdom will no longer sit at the European Council table or in the Council of Ministers, and we will no longer have Members of the EP. This proposal relates to the 2019 EP elections which will take place after we have left the EU and no longer have MEPs. This means this issue is primarily an issue for the EU 27 and will have no direct policy impact on the UK."

3.12 In terms in timing, he adds that the proposal will now be debated in the Council which has until June 2018 to vote on the proposal. It will then go back to the European Parliament for adoption.

Previous Committee Reports

None.

Annex

Belgium	21 (same)	Lithuania	11 (same)
Bulgaria	17 (same)	Luxembourg	6 (same)
Czech Republic	21 (same)	Hungary	21 (same)
Denmark	14 (+1)	Malta	6 (same)
Germany	96 (same)	Netherlands	29 (+3)
Estonia	7 (+1)	Austria	19 (+1)
Ireland	13 (+2)	Poland	52 (+1)
Greece	21 (same)	Portugal	21 (same)
Spain	59 (+5)	Romania	33 (+1)
France	79 (+5)	Slovenia	8 (same)
Croatia	12 (+1)	Slovakia	14 (+1)
Italy	76 (+3)	Finland	14 (+1)
Cyprus	6 (same)	Sweden	21 (+1)
Latvia	8 (same)		

4 Second mobility package: emissions performance standards

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 setting emission performance standards for new passenger cars and for new light commercial vehicles as part of the Union's integrated approach to reduce CO_2 emissions from light-duty vehicles and amending Regulation (EC) No 715/2007 (recast).
Legal base	Article 192(1) TFEU; ordinary legislative procedure, QMV
Department	Transport
Document Number	(39203), 14217/17 + ADDs 1–4, COM(17) 676

Summary and Committee's conclusions

4.1 This European Commission proposal would recast two existing Regulations on emissions performance standards for new passenger cars and light commercial vehicles. It is part of the second phase of the Mobility Package—the European Commission's set of initiatives seeking to establish a more integrated and sustainable EU transport system. The objective of the proposal is to set CO_2 emission reduction targets for new light-duty vehicles up to 2030 and provide an incentive mechanism to increase the share of zero-low emission vehicles.

4.2 An evaluation of Regulations (EC) 443/2009 and (EU) 510/2011 concluded that the Regulations are still valid and will remain so for the period beyond 2020. However, it also concluded that the New European Driving Cycle test cycle does not adequately reflect real-world emissions and there is an increasing discrepancy between the two.

4.3 The proposed recast Regulation seeks to go beyond the current Regulations by, among other things:

- setting emission reduction targets compared to 2021 of 15% by 2025 and 30% by 2030;
- crediting manufacturers so that if they see more than 15% of sales as low or zero emission vehicles in 2025 or 30% by 2030 they will see their emissions targets reduced by up to 5%;
- maintaining the excess emissions premium levied on manufacturers that exceed their CO_2 targets;
- allowing small manufacturers (fewer than 10,000 cars and 20,000 vans) to apply for a derogation, with very small manufacturers producing 1,000 or fewer considered out of scope. However, from 2025 manufactures of between 10,000 and 300,000 cars would see their derogation removed;

- reducing targets for some innovative technologies unable to demonstrate CO_2 reducing effects under specific test conditions;
- empowering the Commission to monitor, assess and publish the real world effectiveness of vehicle CO_2 emissions, with Member States collecting and reporting the information; and
- requiring the Commission to review the effectiveness of the proposed Regulation by the end of 2024.

4.4 **The Government informs us that it welcomes and supports the Commission's broad approach in the proposal and that it considers it to be justified with regards to subsidiarity. The Government in particular welcomes the continuation of provisions for small volume manufacturers. The Government indicates it will consider the timeliness of removing the niche derogation for manufacturers registering between 10,000 and 300,000 as the small number of manufacturers that utilise it does not necessarily indicate its need.**

4.5 **We note that the proposal would empower the Commission to make further changes under the proposed Regulation.**

4.6 **The proposal also adds a strengthened monitoring obligation on Member States to ensure high quality CO_2 data and co-operate with the Commission.**

4.7 **The Commission's Impact Assessment concludes that the proposal will increase manufacturing costs and that this will affect vehicle price for consumers. The Government is considering whether there is a need to produce its own impact assessment. The Department for Transport will be adopting a strategy on the pathway to zero emission transport in March 2018.**

4.8 **We therefore request:**

- **clarification as to whether the Government intends to implement any future changes the Commission is empowered to make under the proposed Regulation after exit;**
- **clarification as to whether the Government intends to maintain any monitoring and co-operation obligations towards the Commission after exit; and**
- **that the Government inform us of any assessment it carries out with regard to the proposal's impact, costs and benefits for the UK.**

4.9 **We retain this proposal under scrutiny and request a response by 21 April 2018.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars and for new light commercial vehicles as part of the Union's integrated approach to reduce CO_2 emissions from light-duty vehicles and amending Regulation (EC) No 715/2007 (recast): (39203), 14217/17 + ADDs 1–4, COM(17) 676.

Background

4.10 Existing targets to 2020 for emissions performance standards for new passenger cars and light commercial vehicles are prescribed in Regulations (EC) 443/2009 and (EU) 510/2011.

4.11 Furthermore, Regulation (EC) 715/2007 allows the Commission to set up an in-service conformity procedure for verifying CO_2 emissions.

4.12 An extensive evaluation of Regulations (EC) 443/2009 and (EU) 510/2011 was completed in April 2015 and a final report published. It concluded that the Regulations are still valid and will remain so for the period beyond 2020. However, it also concluded that the New European Driving Cycle test cycle does not adequately reflect real-world emissions and there is an increasing discrepancy between the two.

The proposal[23]

4.13 The amendments in the proposal concern:

4.14 *Subject matter and objectives (Article 1)*—the proposal would specify the EU fleet wide CO_2 targets applicable to new passenger cars and new light commercial vehicles from 2020, 2025 and 2030. The proposed Regulation would apply from 2020 in order to ensure a coherent transition to a new target regime starting from 2025. It would therefore include the already established EU fleet wide targets for 2020 of 95g/km (NEDC based) for passenger cars and 147g/km (NEDC based) for light commercial vehicles, as well as new targets for 2025 and 2030.

4.15 Starting from 2021, the specific emission targets would be based on the new emissions test procedure, the Worldwide Harmonised Light Vehicle Test Procedure (WLTP). Therefore, the 2025 and 2030 fleet wide targets, which are WLTP based, are expressed as percentage reductions compared to the average of the specific emission targets for 2021 determined for each manufacturer in accordance with section 4 of Annex I.

4.16 *Scope (Article 2)*—the proposal would define the categories of vehicles by reference to the type approval legislation. It would also clarify that the de minimis exemption applicable to manufacturers responsible for fewer than 1000 new registrations per year would not apply where a manufacturer eligible for such an exemption nevertheless applies for and is granted a derogation.

4.17 *Definitions (Article 3)*—the proposal would add new definitions for "EU fleet-wide targets", "zero- and low-emission vehicles" and "test mass".

4.18 *Specific emission targets (Article 4)*—the proposal would set out the general obligation for a manufacturer to ensure that the average CO_2 emissions of its fleet of newly registered vehicles in a calendar year do not exceed its annual specific emissions target. That target is manufacturer specific and is calculated as a function of the applicable EU fleet wide target, the limit value curve, the average mass of the manufacturer's fleet and the reference

23 European Commission Proposal for a Regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars and for new light commercial vehicles as part of the Union's integrated approach to reduce CO_2 emissions from light-duty vehicles and amending Regulation (EC) No 715/2007 (recast) (COM(17) 676).

mass (M0 or TM0). The mass calculation is based on mass in running order until 2024 inclusive. From 2025 the vehicle's test mass, which is closer to the real mass of the finished vehicle, would be used instead. The formulae for the calculations of the specific emission targets for the period from 2020 to 2030 are set out in Parts A and B of Annex I. The target calculations applicable in 2020 to 2024 would be those set out in existing legislation.

4.19 From 2025, the specific emissions target for a manufacturer would be calculated taking into account the share of zero- and low-emission vehicles in the manufacturer's fleet. For the calculation of that share, the zero- and low-emission vehicles would be counted based on a weighting of the emissions of each vehicle. Where the share exceeds the EU fleet-wide benchmark, the manufacturer would benefit from a higher specific emissions target.

4.20 In the case of light commercial vehicles, a distinction would be made in the distribution of the effort between manufacturers of light commercial vehicles with an average test mass exceeding the average reference mass (TM0) and those with an average test mass lower than TM0. For the first group, the slope of the limit value curve would be kept constant over time, while in the latter case the same approach as for passenger cars would be used, i.e. the slope is modified according to the EU fleet wide target.

4.21 *Super credits for the 95g CO_2/km target for cars (Article 5)*—the proposal would keep this provision unchanged and apply it until 2022 inclusive.

4.22 *Pooling (Article 6)*—the proposal would keep the provisions on pooling for connected undertakings and independent manufacturers unchanged. However, an empowerment would be added for the Commission to clarify the conditions for pooling arrangements between independent manufacturers, in particular with regard to competition rules.

4.23 *Monitoring and reporting (Article 7)*—the proposal would keep the general provisions on the monitoring of CO_2 data from Member States unchanged. However, a strengthening of the obligation on Member States to ensure high quality data and co-operate with the Commission would be added.

4.24 A mechanism would be added to introduce a procedure for in-service conformity checks of the CO_2 emission values in type approval legislation. Type approval authorities would report any deviations detected, and the Commission would take those into account when checking manufacturers' compliance with their targets. The provision would include an empowerment for the Commission to provide the details for such a procedure by way of an implementing act.

4.25 *Excess emission premium (Article 8)*—the proposal would set out the formula for calculating the financial penalties in case a manufacturer exceeds its target. The excess emission premium from the existing Regulations is maintained.

4.26 *Publication of performance of manufacturers (Article 9)*—the proposal would list the data that the Commission will publish with regard to manufacturers' annual target compliance (i.e. the annual monitoring decision). Test mass would be added as a data parameter to be published, in view of its use as utility parameter from 2025 onwards, as well as a vehicle's electric range.

4.27 *Derogation for certain manufacturers (Article 10)*—the proposal would keep unchanged the possibility for small volume manufacturers (i.e. those responsible for 1,000 to 10,000 registrations for cars, and 1,000 to 22,000 registrations for vans) to apply for a derogation from their specific emissions targets.

4.28 For niche manufacturers of cars, i.e. those responsible for between 10,000 and 300,000 new registered vehicles, the possibility to benefit from a derogation from the 95g CO_2/km target would also remain. However, with effect from 2025 this group of manufacturers would have to meet the specific emission targets calculated in accordance with Annex I.

4.29 *Eco-innovations (Article 11)*—the proposal would provide for manufacturers to continue to benefit from lower average emissions by fitting their vehicles with eco-innovations. In order to take into account the changes in eco-innovation savings that may occur as a result of the change in the regulatory test procedure, an empowerment would be added for the Commission to adjust the 7g CO_2/km cap set on the CO_2 savings that a manufacturer may take into account for reducing its average emissions. This empowerment would apply from 2025 onwards.

4.30 The eligibility criteria for being considered an eco-innovation would remain unchanged until 2024 inclusive. From 2025 the removal of the reference to the integrated approach measures would allow mobile air-conditioning equipment to be eligible as an eco-innovation.

4.31 *Real world CO_2 emissions and energy consumption (Article 12)*—the proposal would provide an empowerment for the Commission to monitor and assess the real world representativeness of the WLTP test procedure and to ensure that the public is informed of how that representativeness evolves over time. The Commission would have the power to request real world data to be collected and reported by Member States and manufacturers.

4.32 *Adjustments of M0 and TM0 (Article 13)*—the proposal would distribute among manufacturers the CO_2 reduction effort on the basis of the average mass of the vehicle fleet over a certain period. That reference value is expressed as M0 or TM0 depending on whether mass in running order (M) or the vehicle test mass (TM) is used. The proposal would clarify the process for adjusting the reference mass value to ensure that the specific emission targets continue to reflect the EU fleet wide target. With effect from 2025, the frequency of those adjustments would increase from every three years to every second year. A more frequent adjustment would allow changes in the average test mass and their effect on the positioning of manufacturers on the limit value curve to be taken into account earlier.

4.33 *Review and report (Article 14)*—the proposal would include a requirement for the Commission to provide a report on the effectiveness of the Regulation, where appropriate accompanied by a further proposal. The report would need to be submitted in 2024 to align it with the review and reporting provisions proposed under the Effort Sharing Regulation and the Emissions Trading Directive. Provisions on the review of the type approval test procedure as well as the empowerments for taking into account changes in the regulatory test procedure would remain.

4.34 *Comitology and delegation of powers (Articles 15 and 16)*—the proposal would include provisions on the committee procedure and the delegation of powers.

4.35 *Amendment to Regulation (EC) 715/2007 (Article 17)*—the proposal would introduce a legal basis in Regulation (EC) 715/2008 (Euro 5/6 Emissions Type Approval Regulation) for the Commission to set up an in-service conformity procedure for verifying CO_2 emission.

4.36 *Repeal and entry into force (Article 18 and 19)*—the proposal would repeal Regulations (EC) No 443/2009 and (EU) No 510/2011 with effect from 1 January 2020. Entry into force would take place within 20 days of publication of the act.

4.37 *Annex I*—this sets out the formulae for calculating the annual specific emissions targets that should be achieved by the average emissions of the manufacturers' fleets of newly registered vehicles. Part A covers passenger cars, while Part B covers light commercial vehicles.

4.38 *Annex II and III*—these set out the monitoring data parameters that are needed for the calculation of the targets and for checking target compliance. Annex III, covering light commercial vehicles, also makes reference to the need to consider the specificities of vehicles that are type approved in multiple stages.

4.39 *Annex IV*—this lists the legal acts covered by the recast, i.e. the two basic Regulations (EC) No 443/2009 and (EU) No 510/2011 with their respective amending acts.

4.40 *Annex V*—this provides the correlation table.

4.41 Finally, the proposal is accompanied by an Impact Assessment on the proposal and an Executive Summary of the Impact Assessment.

The Government's Explanatory Memorandum of 20 December 2017[24]

4.42 The Parliamentary Under-Secretary of State at the Department for Transport (Jesse Norman) informs us that the Government considers the proposal to be justified with regards to subsidiarity.

4.43 The Explanatory Memorandum states that the Government welcomes and supports the Commission's broad approach in the proposal. It welcomes the approach to continue monitoring tailpipe CO_2 emissions and to set a minimum sales benchmark for new ultra low and zero emission cars in 2025 and 2030. It notes that the Government's recent Clean Growth Strategy set out a pathway to meet the UK's Carbon Budget 4 targets that suggested at least 30% of new car sales were expected to be ultra low emission vehicles by 2030 and that this matches the minimum benchmark put forward by the Commission in that year.

4.44 The Government also welcomes the continuation of provisions for small volume manufacturers. The Explanatory Memorandum indicates the Government will consider the timeliness of removing the niche derogation for manufacturers registering between 10,000 and 300,000 as the small number of manufacturers that utilise it does not necessarily indicate its need.

24 Explanatory Memorandum from the Minister, DfT, to the Chairman of the European Scrutiny Committee (20 December 2017)

4.45 The Government argues that a continued focus is needed on strengthening the controls on vehicle CO_2 emissions. It also considering whether there is a need to produce its own impact assessment.

Brexit implications

4.46 The Explanatory Memorandum notes that as the UK leaves the EU, the Government will pursue an approach that offers certainty to industry and is at least as ambitious as that of the EU. The Department for Transport will set out more detail on how this will be achieved in its strategy on the pathway to zero emission transport due in March 2018.

4.47 Furthermore, a targeted consultation was launched in February 2018 in the wider context of improving air quality and safety for road vehicles.

Financial implications

4.48 The Explanatory Memorandum notes that the Commission's Impact Assessment concludes that the proposal will increase manufacturing costs and that this will affect vehicle price for consumers. Estimates range from €400 to €2,700 for cars and €400 to €2,400 for light commercial vehicles.

Timeframe

4.49 Negotiations at working group level began on 4 December 2017. The Council of Ministers has yet to discuss the proposal. The European Parliament appointed a Rapporteur on 16 January 2018.

Previous Committee Reports

None.

5 Second mobility package: combined transport

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

Summary and Committee's conclusions

5.1 This European Commission proposal would amend Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States. It is part of the second phase of the Mobility Package—the European Commission's set of initiatives seeking to establish a more integrated and sustainable EU transport system. The objective of the proposal is to further increase the competitiveness of combined transport compared to long-distance road freight and therefore strengthen the shift from road freight to other modes of transport.

5.2 An ex-post evaluation of the 1992 Directive found shortcomings relating in particular to the definition of combined transport, the limitations of fiscal incentives and the outdated provisions relating to transport documents.

5.3 The proposed amending Directive aims to remedy these by, among other things:

- providing a clearer definition of 'Combined Transport';
- modifying the reporting conditions;
- adding further economic support conditions applicable to Combined Transport in order to extend the scope of these support measures;
- introducing specific provisions for own-account transport, removing distinctions between own-account transport and Combined Transport for hire and reward; and
- supporting the use of more electronic documentation for those individuals undertaking Combined Transport operations.

5.4 **The Government informs us that it agrees with the European Commission that amendment of the existing Directive can only be done at EU level. However, the Government will be considering, with stakeholders, whether some aspects of the proposal may go beyond what is required to achieve the objectives of the proposal.**

5.5 **We note that the Government believes that it is unlikely that UK domestic legislation would need to be amended to apply the proposed Directive to include national transport and operations with non-EU countries as this would be more a matter of a change in practice. However, this will depend on the exact form of the final proposal. In any case, a revised definition could entail operational and procedural changes.**

5.6 **The Government describes Combined Transport operations in the UK as limited and does not envisage a major impact on industry from the proposal. The Government believes that the UK road haulage industry is liable to face slightly less foreign competition on the UK road legs of some freight movements between the EU and UK via longer sea crossings due to the proposed alteration in the definition of Combined Transport and that operators using Combined Transport should have some cost savings from modernised requirements for documentation.**

5.7 **The proposal also requires Member States to take necessary measures to support investment in transshipment terminals but does not specify what these measures might be. The Government therefore anticipates a possible cost impact and intends to work with economists to seek to quantify some of these proposed measures as negotiations develop.**

5.8 **We therefore request:**

- **the Government inform us of the cost impact for the UK once it has quantified it; and**
- **clarification as to whether the Government intends to take the proposed measures to support investment in transshipment terminals after exit, given that Combined Transport operations in the UK are limited.**

5.9 **We retain this proposal under scrutiny and request a response by 21 April 2018.**

Full details of the documents

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

Background

5.10 Directive 92/106/EEC defines Combined Transport as the transport of goods on intra-European journeys where the lorry, trailer, semi-trailer, with or without tractor unit, swap body or container of 20ft or more, uses the road on the initial and/or final leg of the journey, and on the other leg uses rail, inland waterway or maritime services. The road legs must be no more than 150km and the non-road leg must be more than 100km. Financial incentives are given for road legs of Combined Transport operations by way of reduced taxation and maximum permissible vehicle weights in some Member States. If the ultimate start and end points of the whole journey are in different countries, the non-

road legs are treated as parts of international journeys and haulage operations established anywhere in the EU can compete for them, including non-road legs which themselves are within a Member State.

5.11 An ex-post evaluation of the Directive was carried out and published in 2016. It concluded that the Directive continues to be a relevant instrument for supporting combined transport. It argued that without EU action, cross-border combined transport services would be faced with barriers resulting from different legal systems, making such services less attractive and possibly unfeasible. It also argued that combined transport helps reduce negative externalities through a modal shift. However, it found shortcomings relating in particular to the definition of combined transport, the limitations of fiscal incentives and the outdated provisions relating to transport documents.

The proposal[25]

5.12 The amendments in the proposal concern:

5.13 *(Article 1)*—this provides the scope of the Directive and the definition of 'combined transport'. The proposal would amend this Article to provide a new definition by:

- extending, in paragraph 4, the scope of application of 'combined transport' to all operations in the EU, including national combined transport operations;
- clarifying and further specifying, in paragraph 3, the maximum distance of the road leg as 150 km or 20% of the total distance, irrespective of the non-road leg type, while ensuring that flexibility is allowed due to specific geographical or operational constraints in Member States;
- removing, in paragraph 2, the limitation on the non-road leg to bring important combined transport with inland waterways into the scope of the Directive; and
- further specifying, in paragraph 2, the load unit types that are admissible in combined transport operations.

5.14 *(Article 3)*—this includes a reference to a transport document that can be used as proof of eligibility, and provides additional specification for information to be added, in particular the usage of stamps to confirm or verify parts of the operation. Because these conditions were deemed unclear, and because stamps are no longer used in many facilities, the proposal would replace this Article with a more precise specification of the conditions and types of evidence to be used as proof of eligibility for combined transport for the purposes of road checks performed in a Member State on a road leg of the transport operation:

- paragraph 1 defines the condition for road transport to be considered as part of a combined transport operation;
- paragraph 2 lists and details the data to be provided as evidence;

25 European Commission Proposal for a Directive of the European Parliament and of the Council amending Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States (COM(17) 648).

- paragraph 3 states that no additional document shall be required to prove the combined transport operation;
- paragraph 4 provides the conditions of presentation of the evidence, including for the purposes of a roadside check;
- paragraph 5 describes the acceptable format of the evidence data to be provided, in particular the possible usage of existing transport documents, but also the possibility to use electronic means with a revisable structured format; and
- paragraph 6 consists of a safeguard for operators if there is a discrepancy between the actual operations and the information provided in the evidence, when discrepancies are due to exceptional circumstances.

5.15 *(Article 5)*—this includes reporting obligations for the Commission (with the assistance of the Member States), but lacks a systematic obligation to collect the relevant data in support of such an obligation. The proposal would therefore modify the reporting conditions and obligations necessary to ensure the proper application of the Directive:

- paragraph 1 introduces the obligation for Member States to report to the Commission, 18 months after the date for transposition of the Directive, data on the conditions of the combined transport market in their territory, including on the relevant infrastructure and the adopted national support measures. It also provides for the possibility for the Commission to adopt, by means of delegated acts, measures to help Member States in their obligation by further detailing the content of the information to be reported;
- paragraph 2 provides that the Commission assesses, on the basis of these national reports, the implementation of the Directive, including its effectiveness and efficiency and may also envisage additional measures; and
- paragraph 3 stipulates that the information provision and reporting by the Member States is periodical, every two years.

5.16 *(Article 6)*—this includes the economic support conditions applicable to combined transport. The proposal would add five new paragraphs to extend the scope of these support measures:

- paragraph 4 introduces mandatory support measures to promote new investments by Member States in infrastructures and facilities for combined transport and focuses on the underlying priorities, in particular the density of transshipment terminals. It also includes the conditions for co-ordination between Member States and the Commission to prevent possible overlapping investment in the transshipment infrastructure, which could lead to excessive terminal capacity, particularly in the TEN-T corridors;
- paragraph 5 provides for additional support measures that Member States may adopt to complement existing ones to reduce the cost of a combined transport operation and to make it more competitive compared to the equivalent road-only operation;

- paragraph 6 requests Member States to report to the Commission the adopted support measures;
- paragraph 7 provides for a regular review of the adopted measures to ensure their effectiveness; and
- paragraph 8 provides the general objective that support measures should address.

5.17 *(Articles 7 and 9)*—these include specific provisions addressing own-account transport and aimed at facilitating such transport. The proposal would delete these, as the Commission believes it is no longer reasonable to make a distinction, in the context of this Directive, between combined transport for hire or reward and own-account combined transport. Unless otherwise specified, the rights and obligations of the Directive would be the same for both types of transport.

5.18 *(Article 9a)*—the proposal would add this Article to ensure that transparency is provided to all stakeholders involved in combined transport operations with regard to the implementation of the Directive, and in particular the support measures available and the conditions for their application. A network of competent authorities would be established to foster co-operation among Member States by exchanging relevant information and best practices, in particular on support measures, and by providing a list of main contact points for stakeholders. In addition, paragraph 4 provides that the Commission would need to make available the list of competent authorities and relevant measures adopted by the Member States.

5.19 *(Article 10a)*—the proposal would add this Article to provide the procedure for the exercise of Commission delegated powers.

5.20 Finally, the proposal is accompanied by two Staff Working Documents:

- Impact Assessment on the proposal; and
- Executive Summary of the Impact Assessment.

The Minister's Explanatory Memorandum of 20 December 2017[26]

5.21 The Parliamentary Under-Secretary of State at the Department for Transport (Jesse Norman) informs us that the Government agrees with the Commission that amendment of the existing Directive can only be done at EU level. However, the Government will be considering, with stakeholders, whether some aspects of the proposal may go beyond what is required to achieve the objectives of the proposal.

5.22 The Explanatory Memorandum notes that Combined Transport operations in the UK are limited so the Government does not expect the measures to have a significant impact, but its effect may depend on the final definition emerging from the negotiating processes and the degree to which specified support measures are required.

5.23 The Government believes that it is unlikely that UK domestic legislation would need to be amended to apply the proposed Directive to include national transport and

26 Explanatory Memorandum from the Minister, DfT, to the Chairman of the European Scrutiny Committee (20 December 2017).

operations with non-EU countries as this would be more a matter of a change in practice. However, this will depend on the exact form of the final proposal. In any case, a revised definition could entail operational and procedural changes.

5.24 The Government has begun a targeted consultation on the proposal with representatives of the freight industry. Although the Government is still considering its detailed position on the proposal, the Explanatory Memorandum provides an initial assessment of its policy implications.

5.25 Firstly, the proposal would remove long sea journeys of more than 100km (for example, across the North Sea). This is welcomed by the Government, as it would establish that road haulage between UK ports and inland end points should be considered as domestic, with non-UK EU competition being based on the general, restricted road haulage cabotage rights. This should simplify some enforcement practice related to non-UK vehicles in the UK.

5.26 Secondly, the proposal might impact on Channel Tunnel shuttle journeys. Articulated lorries carried in the shuttle as part of journeys which both originate and end within 150km of each Channel tunnel terminal are not covered by the current Directive because the rail leg is less than 100km. With the proposed removal of any distance limitation for the non-road leg, the Government was concerned that the proposal might include such journeys, which could result in operational complications (for example, concerning documentation and reporting). However, the Government has received reassurances from the Commission that this is not their intention, although the Government are considering whether to seek amendments in the final text to spell this out as clearly as possible.

5.27 Thirdly, the proposal would extend the scope of Combined Transport to national operators. This will not impact the volume of cabotage operations as the 'cabotage exemption' will not apply to such national Combined Transport operations. The Government argues this should ensure that possible cabotage in national Combined Transport does not lead to unfair competition.

5.28 Fourthly, the measures in the proposal would provide simpler definitions and boost digitalisation. This could reduce the administrative burden and the cost of enforcement. It could also prevent circumvention of cabotage rules because of the current difficulty in proving the 'international Combined Transport' aspect of the operation.

5.29 Fifthly, the proposal would modify the reporting obligations on Member States. The Government will consider the proportionality and usefulness of this during the negotiations and in the context of other Member State views.

5.30 Sixthly, the proposal would amend the treatment of 'own-account' transport within Combined Transport, providing, in the Government's view, useful simplification, and aligning it with 'hire and reward' transport.

5.31 A further advantage to the proposal is that it would modernise the arrangements for documentation carried by hauliers, including allowing electronic documentation.

5.32 The Explanatory Memorandum notes that some measures will not have much, if any effect in the UK. For instance, the proposal would not amend tax rebate requirements in the UK because the Directive's rebate requirements do not have a practical effect in this country.

5.33 Furthermore, the extra allowances for Combined Transport and other intermodal operations outlined in practice make little difference to the policy and regulations related to lorry weights and dimensions allowed in the UK.

Brexit implications

5.34 The Explanatory Memorandum states that the precise implications of the proposal will depend on the outcome of the exit negotiations. Third country operators can only benefit from the current Directive if they are legally carrying out Combined Transport road legs in the EU or crossing the EU external border. Third country logistics companies, freight forwarders and other Combined Transport operation managers can benefit from the Directive's regulatory advantages if they fulfil the criteria.

Financial implications

5.35 The Explanatory Memorandum notes that the Government are still assessing the costs for the UK but that it is difficult to monetise given the vague wording in the proposal. The proposal requires Member States to take necessary measures to support investment in transshipment terminals but does not specify what these measures might be.

Timeframe

5.36 The Council of Ministers has yet to discuss the proposal, although the Bulgarian Presidency intends to take negotiations forward and plans to include it on the agenda at the June 2018 Transport Council. The European Parliament appointed a Rapporteur on 11 December 2017.

Previous Committee Reports

None.

6 Second mobility package: international bus and coach travel

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 1073/2009 on common rules for access to the international market for coach and bus services
Legal base	Article 91(1) TFEU; ordinary legislative procedure, QMV
Department	Transport
Document Number	(39208), 14184/17 + ADDs 1–4, COM(17) 647

Summary and Committee's conclusions

6.1 This European Commission proposal would amend Regulation (EC) 1073/2009 on common rules for access to the international market for coach and bus services. It is part of the second phase of the Mobility Package—the European Commission's set of initiatives seeking to establish a more integrated and sustainable EU transport system. The objective of the proposal is to address shortcomings in the 2009 Regulation.

6.2 An ex-post evaluation carried out by the Commission identified shortcomings concerning:

- the failure of the inter-urban coach and bus sector to grow at a rate comparable to that of other transport modes and its continued decline in modal share over an extended period;
- the obstacles in national markets hindering the development of inter-urban coach and bus services;
- the lesser appeal to users of international regular services by coach and bus without competitive inter-urban services;
- the omission from the scope of the objectives of the 2009 Regulation of the problem of discrimination in access to terminals; and
- excessive administrative costs of entry.

6.3 The proposed amending Regulation aims to tackle these by, among other things:

- redefining the meaning of cabotage, in particular by removing the element of it being 'temporary';
- allowing operators to provide national services in another Member State;

- defining what a coach terminal is, and setting out the basis for non-discriminatory access to terminals;
- requiring Member States to set up a national regulatory body to ensure access to terminals and to decide on whether any public service contracts are jeopardised by the provision of any service where passengers are carried less than 100km as the crow flies;
- abolishing the requirement for a journey form on international occasional journeys; and
- adding a reporting obligation so that the Commission has reliable information from the Member States in order to produce a report to the Council and the European Parliament within five years of the date of application of the proposed amending Regulation.

6.4 **The Government informs us that it agrees with the Commission that amendments to existing rules can only be made at EU level. It also agrees that the proposal is consistent with the principle of subsidiarity.**

6.5 **We note that the Government is still considering its detailed position on the proposal and that it has made an initial assessment of the policy implications, namely that the proposal would require Member States to set up a national regulatory body, would require non-resident carriers to be authorised permitted cabotage, would have the potential to weaken the oversight provided by the Traffic Commissioners and may also make enforcement more difficult in the case of non-resident carriers as the enforcement agencies will be in another country.**

6.6 **Initial discussions at Working Group level in the Council indicate that other Member States have similar concerns. Furthermore, as other Member States have highly regulated markets, it is likely that the proposal will be significantly amended.**

6.7 **The Government's view is that the long term implications of the proposal will depend on the outcome of the exit negotiations and that the full net costs of all the elements of the proposal will, in due course, need to be appropriately assessed and estimated.**

6.8 **We therefore request:**

- **clarification as to how the Government intends to tackle the issue of enforcement if non-resident carriers will be regulated by enforcement agencies in another country;**
- **clarification as to whether the Government intends to create a new regulatory body or simply to modify the existing system;**
- **clarification as to whether the Government intends to accept liberalised terms of access for non-resident EU operators if the same terms are not reciprocated after exit; and**
- **that the Government inform us of any assessment it carries out with regard to the proposal's impact and costs for the UK.**

6.9 **We retain this proposal under scrutiny and request a response by 21 April 2018.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services: (39208), 14184/17 + ADDs 1–4, COM(17) 647.

Background

6.10 Regulation (EC) 1073/2009 lays down the provisions that undertakings intending to operate on the international road passenger transport market and on national markets other than the market of their Member State of establishment (cabotage operations) must comply with. It includes provisions on the documents to be issued to those undertakings by the Member State of registration (Community Licence) and by the authorising authority (Authorisation for a regular service). It sets provisions on the sanctions for infringements of those obligations as well as the provisions on co-operation between Member States.

6.11 An ex-post evaluation of the Regulation was carried out from 2015 to 2017 and concluded that the Regulation is only partly effective in achieving its original objective of promoting coach and bus services as a sustainable alternative to individual car transport. It found that the opening of national markets for regular services by coach and bus creates a critical mass of operators who then also introduce international services, resulting in a greater impact on the number of international routes and service frequencies than pan-European legislation alone. Further opening of national markets will strengthen the development of the international market for regular services, quite apart from any benefits for passengers making national journeys. The main problems identified were obstacles in national markets hindering the development of inter-urban coach and bus services and a low share of sustainable passenger transport modes.

The proposal[27]

6.12 The amendments in the proposal concern:

6.13 *Scope (Article 1)*—currently Article 1(4) includes national road passenger services for hire or reward operated on a temporary basis by a non-resident carrier within the scope of the Regulation. The proposal would amend this provision to include within the scope of the Regulation all regular services for hire and reward operated by a non-resident carrier.

6.14 *Definitions (Article 2)*—the proposal would amend point 2 to clarify that express services are to be considered as regular services. It would also amend point 7 to update the definition following the liberalisation of national regular services. Furthermore, the proposal would add new definitions of a terminal and of a terminal operator. Finally, the proposal would add a new definition of viable alternative to clarify which other terminal(s) a terminal operator should indicate to the carrier when it refuses access to its own terminal.

6.15 *Regulatory Body (Article 3a)*—the proposal would add a new Article requiring Member States to designate a Regulatory body which should be independent from any

27 European Commission Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services (COM(17) 647).

other public authority. The designated body may be a new or an existing body. The body should be able to obtain the information requested and enforce its decisions by means of appropriate penalties. Finally, the size of the Regulatory Body in each Member State should be proportionate to the level of road passenger transport activities in that Member State.

6.16 *Access to market (Article 5)*—the proposal would delete subparagraph five of Article 5(3) as it is considered that the requirement to communicate the names of carriers and their connection points en route to competent authorities has lost its relevance and generates an unnecessary administrative burden.

6.17 *Access to terminals (Article 5a)*—the proposal would add a new Article requiring that carriers are granted access rights to terminals on fair, equitable, non-discriminatory and transparent terms for the purpose of operating regular services. The conditions for access to terminals would be published.

6.18 *Procedure for granting access to terminals (Article 5b)*—the proposal would add a new Article to provide the procedure for accessing terminals. Applications for access would only be refused if there is a lack of capacity in the terminal. Decisions on applications for access would be taken within two months and contain a proper statement of reasons. Carriers would have the possibility to appeal decisions to the Regulatory Body. The decision of the Regulatory Body would be binding.

6.19 *Authorising procedure for the international carriage of passengers over a distance of less than 100 kilometres as the crow flies (Article 8)*—the proposal would amend Article 8 to provide the authorisation procedure for international regular services carrying passengers over a distance of less than 100km as the crow flies. Authorising authorities would be required to seek the agreement of other Member States where passengers are picked up and set down and are carried over distances of less than 100km. Authorisations would be granted unless rejection is justified under the clearly specified grounds. If the competent authorities cannot reach agreement on the authorisation the matter may be referred to the Commission. The Commission would be required to take a decision which would continue to apply until the authorising authority adopts its decision.

6.20 *Authorising procedure for the international carriage of passengers over a distance 100 kilometres or more as the crow flies (Article 8a)*—the proposal would add an Article 8a to provide the procedure for authorising international regular services carrying passengers over distances of 100km as the crow flies. The refusal of a new service could not be justified on the grounds that it compromises the economic equilibrium of a public service contract.

6.21 *Authorising procedure for national regular services (Article 8b)*—the proposal would add an Article 8b to provide the authorising procedure for national regular services. Authorisation for a new service carrying passengers over distance of less than 100km as the crow flies could be rejected if it compromises the economic equilibrium of a public service contract. The distance threshold may be increased to up to 120km if the new service is proposed to serve a place of departure and a destination already served by more than one public service contract.

6.22 *Decisions by authorising authorities (Article 8c)*—the proposal would add an Article 8c to specify the decisions of authorising bodies. It would provide for authorising authorities

to grant authorisations, grant authorisations with limitations, or reject authorisations. It would require that decisions refusing authorisations or granting authorisations with limitations be justified. It would also specify the grounds for rejecting an application.

6.23 *Limitation of the right of access (Article 8d)*—the proposal would add an Article 8d to provide the procedure for protecting public service contracts. Member States could reject applications for authorisations if they compromise the economic equilibrium of a public service contract. Only specified interested parties could request the regulatory body to conduct the economic analysis. The Regulatory Body could conclude the authorisation could be granted, subject to conditions, or rejected. The conclusions of the Regulatory Body would be binding.

6.24 *Control documents (Article 12)*—the proposal would delete Article 12(1) to (5) to abolish the journey form as a control document for occasional services to eliminate an unnecessary administrative burden.

6.25 *Local excursions (Article 13)*—the proposal would delete Article 13 as local excursions are liberalised under Article 15 making this Article redundant.

6.26 *Authorised cabotage operations (Article 15)*—the proposal would amend this Article to specify the requirement for regular services to be performed as part of a regular international service and deleting the prohibition of cabotage operations in the form of regular services being carried out independent of a regular service. Local excursions are an authorised cabotage operation and are covered by subparagraph (b).

6.27 *Control documents for cabotage operations (Article 17)*—the proposal would delete Article 17 so that journey forms are no longer required for cabotage operations in the form of occasional services. The control documents for special regular services are specified in Article 12(6).

6.28 *Inspections on the road and in undertakings (Article 19)*—the proposal would specify in Article 19(2) that carriers operating cabotage operations in the form of regular services are required to allow inspections as these services will be permitted to operate independent of operating international carriage of passengers.

6.29 *Reporting (Article 28)*—the proposal would lay down reporting obligations so that the Commission has consistent and reliable information from all Member States to enable it to monitor and evaluate the implementation and effectiveness of the legislation. Draft new paragraph 5 would provide that the Commission would report to the European Parliament and to the Council within five years after the date of application of the Regulation on the extent to which the Regulation has contributed to a better functioning road passenger transport market.

6.30 Finally, the proposal is accompanied by four Staff Working Documents:

- Impact Assessment on the proposal;
- Executive Summary of the Impact Assessment;
- Final Report on the ex-post evaluation of the 2009 Regulation; and
- Executive Summary of the Final Report.

The Government's Explanatory Memorandum of 20 December 2017[28]

6.31 The Parliamentary Under-Secretary of State at the Department for Transport (Jesse Norman) informs us that the Government agrees with the Commission that amendments to existing rules can only be made at EU level. The Government also agrees that the proposal is consistent with the principle of subsidiarity.

6.32 Although the Government is still considering its detailed position on the proposal, the Explanatory Memorandum provides an initial assessment of its policy implications.

6.33 Firstly, the proposal would require Member States to set up a national regulatory body. In Great Britain, the Traffic Commissioners are the regulators of the bus and freight industries and may be able to carry out the proposed additional roles subject to supplementary resourcing.

6.34 Secondly, the proposal would require non-resident carriers to be authorised permitted cabotage. The UK already has a liberalised market for longer distance national coach travel. However, the Government is concerned that the proposal would allow operators established in another Member State to compete in the domestic bus market without having to meet the conditions concerning the premises they use in the UK.

6.35 Thirdly, the proposal has the potential to weaken the oversight provided by the Traffic Commissioners. It may also make enforcement more difficult in the case of non-resident carriers on standards of road safety, environmental protection and driver's hours as the enforcement agencies will be in another country.

6.36 The Explanatory Memorandum states that initial discussions at Working Group level in the Council indicate that other Member States have similar concerns. Furthermore, as other Member States have highly regulated markets, it is likely that the proposal will be significantly amended.

6.37 The Government also has concerns regarding the Commission's Impact Assessment, which it will address in more detail in due course.

6.38 The Explanatory Memorandum notes that it would be necessary to modify primary and secondary legislation, principally, section 12 of the Public Passenger Vehicles Act 1981 and relevant provisions of the Transport Act 1985, the Greater London Authority Act 1999, the Transport Act 1999 (as amended by the Bus Services Act 2017), the Public Services Vehicles (Community Licences) Regulation 2011 and the Public Services Vehicles (Registration of Local Services) Regulations 1986.

Brexit implications

6.39 The Explanatory Memorandum states that the long term implications of the proposal will depend on the outcome of the exit negotiations.

28 Explanatory Memorandum from the Minister, DfT, to the Chairman of the European Scrutiny Committee (20 December 2017)

Financial implications

6.40 The Explanatory Memorandum notes that the full net costs of all the elements of the proposal will, in due course, need to be appropriately assessed and estimated.

6.41 It also notes that, in the UK, industry is required to cover the cost of regulation. Therefore, the cost of establishing any new regulatory body or modifying the existing system would need to be recovered from industry. This cost might be offset to an extent by the proposed removal of the form used for occasional international services.

Timeframe

6.42 The Council of Ministers has yet to discuss the proposal. The European Parliament appointed a Rapporteur on 16 January 2018.

Previous Committee Reports

None.

7 Second mobility package: clean vehicles

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

Summary and Committee's conclusions

7.1 This European Commission proposal would amend Directive 2009/33/EU on the promotion of clean and energy-efficient road transport vehicles. It is part of the second phase of the Mobility Package—the European Commission's set of initiatives seeking to establish a more integrated and sustainable EU transport system. The objective of the proposal is to increase the market uptake of clean, i.e. low- and zero-emission vehicles, in public procurement and hence to contribute to reducing overall transport emissions, and competitiveness and growth in the transport sector.

7.2 An ex-post evaluation of the 2009 Directive concluded that the Directive has not stimulated the public procurement of clean, energy-efficient vehicles. The key reasons were put down to the reduced scope—only considering vehicle purchases and not those leased or hired, the lack of a clear definition of a clean and energy-efficient vehicle, and complicated monetisation methodology.

7.3 The proposed amending Directive aims to remedy this by, among other things:

- widening the Directive's scope;
- setting a definition for clean light-duty vehicles based on a combined CO_2 and air pollutant emissions threshold;
- providing for the adoption of delegated acts to adapt the same approach for heavy-duty vehicles after CO_2 emission standards for such vehicles have been adopted at EU level in the future;
- setting minimum procurement targets at Member State level following the definition and in case of heavy-duty vehicles based on alternative fuels until the adoption of the delegated act; and
- introducing a reporting and monitoring framework and discarding the methodology for monetisation of external effects.

7.4 **The Government informs us that it considers the proposal to be justified with regards to subsidiarity and that it welcomes and supports the Commission's broad approach in the proposal to seek to use public procurement to stimulate market introduction of cleaner and more energy-efficient vehicles.**

7.5 **We note that the proposal would provide for the adoption of delegated acts by the Commission to adapt the same approach for heavy-duty vehicles after CO_2 emission standards for such vehicles have been adopted at EU level in the future.**

7.6 **The proposal would also introduce a reporting and monitoring framework, placing obligations on Member States.**

7.7 **The Government has indicated it will need to consider the workability of the proposal, its proportionality and appropriateness of defining vehicle performance, setting targets in this way and the potential impacts on public sector bodies, bus operators and private business affected. It has also stated that it will consider the Commission's impact assessment and consider preparing a checklist for EU proposals ahead of a decision on whether a Government impact assessment would add any value.**

7.8 **Additionally, the Government believes that it has not yet been possible to estimate the likely costs and benefits of the proposal for the UK as this depends on the impact that the requirement to factor in environmental costs will have on purchasing decisions and any resulting costs or savings in procuring vehicles; and the administrative burdens for public sector organisations and private sector suppliers on monitoring arrangements.**

7.9 **We therefore request:**

- **clarification as to whether the Government intends to implement any Commission delegated act under the proposed Directive after exit;**
- **clarification as to whether the Government intends to maintain any reporting obligations towards the Commission after exit; and**
- **the Government inform us of any assessment it carries out with regard to the proposal's proportionality, appropriateness, impact, costs and benefits for the UK.**

7.10 **We retain this proposal under scrutiny and request a response by 21 April 2018.**

Full details of the documents

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

Background

7.11 Directive 2009/33/EU aimed to stimulate an EU market for clean and energy-efficient road vehicles by requiring operational energy consumption and environmental impacts to be taken into account in the public procurement of road vehicles. It provided two options:

- setting technical specifications for energy and environmental performance; or

- using energy and environmental impacts as award criteria (with a further option of monetising those impacts).

7.12 Along with the majority of Member States, the UK allowed all options. The Directive aimed to allow those impacted to have flexibility to select the most effect way to comply.

7.13 An ex-post evaluation of the Directive commissioned in 2015 concluded that the Directive has not stimulated the public procurement of clean, energy-efficient vehicles. Public procurement has had little effect on market uptake of clean vehicles, a limited impact on reducing greenhouse gases and air pollutant emissions and no visible impact on competitiveness or growth. The key reasons were put down to the reduced scope—only considering vehicle purchases and not those leased or hired, the lack of a clear definition of a clean and energy-efficient vehicle, and complicated monetisation methodology.

The proposal[29]

7.14 The amendments in the proposal concern:

7.15 *Scope (Article 3)*—the proposal would extend the scope of the Directive to forms of procurement other than purchase, namely vehicle lease, rent or hire-purchase, and to public service contracts for public road transport services, special purpose road transport passenger services, non-scheduled passenger transport and hire of buses and coaches with driver according to their common procurement vocabulary codes listed in the Annex.

7.16 *Definitions (Article 4)*—the proposal would amend the definitions in Article 4(4) by adding a reference to the minimum procurement targets for Member States, listed in the Annex.

7.17 *Purchase of clean and energy-efficient road transport vehicles (Article 5)*—the proposal would revise the provisions for the purchase of clean vehicles to set out minimum targets for the procurement of clean vehicles, differentiated by Member State and by vehicle segment categories according to combined CO_2-air pollutant emission-thresholds (light-duty vehicles) and alternative fuels (heavy-duty vehicles), as included in the Annex and as set from the dates specified there.

7.18 *Methodology for the calculation of operational lifetime costs (Article 6)*—the proposal would delete this Article.

7.19 *Exercise of delegation of power (Article 7)*—the proposal would introduce a new Article 7 on the exercise of delegation of power.

7.20 *Committee procedure (Article 9)*—the proposal would adapt this provision on the exercise of implementing powers.

7.21 *Reporting and review (Article 10)*—the proposal would introduce reporting obligations for the Member States and align the Commission's reporting obligations with Member States' reporting, with intermediate reporting in 2023 and full reporting in 2026 on the implementation of the targets for 2025 and every three years thereafter.

29 European Commission Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/33/EU on the promotion of clean and energy-efficient road transport vehicles (COM(17) 653).

7.22 Finally, the proposal is accompanied by an Annex providing information for the implementation of minimum procurement targets for clean road transport vehicles in support of low-emission mobility in Member State and two Staff Working Documents:

- Impact Assessment (Part 1–4) on the proposal; and
- Executive Summary of the Impact Assessment.

The Minister's Explanatory Memorandum of 20 December 2017[30]

7.23 The Parliamentary Under-Secretary of State at the Department for Transport (Jesse Norman) informs us that the Government considers the proposal to be justified with regards to subsidiarity. The Government welcomes and supports the Commission's broad approach in the proposal to seek to use public procurement to stimulate market introduction of cleaner and more energy-efficient vehicles.

7.24 The Explanatory Memorandum notes that since the introduction of the Directive, manufacturers in the UK have told the Government that public authorities are now increasingly evaluating lifetime costs, indicating a shift in focus from considering only purchase cost.

7.25 The Government's recent Clean Growth Strategy set out the Government's intention to reduce emissions by transiting public sector vehicles to ultra low emissions vehicles. This includes an uptake requirement for central government and Environment Agency fleets, as well as a new revision to the Government Buying Standards.

7.26 The Explanatory Memorandum states the Government will need to consider the workability of the proposal, its proportionality and appropriateness of defining vehicle performance, setting targets in this way and the potential impacts on public sector bodies, bus operators and private business affected. It will also consider the Commission's impact assessment and consider preparing a checklist for EU proposals ahead of a decision on whether a Government impact assessment would add any value.

7.27 A targeted consultation was launched in February 2018 in the wider context of improving air quality and safety for road vehicles.

Financial implications

7.28 The Explanatory Memorandum indicates that it had not yet been possible to estimate the likely costs and benefits of the proposal for the UK. This depends on the impact that the requirement to factor in environmental costs will have on purchasing decisions and any resulting costs or savings in procuring vehicles; and the administrative burdens for public sector organisations and private sector suppliers on monitoring arrangements.

Timeframe

7.29 The Council of Ministers has yet to discuss the proposal. The European Parliament appointed a Rapporteur on 16 January 2018.

Previous Committee Reports

None.

30 Explanatory Memorandum from the Minister, DfT, to the Chairman of the European Scrutiny Committee (20 December 2017).

8 Managing EU migration and security databases

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs and the Justice Committees and the Committee on Exiting the European Union
Document details	Proposal for a Regulation on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
Legal base	Articles 74, 77(2)(a) and (b), 78(2)(e), 79(2)(c), 82(1)(d), 85(1), 87(2)(a) and 88(2) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Number	(38878), 10820/17, COM(17) 352

Summary and Committee's conclusions

8.1 A new EU Agency—"eu-LISA"—was established in 2012 to oversee the operational management of three EU information systems dealing with asylum, border management and law enforcement. Several new EU information systems are planned (see the Background section of this chapter for further details). The proposed Regulation would give eu-LISA responsibility for managing these systems. It would also repeal and replace the 2011 Regulation establishing eu-LISA, make some technical changes to implement the findings of a recent external evaluation, and empower the Agency to take the actions needed to make EU information systems for security, border and migration management fully interoperable by 2020 (this latter task being dependent on the adoption of a further legislative instrument).[31]

8.2 UK participation in eu-LISA is legally complex, bringing into play the UK's Title V (justice and home affairs) opt-in and Schengen opt-out Protocols. This is because some of the EU information systems which eu-LISA will manage build on parts of the Schengen rule book on border control and visa policy which do not apply to the UK and are not open to UK participation. Others are subject to the UK's Title V (justice and home affairs) opt-in or Schengen opt-out, meaning that the UK can decide whether or not to participate.

8.3 The Written Ministerial Statement issued by the Home Secretary (Amber Rudd) last November explains why the Government has decided to participate in the proposed eu-LISA Regulation:

> "The Government believe it is in the national interest to continue participating in eu-LISA, as this will maximise our influence over how it

31 See Council document 15119/17, summarised in our Sixteenth Report HC 301–xvi (2017–19), chapter 9 (28 February 2018).

> operates the IT systems that we take part in and for which it is responsible. We have therefore decided to opt in to the draft eu-LISA Regulation to the extent that it is not Schengen-building and not to opt out to the extent that it builds on the policing and judicial co-operation aspects of Schengen."[32]

8.4 The Minister for Policing and the Fire Service (Mr Nick Hurd) indicated that full UK participation in eu-LISA would depend on the Council adopting a further Decision based on Article 4 of the Schengen Protocol and that the Government would "keep under review the question of whether to seek a Council Decision".[33] Without a further Council Decision, UK participation would be limited to "eu-LISA's management of the systems that we take part in or have opted into". It would not extend to eu-LISA's management of new information systems in which the UK cannot take part—the EU Entry/Exit System and European Travel Information and Authorisation System.[34]

8.5 We anticipated that securing political support for a Council Decision, which would require the unanimous approval of EU Schengen States, might be difficult given the UK's decision to leave the EU in March 2019, but encouraged the Minister to pursue this option as it would make clear the basis on which the UK participated in eu-LISA and enhance legal certainty. We asked him to seek the views of other Member States and to report back to us on the outcome of these discussions. We also asked the Minister to:

- explain what partial participation in eu-LISA would mean in practical terms, for example how it would affect the UK's role on the Agency's Management Board and in its Advisory Groups; and
- clarify the Government's position on Articles 38 and 38a of the general approach agreed by the Justice and Home Affairs Council in December and the extent to which these provisions might limit UK participation in or cooperation with eu-LISA as a third country post-exit.

8.6 Finally, we challenged the Minister's continued reticence to set out in clear and unambiguous terms the importance the Government attaches to individual measures (such as the proposed eu-LISA Regulation and the EU information systems eu-LISA manages) as part of the UK's post-exit relationship with the EU, noting:

> "The European Council is expected to agree a new set of guidelines in March on the framework for the UK's future relationship with the EU. Before then, it expects the UK to 'provide further clarity on its position on the framework'.[35] We accept that 'the exact details of our future relationship will need to be agreed in the course of negotiations'. Given that these negotiations are now imminent, and that the Government will have to set out its position on individual measures if it is to influence the European Council guidelines and make headway in negotiations with the EU, we do not agree with the Minister that it would be 'wrong' to share this information with Parliament. We consider it would be wrong not to and will continue to press for greater transparency."[36]

32 See the Written Ministerial Statement issued on 2 November 2017, Hansard 32WS.
33 See the Minister's letter of 1 December 2017 to the Chair of the European Scrutiny Committee.
34 See the Minister's letter of 11 January 2018 to the Chair of the European Scrutiny Committee.
35 See the Guidelines agreed by the European Council on 15 December 2017.
36 See our Eleventh Report HC 301–xi (2017–19), chapter 4 (24 January 2018).

8.7 In his latest update, the Minister tells us that "the exact contours" of the UK's future relationship with the EU "will be a matter for negotiation" and that the Government's focus is on "the areas of cooperation that deliver the most significant operational benefit". He intends to explore the prospects for securing a further Council Decision "over the coming months", as well as the practical implications of participating in eu-LISA without a further Decision, should this arise in discussions with other Member States. He does not consider that Article 38 would limit participation in eu-LISA to third countries that are also part of the Schengen border-free zone, adding that UK participation post-exit would be "a matter for negotiation". He says that the type of cooperation envisaged in Article 38a is "not yet fully clear" but that it would appear to extend to "any third country, whether or not it has an arrangement to participate in EU tools".

8.8 **We are struck by the apparent lack of urgency in the Minister's response which suggests that securing a further Council Decision to enable the UK to participate fully in eu-LISA is not a priority for the Government. If it were, we would expect the Government to be initiating discussions with other Member States at the earliest opportunity, rather than "over the coming months", given that the UK will be leaving the EU on 29 March 2019.**

8.9 **In deciding to participate in the proposed Regulation, the Government must have considered the implications of failing to secure a further Council Decision and the impact this would have on the UK's role on the Agency's Management Board and in its Advisory Groups. We are disappointed that the Minister does not explain what partial participation in eu-LISA would mean in practical terms and ask him to do so now.**

8.10 **We are not as sanguine as the Minister that Article 38 would permit non-Schengen third countries to participate in eu-LISA. If this is the intention, then we think that more open language should be used which links third country participation in eu-LISA to participation in the EU information systems it manages, rather than to a much broader association with the Schengen rule book and related measures.**

8.11 **The Minister tells us that the Government will seek a future relationship with the EU that "provides for multilateral cooperation through EU agencies, as well as providing for practical operational cooperation and facilitating data-driven law enforcement". We are still no closer to understanding whether the Government intends eu-LISA and the EU information systems it manages to form part of that relationship. We reiterate our frustration at this lack of transparency in the Government's negotiating objectives in an area of policy that has important implications for the safety and security of British citizens and lies at the heart of parliamentary sovereignty.**

8.12 **Pending further information, the proposed Regulation remains under scrutiny. We look forward to receiving further progress reports on the negotiations. We draw this chapter to the attention of the Home Affairs and Justice Committees and the Committee on Exiting the European Union.**

Full details of the documents

Proposed Regulation on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, and amending Regulation (EC) 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) 1077/2011: (38878), 10820/17, COM(17) 352.

Background

8.13 It is envisaged that eu-LISA would be responsible for the operational management of eight existing or planned EU information systems. Four of these systems build on parts of the Schengen rule book on border control and visa policy which do not apply to the UK and are not open to UK participation. Others are subject to the UK's Title V (justice and home affairs) opt-in or Schengen opt-out, meaning that the UK can decide whether to participate.

8.14 As the following table shows, the UK is not entitled to participate in the Visa Information System (VIS), the border control elements of the Schengen Information System (SIS II), the EU Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS). The UK currently participates in the Dublin Regulation, Eurodac database, the European Criminal Records Information System (ECRIS) and the police cooperation aspects of SIS II. The Government has opted into new proposals to expand the Eurodac database but does not intend to take part in the new redistribution mechanism which is a key element of the Commission's Dublin reform proposals. The Government has also decided to participate in the Commission's proposed reform of SIS II in so far as it concerns police cooperation and in a recent proposal to establish a centralised EU information system—ECRIS-TCN—containing criminal records information on third country national offenders within the EU.

Existing information systems managed by eu-LISA	**Schengen or non-Schengen**	**UK position**
Visa Information System—VIS	Schengen	UK excluded
Schengen Information System—SIS II (border control component)	Schengen	UK excluded
Schengen Information System—SIS II (police cooperation)	Schengen	UK participates in existing SIS II and is also participating in the Commission's proposal to strengthen the law enforcement component of SIS II
Eurodac	Non-Schengen	UK participates in the existing Eurodac database. The UK has opted into the Commission's proposal to expand its scope
New information systems to be managed by eu-LISA	**Schengen or non-Schengen**	**UK position**
EU Entry/Exit System—EES	Schengen	UK excluded
European Travel Information and Authorisation System—ETIAS	Schengen	UK excluded

Dublin Regulation	Non-Schengen	UK participates in the current (Dublin III) Regulation. The UK has not opted into the proposed Dublin IV Regulation containing a new automated redistribution mechanism for asylum seekers
European Criminal Records Information System—extension to third country nationals (ECRIS-TCN)	Non-Schengen	UK participates in ECRIS and has opted into a supplementary proposal extending ECRIS to third country national offenders

8.15 The Government has completed some of the steps need to participate in the proposed eu-LISA Regulation by:

- opting into those parts of the Regulation dealing with non-Schengen EU information systems—Eurodac, Dublin and ECRIS-TCN—on the basis of the UK's Title V opt-in Protocol; and
- not opting out of those parts of the Regulation dealing with the police cooperation component of SIS II, as provided for in the Schengen Protocol.

8.16 To secure full participation in eu-LISA, the Government would also need to seek a further Council Decision, based on Article 4 of the Schengen Protocol, authorising the UK to participate in the provisions of the Regulation concerning the operational management of new information systems in which the UK is not entitled not take part—the EES and ETIAS.

The Minister's letter of 6 March 2018

8.17 We invited the Minister to seek the views of other Member States on the feasibility of securing a further Council Decision authorising the UK to participate fully in eu-LISA and to report back to us on the outcome of these discussions. We also asked him to explain what partial participation in eu-LISA would mean in practical terms, for example how it would affect the UK's role on the Agency's Management Board and in the Advisory Group.

8.18 The Minister responds:

> "Over the coming months, my officials will explore with other Member States the prospects of agreeing a Council Decision to confirm our full participation in this measure while we are EU members. I will, as requested, report back to the Committee on progress.
>
> "Without a Council Decision we would not be participating in the Regulation as a whole, as we would be excluded from those parts of it that

> deal with the new Schengen-building measures that we do not take part in. We will explore the practical implications of that situation, if it arose, in our conversations with Member States."

8.19 We noted that the UK would be a third country following its exit from the EU and sought the Minister's views on Article 38 and Article 38a of the proposed Regulation. Article 38 was amended by the Justice and Home Affairs Council when it agreed a general approach in December. It provides that participation in eu-LISA shall be open to "countries that have entered into agreements with the Union on their association with the implementation, application and development of the Schengen *acquis* and with Dublin and Eurodac-related measures". Since the Government has ruled out UK participation in the "Schengen border-free zone" post-exit, we asked the Minister whether the revised Article 38 was intended to limit participation in eu-LISA to the small number of third countries associated with Schengen, Dublin and Eurodac and exclude other third countries and, if so, whether the treaty the Government intended to seek on security, law enforcement and criminal justice cooperation with the EU post-exit could overcome this limitation on third country participation.

8.20 The Minister responds:

> "Article 38 as currently drafted states that participation in eu-LISA is open to non-EU countries that have entered into agreements with the EU to participate in the Schengen *acquis* and in Dublin and Eurodac-related measures. These are the only measures that eu-LISA will manage in which non-EU countries currently participate. We do not read the text as meaning that the UK would need to join the Schengen border-free zone in order to participate in eu-LISA. However, any participation in the Agency by the UK after Brexit would be a matter for negotiation."

8.21 Article 38a, which was inserted by the Council when it agreed a general approach, would enable eu-LISA to establish "cooperative relations" and "working arrangements" with relevant authorities in third countries. We asked the Minister to explain what sort of cooperation was envisaged, whether it would extend to a wider range of third countries than those covered by Article 38, and how useful it would be for the UK post-exit, particularly if there was no deal on security, law enforcement and criminal justice cooperation post-exit or the deal did not extend to eu-LISA.

8.22 The Minister responds:

> "It is not yet fully clear what sort of cooperation with third countries is envisaged by the new text at Article 38a, though it could include steps such as the exchange of best practice on the management of large-scale IT systems. Its precise nature would depend on the specific arrangements made with the third country (with the Commission's approval). In principle, the text appears to provide that arrangements could be reached with any third country, whether or not it has an arrangement to participate in EU tools."

8.23 Finally, the Minister sets out in familiar terms the Government's position on the UK's future relationship with the EU:

> "You ask about the role of individual JHA measures in our post-Brexit relationship with the EU. The future partnership paper on security, law enforcement and criminal justice that the Government published in September 2017 set out our intention to seek a relationship that provides for multilateral cooperation through EU agencies, as well as providing for practical operational cooperation and facilitating data-driven law enforcement. The exact contours of that relationship will be a matter for negotiation, but the Government have been clear that the focus should be on the areas of cooperation that deliver the most significant operational benefit."

8.24 The Minister undertakes to provide further updates as negotiations on the proposed eu-LISA Regulation progress.

Previous Committee Reports

Eleventh Report HC 301–xi (2017–19), chapter 4 (24 January 2018), Seventh Report HC 301–vii (2017–19), chapter 8 (19 December 2017) and First Report HC 301–i (2017–19), chapter 26 (13 November 2017).

9 Enhancing law enforcement cooperation and border control: strengthening the Schengen Information System

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee, the Justice Committee and the Committee on Exiting the European Union
Document details	(a) Proposal for a Regulation on the use of the Schengen Information System for the return of illegally staying third country nationals; (b) Proposal for a Regulation on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks; (c) Proposal for a Regulation on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters
Legal base	(a) Article 79(2)(c) TFEU, ordinary legislative procedure, QMV; (b) Articles 77(2)(b) and (d) and 79(2)(c) TFEU, ordinary legislative procedure, QMV; (c) Articles 82(1)(d), 85(1), 87(2)(a) and 88(2)(a) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(a) (38426), 15812/16, COM(16) 881; (b) (38427), 15813/16, COM(16) 882; (c) (38428), 15814/16, COM(16) 883

Summary and Committee's conclusions

9.1 At the end of 2016, the Commission presented a package of three proposed Regulations to improve the functioning of the Schengen Information System—SIS II—and strengthen border control and counter-terrorism efforts across the EU. The proposals are intended to close information gaps and enhance the exchange of information on terrorism, cross-border crime and irregular migration so that "in the future, no critical information should ever be lost on potential terrorist suspects or irregular migrants crossing our

external borders."[37] Three Regulations are needed to reflect differing degrees of Member State participation in Schengen but the Commission says they have been drafted to "work seamlessly together" to ensure the "comprehensive operation and use" of SIS II.[38] For this reason, we are holding all three proposals under scrutiny.

9.2 Our main focus of scrutiny is the proposed police cooperation Regulation—document (c)—as this is the only measure in which the Government has decided to participate. Announcing the decision last July, the Minister for Policing and the Fire Service (Mr Nick Hurd) told the House:

> "The proposed Police Cooperation Regulation will replace the legislation that currently governs SIS II's use for that purpose. The UK has participated in this aspect of SIS II since April 2015. Our law enforcement agencies benefit from this, for example by being able to detain at the border people who are wanted under European Arrest Warrants and to obtain intelligence from police forces across the EU on suspected criminals and security risks. The draft Regulation contains a number of proposals that would update SIS II's capabilities, for example allowing it to store a wider range of biometric data and permitting alerts to be created to protect children who are at risk of going missing. There are some changes we will seek, in particular to maintain Member States' control over when alerts are created, but the Government believes we will be in a better position to do this by not opting out and remaining full participants in the negotiation."[39]

9.3 The Minister made clear that the decision to continue to participate in the proposed police cooperation Regulation would "have no implications for our general opt out from the internal border-free zone established by Schengen".[40]

9.4 The proposed police cooperation Regulation would:

- require Member States to create alerts on individuals or objects connected with terrorist activity;
- introduce a new "inquiry check" to question terrorist and other criminal suspects;
- increase the range of biometric information held in SIS II and the ways in which it can be used to verify or establish identity (SIS II currently contains fingerprints and photographs—the proposal would add palm prints, facial images and, for limited purposes, DNA profiles if necessary to identify a missing person);
- establish a new category of alert on "unknown suspects or wanted persons" based on palm or fingerprints recovered from a crime scene involving the commission of a serious criminal or terrorist offence; and
- enable Member States to issue pre-emptive alerts for children considered to be at high risk of parental abduction (so authorities can act before a child is reported missing).

37 See the European Commission's press release on the proposed Regulations, issued on 21 December 2016, as well as its Fact Sheet and its infographic.

38 See p.3 of document (c).

39 See the Minister's Written Ministerial Statement of 20 July 2017, Hansard, 96WS.

40 Ibid.

9.5 The Council and the European Parliament each agreed their negotiating positions on the SIS II package in November 2017 and intend to reach a First Reading agreement. The Minister told us in December that the Council general approach on the proposed police cooperation Regulation was "broadly acceptable". He highlighted changes which would enable Member States to decide *not* to create an alert on individuals or objects connected with terrorist activity if to do so would be "likely to obstruct official or legal inquiries, investigations or procedures related to public or national security" as well as more flexible deadlines for providing follow-up information in response to a "hit" in SIS II ("*preferably* not later than 12 hours").

9.6 The Government nonetheless decided to vote against the Council general approach as it considered that:

- the conditions determining when an alert created for one purpose could be used for a different purpose were "overly restrictive"—a requirement for the prior authorisation of the Member State creating the alert in all circumstances (even in the event of an imminent threat) could put public security at risk; and
- clearer wording was needed to ensure that an alert entered in SIS II requesting "inquiry checks" (used to elicit information through questioning a suspect) and "specific checks" (involving searches) could only be carried out if permitted by national law.

9.7 Now that trilogue negotiations with the European Parliament are underway, there is every prospect that the SIS II package will be agreed (and each of the proposed Regulations formally adopted) before the UK leaves the EU on 29 March 2019. Implementing the necessary technical and operational changes to SIS II is expected to take longer, meaning that the SIS II package may not take effect until around 2021, after a post-exit transitional/implementation period (if agreed) has expired. The European Parliament is pressing for the SIS II package to take effect sooner, one year after the Regulations have been adopted. Although the Government has been unwilling to speculate on "what future cooperation we may have in relation to individual measures", we consider that the Government's decision to participate in the proposed police cooperation Regulation is intended to pave the way to some form of continued participation in SIS II post-exit.[41]

9.8 In our earlier Report (on 31 January), we examined the basis on which the UK might be able to retain the capability provided by SIS II following its exit from the EU. We noted that under existing EU rules, only EU Member States are entitled to participate in SIS II and data processed in SIS II cannot be transferred or made available to third countries.[42] Although four non-EU Schengen countries do participate in SIS II, there is no precedent for a third country outside the Schengen border-free zone to do so.

9.9 The Government has ruled out UK participation in the Schengen border-free zone post-exit[43] but considers that it is "in the clear interest of both the UK and European partners that we find a way to continue to cooperate and exchange this kind of information".[44] It

41 See the Minister's letter of 1 December 2017 to the Chair of the European Scrutiny Committee.

42 This would remain the case under Article 62 of the proposed police cooperation Regulation.

43 See the letter of 20 July 2017 from the Minister for Policing and the Fire Service (Mr Nick Hurd) to the Chair of the European Scrutiny Committee.

44 See the letter of 1 December 2017 from the Minister for Policing and the Fire Service (Mr Nick Hurd) to the Chair of the European Scrutiny Committee.

has said that it wishes to negotiate a new strategic treaty on security, law enforcement and criminal justice to take effect after the UK has left the EU. It is possible that this treaty could establish bespoke structures and procedures to associate the UK with parts of the EU's justice and home affairs rule book—including SIS II—without requiring changes to third country provisions in EU secondary legislation (see the 'Background' section for further details). As, however, we have previously noted, the Government will need to demonstrate why an exception should be made to allow the UK to continue to participate in SIS II post-exit once it is outside the EU and Schengen and no longer bound by EU rules on free movement.

9.10 Our earlier Report raised the possibility that the Government's decision not to incorporate the EU Charter of Fundamental Rights in domestic law might make it difficult to demonstrate that the UK ensures a standard of protection essentially equivalent to that guaranteed within the EU and create scope for future divergence in data protection laws.[45] We suggested that this could have implications for UK participation in EU information-sharing systems such as SIS II post-exit.

9.11 We sought further information on aspects of the general approach agreed by the Council in November and on the implications for the UK of failing to secure a post-exit agreement with the EU encompassing SIS II. We also asked the Minister when he expected the SIS II package to be formally adopted, whether he judged that it was likely to take effect during any transitional/implementation period agreed with the EU and how this would affect the Government's preparations for implementing the legislation.

9.12 In his latest update, the Minister expresses confidence that the Government will be able to negotiate a new post-exit treaty "to underpin the future internal security relationship between the UK and the EU". Whilst he does not "want or expect a no deal outcome", he says that "we could cope" and that there are "other ways of working together", such as through Interpol. He anticipates that a political agreement may be reached on the SIS II package before the end of June, with formal adoption following in the autumn. He considers that it would be "impractical" to fix in advance the date on which the changes to SIS II should take effect, since this would create a risk that some Member States would not be ready in time. He supports the Commission's approach of a phased implementation once all the necessary technical adjustments and testing have been completed.

9.13 **The Minister confirms that it is unclear whether the proposed changes to SIS II will take effect during or after a transitional/implementation period (if agreed), but he does not tell us how this uncertainty will affect the Government's preparations for implementing the police cooperation Regulation. These preparations will doubtless depend also on the scope and content of the treaty on security, law enforcement and criminal justice cooperation which the Government wishes to negotiate with the EU. As negotiations on the framework for the future relationship between the EU and the UK are imminent, we expect the Minister to tell us in clear and unambiguous terms whether the Government intends the police cooperation elements of SIS II to be amongst the measures included in the future EU/UK security treaty. This information would provide some much-needed context for understanding why the Government has chosen to participate in a measure which may not apply, or only apply for a short period, during a post-exit transitional/implementation period.**

45 See clause 5(4) of the EU (Withdrawal) Bill.

9.14 **We look forward to receiving an update on the progress of trilogue negotiations and the expected timetable for agreeing and formally adopting the proposed Regulations. As all three proposals form part of a SIS II reform package and remain under scrutiny, we ask the Minister in his next update to explain how documents (a) and (b) would affect UK citizens once they become third country nationals following the UK's exit from the EU. We draw this chapter to the attention of the Home Affairs Committee, the Justice Committee and the Committee in Exiting the European Union.**

Full details of the documents

(a) Proposal for a Regulation on the use of the Schengen Information System for the return of illegally staying third country nationals: (38426), 15812/16, COM(16) 881; (b) Proposal for a Regulation on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006: (38427), 15813/16, COM(16) 882; (c) Proposal for a Regulation on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU: (38428), 15814/16, COM(16) 883.

Background

The other elements of the SIS II package—documents (a) and (b)

9.15 Document (a)—the proposed returns Regulation—would create a new alert category for third country (non-EEA) nationals who have been issued with a return decision under the procedures set out in the EU Return Directive. The new alert is intended to increase the detection of illegally staying third country nationals and support EU-wide enforcement of return decisions. The Government decided not to opt in to the proposed Regulation since it would also have to opt in to the EU Return Directive and considered that this would "pose a risk to national control over how we remove people with no right to be here, and would place our returns process under the jurisdiction of the Court of Justice of the European Union".[46]

9.16 Document (b)—the proposed border checks Regulation—would require Member States to enter an alert in SIS II whenever they issue a Schengen-wide entry ban under the EU Return Directive. The Commission believes that increasing the visibility of entry bans should make their enforcement more effective at the EU's external borders. The UK is not entitled to participate in this proposal as it builds wholly on parts of the Schengen rule book on border controls which do not apply to the UK.

Models for UK participation in SIS II post-exit

9.17 Iceland, Norway, Switzerland and Liechtenstein are the only third countries that participate in SIS II. Their agreements with the EU identify the Schengen rules that these non-EU Schengen countries are required to implement and apply and establish special

46 See the Minister's letter of 20 July 2017 to the Chair of the European Scrutiny Committee.

structures and procedures to enable them to keep pace with changes to the Schengen rule book.[47] The agreements operate in a way that avoids the need to make extensive changes to provisions in EU secondary legislation limiting participation to EU Member States.

9.18 The agreements do not give the Court of Justice direct jurisdiction to resolve any disputes concerning their interpretation or application. The Court nevertheless has an important indirect role. The agreements include provisions which seek to ensure "as uniform an application and interpretation as possible" of common Schengen rules (based on the regular mutual transmission of relevant case law) and to avert any "substantial difference" in the case law of the Court of Justice and the courts of the non-EU Schengen countries. A failure to do so can lead to the termination of the agreements.

9.19 There are other models in which the Court of Justice has a more direct role for matters involving a high degree of regulatory approximation. For example, dispute settlement procedures in EU agreements with Ukraine, Georgia and Moldova involve an arbitration panel which is required to seek a ruling from the Court of Justice on questions concerning the interpretation of relevant EU law provisions. In these cases, the Court's ruling is binding on the arbitration panel and the ruling of the arbitration panel must be unconditionally accepted by the Parties.[48] These examples illustrate the wide spectrum of possible outcomes on the role and jurisdiction of the Court of Justice.

The Minister's letter of 6 March 2018

9.20 The Minister notes the concerns raised in our earlier Report about the UK's relationship with SIS II post-exit and the implications of not incorporating the EU Charter of Fundamental Rights (including Article 8 on the protection of personal data) in domestic law. He observes:

> "We are confident that continued cooperation between the UK and EU on security, law enforcement and criminal justice is in the interests of both sides. As reiterated by the Prime Minister in her recent speech in Munich, the Government has proposed a new Treaty to underpin the future internal security relationship between the UK and the EU."

9.21 Should the Government be unable to agree a new treaty with the EU encompassing SIS II, we asked the Minister to explain whether the UK would be able to obtain the information contained in SIS II alerts on a bilateral basis from individual Member States and what processes the UK would need to follow. The Minister responds:

> "We do not want or expect a no deal outcome. However, a responsible government should prepare for all potential outcomes, including the unlikely scenario in which no mutually satisfactory agreement can be reached. No one wants that outcome, and both the UK and the EU would lose out. But we could cope. We have other ways of working together, for example via Interpol that provide secure channels for information sharing."

47 For Iceland and Norway, see the Agreement associating them with the implementation, application and development of the Schengen *acquis* and Council Decision 1999/437/EC. For Switzerland, see the Agreement associating Switzerland with the implementation, application and development of the Schengen *acquis* and Council Decision 2008/146/EC. For Liechtenstein, see the Protocol on Liechtenstein's accession to the EU-Switzerland Agreement.

48 See Articles 402–3 of the Association Agreement with Ukraine, Articles 321–2 of the Association Agreement with Moldova and Articles 266–7 of the Association Agreement with Georgia.

9.22 We noted that general approach agreed by the Council in November on the proposed police cooperation Regulation would extend the existing category of alerts on missing persons to include alerts on "vulnerable persons who need to be prevented from travelling for their own protection". We asked the Minister whether he supported this change and how he envisaged it being applied. He confirms that he does:

> "The Government agrees that Member States' competent authorities should be able to request that alerts be created for 'vulnerable persons who need to be prevented from travelling for their own protection'. In the UK, we think this would be valuable in cases where a Court has ordered that an individual should not be taken out of the jurisdiction because that person is at risk of being subjected to abuses such as forced marriage or female genital mutilation."

9.23 The Minister says that trilogue negotiations are continuing and that it is "feasible" a political agreement will be reached during the current Bulgarian Presidency which ends in June. He continues:

> "If that happened, the texts would be likely to be adopted formally some time in the autumn. As the Committee notes, the date on which the changes would take effect is subject to negotiation in trilogue.
>
> "We support the Commission's initial proposal (also endorsed by the Council in the General Approach) that the new Regulations should apply when all Member States have made the required technical adjustments and when eu-LISA (the EU Agency that is responsible for the central operation of SIS II) has completed all the necessary testing. Having a fixed date on which the changes will take effect creates a risk that some Member States will not be ready then. This could mean that those countries were excluded temporarily from SIS II, which would have implications for the internal security of the EU, or that Member States needed to operate the old and new systems in parallel, which would be impractical."

9.24 Finally, the Minister undertakes to provide "a wider update on the trilogue negotiations when they are more advanced" and have addressed the issues raised in our earlier Report—the provisions on proportionality in Article 21 (which determine how much discretion a Member State has to create an alert on a terrorist suspect), on "specific checks" and "inquiry checks" in Article 37, and on purpose limitation in Article 53.

Previous Committee Reports

Sixth Report HC 301–vi (2017–19), chapter 1 (13 December 2017), First Report HC 301–i (2017–19), chapter 1 (13 November 2017) and Thirtieth Report HC 71–xxviii (2016–17), chapter 1 (1 February 2017).

10 Cross-border parcel delivery services

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Regulation of the European Parliament and the Council on cross–border parcel delivery services
Legal base	Article 114; ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(37821), 9706/16 + ADDs 1–6, COM(16) 285

Summary and Committee's conclusions

10.1 On 1 June 2016 the European Commission proposed a Regulation[49] to tackle the high prices consumers and small businesses pay for cross-border parcel delivery services within the EU, which act as an impediment to cross-border trade.

10.2 On 31 May 2017 a General Approach[50] was agreed in the Council during the General Election period before the Committee had cleared the file from scrutiny, as a result the Government abstained from voting. The General Approach largely reflected UK interests, narrowing its scope, and deleting the more onerous provisions, particularly Article 6, which would have mandated access, on non-discriminatory terms, to universal service providers' networks for third party delivery operators.

10.3 On 31 January 2018 the Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy (Andrew Griffiths) provided the Committee with an update[51] on the outcome of trilogue negotiations. In his letter, the Minister summarises the key issues in trilogues and concludes that the final text is acceptable to the Government. The Minister also requests clearance of the proposal from scrutiny, as the proposal is expected to be cleared at one of a number of Councils in the near future.

10.4 **The provisional agreement between the Parliament and the Council on the cross-border parcel delivery Regulation is broadly in line with the Council's General Approach, which was supported by the Government. We note the Minister's assessment that the text "broadly meets the Government's aims for the negotiation of the file", "removes the most burdensome aspects of the original text", and "strikes the right balance between improving the information available to consumers and SMEs sending parcels across borders and minimising burdens for businesses".**

10.5 **We note that the intensity of regulatory intervention is significantly lower than was originally envisaged by the Commission: providers are not required to submit data regarding terminal rates,[52] and there is no longer any provision that access to negotiated**

49 European Commission, Proposal for a Regulation of the European Parliament and the Council on cross–border parcel delivery services COM(2016) 285 final.

50 Council of the European Union, Proposal for a Regulation of the European Parliament and of the Council on cross-border parcel delivery services—General approach.

51 Letter from the Minister, BEIS, to the Chairman of the European Scrutiny Committee (31 January 2018).

52 Payments from the originating universal service provider to the destination universal service provider for the costs of cross-border parcel delivery services in the destination Member State.

terminal rates must be non-discriminatory. The chief effect of the Regulation in its final form is to improve price transparency by requiring providers within the scope of the Regulation to submit data on tariffs which the Commission will publish on a central web-site, enabling consumers to make comparisons. National regulatory authorities (NRAs) are also given the power to conduct affordability assessments which they must share with the Commission, which will publish them in a non-confidential format. These measures are intended to lead to increased transparency and lower prices over time.

Brexit implications

10.6 **On Brexit, we consider that the impact of non-participation in the EU Cross Border Parcel Delivery Services Regulation is likely to be limited. The UK's implementation of the EU Postal Services Directive[53] already empowers Ofcom to collect data on cross border parcel delivery services and to conduct affordability checks, and the Government has suggested that it intends to retain the Regulation in some form in domestic legislation post-withdrawal. Although the Minister indicates that the UK is unlikely to continue to submit data to the Commission for use on its portal, price comparison websites currently provide UK consumers with similar functionality. Outbound single piece parcel deliveries from the UK to the EU are therefore unlikely to be significantly affected. Conversely, EU27 NRAs will no longer be required to submit data and conduct affordability checks for EU27-UK deliveries, meaning that this data will no longer be collected on the Commission's website, which could in theory lead to British consumers posting parcels from the EU27 to the UK (e.g. expats, holidaymakers) incurring higher prices than they would have, if the anticipated increase in competitive pressure the portal is expected to generate does not materialise, although we note that this hypothetical negative impact would affect more EU27 than UK citizens. In the longer term, the increased price transparency that will result from the data collected by the Commission could, following the review proposed for 2020,[54] lead to a regulation of prices by the Commission. Outside the Digital Single Market, UK consumers would not automatically benefit from any reductions this would lead to, but the Government could regulate tariffs for deliveries from the UK to the EU27 if it chose to.**

10.7 **Although the implications of non-participation in the EU Cross Border Parcel Delivery Regulation are unlikely to be great, the wider implications of leaving the EU for cross border parcel delivery services are likely to be significant. Leaving the customs union and the single market will, by default, result in customs duties, border control formalities, and import VAT applying to goods bought online by UK consumers from EU businesses (and vice versa). These changes would lead to slower delivery times and increased costs for businesses and consumers. The question is to what extent the future relationship will be able to mitigate these negative impacts.**

10.8 **In terms of how the Government proposes to treat the Regulation post-withdrawal, the Minister clarifies that the Government intends to retain it in UK law**

53 Directive 97/67 (EC) of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as subsequently amended.

54 The Commission will take stock of progress made as a result of the regulation in 2020 and assess if further measures are necessary.

but to use powers conferred by the EU Withdrawal Bill to modify the Regulation where necessary—for example, the Minister questions whether it would be appropriate for Ofcom to continue to send prices provided by Royal Mail or details of any affordability assessments to the Commission for publication. One point of particular interest will be whether the Government chooses to retain the wider range of service providers who have to submit data to Ofcom under the Regulation.

10.9 **The Minister states that any future UK-EU cooperation on this issue will be settled as part of negotiations regarding the future relationship. However, it is not clear what form this cooperation could take, if the Government does not wish to provide the Commission with data on tariffs as required under the Regulation.**

10.10 **We now clear the proposal from scrutiny.**

Full details of the documents

Proposal for a Regulation of the European Parliament and the Council on cross–border parcel delivery services: (37821), 9706/16 + ADDs 1–6, COM(16) 285.

Background

10.11 The original Commission proposal included the following elements:

- a requirement for all parcel delivery providers with over 50 employees to submit to national regulatory authorities a limited set of information annually, including annual turnover, the number of employees and the number of parcels handled;
- an obligation for universal service providers to submit their tariffs and terminal rates[55] to national regulators, who will in turn provide the information to the Commission for publication on a dedicated website;
- national regulatory authorities would make an assessment of the "affordability" of the tariffs applied by universal service providers,[56] requesting further information or justification where appropriate, and make a non-confidential version of that assessment available to the Commission, which would, in turn, publish the assessment on a dedicated website;
- a requirement that access to negotiated terminal rates should be non-discriminatory;
- penalties for infringements of the Regulation; and
- an evaluation every four years of the impact of the Regulation, including whether the affordability of cross-border postal delivery services has improved.

55 Payments from the originating universal service provider to the destination universal service provider for the costs of cross-border parcel delivery services in the destination Member State.

56 Assessment of affordability will include domestic price comparison and any application of a uniform tariff to two or more Member States, regardless of the specific costs incurred.

10.12 The Government's Explanatory Memorandum of 15 June 2016[57] indicated that it supported the proposal because cross-border parcel delivery played an important role in facilitating the digital economy and building the Single Market. It considered that the proposal would help to improve transparency for consumers, help small e-retailers get the best deal on parcel delivery and remove barriers to competition. The Government said that it supported EU-level action because "the establishment of a clear and harmonised framework of cross-border parcel delivery services within the EU will require action at EU level and cannot be achieved by Member States on their own".

10.13 On 6 July 2017[58] the Minister wrote to inform the Committee that the Council had agreed a General Approach, with the Government abstaining because the Committee had not received notification of the proposed vote in sufficient time prior to the General Election for it to grant the Government a scrutiny waiver. The Minister provided a summary of the principal changes that had been made, and concluded "overall, the draft Regulation is now in a much better place than it was originally" but emphasised that the Government retains concerns, particularly "with the provision of information (Article 3)."

10.14 In our report of 22 November 2017[59] we asked that the Minister provide the Committee with an account of how the European Parliament position differed from the Council's General Approach in relation to affordability checks and any other salient points; whether, based on the proposed text of the Regulation that the Presidency had agreed, the UK was likely to want to apply the terms of the legislation after the UK leaves the EU; and whether trilogue negotiations are expected to commence during the Estonian Presidency.

The Minister's letter of 28 November 2017[60]

10.15 On 28 November 2017 Parliamentary Under Secretary of State for the Department for Business, Energy and Industrial Strategy (Margot James) provided the Committee with an update on progress of the file in the European Parliament.

10.16 The Minister stated that:

- in broad terms, the Parliament's proposed amendments supported UK objectives, particularly in terms of reducing burdens on national regulatory authorities and postal operators in Article 3 (Information Requirements) and Article 5 (affordability assessment);
- the Parliament introduced a new Article 6(a) that required retailers that delivered products to consumers based in another Member State to provide upfront delivery information and details of complaint handling processes of the retailer and the parcel delivery operator; and
- Member States discussed the European Parliament's proposals at a Working Party on 8 November, and questioned how the Parliament's proposed Article 6(a) added value.

57 Explanatory Memorandum from the Minister, BEIS, to the Chair of the European Scrutiny Committee (15 June 2016).
58 Letter from the Minister, BEIS, to the Chairman of the European Scrutiny Committee (6 July 2017).
59 Second Report HC 301–ii (2017–19) chapter 7 (22 November 2017).
60 Letter from the Minister, BEIS, to the Chairman of the European Scrutiny Committee (28 November 2017).

10.17 In response to this letter, we wrote to the Minister asking for an update on the outcome of trilogue negotiations as well as further clarification of the implications of exiting the EU for this proposal.

The Minister's letter of 31 January 2018[61]

10.18 The Minister (Andrew Griffiths) states that the final proposal strikes a better balance having removed a number of the most burdensome aspects of the original text. These include:

- the deletion of Article 6, which would have mandated access to universal service providers' networks for third party delivery operators;
- removing disclosure of terminal rates paid between national postal operators which is commercially confidential information;
- carving out retailers' in-house delivery services from scope of the Regulation;
- limiting the scope of Article 5, the affordability assessment of cross-border delivery prices, to national universal service products only, and giving national regulators discretion over which, if any, universal service products it chooses to put through an affordability assessment;
- extending the dates for submitting data from end-April to end-June meaning that the UK's data would be up to date, rather than out of date at the point of submission due to differing financial years; and
- curbing some of the more onerous elements of the Council's text on information requirements of operators' sub-contractors in Article 3.

10.19 The Minister states that the European Parliament's new draft Article 6(a), requires traders, "where possible and applicable", to provide consumers with information at the pre-contractual stage about cross-border delivery options and charges, as well as their own complaints handling policies in this regard. The Minister states that the Article was challenged in negotiations and its final form is much less prescriptive than the initial proposal.

Brexit implications

10.20 In response to the Committee's questions, the Minister states that:

- the European Union (Withdrawal) Bill will convert this Regulation at the point of exit so that it will become part of the body of retained EU law;
- given the cross-border nature of this file, the UK's future relationship will be subject to the sensitivities of the UK negotiation position, to be settled as part of the negotiations;
- some elements of the Regulation that may no longer be relevant once we leave the EU: for example, in the absence of a withdrawal agreement (that provided for it to do so), the need for Ofcom to send public prices provided by Royal

61 Letter from the Minister, BEIS, to the Chairman of the European Scrutiny Committee (31 January 2018).

Mail or details of any affordability assessments it carried out to the Commission for publication "would represent a one-sided relationship and it would be an option open to Ministers to use the powers in the bill to change it". The Minister therefore emphasises that the Government will be considering which elements of the Regulation will need to be amended;

- in the absence of any agreement to share information, UK consumers and businesses would still be able to source published list price details of parcel delivery services by both UK and EU operators, including through the Commission's proposed online portal; and
- postal services have featured in a number of EU Free Trade Agreements with third countries, which have typically sought to protect the scope of national universal service obligations and ensure free and fair competition.

10.21 A number of EU exit implications not mentioned by the Minister include:

- EU27 NRAs will, in the absence of provisions in the UK-EU future relationship, no longer be required to collect data for deliveries from the EU27 to the UK;
- The Commission will no longer publish this data on its central online portal; and
- EU27 NRAs will also, in the absence of provisions in the UK-EU future relationship, no longer be required to conduct affordability checks on deliveries to the UK.

10.22 There are also wider implications of leaving the EU for cross border parcel delivery. Leaving the customs union and the single market will result in customs duties, border control formalities, and import VAT applying to goods bought online by UK consumers from EU businesses (and vice versa), which is likely to lead to slower delivery times and increased costs for businesses and consumers.

10.23 EU business has produced an analysis ("How will Brexit affect parcel delivery between the UK and Europe?")[62] which summarises these impacts. ParcelHero Group, which specialises in online parcel delivery, has produced an "industry report"[63] which considers the implications specifically for the parcel delivery sector. It concludes that:

> "Increased delivery fees and higher import costs following the UK's exit from the EU will hit SMEs and start-ups particularly hard; and add significant complication and increased expense for UK internet retailers and online marketplace traders doing business with the EU. What might look like an exit could in fact become a wall between the UK and EU.
>
> "Were the UK not to have immediate membership of a group such as the European Economic Area (EEA), or to have Free Trade Agreements (FTAs) with the EU in place at the time it exits from the Union, duties would also be payable at EU borders. Where any duty is applicable on an item, the average is between 5% and 9%—depending on the kind of item being bought or imported.

62 EUbusiness, How will Brexit affect parcel delivery between the UK and Europe? (19 September 2017).
63 ParcelHero Industry Report, Delivering Brexit (21 December 2015).

> "Further, different rates of VAT apply in different EU member states when trading with countries outside the EU: ranging from 17 to 27%. VAT would also have to be paid separately, and include the cost of the actual shipping and insurance; and would only be reclaimable by those senders who are VAT registered.
>
> "Finally, delivery companies will typically charge around £15 in administrative 'customs clearance' fees.
>
> "Bringing these extra transport costs, duties and taxes all together is not entirely straightforward but an easy rule of thumb (advocated by eBay and MoneySavingExpert.com) is that the charges for delivery, customs and VAT will add around 30%-33% to the price listed when being imported from a non-EU country. This means a typical item that cost £150 will cost around £195 once Britain is outside the EU."

10.24 We specifically examined the implications of Brexit for VAT in our report on 6 December 2017.[64]

Previous Committee Reports

Second Report HC 301–ii (2017–19) chapter 7 (22 November 2017); Fifteenth Report 71–xiii (2016–17), chapter 1 (26 October 2016); Seventh Report HC 71–v (2016–17), chapter 5 (6 July 2016). On the subject of VAT, see Fourth Report HC 301–iv (2017–19) chapter 9 (6 December 2017).

64 Fourth Report HC 301–iv (2017–19) chapter 9 (6 December 2017).

11 Endocrine disruptors in plant protection and biocidal products

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Environmental Audit Committee
Document details	(a) Commission Communication on endocrine disruptors and the draft Commission acts setting out scientific criteria for their determination in the context of EU legislation on plant protection products and biocidal products; (b) Proposed Commission Regulation setting out scientific criteria for the determination of endocrine-disrupting properties and amending Annex II to Regulation (EC) 1107/2009; (c) Proposed Commission Delegated Regulation setting out scientific criteria for the determination of endocrine-disrupting properties pursuant to Regulation (EU) No 528/2012
Legal base	(a)—; (b) Regulation (EC) 1107/2009; (c) Regulation (EU) 528/2012
Department	Environment, Food and Rural Affairs
Document Numbers	(a) (37880), 10442/16 + ADDs 1–17, COM(16) 350; (b) (37935), C(2016) 3751; (c) (37936), C(2016) 3752

Summary and Committee's conclusions

11.1 Because biocidal products (BPs)[65] and plant protection products (PPPs)[66] used to control harmful or unwanted organisms can in turn have harmful effects themselves, their use is controlled by EU legislation aimed at reducing any hazard to human health, animals or the environment. Although most of the hazard criteria are well established, this is not the case for endocrine disrupting chemicals (EDCs)—substances with the potential to affect hormonal systems. EDCs are banned under the legislation, with certain exceptions which are very narrow for PPPs and somewhat broader for BPs. Interim criteria to identify EDCs were included in the relevant EU legislation, with a view to the Commission establishing definitive criteria by December 2013. Since then, there has been considerable scientific and political debate on the criteria to determine what constitutes an EDC, and it was only in 2016 that the Commission set out its approach.

11.2 The Minister for Agriculture, Fisheries and Food (George Eustice) has written to update the Committee on discussions among Member States and to provide an impact assessment. He notes that the Government is content with the criteria agreed for EDCs in both PPPs and BPs, but that the UK has abstained on the revised rules for PPPs as an

65 Products which control harmful or unwanted organisms through chemical or biological means, such as disinfectants, wood preservatives and insect repellents.

66 Plant protection products are also known as pesticides, used to control pests, weeds and diseases. Examples include insecticides, fungicides, herbicides, molluscicides and plant growth regulators.

original proposal to allow those EDCs posing a negligible risk—already permitted for BPs—was removed from the text and will be brought forward at a later stage. The Minister reports that stakeholders regard the criteria agreed as an improvement, but that they also wish to see the proposal to allow the use in PPPs of EDCs posing a negligible risk to be agreed.

11.3 **The Government's assessment of the potential impact of the proposals draws attention to the health and environmental benefits as well as the possible economic costs. We considered the broader question of the sustainable use of pesticides at our meeting of 10 January 2018, noting that pesticides regulation is an example of the potential opportunities presented by the UK's exit from the European Union. We observed too, however, that the challenge of addressing environmental, health and agricultural considerations would remain post-Brexit.**[67]

11.4 **We have identified as relevant the Prime Minister's announcement in her Mansion House speech that the UK would seek associate membership of the European Chemicals Agency. Any such arrangement could have implications for the UK's flexibility regarding domestic rules post-Brexit on biocidal products in particular as such products fall within the remit of the Agency. We accept, though, that no conclusions can be drawn on this matter until negotiations are at a more advanced stage.**

11.5 **Regarding the specific documents under scrutiny, we note that a satisfactory conclusion has been reached on new scientific criteria for endocrine-disrupting chemicals in both plant protection products and biocidal products. A separate proposal is now expected to allow the use in plant protection products of EDCs posing a negligible risk. We will consider that proposal once published and now clear these documents from scrutiny. We draw the documents to the attention of the Environmental Audit Committee given that Committee's interest in post-Brexit chemicals regulation.**

Full details of the documents

(a) Commission Communication on endocrine disruptors and the draft Commission acts setting out scientific criteria for their determination in the context of EU legislation on plant protection products and biocidal products: (37880), 10442/16 + ADDs 1–17, COM(16) 350; (b) Draft Commission Regulation setting out scientific criteria for the determination of endocrine-disrupting properties and amending Annex II to Regulation (EC) 1107/2009: (37935), C(2016) 3751; (c) Draft Commission Delegated Regulation setting out scientific criteria for the determination of endocrine-disrupting properties pursuant to Regulation (EU) No 528/2012: (37936), C(2016) 3752.

Background

11.6 The Biocidal Products Regulation (EU No. 528/2012) and the Plant Protection Products Regulation (EC No. 1107/2009) contain important safeguards to ensure that the respective products can be used without causing unnecessary harm to human health, animals or the environment.

11.7 Each Regulation operates in two stages. "Active substances" are first assessed at EU level for their efficacy and any potential risks they might pose to human health, animals

67 Ninth Report HC 301–ix (2017–19), chapter 9 (10 January 2018).

or the environment: and, where an active substance passes that assessment, companies can then apply for a formulated product containing it to be authorised. Each Regulation also provides that active substances presenting certain types of hazard are not normally allowed for use in products, although there some exceptions, those under the biocides legislation being relatively broad (and based on negligible risk, essential use or socio-economic considerations), whilst those under plant protection products legislation are a good deal narrower (allowing exceptions based on "negligible exposure" or, in certain situations and under strict conditions, a serious danger to plant health).

11.8 Most of the hazard criteria—for example, those for carcinogenicity—are well established. However, this is not the case for endocrine disrupting chemicals (EDCs) which have the potential to affect hormonal systems, and both the Biocidal Products Regulation and the Plant Protection Products Regulation were adopted with interim criteria to identify EDCs, with the Commission being given the task of establishing definitive criteria by December 2013.

11.9 The UK Government was not supportive of the provisions for endocrine disruptors in the original PPPs Regulation, considering that the interim criteria for identifying endocrine disruptors were not scientifically rigorous. The Government also considered that the lack of any provision to allow the use of an endocrine disruptor even when this would pose a low risk was disproportionate.

11.10 The Commission's documentation presented the Commission's proposals to define EDCs. The proposal on EDCs in PPPs would also have allowed the use of endocrine disruptors assessed as posing negligible risk, broadening the exemption for negligible exposure that is currently written into the legislation. The same issue did not arise for BPs since the Regulation already allowed approval of endocrine disruptors where risk is negligible, and in certain other circumstances.

11.11 The full background, and content of the original draft texts, were set out in our report of 20 July 2016.[68]

11.12 In his original Explanatory Memorandum,[69] the Minister said that the Government would carefully consider the detail of the Commission's proposals and their impact on the transitional arrangements, including the approval of applications already submitted, and that it would also be consulting UK stakeholders.

11.13 At their meeting of 20 July 2016, our predecessors held the documents under scrutiny, pending further views from the Government in the light of its more detailed consideration and consultation with stakeholders.

The Minister's letter of 26 January 2018[70]

11.14 The Government regarded the Commission's original proposals as acceptable because the proposed criteria for identifying endocrine disruptors in both PPPs and BPs were scientifically sound and the Government agreed with the proposal to allow the use of endocrine disruptors posing negligible risk in PPPs.

68 Ninth Report HC 71–vii (2016–17), chapter 4 (20 July 2016).
69 http://europeanmemoranda.cabinetoffice.gov.uk/files/2016/07/EM_10442–16_Endocrine_disruptors.pdf.
70 http://europeanmemoranda.cabinetoffice.gov.uk/files/2018/01/18–1–26_10442–16_GE_to_WC_letter.pdf.

The progress of the negotiations for PPPs

11.15 The Minister explains that a number of minor changes were made to the criteria but that, more importantly, the Commission decided to put the negligible risk exemption for PPPs into a separate proposal to be brought forward once the criteria have been agreed.

11.16 The Commission took a vote on the proposed criteria on 4 July 2017. At that meeting of the Standing Committee on Plants, Animals, Food and Feed (Committee of experts from the Member States), the Commission obtained a qualified majority. The UK abstained because, although the criteria were regarded as scientifically sound and reasonable in themselves, the UK did not agree that PPPs should be banned if they pose negligible risk in use.

11.17 The proposal was sent for the required scrutiny by the Council and the European Parliament. The European Parliament rejected the proposals on 4 October on the grounds that the draft regulation exceeded the Commission's implementing powers. A revised proposal, omitting the provision opposed by the European Parliament, was agreed by the Standing Committee on 13 December, with the UK again abstaining. It has since been agreed, unopposed by either the Council or the European Parliament.

The progress of the negotiations for BPs

11.18 Technical working group meetings between June 2016 and July 2017 led to a number of changes to the proposed criteria. The most significant of these were an extension of the criteria to apply to co-formulants (non-active ingredients in biocidal products such as solvents, fragrances or pigments) as well as active substances, and a provision relating to active substances whose intended mode of action is via the endocrine system, similar to PPPs.

11.19 The UK opposed applying the criteria to co-formulants as it was a substantial increase in scope that could have increased costs to businesses, without commensurate benefits to human health or the environment. However, only one other Member State expressed similar concerns. Guidance recently produced by the Commission following UK interventions has provided some reassurance that the impact will be more limited as most co-formulants will not require additional assessment. UK officials will, however, continue to press strongly at working level that these measures must be proportionate and workable.

11.20 The Government gave qualified support to the Commission's proposals as the framework offers greater scope for risk-based decision-making regarding PPPs, and prevents any further moves towards greater hazard-based restrictions. The Commission submitted the proposals to Council and the European Parliament on 4 September 2017 for consideration under the Delegated Act procedure and neither institution objected.

Potential impacts of the Commission proposals (taking account of information offered by stakeholders)

11.21 In response to the Committee's earlier request, the Minister provides (see Annex) a short assessment of the proposals. Summarising, the Minister notes that the interim criteria included in the original PPP and BP legislation were generally agreed to be a

poor basis for decision-making as they did not take a scientific approach to identifying endocrine disruptors. Stakeholders therefore generally regard the new criteria for BPs and for PPPs as an improvement. Industry stakeholders wish to see the proposal to allow the use in PPPs of endocrine disruptors posing a negligible risk to be agreed.

Previous Committee Reports

Ninth Report HC 71–vii (2016–17), chapter 4 (20 July 2016).

Annex: Potential impacts of the Commission proposals

Affected Groups

The regulation of biocides and PPPs has an impact not only on the markets for these products but also those for the wide range of goods which include or have been treated with them. Therefore, the proposals would potentially affect a large number of actors, starting from those upstream in the supply chain (for example producers and distributors of active substances and products), to all downstream users (including farmers and growers, amateur gardeners, those managing amenity areas, water treatment and wood preservation).

Small and medium-sized enterprises (SMEs) play a significant role in the PPP sector and, particularly, for biocides. Among manufacturers of substances and products, smaller firms are often more specialised. Some SMEs making substances and products affected by the Commission's proposal may therefore suffer a greater burden than larger firms involved in similar production.

Benefits

There is potential for endocrine disruption to harm people and the environment if hazardous substances are used without care. Protection of people and the environment is therefore the main benefit sought from regulation in this area. However, the extent of this threat is not easy to assess and there are also potential risks to health in some situations if endocrine disruptors are not used—for example disinfectants and fungicides that reduce threats from mycotoxins.

The Commission's own Impact Assessment is clear that both the current Commission proposal and the original proposal for PPPs would be effective, and equally effective, in protecting human health and the environment. This is because no active substance—whether its mode of action was known or not—would be authorised in the EU if an unacceptable risk of causing adverse effects to human health or the environment was identified.

Costs of the proposals

The Commission Impact Assessment identifies 26 active substances used in PPPs as being likely to be caught by the proposed criteria. This assessment has limitations but is considered to be a good basis for assessing the implications. For biocides, the Impact Assessment

picks up five active substances, of which only iodine is used in the UK. However, this only considers some active substances. The following commentary therefore focuses on PPPs, although comments on issues such as testing costs will also apply to biocidal products.

Broadly, there are three areas where costs are likely to result from the criteria.

Regulatory costs for companies producing products

These costs will include the costs to businesses formulating active substances as well as the costs to the relevant Competent Authority for additional enforcement work. The biggest cost is likely to be the additional testing costs to establish the endocrine-disrupting properties of active substances. These costs will fall on most companies producing most active substances and are estimated to be of the order of £1 million for a set of tests for one active substance.

Costs of this scale are unlikely to deter a large company bringing a new active substance to market or defending a major revenue earner. They may well, however, discourage companies with older, more niche active substances from defending their products, with knock-on effects for users of PPPs.

Direct downstream costs from the loss of products

The Commission Impact Assessment suggests that the UK farming sector is likely to lose some important fungicides, herbicides and insecticides. As a consequence, crops protected by the use of these substances are likely to suffer from reduced yields. In particular: oilseed rape and wheat; most fruit and vegetables; lettuce crops; and potato would see yield reductions. The extent of these losses is highly uncertain. However, DEFRA analysis of small yield losses for major crops indicates the following possible economic impacts on downstream users of the PPPs:

- farmers are likely to increase the area harvested as a response to yield losses. Increases in the area harvested are, however, expected to be marginal, and not offset yield losses. As a result, overall crop production is expected to fall;
- the fall in production causes crop prices to rise. This price increase is likely to be more than proportional to the yield reduction. The total effect on crop producers' bottom lines would depend on whether operating costs were increased;
- EU imports would grow substantially for wheat, rapeseed and barley while exports fall because of higher prices and lower domestic production; and
- These impacts would feed through to the livestock sector. As the price of crops rise, production falls and prices rise in all meat sectors, not necessarily improving livestock farmers' bottom line.

Overall, the fall in production and price increase could result in increased aggregate revenue for grain producers and livestock producers while consumers are worse off. Any fall in productivity would mean that the loss to consumers was greater than any gain to producers because of a loss of economic efficiency and productivity.

Wider impacts

Wider impacts of the measures may include:

- negative effects on competition if the measures impact differentially on companies;
- increased development of pesticide resistance in pests, weeds and diseases if the range of products is reduced. Increased resistance will tend to reduce crop yields/quality and may increase input costs; and
- reductions in the quality of crops as a result of certain PPPs no longer being available for use if no effective substitutes exist as a result of the proposal. Some producers may only be able to sell their produce at a lower grade than previously.

12 Second Mobility Package

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Delivering on low-emission mobility—A European Union that protects the planet, empowers its consumers and defends its industry and workers
Legal base	—
Department	Transport
Document Number	(39204), 14215/17, COM(17) 675

Summary and Committee's conclusions

12.1 This Commission Communication provides background to the second phase of the Mobility Package—the European Commission's set of initiatives seeking to establish a more integrated and sustainable EU transport system.

12.2 These are linked closely with other EU initiatives under the Energy Union, Digital Single Market, Circular and Low Carbon Economy and Jobs, Growth and Investment Agenda. We will consider the second set of four Mobility Package legislative proposals and a further Communication on alternative fuels infrastructure separately.

12.3 **The Parliamentary Under-Secretary of State (Jesse Norman) informs us that the Government broadly welcomes the Commission's general objectives of clean, connected and competitive mobility as outlined in the Communication and in the individual proposals.**

12.4 **We note that the Government states that it has recently committed to seeing an end to the sale of all conventional petrol and diesel cars and vans by 2040, so supports any move that will assist in this transition to cleaner mobility. However, against a rapidly changing international context, and as the UK prepares to leave the European Union, the Government will monitor such measures closely to ensure that its climate goals are met, and will develop an approach that is at least as ambitious as that of the EU.**

12.5 **The Government also highlights that the Communication envisages two commitments that will support Member States and industry in the transition to clean mobility, namely €800m (£909.248m) to leverage public and private investment for the roll-out of Alternative Fuels Infrastructure and €200m (£227.312m), in addition to €150m (£170.484m) that has already been allocated, toward battery research and innovation under Horizon 2020.**

12.6 **As we will be examining the legislative proposals in detail, we do not see a need to retain this Communication under scrutiny.**

Full details of the documents

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Delivering on low-emission mobility—A European Union that protects the planet, empowers its consumers and defends its industry and workers: (39204), 14215/17, COM(17) 675.

Background

12.7 The Mobility Package is the European Commission's set of initiatives seeking to establish a more integrated and sustainable EU transport system. These are linked closely with other EU initiatives under the Energy Union, Digital Single Market, Circular and Low Carbon Economy and Jobs, Growth and Investment Agenda.

12.8 The first phase of the Mobility Package, presented in May 2017, included a wide-ranging set of initiatives aimed at making traffic safer; encouraging smart road charging; reducing CO_2 emissions, air pollution and congestion; cutting red-tape for businesses; fighting illicit employment; and ensuring proper conditions and rest times for workers.

12.9 A second phase includes four legislative proposals and a Communication setting out an alternative fuels infrastructure plan. We will consider these separately.

12.10 A third and final set of proposals is expected in the first half of 2018, including on CO_2 emissions standards for lorries.

Commission Communication: Delivering on low-emission mobility[71]

12.11 The Communication explains the context for the second phase of the Mobility Package. It notes that transport is a big contributor to Europe's greenhouse gas emissions—second only to energy, as well as being responsible for increasingly severe air pollution in urban areas. The sector also contributes to the EU economy, to employment and to the mobility of citizens. It therefore has a large role to play in the transition to low-emission mobility.

12.12 The Communication outlines the aims of the second phase of the Mobility Package of curbing transport emissions to fight the dangers of climate change while, at the same time, improving the quality of life of citizens and ensuring that industries create jobs, generate sustainable economic growth, and drive innovation in renewable energy technologies.

12.13 Furthermore, the Communication sets out how the initiatives of the second phase of the Mobility Package will contribute to these aims. The initiatives are an Alternative Fuels Infrastructure Action Plan and four legislative proposals, covering CO_2 standards for cars and vans, clean vehicles in public procurements, combined transport, and international coach and bus services.

71 European Commission Communication, Delivering on low-emission mobility—A European Union that protects the planet, empowers its consumers and defends its industry and workers (COM(17) 675).

The Minister's Explanatory Memorandum of 20 December 2017[72]

12.14 The Parliamentary Under-Secretary of State at the Department for Transport (Jesse Norman) informs us that the Government broadly welcomes the Commission's general objectives of clean, connected and competitive mobility as outlined in the Communication and in the individual proposals.

12.15 The Government states that it has recently committed to seeing an end to the sale of all conventional petrol and diesel cars and vans by 2040, so supports any move that will assist in this transition to cleaner mobility. However, against a rapidly changing international context, and as the UK prepares to leave the European Union, the Government will monitor such measures closely to ensure that its climate goals are met, and will develop an approach that is at least as ambitious as that of the EU.

12.16 Furthermore, the Government recognises the need to develop skills further in order to support the UK's transition to ultra-low and zero-emission vehicles. It is also already positioning the UK as a global leader in battery technology.

12.17 With regards to the automotive sector, the Government states that it works closely with industry through the Automotive Council via institutions such as the Advanced Propulsion Centre to ensure the UK automotive industry remains highly competitive and sustainable and is also closely engaged with GEAR 2030.

12.18 The Memorandum also highlights that the Communication notes two commitments that will support Member States and industry in the transition to clean mobility, namely €800m (£909.248m)[73] to leverage public and private investment for the roll-out of Alternative Fuels Infrastructure and €200m (£227.312m), in addition to €150m (£170.484m) that has already been allocated, toward battery research and innovation under Horizon 2020.

Timeframe

12.19 The Bulgarian Presidency has indicated it will focus on striking a balance and finding compromise solutions in order to achieve positive results on the legislative proposals in the Mobility Package that take into account the national specificities of the transport sector in each Member State.

Previous Committee Reports

The Committee considered the first Mobility Package in November 2017. First Report HC 301–i (2017–19), chapter 39 (13 November 2017).

72 Explanatory Memorandum from the Minister, DfT, to the Chairman of the European Scrutiny Committee (20 December 2017).

73 €1 = £0.88415 or £1 = €1.13103 as at 28 February.

13 Second mobility package: alternative fuels infrastructure

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Communication from the Commission—Towards the broadest use of alternative fuels—an Action Plan on Alternative Fuels Infrastructure under Article 10(6) of Directive 2014/94/EU, including the assessment of national policy frameworks under Article 10(2) of Directive 2014/94/EU; with Commission Staff Working Document—Detailed Assessment of the National Policy Frameworks
Legal base	—
Department	Transport
Document Numbers	(39225), 14333/17 + ADDs 1–3, COM(17) 652, SWD(17) 365 Parts 1–3

Summary and Committee's conclusions

13.1 This Commission Communication highlights actions to implement national policy frameworks (NPFs) under Directive 2014/94/EU on alternative fuels infrastructure. It is part of the second phase of the Mobility Package—the European Commission's set of initiatives seeking to establish a more integrated and sustainable EU transport system.

13.2 **The Parliamentary Under-Secretary of State of the Department for Transport (Jesse Norman) informs us that the Government broadly welcomes the publication of the detailed analyses of Member States' NPFs. The assessment of each available NPF demonstrates that the UK is one of the most ambitious Member States in the European Union in terms of Alternative Fuel Infrastructure deployment, and provides a comprehensive support and development package for alternative fuel technology. Furthermore, the Government welcomes the Commission's commitment to visit all Member States to discuss each NPF, and to discuss future plans for the deployment of alternative fuel infrastructure.**

13.3 **We note that the Government states that it wants a modern transport system, one that is clean, affordable, and easy to use. Meeting its 2050 target of reducing greenhouse gas emissions by at least 90 per cent compared to 1990 levels will require almost every car and van to be zero emission. This will require an end to the sale of all new conventional petrol and diesel cars and vans by 2040, industry-led with Government monitoring developments closely. To support such a change, full deployment of alternative fuelling infrastructure will be required to support the transition from petrol and diesel vehicles to zero-emission vehicles.**

13.4 **The Government also highlights that the Communication makes a number of estimates of infrastructure investment needs by all EU Member States combined, including along the TEN-T core network corridors. The Communication expects these to run until 2025.**

13.5 **We further note a draft Delegated Regulation mandating the use of three new technical standards for certain kinds of alternative fuel infrastructure and replacing a further technical standard that was mandated in Directive 2014/94/EU, which the Committee has considered separately.**

13.6 **We therefore wish to know whether the Government intends:**

- **to meet any estimates of the UK's share of public funding commitments till 2025 after the UK leaves the European Union; and**
- **for the UK to continue to meet European technical standards for alternative fuel infrastructure after exit, or if it intends for the UK to follow other standards or create its own.**

13.7 **We clear both documents from scrutiny and request a response by 21 April 2018.**

Full details of the documents

Commission Communication—Towards the broadest use of alternative fuels—an Action Plan on Alternative Fuels Infrastructure under Article 10(6) of Directive 2014/94/EU, including the assessment of national policy frameworks under Article 10(2) of Directive 2014/94/EU, Commission Staff Working Document—Detailed Assessment of the National Policy Frameworks: (39225), 14333/17 + ADDs 1–3, COM(17) 652 SWD(17) 365 Parts 1–3.

Background

13.8 Directive 2014/94/EU on the deployment of alternative fuels infrastructure:

- requires Member States to develop national policy frameworks (NPFs) for the market development of alternative fuels and their infrastructure;
- foresees the use of common technical specifications for recharging and refuelling stations; and
- provides for the setting up of appropriate consumer information on alternative fuels, including a clear and sound price comparison methodology.

13.9 As required by the Directive, the Commission has assessed the NPFs and their coherence at EU level. It has evaluated whether the NPFs enable the Member State in question to attain the targets and objectives it has set itself.

Commission Communication: Towards the broadest use of alternative fuels[74]

13.10 The Communication provides a general overview of the NPFs that were submitted to the Commission. The Working Documents accompanying the Communication provide a detailed assessment of each Member States' NPFs.

13.11 The Communication also outlines a number of actions to support an accelerated roll-out of alternative fuels infrastructure in the EU. The aim is that, by 2025, the EU should have completed the backbone of recharging and refuelling infrastructure, providing full coverage of the Trans-European Transport Network (TEN-T) core corridors. The actions cover working with Member States to complete and implement the NPFs; developing investment support; the urban dimension; increasing consumer buy-in; and integrating electric vehicles into the electricity system.

13.12 The Communication argues that, with the Paris Agreement on Climate Change in force, the transition to a modern and low-carbon economy has to be accelerated. With around 95% of road vehicles still conventionally fuelled, including renewable biofuel blends, the number of vehicles, and vessels, running on alternative energies in the EU is too low. Any future deployment of alternative fuels infrastructure will require significant public and private investment.

The Government's Explanatory Memorandum of 20 December 2017[75]

13.13 The Parliamentary Under Secretary of State (Jesse Norman) informs us that the Government broadly welcomes the publication of the detailed analyses of Member States' NPFs. The Assessment of each available NPF demonstrates that the UK is one of the most ambitious Member States in the European Union in terms of Alternative Fuel Infrastructure deployment, and provides a comprehensive support and development package for alternative fuel technology. Furthermore, the Government welcomes the Commission's commitment to visit all Member States to discuss each NPF, and to discuss future plans for the deployment of alternative fuel infrastructure.

13.14 The Government states that it wants a modern transport system, one that is clean, affordable, and easy to use. Meeting its 2050 target of reducing greenhouse gas emissions by at least 90 per cent compared to 1990 levels will require almost every car and van to be zero emission. This will require an end to the sale of all new conventional petrol and diesel cars and vans by 2040, industry-led with Government monitoring developments closely. To support such a change, full deployment of alternative fuelling infrastructure will be required to support the transition from petrol and diesel vehicles to zero-emission vehicles.

13.15 Furthermore, the Government highlights that the Communication makes a number of estimates of infrastructure investment needs by all EU Member States combined, including along the TEN-T core network corridors. The Communication expects these to run until 2025.

74 European Commission Communication, Towards the broadest use of alternative fuels—an Action Plan on Alternative Fuels Infrastructure under Article 10(6) of Directive 2014/94/EU, including the assessment of national policy frameworks under Article 10(2) of Directive 2014/94/EU (COM(17) 652).

75 Explanatory Memorandum from the Minister, DfT, to the Chairman of the European Scrutiny Committee (20 December 2017).

13.16 With regards to the UK's NPF, the Explanatory Memorandum addresses a shortcoming highlighted by the Commission in its Staff Working Document. The Commission notes that the number of electric vehicles is expected to more than triple in the UK by 2020, while the targeted number of recharging infrastructure is only about 10% higher than the currently available one. This may lead to an insufficient publicly available recharging infrastructure in 2020 as indicated by the calculated sufficiency index. The Government notes this feedback, but explains that 90% of all vehicle charging in the UK is currently performed either at home or at a place of work. The Government endeavours to monitor developments closely and to intervene if required.

13.17 The Government's Explanatory Memorandum also covers a draft Delegated Regulation supplementing Directive 2014/94/EU. This draft Delegated Regulation mandates the use of three new technical standards for certain kinds of alternative fuel infrastructure and replaces a further technical standard that was mandated in Directive 2014/94/EU. In its Explanatory Memorandum, the Government broadly welcomes the Commission's aims of developing alternative fuel infrastructure technical standards to ensure interoperability throughout Europe. Removing these technical market barriers will help to further the deployment of such vehicles and infrastructure, and will assist the UK in meeting its 2040 ambition of seeing an end to the sale of conventionally powered vehicles. The Government also draws attention to the Delegated Regulation's effect on installations of liquefied natural gas infrastructure, which it welcomes, and also the impact on operators of hydrogen refuelling stations, with whom it will work with to handle transition from one standard to another.

Timeframe

13.18 The timetable for any consideration of the Communication is not yet known.

Previous Committee Reports

None.

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

Department for Business, Energy and Industrial Strategy

(38948) 11259/17 SWD(17) 350	Commission Staff Working Document better regulation guidelines.
(39172) 13824/17 + ADD 1 COM(17) 651	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Completing the Better Regulation Agenda: Better solutions for better results.
(39524) 6697/18 COM(18) 76	Report from the Commission to the Council and the European Parliament Operation of the High Flux Reactor in the years 2014–15.

Department for Environment, Food and Rural Affairs

(39365) 15780/17 + ADDs 1–2 COM(17) 810	Report from the Commission to the European Parliament and the Council on progress in implementing Regulation (EC) 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register (EPRTR).
(39436) 5479/18 + ADD 1 COM(18) 32	Communication from the Commission to the European Parliament, the Council, the European and Economic and Social Committee and the Committee of the Regions on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation.
(39537) 6756/18 + ADD 1 COM(18) 119	Proposal for a Council Regulation amending Regulation (EU) 2018/120 as regards certain fishing opportunities.

Department for International Development

(39513) 6484/18 + ADD 1 COM(18) 78	Report from the Commission to the Council for 2017 on the implementation of the financial assistance provided to the Overseas Countries and Territories under the 11th European Development Fund.

Department for Work and Pensions

(39244) 14805/17 + ADD 1 COM(17) 677	Proposal for a Council Decision on guidelines for the employment policies of the Member States.

Foreign and Commonwealth Office

(39554) — —	Proposal of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a Council Decision amending Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya.

HM Treasury

(39510) 6497/18 COM(18) 155	Draft Amending Budget No 1 to the general budget 2018 accompanying the proposal to mobilise the European Union Solidarity Fund to provide assistance to Greece, Spain, France and Portugal.
(39511) 6496/18 COM(18) 150	Proposal for a Decision of the European Parliament and of the Council on the mobilisation of the European Union Solidarity Fund to provide assistance to Greece, Spain, France and Portugal.

Home Office

(39403) 16005/17 COM(17) 813	Communication from the Commission to the European Parliament and the Council State of play and possible ways forward as regards the situation of non-reciprocity with certain third countries in the area of visa policy and assessment of the effectiveness of the reciprocity mechanism provided for in Article 1(4) of Council Regulation (EC) No 539/2001.
(39466) 5561/18 COM(18) 46	Communication from the Commission to the European Parliament, the European Council and the Council Thirteenth progress report towards an effective and genuine Security Union.

(39522) 6180/18 + ADD 1 COM(18) 64	Proposal for a Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the Swiss Confederation on supplementary rules in relation to the instrument for financial support for external borders and visa, as part of the Internal Security Fund, for the period 2014 to 2020.
(39523) 6182/18 + ADD 1 COM(18) 71	Proposal for a Council Decision on the conclusion, on behalf of the European Union, of an Agreement between the European Union and the Swiss Confederation on supplementary rules in relation to the instrument for financial support for external borders and visa, as part of the Internal Security Fund, for the period 2014 to 2020.

Office for National Statistics

(38029) 11774/16 + ADDs 1–3 COM(16) 551	Proposal for a regulation of the European Parliament and of the Council establishing a common framework for European statistics relating to persons and households, based on data at individual level collected from samples.

Formal Minutes

Wednesday 21 March 2018

Members present:

Steve Double	Darren Jones
Richard Drax	David Jones
Marcus Fysh	Andrew Lewer
Kate Green	Michael Tomlinson
Kelvin Hopkins	

2. Scrutiny report

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

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

Paragraphs 1.1 to 14 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Twenty-first Report of the Committee to the House.

Ordered, That Kate Green make the Report to the House.

[Adjourned till Wednesday 28 March 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)

Douglas Chapman MP (*Scottish National Party, Dunfermline and West Fife*)

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

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*)