House of Commons

European Scrutiny Committee

Twenty-second Report of Session 2017–19

Documents considered by the Committee on 28 March 2018 including the following recommendation for debate:

Permanent Structured Cooperation

Report, together with formal minutes

Ordered by the House of Commons
to be printed 28 March 2018

HC 301-xxi
Published on 3 April 2018
by autority of the House of Commons

Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Staff

The staff of the Committee are Dr Lynn Gardner (Clerk), Kilian Bourke, Alistair Dillon, Leigh Gibson, Foeke Noppert and Sibel Taner (Clerk Advisers), Arnold Ridout (Counsel for European Legislation), Françoise Spencer (Deputy Counsel for European Legislation), Joanne Dee (Assistant Counsel for European Legislation), Mike Winter (Second Clerk), Sarah Crandall (Senior Committee Assistant), Sue Beeby, Rob Dinsdale and Beatrice Woods (Committee Assistants), Ravi Abhayaratne and Paula Saunderson (Office Support Assistants).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is (020) 7219 3292/5465. The Committee's email address is escom@parliament.uk.

Contents

Meeting Summary

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

Brexit-related issues

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

EU Trade Defence Instruments

- We request further information from the Government on the UK's future trade remedies regime and how divergence from this proposal after Brexit will impact wider trade relations and trade agreement negotiations, particularly if there is unfair trade deflection (with unfair imports possibly being diverted into the UK away from countries or trading blocs which impose relatively higher duties on unfair imports).

Permanent Structured Cooperation in defence

- In December 2017, we called for a debate in Parliament on the EU's new "Permanent Structured Cooperation" (PESCO) in the field of defence matters, in view of the Government's intention to participate in specific projects to enhance military capability within the framework of the Common Security & Defence Policy after Brexit. We now examine on recent developments, including a roadmap for the practical implementation of PESCO and the official list of projects. The conditions for UK participation after Brexit remain to be decided by the other Member States.

Summary

EU Trade Defence Instruments

The draft Regulation updates EU trade defence tools aimed at tackling unfair trading practices, such as steel dumping from China. First proposed in 2013, it faced three years of political stalemate over proposed revisions to the 'lesser duty rule', which impacts the level of duties imposed on unfair imports. Negotiations accelerated in late 2016 (driven by the EU steel crises), and the proposal is due for adoption in the Council in April. The Government is intending to vote against the proposal, as it considers that the proposed revisions to the lesser duty rule could lead to a significant rise in duties that the EU imposes on dumped or subsidised imports and would place disproportionate costs on consumers or downstream users. The Government also provides an update on the future UK trade remedies system, stating that it is intending to apply the current lesser rule after Brexit. The Committee clears the proposal from scrutiny, but seeks further information

on how UK divergence from the EU trade defence regime after Brexit could a) impact trade patterns (e.g. deflect 'dumped' goods from China to the UK away from the EU27) and b) influence wider trade relations and the negotiation and conclusion of the UK-EU future relationship and other UK trade agreements (for example with the US, noting its recent imposition of steel and aluminium tariffs).

Cleared; further information requested; drawn to the attention of the Committee on Exiting the EU and the International Trade Committee.

EU Political Parties and Funding

The next EP elections will take place in June 2019, after the UK's exit from the EU as a Member State. When the Committee first considered this proposal (a) to amend the existing Regulation on European political parties (EUPPs), the Government therefore considered that it was likely only to have a minimal impact on the UK. However, it considered that transparency requirements in relation to EUPPs could in turn impose obligations on national political parties for a short time before Brexit. In particular, the Government was concerned about any indirect obligation to publish gender diversity data in respect of candidates and previous MEPs. We kept the proposal under scrutiny to see how it might progress and asked the Government to also update us on a previous EP proposal to reform EU electoral law.

In the meantime, the Government submitted an EM on a related Court of Auditors' Opinion which we now report. The Government has also now written to update us on overall progress and timing of the proposal, to report that its concerns about impact on national political parties have been addressed and to make clear its commitment to voluntary submission of gender diversity data by national political parties. Informed by that response, we now clear the proposal from scrutiny in advance of its expected adoption in April and a "coming into force" date of 30 June 2018.

Cleared from scrutiny.

Subsidiarity and Proportionality and the Commission's Relations with National Parliaments in 2016

These Annual Reports on subsidiarity and proportionality and the Commission's dialogue with National Parliaments are non-legislative documents which do not raise significant policy implications. However, they do present the opportunity to raise with the Government whether there will be any informal arrangements for dialogue between the UK Parliament and the EU institutions during any implementation period. During this period the UK Parliament will no longer be a National Parliament of a Member State and will not be able to submit Reasoned Opinions in respect of new legislation which could potentially bind the UK before the end of that period. The chapter also refers to last week's developments in relation to the Committee's recommendation for a Reasoned Opinion on the Drinking Water Directive. In particular, the initial uncertainty as to whether the Government would support that recommendation in terms of the debate motion. The chapter highlights the need for better communication across Whitehall of the Government's position that until Brexit, it will continue to support the efforts of Parliament to influence EU law-making through the submission of Reasoned and Political Dialogue Opinions by either Chamber.

Cleared from scrutiny; further information requested.

Europol: exchanging personal data with third countries

These proposals would authorise the Commission to negotiate agreements enabling Europol to exchange personal data with the law enforcement authorities of eight countries— Jordan, Turkey, Lebanon, Israel, Tunisia, Morocco, Egypt and Algeria. The Government told the European Scrutiny Committee that it would need to be "fully assured that exchanges of personal data come with sufficient protections to ensure they are consistent with fundamental rights". The Committee asked what additional assurances the Government would like to see, whether the proposed negotiating directives should be amended to include specific safeguards and whether they should be tailored to address specific human rights concerns in each country. The Government was also asked to report back on the outcome of its efforts to secure a justice and home affairs legal base and a recital making clear that the UK's opt-in applies.

In its response, the Government says that the Presidency is expected to seek agreement before the three-month deadline for the UK to decide whether to opt in expires on 30 April and invites the Committee to express a view on the opt-in decision. We are unwilling to do so (given that key information is missing) but nonetheless recommend clearing the proposals from scrutiny so that the UK can participate in the vote in Council if the Government decides to opt in. This is because the agreements are the first to be concluded with third countries under the new Europol Regulation and are likely to establish the framework for future agreements on the exchange of personal data between Europol and third country law enforcement authorities (including, potentially, the UK once it leaves the EU). The Government may therefore wish to have some involvement in overseeing the negotiations (through its participation in a specially constituted Council committee). We expect the Government to provide further information on the legal base agreed for the proposals; the Government's opt-in decision; and human rights and data protection safeguards.

Cleared from scrutiny; Drawn to the attention of the Home Affairs Select Committee and the Joint Committee on Human Rights; further information requested.

Permanent Structured Cooperation in defence

In December 2017, against a general backdrop of intensified cooperation on defence matters at EU-level, twenty-five EU countries—all except the UK, Denmark and Malta—formally launched Permanent Structured Cooperation (PESCO). This is a political framework within which EU Member States can choose to make commitments intended to improve their military assets and defence capabilities in the context of specific initiatives and projects.

While the UK is not a formal participant in PESCO, the Government has supported its launch, as well as consistently calling for a legal framework—which is still being discussed by the participating countries—that will allow non-EU countries to request involvement in specific projects. This would enable the Ministry of Defence and UK industry to seek participation in PESCO after Brexit on a case-by-case basis where there is value in doing so from a national security or industry perspective. The Minister identified the 'military mobility' project as the one of principal interest to the UK. The European Commission

is due to set out its specific proposals for the removal of customs and regulatory barriers to the movement of troops and military equipment within the EU in an Action Plan in spring 2018.

Given its political importance, the Committee recommended that PESCO, and its implications for UK defence policy after Brexit, should be debated on the Floor of the House.

In March, the Defence Ministers of the participating countries agreed a roadmap for PESCO's practical implementation (on which the UK did not have a vote). It sets out a timetable for the adoption of detailed governance arrangements for individual projects (June 2018), the addition of new projects to the existing list (November 2018) and the legal principles for 'third country' participation ("by the end of 2018"). Today's Committee Report summarises these developments, and adds the latest EU documents to the Committee's previous debate recommendation.

Not cleared from scrutiny; recommended for debate on the Floor of the House; drawn to the attention of the Defence Committee and Foreign Affairs Committee.

Documents drawn to the attention of select committees:

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

Business, Energy and Industrial Strategy Committee: Radioactive waste and spent fuel [(a) and (b) Commission Reports (C)]

Defence Committee: Permanent Structured Cooperation [(a) Recommendation (NC), (b) Decision (NC)]

Exiting the European Union Committee: EU Trade Defence Instruments [(a) Communication (C), (b) Proposed Regulation (C)]

Foreign Affairs Committee: Permanent Structured Cooperation [(a) Recommendation (NC), (b) Decision (NC)]

Home Affairs Committee: Delivering the EU's Agenda on Migration [Commission Communication (C)]; Europol: exchanging personal data with third countries [Proposed Decisions (C)]

International Development Committee: Delivering the EU's Agenda on Migration [Commission Communication (C)]

International Trade Committee: EU Trade Defence Instruments [(a) Communication (C), (b) Proposed Regulation (C)]

Joint Committee on Human Rights: Europol: exchanging personal data with third Countries [Proposed Decisions (C)]

1 Permanent Structured Cooperation

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; recommended for debate on the floor of the House; drawn to the attention of the Defence and Foreign Affairs Committees
Document details	(a) Council Recommendation of 6 March 2018 concerning a roadmap for the implementation of PESCO; (b) Council Decision (CFSP) 2018/340 of 6 March 2018 establishing the list of projects to be developed under PESCO
Legal base	Articles 42(6) TEU and Council Decision (CFSP) 2017/2315 of 11 December 2017; unanimity by PESCO participating Member States.
Department	Foreign and Commonwealth Office AND Ministry of Defence
Document Numbers	(a) (39552), —; (b) (39553), —

Summary and Committee's conclusions

1.1 The 2009 Lisbon Treaty created the legal basis for "Permanent Structured Cooperation" (PESCO) in the area of defence, a political framework within which EU Member States can choose to make commitments intended to improve their military assets and defence capabilities in the context of specific initiatives and projects. PESCO does not affect the veto of each EU Member State over CSDP operations and other EU foreign policy measures under the Treaties,[1] or their right to decide unilaterally whether to deploy military personnel or equipment to specific operations or missions.

1.2 In December 2017, against a general backdrop of intensified cooperation on defence matters at EU-level,[2] twenty-five EU countries—all except the UK, Denmark and Malta—formally launched PESCO. They also identified a provisional list of 17 projects to be undertaken to improve their assets and increase their defensive capabilities. It was clear that not all participating countries would be involved in all projects.

1.3 While the UK is not a formal participant in PESCO, the Government has supported its launch, as well as consistently calling for a legal framework—which is still being discussed by the participating countries—that will allow non-EU countries to request involvement in specific projects. This would enable the Ministry of Defence and UK industry to seek participation in PESCO after Brexit on a case-by-case basis.

1.4 When we considered the launch of PESCO in December 2017, we concluded it was a major political development—irrespective of the UK's decision not to participate and its exit from the EU—in light of the Government's clear interest in safeguarding its

1 Article 31 of the Treaty on European Union makes CFSP measures subject to unanimity, except in certain circumstances (where each Member State can require unanimity if the measure would be detrimental for "vital and stated reasons of national policy").

2 See "Background" below.

ability to participate in projects of mutual benefit under the PESCO aegis. We therefore recommended the Council Decisions establishing PESCO for debate on the Floor of the House.[3]

1.5 In early March 2018, the Defence Ministers of the PESCO countries adopted a Council Decision that formally established the 17 projects,[4] as well as a separate Council Recommendation on PESCO's implementation.[5] The latter sets out a timetable for the adoption of detailed governance arrangements for individual projects (June 2018), the addition of new projects to the existing list (November 2018) and the legal principles for 'third country' participation ("by the end of 2018"). The list of seventeen PESCO projects formally endorsed by the Council reflects the list provisionally adopted by the participating countries back in December 2017.[6]

1.6 As a non-participating State, the UK did not vote on either document and will not be bound by them. The Minister for Europe (Sir Alan Duncan) submitted an Explanatory Memorandum on both documents on 20 March, reiterating the Government's support for PESCO and confirming the UK will seek a clear legal route for participation in individual projects after Brexit (to ensure it can seek involvement where this is in the UK's interest or "where there is clear value in doing so, including for [the] defence industry", and to prevent duplication of efforts between PESCO and NATO).[7]

1.7 From the seventeen current PESCO projects, the Minister identified the 'military mobility' project[8] as the one of principal interest to the UK. The European Commission is due to set out its specific proposals for the removal of customs and regulatory barriers to the movement of troops and military equipment within the EU in an Action Plan in spring 2018.

1.8 **We thank the Minister for his Explanatory Memorandum, and reiterate our previous conclusion that the launch of PESCO is of major political importance, especially as the Government will in the coming months and years seek to shape a new security and defence relationship with the EU and its Member States. We urge the Government to schedule the debate on PESCO we called for in December last year without delay.**

1.9 **Crucially, the Minister has again confirmed the Government wants the flexibility to seek involvement in specific PESCO projects even after the UK has left the EU, where this is considered in the national interest.[9] The modalities and constraints any such participation might impose on the UK will not be clear for some time. The participating countries have committed, "in principle", to adopt rules for involvement by non-EU**

3 See our Report of 19 December 2017.
4 Council document 6393/18: "Council Decision establishing the list of projects to be developed under PESCO" (March 2018).
5 Council document 6588/18: "Council Recommendation concerning a roadmap for the implementation of PESCO" (March 2018).
6 See http://www.consilium.europa.eu/media/32079/pesco-overview-of-first-collaborative-of-projects-for-press.pdf for more information on individual PESCO projects.
7 Explanatory Memorandum submitted by the Foreign & Commonwealth Office (19 March 2018). There was no scrutiny override, as the UK did not have a vote as a non-participating country.
8 See our Report of 19 December 2017 on military mobility in the EU.
9 The draft Withdrawal Agreement for the UK's exit from the EU specifies that, during the transitional period, the UK will not be considered a Member State for the purposes of PESCO and therefore would only be able to participate on the same basis as other third (i.e. non-EU) countries.

countries "by the end of 2020", but declined to be more specific. We ask the Minister to keep us fully informed of any developments in the establishment of the third country arrangements, although we understand the UK will have no formal say in that process.

1.10 **We also note that the Ministry of Defence is principally interested in participating in the PESCO project relating to 'military mobility'. As we noted in our Report of November 2017, this relates to the removal of regulatory and other barriers to the movement of troops and equipment within the EU, as well as improvements in physical infrastructure needed for the movement of military convoys within the EU by rail, road, air and water (possibly with financial assistance from the EU budget).**

1.11 **Problematically for the Government, 'military mobility' is the project most likely to involve binding EU legislation, rather than pure intergovernmental cooperation between national defence forces. It could require amendments to EU law in areas such as customs, transport and freight. This, under the Treaties, will usually require the involvement of the European Commission as the initiator of EU legislation in those areas, and the European Parliament as co-legislator with the Member States. The UK will no longer have a vote over any legislative initiatives taken as part of this project after it ceases to be a Member State. In any event, given the decision to leave the Single Market and the Customs Union after the post-Brexit transitional period, the extent to which the UK would benefit from measures taken as part of the 'military mobility' project is uncertain at this stage.**

1.12 **As part of Brexit, the UK is placing itself outside the remit of EU law, and as such it is unclear if lifting of regulatory and customs hurdles would—should the Government secure formal participation in this project—also apply to military transports to and from non-EU countries, or to British troops and equipment being moved within the EU. We will return to this subject when the European Commission publishes its Military Mobility Action Plan with concrete proposals later this spring. We expect further information from the Minister about the potential benefits and costs to the UK of cooperation with the EU in this area after Brexit, including the potential need for continued regulatory alignment with EU law.**

1.13 **More generally, we still await further information from the Government about its detailed proposals for a new foreign policy and defence partnership with the EU after Brexit. The Government has told us that it wants to be able to participate not only in what is likely to be the most regulation-heavy PESCO project, but also secure involvement of the British defence industry in EU-funded research and development of military technology under the new European Defence Fund,[10] and a role for the UK military in the EU's Common Security and Defence Policy.[11] The overall implications of seeking such a close relationship for the operation of the UK's defence and foreign policy is not yet clear, especially where it includes cooperation within the EU's legal structures as a non-Member State and without the Government's current representation and voting rights.**

1.14 **As the debate we recommended on PESCO has not yet taken place on the floor of the House, we recommend that these latest Council documents be added to our**

10 See our Reports of 30 November 2017 and 31 January 2018 for more information on the new European Defence Fund.

11 DExEU, "Foreign policy, defence and development: a future partnership paper" (September 2017).

previous recommendation so that Members from all parties are fully informed of the latest developments at EU-level when they debate the implications of Permanent Structured Cooperation for the UK after Brexit. We also draw these documents to the attention of the Defence and Foreign Affairs Committees.

Full details of the documents

(a) Council Recommendation of 6 March 2018 concerning a roadmap for the implementation of PESCO: (39552), —; (b) Council Decision (CFSP) 2018/340 of 6 March 2018 establishing the list of projects to be developed under PESCO: (39553), —.

Background

1.15 On 11 December 2017 twenty-five EU Member States—all except the UK, Denmark and Malta—signed up to "Permanent Structured Cooperation" (PESCO) on defence matters, a mechanism introduced by the Lisbon Treaty in 2009. It is essentially an EU-level political framework for Member States to establish binding mutual commitments in the area of defence, for example by jointly developing military capabilities, or enhancing the operational readiness of their armed forces.

1.16 In December the participating Member States also adopted a declaration provisionally identifying 17 projects to be undertaken under PESCO. Among these are a European medical command, a network of logistic hubs across Europe, and a creation of a European crisis response centre. The European Commission will produce an assessment each year of how the participating countries are meeting the targets they have set themselves.

1.17 PESCO does not affect the veto of each EU Member State over CSDP operations and other EU foreign policy measures under the Treaties, or their right to decide unilaterally whether to deploy military personnel or equipment to specific operations or missions. Instead, it aims to develop existing capabilities to ensure more effective and efficient deployment—especially in the context of activities undertaken as part of the EU's Common Security & Defence Policy (CSDP)—where it is sanctioned at national level.[12]

1.18 Nevertheless, PESCO is seen by some as a step towards a more unified EU-level military structure. It should be seen in the context of other developments in EU's CSDP, which mean it is deeply enmeshed in the broader efforts by the Member States and the European Commission to unify the EU's approach to defence, and therefore strongly influenced by the overall direction of EU defence policy as determined by the Member States in the Council. These parallel developments include:

- the European Commission's 'reflection paper' on the future of European defence, which outlined three scenarios for the development of the CSDP;[13]

12 For example, the deployment of Irish troops remains subject to its 'triple lock': a UN resolution, a formal decision by the Irish Government, and a vote by the Dáil.

13 See our Report of 13 November 2017 for more information on the reflection paper.

- the establishment of the EU's Coordinated Annual Review on Defence (CARD)[14] and the Capability Development Plan,[15] both of which should ensure that efforts within the PESCO framework are focussed on "capabilities that fulfil a European level of ambition that is coherent with NATO";
- the creation, in July last year, of a Military Planning and Conduct Capability (MPCC) unit for the EU's non-executive military CSDP missions[16] (which are currently in place in Somalia, Mali and the Central African Republic);
- the launch of a new European Defence Fund, which will co-finance PESCO projects seeking to develop new military technology at a favourable rate;[17]
- the European Commission's upcoming Action Plan on military mobility, which will announce regulatory measures to remove obstacles to the intra-EU movements of troops and equipment; and
- the significant increase in the budget for the European Defence Agency in 2018.

1.19 The same section of the EU Treaty that forms the basis for PESCO also contains article 42, which allows the Member States—unanimously—to decide to create a "common defence".

1.20 As noted, the UK did not join PESCO, but it did vote in favour of its launch at the Foreign Affairs Council. The Minister for Europe (Sir Alan Duncan) told us at the time that the Government was of the view that PESCO could address military capability shortfalls in the EU, and that it was satisfied that the legal framework would allow for participation by the UK defence industry after Brexit in specific projects of mutual interest (although the exact conditions for such involvement are yet to be determined by the participating countries, without formal UK input).[18]

1.21 When we considered the launch of PESCO in December 2017, we concluded it was a major political development—irrespective of the UK's decision not to participate and its exit from the EU—in light of the Government's clear interest in safeguarding its ability to participate in projects of mutual benefit under the PESCO aegis. As a non-Member State, the UK will lose the ability—open to the other non-participating EU countries—to request participation in PESCO. In terms of the practical impact of the projects to be launched under PESCO, we considered that the improvements sought to the participating countries' military capability will take many years to develop. In addition, we remain to be convinced that the framework itself will lead to a greater willingness among Member States to engage in more joint operations coordinated at EU-level.

14 CARD is a stocktake of the European Capability Development landscape that provides Member States and the European Defence Agency with a "clear understanding of current capabilities, shortfalls, Member States' plans, and potential areas for cooperation", the initial results of which are likely to be published in autumn 2018.

15 The CDP is the EDA's strategic tool for defining future European capability needs in the short and long term and sets priority areas to guide Member States in their development plans. The CDP is expected to be updated in May/June.

16 Non-executive military operations are operations that provide an advisory role to the host nation only. By contrast, executive operations are operations mandated to conduct actions in replacement of the host nation's own armed forces.

17 See our Reports of 30 November 2017 and 31 January 2018 for more information on the new European Defence Fund.

18 Explanatory Memorandum submitted by the Foreign & Commonwealth Office (19 March 2018).

1.22 We recommended the Council Decisions establishing PESCO for debate on the Floor of the House. We took the view that the debate should, ideally, cover the launch of PESCO and the MPCC; the broader possibilities for UK-EU cooperation on defence matters after Brexit; and the implications of PESCO and the European Defence Fund for international defence structures outside of the EU framework, in particular NATO.

Developments since December 2017

1.23 On 6 March 2018 at the Foreign Affairs Council (Defence), EU Defence Ministers adopted a Council Decision that formally established the seventeen PESCO projects,[19] as well as a separate Council Recommendation on PESCO's implementation.[20] The Council sat for the first time in 'PESCO format', meaning that Ministers from all EU Member States were present and invited to speak, but only those from PESCO-participating Member States could vote on the legal acts. As a non-participating State, the UK did not vote on either document and is not be bound by them.[21]

1.24 The Minister for Europe (Sir Alan Duncan) submitted an Explanatory Memorandum on both documents on 19 March, after they had been adopted by the Council. There was no scrutiny override, as the UK did not have a vote as a non-participating country. The Minister reiterates the Government's support for PESCO, saying it recognises "its potential to help drive up defence investment in Europe and to strengthen capability, so long as capabilities developed in this framework remain Member State-owned and are available to NATO and the UN, not just the EU".

Roadmap for implementation of PESCO

1.25 The Council Recommendation sets out a roadmap for the implementation of the PESCO. Council Recommendations are legal acts, but are not legally binding. The principal purpose of the Recommendation is to set out next steps for the implementation of framework. It includes a timeline for the review of the national implementation plans that detail how PESCO participating Member States will fulfil their commitments. Notably, it provides a schedule for other future Decisions on:

- the main elements of a common set of governance rules for projects by June 2018;
- The possible inclusion of new initiatives on the list of PESCO projects by November 2018; and
- the general conditions for exceptional third state participation (such as the UK after Brexit) "in principle (…) before the end of 2018".

1.26 With respect to participation by the UK, the Government has been consistently clear that it wants to secure the right to seek involvement on a case-by-case basis after it ceases to be an EU Member State, in particular to ensure that PESCO remains complementary

19 Council document 6393/18: "Council Decision establishing the list of projects to be developed under PESCO" (March 2018).

20 Council document 6588/18: "Council Recommendation concerning a roadmap for the implementation of PESCO" (March 2018).

21 The Minister informed us that the Council's Legal Service proposed a Council Recommendation for the main elements of a common set of governance rules for projects instead of Council Conclusions, which are politically binding on all Member States.

with NATO and does not duplicate work undertaken by that organisation. The conditions for third country participation are therefore a UK priority, and the Government has welcomed the participating states' ambition to formalise them by the end of the year.

1.27 In his Explanatory Memorandum, the Minister underlines that the Government "will not support measures that would undermine Member States' competence for their own military forces", in recognition of the fact that "defence remains a national competence". He then adds:

> "We want to have the ability to cooperate with PESCO as a third state, should it serve the UK's security and defence interests. Our key objective on the Council Recommendation was to secure a specific timeline on arrangements for third state participation. We therefore welcomed the language (…) calling for discussions to start "as soon as the common set of governance rules for the projects and the sequencing of the fulfilment of commitments are in place by June 2018 and, subject to a further assessment by the Council, a Decision should in principle be adopted before the end of 2018."

1.28 The Minister adds that the Government was "encouraged by the number of Member States who spoke about the importance of early decisions on third state participation" at the Council meeting where the latest PESCO documents were approved:

> "To ensure complementarity with NATO we believe PESCO projects should be open to third states, as is the case with other projects led by the European Defence Agency (EDA). The UK has consistently called for third state participation in PESCO projects where there is clear value in doing so, including for our defence industry."

PESCO projects

1.29 The seventeen PESCO projects formally endorsed by the Council reflects the list provisionally adopted by the participating countries back in December 2017.[22] They are a mix of capability development, training, and enabling initiatives that span different operating environments. The Council Decision lists all the projects, including a list of the PESCO participating Member States that have agreed to join that specific initiative.

1.30 All participating Member States have joined at least one project, and at most two or more. Italy is the most prolific in participants, with involvement in 15 projects. Germany and Italy lead four PESCO initiatives each, while France, Spain, Greece, Belgium, the Netherlands, Slovakia and Lithuania are also lead countries for certain projects. The most popular initiatives are:

- **Military mobility**, aimed at simplifying and standardising procedures for cross-border military transport to increase the speed of movement of military forces across Europe by removing regulatory barriers—such as customs controls—and improving physical transport infrastructure equipped to deal with military convoys. It has 24 participants (with only Ireland not involved);

22 See http://www.consilium.europa.eu/media/32079/pesco-overview-of-first-collaborative-of-projects-for-press.pdf for more information on individual PESCO projects.

- The **Network of Logistic Hubs**, which has the objective of improving "strategic logistic support and force projection in EU Missions and Operations" to "enhance logistic planning and movement as well as to deliver common standards and procedures" (13 participating countries); and
- The **European Union Training Mission Competence Centre** (EU TMCC), which aims to improve the "availability, interoperability, specific skills and professionalism" of trainers deployed for EU training missions (13 participating countries).

1.31 In his Memorandum, the Minister identifies the 'military mobility' project as the one of principal interest to the UK:

> "We recognise the need to improve Military Mobility across Europe and are engaged in multiple projects within both NATO and the EU. We also support the need for all PESCO projects to form part of a unified vision for improved security and defence across Europe. For the UK, NATO remains the cornerstone of Euro-Atlantic security and any EU work should complement NATO. We will therefore continue to champion greater capability cooperation between the EU and NATO."

1.32 However, as we set out in our Report last year on military mobility,[23] the fact that this project cuts across broader legal barriers that fall within the EU's competence—such as customs, transport or environmental protection—means it remains unclear to what extent the UK would directly benefit from any progress in this area in view of the Government's decision to leave the Customs Union and the Single Market.

1.33 The European Commission is due to set out its specific proposals for the removal of customs and regulatory barriers to the movement of troops and equipment within the EU in an Action Plan in spring 2018. That document may clarify to what extent the UK could expect to benefit from any further initiatives to remove legal hurdles once it becomes a 'third country' vis-à-vis the EU, but as a possible participant in the 'military mobility' project, and conversely to what extent this could require continued regulatory alignment with the EU after Brexit.

Previous Committee Reports

Seventh Report HC 301–vii (2017–19), chapter 1 (19 December 2017).

23 See our Report of 19 December 2017 on military mobility in the EU.

2 Swiss participation in the European Global Navigation Satellite Systems (GNSS) Agency

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; waiver granted; further information requested
Document details	Recommendation for a Council Decision authorising the Commission to open negotiations with the Swiss Confederation on an agreement laying down the terms and conditions for the participation of the Swiss Confederation in the European GNSS Agency
Legal base	Article 218(3) and (4); QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39370), 14927/17 + ADD 1,—

Summary and Committee's conclusions

2.1 The EU's Global Navigation Satellite Systems Agency, or GSA, is an agency of the European Union, set up by Regulation (EU) 912/2010 (the "GSA Regulation").[24] The GSA is tasked with operational, security and marketing responsibilities for the EU Global Navigation Satellite Systems (GNSS) Galileo[25] and EGNOS.[26] It is responsible for much of the day-to-day programme management of these systems, including tasks relating to the commercial exploitation of the programmes.

2.2 The Commission proposes a Council Decision which would allow it to open negotiations with the Swiss regarding its participation in the GSA. This would build on an existing EU-Swiss Cooperation Agreement[27] which enables it to participate, to a significant extent, in the EU's GNSS Programmes. To date, Norway is the only non-EU country to participate in the GSA.

2.3 In a 'future partnership paper'[28] on Collaboration on science and innovation the Government acknowledged that participation in the EU's space programmes "provides important commercial opportunities to UK industry" and observed that "relevant EU legislation makes express provision for non-EU countries to participate in Galileo and Copernicus, although there is no standard framework for participation". The paper stated that "the EU and UK should discuss all options for future cooperation, including new

24 Regulation (EU) 912/2010 of the European Parliament and of the Council of 22 September 2010 setting up the European GNSS Agency, repealing Council Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio navigation programmes and amending Regulation (EC) No 683/2008 of the European Parliament and of the Council.

25 Galileo is the EU's global navigation system similar to the US GPS system.

26 European Geostationary Navigation Overlay Services, a satellite based augmentation system.

27 Cooperation agreement between the European Union and its Member States, of the one part, and the Swiss Confederation, of the other, on the European Satellite Navigation Programmes OJ L 15/3 20.1.2014.

28 HM Government, Collaboration on science and innovation—a future partnership paper (6 September 2017).

arrangements". The paper did not discuss UK participation in the GSA, nor did the Prime Minister raise this possibility in her Mansion House speech,[29] in which she indicated the Government's desire to participate in three EU agencies: the European Medicines Agency, the European Chemicals Agency, and the European Aviation Safety Agency.

2.4 **We thank the Minister for her Explanatory Memorandum. We note her support for opening negotiations with Switzerland regarding their participation in the EU's Global Navigation Satellite Systems Agency, or GSA. Given the Government's intention to "discuss all options for future cooperation, including new arrangements"[30] in relation to the EU's space programmes, we consider the Swiss relationship with the EU's space programmes and this proposal to provide an interesting precedent which warrants further clarification.**

2.5 **We note that Swiss participation in the GSA would supplement an existing Swiss-EU Cooperation Agreement which allows Switzerland to participate closely in the Galileo and EGNOS programmes, as well as addressing issues such as security, export controls, standardisation, certification and radio spectrum. We further note that under the terms of the EU-Swiss Cooperation Agreement Switzerland will not be permitted voting rights, and participation is not permitted in fora, working groups or discussions related to the Galileo Public Regulated Service (PRS)[31] unless a separate agreement is concluded.**

2.6 **We ask the Government to clarify:**

- **Whether it seeks to continue to participate in the GSA after it has withdrawn from the EU and any transition period comes to an end, and to provide the reasoning behind its position;**
- **What the effects of leaving the GSA would be;**
- **How the terms of Norway and Switzerland's participation in the GNSS Programmes and the GSA differs from that of EU Member States, including a summary of those areas in which participation (notably in procurement programmes) falls short of the levels granted to EU participants;**
- **How arrangements with other third countries for participation in the GNSS Programmes compare to those of Switzerland and Norway; and**
- **In what respects an arrangement akin to that which is proposed for Switzerland (i.e. participation in the GSA supplementing its existing Cooperation Agreement) would meet UK objectives for its relationship with the EU post-withdrawal in this policy area, and in what respects it would not.**

2.7 **We note the Government's support for Swiss participation in the GSA and grant it a scrutiny waiver so that Ministers can participate fully in Council. We retain the proposal under scrutiny and ask for a response to our questions by 27 April 2018.**

29 HM Government, PM speech on our future economic partnership with the European Union (2 March 2018).
30 HM Government, Collaboration on science and innovation—a future partnership paper (6 September 2017).
31 Public Regulated Service (PRS) means a service provided by the system established under the Galileo programme which is restricted to government authorised users for sensitive applications which require effective access control and a high level of service continuity.

Full details of the documents

Recommendation for a Council Decision authorising the Commission to open negotiations with the Swiss Confederation on an agreement laying down the terms and conditions for the participation of the Swiss Confederation in the European GNSS Agency: (39370), 14927/17 + ADD 1, —.

Background

Swiss-EU Cooperation Agreement

2.8 Switzerland already participates in elements of the EU GNSS Programmes (Galileo and EGNOS) and contributes technical and industrial expertise in specific areas of satellite navigation. This was enabled through a Cooperation Agreement[32] between Switzerland and the European Union signed in 2013 and provisionally applied since 1 January 2014.

2.9 According to a Government Explanatory Memorandum[33] produced in relation to the Cooperation Agreement in 2012, it permits "a framework to be put in place to allow Switzerland to participate closely in the Galileo and EGNOS programmes and address issues such as security, export control, standardisation, certification and radio spectrum for the Swiss technologies used as fundamental parts of the Galileo programme. Since Switzerland is not part of the EU, the regulations that set the framework for security for instance for the EU Member States do not apply. It is necessary to ensure that such a framework is put in place and the agreement allows that to be done".

2.10 Switzerland currently hosts an EGNOS ground station. From the period 2014–2017 Switzerland has financially contributed circa €240m to the EU GNSS Programmes.

The proposal[34]

2.11 Switzerland submitted a request to participate in the GSA on 20 May 2014. The Commission states that on the basis of its long-standing cooperation and contribution to the European GNSS Programmes since the 1990s, and its "specific, sometimes exclusive, technical know-how in certain sectors of satellite navigation technology", the document recommends the opening of negotiations with Switzerland.

2.12 The Commission's proposal for a Council Decision notes that Article 23 of the GSA Regulation (912/2010) permits the participation of third countries in the Agency, and that Article 16 of the GNSS Cooperation Agreement with Switzerland grants it the right to participate in the GSA under conditions to be laid out in a separate agreement.

32 Cooperation agreement between the European Union and its Member States, of the one part, and the Swiss Confederation, of the other, on the European Satellite Navigation Programmes OJ L 15/3 20.1.2014.

33 Explanatory Memorandum from the Minister, BEIS, to the Chairman of the European Scrutiny Committee (24 September 2012).

34 Recommendation for a Council Decision authorising the Commission to open negotiations with the Swiss Confederation on an agreement laying down the terms and conditions for the participation of the Swiss Confederation in the European GNSS Agency 14927/17.

2.13 The Commission also observes that:

- as set out in the EU-Swiss Cooperation Agreement,[35] Swiss representatives will be allowed to attend the GSA's Administrative Board and other Committees and working groups as observers with no voting rights;
- the agreement should not allow Switzerland to participate in the Galileo Public Regulated Service (PRS);[36] the Cooperation Agreement stipulates that access to the PRS should be subject to a separate agreement; and
- Switzerland should contribute financially to the budget of the Agency to cover the full costs relating to its participation to the works of the Agency, meaning that there will be no financial implication for the Union budget.

2.14 The scope of the future agreement is set out in an Annex[37] which notes that provisions regarding a dispute settlement mechanism and for termination should be included in the Agreement.

The Government's position[38]

2.15 The Minister of State at BEIS (Claire Perry) states that the Government is supportive of agreements between third countries and the EU's Satellite Navigation Programmes allowing for mutually beneficial cooperation. The Minister adds that the UK's future relationship with the EU GNSS Programmes and the European GNSS Agency "will depend on the outcome of the exit negotiations and future Government decisions".

UK position paper

2.16 On 9 September 2017 the Government published a "future partnership paper"[39] on collaboration on science and innovation, in which it stated that:

> "The UK space sector has played a major role in the development of the main EU space programmes by providing highly skilled personnel and technology. Participation provides important commercial opportunities to UK industry. Space is inherently collaborative and the relevant EU legislation makes express provision for non-EU countries to participate in Galileo and Copernicus, although there is no standard framework for participation."

35 Cooperation agreement between the European Union and its Member States, of the one part, and the Swiss Confederation, of the other, on the European Satellite Navigation Programmes OJ L 15/3 20.1.2014.

36 Public Regulated Service (PRS) means a service provided by the system established under the Galileo programme which is restricted to government authorised users for sensitive applications which require effective access control and a high level of service continuity.

37 Annex to the Recommendation for a Council Decision authorising the Commission to open negotiations with the Swiss Confederation on an agreement laying down the terms and conditions for the participation of the Swiss Confederation in the European GNSS Agency 14927/17 ADD 1.

38 Explanatory Memorandum from the Minister, BEIS, to the Chair of the European Scrutiny Committee (10 January 2018).

39 HM Government, Collaboration on science and innovation—a future partnership paper (6 September 2017).

And that:

> "The UK has been especially involved in the development of the Galileo security modules and encryption, which are integral to a secure and resilient system. The UK is also recognised for its specialist capability in the area of earth observation. The space surveillance services provided by the new SST programme will underpin an innovative launch capability which the UK is looking to develop. Given the unique nature of the space programmes' applications to security in addition to science and innovation, and the extent of the UK's involvement, the EU and UK should discuss all options for future cooperation, including new arrangements."

Previous Committee Reports

None.

3 Radioactive waste and spent fuel

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	(a) Report from the Commission on progress of implementation of Council Directive 2011/70/EURATOM and an inventory of radioactive waste and spent fuel present in the Community's territory and the future prospects; (b) Report from the Commission on Member States' implementation of Council Directive 2006/117/EURATOM on the supervision and control of shipments of radioactive waste and spent fuel
Legal base	—
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (38720), 9329/17 + ADDs 1–2, COM(17) 236; (b) (39455), 5540/18 + ADD 1, COM(18) 6

Summary and Committee's conclusions

3.1 All EU Member States generate radioactive waste, and 21 of them also manage spent fuel on their territory. European Atomic Energy Community (EURATOM) legislation lays down systems for the supervision and control of transboundary shipments of radioactive waste and spent fuel (Council Directive 2006/117/EURATOM) and for the safe and responsible management of spent nuclear fuel and radioactive waste (Council Directive 2011/70/EURATOM). The Commission has assessed the operation of both Directives.

3.2 We considered the Commission's Report on the operation of the nuclear waste management Directive at our meeting of 10 January 2018 and raised a number of questions to which the Parliamentary Under-Secretary of State for Business and Energy (Richard Harrington) has now responded.

3.3 The Minister emphasises that the UK is a Contracting Party to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management and will remain so after the UK leaves the EU. He says that the UK's position and policy on the import of radioactive waste aligns with the requirements of the Directive and obligations under the Joint Convention. The UK does not plan to revise its position or policy in this area once the UK has withdrawn from EURATOM.

3.4 The Minister goes on to explain the limited circumstances in which radioactive waste may be imported to, or exported from, the UK. Finally, he outlines the Government's latest plans for managing spent fuel while plans for a Geological Disposal Facility are developed and the outstanding position as regards spent fuel originally derived from other EURATOM Member States.

3.5 The Minister has also submitted an Explanatory Memorandum on the Commission's report assessing the implementation of Directive 2006/117/EURATOM regarding the supervision and control of shipments of radioactive waste and spent fuel.

3.6 The Directive ensures that the Member States concerned are informed about shipments of radioactive waste and spent fuel to or via their territory with the obligation to give either their consent or reasoned refusal to the shipments.

3.7 The Commission proposes to take measures to improve the standard document used for compliance with the Directive and to provide support to Member States to harmonise the reporting of shipments of spent fuel and radioactive waste of Member States. Regarding the transport of materials within Member States, the Commission will assess any specific actions required for the improvement of transport at EU and national levels, to enhance transparency and to increase public confidence.

3.8 The Minister indicates no concerns.

3.9 The EU and UK have resolved most of the Brexit issues applicable to EURATOM, including the UK's ultimate responsibility for spent fuel and radioactive waste generated in the UK and present on the territory of a Member States at the end of the transition period. The UK has also agreed that it has sole responsibility for ensuring that all ores, source materials and special fissile materials covered by the Euratom Treaty and present on the territory of the UK at the end of the transition period should be handled in accordance with relevant and applicable international treaties and conventions, including safety of spent fuel management and the safety of radioactive waste management.

3.10 **We note the outcome of negotiations on a post-Brexit implementation period, including the resolution of most issues applicable to EURATOM and specifically to responsibility for spent fuel and radioactive waste.**

3.11 **We welcome the comprehensive information provided by the Minister in response to the queries raised in our Report of 10 January 2018. We clear both documents from scrutiny and draw this chapter to the attention of the Business, Energy and Industrial Strategy Committee.**

Full details of the documents

(a) Report from the Commission on progress of implementation of Council Directive 2011/70/EURATOM and an inventory of radioactive waste and spent fuel present in the Community's territory and the future prospects: (38720), 9329/17 + ADDs 1–2, COM(17) 236; (b) Report from the Commission on Member States' implementation of Council Directive 2006/117/EURATOM on the supervision and control of shipments of radioactive waste and spent fuel: (39455), 5540/18 + ADD 1, COM(18) 6.

Background

Document (a)—management of radioactive waste and spent fuel

3.12 The Commission's Report on radioactive waste and spent fuel management was the first comprehensive progress report on the state of implementing the Directive. The

Directive seeks to protect workers, the public and future generations from the danger of ionising radiation. Further information on the background to, and content of, the Commission's report was set out in our report of 10 January 2018.[40]

3.13 In his original Explanatory Memorandum, the Minister said that no policy implications arose. On Brexit, he indicated that the outcome of the withdrawal negotiations would determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

3.14 When the Committee considered the document at our meeting of 10 January 2018, we raised a number of issues:

- noting that one of the areas highlighted by the Commission was that of "shared solutions" for radioactive waste management and spent fuel disposal, we asked the Minister to explain to what extent the Government would hope to be able to participate in such solutions once the UK has withdrawn from Euratom;
- we sought an update from the Government on its latest plans for managing spent fuel while plans for a Geological Disposal Facility were taken forward, including whether this might include export of spent fuel elsewhere for reprocessing or whether it would all be stored;
- we welcome information as to the proportion of the waste in the UK originally generated in other Euratom Member States and vice versa; and
- we asked if the Government had received a formal Opinion from the Commission on the UK's National Programme.

Document (b)—shipments of radioactive waste and spent fuel

3.15 The Report covers the three-year period 2012–14. The Report provides information on the general provisions of the Directive, the current EU and international legal framework, and an overview of the number of authorised shipments between Member States and by Member States to third countries. It highlights that the majority of shipments were between Member States while exports to third countries (Russia, USA, Switzerland and Japan) remain low.

3.16 During the 2012–14 period, shipments from the UK comprised the return of wastes from processing (metals) and reprocessing or treatment of spent fuel, treatment (e.g. oily Uranic residue) and recycling (of metals). Shipments to the UK were mainly the return of residues from the processing or treatment of wastes, and the disposal of sealed and open sources from Ireland and the retrieval and disposal of a damaged sealed source from Kuwait. The agreement to dispose of these sources is in line with the UK's policy on the import of radioactive waste.

3.17 The Report notes that Member States have reported that the shipments are supervised and controlled in accordance with the procedures and provisions laid down in the Directive, and that there were no non-authorised shipments, shipment failures or prohibited exports. It also notes that the information in Member States' reports is consistent with

40 Eighth Report HC 301–viii (2017–19), chapter 1 (10 January 2018).

and complementary with their National Reports under the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management. The UK is a Contracting Party of the Joint Convention.

3.18 Finally, the Report provides information on measures that the Commission will take to improve the standard documentation for the supervision and control of shipments and provide support to Member States to enhance the level of consistency and detail in future reports.

The Minister's letter of 19 February 2018 (on document (a))

3.19 On "shared solutions" for radioactive waste management and spent fuel disposal, including future UK participation, the Minister notes that both the Directive and the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (on which the Directive is based) recognise the potential to share disposal facilities, but they should only be used in specific circumstances (see below).

3.20 Both the Joint Convention and the Directive, says the Minister, stipulate that radioactive waste should be disposed of in the country in which it was generated, unless there is an agreement between Member States/Contracting Parties to allow facilities in one to be used by the other(s). The Directive requires that such an agreement is in place at the time of shipment. On the post-Brexit approach, the Minister says:

> "The UK is a Contracting Party to the Joint Convention and will remain so after we leave the European Union. The UK's position and policy on the import of radioactive waste aligns with the requirements of the Directive and obligations under the Joint Convention. We do not plan to revise our position or policy once the UK has withdrawn from EURATOM."

3.21 The Minister signals the UK's recognition of the self-sufficiency principle, whereby countries that have a nuclear industry should also manage their own nuclear waste. The UK's general policy is that radioactive waste should not be imported to or exported from the UK, except:

- for the recovery of reusable materials, provided that this is the genuine prime purpose;
- for treatment that will make its subsequent storage and disposal more manageable, in cases—where the processes are at a developmental stage or which involve quantities which are too small for the processes to be practicable in the country of origin;
- sending samples for investigative analysis; and
- the return to the country of origin of radioactive waste resulting from the processing of radioactive waste in another country or from the reprocessing of spent fuel (or an equivalent amount of other radioactive waste by way of substitute).

3.22 However, radioactive waste may be imported for treatment and disposal in the United Kingdom: if it is in the form of spent sealed sources that were manufactured in the

United Kingdom; or if it arises from small users, such as hospitals, situated in Member States that produce such small quantities of radioactive waste that the provision of their own specialised installations would be impractical, or developing countries that cannot reasonably be expected to acquire suitable disposal facilities.

3.23 The Minister reiterates the Government's ambition to maintain a close and effective association with Euratom. He adds that, at the same time as conducting the Brexit negotiations, the Government is also putting in place all the necessary measures to ensure that the UK can operate as an independent and responsible nuclear state from day one.

3.24 On the Government's latest plans for managing spent fuel while plans for a Geological Disposal Facility are taken forward, including whether this might include export of spent fuel elsewhere for reprocessing or whether it will all be stored, the Minister says:

> "There are no plans to export spent fuel from the UK to be reprocessed elsewhere.
>
> "The remaining Advanced Gas-cooled Reactor fuel from the EDF Energy fleet will not be reprocessed following the closure of the Thermal Oxide Reprocessing Plant (THORP) in November 2018, but will be stored in the THORP Receipt and Storage Pond pending a decision on its future disposition, which includes disposal to a Geological Disposal Facility (GDF). The current plan for spent Magnox fuel is for reprocessing to be completed before the end of 2020, when the Magnox Reprocessing Plant at Sellafield is expected to cease operating.
>
> "Spent Pressurised Water Reactor fuel from the Sizewell B power station is held in dry storage at that site, pending a decision on its future disposition which includes disposal to a GDF. Any spent fuel from the UK's new nuclear programme would be safely and securely stored on site, pending disposal to a GDF."

3.25 Regarding the proportion of the waste in the UK originally generated in other Euratom Member States and vice versa, the Minister says:

> "With the exception of a small quantity (c.28 tonnes) of non-standard overseas-origin spent fuel, all spent fuel originally derived from other EURATOM Member States, will have been reprocessed by the time THORP closes at the end of 2018. The Nuclear Decommissioning Authority (NDA, a BEIS Non-Departmental Public Body) has already taken ownership of the majority of this overseas-origin spent fuel and is in the process of taking ownership of the remaining quantity (c.2.7 tonnes) through concurrence by the EURATOM Supply Agency (ESA). We expect this to be concluded with ESA before the UK has withdrawn from EURATOM. As a result this fuel will be owned by the NDA in line with published policy. The non-standard fuel will be managed at Sellafield alongside similar UK material pending disposal to a GDF.
>
> "In line with UK policy, all radioactive waste arising from the EURATOM Member States reprocessing contracts (or a radiological equivalent) has

> either been returned to or will be returned to the customers. There are two outstanding returns: (1) to Germany, planned to be completed by 2021/22, and (2) to Italy, planned to be completed by 2025."

3.26 In response to our query about a formal Commission Opinion on the UK's National Programme, the Minister indicates that this is not anticipated.

The Minister's Explanatory Memorandum of 5 February 2018 (on document (b))

3.27 The Minister indicates that no policy implications arise from the Commission's Report. He explains that the Directive was transposed in the UK by the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008. Paragraph 13 to the Regulations sets out the criteria under which shipments to and from the UK may take place (see paras 3.21–3.22 above). The UK's environmental regulators are responsible for granting an authorisation or consent to a shipment of radioactive waste or spent fuel, and for enforcing the Regulations.

Previous Committee Reports

Eighth Report HC 301–xiii (2017–19), chapter 1 (10 January 2018).

4 EU Political Parties and Funding

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny
Document details	(a) Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU, Euratom) No 1141/2014 on the statute and funding of European political parties; (b) Opinion of the European Court of Auditors — Proposal for a Regulation on the European Parliament and the Council amending Regulation (EU) No 1141/2014 of the European Parliament and the Council of 22 October 2014 on the statute and funding of European Political Parties and European political foundations
Legal base	(a) Article 224 TFEU; ordinary legislative procedure; QMV; (b) —
Department	Cabinet Office
Document Numbers	(a) (39041), 12308/17, COM(17) 481; (b) (39427), 16004/17, —

Summary and Committee's conclusions

4.1 Political parties at European level are organisations following a political programme which are composed of national parties and individuals as members and which is represented in several Member States. Political foundations at European level are organisations affiliated with those European parties, underpinning and complementing their objectives. So, for example, the Green European Foundation is affiliated to the European Green Party.[41]

4.2 The aim of the proposed Regulation (document (a)) is to make targeted changes to the existing Regulation (No 1141/2014) on EU political parties (EUPPs) and their affiliated foundations (EUPFs) (the 2014 Regulation).

4.3 Document (a) envisages changes to limit who can sponsor EUPPs/EUPFs, to reduce the proportion of funding that EUPPs/EUPFs must raise themselves to access EU funding (co-financing), to increase powers for the Authority to deregister non-compliant EUPPs/EUPFs and to improve recovery of funding unduly paid to EUPPs/EUPFs. It also aims to increase transparency of the links between EUPPs and EUPFs and national parties. Further details of all the proposed amendments were provided in our last Report at paragraph 2.14.[42]

4.4 The Commission intends the proposed Regulation to take effect in time for the 2019 elections, aiming for political agreement by April 2018. In its EM, the Government considered the proposal would have minimal impact on UK political parties because the 2019 EP elections would take place after Brexit. However, there remained one concern. To improve transparency EUPPs would be required to prove that member parties (national

41 A list of parties and affiliated foundations can be found on the EP website.
42 Third Report HC 301–iii (2017–19), chapter 2 (29 November 2017).

political parties) had displayed the logo and political programme of their EUPP on their websites for a period of time, as well as data about gender representation among their candidates and MEPs. An EUPP applying for funding in the 2019 financial year would have to demonstrate that its member parties were publishing the relevant information from one month after the Regulation comes into force. Assuming the Regulation was in force some time before the 2019 elections, the Government was concerned that this requirement would impact on UK political parties for a short time before Brexit. The then Minister for the Constitution at the Cabinet Office (Chris Skidmore) commented in the Government's EM[43] on the proposal:

> "The Government's position on political parties and diversity data generally is that requiring publication places a potential regulatory burden on political parties, particularly smaller parties. Instead, the Government has worked with political parties to encourage the voluntary collection of such data. If the new Regulation requires EUPPs to show that their member parties are publishing gender diversity data online then, given the Government's current position, this could cause some concerns."

4.5 In our first Report, we recognised that the proposal was likely to have little impact on the UK, but wanted to wait for further progress before clearing the proposal. We took the opportunity in the meantime to ask for an update on a previous EP proposal to reform EU electoral law.[44]

4.6 At the end of January, the Government deposited document (b), a European Court of Auditor's (ECA) Opinion on the proposed Regulation. We now report that the current Minister (Chloe Smith) says that the ECA Opinion aligns broadly with the proposals, welcoming those that could improve the financial management, accountability and transparency of funds allocated to EUPPs and EUPFs. She also notes that the ECA refrained from commenting on the proposal that EUPPs and therefore member (national) parties should publish gender diversity data about their MEPs and candidates.

4.7 She also provides an update on document (a), as at the end of January 2018. She says that a revised text based on previous Working Party discussions during the Estonian Presidency envisaged:

- 10% of the total funding being split evenly between all eligible EUPPs and 90% being divided according to representation—this would replace the original proposal that 5% be distributed evenly and 95% distributed according to representation; and
- removing provisions amounting to an obligation for national political parties to provide diversity information.

4.8 The current Minister now writes to update us again on the progress with the text. She tells us that the new aim is for the proposal to be "in force" on 30 June 2018. It is due for final Council adoption after the EP plenary in April, having already been agreed

43 Explanatory Memorandum of 13 October 2017.

44 The European Parliament's proposal for a Council Decision to amend the 1976 Electoral Act (37431) and the EP Resolution of 11 November 2015 on EU electoral law reform (37395). See the previous Committee's last Report on this proposal: Twenty-sixth Report HC 342–xxv (2015–16), chapter 4 16 March 2016. A Reasoned Opinion was approved by the House and sent to the EU institutions on 3 February 2016.

provisionally in COREPER on 7 March. As the wording in the current confidential (Limité) text removes any obligation, direct or indirect, for national political parties to have to publish gender diversity data, the Government's concerns have been addressed. She therefore asks us to clear the proposal from scrutiny.

4.9 **We thank the Minister for her Explanatory Memorandum (EM) on the Opinion of the Court of Auditors and her letter updating us on the progress of the proposed Regulation.**

4.10 **Based on the information set out in the Minister's letter and EM, we are now prepared to clear both documents from scrutiny. However, we ask the Minister to note that only seeking clearance after agreement on the substance of a proposal has been reached in COREPER can deprive the Committee's scrutiny reserve of effect, if it then only bites on a later "rubber-stamping" vote in Council. We expect to be given good notice of potential agreement in COREPER as a matter of best practice.**

Full details of the documents

(a) Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU, Euratom) No 1141/2014 on the statute and funding of European political parties: (39041), 12308/17, COM(17) 481; (b) Opinion of the European Court of Auditors — Proposal for a Regulation on the European Parliament and the Council amending Regulation (EU) No 1141/2014 of the European Parliament and the Council of 22 October 2014 on the statute and funding of European Political Parties and European political foundations: (39427), 16004/17, —.

The Government's view of document (b)

4.11 In an Explanatory Memorandum of 29 January 2018, the Minister for the Constitution (Chloe Smith) provides a commentary on the ECA Opinion:

- **"Multiparty membership":** The ECA offers no opinion on this, noting that it is a political decision.
- **Amending the distribution key for financing EUPPs and EUPFs:** Again, the ECA offers no opinion, noting that this is a political decision. The proposal would see more of the funding for EUPPs be distributed based on representation. This would generally mean that the larger EUPPs would receive more funding and those with little representation would receive less. Revised text, based on Working Party discussion during the Estonian Presidency, has amended the proposal so that 10% of the total funding is split evenly between all eligible EUPPs and 90% is divided according to representation. This replaces the original proposal that 5% is distributed evenly and 95% is distributed according to representation.
- **The lowering of the co-financing rate:** The ECA agrees with the Commission's proposal to mitigate the risk of using questionable practices generated by the difficulties in meeting the co-financing threshold. The Government has no concerns about this.

- **Recovery of amounts unduly paid and enforcing compliance with registration criteria:** The ECA agrees with the proposal to clarify how funds unduly paid could be recovered by the EP and empowering the European Authority to de-register EUPPs and EUPFs if they cease to comply with registration criteria. The ECA reiterates a previous recommendation to remove the maximum ceiling for fines.[45]

- **Clarifying the link between national parties and EUPPs:** The ECA welcomes the Commission's intention to improve the transparency of the link between EUPPs and national parties. However, it considers that it will be difficult in practice to monitor the requirement that national parties continuously publish the logo and political programme of their EUPP on their website. It makes no comment on the proposal that EUPPs must show that their national parties publish gender diversity data about their MEPs and candidates. The Revised text suggests removing the reference to national political parties needing to provide diversity information. If adopted, this would remove the UK Government's concern.

- **Timing of the proposal:** The ECA notes that the proposal to amend this Regulation has come before the expected date for review. It considers that proposed legislation on the back of premature review, especially if only to make limited improvements, should be discouraged.

- **Single rule book:** The ECA suggests that, to avoid overlaps and simplify the legislative framework, all provisions concerning EUPPs and EUPFs could be grouped under a "single rule book".

4.12 The Minister notes that the ECA Opinion aligns broadly with the proposals, welcoming those that could improve the sound financial management, accountability and transparency of funds allocated to EUPPs and EUPFs.

The Minister's letter of 15 March 2018 on document (a)

4.13 The Minister first addresses the Government's previous concerns about the impact of transparency requirements on national political parties before Brexit:

> "By way of background, the Government is not opposed to the publication of such data, indeed we are committed to encouraging political parties to publish this information, but we do not think that introducing legislative requirements is the right approach. Other Member States also had concerns about this requirement which were raised during discussions at Working Group."

4.14 Turning to the overall speed and progress of the negotiations she says that there has been "fast progress" with "provisional agreement" now being reached by the Council and EP. She attaches two Limité letters, subject to the usual understandings about confidentiality, one of which comprises the compromise text agreed. She adds:

45 Opinion 1/2013.

> "As you will see, the compromise text says 'the inclusion of information on gender balance in relation to each of the member parties of the European political party should be encouraged.' The Government endorses this approach."

4.15 She then provides us with an update on the progress of the EP's proposal on reforming the electoral law of the EU:[46]

> "Those proposals are still under consideration by Member States and I will write to the Committee with further details should any firm proposals emerge. If any proposals are agreed, given that the United Kingdom will cease to be a member of the European Union on 29 March 2019 and will therefore not be taking part in future European Parliamentary elections, in practice, the proposals would not have any practical effect in the UK."

4.16 Finally, she requests that we clear the proposal from scrutiny to enable the UK to support the proposal given the progress in negotiations. She explains:

> "The aim is for the new provisions on European Political Parties to enter into force by 30 June 2018, and be applicable in the 2019 financial year, ahead of the upcoming European elections. ln view of this, progress has been made quickly with the European Parliament and Council rapidly reaching agreement, and was on the agenda of COREPER on Wednesday 7 March. It is then likely to be voted on in the European Parliament at its April Plenary. After this, Council will look to finalise its agreement to the text."

Previous Committee Reports

Third Report HC 301–iii (2017–19), chapter 2 (29 November 2017).

46 See footnote 4.

5 Subsidiarity and Proportionality in relations between the European Commission and National Parliaments

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Annual Reports for 2016 concerning (a) relations between the European Commission and National Parliaments; (b) Subsidiarity and Proportionality
Legal base	—
Department	Exiting the European Union
Document Numbers	(a) (38916), 11021/17, COM(17) 601; (b) (38917), 11018/17, COM(17) 600

Summary and Committee's conclusions

5.1 These two complementary Annual Reports cover different aspects of the relations between the Commission and National Parliaments. Document (a) covers different forms of political dialogue between the Commission and National Parliaments. Document (b) looks at how EU institutions apply the principles of subsidiarity and proportionality. Enshrined in Article 5(3) TEU, the subsidiarity principle requires that that the EU should only act where such action cannot be sufficiently achieved by Member States. The proportionality principle seeks to ensure that EU action will not exceed the minimum necessary to achieve the Treaties' objectives.

5.2 Document (a) reviews the political dialogue between the Commission and National Parliaments, which covers Opinions (including Reasoned Opinions),[47] "green card" mechanism usage,[48] bi-lateral visits and multi-lateral conferences and meetings. It notes that 620 Opinions were submitted in 2016, showing a marked increase of 77% in Opinions from 2015,[49] with 70% of the Opinions coming from the top ten most active chambers.[50] There was a sevenfold increase in Reasoned Opinions from only 8 in 2015 to 65 in 2016.

5.3 Most political dialogue between the Commission and National Parliaments in 2016 concerned the following documents:

- Communication on the Commission Work Programme 2016: No time for business as usual (25 Opinions);

47 The Annual Report sets out the criteria for a Reasoned Opinion: "according to the definition in Protocol No 2, an opinion must clearly state a breach of subsidiarity and be sent to the Commission within eight weeks of the transmission of the legislative proposal to National Parliaments".

48 The "green card" mechanism is a means for Member State Parliaments to invite the introduction of legislative proposals or amendments.

49 However, 2015 saw the lowest number of Opinions (350) since the subsidiarity control mechanism was introduced by the Lisbon Treaty in 2009 (Report 12 October 2016).

50 The *Senato della Republica* of Italy submitted the most Opinions in 2016 with 81, the House of Lords by contrast submitted 17.

- Proposal for a Directive concerning the posting of workers in the framework of the provision of services (23 Opinions, of which 14 were Reasoned Opinions);
- Proposal for a Regulation establishing criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country National or a stateless person (recast) (14 Opinions, of which 8 were Reasoned Opinions); and
- Proposal for a Directive on certain aspects concerning contracts for the supply of digital content[7] and Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods (12 Opinions, of which 1 was a Reasoned Opinion).

5.4 Document (b) reviews how subsidiarity and proportionality have been applied at three stages of the EU pre-legislative process: at the publication of the roadmap/inception impact assessment, then the impact assessment and finally the Explanatory Memorandum. In line with the EU's 2015 Better Regulation Agenda, the emphasis is on identifying difficulties in complying with either principle at an early stage of the decision-making process. The document also reviews the different tools used to assess subsidiarity and proportionality.[51]

5.5 Further details of both documents are provided in paragraphs 5.9–5.21 below. The Government welcomes "the Commission's commitment to proportionality, and subsidiarity and the measures they continue to take to ensure that these are upheld". Concerning the 20 Opinions (Reasoned and by political dialogue) submitted by the UK (17 from the House of Lords, 3 from the House of Commons), the Government was "pleased that the UK Parliamentary chambers remain engaged in this process and are able to influence the decision-making process". In 2016, the House of Commons issued two Reasoned Opinions: on the reform of the electoral law of the EU[52] and on Aviation Security Screening Equipment.[53]

5.6 **We welcome the Minister's words of support for the participation of the UK Parliament in the EU decision-making process during 2016, through the submission of Reasoned and Political Dialogue Opinions. We are glad that the Minister considers that:**

> **"Written and Reasoned Opinions provide National Parliaments influence to shape decisions, and dialogue between Parliaments and the Commission, and a respect for subsidiarity and proportionality are a vital part of this."**[54]

51 impact assessments, evaluations and fitness checks, consultations with the Subsidiarity Expert Group, REGPEX (a sub-network of the Subsidiarity Monitoring Group), a Conference on Subsidiarity, Better Regulation and Political Dialogue hosted by Italy in 2016 and finally decisions made by the Court of Justice of the European Union.

52 Reasoned Opinion of the House of Commons on a Proposed Council Decision adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage 3 February 2016.

53 Reasoned Opinion of the House of Commons on a Proposed Regulation establishing a Union certification system for aviation security, 26 October 2016.

54 See para 23 of the Minister's Explanatory Memorandum.

Further, when referring to the submission by the House of Commons of a Reasoned Opinion on Aviation Security Screening Equipment amongst other Opinions[55] submitted by both Chambers, the Minister comments: "We are pleased that the UK Parliamentary chambers remain engaged in this process and are able to influence the decision-making process."[56]

5.7 **We assure the Minister that we remain committed to carrying out our role in ensuring subsidiarity compliance until the UK Parliament loses that right on 29 March 2019, when it is no longer the Parliament of a Member State. However, we are uncertain whether the Government's position—that it will continue to support both Houses in exercising that right until Brexit—is being communicated effectively across Whitehall. We were disappointed to receive last week an initial letter from the Parliamentary Under Secretary of State for the Environment dated 21 March 2018[57] proposing a motion that would not support the Committee's recommendation that the House submit a Reasoned Opinion to the Presidents of the EU institutions. in relation to the Proposed Directive on the quality of water intended for human consumption.[58] To submit a Reasoned Opinion in relation to proposed EU legislation is a right that the chambers of the UK Parliament hold under the EU Treaties,[59] independent from any right of the Government to make its own views known in the Council on subsidiarity compliance. We expect the Government to facilitate that right and not to obstruct it, particularly at a late stage in the process. We therefore welcome the Government's reversal of that initial position.[60] In particular, the confirmation from the Parliamentary Secretary of State for the Environment that the Government will table a motion for the Reasoned Opinion debate on Monday 26 March which supports the submission of the Opinion to the EU institutions by the Clerk of the House.**

5.8 **As currently drafted, the EU's draft Withdrawal Agreement text does not permit any formal participation of the UK Parliament in EU decision-making during the implementation period. We ask the Minister to confirm whether the Government intends to agree any informal arrangements to enable some form of dialogue between the UK Parliament and the EU institutions on new measures proposed after Brexit but which could apply to the UK before the end of the implementation period.**

5.9 **We note with interest that there appears to have been some improvement in the Commission's responsiveness to Reasoned Opinions submitted by National Parliaments, as outlined in paragraphs 5.20–5.22 of this Report chapter. The timing and quality of Commission responses to Reasoned Opinions was an issue which our predecessor Committee addressed in 2013.[61] It is likely that this improvement at a**

55 The House of Commons submitted two not just one Reasoned Opinion in 2016, see paragraph 5.5 of this chapter.

56 See para 24 of the Minister's Explanatory Memorandum.

57 See the letter from the Parliamentary Under Secretary of State for the Environment Dr Thérèse Coffey of 21 March 2018.

58 Eighteenth Report HC 301–xviii (2017–19), chapter 1 (7 March 2018).

59 Article 5 of Protocol No 2 on the application of the principles of subsidiarity and proportionality.

60 See the letter from Kate Green MP on behalf of the Chairman of ESC to the Parliamentary Under Secretary of State for the Environment to Dr Thérèse Coffey of 21 March 2018 and the Minister's response to the Chairman of 22 March 2018.

61 See Correspondence between Sir William Cash, Chairman of ESC to Vice President of the Commission between 26 June and 24 July 2013.

time when Reasoned Opinion numbers increased in 2016 compared with 2015 is partly attributable to streamlining initiatives set out in the Commission Work Programme at the time and reflective of the EU's Better Regulation initiative.

5.10 **These non-legislative annual documents raise no direct policy or legal issues in themselves. For this reason, we are content to clear them from scrutiny but look forward to the Minister's response to our question in paragraph 5.6 above.**

Full details of the documents

(a) Annual Report 2016 on relations between the European Commission and National Parliaments: (38916), 11021/17; COM(17) 601; (b) Annual Report 2016 on Subsidiarity and Proportionality: (38917), 11018/17; COM(17) 600.

Document (a)

5.11 The use of Reasoned Opinions saw a marked increase, with 65 in 2016 up from the 8 submitted in 2015. Most of these Reasoned Opinions discussed the following documents:

- Communication on the Commission Work Programme 2016: No time for business as usual;[62]
- Proposal for a Directive concerning the posting of workers in the framework of the provision of services;[63]
- Proposal for a Regulation establishing criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country National or a stateless person (recast);[64] and
- Proposal for a Directive on certain aspects concerning contracts for the supply of digital content and Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods.[65]

5.12 The Annual Report compared the original and final texts of two proposals following communications with National Parliaments in 2016, thus highlighting two case studies, as outlined below:

i) Proposal to establish a European Border and Coast Guard[66]—This new Agency would be created from Frontex and authorities in Member

62 The Commission received 25 Opinions on this Programme, 9 individual ones and one Joint Opinion from 16 chambers.

63 This Directive triggered the third use of the 'yellow card' procedure, a mechanism set out in article 7(2) of Protocol 2 to the Treaties, which allows a National Parliament to object to proposed legislation on the grounds of subsidiarity, with 23 Opinions total, including 14 Reasoned Opinions.

64 This proposal for 'corrective allocation mechanism' to be added to the Dublin Regulation regarding asylum received 14 opinions, including 8 Reasoned opinions

65 The two proposals aimed at protecting pa-EU online consumers and expanding EU on-line businesses' sales, the former received 11 opinions and the latter received..This included 8 opinions covering both proposals and one Reasoned Opinion.

66 Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC

States responsible for managing the external border. The ten Opinions received reflected concern over possible encroachment on sovereignty and competency of Member States' border management,[67] specifically that the Council, not the Commission/Agency, should approve urgent external border measures, and the text was amended to reflect any proposals from the Commission/Agency would be adopted by the Council.

ii) Anti-Tax Avoidance Directive[68]—This proposal contained five legally binding measures on hybrid mismatches to prevent exploitation of national legislative differences to avoid taxes in the Single Market. The seven Opinions, including the two Reasoned Opinions, required the Commission to address a variety of points individually: lack of flexibility; lack of an impact assessment; limitation of scope; impact on small and medium-sized enterprises; and divergence from the Organisation for Economic Co-operation and Development (OECD) approach on third party hybrid mismatches. Each of these points was addressed by the Commission through responses and alterations to the Directive were made to reflect recommendations on scope and OECD recommendations.

5.13 The Report details the progress of the second "green card" invitation for the Commission to create European level corporate and social responsibility principles.[69] The Commission's response noted its proactive initiatives concerning corporate social responsibility with stress on regulations both past and ongoing in several sectors. The Commission used the November 2016 Communication on *Next Steps for a sustainable European future* to reiterate its commitment, focusing on concrete actions, policy approaches and monitoring of the process in Member States and international bodies.

5.14 The dialogue with regional Parliaments was also reviewed in the Report, with mention of the Committee of the Regions, which has been vested with more subsidiarity monitoring responsibilities.[70] Some Regional Parliaments submitted options to the Commission, joined the delegation of regional Parliaments that met with First Vice-President Timmermans or held individual meetings with President Juncker and Commissioner for Regional Policy Creţu throughout the year.

5.15 The report concludes by reiterating the Commission's commitment to closer and deeper relations with National Parliaments with its proposed "Future of Europe" debate meetings and White Paper.[71]

5.16 Document (b) outlines feedback tools such as the Commission's 'Lighten your load—Have your say' website and the Regulatory Fitness and Performance (REFIT) Platform have improved public engagement, and resulted in REFIT's recommendations for the 2017 Work Programme on "how to simplify and reduce regulatory burdens of existing EU legislations".

67 Article 18 of the Commission proposal.

68 Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

69 This "green card" initiative was signed by eight (later nine) chambers, led by the French *Assemblée Nationale*.

70 Article 5(3) of the Treaty on the European Union: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

71 COM(2017) 2025 final.

5.17 Subsidiarity is analysed by the Commission in new legislative and non-legislative initiatives, evaluating areas where the commission does not have exclusive competence or where relevance and value may be needed. Analysis focuses on the objective and whether it can be met at a lower level and the pros and cons of EU action over local action. Qualitative and quantitative (as much as possible) deliberations include; "the geographical scope, the number of players affected, the number of Member States concerned and the key economic, environmental and social impacts".

5.18 Proportionality is reviewed in the impact assessments, evaluations and fitness checks and are required to consider:

- whether the measures go beyond what is necessary to address the problem and achieve the objective satisfactorily;
- whether the scope of the initiative is limited to those aspects that Member States cannot achieve satisfactorily on their own and where the EU can do better;
- whether the action or choice of instrument is as simple as possible, and consistent with the satisfactory achievement of the objective and effective enforcement;
- whether the costs are kept to a minimum and commensurate with the objective to be achieved;
- whether there is a solid justification for the choice of instrument (Regulation, Directive or alternative regulatory methods); and
- whether well-established national arrangements and special circumstances in individual Member States are respected.[72]

5.19 The Commission's Regulatory and Scrutiny Board examined 60 impact assessments (see section 5.4), determining that 15% (9 cases) needed more work in analysing subsidiarity and/or proportionality. The Commission published 43 evaluations and Fitness Checks, the individual dossiers and measures pertaining to these 43 were analysed in the report.

5.20 Other EU institutions' actions were also covered in the report, including:

- The 410 National Parliament submissions resulting in 36 Initial Appraisals, one Impact Assessment, 14 ex-post European Impact Assessments and 28 "Implementation Appraisals";
- the European Council which ensured National Parliaments had non-Commission draft legislative acts and National Parliamentary Opinions on Commission legislative proposals;
- the Committee of the Regions' Subsidiarity Work Programme which issued 13 Opinions and the sub-network of the Programme REGPEX which had 28 contributions from partners; and
- the Court of Justice of the European Union which considers EU legislation in respect of subsidiarity.

72 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0469.

5.21 The report notes that there were a variety of means used by the Commission to respond to Reasoned Opinions, including:

- hosting discussions at COSAC;
- direct engagement; and
- further clarifying the proposals.

5.22 Three of the proposals that received the most Opinions as outlined above in paragraph 5.10 were reviewed, along with and the Commission responses to the Reasoned Opinions. Concerning the posting of workers Directive, the Report noted the key areas of concern raised by Reasoned Opinions:

> "(i) that existing rules were sufficient and adequate, (ii) that the Union was not the adequate level of the action, (iii) that the proposal fails to recognise explicitly Member States' competences on remuneration and conditions of employment and (iv) that the proposal's justification with regard to the principle of subsidiarity was too succinct."

In response to these issues the Commission initiated bi-lateral and multi-lateral engagement, in which the Commission determined that the principle of subsidiarity had not been infringed on in this case as the posting of workers was, by definition, a transnational issue.

5.23 Similarly, the Commission responded to the Reasoned Opinions that asserted the Dublin Regulations' corrective allocation mechanism infringed on Member States' competence on relocation of asylum seekers, detailing why the mechanism was in line with this principle.

5.24 However, the Commission did note the merits of the arguments raised in the eight Reasoned Opinions concerning its proposals for the establishment of a Common Consolidated Corporate Tax Base, specifically that Member States wished to maintain control of their corporate tax systems. The Commission set out in its replies to the National Parliaments its reasons for the two proposals.

5.25 In its conclusion, the Annual Report reiterates the significance of the principles of subsidiarity and proportionality, and notes that the increase in Opinions submitted in 2016 indicates an increased interest and commitment from the National Parliaments of Member States.

The Government's view

5.26 In an Explanatory Memorandum of 27 July 2017, the then Minister for Exiting the EU (Baroness Anelay) provides the Government's view on both documents:

> "While the UK remains an EU Member State, we continue to view subsidiarity and proportionality as crucial principles that should be at the heart of the work of the European Commission and the other EU institutions.
>
> "We welcome the Commission's commitment to proportionality and subsidiarity, and the measures they continue to take to ensure that these

are upheld. They remain essential principles by which the EU must abide to ensure EU legislation is effective and proportionate. These annual reports are a valuable mechanism for promoting accountability in the policy-making process and transparency for the manner in which the EU institutions adhere to the principles of subsidiarity and proportionality.

"The Government notes the large increase in Opinions issued by National Parliaments in 2016. Although this is in part due to substantial decreases in 2015, it remains encouraging that National Parliaments are prepared and willing to engage the Commission during the legislative process, and that the Commission takes such Opinions into account during policy-making, as evidenced by the reports. Written and Reasoned Opinions provide National Parliaments influence to shape decisions, and dialogue between Parliaments and the Commission, and a respect for subsidiarity and proportionality are a vital part of this.

"As per the annex to the report on National Parliaments, the UK Parliament submitted 20 Opinions (17 from the House of Lords and 3 from the House of Commons) of which one was a Reasoned Opinion from the House of Commons (regarding aviation security screening equipment). The House of Lords issued the thirteenth highest number of Opinions, and a quarter of the highest (the Italian Senate at 81). We are pleased that the UK Parliamentary chambers remain engaged in this process and are able to influence the decision-making process.

"An assessment of the specific policies referenced in the report show that these are accurate summaries of both the concerns that the UK raised and how they were addressed. We are also content with the accuracy of the summaries of meetings and engagements, and the actions being taken by the various EU institutions to meet the principles.

"As an EU Member State it is the right of the UK to raise concerns it may have on whether the principles of subsidiarity and proportionality are being upheld in the legislative process, and will continue to do so. Departments will continue to raise with Parliament any policies where they assess the principles of subsidiarity and proportionality are not being upheld by the EU institutions in proposals, and outline any concerns they have."

Previous Committee Reports

None.

6 Digital Education Action Plan

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 on the Digital Education Action Plan
Legal base	—
Department	Education
Document Number	(39443), (5459/18), COM(18) 22

Summary and Committee's conclusions

6.1 The European Commission has adopted a Digital Education Action Plan.[73] It follows European Council conclusions of 14 December 2017[74] which highlight the need to address the skills challenges linked to digitalisation, cybersecurity, media literacy and artificial intelligence.

6.2 The Action Plan outlines a range of actions that the Commission will seek to implement, in partnership with Member States, stakeholders and society, by the end of 2020, organised into three priorities:

- making better use of digital technology for teaching and learning;
- developing relevant digital skills and competences for the digital transformation; and
- improving education systems through better data analysis and foresight.

6.3 More information about proposed actions is provided in the background section of this Report. Some of the more specific proposed actions include launching an online self-assessment tool for teachers, and providing a framework for issuing digitally-certified qualifications and validating digitally-acquired skills, which would be aligned with other EU regimes.

6.4 The Action Plan will be implemented as part of the European cooperation in education and training (ET2020) process. ET 2020 is a forum for exchanges of best practices, mutual learning, gathering and dissemination of information and evidence of what works, as well as advice and support for policy reforms. Through it, the Commission will launch a dialogue with relevant stakeholders on how to implement the proposed actions.

6.5 **The Digital Education Action Plan is a non-legislative document which outlines the Commission's vision as to how education and training systems can make better use**

73 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Digital Education Action Plan COM(2018) 22 final.

74 European Council meeting—Conclusions (14 December 2017).

of innovation and digital technology and support the development of relevant digital competences. Proposed actions will be taken forward through the existing European cooperation in education and training (ET2020) process.

6.6 **The Government is supportive of the Action Plan. The Minister of State for Apprenticeships and Skills (Anne Milton MP) observes that it is a non-legislative document and does not have any direct policy or financial implications for the UK. The Minister also observes that the Prime Minister supported the December 2017 European Council conclusions[75] on this subject. The Minister also indicates her support for the Commission's three priorities, and states that much of the Commission's analysis is in line with the Government's own thinking.**

6.7 **The Minister states that the Government supports the need to improve gender diversity in the digital sector, and adds that the Government announced in the Autumn Budget that it would invest in improving the teaching of computing and seek to drive up participation in computer science qualifications, particularly among girls.**

6.8 **In view of the limited policy and financial implications of this non-legislative document for the UK, both pre-and post-Brexit, we now clear the proposal from 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 on the Digital Education Action Plan: (39443), (5459/18), COM(18) 22.

The proposal[76]

6.9 The Communication sets out the European Commission's proposal for a Digital Education Action Plan. It follows the European Council conclusions of 14 December 2017 that highlight the need to address the skills challenges linked to digitalisation, cybersecurity, media literacy and artificial intelligence.

6.10 The Action Plan outlines European initiatives that the European Commission, in partnership with Member States, stakeholders and society, will seek to implement by the end of 2020, as part of the European cooperation in education and training (ET2020) process. It has a specific focus on initial education and training systems and covers schools, vocational education and training (VET) and higher education.

6.11 The Action Plan proposes three priorities:

75 European Council meeting—Conclusions (14 December 2017).

76 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Digital Education Action Plan COM(2018) 22 final.

Priority 1: Making better use of digital technology for teaching and learning

6.12 Actions proposed under this heading include:

- launching a new online self-assessment tool, SELFIE, with the aim of reaching one million vocational and educational teachers, trainers and learners by end of 2019 in all EU Member States and the Western Balkans;
- providing a framework for issuing digitally-certified qualifications and validating digitally-acquired skills that that are trusted, multilingual and can be stored in professional profiles (CVs) such as Europass. The framework will be fully aligned with the European Qualifications Framework (EQF) and the European Classification of Skills, Competences, Qualifications and Occupations (ESCO);
- tackling the connectivity divide between EU Member States regarding the uptake of very high capacity broadband in all European schools, including through an existing "voucher scheme"; and
- encouraging the uptake of high speed broadband through the EU network of Broadband Competence Offices which will run an information campaign for schools, particularly in disadvantaged regions.

Priority 2: Developing relevant digital skills and competences for the digital transformation

6.13 Proposed actions include:

- creating a Europe-wide platform for digital higher education supported by Erasmus+ to offer online learning, blended mobility, virtual campuses and exchange of best practices among higher education institutions (for students, researchers, educators);
- developing a pilot project dedicated to training on open science and citizen science, including continuous professional development courses on open science in higher education institutions at all levels (for students, researchers and educators);
- increasing the number of schools taking part in EU Code Week, a grassroots movement run by volunteers who promote coding in their countries as Code Week Ambassadors;
- launching an EU-wide awareness-raising campaign targeting educators, parents and learners to foster online safety, cyber hygiene and media literacy, alongside a cyber-security teaching initiative; and
- seeking to decrease the gender gap in the technology sector by promoting digital and entrepreneurial competences of women and girls.

Priority 3: Improving education systems through better data analysis and foresight

6.14 Proposed actions include:

- publishing a reference study assessing progress made in mainstreaming ICT use in education. The Commission will work with the OECD on the development of a new module in PISA (the EU Programme for International Student Assessment) on the use of technology in education and explore the relevance and feasibility of proposing new Council benchmarks for digital competences and entrepreneurship;
- launching artificial intelligence and learning analytics pilots in education from 2018 to make better use of the large amount of data which is already available, and to develop a toolkit and guidance for Member States; and
- initiating "strategic foresight" on key trends in digital transformation for the future of education systems, in close cooperation with Member State experts.

The Minister's letter of 28 February 2018[77]

6.15 The Minister of State for Apprenticeships and Skills (Anne Milton) notes that this is an area where the EU has limited competence, as the EU's role in education and culture is defined as supporting and supplementing Member States' action at national and devolved level.

6.16 In line with this, the Minister notes that Action Plan is not a proposal for legislation, but outlines action to be taken by the European Commission which will not have a direct impact on UK policy.

6.17 She also notes that:

- the Prime Minister supported the December European Council conclusions on this subject[78] and much of the Commission's analysis is broadly in line with the Government's thinking on the need to develop the digital skills required for a modern digital economy;
- the Government also supports the need to improve gender diversity in the digital sector, develop data skills and the better use of data to measure and assess policy interventions; and
- the Government announced in the Autumn Budget that the UK would invest new funding to improve the teaching of computing and drive up participation in computer science qualifications, particularly amongst girls, which includes a new National Centre for Computing Education.

6.18 The Minister notes that the proposal has no financial implications for the UK.

Previous Committee Reports

Eight Report HC 71–vi (2015–16) chapter 13 (13 July 2016).

77 Letter from the Minister, DFE, to the Chair of the European Scrutiny Committee (28 February 2018).

78 European Council meeting—Conclusions (14 December 2017).

7 EU Trade Defence Instruments

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the International Trade Committee and the Committee on Exiting the European Union
Document details	(a) Communication on Modernisation of Trade Defence Instruments: Adapting Trade Defence Instruments to the current needs of the European Economy; (b) Proposal for a Regulation amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community and Council Regulation (EC) No 597/2009 on protection against subsidised imports from countries not members of the European Community[79]
Legal base	(a) — ; (b) Article 207 TFEU; ordinary legislative procedure; QMV
Department	International Trade
Document Numbers	(a) (34838), 8493/13, COM(13) 191; (b) (34863), 8495/13 + ADDs 1–2, COM(13) 192

Summary and Committee's conclusions

7.1 In 2013 the Commission presented legislative changes to EU trade defence instruments, aimed at tackling unfair trading practices from countries such as China and Russia. The draft Regulation is a highly technical but politically important proposal that has direct read-across to issues such as 'dumping'[80] from China and the UK/EU steel crises.

7.2 The proposal faced political stalemate in the Council for nearly three years, largely due to a blocking minority of Member States (including the UK) opposing the proposed changes to the lesser duty rule,[81] which limits the level of duties the EU can apply to 'dumped' or subsidised imports. However, following pressure to respond more effectively to unfair trading practices, such as steel dumping from China, the Council adopted a General Approach in December 2016. Key proposed changes include the ability to impose higher antidumping duties in cases of raw material distortions and the shortening of the investigation period for antidumping cases to a maximum of eight months. Following trilogue agreement on an acceptable text, the proposal is expected to move to a Council vote in April 2018.

79 Council Regulation (EC) No 1225/2009 and (EC) No 597/2009 were re-codified in 2016 under EU Regulation 2016/1036 and EU Regulation 2016/1037.

80 The term dumping refers to the export by a country or company of a product at a price that is lower in the foreign market than the price charged in the domestic market.

81 The lesser duty rule means that the EU imposes trade defence duties that are sufficient to remove the injury to EU industry (at the 'injury margin'), which may be below the actual dumping margin. The lesser duty rule is recommended under WTO rules, but many of the EU's trade partners do not apply it. It therefore compensates producers for the harm caused by unfair trade (to allow them to make a reasonable profit) rather than for the actual amount of dumping.

7.3 The Minister of State for Trade Policy (Greg Hands) informs the Committee that the Government intends to vote against the proposal in the Council, and sets outs the Government's assessment of the proposed changes to EU trade defence legislation for the UK. The Government's view is that the current lesser duty rule has proved effective in tackling unfair trade and that it adequately compensates EU producers for the injury caused by this unfair trade, without imposing disproportionate costs on other parts of the supply chain or on consumers. The Minister also updates the Committee on the implications of the proposal in the context of Brexit, stating that the future UK trade remedies system will diverge from the new EU trade remedies regime as the UK "will continue to apply the lesser duty rule in the same way the Commission has applied it for some 50 years".

7.4 **The policy framework and enforcement of trade defence measures to protect the UK from unfair trading practices (such as steel dumping)—both whilst a member of the EU and after exit—is of significant political and public interest, as changes to the way duties are calculated and imposed will directly impact UK production, jobs and growth.**

7.5 **We are content to clear the 2013 Communication—a non-legislative document—from scrutiny, noting that the more recent overarching Communication on strengthening trade defence legislation (which effectively updated the Commission's intended approach to many of the issues raised in the 2013 Communication), was cleared by the Committee in December 2016.**[82]

7.6 Further to the Minister's recent correspondence setting out the Government's analysis of the draft Regulation's impact on the UK and its reasons for objecting to the proposal, we now clear this draft Regulation from scrutiny. However, we:

a) consider that Government engagement on this issue has been very light-touch. Despite previous Committees having reminded the Government of the importance of keeping the Committee updated on any revisions to that Regulation and the Government's position on it (in particular on the application of the lesser duty rule), the last substantive update was provided in February 2015. The Government did not provide detailed updates of the Government's position at key stages in the negotiation process, notably ahead of the Council agreeing a General Approach in December 2016 and trilogue discussions concluding in December 2017. The Minister's recent analysis, whilst helpful, has been shared at the end of the negotiation process, just weeks before the proposal's expected adoption by the Council in April;

b) ask the Minister to inform the Committee of the outcome on this important dossier;

c) ask the Minister to provide the Committee with a detailed update on the work that the Government is undertaking on the UK's future trade remedies regime after the UK exits the EU. In particular:

   - What objectives or criteria is the Government using to determine the future UK trade remedies framework?

82 Twenty-fourth Report HC 71–xxii (2016–17), chapter 8 (14 December 2016).

- On what matters (in addition to the application of the lesser duty rule) is the UK intending to diverge from the EU trade defence regime after exit? and
- How is divergence from the EU trade defence regime expected to:
  - impact future trade patterns, in particular unfair trade deflection (where, for example, higher EU27 duties relative to UK duties on dumped imports leads to the deflection of 'dumped' goods away from the EU27 and into the UK)? In this context, what specific measures would the UK's new Trade Remedies Authority take to tackle unfair trade deflection, if more unfair imports do enter the UK market and the duties imposed prove to be inadequate to prevent injury to UK industry? and
  - influence wider trade relations and the negotiation and conclusion of future trade agreements, including i) the future EU-UK relationship and ii) other trade agreements (for example with the US, especially in light of recent US aluminium and steel tariffs)?

7.7 We draw our conclusions to the attention of the Committee on Exiting the EU and the International Trade Committee, which will no doubt wish to analyse the Government's responses to the questions outlined above and its developing plans on trade remedies.

Full details of the documents

(a) Communication on Modernisation of Trade Defence Instruments: Adapting Trade Defence Instruments to the current needs of the European Economy: (34838), 8493/13, COM(13) 191; (b) Proposal for a Regulation amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community and Council Regulation (EC) No 597/2009 on protection against subsidised imports from countries not members of the European Community: (34863), 8495/13 + ADDs 1–2, COM(13) 192

Background

State of play on the proposal to modernise trade defence instruments

7.8 In April 2013, the Commission presented a proposal to modernise EU trade defence instruments (anti-dumping and anti-subsidy measures to tackle unfair trading practices) as it considered that, in its present shape, EU legislation on trade defence instruments could no longer adequately address current challenges such as external overcapacity or dumping.

7.9 The previous Committee's Report, listed at the end of this chapter, provides details of the draft Regulation and related background.

7.10 The draft Regulation includes a proposal to disapply the lesser duty rule in certain cases where there are raw material distortions. Derogations from this rule under specific circumstances would allow the EU to impose higher antidumping duties on imports from third countries.

7.11 The Government had previously noted that several Member States, including the UK, opposed the proposed changes to the lesser duty rule, in the absence of compelling evidence from the Commission to the contrary.

7.12 However, the balance of opinion shifted in late 2016. At the European Council of October 2016, EU leaders "committed to reaching an agreement on the modernisation of all trade defence instruments by the end of 2016, and … tasked trade ministers with breaking the stalemate on the remaining issues". In December 2016, the Council agreed a General Approach (mandate to engage in trilogues).

7.13 The reform of EU trade defence instruments is not formally linked to the recently adopted new anti-dumping and anti-subsidy methodology regulations (to address the expiry of certain parts of China's WTO Accession Protocol by removing the provisions in the legislation which refer to non-market economy), but they are related, particularly in the context of the EU steel industry crises.

The Government's view

7.14 Bar the most recent letter of 13 March 2018 from the Minister (and accompanying Annex received on 21 March 2018), the last substantive update to previous Committees on the progress of, and Government's position on the draft Regulation, was provided in February 2015.

7.15 In a general trade update to the Committee on 8 December 2017, the then Minister for Trade and Investment (Lord Price CVO) states that the "Government continues to support the Modernisation of Trade Defence Instruments, but does not agree that the case has been made for restrictions on the operation of the Lesser Duty Rule (LDR). This is under active discussion in Brussels and the Slovak Presidency is pressing for agreement before the end of the year)."

In a further general update on 24 January 2017, the former Minister notes that the Council agreed a General Approach (the UK opposed, but it was agreed through qualified majority) on 13 December 2016 and it would go to trilogues.

7.16 In a general trade update to the Committee on 13 July 2017,[83] the Minister simply notes continued Government engagement at working group level on the draft Regulation:

> "In respect of the department's main legislative files—namely the Modernisation of EU Trade Defence Instruments (MTDI), the new Anti-Dumping Methodology (ADM)(14249/16, 8493/13 and 8495/13) … the department continues to be actively engaged at working group level in relation to each dossier."

7.17 The Minister provided a further brief update on 7 February 2018,[84] noting that the Commission, European Parliament and Presidency had agreed on a Common Approach in 2017, but did not provide any further evidence as to why the Government was continuing to object to the proposed changes to the lesser duty rule or to the post-Brexit implications of the proposal:

83 Letter of 13 July 2017.
84 Letter of 7 February 2018.

> "A number of trilogues took place under the Estonian Presidency. During the eighth trilogue on 5 December 2017 the Commission, the European Parliament and the Estonian Presidency agreed on a common approach. The agreement still requires the approval of the European Parliament and the Council. As the Committee is aware, the UK Government position is to oppose this file due to the proposed restrictions to the lesser duty rule."

7.18 On 13 March 2018, a few weeks before the Council is expected to the vote on the draft Regulation in April, the Minister sets out the Government's assessment of the legislative proposal (the attached Annex, which evaluates the impact the proposed changes would have on the UK was received by the Committee on 21 March 2018). The analysis covers the:

- disapplication of the lesser rule in certain cases (raw materials distortions and the 'positive Union interest test');
- the calculation of the injury margin based on an imposition of a minimum 6% target profit and where the Commission takes into account social and environmental standards in establishing the injury elimination margin; and
- the duration of investigations.

7.19 The Minister concludes that the proposed revisions to the lesser duty rule are not in the UK's interest as he considers that duties imposed under the current rules are already effective at restraining dumped imports and protecting UK industry, and that the revised rules would negatively impact consumers and intermediate users:

> "…the LDR [lesser duty rule], as it currently operates, provides UK producers in the steel, ceramics and other sectors, with the protection they need against injury caused by dumped and subsidised imports, but without imposing punitive measures that could harm downstream users or consumers."

7.20 The Minister is supportive of the shortening of antidumping and antisubsidy investigation times for imposing provisional measures to a maximum of eight months as it may help reduce market uncertainty and bring earlier protection against dumped or subsidised imports.

Brexit implications

7.21 The Minister sets out the impact of those changes in the context of Brexit as follows:

> "We are currently legislating through the Trade and Taxation (Cross-border Trade) Bills to ensure that the UK has the full suite of tools permitted under WTO rules in order to tackle injury caused to UK industry by unfair trading practices, or unforeseen surges in imports. The UK's regime will be delivered by a new Trade Remedies Authority, to be established through provisions in the Trade Bill, to investigate cases and take action.
>
> "The future UK trade remedies system will contain many similar features to the EU system and it will continue to apply the lesser duty rule in the

same way the Commission has applied it for some 50 years. Evidence from a number of recent cases suggests that EU trade remedy measures have generally been very effective in reducing imports from the countries subject to measures, even with the application of the lesser duty rule. For example, in the year to August 2017, UK imports from China of rebar, hot rolled and cold rolled flat products were down over 90 percent compared with the year leading up to their respective anti-dumping investigations.

"I am aware that there are those who are concerned the UK's system will lead to lower duties being imposed on imports into the UK than into the EU, and that this will lead to goods being deflected from Europe to the UK. I would like to reassure the Committee that we have found no evidence of trade deflection occurring between the US and Canada, or between the US and the EU, where very different levels of duty are applied. Furthermore, if duties are high enough to prevent injury to our domestic industry, then they should continue to do so. In the unlikely event that more imports do enter the UK market as a result of trade deflection, and if duties proved to be inadequate to prevent injury, then the UK system will allow the TRA to take appropriate action."

Previous Committee Reports

Third Report HC 83–iii (2013–14), chapter 6 (21 May 2013).

Annex: The Government's assessment of the impact of the draft Regulation

ANNEX I

The main proposed changes to the EU Regulation are as follows

A. Lesser Duty Rule (LDR)

For anti-dumping (AD) cases, disapplication of the Lesser Duty Rule (LDR) where:

- distorted raw materials account for more than 17% of the cost of production, taken individually
- the Commission clearly concludes that the disapplication of the LDR is in the Union's interest ("positive Union interest test").

For anti subsidy (AS) cases, the proposal is to disapply the LDR in all cases, without condition, and without any further Union Interest test.

B. Calculation of the Injury Margin

When the LDR still applies, the injury margin will use a minimum target profit margin of 6%. Currently there is no minimum specified in the EU Regulation.

The Commission states that social and environmental standards will be taken into account when establishing the injury elimination margin. In addition, there will be a possibility to

take into account future costs stemming from implementing these standards if such costs are clearly foreseeable and objectively quantifiable, and that a) there is no double-counting of costs and b) the costs are duly substantiated.

C. Continental Shelf and Exclusive Economic Zone

An enabling clause has been introduced in the basic regulations allowing to extend measures to these areas, for example, North Sea oil and gas installations, via a future implementing act.

D. Reimbursement

If measures are repealed following an Expiry Review, importers will be reimbursed of the duties collected during the period of the Expiry review investigation.

E. Trade Unions

Trade unions will be able to prepare complaints jointly with the EU industry or expressly support complaints prepared by the EU industry.

Trade unions become "interested parties" in the proceedings, which means that they have access the non-confidential file of ongoing investigations, upon a written request. The Council had already accepted the role of trade unions in trade defence in the related new antidumping methodology file, which modified the same legal acts.

F. Duration of investigations

The duration for the imposition of provisional measures will be normally 7 months but not later than 8 months. Definitive duties will have to be imposed within 14 months.

G. Pre Disclosure[85]

A period of 3 weeks of pre-disclosure of the imposition of provisional anti-dumping and anti-subsidy measures. Subject to a number of conditions to mitigate a perceived risk of stockpiling.

Impact

A. Lesser Duty Rule (LDR)

Non-application of the LDR in AD cases involving raw materials distortions is likely to be the most significant element of the MTDI package. Because of the much smaller number of AS cases, and the fact that AS duties are much lower than AD duties, not applying the LDR in AS cases is likely to have a much smaller impact in the foreseeable future.

Rationale for non-application of the LDR in cases involving raw materials distortions.

Although the proposal makes the non-application of the LDR conditional on the presence of structural raw material distortions in the exporting country, the rationale for drawing this link is unclear.

85 "Pre-disclosure" means giving an advance warning to importers and distributors before proceeding 55% to impose provisional measures. At present, disclosure takes place only after the imposition of provisional measures

In principle, distortions to raw materials in an exporting country, such as a restriction on the export of a raw material, can cause injury to EU industry in two ways. First, by providing exporters with artificially low input costs and thus allowing them to reduce export prices, EU industry may be injured. Second, where the country is a significant exporter of the raw material in question, and can affect world prices, the raw material distortion may put upward pressure on costs of their overseas competitors, including EU producers, further exacerbating that injury.

However, the current approach used by the Commission to estimate injury margins and hence determine duties under the LDR already appears to take both these effects into account. Injury margins are based on a comparison of prices of imports from the country subject to the investigation and a target price for the EU industry. The target price, in turn, is based on the EU industry's cost of production plus a reasonable profit margin.

Injury Margin = Costs of EU Production + Profit – Import Price of dumped imports

To the extent that raw material distortions lead to either lower import prices or higher costs for EU industry, they will also lead to an increase in the injury margin and hence duties. Thus, the injurious impact of raw materials distortions should already be reflected in the duties determined under the LDR, so the removal of the LDR in these cases, and the consequent increase in duties in some cases, cannot be said to be "correcting" for the impact of these distortions.

Impact of non-application of the LDR on AD Duties

Current Use of the LDR

The Commission currently applies the LDR in all AD and AS cases. The application of the LDR has had a material impact on duties in a significant number of AD cases.

An evaluation of the European Union's trade defence instruments[86] found that, during 2005–2010, the LDR resulted in duties at the level of the injury margin, rather than the dumping margin, in around 55% of AD cases, resulting in an average reduction in the level of duties of around 9.3 percentage points. Earlier, DG Trade estimated that that the LDR affected duties in around 40% of cases during the 1990s.

In more recent AD cases, internal DIT analysis suggests that the role of the LDR has been equally, if not more, important. Since 2011 the LDR has meant that duties have been based on the injury margin in 56% of cases. Even where duties are based on the injury margin (IM) the duties are significant — a mean duty of 36%. Had the LDR not been applied to these cases the mean level of duties would have been around 29 percentage points higher. Averaged over all new cases since 2011, the duties would have been 16 percentage points higher.

86 Evaluation of EU Trade Defence Instruments. BKP Development and Consulting. 2012

	Number of Cases	Share of Cases		Mean Injury Margin	Mean Dumping margin	Duty Reduction due to LDR
Determined by Injury Margin	25	56		36	65	29
Determined by the Dumping Margin	20	44		43	21	0
Total	45	100		39	45	16

Evidence on the Effectiveness of the Duties imposed under the LDR

The aim of the LDR is to ensure that duties are set at a level adequate to remove the injury caused by dumped or subsidised imports without imposing disproportionate costs to downstream industries and to consumers.

A 2012 evaluation of the EU Trade Defence Instruments for the Commission by BKP consultants considered whether the LDR is successful in achieving this objective. The evaluation found that duties imposed under the EU system using the LDR are more than sufficient to protect industry from the effects of dumped and subsidised imports and recommended the retention of the LDR.

"TDI is on the whole effective and reasonably well calibrated, although the protection is moderately greater than what would be required to offset injury, even with the application of the lesser duty rule".

"Accordingly, the evidence adduced in … supports the continued application of the lesser duty rule …"

Evidence from more recent anti-dumping measures against Chinese steel imports also suggests that duties determined under the LDR are very effective in curtailing dumped imports. As an illustration, in the year to August 2017, UK imports from China of three key steel products, rebar, hot rolled and cold rolled flat products, were down over 90 percent compared with the year leading up to their respective anti-dumping investigations.

In all other steel cases against China over the past ten years, duties under the LDR have proved effective in curtailing dumped imports, including in cases where measures have been in place for nearly a decade. For example, duties were imposed on Chinese imports of wire rod in 2009 and on welded pipes in 2008 based on the LDR. In both cases, imports fell almost immediately, and by 2017 were still 99% and 98% below their pre-investigations levels.

Impact of the Commission Proposal

Although the precise number of AD cases where the LDR would be removed under the MTDI package is uncertain, it is likely to be significant number and that in some cases this could have significant adverse impacts on the UK interests.

Based on the focus of EU industry's complaints about raw materials distortions, it is likely, for example, that the proposal could lead to the non-application of the LDR in a significant number of cases against China, particularly where a single raw material accounts for a significant proportion of Chinese exporters' costs (e.g. steel or aluminium).

Since 2011, in 25 out of 45 new AD measures imposed, duties were based on the injury margin. Of these 25 cases, 17 were against China, 15 involved steel products and a further 3 involved aluminium products.

But the proposal might also have led to the non-application of the LDR in some other cases involving amongst others Russia (e.g. in products where energy is a significant production input), as well as Argentina and Indonesia, (e.g. where inputs into biodiesel were subject to raw materials distortions).

Impact on AS duties

The impact of removing the LDR in AS cases may be less significant simply because there are fewer AS cases and because subsidy margins are generally much lower than dumping margins, so the practical effect of removing the LDR affects a smaller number of cases. In 10 new Anti-Subsidy measures imposed since 2011 the subsidy margin was lower than the injury margin in all cases, so the LDR did not determine duties.

However, it is unclear how the removal of the LDR will affect duties in cases where there are parallel AD and AS investigations and it remains a possibility that duties could rise in these cases as a result of the removal of the LDR in subsidy cases.

Conclusion

Based on the above evidence, it seems reasonable to conclude that that non-application of the LDR could affect a significant number of AD cases and could lead to a significant rise in (already high) duties on those cases.

There does not appear to be a clear rationale for the removal of the LDR in cases affected by raw materials distortions, as any distortions should already be reflected in injury margins. In addition, the evidence from a major evaluation of the Commission use of trade defence instruments suggests that duties imposed under the LDR are already effective in restraining dumped imports and protecting EU and UK industry.

Based on this, it appears that the removal of the LDR is unlikely to lead to additional benefit terms of protecting UK producers from the effects of trade distorting practices. It will however lead to increased costs for downstream industrial users and consumers.

By making the application of the LDR conditional the presence of raw material distortions, the proposal will also have various implications for the administrative burdens, positive and negative, both on the Commission and on interested parties, although the net impact and significance of these is unclear at this stage

B. Calculation of the Injury Margin

Imposition of a minimum 6% target profit

As noted above, currently under the LDR, the injury margin (IM) is based on the difference between import prices and a target EU price. The latter is based on a combination of EU costs of production and a target profit. The target profit is supposed to represent the rate of profitability that the EU could achieve in normal conditions in the absence of dumping or subsidised imports. As long it acts in manner consistent with this principle, the European Commission has some discretion over the choice of the target profit, and decides the appropriate level on a case by case basis.

Imposing a minimum target profit will increase the estimated injury margin and hence the level of duties in cases where: a) the LDR determines the duty, and, b) the target profit would otherwise be less than 6%.

The BKP evaluation covered 45 AD cases over the period 2005–10, where the duties were based on injury margins. The target profit rate in these calculations, ranged from 3% to 15% and was less than 6% in 23 cases. In 15 of these cases the target profit was 5%. In these 23 cases duties calculated under the LDR would therefore have been higher had a 6% minimum target profit been imposed.

In new AD cases since 2011, the target profit was less than 6% in 10 cases where the LDR determined duties. In all but two of these 10 cases, the target profit was 5%.

New Anti Dumping Cases 2011–17: Target Profit used to Calculate Injury Margins

Target Profit	Less than 5%	5%–6%	6% or more	N/A
Number of Cases	2	8	14	1

Although imposing a 6% minimum target profit would have increased duties in these ten cases , the rise in duties would have been limited given that, in most cases, the target profit would have risen by just 1% point. Assuming a similar pattern going forward, this also suggest a limited impact, albeit the precise scale of the increase will vary significantly case to case depending on particular features of the case.

Social and Environmental costs

In order to assess the impact of social and environmental costs, it is again important to consider the current method of determining duties based on the injury margin under the lesser duty rule. The current Commission approach is, as noted above, based the difference between prices of dumped imports on the one hand and the costs of production and "normal" profits of EU producers on the other. This cost of production, and hence the injury margin, will already reflect all costs incurred by EU producers from of meeting EU labour and environmental standards. So, for these cases the proposal is merely a restatement of current practice and will not have any impact.

Similarly, to the extent that exporters attempt to gain a competitive advantage from lower labour and environmental costs, this will lead to lower import prices and hence a higher injury margin.

At present injury margins are based on actual costs. So, the proposal to include prospective costs arising from EU social or environmental regulation could affect injury margins

and hence duties. It is not possible at this stage to estimate the impact of this part of the proposal. However, the fact that these should only be taken into account when quantifiable, foreseeable and verifiable, suggests that the impact will be limited.

It is worth reminding that labour and environmental standards are not referred to in the WTO Agreements and, in general, trade remedies cases are not an appropriate vehicle for such issues.

C. Continental Shelf and Exclusive Economic Zone

The proposal is to introduce an enabling clause only. Details of how this proposal would work in practice, and how many cases it might affect, is not yet clear. It is therefore not possible to determine the impact, though it would lead to a wider coverage of duties as goods consumed on the Continental Shelf and EEZs are currently not subject to AD or AS duties. The impact is likely to be felt for a limited number of products consumed by the North Sea oil and gas sector. Future implementing acts will contain more details on how to practically extend AD and AS measures in the Continental Shelf and the Exclusive Economic Zone.

D. Reimbursement

Under current arrangements, duties remain in place during Expiry Review investigations. Even where an investigation concludes that measures should be terminated, any duties collected during the investigation are not paid back to importers. This proposal will therefore bring benefits to those importers that have paid duties on imports during Expiry Review investigations, where the result of those investigations is to terminate measures. However, the benefits are likely to be small in most cases. During 2011–17, the Commission conducted 91 Expiry Reviews of which 25 resulted in termination of measures. In recent years, however, the rate of termination has fallen sharply. Of 42 Expiry reviews 2015–17, only 5 ended in termination. Another factor limiting the benefits of this proposal is that the duties paid during Expiry Review investigations will be relatively small given that, in many cases, AD and AS duties are highly effective in curtailing imports from targeted exporters.

E. Trade Unions

This is unlikely to have a significant impact on the outcome of cases. The main reason for this conclusion is that the basic WTO requirements for launching an investigation—providing prima facie of dumping or subsidy, injury and a causal relationship between the two—will still need to be met, and the data will to a large extent have to be provided by companies.

F. Duration of investigations

The duration for the imposition of provisional measures will be "normally 7 months but not later than 8 months". Definitive duties will have to be imposed within 14 months.

Over the past ten years, the vast majority of Commission investigations up to provisional measures have taken 9 months, though a few of the most recent cases have been completed in a shorter time frame. The proposal should therefore bring some benefits in terms of reduced uncertainty in the market and earlier protection against dumping and subsidy where justified.

G. Pre Disclosure[87]

Although a period of pre-disclosure should bring benefits to importers and traders in terms of greater certainty and the ability to plan, the proposed period of pre-disclosure may be too short to have a material impact on decision making, as lead times for import decisions and shipping often exceed three weeks. The addition of a number of conditions to pre-disclosure, particularly greater use of registration is also likely to counteract any benefits.

87 "Pre-disclosure" means giving an advance warning to importers and distributors before proceedin55% g to impose provisional measures. At present, disclosure takes place only after the imposition of provisional measures

8 Delivering the EU's Agenda on Migration

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the International Development Committee
Document details	Commission Communication on the Delivery of the *European Agenda on Migration*
Legal base	—
Department	Home Office
Document Number	(39068), 12702/17, COM(17) 558

Summary and Committee's conclusions

8.1 The Commission published its *European Agenda on Migration* at the height of the refugee and migration crisis in 2015. It recognised that EU policy had "fallen short" and that there were "serious doubts about whether our migration policy is equal to the pressure of thousands of migrants, the need to integrate migrants in our societies, or to the economic demands of a Europe in demographic decline."[88] It called for "a set of core measures and a consistent and clear common policy" which would provide the tools needed to tackle the crisis in the Mediterranean and prevent further loss of life as well as establish a longer-term agenda for a "fair, robust and realistic" EU migration policy based on "four pillars": reducing the incentives for irregular migration, strengthening the EU's external borders, reforming the EU's common asylum policy and enhancing legal pathways to the EU.

8.2 In this Communication, published last September, the Commission takes stock of the main actions implemented under the *European Agenda on Migration* since 2015. It concludes that the EU's efforts have produced "tangible results": the number of irregular migrants reaching the EU has fallen, the EU's external borders are stronger, and there is a greater "spirit of solidarity" with frontline Member States as well as stronger cooperation with external partners in managing migration flows. Despite this, the Commission says that the EU remains at risk of "being trapped in a permanent state of crisis management".[89] It makes clear that "migration will remain a defining issue for the EU for […] years to come" and that further work is needed to develop a sustainable migration policy that is "robust, realistic and fair".[90] The Commission identifies four priority areas for action: delivering reform of the EU's common asylum policy to "future-proof" it against further migratory crises; opening up legal pathways to the EU to reduce the incentives for irregular migration; making the returns process more effective; and building deeper and stronger partnerships with countries of origin and transit. It also calls on Member States to resettle

88 See p.2 of the Commission Communication, *A European Agenda on Migration*.
89 See p.23 of the Commission Communication.
90 See p.2 and p,17 of the Commission Communication.

a further 50,000 refugees in the two years to October 2019, supported by an additional €500 million in EU funding, and to increase their contributions to the EU Trust Fund for Africa.[91]

8.3 Responding to the Communication, the then Immigration Minister (Brandon Lewis) reiterated the Government's commitment to "playing its full part in addressing migration challenges across the Mediterranean as well as through work further upstream" and said the UK had offered to resettle "at least 5,000 refugees next year under our own existing national schemes". He added that the UK was "one of the leading resettlement countries in the EU and worldwide having resettled more than a third of all refugees resettled to the EU last year".[92]

8.4 We welcomed the Government's commitment to resettle "at least 5,000 refugees next year" (2018). As this would be based on the UK's existing national resettlement schemes, we asked the Minister to:

- confirm that the UK would be eligible for EU funding (€10,000 for each resettled individual);
- explain why the Government had only pledged for one year; and
- indicate whether the Government intended to make a further pledge for 2019.

8.5 We also sought the Minister's views on UK participation in the pilot projects mooted in the Communication covering private sponsorship schemes for refugees, cooperation with third countries to develop legal channels for economic migration, and joint management of returns.

8.6 We noted the Minister's broadly positive assessment of the *European Agenda on Migration* as a means for delivering "a managed and coordinated EU approach to migration" but said that it contrasted starkly with the experience of several non-governmental organisations operating at the sharp end of the EU's asylum and migration policies. We drew attention to an Oxfam briefing paper published last October which concluded that the EU and Member States had "focused their efforts on reducing irregular migration and increasing border management, with very little attempt to increase options for safe and regular migration, and insufficient concern for the human rights and living conditions of asylum seekers." Oxfam expressed concern that the EU's asylum and migration policies:

- "risk compromising aid effectiveness and good donorship principles" by linking "success" with reductions in irregular migration rather than improvements in people's lives;
- prioritise the prevention of irregular cross-border movements, ignoring "the critical contribution of regional migration to economic development in Africa";
- push the obligation to host refugees onto poorer countries "at an immense cost to people's dignity, well-being and their ability to seek asylum safely"; and

91 See the Commission's press release issued on 27 September 2017.
92 See the Minister's Explanatory Memorandum dated 17 November 2017.

- are ineffective in enabling refugees to reunite with family members already in Europe.[93]

8.7 In a similar vein, we noted that a Save the Children report considered that current EU policies and practices were "putting children at risk":

> "There are almost no safe and regular routes for migrant and refugee children to reach safety in Europe. Children trapped in Libya face violence, abuse and torture. Thousands of children are stranded alongside adults in overcrowded 'hotspots' in Greece. Slow asylum processing procedures are driving children underground and forcing them to undertake dangerous journeys at the hands of smugglers."[94]

8.8 Given these and other concerns expressed by non-governmental organisations,[95] we asked the Minister whether he considered that the policies and practices developed under the *European Agenda on Migration* were "robust, realistic and fair" in equal measure and provided a pathway to sustainable solutions to the refugee and migration crisis. We also asked how he envisaged UK policies and practices differing post-Brexit.

8.9 The Immigration Minister (Caroline Nokes) considers that the measures developed under the European Agenda on Migration "are part of a balanced and sustainable response to all aspects of migration as a global issue" but will "take time to be delivered". She says that all funding questions, including UK eligibility for EU resettlement funding, "now form part of the negotiation of the UK's exit from the EU". She sets out the Government's resettlement commitments up to 2020 under the UK's Vulnerable Persons and Vulnerable Children's Resettlement Schemes.[96] Whilst recognising that "the UK and the EU will continue to share a great deal of common interest" in managing migration once the UK leaves the EU, she adds that "the exact nature of our future relationship with the EU on these issues is a matter for negotiation".

8.10 **We appreciate that the policies and practices being implemented under the *European Agenda on Migration* will take time to deliver results and that the challenges are immense. We are nonetheless disappointed that the Minister does not address directly the specific concerns raised by non-governmental organisations operating on the ground and dealing with the real-life consequences of EU asylum and migration policies. Even if the Minister considers that there are few better alternatives to the policy framework developed by the EU in recent years, we believe it is important to acknowledge the limitations and unintended consequences.**

8.11 **Whilst we are content to clear the Communication from scrutiny, we ask the Minister to explain why (drawing on advice from the Treasury and/or the Department for Exiting the European Union as necessary) the question of UK eligibility for EU funding for resettlement during the period while the UK remains a member of the EU should form part of the UK's exit negotiations. We draw this chapter to the attention of the Home Affairs Committee and the International Development Committee.**

93 See Oxfam's briefing paper, *Beyond 'Fortress Europe'* published in October 2017.

94 See Save the Children's report, *Keeping Children at the Centre*.

95 See also recent reports by Médecins Sans Frontières on violence at EU border crossings (Games of Violence) and on reception conditions at the "hotspot" on the Greek island of Lesbos (A Dramatic Deterioration for Asylum Seekers on Lesbos).

96 See the Government's press release issued on 22 February 2018 announcing that the UK has resettled over 10,500 refugees under its schemes for vulnerable people.

Full details of the documents

Commission Communication on the Delivery of the European Agenda on Migration: (39068), 12702/17, COM(17) 558.

Background

8.12 Our earlier Report (listed at the end of this chapter) provides a detailed overview of the Communication and the priority areas identified by the Commission to deliver on its *European Agenda on Migration*.

The Minister's letter of 7 March 2018

8.13 We asked the Minister whether she considered that the policies and practices developed under the *European Agenda on Migration* were "robust, realistic and fair" in equal measure and provided a pathway to sustainable solutions to the refugee and migration crisis. The Minister updates us on developments since the Commission published its Communication last September. She says that the Summit of European Union and African Union leaders held in November sought to address the situation in Libya but also agreed to "move beyond a crisis response". This was followed by a further meeting of EU leaders in December who endorsed a set of actions contained in a Roadmap prepared by the Commission covering "work in 2018 and beyond". The Minister continues:

> "The Roadmap moves beyond a crisis response and reinforces work with transit and source countries both at an EU level and through complementary bilateral engagement. This work continues efforts to break the business model of organised immigration crime and support third countries to better manage their borders. By reducing illegal migration, we are reducing the number of people suffering through modern slavery and at the hands of organised criminals. The Roadmap also sets in motion medium to longer term aspects of the comprehensive approach, covering in-region opportunities and protection as well as legal migration alternatives. These will take time to be delivered but, when viewed as a whole, are part of a balanced and sustainable response to all aspects of migration as a global issue.
>
> "The UK therefore continues to support this comprehensive approach and we have, alongside our European partners, renewed efforts to stand together as an international community to tackle this issue, building on the new activity amongst African partners."

8.14 Turning to the Government's position on various pilot projects mooted in the Communication, the Minister indicates that private sponsorship schemes for refugees, cooperation with third countries to develop legal channels for economic migration and joint management of returns largely concern areas of Schengen cooperation in which the UK does not participate. She notes that "the UK does not take part in Schengen visas or the EU Returns Directive" but adds that "we are watching these developments closely". The UK has implemented a Community Sponsorship scheme for refugee resettlement

(in 2016) and is "actively sharing our recent experience with other EU Member States". She considers that the UK's bilateral work on coordinated returns can "complement and support our European partners' efforts".

8.15 We welcomed the Government's commitment to resettle at least 5,000 refugees in 2018 and asked the Minister whether the UK would be eligible for EU funding, given that resettlement would be based on existing national schemes. The Minister tells us that the Home Office "is working closely with Her Majesty's Treasury and the Department for Exiting the EU given that EU budget and EU funding issues now form part of the negotiation of the UK's exit from the EU".

8.16 We asked why the Government had only pledged for one year and whether there would be a further pledge for 2019. The Minister responds:

> "The Commission only asks for pledges on a yearly basis. Our pledge to resettle is under our own existing national schemes, which will see the resettlement of 20,000 refugees fleeing Syria under the Vulnerable Persons Resettlement Scheme (VPRS) and up to 3,000 people under the Vulnerable Children's Resettlement Scheme (VCRS) by 2020."

8.17 Finally, we asked the Minister whether UK policies and practices in this area were likely to diverge from the EU's post-Brexit. The Minister tells us:

> "As it currently stands, the UK continues to support a comprehensive approach and we have, alongside our European partners, renewed efforts to stand together as an international community to tackle this issue. This is an area where the UK and the EU will continue to share a great deal of common interest after the UK's exit from the EU. The exact nature of our future relationship with the EU on these issues is a matter for negotiation."

Previous Committee Reports

Third Report HC 301–iii (2017–19), chapter 18 (29 November 2017).

9 Europol: exchanging personal data with third countries

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the Joint Committee on Human Rights
Document details	(a) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Jordan on the exchange of personal data between Europol and the Jordanian authorities competent for fighting serious crime and terrorism; (b) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Turkey on the exchange of personal data between Europol and the Turkish authorities competent for fighting serious crime and terrorism; (c) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Lebanon on the exchange of personal data between Europol and the Lebanese authorities competent for fighting serious crime and terrorism; (d) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Israel on the exchange of personal data between Europol and the Israeli authorities competent for fighting serious crime and terrorism; (e) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Tunisia on the exchange of personal data between Europol and the Tunisian authorities competent for fighting serious crime and terrorism; (f) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Morocco on the exchange of personal data between Europol and the Moroccan authorities competent for fighting serious crime and terrorism; (g) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Egypt on the exchange of personal data between Europol and the Egyptian authorities competent for fighting serious crime and terrorism;

	(h) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Algeria on the exchange of personal data between Europol and the Algerian authorities competent for fighting serious crime and terrorism
Legal base	(All) Article 218(3) and (4) TFEU, QMV
Department	Home Office
Document Numbers	(a) (39411), 5033/18 + ADD 1, COM(17) 798; (b) (39412), 5034/18 + ADD 1, COM(17) 799; (c) (39413), 5035/18 + ADD 1, COM(17) 805; (d) (39414), 5036/18 + ADD 1, COM(17) 806; (e) (39415), 5037/18 + ADD 1, COM(17) 807; (f) (39416), 5038/18 + ADD 1, COM(17) 808; (g) (39417), 5039/18 + ADD 1, COM(17) 809; (h) (39418), 5040/18 + ADD 1, COM(17) 811

Summary and Committee's conclusions

9.1 These Recommendations for Council Decisions would authorise the Commission to negotiate agreements enabling Europol to exchange personal data with the law enforcement authorities of eight countries—Jordan, Turkey, Lebanon, Israel, Tunisia, Morocco, Egypt and Algeria. These agreements would be the first of their type to be concluded with countries in the Mediterranean, Middle East and North Africa region and, the Commission says, reflect Europol's operational needs and the long-term security threat which instability in the region presents for the EU.

9.2 Under the Europol Regulation, the transfer of personal data agreed after 1 May 2017 (when the Regulation took effect) must be based either on a so-called "adequacy decision" establishing that a third country (or processing sector within it) ensures an adequate level of protection of personal data or on an international agreement concluded by the EU which "adduces adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals".[97] Negotiating directives setting out the objectives to be achieved in the negotiations are annexed to each of the proposed Council Decisions. If approved, further Council Decisions will be needed once the negotiations have been completed to authorise the EU to sign the agreements. The Council will need to obtain the approval (consent) of the European Parliament before it can conclude the agreements.

9.3 The Minister for Policing and the Fire Service (Nick Hurd) told us that he expected the Council to insist on the inclusion of a substantive justice and home affairs legal base to complement the procedural legal bases cited in the Commission proposals. This would bring the proposals within the scope of the UK's Title V (justice and home affairs) opt-in Protocol, meaning that each Council Decision would only apply to the UK if the Government decided to opt in. Whilst "generally supportive of Europol exchanging data with third countries to maximise its potential in the fight against serious and organised crime", he noted that Israel and Egypt were "human rights priority countries" for the Government and that it had human rights concerns about several of the remaining

97 See Article 25 of Regulation (EU) 2016/794.

countries. In deciding whether to opt in to each proposed Council Decision, the Government would need to be "fully assured that exchanges of personal data come with sufficient protections to ensure they are consistent with fundamental rights".[98]

98 See the Minister's Explanatory Memorandum of 26 January 2018.

9.4 We considered that the proposed Council Decisions should cite the same substantive legal base as the Europol Regulation—Article 88 TFEU—and urged the Minister to press for its inclusion, as well as for a specific recital in each proposal making clear that the UK's Title V opt-in Protocol applies. We also asked him to inform us when the three-month period available to the UK to decide whether to opt in would expire.

9.5 We shared the Minister's concern that the agreements proposed included some countries where there were well-documented human rights violations or threats to democracy and the rule of law.[99] We asked him to indicate:

- what additional assurances the Government would like to obtain to ensure adequate protection for personal data exchanged under the agreements and respect for fundamental rights;
- what form these assurances should take;
- whether the draft negotiating directives should be amended to include specific safeguards; and
- whether the negotiating directives should be the same for each country, or tailored to address specific human rights concerns in each one.

9.6 In his response, the Minister says the Government will "work alongside the EU" to obtain assurances from all eight countries that they have "adequate safeguards with respect to the protection of privacy, data and freedoms of individuals". He also expects the European Data Protection Supervisor to recommend specific safeguards. The Government has not sought to amend the proposed negotiating directives to include safeguards tailored to each country but " may seek country specific safeguards in the individual agreements themselves". The Minister tells us that the three-month period available to the UK to decide whether it wishes to participate in the proposed Council Decisions will expire on 30 April. As the Presidency "is prioritising negotiations on these mandates", he expects that the Council will be invited to adopt the proposals sooner, making it "unlikely" that the UK will have the full three months provided for in its Title V opt-in Protocol to decide whether to participate. He asks for our opinion on the Government's opt-in decision "as soon as possible".

9.7 **The Minister does not tell us whether the proposed Council Decisions will be amended to include a substantive justice and home affairs legal base. This is essential to make clear that the UK's Title V opt-in Protocol applies. Nor does he explain the reasons why the Presidency intends to disregard the UK's right to a three-month period in which to reach an opt-in decision or indicate whether the Government has raised any objection. We note, also, that the European Data Protection Supervisor has yet to issue his opinion on the safeguards that should be included in the Europol agreements, as well as the absence of any details on the operation of the human rights clause proposed by the Presidency. Given all these factors, we do not consider that it would be appropriate for us to express a view on the merits of opting in to the proposed Council Decisions. Nor would we usually be willing to clear the proposals from scrutiny without having a much clearer understanding of the safeguards that the EU will be seeking in its negotiations with each country.**

99 See the Human Rights and Democracy report published by the Foreign and Commonwealth Office in July 2017.

9.8 **We appreciate, however, that Brexit casts these proposals in a different light. The agreements proposed will be the first to be negotiated and concluded under the Europol Regulation. They are likely to establish the framework for future agreements on the exchange of personal data between Europol and third country law enforcement authorities. Whilst the Government has said it will seek a "bespoke" relationship with Europol as part of a future partnership between the EU and the UK, it may yet have to fall back on the third country provisions set out in the Europol Regulation.[100] Given this possibility, we consider that the Government may wish to have some involvement in overseeing the negotiations (through its participation in a specially constituted Council committee). We therefore agree, exceptionally, to clear the proposed Council Decisions from scrutiny so that the Government can participate in the vote in Council if it decides to opt into the proposals.**

9.9 The Minister should not interpret our decision to clear these proposals from scrutiny as approval of his handling of these documents. We are disappointed that crucial information is still lacking and expect the Minister to provide the following information at the earliest opportunity:

- the progress he has made in securing the addition of a substantive justice and home affairs legal base and a recital stating that the UK's Title V (justice and home affairs) opt-in Protocol applies;
- the Government's opt-in decision and the reasons for it;
- the text of any statement entered in the Council minutes by the UK if, as the Minister anticipates, the proposals are adopted before the three-month opt-in period has expired;
- details of the human rights clause proposed by the Presidency and how it would operate in practice;
- a summary of the European Data Protection Supervisor's Opinion and the safeguards he recommends; and
- details of the country specific safeguards that the Government will seek to include in each of the agreements during the course of negotiations.

9.10 We draw this chapter to the attention of the Home Affairs Committee and the Joint Committee on Human Rights.

Full details of the documents

(a) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Hashemite Kingdom of Jordan on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Jordanian authorities competent for fighting serious crime and terrorism: (39411), 5033/18 + ADD 1, COM(17) 798; (b) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Turkey on the exchange of personal data between the European

100 See the Government's future partnership paper on *Security, law enforcement and criminal justice* published in September 2017.

Union Agency for Law Enforcement Cooperation (Europol) and the Turkish authorities competent for fighting serious crime and terrorism: (39412), 5034/18 + ADD 1, COM(17) 799; (c) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Lebanese Republic on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Lebanese authorities competent for fighting serious crime and terrorism: (39413), 5035/18 + ADD 1, COM(17) 805; (d) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the State of Israel on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Israeli authorities competent for fighting serious crime and terrorism: (39414), 5036/18 + ADD 1, COM(17) 806; (e) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Tunisia on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Tunisian authorities competent for fighting serious crime and terrorism: (39415), 5037/18 + ADD 1, COM(17) 807; (f) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Kingdom of Morocco on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Moroccan authorities competent for fighting serious crime and terrorism: (39416), 5038/18 + ADD 1, COM(17) 808; (g) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Arab Republic of Egypt on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Egyptian authorities competent for fighting serious crime and terrorism: (39417), 5039/18 + ADD 1, COM(17) 809; (h) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the People's Democratic Republic of Algeria on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Algerian authorities competent for fighting serious crime and terrorism: (39418), 5040/18 + ADD 1, COM(17) 811.

Background

9.11 Our earlier Report (listed at the end of this chapter) provides further information on the proposed Council Decisions and negotiating directives. The Decisions include a provision which would require the Commission to conduct negotiations "in consultation with" a specially-constituted Council committee.

9.12 Europol has already concluded operational agreements which allow it to exchange personal data with a wide range of third countries—Albania, Australia, Bosnia and Herzegovina, Canada, Colombia, the former Yugoslav Republic of Macedonia, Georgia, Iceland, Liechtenstein, Moldova, Monaco, Montenegro, Norway, Serbia, Switzerland, Ukraine and the United States of America.[101] These agreements are based on an earlier Council Decision (now replaced by the Europol Regulation) and also required Council approval.[102]

101 See the Operational Agreements listed on Europol's website.

102 See Article 23 of Council Decision 2009/371/JHA

The Minister's letter of 21 March 2018

9.13 The Minister reiterates the Government's view that the agreements will "facilitate counter-terrorism, organised crime and illegal migration efforts in the region". He continues:

> "The Government, working alongside the EU, will be seeking assurances from all eight countries that they will ensure adequate safeguards with respect to the protection of privacy, data and freedoms of individuals.
>
> "We supported the Presidency proposal for a clause to terminate the agreement where the third country no longer effectively ensures the high level of protection of fundamental rights and freedoms required under the Agreement, and we are seeking clarity on how this proposed safeguard will work in practice. We are also awaiting an opinion from the European Data Protection Supervisor (EDPS) and will be interested in the safeguards that they propose."

9.14 The Minister says that the Government "has not pushed for tailored negotiating directives" for each country but adds that "we may seek country specific safeguards in the individual agreements themselves" and "are working closely with EU colleagues and FCO Posts in these countries to establish whether specific safeguards are needed".

9.15 Finally, the Minister tells us that the three-month opt-in period will expire on 30 April but adds:

> "However, the Presidency is prioritising negotiations on these mandates, with the aim of adopting them quickly. It is therefore unlikely that the UK will receive the full three months allowed for under Protocol (No. 21) to take an opt-in decision. The Government is undertaking its consideration of whether to opt-in to these measures and I would be grateful for the Committee's opinion on the opt-in decision as soon as possible."

Previous Committee Reports

Thirteenth Report HC 301–xiii (2017–19), chapter 3 (7 February 2018).

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

Cabinet Office

(39503)
6217/18
—

Commission Recommendation of 14.2.2018 on enhancing the European nature and efficient conduct of the 2019 elections to the European Parliament.

(39509)
6282/18
COM(18) 44

Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections.

Department for Environment, Food and Rural Affairs

(39311)
15473/17
COM(17) 727

Report from the Commission to the Council and the European Parliament on implementation of Directive 2010/75/EU and final reports on its predecessor legislation.

(39470)
5450/18
+ ADDs 1–2
SWD(18) 36

Commission Staff Working Document Report on Critical Raw Materials and the Circular Economy.

(39521)
—
—

European Court of Auditors Special Report No: 5 Renewable energy for sustainable rural development: significant potential synergies, but mostly unrealised.

Department for Exiting the European Union

(39504)
6216/18
COM(18) 95

Communication from the Commission A Europe that delivers: Institutional options for making the European Union's work more efficient The European Commission's contribution to the Informal Leaders' meeting of 23 February 2018.

Foreign and Commonwealth Office

(39578) — —	Council Decision authorising the opening of negotiations with the Federal Republic of Somalia, for an Agreement on the status of the European Union Capacity Building Mission in Somalia (EUCAP SOMALIA).

HM Revenue and Customs

(39512) 6494/18 COM(18) 77	Report from the Commission to the Council and the European Parliament Report on the implementation of the EU customs Action Plan to combat IPR infringements for the years 2013/2017.
(39520) 5797/18 + ADD 1 COM(18) 45	Report from the Commission to the Council on the Application of the Airworthiness Regulation (Period 2014–2016).

HM Treasury

(39388) 15908/17 COM(17) 781	Report from the Commission to the European Parliament and the Council on the application of Council Directive (EU) 2011/16/EU on administrative cooperation in the field of direct taxation.
(39389) 15907/17 COM(17) 780	Report from the Commission to the Council and the European Parliament Eighth report under Article 12 of Regulation (EEC, Euratom) n° 1553/89 on VAT collection and control procedures.
(39390) 15905/17 COM(17) 778	Report from the Commission to the European Parliament and the Council on the operation of the arrangements established by Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

Formal Minutes

Wednesday 28 March 2018

Members present:

Sir William Cash, in the Chair

Geraint Davies	David Jones
Steve Double	Stephen Kinnock
Marcus Fysh	Andrew Lewer
Kate Green	Michael Tomlinson
Kelvin Hopkins	David Warburton
Darren Jones	Dr Philippa Whitford

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 10 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 18 April 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 (Co-op), 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*)