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European Scrutiny Committee

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Documents considered by the Committee on 18 April 2018

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Staff

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Meeting Summary

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

Brexit-related issues

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

Adoption of detailed EU fishing rules

- Arrangements for involvement of the UK in the preparation of detailed EU fisheries rules during the implementation period.

Animal welfare standards and international competitiveness

- International competitiveness and high animal welfare standards post-Brexit.

Relocation of the European Medicines Agency and European Banking Authority

- UK facilitation of the relocation of the European Medicines Agency and European Banking Authority from London.

Union Customs Code: electronic systems

- Impact of a proposal to delay the switch of various EU customs processes for goods entering and leaving the Customs Union to electronic, paperless versions from 2020 until 2025. Delays to the electronic systems will affect UK traders, whose exports to the EU will face customs and regulatory controls after the UK leaves the Single Market and Customs Union. It remains unclear what the details of the Government's desired post-Brexit customs agreement with the EU are, and whether HM Revenue & Customs will benefit from access to EU risk assessment tools for customs officials.

Proportionality test for regulation of professions

- The draft Withdrawal Agreement protects the rights of UK and EU citizens whose qualifications have been recognised as well as recognition procedures that are ongoing when the transition period ends.

- Both the UK and the EU have an interest in retaining some form of mutual recognition of professional qualifications, as the UK has recognised a high number of EU27 nationals' qualifications (mainly doctors, nurses, and teachers), and UK professional business service providers benefit from the ability for their UK staff to practice in/provide services to their EU branches.

EU space programmes, particularly the Galileo Public Regulated Service (PRS)

- The EU27 have decided (unanimously — the UK abstained) to relocate a back-up monitoring centre for the Galileo Public Regulated Service (PRS) from the UK to Spain, to comply with the programme's security requirements.
- The Government recently accepted the inclusion of agreed text in the draft Withdrawal Agreement, which enables the EU to exclude the UK from activity that involves the transfer of sensitive information by notification, such as the Galileo PRS.
- An EU Decision governing third country access to the Galileo Public Regulated Service means that continued UK access to the service is possible post-transition, subject to the negotiation of two agreements, including one on security. However, this Decision restricts the extent of third country involvement in production of the most security-sensitive aspects of the PRS.
- UK firms are encountering difficulty securing space programme contracts in ongoing procurements, as the legal basis for them to deliver these services post-transition is currently unclear.

Summary

Adoption of detailed EU fishing rules

The Committee reports to the House a Commission Report setting out the instances where detailed rules have been adopted under the Common Fisheries Policy (EU tertiary legislation, akin to UK Statutory Instruments). While the Report is largely factual, the Committee considers this to be a helpful case study into the potential implications for the UK during the post-Brexit implementation period of no longer being party to decisions on tertiary legislation that will nevertheless apply. The Committee therefore asks how the consultation mechanisms agreed in the draft Withdrawal Agreement would apply in practice.

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

Animal welfare standards and international competitiveness

Noting the work of the Commission to engage internationally in order to promote high animal welfare standards and therefore mitigate any impact of high standards on international competitiveness, the Committee asks how a post-Brexit UK strategy in this area might differ and what progress has been made in advocating greater flexibility to make imports conditional on compliance with animal welfare standards.

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

Relocation of the European Medicines Agency (EMA) and the European Banking Authority (EBA)

Swift progress is being made in putting in place the legal arrangements for the relocation of the EMA and EBA from London as a result of Brexit. The Committee seeks information on the progress of any discussions between the EMA, EBA and the Government concerning how the UK might facilitate the Agencies' relocation, in particular as regards reducing the withdrawal costs.

Cleared; further information requested.

Union Customs Code: electronic systems

The legal foundation for the operation of the EU's Customs Union on goods entering from other countries is the 2013 Union Customs Code (UCC). It foresaw the upgrading or creation of various new electronic systems by the end of 2020 to automate the operation of the Customs Union and eliminate the need for physical paperwork when exporting goods to or from the EU. In March 2018, the European Commission proposed to delay the legal deadline for implementation of seven of the UCC's electronic systems in view of the difficulties encountered in the preparatory process until the end of 2025.

Given the Government's policy is to leave the Single Market and the Customs Union at the end of the post-Brexit transitional period, the European Scrutiny Committee has concluded that any delay in the establishment of the speedier electronic customs processes would have an impact on British businesses trading with the EU when the UK assumes 'third country' status. This is because the Government has failed to advance a detailed prospectus for the post-Brexit customs cooperation agreement with the EU, and customs checks (and regulatory controls) will by default apply to exports of UK goods to EU countries.

The Committee asks the Government for further detailed information about its post-Brexit customs proposals, to assess to what extent they are likely to require continued policy alignment with the EU even when the UK ceases to have a formal say over EU customs law and policy. The Committee has also repeated concerns that negotiations over a new customs agreement with the EU could be complicated by an on-going dispute between the Treasury and the European Commission over alleged widespread customs fraud at UK ports on Chinese imports.

Cleared from scrutiny; drawn to the attention of the Home Affairs, International Trade and Treasury Committees.

Proportionality test for regulation of professions

In January 2017 the European Commission proposed a Directive for a proportionality test, to be conducted by Member States before they introduced new national regulatory measures or amended existing provisions in this area, with the aim of ensuring greater compliance with the requirement that any regulations which restrict access to professions be necessary and proportionate. The Government indicated its support for the measure, which could benefit the UK post-exit, particularly where Member States' professional regulation does not discriminate between EU and third country nationals. The Minister

(Lord Henley) now seeks clearance of the file before its adoption in Council, following the quick and uncontroversial conclusion of trilogue negotiations with the European Parliament. On Brexit, the draft Withdrawal Agreement protects the rights of UK and EU citizens whose qualifications have been recognised as well as recognition procedures that are ongoing when the transition period ends. Thereafter, the legal default is UK non-participation in the EU's mutual recognition of professional qualifications regime. However, the Prime Minister and the European Council's guidelines both indicate an interest in retaining mutual recognition of qualifications. The EU has an interest in retaining these arrangements as the UK has recognised a high number of EU27 national's qualifications (mainly doctors, nurses, and teachers), although the value of any such arrangement will be contingent on the provisions regarding movement of natural persons. Meanwhile, UK professional business service providers also benefit from the ability for their UK staff to practice in/provide services to their EU branches.

Cleared from scrutiny; update requested; drawn to the attention of the Business, Energy and Industrial Strategy and Exiting the European Union Committees.

EU Space Programmes: Galileo, EGNOS, Copernicus

The EU27 have decided (unanimously — the UK abstained) to relocate a back-up monitoring centre for the Galileo Public Regulated Service (PRS) from the UK to Spain, to comply with the programme's security requirements. A recent furore at the prospect of UK exclusion from the EU space programmes has given the issue prominence. Concerns have focused on possible UK exclusion from the secure Galileo Public Regulated Service (PRS) which is restricted to government-authorised users. The chief development in this regard is that the Government recently accepted the inclusion of agreed text in the draft Withdrawal Agreement which enables the EU to exclude the UK from activity that involves the transfer of sensitive information by notification. This gives the EU27 the option to exclude the UK and UK providers from the PRS from exit day.

The report judges it unlikely that the UK will be unable to access the PRS in the long-term, as an EU Decision allows for third country access, negotiations are already underway with Norway and the US, and it appears to be in the EU's strategic and commercial interest to grant PRS access to its NATO partners, including the UK. However, it appears less likely that UK businesses will be able to continue to participate fully in in the production of PRS-infrastructure and equipment. The Decision governing third country participation permits third country involvement in production of PRS receivers but not the most sensitive parts of the programme such as the security modules. To continue to have access to the PRS, the Government would have to conclude separate space programme and security agreements with the EU.

Regarding the EU space programmes more generally, UK participation post-transition will be dependent on the future relationship; however, UK firms are already encountering difficulty securing contracts which will involve delivery post-transition, as the legal basis for them to do so is not established. This is cause for concern for the sector as, despite previous UK opposition to Galileo, the UK space sector has been a significant beneficiary and wants to continue to grow on the back of this work and to exploit the downstream commercial opportunities that the infrastructure will create.

Not cleared from scrutiny; further information requested; drawn to the attention of the Committees for Exiting the European Union and Business, Energy and Industrial Strategy.

Documents drawn to the attention of select committees:

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

Business, Energy and Industrial Strategy Committee: EU space programmes: Galileo, EGNOS and Copernicus [(a) Commission Decision (NC), (b) Commission Report (C)]; Proportionality test for professions [Proposed Directive (C)]

Digital, Culture, Media and Sport Committee: International cooperation to combat match-fixing [Proposed Council Decisions (NC)]

Exiting the European Union Committee: EU space programmes: Galileo, EGNOS and Copernicus [(a) Commission Decision (NC), (b) Commission Report (C)]; Proportionality test for professions [Proposed Directive (C)]

Environment, Food and Rural Affairs Committee: Adoption of detailed EU fishing rules [Commission Report (NC)]; Animal welfare and international competitiveness [Commission Report (NC)]

Home Affairs Committee: Union Customs Code: electronic systems [Proposed Regulation (C)]

International Trade Committee: Union Customs Code: electronic systems [Proposed Regulation (C)]

1 EU space programmes: Galileo, EGNOS and Copernicus

Committee's assessment	Politically important
Committee's decision	(a) Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy and Exiting the European Union Select Committees; (b) Cleared from scrutiny
Document details	(a) Commission Implementing Decision 2018/155 of 24 January 2018 amending, as regards the location of the Galileo Security Monitoring Centre, Implementing Decision (EU) 2016/413 determining the location of the ground-based infrastructure of the system established under the Galileo programme and setting out the necessary measures to ensure that it functions smoothly, and repealing Implementing Decision 2012/117; (b) Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions mid-term evaluation of the Copernicus programme (2014–2020) 13599/17
Legal base	(a) Article 12, paragraph 3(c), and Article 36, paragraph 3, of GNSS Regulation 1285/2013; QMV; (b) —
Department	Business, Energy and Industrial Strategy
Document Number	(a) (39477), 2018/155; (b) (39161), 13599/17 + ADD 1, COM(17) 617

Summary and Committee's conclusions

1.1 On 18 January 2018 the Member States' representatives on the European GNSS Programmes Comitology Committee voted to relocate the back-up Galileo Security Monitoring Centre (GSMC), currently hosted in Swanwick, to a new location in Spain, with the replacement back-up centre to be operational by exit day (March 29 2019). The Commission's subsequent Implementing Decision provides the rationale.[1]

1.2 Unusually, the Government did not initially submit an Explanatory Memorandum in relation to this document, despite its clear Brexit implications. The Committee contacted the officials who agreed to submit a memorandum. On 13 February 2018 the Minister of State for University at the Department for Business, Energy and Industrial Strategy (Sam Gyimah MP) submitted an Explanatory Memorandum on behalf of the Government.[2]

1.3 In it, the Government states that the relocation of the back-up Galileo Security Monitoring Centre was "part of the wider process of relocating EU agencies and facilities

1 Commission Implementing Decision (EU) 2018/155 of 24 January 2018 amending, as regards the location of the Galileo Security Monitoring Centre, Implementing Decision (EU) 2016/413.

2 Explanatory Memorandum from the Minister (BEIS) to the Chair of the European Scrutiny Committee (13 February 2018).

out of the UK before the UK leaves the EU"; however the Implementing Decision itself supplies additional reasons "relating to the security of the European Union and its Member States, and in particular taking into account the rules on the protection of classified information and the restrictions on the export of cryptographic equipment and [Galileo] PRS technology" as to why "the GSMC should be located on the territory of a Member State of the European Union".[3]

1.4 The Minister states that the Government does not consider the implications of this decision significant, as the site is not yet operational and therefore only employs five people at present. The Minister notes that the site was hosted in a secure building by contract with UK air traffic navigation service provider NATS and could therefore have financial implications, but does not specify what these are.

1.5 On 25 March 2018 the Financial Times reported that the Prime Minister was leading efforts to stop the UK being locked out of protected security elements of the satellite programme after Brexit, and that Gavin Williamson, Secretary of State for Defence, "hit the roof" when told about the EU's strict approach to sharing confidential information, despite the UK having offered unconditional security co-operation after Brexit.[4] Greg Clark, Secretary of State for the Department of Business, Energy and Industrial Strategy, was subsequently reported to have told the French ambassador that the UK wanted "complete involvement in all aspects of Galileo, including the key secure elements which the UK has unique specialisms in and have helped to design and implement".[5] It has also been suggested that the UK may turn off key Galileo infrastructure on the Falkland Islands and elsewhere if the EU Commission proceeds to exclude the UK,[6] and that the MoD is in "early discussions" as to whether the UK could launch its own satellite navigation system to replace Galileo, although this would be "hugely expensive".[7]

1.6 On 19 March 2017, a week before news of this disagreement was publicised, an updated version of the draft Withdrawal Agreement was published which included text (Article 122, 7b) allowing the EU to exclude the UK from procedures and programmes which would provide access to security related sensitive information that only Member States were to have knowledge of.[8] This text was highlighted in green, meaning that it was "agreed at negotiators' level" and would "only be subject to technical legal revisions in the coming weeks".[9] Under this provision, the EU must merely notify the UK of any exclusion.

3 Commission Implementing Decision (EU) 2018/155.
4 FT, Theresa May fights to keep UK in EU satellite project (25 March 2018).
5 Belfast Telegraph, Brexit means 'adjustment' to UK involvement in EU space programme (March 26 2018).
6 Open Europe, Theresa May: UK's participation in Galileo satellite programme after Brexit is in the interests of the EU (27 March 2018).
7 FT, Theresa May fights to keep UK in EU satellite project (25 March 2018).
8 This text had been included in the earlier 28 February 2018 version of the draft Withdrawal Agreement, as well as the Commission's proposed text in its position paper on transitional arrangement on 7 February 2018. In a Government paper raising issues with and proposing amendments to the Commission's position paper, the UK negotiating team sought clarification of what the text on sensitive information meant.
9 HM Government, Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (19 March 2018).

1.7 In this report we consider the implications of Brexit not only for the Galileo Security Monitoring Centre, but also for UK involvement in the EU space programmes more generally. For this reason, a Commission report on the mid-term review of the Copernicus programme[10] is considered alongside the GSMC Implementing Decision.

1.8 **We note the EU27's decision to relocate the back-up Galileo Security Monitoring Centre (GSMC) from the UK to Spain in preparation for the UK's departure from the EU. The Government's representative abstained in the comitology committee on the basis that this was part of the EU's wider relocation of its agencies to its territory as part of the withdrawal process. We note that, in line with a previous communication to the Government on the subject,[11] the Commission cited additional factors for this decision including "rules on the protection of classified information and the restrictions on the export of cryptographic equipment and [Galileo] PRS technology". The Government does not consider the implications of this decision significant, as the site is not yet operational, and currently has fewer than five employees, although we note that it would have employed thirty staff in due course.[12] The Government states that the site was hosted in a secure building by contract with a UK public-private partnership, NATS, which could have financial implications.**

1.9 **Unusually, the Government did not deposit this document in Parliament for scrutiny until it was specifically asked by the Committee to do so. It is concerning that a decision with such direct Brexit implications was not deposited as a matter of course. We note the Minister's assurance that he has subsequently instructed officials "to take steps to avoid similar situations arising in future." We welcome this assurance, but will take any further non-deposit of EU documents with such immediate Brexit implications very seriously.**

Brexit implications

1.10 **The UK currently receives approximately £200m annually[13] in direct funding from the EU space programmes, which enables UK firms to play a key role in large-scale space projects. Because the Galileo and Copernicus projects are not standalone missions and involve creating space infrastructure with many civilian and Government applications, the UK's involvement in the production of central aspects of these systems, notably the Galileo PRS, has placed it in a prime position to exploit the downstream commercial opportunities that they will create when fully operational. Doing so will be instrumental to the Government achieving its objective of taking 10 per cent of the global space market by 2030.[14]**

10 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions mid-term evaluation of the Copernicus programme (2014–2020) 13599/17.

11 The Financial Times refers to a letter sent to the Government in January in which the Commission expressed the view that it would be inappropriate to divulge sensitive information to the UK about post-2019 PRS plans, on the grounds that this would "irretrievably compromise the integrity of certain elements of these systems for many years after the withdrawal of the UK". FT, Theresa May fights to keep UK in EU satellite project (25 March 2018).

12 Politico, UK loses space data center to Spain amid post-Brexit security concerns (18 January 2018).

13 Philip Davies, Chair of the Space Specialist Group at the Royal Aeronautical Society, to the House of Lords EU Internal Market Sub-Committee (15 March 2018).

14 FT, Theresa May fights to keep UK in EU satellite project (25 March 2018).

1.11 **We note the Government's preference to continue to participate in all aspects of the EU space programmes,[15] including those which it has acknowledged are currently restricted to EU Member States.[16] Numerous precedents exist which allow third country participation in aspects of the space programmes; however, such participation is not automatic and would require a UK-EU agreement regarding the terms of participation.**

The Galileo Public Regulated Service

1.12 **We note concerns that UK stakeholders may be excluded from participation in some elements of the space programmes, most notably the Galileo Public Regulated Service (PRS) which is unlikely to be fully operational until 2022 or later. This appears increasingly probable, given that the Commission has suggested limiting information the UK receives about post-2019 PRS plans,[17] has required the relocation of the Galileo Security Monitoring Centre from the UK to Spain, and has included text (highlighted green to indicate the Government's agreement) in the draft Withdrawal Agreement which grants it the right to exclude UK firms from involvement in EU programmes which involve the exchange of sensitive information from exit day (29 March 2019), and requires it only to notify the UK that it is exercising this derogation for it to do so.**

1.13 **Despite these concerns, we do not consider it likely that the UK will in the long-term be excluded from accessing the Galileo Public Regulated Service (PRS). An EU Decision[18] clearly establishes that it is possible for certain third countries and international organisations to access the PRS if they conclude the necessary agreements with the Union; the EU is currently negotiating access to the PRS with the US and Norway; and it is in the EU's strategic and commercial interests to promote PRS usage among its NATO allies.**

1.14 **In terms of future UK industrial involvement in contractual work on the PRS programme, we observe that the framework for third country access states that stakeholders in third countries with which the EU has put in place the necessary space programme and security agreements may be involved in the production of PRS receivers, but not in "particularly security-sensitive matters such as the manufacturing of security modules".[19] This appears to be broadly in line with the Government's own assessment in its sectoral report on the implications of Brexit for the space sector, which accepted that "some security elements of these EU space programmes are restricted to EU Member States … creating markets exclusively for EU companies."[20]**

15 See HM Government, Collaboration on science and innovation — a future partnership paper (6 September 2018) and Greg Clark in Belfast Telegraph, Brexit means 'adjustment' to UK involvement in EU space programme (March 26 2018).

16 For a list of those aspects of the space programmes restricted to EU Member States, see Department for Exiting the European Union, Sectoral Report — Space, paragraph 57 (21 December 2017).

17 The Financial Times refers to a letter sent to the Government in January in which the Commission expressed the view that it would be inappropriate to divulge sensitive information to the UK about post-2019 PRS plans, on the grounds that this would "irretrievably compromise the integrity of certain elements of these systems for many years after the withdrawal of the UK". FT, Theresa May fights to keep UK in EU satellite project (25 March 2018).

18 Decision 1104/2011 of the European Parliament and of the Council of 25 October 2011 on the rules for access to the public regulated service provided by the global navigation satellite system established under the Galileo programme.

19 Decision 1104/2011.

20 Department for Exiting the European Union, Sectoral Report — Space (21 December 2017).

1.15 **We conclude that it is in the EU's strategic and commercial interest to allow the UK to continue to access the service. We also observe that, while existing EU law and the draft Withdrawal Agreement enable the EU to exclude UK industry from the Galileo PRS, doing so would involve the loss of unique expertise, cause further disruption and delays to the programme, and have a detrimental effect on infrastructure which is of some importance to UK, EU and European security, potentially weakening the security that both the UK and the EU desire to protect.**

Immediate contractual and procurement implications

1.16 **The lack of certainty regarding the UK's future relationship involvement in the EU space programmes is causing businesses immediate difficulties. In addition to UK firms working on security-related aspects of the space programmes being faced with the possibility of contract termination during the implementation period, UK firms participating in ongoing EU space programme procurement rounds are at a disadvantage because it is unclear whether there will be a legal basis for them to fulfil these contracts when the implementation period ends. If this situation is not resolved soon, even if continued UK participation in the space programmes is subsequently agreed, firms may find themselves effectively locked out of the implementation of large parts of those programmes for several years. We urge the Government to continue its efforts to resolve this situation at the earliest opportunity.**

Questions

1.17 **We request that the Government provide us with a detailed update regarding reports that the EU intends to exclude the UK from accessing the Galileo PRS service and to prevent UK-based entities from continuing to participate in its production during the implementation period. We ask the Government to summarise what action it has taken to address this issue, how it proposes to do so, and what progress has been made to date.**

1.18 **As this will be the principal file through which we scrutinise the implications of EU exit for the space sector, we also ask the Government to respond to the following questions in detail:**

- **What are the financial implications resulting from the relocation of the GSMC from a secure building by contract with NATS, and on whom will they fall? Will the Government, as a shareholder in NATS, incur any of the costs associated with this decision?**
- **The Government's space sector report states that "some security elements of these EU space programmes are restricted to EU Member States (e.g. the Copernicus security and emergency management services, Galileo's Public Regulated Service, the right to manufacture specific receivers for Galileo signals) creating markets exclusively for EU companies."[21] Is this list of examples exhaustive or are other elements of the space programmes potentially captured by the derogation for programmes involving sensitive information (if so please identify)?**

21 Department for Exiting the European Union, Sectoral Report — Space (21 December 2017).

- **The Government sought clarification from the Commission regarding the meaning of the derogation relating to transfer of sensitive information[22] in the Commission's position paper on transitional arrangements, text which was subsequently incorporated into the draft Withdrawal Agreement. Based on the Government's understanding of the legal text and any clarifications that have been received, what other EU programmes and activities could the UK potentially be excluded from through the exercise of this derogation?**

- **Why did the Government agree to the inclusion of text in the draft Withdrawal Agreement that enables the EU to restrict UK involvement in the Galileo Public Regulated Service (Article 122, 7b)?[23]**

- **We note that the EU Decision regarding third country access to the Galileo Public Regulated Service permits third countries that negotiate agreements with the EU to access it (possibly subject to a charge) and to manufacture PRS receivers, but not security modules and other activity involving extremely sensitive information. To what extent would this level of involvement satisfy the needs of the Government and UK industry?**

- **Uncertainty as to whether UK firms will be able to continue to participate in the EU space programmes post-exit is impeding their ability to secure contracts in ongoing space programme procurement processes. At what point in the exit process does the Government believe that it will be able to provide industry with the certainty that it seeks?**

- **If the ability of UK businesses to secure space programme contracts remains unresolved for a significant period of time — e.g. until the future relationship is implemented — will the Government consider leaving the space programmes permanently? Were it to do so, would the Government domestically maintain current-levels of EU funding for the sector?**

- **What would the implications be for the Government of loss of access to the Galileo Public Regulated Service? Given the further delays to the PRS becoming fully operational that are anticipated, how significant would it be if the Government were to cease to have access to it temporarily while the necessary agreements were negotiated?**

- **What proportion of total public sector funding to the UK space sector is associated with the EU space programmes? Are concerns about the impact of the loss of this funding and participation in the EU space programmes overstated, in the Government's assessment?**

- **What opportunities and benefits would the UK leaving the EU space programmes create for the UK space sector?**

1.19 **We also ask the Government to provide us with an update on reported MoD "early discussions" on whether Britain could launch its own satellite system to replace Galileo.[24]**

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

23 HM Government, Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (19 March 2018).

24 FT, Theresa May fights to keep UK in EU satellite project (25 March 2018).

1.20 **We clear the Copernicus Mid-Term Evaluation from scrutiny. We retain the Galileo Implementing Decision under scrutiny and ask the Government to respond to these questions by May 23 2018. We draw this report to the attention of the Select Committees for Exiting the EU and Business, Energy and Industrial Strategy.**

Full details of the documents

(a) Commission Implementing Decision 2018/155 of 24 January 2018 amending, as regards the location of the Galileo Security Monitoring Centre, Implementing Decision (EU) 2016/413 determining the location of the ground-based infrastructure of the system established under the Galileo programme and setting out the necessary measures to ensure that it functions smoothly, and repealing Implementing Decision 2012/117/EU: (39477), 2018/155; (b) Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions Mid-term evaluation of the Copernicus programme (2014–2020): (39161), 13599/17 + ADD 1, COM(17) 617.

Background

Galileo

1.21 Galileo is the European Union's Global Satellite Navigation System (GNSS). It provides radio signals to users equipped with Galileo-compatible receivers for position, navigation and timing purposes. The programme has three roles. It is intended to provide a European alternative to the United States' GPS programme (with which it is interoperable), China's Beidou, and Russia's GLONASS, so that the EU is not reliant on these military-operated systems. It is also an industrial policy tool designed to support economic growth and innovation in the Member States' economies, as the transport, logistics, telecommunications and energy sectors all become increasingly dependent on services of this kind. The services themselves are also intended to bring specific benefits.

1.22 Following a testing period, Galileo is currently offering three Initial Services:

- *Open Service (OS):* The Galileo Open Service is a free mass market service for positioning, navigation and timing that can be used by Galileo enabled chipsets in, for example, smartphones or in-car navigation systems.
- *Public Regulated Service (PRS) (encrypted):* The Galileo Public Regulated Service[25] is an encrypted navigation service designed to resist jamming, involuntary interference and spoofing, and be able to provide service continuity for government users during emergencies or crisis situations when other navigation services are being jammed. It is for government-authorised users, such as police, border control, customs, civil protection units working in crisis situations, governmental transport and tracking of dangerous goods, and peace-keeping forces and defence. The service is intended for security and strategic infrastructure (e.g. energy, telecommunications and finance).

25 GSA, The Galileo PRS, Secure EU satellite navigation for public use.

- *Search and Rescue Service (SAR):* Europe's contribution to the international distress beacon locating organisation COSPAS-SARSAT. Galileo's data helps to locate beacons and rescue people in distress.

1.23 Additional services which will become available in the future are:

- *Commercial Service (CS) (encrypted)*: Provides access to two additional signals, to allow for a higher data throughput rate and to enable users to improve accuracy. Accuracy to 1 centimetre and guaranteed service for which service providers will charge fees. The signals are encrypted. The Commercial Service allows for development of applications for professional or commercial use owing to improved performance and data with greater added value than that obtained through the open service.

- *Safety of life (SoL):* This service improves the open service through the provision of timely warnings to the user when it fails to meet certain margins of accuracy. Integrity messages will warn of errors. This service will be made available for safety-critical applications such as running trains, guiding cars, navigation and aviation.

Historic US and UK opposition to Galileo

1.24 One reason for the EU's proposal to develop the Galileo system was that the US GPS system was operated by the military, and intentionally degraded the quality of signal that was available for civilian use ("selective availability"). The EU considered that civil infrastructure, including airplane landing, should not rely solely upon a system with this vulnerability. The US opposed the EU proposal to develop its own satellite navigation system for a range of reasons,[26] including its intention to use the same frequency as the US GPS, which would have made it impossible for the US to block the Galileo signals without interfering with its own GPS signals. This conflict was subsequently addressed. Initially, the Government opposed the project, but when a qualified majority in support of the proposal emerged, the Government dropped its opposition.[27] In recent years both the US and the UK have become more supportive of Galileo, as the UK has been successful in securing contracts — particularly related to the Public Regulated Service — worth more than it invests,[28] and the US has come to the view that having the encrypted PRS service would provide a useful improvement to the robustness and resilience of its own system.

The European Geostationary Navigation Overlay Service (EGNOS)

1.25 EGNOS is a satellite-based augmentation system which supplements GPS, GLONASS and Galileo by reporting on the reliability and accuracy of their positioning data and sending out corrections. Developed by the European Space Agency and EUROCONTROL on behalf of the European Commission, EGNOS consists of a network of about 40 ground stations and three geostationary satellites.

26 See, for example, Guardian, Europe and US clash on satellite system (8 December 2003).
27 The Independent, Galileo satellite project goes into orbit (10 March 2002).
28 The UK has funded roughly 12 per cent of the annual budget for Galileo and received a work share of more than 15 per cent (FT, Airbus says UK participation in Galileo after Brexit is critical, 28 March 2018).

Copernicus earth-observation programme

1.26 Copernicus is the EU flagship programme which provides satellite-based monitoring services of the atmosphere, land, water and forests to help environmental research. It delivers data and information in areas of atmosphere monitoring, marine environment monitoring, land monitoring, climate change, emergency management and security. Copernicus was designed to support decision makers in the EU and its Member States, as well as stimulate growth in the private sector use of earth observation, which is particularly useful in agriculture. The data it generates is provided freely worldwide, not just to EU Member States.

1.27 The Government's sectoral report on the implications of EU exit for the space sector[29] states that UK firms currently hold Copernicus data processing contracts worth €23m, the European Centre for Medium-Range Weather Forecasts in Reading operates the Copernicus Service Climate and Atmospheric Monitoring System, and handling service budgets in excess of €60m per annum.

1.28 The Copernicus project is managed by the European Commission. The space segment of the programme is operated by the European Space Agency and the ground segment by the European Environment Agency and the Member States.

The European Global Navigation Satellite Systems Agency (GSA)

1.29 The GSA is the EU agency that aims to ensure that essential public interests are properly defended and represented in connection with satellite navigation programmes of the union: Galileo and European Geostationary Navigation Overlay Service (EGNOS). It manages the day to day operations of these programmes.

Horizon 2020

1.30 In addition to the general funding programme for research under Horizon 2020, the EU also operates sector-specific research programmes for areas with military or national security implications, including the EU space programme.[30] Horizon 2020 grants are used to develop technology that will form the basis for future evolutions of the EU space systems.

EU Funding

1.31 In the Government's sectoral report on the implications of exiting the EU for the space sector,[31] the Government stated that the EU had allocated "around €12bn" on space initiatives and projects between 2014–2020, including €7bn for Galileo and EGNOS, €3.4bn for Copernicus, and €1.5bn for the Horizon 2020 space element. The Government stated that €3.5bn of contracts to design, build, operate and replenish EU space programmes were out to tender at present, and that, after 2020, up to €5bn could be spent on contracts for the next generation of Copernicus satellites.

29 Department for Exiting the European Union, Sectoral Report — Space (21 December 2017).
30 See the Committee's recent report on EU research funding (28 February 2018).
31 Department for Exiting the European Union, Sectoral Report — Space (21 December 2017).

The European Space Agency (ESA)

1.32 The ESA is not an agency or body of the European Union (EU), and has non-EU countries (Norway, and Switzerland) as members. Although Galileo and Copernicus are funded and owned by the EU, they are managed in partnership between the European Commission and the ESA. The European Space Agency effectively serves as the technical and procurement agent for the European Commission, in relation to its space programmes.[32]

1.33 More than three-quarters of Britain's space spending is sent to the 22-nation European Space Agency.[33]

The proposal

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

1.35 The reasons given were that:

> "On 29 March 2017 the United Kingdom notified the European Council of its intention to withdraw from the European Union under Article 50 of the Treaty on European Union. For reasons relating to the security of the European Union and its Member States, and in particular taking into account the rules on the protection of classified information and the restrictions on the export of cryptographic equipment and PRS technology, the GSMC should be located on the territory of a Member State of the European Union.
>
> "In the guidelines adopted on 29 April 2017 following the notification by the United Kingdom, the European Council stated that the matter of the future location of the seats of EU facilities located in the United Kingdom should be settled rapidly and that arrangements should be made to facilitate their transfer. It is thus important to make provision without delay for the transfer of the United Kingdom GSMC to the territory of another EU Member State."[34]

1.36 It is notable that a number of reasons are given for the decision: one relates to EU rules regarding security and classified information including Galileo PRS technology in particular; a second reason relates to the relocation of EU facilities from the UK to the EU.

1.37 The EU27 supported the proposal while the UK Government abstained. Formal adoption by the College of Commissioners took place on 24 January 2018.

1.38 On 25 October 2017, the Commission published a mid-term evaluation report on the EU's Copernicus space programme during the period 2014–2020.[35] We are considering this

32 European Space Agency, Procurement of full Galileo programme begins (1 July 2008).
33 Space News, Britain's quitting the EU, but will it be forced out of EU space programs? (24 June 2016).
34 Commission Implementing Decision (EU) 2018/155.
35 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions mid-term evaluation of the Copernicus programme (2014–2020) 13599/17.

report alongside the Implementing Decision regarding the Galileo Security Monitoring Centre (GSMC) in order to allow us to consider the Brexit implications for the UK space sector's participation in the EU's space programmes as a whole.

1.39 The evaluation found that the Copernicus programme was considered a success: it was on track, within budget, and meeting its objectives, which remained relevant. The large amount of data the project generated, coupled with advances in ICT and cloud computing, was judged to have created "unprecedented business opportunities in many sectors of the economy and across the EU Member States." The main limitations identified were that the use of Sentinel data was not intuitive, and that there is a lack of awareness of the programme among non-specialists which is seen as a barrier to market uptake.

The Government's view[36]

1.40 The Government did not submit an Explanatory Memorandum on this Implementing Decision of its own accord. Although implementing decisions are not automatically depositable, in cases where there is political importance the Government should consult the Committee as to whether the document should be deposited. On 24 January 2018, after being asked to do so by the Committee, the Minister of State at BEIS (Sam Gyimah MP) submitted an Explanatory Memorandum, in which he stated that:

> "Unfortunately, given that the decision was taken at Committee level, BEIS did not submit an Explanatory Memorandum ahead of the decision. I have instructed my officials to take steps to avoid similar situations arising in future."

1.41 Regarding the financial implications of the relocation, the Minister noted that the back-up GSMC site in Swanwick was managed by the European GNSS Agency and was "not yet operational". He said that "there are less than five employees currently based at the Swanwick GSMC site, all of which are employed by the GSA and will need to be relocated in the coming months." The Minister said that "no additional impact on jobs in the UK is foreseen as a result of this decision." However, he noted that the back-up GSMC site was hosted in a secure building by contract with a UK public-private partnership, NATS, which could have financial implications.

1.42 The Minister explained that this relocation "is part of the wider process of relocating EU agencies and facilities out of the UK before the UK leaves the EU" and that UK representatives abstained from voting in the Comitology committee, "as the location of EU infrastructure is a matter for the remaining Member States of the European Union". and that the other Member State representatives present endorsed the European Commission's recommendation.

1.43 In the Government's Explanatory Memorandum[37] regarding the Commission's mid-term evaluation report of the EU's Copernicus space programme during the period 2014–2020, the Minister said that the report did not have direct policy implications as it was merely an evaluation report, and reiterated the Government's desire to continue to participate in the Copernicus space programme post-exit.

36 Explanatory Memorandum from the Minister (BEIS) to the Chair of the European Scrutiny Committee (13 February 2018).

37 Explanatory Memorandum from the Minister, BEIS, to the Chair of the European Scrutiny Committee (10 November 2017).

UK-EU participation in the space programmes after Brexit

Government policy: continued UK participation

1.44 In the Government's February 2017 White Paper "The United Kingdom's exit from and new partnership with the European Union" the Government expressed support for the UK space programmes, Galileo and Copernicus, in which the UK had played an important role, indicated that the UK would "welcome agreement to continue to collaborate with our European partners on major science, research and technology initiatives."[38] On 9 September 2017 the Government published a "future partnership paper"[39] on collaboration on science and innovation which also noted the important commercial opportunities the space programmes provided to UK industry, and concluded that "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."

1.45 As noted above, when it became apparent that the Commission was serious about excluding the UK from the Galileo PRS programme, Greg Clark MP, the Business Secretary, was reported to have told the French ambassador that the UK wanted "complete involvement in all aspects of Galileo, including the key secure elements which the UK has unique specialisms in and have helped to design and implement".[40]

Non-participation is the legal default

1.46 Only EU Member States have the automatic right to participate in the EU's space programmes. The Galileo and Copernicus space programmes include provisions which permit participation by third countries which conclude agreements with the EU (see Precedents for third country participation) but there is no template for these agreements and they must be negotiated on a case-by-case basis. In the absence of alternative arrangements, the legal default is therefore that when the UK leaves the EU it will no longer be able to participate in these programmes. On this basis, the head of the European Space Agency's EU policy office has stated that "If nothing changes (and Brexit goes ahead), we would have to stop these contracts".[41] If the draft Withdrawal Agreement as currently drafted is concluded and enters into force, it would extend the ability of the UK and its industry (with the exception of certain sensitive programmes) to participate in the programmes until December 31 2020, when UK firms would cease to be able to participate. In the event of a non-negotiated exit on 29 March 2019, the UK and its firms would, in the absence of alternative arrangements, immediately cease to be eligible to participate in the programmes.

38 HM Government, The United Kingdom's exit from and new partnership with the European Union (2 February 2017).
39 HM Government, Collaboration on science and innovation—a future partnership paper (6 September 2017).
40 Belfast Telegraph, Brexit means 'adjustment' to UK involvement in EU space programme (March 26 2018).
41 Phys.org, Brexit will change UK role in Europe's space programmes: ESA (14 September 2016).

Third country participation

1.47 The EU Regulations governing the operation of the Galileo[42] and Copernicus[43] programmes both permit third country participation subject to the conclusion of agreements with the EU. There is no standard framework for participation.

1.48 In the Government's future partnership paper on research and innovation,[44] it observes that, for Galileo, the EU has Cooperation Agreements on satellite navigation with countries including China, Korea, Israel, Morocco, Norway, Switzerland, Ukraine and USA. Many of these agreements focus on technical cooperation: for example, the 2004 US-EU Agreement on GPS-Galileo Cooperation laid down the principles for cooperation in the field of satellite navigation, and has focused on maximising interoperability between the services, and agreements with Korea and Ukraine cover a wide range of cooperative activities. However, a number of agreements entail more extensive participation in the EU space programmes:

- Switzerland has a Cooperation Agreement[45] which enables it to participate extensively in the Galileo and EGNOS programmes. Financially, Switzerland contributes to the programmes and is able to bid to provide contracts. The hydrogen-maser clocks used by the Galileo satellites are manufactured in Switzerland.

- Norway also participates extensively in the programme through a similar agreement.[46] Norwegian companies are able to compete for contracts and Norway hosts parts of the system infrastructure on its territory. Norway participates in the GSA in an observer role. Participation in the programme is granted through the EEA agreement and a separate Cooperation Agreement on Satellite Navigation.

1.49 In terms of third country participation in the Copernicus programme:

- Norway and Iceland have an agreement with the EU providing for participation in the programme and access to data and services, including the right for their industries and institutions to bid for contracts. They participate fully in the EU programme committees, but without the right to vote. These agreements include financial contributions by Norway and Iceland.

- The USA and Australia have signed cooperation agreements with the EU on a 'no exchange of funds' basis. Both countries provide contributions in the form of mirror sites to store and distribute data in their regions. In the case of the USA, there is also a reciprocal open data agreement on Earth observation data. Australia's agreement enables fast access to Copernicus satellite data through the establishment of a regional data access and analysis hub.

42 Article 49 of Regulation 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems and repealing Council Regulation (EC) No 876/2002 and Regulation (EC) 683/2008 of the European Parliament and of the Council.

43 Article 26 of Regulation 377/2014 of the European Parliament and of the Council of 3 April 2014 establishing the Copernicus Programme and repealing Regulation (EU) No 911/2010.

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

45 OJ L 15, 20.1.2014, p. 3–17, 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.

46 OJ L 283, 29.10.2010, p. 12–20, Cooperation Agreement on Satellite Navigation between the European Union and its Member States and the Kingdom of Norway.

1.50 The EU's guidelines for the framework for the future relationship suggest that in "certain Union programmes, e.g. in the fields of research and innovation and of education and culture, any participation of the UK should be subject to the relevant conditions for the participation of third countries to be established in the corresponding programmes."[47]

Implementation period provisions on sensitive information

1.51 The transitional arrangements outlined in Article 122 of the draft Withdrawal Agreement, which have been provisionally agreed by both parties, would allow the UK and its industry to continue to participate in most of the EU space programme during the implementation period, albeit without representation on the EU's institutions or agencies.

1.52 However, the EU is permitted during the implementation period to exclude the UK from participating in those elements of the space programme which involve access to "security related sensitive information". Article 122 (7b) of the Draft Withdrawal Agreement[48] states that where EU law provides for the participation of Member States or their nationals participating "in an information exchange, procedure or programme which continues to be implemented or starts after the end of the implementation period, and where such participation would grant access to security related sensitive information that only Member States (or nationals of Member States, or natural or legal persons residing or established in a Member State) are to have knowledge of", these references will be understood as not including the UK, and the EU will notify it of "the application of this derogation".

1.53 That access to security-sensitive aspects of the space programme might be affected by exit has been evident by a number of developments:

- the Government's sectoral report on the implications of Brexit for the space sector[49] acknowledges that "some security elements of these EU space programmes are restricted to EU Member States (e.g. the Copernicus security and emergency management services, Galileo's Public Regulated Service, the right to manufacture specific receivers for Galileo signals) creating markets exclusively for EU companies";

- the European Commission reportedly wrote to the UK in January to explain that it would be inappropriate to divulge sensitive information about post-2019 Galileo Public Regulated Service plans to a departing member state;[50]

- the Government sought clarification from the Commission of what the proposed sensitive-information clause meant in a position paper in response to the Commission's proposed legal text for the implementation period,[51] although what clarification was supplied is unknown; and

- the EU's decision to require the relocation of the back-up Galileo Security Monitoring Centre to Spain cites "reasons relating to the security of the European

47 European Council (Art. 50) guidelines on the framework for the future EU-UK relationship, 23 March 2018.
48 HM Government, Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (19 March 2018).
49 Department for Exiting the European Union, Sectoral Report — Space (21 December 2017).
50 FT, Theresa May fights to keep UK in EU satellite project (25 March 2018).
51 HM Government, Draft text for discussion: implementation period (7 February 2018).

> Union and its Member States, and in particular taking into account the rules on the protection of classified information and the restrictions on the export of cryptographic equipment and PRS technology".

Future UK access to the Galileo Public Regulated Service (PRS)

1.54 EU Decision 1104/2011[52] establishes the rules governing access to the Galileo PRS. Article 5 of the decision establishes that it is possible for certain third countries and international organisations to access the PRS if they conclude two agreements with the Union: one laying down the terms of access, alongside a separate security of information agreement.

1.55 The Decision states that these agreements could permit the manufacturing of PRS receivers, subject to an agreement being reached, but not "particularly security-sensitive matters such as the manufacturing of security modules"[53] (Recital 8) — the part of a PRS receiver that enables it to decrypt the PRS. The Decision states that the Commission should analyse whether a charging policy should be put in place for the PRS, with respect to third country participants. Participation in the PRS for third countries is not automatic, and is subject to negotiation.

1.56 To date no third country participates in the Galileo PRS, although Norway and the United States have submitted requests for PRS access, and negotiations with the US are underway. Recent coverage suggests that the delay in dealing with Norway and the US's requests has partly resulted from the fact that sorting out access to PRS even among the EU 28 has been complicated.[54]

1.57 Given the lack of precedents for third country participation in the Galileo PRS to date it is not possible to be definitive about what the implications will be for the UK. However, there are reasons to be optimistic that the UK will retain access to the service. In addition to Decision 1104/2011 making provision for third country access, the EU is likely to want to promote the access to the Galileo PRS among its NATO partners, not least so that European industry can develop and sell technologies based on the system more widely.

1.58 The extent to which the UK can continue to participate in contracts associated with the PRS programme is likely to prove more challenging. Decision 1104/2011 raises the possibility of a certain degree of involvement in the production of PRS receivers, but excludes involvement in the most sensitive security-related aspects, such as the manufacture of the security modules. The manufacture of the infrastructure that provides the PRS system itself is likely to fall within this category.

Mutual interest in continued UK involvement

1.59 Nonetheless, it is not inevitable that the EU will choose to prevent the continued involvement of UK operators from involvement during the implementation period. Doing so would involve disruption, which could potentially lead to delays in the rollout of the PRS service.

52 Decision 1104/2011 of the European Parliament and of the Council of 25 October 2011 on the rules for access to the public regulated service provided by the global navigation satellite system established under the Galileo programme.

53 http://eur-lex.europa.eu/legal-content/GA/ALL/?uri=CELEX%3A32011D1104.

54 SpaceNews, U.S., Norwegian Paths to Encrypted Galileo Service Open in 2016 (18 December 2015).

1.60 Professor John Remedios recently told the Lords EU Internal Market Committee that the existing systems were built around unique research capabilities in the UK and that "the systems will suffer in some areas because they will no longer be able to use our research capability if we are unable to participate fully in the programme."[55] The chief executive of the European Space Agency has also warned that the absence of UK companies could lead to delays in Europe's flagship space programmes.[56]

1.61 While the sensitive nature of security-related information is often cited as the reason to exclude the UK from the PRS, the importance of security, and the UK's strength in this area, has also been cited as a reason not to do so. Tom Enders, the chief executive of Airbus, recently said that "the UK's continued participation in the EU Galileo programme will ensure security and defence ties are strengthened for the benefit of Europe as a whole, during a period of increasing threats to our security and geopolitical instability".[57]

Immediate contractual and procurement implications for UK industry

1.62 Nonetheless, the potential exclusion of UK industry from aspects of the space programme during the implementation period, and the legal default of UK non-participation in the space programme after the end of the implementation period (or in the event of a non-negotiated exit), is already having consequences for some UK operators.

1.63 The two principal concerns are that:

- *Existing contracts with UK firms with security implications could in principle be terminated unless firms restructure their operations*: The clause in the draft Withdrawal Agreement which allows the UK to be excluded from areas of EU activity that concern "security related sensitive information" during the implementation period could be used to terminate existing UK contracts, unless UK operators can adapt their operations so as to satisfy EU concerns. Four companies potentially stand to be potentially affected: a small proportion of Surrey Satellite Technology Ltd (SSTL) has a contract on batch 3 of Galileo a small part of which is understood to relate to security restricted work; Airbus's work on the Galileo Ground Control Segment (GCS) will involve a proportion of work with security implications; CGI is working on Galileo Public Regulated Service encryption; and Qinetiq develops receivers for the Public Regulated Service.

- *Procurement processes are underway for future phases of the space programme and UK-based firms are having difficulty being able to compete without an established legal basis for their participation during the delivery period:* Procurement processes are currently underway for phases of the Galileo and Copernicus programmes which will involve delivery either during the period when the exclusion of the UK on security matters applies, or post-2020, when there is as yet no established legal basis for continued UK involvement. The Government's sectoral report said that €3.5bn of space programme contracts were currently out to tender.[58] UK firms report that they are finding it difficult to demonstrate

55 Professor John Remedios, National Centre for Earth Observation, to the House of Lords EU Internal Market Sub-Committee (15 March 2018).
56 Financial Times, Space chief urges UK firms to set up EU subsidiaries (May 31 2017).
57 Financial Times, Airbus says UK participation in Galileo after Brexit is critical (28 March 2018).
58 Department for Exiting the European Union, Sectoral Report — Space, p. 17 (21 December 2017).

that they will be able to satisfy the security requirements of the programmes, and having to accept "Brexit clauses" which would effectively terminate the contract and require them to pay for the work to be relocated to an EU Member State. The Financial Times listed a number of businesses reported to be shifting work to the EU in order to be able to compete for these contracts.[59]

1.64 Industry stakeholders have been vocal about the difficulties that they face, including:

- an SSTL representative said that SSTL was effectively unable to participate in the design and development of the next generation of Galileo systems;[60]
- Airbus, which is currently engaged in a tender for the next phase of the ground control segment competition, has said that: "Due to the Brexit environment, the conditions of tender and the security constraints, we do not believe it is possible to sustain a lead from the UK for that activity."[61] Airbus is reportedly considering shifting work to France;[62] and
- a RAL Space representative said that Brexit clauses had been included in a number of its contracts for work on Copernicus which would be enacted once Brexit happened, meaning that they could no longer provide that service. These clauses were "punitive" and might even require the company to pay for the contract to be transferred to another organisation. RAL Space said that there was "already evidence that … agencies have an appetite to minimise the use of UK companies and organisations such as ourselves in doing that delivery, because of the issues they have already encountered on Galileo."[63]

1.65 Stakeholders are particularly concerned that, even if the UK does secure continued participation in Galileo in due course, if UK firms are unable to compete effectively in procurement processes that are currently taking place, they will effectively have been locked out of delivery for a period of several years. Professor Sweeting said that "the real danger is that, even if the UK negotiates a position to participate in Galileo, the die will have been cast; the industrial consortia for the next generation will have been destablished and, even if we were to try to re-enter later in the game, it would be an almost impossible uphill struggle."[64]

Funding implications of UK non-participation

1.66 As previously noted, the Government's sectoral report on the implications of exiting the EU for the space sector[65] stated that the EU had allocated "around €12bn" (£10.6)[66] on space initiatives and projects between 2014–2020, composed of €7bn for Galileo and EGNOS, €3.4bn (£3bn) for Copernicus, and €1.5bn (£1.33bn) for the Horizon 2020 space

59 Financial Times, UK cries foul over exclusion from EU satellite plan (26 March 2018).
60 Professor Sir Martin Sweeting OBE, Executive Chairman, Surrey Satellite Technology Ltd (SSTL), to the House of Lords EU Internal Market Sub-Committee (15 March 2018).
61 Andrew Stroomer, Business Development Director Space, Airbus Defence and Space, to the House of Lords EU Internal Market Sub-Committee (15 March 2018).
62 Financial Times, UK cries foul over exclusion from EU satellite plan (26 March 2018).
63 Dr Chris Mutlow, Director, RAL Space, to the House of Lords EU Internal Market Sub-Committee (15 March 2018).
64 Professor Sir Martin Sweeting OBE, Executive Chairman, Surrey Satellite Technology Ltd (SSTL), to the House of Lords EU Internal Market Sub-Committee (15 March 2018).
65 Department for Exiting the European Union, Sectoral Report — Space (21 December 2017).
66 €1 = £0.88415 or £1 = €1.13103 as at 28 February.

element. In terms of how much the UK receives of this funding, Phillip Davies, Chair of the Space Specialist Group at the Royal Aeronautical Society, told the House of Lords EU Internal Market Committee that the UK was currently receiving around £200 million per year from the EU space programmes.[67]

1.67 The benefits which accrue to the UK through its participation in the space programmes extend beyond those of funding from the EU, as firms that win space programme contracts acquire UK firms expertise which they can then exploit commercially. In this respect, Professor Alan Smith describes the programmes as "major commercial enablers for the UK".[68]

1.68 The ability to effectively exploit the downstream commercial opportunities created by Galileo and Copernicus will be particularly valuable to the UK industry, given the extent of UK involvement in both — particularly the Galileo PRS. According to the Commission, the cumulative direct benefits emanating from the GNSS downstream market are estimated to amount to €14bn (£12.38bn) over a 20-year period.[69] UK Government estimates the potential market for Galileo-related applications and services could amount to €6bn by 2025.[70] The Government has estimated the downstream market potential of the Copernicus programme to be worth €1.8bn (£31.6bn) per annum by 2030.[71]

1.69 If there is a loss of EU procurement funds for the UK space sector, the extent to which the Government directly replaces this funding will be of primary importance, as state-sponsored procurement processes in other countries, including the US, are generally closed to operators from other countries.[72]

1.70 In the aftermath of concerns about the UK being excluded from the EU, an unnamed official told the Financial Times that the UK defence department was having "early discussions" on whether Britain could launch its own satellite system to end its dependence on the US system and avert exclusion from the Galileo military application, although the official noted that this "would be hugely expensive — our priority is to sort this out with Brussels".[73]

1.71 If the UK were unable to participate in Horizon 2020, that would potentially also have significant implications for space-related research funding. A quarter of all Horizon 2020 space funding reportedly[74] goes to the UK, which enables UK universities to lead in space research and innovation. We are separately scrutinising future UK-EU cooperation on research.[75]

67 Philip Davies, Chair of the Space Specialist Group at the Royal Aeronautical Society, to the House of Lords EU Internal Market Sub-Committee (15 March 2018).
68 Professor Alan Smith, Director Space Domain, University College London, to the House of Lords EU Internal Market Sub-Committee (15 March 2018).
69 GSA, Galileo, the European Satellite Navigation system, opens up business opportunities (25 July 2013).
70 FT, Theresa May fights to keep UK in EU satellite project (25 March 2018).
71 Department for Exiting the European Union, Sectoral Report — Space (21 December 2017).
72 Richard Peckham, UK Strategy & Business Development Director, Airbus Defence and Space, and Chair, UK space, to the House of Lords EU Internal Market Sub-Committee (15 March 2018).
73 FT, Theresa May fights to keep UK in EU satellite project (25 March 2018).
74 Dr Lucy Berthoud, Senior Teaching Fellow, University of Bristol and Chair of Space Universities Network, to the House of Lords EU Internal Market Sub-Committee (15 March 2018).
75 Twentieth Report HC 301–iv (2017–19) chapter 10 (28 February 2018).

Loss of space programme services

1.72 Apart from the Galileo Public Regulated Service (PRS), the other Galileo services are all publicly available and so the UK would enjoy the same access as any third country. Loss of access to the Galileo Public Regulated Service (PRS) is possible, although the service is not yet fully operational and is not expected to be before 2020 at the earliest, although officials anticipate that further delays until 2022 or later are possible. Loss of the PRS would be a loss for the military as it provides a higher-quality alternative to the US GPS encrypted signals, and having access to two systems would provide enhanced resilience. The many potential uses of the PRS in non-military areas of Government activity — for example, for accurate tracking of vehicles by customs, police and ambulance services — would also represent a loss.

1.73 Earth-observation data generated by Copernicus is freely available worldwide, and so the UK should be able to continue to access this information as a third country. The one exception is the Copernicus security-related service whereby the Commission provides additional data processing and intelligence, to produce intelligence regarding borders and migration. However, there are concerns that the underlying open data policy may change in time, if the EU takes the view that its services should be made available to EU-based businesses rather than global ones.

The European Space Agency (ESA)

1.74 ESA is a non-EU organisation and the UK's membership of it will not be affected by Brexit. ESA differs from the EU in that it funds a large number of smaller projects which are designed to develop European science capability and to support the European space industry: for example, Mars Explorer, the international space station, an earth observation satellite, and various navigation programmes. The principal benefit is one of economies of scale, as space activities are prohibitively expensive for all but the largest nation states. Countries which invest receive a proportionate share of contract work in return.

1.75 The EU, in contrast, invests in much larger programmes which seek to provide infrastructure and services for states and civilians, and contract work is secured on the basis of competitive tenders, meaning that countries which are competitive and have expertise in particular areas, like the UK, can secure a disproportionate share of the contracts.

1.76 Two concerns have been identified about how the UK's role in ESA will be modified by its withdrawal from the EU.

1.77 First, much of the research and development phase for the Galileo space programme was conducted through ESA, and the UK could in principle continue to participate in this type of research; however, when it came to producing the satellites, which are EU-owned infrastructure, EU funding was used, and, in the absence of an agreement, the UK would in future not be able to participate in this work. The UK could thus end up in the perverse situation of funding the product development but being excluded from the implementation and exploitation of the research in which it had been involved.[76]

76 Stuart Martin, CEO and Executive Director, Satellite Applications Catapult, to the House of Lords EU Internal Market Sub-Committee (15 March 2018).

1.78 Secondly, concerns have been expressed that ESA could converge with the EU in order to reduce its dependency on the UK. Professor Alan Smith commented that the EU has on a number of occasions made approaches with a view to absorbing ESA. He said that, at the moment the UK needs the EU as much as the EU needs the UK, but that once Brexit has occurred, the EU will seek to remove that dependency: "Just as ESA has many schemes to reduce the dependency of the European space sector on the US space sector, there is a danger that the EU and ESA will have similar schemes to disadvantage the UK." He said that if ESA was absorbed into the EU, and the UK's role in ESA were threatened, "we should be very concerned".[77]

Previous Committee Reports

None.

77 Professor Alan Smith, Director Space Domain, University College London, to the House of Lords EU Internal Market Sub-Committee (15 March 2018).

2 International cooperation to combat match-fixing

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Digital, Culture, Media and Sport Committee
Document details	(a) Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the manipulation of sports competitions with regard to matters not related to substantive criminal law and judicial cooperation in criminal matters (b) Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the manipulation of sports competitions with regard to matters related to substantive criminal law and judicial cooperation in criminal matters
Legal base	(a) Articles 114, 165 and 218(6)(a) TFEU, EP consent, QMV (b) Articles 82(1), 83(1) and 218(6)(a) TFEU, EP consent, QMV
Department	Digital, Culture, Media and Sport
Document Numbers	(a) (38991), 11723/17, COM(17) 387; (b) (38992), 11724/17, COM(17) 386

Summary and Committee's conclusions

2.1 The proposed Council Decisions would authorise the EU to conclude (ratify) the Council of Europe Convention on the Manipulation of Sports Competitions ("the Convention"). The purpose of the Convention is to protect the integrity of sport and sports ethics by establishing a range of measures to prevent, detect and sanction match-fixing which apply, variously, to public authorities, sports governing organisations, competition organisers, and the providers of sports betting services. The first of the proposed Decisions — document (a) — would cover provisions of the Convention which fall within the powers conferred on the EU by Article 114 (the internal market) and Article 165 (sport) of the Treaty on the Functioning of the European Union (TFEU). The second — document (b) — would cover provisions on criminal law, judicial cooperation and law enforcement which fall within the scope of Articles 82(1) and 83(1) TFEU (judicial cooperation in criminal matters). These Articles are subject to the UK's Title V (justice and home affairs) opt-in, meaning that the UK is not bound to participate in the second Council Decision unless it chooses to opt in, but will be bound by the first Decision if it is adopted.

2.2 Earlier Council Decisions agreed in 2013 authorised the Commission (alongside Member States) to take part in the negotiations leading to the adoption of the Convention,

but only on those matters falling within EU competence.[78] In 2015 the Commission proposed two Council Decisions authorising the EU to sign the Convention. The Council was unable to reach agreement and the proposed Decisions were not adopted.[79] The EU has not therefore signed the Convention.

2.3 The UK did not opt into these earlier Council Decisions. The Government disagreed with the Commission's view that the EU had exclusive competence for parts of the Convention dealing with illegal sports betting services provided from and to third countries (Article 11) and data protection (Article 14), meaning that only the EU, not Member States, could act in relation to these provisions. It considered that the Convention covered areas of shared competence, that Member States and not the EU should act in areas of shared competence, and that the Commission had failed to provide a clear rationale for the EU to participate in the Convention.

2.4 The Minister for Sport and Civil Society (Tracey Crouch) questioned whether it would be feasible for the Council to adopt Decisions authorising the EU to conclude (ratify) the Convention without first authorising the EU to sign the Convention and said there was little to indicate that the "stalemate" which had so far prevented the Decisions on signature from being adopted would be overcome.

2.5 Whilst recognising that little progress was likely to be made during the current Bulgarian Presidency, we expressed our grave concern that the Minister's Explanatory Memorandum on the latest Commission proposals to ratify the Convention was three months overdue, meaning that the deadline for deciding whether to opt into document (b) had already expired by the time we received it.[80] As a result of the delay, the Government's decision *not* to opt in was taken without consulting the Scrutiny Committees or ensuring that Parliament had an opportunity to consider the factors informing the Government's opt-in decision and express a view before a final decision was reached. We welcomed the Minister's sincere apology for failing to comply with the Government's own Code of Practice on parliamentary scrutiny of opt-in decisions but noted that a similar lapse had occurred during scrutiny of the proposed Council Decisions on signature of the Convention. Given her assurance then that "lessons have been learned" and processes put in place to ensure that breaches of the Code are "never repeated", we asked her to provide details of the steps that she intended to take to ensure full compliance with the Code of Practice.[81]

2.6 The Minister responds that her Department "does not routinely deal with justice and home affairs matters related to opt-in decisions" and that the proposed Council Decisions are "an exception". Officials have nonetheless established "an operational framework to identify and act upon any opt-in issues which arise at the earliest opportunity" which is being embedded through learning and development. She reiterates the Government's view

78 See recital (6) of Council Decision 2013/304/EU and recital (8) of Council Document 10180/13 which provide: "In the case that the EU decides to join the future Convention, the legal nature of the Convention and distribution of the powers between the Member States and the Union will be determined separately at the end of the negotiations on the basis of an analysis of the precise scope of the coverage of the individual provisions".

79 Although the procedure for adopting the proposed Decisions only required a qualified majority, the Council Presidency at the time made clear that it would only proceed with the consent of all participating Member States.

80 The three-month opt-in deadline expired on 24 November 2017. The Minister submitted her Explanatory Memorandum on 15 December 2017.

81 See the Minister's letter of 20 January 2016 to the Chair of the European Scrutiny Committee.

that the Commission has failed to establish exclusive EU competence for any provisions of the Convention and says that the UK has placed a scrutiny reservation on the proposals. She undertakes to update us on any developments.

2.7 **We are disappointed with the Minister's response. Our predecessors were given a categorical assurance in 2016 that "lessons have been learned" and processes put in place to ensure that breaches of the Government's Code of Practice on parliamentary scrutiny of justice and home affairs opt-in decisions are "never repeated". The fact that a similar breach has occurred on similar documents within the space of two years demonstrates that these latest proposals are not an "exception" and that processes for handling opt-in decisions have not been properly embedded. We remind the Minister that the Government's Code of Practice on parliamentary scrutiny of justice and home affairs opt-in decisions has formed part of Cabinet Office guidance on scrutiny of EU documents since May 2013 and is intended to ensure that *all* Government Departments — even those for whom opt-in decisions are not a routine part of their business — fulfil their obligations to Parliament.**

2.8 **We note that the Government has placed a parliamentary scrutiny reserve on the proposed Council Decisions and welcome her undertaking to inform us promptly of any developments. Meanwhile, the proposals remain under scrutiny. We draw this chapter to the attention of the Digital, Culture, Media and Sport Committee.**

Full details of the documents

(a) Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the manipulation of sports competitions with regard to matters not related to substantive criminal law and judicial cooperation in criminal matters: (38991), 11723/17, COM(17) 387. (b) Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the manipulation of sports competitions with regard to matters related to substantive criminal law and judicial cooperation in criminal matters: (38992), 11724/17, COM(17) 386.

Background

2.9 Our earlier Reports listed at the end of this chapter provide a more detailed overview of the proposed Council Decisions and the Government's position, as well as our analysis of the division of competences between the EU and Member States.

The Minister's letter of 9 April 2018

2.10 The Minister responds to our request for details of the steps that she has taken to ensure full compliance with the Code of Practice on parliamentary scrutiny of opt-in decisions:

> "My Department does not routinely deal with justice and home affairs matters related to opt-in decisions and so this file is an exception. However, officials have established an operational framework to identify and act upon any opt-in issues which arise at the earliest opportunity in conjunction with the relevant government departments and this is also being embedded through learning and development."

2.11 The Minister assures us that she will update us "in light of any further developments in Brussels", and adds:

> "I have taken note of the fact that [the] proposals remain under the scrutiny of the Committee and would like to reiterate that the Government has itself placed a scrutiny reservation on the texts which remains in place."

2.12 The Minister also reiterates the Government's view that the Commission has failed to establish exclusive EU competence for any part of the Convention.

Previous Committee Reports

Twentieth Report HC 301–xix (2017–19), chapter 1 (14 March 2018) and Tenth Report HC 301–x (2017–19), chapter 2 (17 January 2018).

3 Adoption of detailed EU fishing rules

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Commission Report in respect of the delegation of powers referred to in Article 11(2), Article 15(2), (3), (6), (7) and Article 45(4) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy
Legal base	—
Department	Environment, Food and Rural Affairs
Document Number	(39516), 6579/18, COM(18) 79

Summary and Committee's conclusions

3.1 Most fisheries policy falls within the exclusive competence of the European Union — the Common Fisheries Policy (CFP). The European Parliament and Council of Ministers set the framework for the policy, but detailed decisions — such as the practical implementation of the discard ban (landing obligation) in the North Sea — are formally taken by the European Commission, but with the close involvement of national experts and stakeholders. Known as Delegated Acts, these decisions can be opposed, and ultimately blocked, by either the European Parliament or Council. The Commission's document reports on how the Commission has exercised its delegation of powers in this area. During the post-Brexit implementation period, such Acts will apply to the UK, including those Acts adopted after the UK has left the EU in March 2019.

3.2 Since the entry into force of the CFP Regulation (Regulation (EU) No 1380/2013), 15 UK-relevant Delegated Acts have been adopted under it (see Annex), most of which related to implementation of the discard ban.

3.3 As an EU Member State, the UK is involved in the development of these Acts at different stages. The first stage involves those Member States with a direct management interest agreeing to submit a Joint Recommendation to the Commission on how the objectives can be achieved. When shaping Joint Recommendations, Member States should consult the relevant stakeholder Advisory Councils, which include UK representatives from both industry and non-governmental organisations. The draft Acts are then submitted to scientific experts on the Scientific, Technical and Economic Committee for Fisheries (STECF) — four of the 32 members are currently from the UK — and, finally, to the Expert Group for Fisheries and Aquaculture, comprising representatives of the Member States. The European Parliament and Council (including the UK and UK Members of the European Parliament) can object within two months following adoption by the Commission.

3.4 According to the draft Withdrawal Agreement ("the Agreement"), the UK will no longer be a member of any EU institutions or bodies during the post-Brexit implementation period. The UK may, however, be invited to meetings of Commission expert groups as long as: either the discussion concerns individual acts to be addressed during the transition period to the UK or to natural or legal persons residing or established in the UK; or the presence of the UK is necessary and in the interest of the EU, in particular for the effective implementation of EU law during the transition period. Furthermore, the UK shall be consulted by the EU on draft EU acts which identify or refer directly to specific Member State authorities, procedures, or documents. Both sides are required under the Agreement to operate under the concept of "good faith", without prejudice to the application of Union law pursuant to the Agreement, in particular the principle of sincere cooperation. Finally, a Joint Committee will be charged with overseeing implementation of the Agreement and will be able to seek appropriate ways and methods of preventing problems that might arise or of resolving disputes.

3.5 The Minister for Agriculture, Fisheries and Food (George Eustice) considers that no policy implications arise. The UK has actively contributed to Joint Recommendations for existing Delegated Acts applicable to the UK fleet and the UK is currently working within the North Sea and North Western Waters regional groups of Member States on Joint Recommendations for 2019 discard plans that will outline rules for full implementation of the landing obligation from 1 January 2019.

3.6 **We note the Minister's view that no policy implications arise from this document, but we do not agree. By contrast, we consider that the document provides a stark illustration of the challenge that the UK will need to meet in engaging with relevant EU fisheries rules affecting its fleet during the post-Brexit implementation period.**

3.7 **The UK can currently influence Delegated Acts adopted under the CFP Regulation in a number of ways as set out above. As we interpret the draft Agreement, there are no arrangements at all for UK engagement in Joint Recommendations or the Advisory Councils. The UK may be invited to the Expert Group for Fisheries and Aquaculture, and potentially to the STECF. It clearly would not be able to participate in either the Council or the European Parliament. The Commission might be obliged to consult the UK on draft Delegated Acts should they be deemed to identify or refer directly to specific Member State authorities, procedures, or documents, although it is unclear what such consultation would constitute and at what stage it would be.**

3.8 **Noting the UK's active contributions to date in discussions on Joint Recommendations relevant to the UK, and noting the likelihood that UK-relevant fisheries Delegated Acts will be proposed, adopted and implemented during the implementation period, we ask the Minister to explain:**

- **how, if at all, the UK might be able to engage in discussions on relevant Joint Recommendations and how its stakeholders might be involved in Advisory Council discussions;**
- **whether the UK would be invited to relevant meetings of the STECF and the Fisheries and Aquaculture Expert Group and, if so, how the UK would assess whether it was being invited to all of the appropriate meetings and for all of the appropriate agenda points; and**

- **whether draft Delegated Acts proposed under the CFP Regulation would be likely to constitute "draft Union acts" on which the EU will be required to consult the UK according to Article 123(7) of the draft Agreement and, if so, what arrangements for such consultation will apply.**

3.9 **We note that the draft Agreement includes both the obligation on both parties to operate under the principle of good faith and the possibility for any disputes to be considered by the Joint Committee. How either of these mechanisms will work in practice is yet to be considered in any detail, and we note that significant caveats apply to the good faith provision. That said, these are potentially helpful back-stop provisions, aiming to ensure that the EU does not take action that would harm the UK (and vice versa). We would nevertheless hope that the UK Government would aspire not simply to avoid harm but to ensure that law applicable to UK fisheries is well-suited to UK circumstances. We therefore ask the Minister how confident — irrespective of the good faith clause and the Joint Committee mechanism — the Government is that it will be able to represent UK fisheries and marine environment interests during the implementation period as effectively as it currently does, taking into account the considerations that we have set out above.**

3.10 **We note that the delegation power will be tacitly extended for another five years unless opposed by either the European Parliament or the Council by 29 September 2018. Given that the acts adopted under the delegation power will apply during the implementation period, but without full UK involvement, we ask whether the UK would consider opposing the extension.**

3.11 **We hold the Report under scrutiny and draw it to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents

Commission Report in respect of the delegation of powers referred to in Article 11(2), Article 15(2), (3), (6), (7) and Article 45(4) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy: (39516), 6579/18, COM(18) 79.

Background

3.12 The Commission Report sets out how the Commission has exercised delegated powers within the CFP Regulation (Regulation (EU) No 1380/2013) and provides a list of the Delegated Acts adopted.

3.13 Delegated Acts can be adopted in respect of:

- the implementation of the discard ban;
- conservation measures relating to Member States' environmental obligations; and
- the functioning of Advisory Councils (industry and environmental stakeholders).

3.14 This power to adopt Delegated Acts is conferred on the Commission for a period of five years from 29 December 2013. The delegation of power will be tacitly extended for further five-year periods unless the European Parliament or the Council opposes this extension. If they do choose to oppose, this should be done no later than three months ahead of the end of the current five-year period.

Explanatory Memorandum of 13 March 2018[82]

3.15 The Minister considers that no policy implications arise from this Report. He adds:

> "The UK has actively contributed to Joint Recommendations for existing delegated acts that are applicable to the UK fleet. The UK is currently working within the North Sea and North Western Waters regional groups on Joint Recommendations for 2019 discard plans that will outline rules for full implementation of the landing obligation from 1 January 2019."

Previous Committee Reports

None.

82 Explanatory Memorandum from the Department for Environment, Food and Rural Affairs.

UK-relevant Delegated Acts adopted under Regulation (EU) No 1380/2013

Delegated Acts in Force

- Commission Delegated Regulation (EU) 2017/118 of 5 September 2016 establishing fisheries conservation measures for the protection of the marine environment in the North Sea;
- Commission Delegated Regulation (EU) 2017/1180 of 24 February 2017 amending Delegated Regulation (EU) 2017/118 establishing fisheries conservation measures for the protection of the marine environment in the North Sea;
- Commission Delegated Regulation (EU) No 1393/2014 of 20 October 2014 establishing a discard plan for certain pelagic fisheries in north-western waters (expiration date: 31 December 2017);
- Commission Delegated Regulation (EU) No 1395/2014 of 20 October 2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea (expiration date: 31 December 2017);
- Commission Delegated Regulation (EU) 2016/2250 of 4 October 2016 establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES Division IIa (expiration date: 31 December 2018);
- Commission Delegated Regulation (EU) 2016/2375 of 12 October 2016 establishing a discard plan for certain demersal fisheries in North-Western waters (expiration date: 31 December 2018);
- Commission Delegated Regulation (EU) 2017/1393 of 24 May 2017 amending Delegated Regulation (EU) No 1395/2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea (expiration date: 31 December 2017);
- Commission Delegated Regulation (EU) 2015/242 of 9 October 2014 laying down detailed rules on the functioning of the Advisory Councils under the Common Fisheries Policy;
- Commission Delegated Regulation (EU) 2017/1575 of 23 June 2017 amending Delegated Regulation (EU) 2015/242 laying down detailed rules on the functioning of the Advisory Councils under the common fisheries policy.

Delegated Acts adopted by the Commission but not yet in force

- Commission Delegated Regulation (EU) No …/... establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES division IIa for the year 2018, adopted on 20/10/2017;
- Commission Delegated Regulation (EU) No …/... establishing a discard plan for certain demersal and deep sea fisheries in North-Western waters for the year 2018, adopted on 20/10/2017;

- Commission Delegated Regulation (EU) No …/... amending Delegated Regulation (EU) No 1395/2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea, adopted on 23/11/2017;

- Commission Delegated Regulation (EU) No …/.. amending Delegated Regulation (EU) No 1393/2014 establishing a discard plan for certain pelagic fisheries in North-Western waters, adopted on 24/11/2017.

Delegated Acts that have expired or been repealed

- Commission Delegated Regulation (EU) 2015/2438 of 12 October 2015 establishing a discard plan for certain demersal fisheries in north-western waters, repealed by Commission Delegated Regulation 2016/2375 as of 1 January 2017;

- Commission Delegated Regulation (EU) 2015/2440 of 22 October 2015 establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES Division IIa, expired on the 31 December 2016.

4 Animal welfare and international competitiveness

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Report from the Commission: On the impact of animal welfare international activities on the competitiveness of European livestock producers in a globalised world
Legal base	—
Department	Environment, Food and Rural Affairs
Document Number	(39483), 5787/18 + ADD 1, COM(18) 42

Summary and Committee's conclusions

4.1 The EU has comparatively high animal welfare standards. As most EU animal welfare standards apply only to EU production and as animal welfare has not been explicitly recognised as trade-relevant under the General Agreement on Tariffs and Trade (GATT), the Commission has engaged in international efforts to communicate EU and global standards.

4.2 Overall, this analysis of EU interventions internationally (over the period 2004–15) concludes that they were effective in improving awareness of European and global animal welfare standards with particular success in welfare at slaughter, although not so much progress has been achieved on welfare in transport and on farm. Pigs and laying hens are named as key farm welfare areas where EU legislation has served as inspiration to others for improvements to animal welfare in production systems. Further details are set out below.

4.3 The Parliamentary Under-Secretary of State for Rural Affairs and Biosecurity (Lord Gardiner) says that the UK has been closely involved in the Report. He notes that, as part of the planning for the UK's departure from the EU, the UK will need to consider how the collaborative work of UK experts and non-governmental organisations (NGOs) may be affected. The UK will also need to consider collaborative frameworks with the EU or alternative initiatives to promote international animal welfare. He concludes that the information contained in this Report is useful background for planning for the UK's departure from the EU, particularly in relation to animal welfare and trade, as well as any future UK strategies to encourage improvements in international animal welfare.

4.4 There has been parliamentary interest in the question of the UK's approach to animal welfare post-Brexit, taking into account the UK's intention to boost trade with countries

beyond the EU. The Secretary of State for the Environment and Rural Affairs (Michael Gove) told the Environment, Food and Rural Affairs Committee that there would be no compromise on animal welfare standards in order to secure trade agreements.[83]

4.5 In a joint evidence session between the Environment, Food and Rural Affairs Committee and our predecessors on 8 March 2017,[84] the Minister for Agriculture, Fisheries and Food (George Eustice) noted that the World Trade Organisation had shown some flexibility in acknowledging the legitimacy of restricting trade on the basis of animal welfare. He pointed to a test case around banning the trade in seal furs that was held as legitimate under WTO rules using public morals or ethics as an argument.[85]

4.6 **We note the Minister's generally positive approach to the work undertaken by the Commission in this area and his view that, post-Brexit, the UK will need to consider similar initiatives to promote international animal welfare. We would welcome the Minister's assessment of what has worked well and what has worked less well and therefore how a post-Brexit UK strategy in this area might take a different approach.**

4.7 **The Minister for Agriculture, Fisheries and Food, noted in March 2017 that the World Trade Organisation appears to be showing flexibility in terms of the possibility to restrict imports on the basis of animal welfare standards. We would welcome any information from the Government on any progress it has made since that evidence in advocating greater flexibility to make imports conditional on compliance with animal welfare standards.**

4.8 **Given the interest shown in this matter by the Environment, Food and Rural Affairs Committee, we draw this document to the attention of that Committee. We hold the document under scrutiny and look forward to a response within ten working days.**

Full details of the documents

Report from the Commission: On the impact of animal welfare international activities on the competitiveness of European livestock producers in a globalised world: (39483), 5787/18 + ADD 1, COM(18) 42.

Background

4.9 In 1995, the Council mandated the Commission to conduct negotiations with a view to concluding agreements with non-EU countries on sanitary and phytosanitary measures, including on animal welfare related to trade.

4.10 With the exception of standards at slaughter, EU animal welfare standards apply only to EU production and not to imported products. Furthermore, when live animals are exported, only certain requirements on animal transport are applicable outside the EU

83 Third Report of the Environment, Food and Rural Affairs Committee (2017–19), "Brexit: Trade in Food", HC 348.

84 Oral evidence from the Minister for Agriculture, Fisheries and Food, 8 March 2017.

85 In EC-Seal Products, the WTO Appellate Body ruled that in the EU (and therefore in the UK) animal welfare is a concern that comes within the field of public morals. WTO dispute panels and the Appellate Body have stated on several occasions that WTO member countries have the right to determine the level of protection that they consider appropriate to achieve a given policy aim for example as regards public health, conservation, prevention of deceptive practices or public morals.

territory. For other EU animal welfare standards, the Commission has limited power to influence non-EU countries. Animal welfare has not been explicitly recognised as trade relevant under the General Agreement on Tariff and Trade (GATT). Consequently, animal welfare-related provisions included in trade agreements mostly relate to cooperation and not to compliance with given requirements. The EU achievements in this area depend on the degree of willingness of non-EU countries to cooperate.

4.11 Identified EU interventions include:

- multilateral activities carried out in the framework of international intergovernmental organisations operating on a worldwide basis (e.g. World Organisation for Animal Health (OIE), Food and Agriculture Organization); and
- bilateral activities taking place with individual or regional groups of non-EU countries like Mercosur.

4.12 The key instruments to increase awareness are training and technical assistance interventions under the Better Training for Safer Food (BTSF) programme and Technical Assistance and Information Exchange instrument (TAIEX), EU research programmes and targeted projects.

4.13 The Report confirms that the Commission has a cooperative approach to promoting animal welfare on the international scene in place and has included animal welfare in its dialogue with many non-EU countries. Interventions have been made on three key elements: awareness raising, capacity building and funding. The Report also confirms that significant results have been achieved and notes that interventions have resulted in a "prominent and decisive role", helping raise global awareness of animal welfare as well as facilitating the implementation of EU import requirements on animal welfare standards at slaughter.

4.14 Interventions in research, training and capacity building activities have helped increase the animal welfare knowledge and skills of thousands, and have supported the implementation of animal welfare policies and standards in beneficiary countries.

4.15 EU animal welfare standards are reported to have had a "lighthouse effect" and inspired voluntary industry welfare initiatives. The EU has also had direct input in promoting and supporting OIE activities, including the OIE standards-setting process and implementation, within and outside of the EU, with particular emphasis on implementation of welfare at slaughter and transport standards.

4.16 Finally, the Report notes that, overall, animal welfare standards have a limited impact on the competitiveness of EU producers in world markets. Compliance costs remain low when compared to other production costs that affect global competitiveness and influence world trade patterns. The global promotion of EU standards on animal welfare contributes to the long-term objective of improving animal welfare in the world and reducing unfair trading practices. It is also an opportunity to enhance the added market value of products obtained under such standards.

Explanatory Memorandum of 22 February 2018[86]

4.17 The Minister considers that "no immediate implications" arise for the UK from this Report. The Government will wait to see how the Report's conclusions are taken forward by the Commission, and will stand ready to discuss with the Commission and other Member States ways to further improve animal welfare globally.

4.18 The Minister notes that the Report includes as part of the reviewed documents the last UK Government Five Year Progress Report on International Animal Welfare.[87] Several UK experts and non-governmental organisations (NGOs) have, says the Minister, participated in a number of the training and technical assistance activities captured by this Report. He adds that the UK OIE animal welfare focal point and UK experts have contributed to the EU's input into animal welfare standards through the EU coordination meetings and as members of the OIE chapter drafting working groups. The UK has also provided speakers for all of the OIE global animal welfare conferences to date.

4.19 Regarding the UK's withdrawal from the EU, the Minister says:

> "As part of the planning for the UK's departure from the EU, we will need to consider how UK experts and NGOs may be affected if future activities take place. The UK will also need to consider collaborative frameworks with the EU or alternative initiatives to promote international animal welfare.
>
> "Information contained in this report is useful background for planning for the UK's departure from the EU, particularly in relation to animal and trade, as well as any future UK strategies to encourage improvements in international animal welfare."

Previous Committee Reports

None.

86 Explanatory Memorandum submitted by the Department for Environment, Food and Rural Affairs.

87 HM Government, "The Government's 5 Year Progress Report on International Animal Welfare", February 2015.

5 Proportionality test for professions

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; update requested; drawn to the attention of the Business, Energy and Industrial Strategy and Exiting the European Union Committees
Document details	Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions
Legal base	Articles 46, 53(1) and 62 TFEU
Department	Business, Energy and Industrial Strategy
Document Number	(38451), 5281/17 + ADDs 1–2, COM(16) 822

Summary and Committee's conclusions

5.1 The European Commission has proposed a Directive[88] which would require Member States to conduct a "proportionality test" when they modify the rules which apply to regulated professions, the aim being to improve transparency and compliance with the Professional Qualifications Directive.[89] The Government lobbied the Commission to introduce the proposal, which it supported in its Explanatory Memorandum.[90]

5.2 On 30 November 2017 the Parliamentary Under Secretary at the Department of Business, Energy and Industrial Strategy (Lord Henley) wrote to update the Committee regarding a General Approach which had been agreed by the Member States,[91] in line with the scrutiny waiver granted by the Committee. In a follow-up letter on 29 March 2018, the Minister now informs us that trilogue negotiations quickly reached agreement on a compromise text.[92] As the text is in line with UK interests, he asks the Committee to clear the file from scrutiny, so that the Government can support its adoption.

5.3 The issue of the mutual recognition of professional qualifications is relevant in the context of the UK's withdrawal from the European Union, and legal text has recently been agreed by both parties in the latest version of the draft Withdrawal Agreement.[93] Looking beyond the exit agreement, the Prime Minister indicated the Government's preference to retain reciprocal recognition of qualifications in her Mansion House speech,[94] and

88 Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions COM(17) 822.

89 Directive 2005/36 on the recognition of professional qualifications, as amended by Directive 2013/55 on the recognition of professional qualifications and administrative cooperation through the Internal Market Information System.

90 Explanatory Memorandum from the Minister, BEIS, to the Chair of the European Scrutiny Committee (30 January 2017).

91 Letter from the Minister, BEIS, to the Chair of the European Scrutiny Committee (30 November 2017).

92 Letter from the Minister, BEIS, to the Chair of the European Scrutiny Committee (28 March 2018).

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

94 HM Gov, PM speech on our future economic partnership with the European Union (2 March 2018).

the European Council's guidelines on the future economic partnership also express a preference to retain some form of recognition of qualifications, alongside "ambitious provisions" regarding movement of natural persons.[95]

5.4 **We thank the Minister for updating the Committee regarding the outcome of trilogue negotiations. We note that the compromise text makes a number of minor technical changes whose overall effect is to clarify the scope of the Directive and how the proportionality test will function. These do not alter the Government's assessment that the Directive will encourage Member States to be more proportionate in their regulation of professions, which has the potential to benefit the UK post-exit, particularly where individual Member States' regulation of professions does not differentiate between EU and third country nationals. Nonetheless, we consider the likely benefits of the proposed Directive to be modest: it will merely require Member States to assess the proportionality of regulatory measures and to share these assessments, and does not require any action to be taken when a Member State or other stakeholder challenges a specific provision or test, or require Member States to reduce the restrictiveness of their regulations.**

5.5 **Significant progress has been made on the recognition of professional qualifications in the context of the withdrawal negotiations. The agreed text in the draft Withdrawal Agreement regarding professional qualifications (Articles 25–27) establishes that, subject to its agreement, existing recognitions of UK and EU27 nationals' qualifications will be protected and procedures which are ongoing at the end of the transition period will be concluded in accordance with current rules. UK professionals' qualifications will be recognised in the EU27 country in which they have exercised this right.**

5.6 **Regarding the future economic partnership, both the UK and the EU have indicated that they wish to retain some form of continued recognition of professional qualifications. We consider it noteworthy that European Commission data[96] shows that the UK has recognised a far greater number of EU27 nationals' qualifications than vice-versa. This imbalance appears to be attributable to the UK's reliance on a supply of qualified nurses, doctors and teachers from the EU. The EU is therefore likely to have a strong interest in retaining ambitious arrangements in this policy area. We note its linkage of this issue in its guidelines to that of movement of natural persons. The Government also has an interest in continued recognition of qualifications: in addition to the UK public sector's current reliance on EU professionals, UK businesses with an international presence benefit from their employees being able to practice in different countries (although the ease of doing so varies from country to country).**

5.7 **We note that the EU's existing bilateral arrangements with third countries outside EFTA/the EEA, including the relevant chapter of the EU-Canada Comprehensive**

95 European Council, Guidelines — 23 March 2018 20001/18.

96 A briefing by the British Institute of International and Comparative Law, based on European Commission data, reports that between 2013 and 2015 the UK reported 51,800 positive recognition decisions; over 20,200 for nurses, followed by 13,500 for secondary school teachers and 8,500 for doctors. The Government's professional and business services sector report states that "since 1997, over 26,000 UK qualifications have been recognised on a permanent basis in other EU countries. Over the same period, over 120,000 qualifications from other EU countries have been recognised on a permanent basis in the UK."

Economic and Trade Agreement (CETA),[97] which is the most ambitious such arrangement to date, do not currently provide for significant levels of reciprocal recognition of qualifications.

5.8 **If new arrangements on this issue are not agreed with the EU as part of the future economic partnership, the current system will cease to apply from the end of the transition period or, in the event of a non-negotiated exit, from exit day. UK professionals' applications for recognition of their qualifications in the EU27, and vice-versa, would proceed thereafter on the basis of host country law. The harmonised regimes for lawyers, auditors and accountants would cease to apply, as would the system of automatic recognition for doctors, general care nurses, dental practitioners, veterinary surgeons, pharmacists and architects. UK professionals who temporarily provide cross-border services within the EU on the basis of their home country qualification would in future be subject to host country rules, which would in some cases prevent them from continuing to do so. These changes would erect new non-tariff barriers to services trade via cross-border supply, commercial presence, and movement of natural persons.**

5.9 **We now clear the proposal from scrutiny. For completeness, we ask the Government to provide us with an update regarding any types of professional qualification that have been excluded from the scope of the professional qualifications provisions in the draft Withdrawal Agreement, including an explanation of why they were excluded and an assessment of the practical implications of these exclusions, by 23 May 2018.[98] We draw this report to the attention of the Business, Energy and Industrial Strategy and Exiting the European Union Select Committees.**

Full details of the documents

Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions: (38451), 5281/17 + ADDs 1–2, COM(16) 822.

Background

5.10 The Mutual Recognition of Professional Qualifications Directive[99] provides for:

- automatic recognition of qualifications for a limited number of professions, including doctors, general care nurses, dental practitioners, veterinary surgeons, pharmacists and architects. The Directive sets out harmonised minimum training requirements or professional experience conditions that the person must meet for successful recognition, but compensatory measures are not allowed. Host countries have limited scope to reject applications;

97 Text of the Comprehensive Economic and Trade Agreement — Chapter 11: Mutual recognition of professional qualifications.

98 For example, the draft Withdrawal Agreement makes no mention of Directive 2005/45 on the mutual recognition of seafarers' certificates issued by the Member States, which is addressed in a Task Force 50 notice. The Commission's online summary of 'recognition of professional qualifications in practice' also references specific legislation on transport professions, insurance intermediaries and aircraft controllers, none of which are referenced in the draft Withdrawal Agreement.

99 Directive 2005/36 as amended by Directive 2013/55.

- a "general system" that requires a professional who wants to move to another EU country to apply to the competent authority in the destination country to have their qualifications or professional experience recognised. 'Compensation measures', such as an aptitude test or a traineeship, can be imposed on the applicant where there are major differences between the training obtained in the home country and the qualifications required in the host Member State. 'Partial access' to the profession will instead be granted when the differences between the fields of activity are so large that a full programme of education and training would be required to compensate for shortcomings; and

- subject to certain requirements,[100] Member States are not permitted to restrict the temporary cross-border provision of services by providers in other EU Member States, provided their professional qualifications are in line with national rules in the country in which they are registered.

5.11 Alongside the Professional Qualifications Directive systems, EU legislation applies to certain professions including sailors and seafarers, aircraft controllers, insurance intermediaries, commercial agents and activities involving toxic products. Recognition of qualifications related to the legal profession is regulated by two Directives,[101] under which lawyers qualified in one Member State may practice the profession in another Member State by way of temporary provision of services or permanent establishment.

5.12 An update of the Directive in 2013 provided clarification that the 2005 Directive allowed for the obligation that professionals have the necessary language skills to practice, and that responsible authorities, such as the NHS, were permitted to apply language controls after recognition of professional qualifications had taken place.[102]

The proposal

5.13 The 2013 update of the Professional Qualifications Directive[103] also introduced a mutual evaluation exercise between the Member States of all their regulated professions. This exercise found that assessing the proportionality of new measures presented a challenge to many Member States, and had not prevented the introduction of new restrictive measures without, or with only very superficial, assessment of proportionality.

5.14 On 10 January 2017, to address these concerns, the Commission proposed as part of a wider services package a Directive for a proportionality test,[104] which was to be conducted by Member States before they introduced new national regulatory measures or amended existing provisions. The Directive only applies to those professions within the scope of the Professional Qualifications Directive.

100 See European Commission, Internal Market Directorate General, Recognition of professional qualifications in practice, temporary mobility https://goo.gl/Nc9gCt.

101 Directive 2005/36 on the recognition of professional qualifications, as amended by Directive 2013/55 on the recognition of professional qualifications and administrative cooperation through the Internal Market Information System.

102 See recital 26 of Directive 2013/55 on the recognition of professional qualifications and administrative cooperation through the Internal Market Information System

103 Directive 2013/55 on the recognition of professional qualifications and administrative cooperation through the Internal Market Information System.

104 Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions COM(17) 822.

5.15 The test requires Member States to assess whether proposed legislative, regulatory or administrative provisions that restrict access to or pursuit of a regulated profession are necessary and proportionate. Relevant stakeholders must be given the opportunity to comment on the proposed regulatory provisions. The results of any proportionality tests conducted should be entered into the database of regulated professions, and are to be made publicly available by the Commission. Member States and other interested parties may then submit comments to the Commission or to the Member State which has notified the provisions. The decision of what to regulate, and how, is left to Member States.

5.16 In an Explanatory Memorandum submitted on 30 January 2017,[105] the Parliamentary Under Secretary of State at the Department of Business, Energy and Industrial Strategy (Lord Prior) indicated that the Government had advocated the bringing forward of this proposal, and said that it would reduce barriers to cross-border trade "by ensuring a more transparent and thorough process of evaluation when making new regulations restricting access to a profession". In a subsequent letter he informed the Committee that even after the UK left the EU, businesses and professionals would continue to benefit from the removal of disproportionate barriers, "particularly where Member States' professional regulation does not discriminate between EU and third country nationals".[106]

5.17 A General Approach was agreed by the Member States at Competitiveness Council on 29–30 May 2017. This did not constitute a scrutiny override because the Committee granted the Government a scrutiny waiver for the file during the General Election period. We requested additional information regarding the detail of the General Approach in its report on 13 November 2017.[107]

Letter from the Minister dated 30 November 2017[108]

5.18 The Minister provided an update regarding the General Approach that was agreed at Competitiveness Council. He judged that the original proposal has not been significantly weakened by the amendments.

5.19 The Minister summarised some of the key compromises which had been made:

- Article 1 referred to a "margin of discretion" for the Member States, although this did not alter the level of discretion that a Member State had to regulate a profession;
- Article 6 identified which factors must be considered as part of the proportionality test and which factors must only be considered where relevant;
- Article 9 was amended to allow Member States to request that the detail of a proportionality test not be made publicly available by the Commission, so long as that request is supported by reasons; and
- The language of "cumulative effect" — concerns about the cumulative effect of regulations, as opposed to regulations considered in isolation — was removed from the General Approach text, but there was a requirement to consider "the combined effect" of new or amended measures with existing requirements.

105 Explanatory Memorandum from the Minister, BEIS, to the Chair of the European Scrutiny Committee (30 January 2017).
106 Letter from the Minister, BEIS, to the Chair of the European Scrutiny Committee (28 March 2017).
107 First Report HC 301–i (2017–18) chapter 3 (13 November 2017).
108 Letter from the Minister, BEIS, to the Chair of the European Scrutiny Committee (30 November 2017).

5.20 Regarding the European Parliament, the Minister stated that the rapporteur's draft report was published in June and the Internal Market and Consumer Protection (IMCO) Committee considered its compromise amendments on 21 November. The Minister observed that there were differing views over whether healthcare professionals and cross-border service provision should be covered by the Proportionality Directive.

5.21 In response to the Minister's predecessor's observation that WTO rules did not mean that a future UK-EU agreement on mutual recognition of professional qualifications would not have to be contained in an FTA, but that an FTA might be necessary to cover certain associated provisions, we sought further clarification regarding what type of provisions would have to be contained in an FTA. The Minister did not answer this question directly, but made the following general observation:

> "The current arrangements underpinning the mutual recognition of professional qualifications are a key element of the EU's single market for services. This is a broad system, with links to a wide range of sector-specific frameworks (for example, on legal services) and cross-cutting regulatory frameworks (for example, the Services Directive). The Prime Minister has been clear that we will pursue a bold, ambitious and comprehensive Free Trade Agreement, allowing for the freest possible trade in services with the EU. The precise shape of that agreement will be a matter for negotiation." [109]

Letter from the Minister dated 29 March 2018[110]

5.22 The Minister has written to the Committee to report rapid progress in trilogues, resulting in a compromise text that reflects the General Approach that was agreed by the Council as well as UK objectives. He asks that we clear the proposal from scrutiny ahead of a forthcoming Council.

5.23 The chief developments in trilogues included:

- The addition of fiscal supervision to the "list of overriding reasons of public interest" which can be used to justify regulation;
- The extension of the scope of the Directive to cross-border provision of services under Title II of the Mutual Recognition of Professional Qualifications (MRPQ) Directive, which governs the temporary cross-border provision of services; and
- The rejection of the European Parliament's proposal to create a carve out for healthcare professionals.

5.24 The Minister states that he considers the final text to be a compromise "that has stayed true to the Directive's objectives, which the UK has supported from the inception of this proposal".

109 Letter from the Minister, BEIS, to the Chair of the European Scrutiny Committee (30 November 2017) Letter from the Minister, BEIS, to the Chair of the European Scrutiny Committee (29 March 2018).

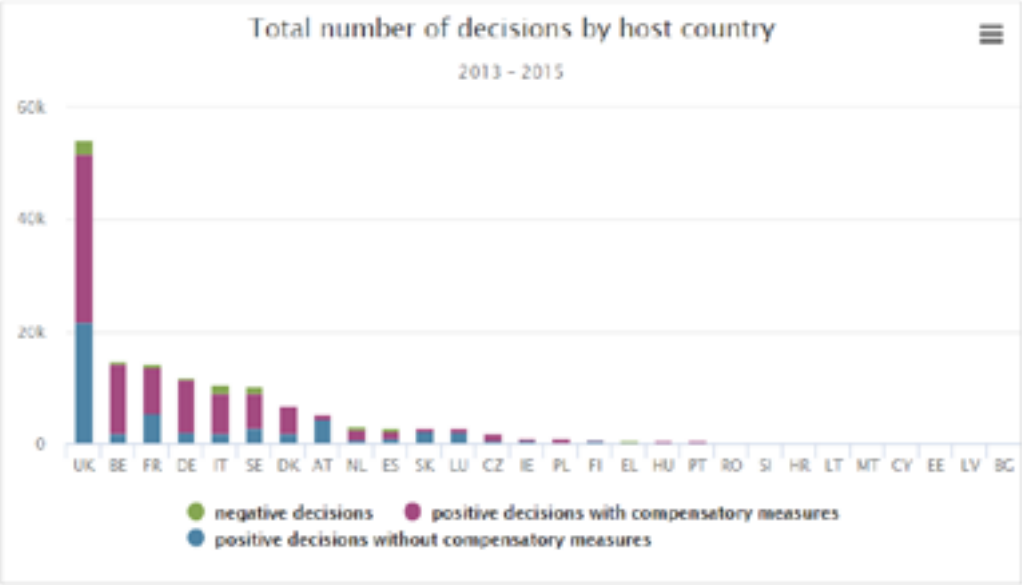
110 Letter from the Minister, BEIS, to the Chair of the European Scrutiny Committee (30 November 2017) Letter from the Minister, BEIS, to the Chair of the European Scrutiny Committee (29 March 2018).

Brexit implications

The UK and the EU27: Mutual recognition of professional qualifications in practice

5.25 The Government's sectoral analysis of the implications of Brexit for Professional and Business Services[111] states that since 1997, over 26,000 UK qualifications have been recognised on a permanent basis in other EU countries. Over the same period, over 120,000 qualifications from other EU countries have been recognised on a permanent basis in the UK. A briefing by the British Institute of International and Comparative Law[112] reports that between 2013 and 2015 the UK reported 51,800 positive recognition decisions; over 20,200 for nurses, followed by 13,500 for secondary school teachers and 8,500 for doctors. Table 1 illustrates these figures.

Table 1: Total number of decisions by host country



Source: European Commission database on regulated professions[113]

5.26 The data show that the UK is almost unique within the EU in term of the volumes of professional qualifications that it recognises (per capita, Belgium appears to be the only state issuing comparable levels of recognitions). Given that nurses, secondary school teachers and doctors account for over 80% of the positive decisions, it appears that this imbalance can principally be attributed to the reliance of certain sectors of the UK economy on labour from other countries for recruitment. Additional data on the Commission's website[114] show that in other respects the UK is middle-ranking in terms of the proportion of positive decisions that it issues — the proportion of negative decisions is low across the system — as well as the speed with which it processes requests. The UK issues a relatively high proportion of positive decisions "without compensatory measures".

111 HM Government, Professional and business services sector report (21 December 2017).
112 British Institute of International and Comparative Law, FAQ: Professional Qualifications after Brexit (October 2017).
113 The table is taken from the European Commission's single market scoreboard, cited in the British Institute of International and Comparative Law, FAQ: Professional Qualifications after Brexit (October 2017).
114 European Commission, Professional Qualifications https://goo.gl/BLR8xs (accessed 5 March 2018).

5.27 In evidence given to a House of Lords report, *Brexit: trade in non-financial services,*[115] KPMG highlighted the dependence of regulated PBS, such as law and accountancy, upon "the level of professional mobility—i.e. mutual recognition of qualifications, registration, and licensing for regulated professions". It said that "loss of mutual recognition would hamper the mobility of [firms'] professionals." In the same report, the Professional and Business Services Council accepted that the Professional Qualifications Directive could be better implemented, but said that it was important that leaving the Single Market did "not result in currently recognised qualifications becoming unrecognised". Industry representatives from the NHS Confederation,[116] the Royal Institute of British Architects,[117] and accountancy and audit,[118] also called for continued mutual recognition of qualifications.

The legal default: non-participation in the EU mutual recognition of professional qualifications regime

5.28 In the absence of alternative arrangements, when the UK leaves the EU, both the Professional Qualifications Directives and sectoral legislation regarding other professions will cease to apply. Member States will process the requests of UK nationals for recognition of their professional qualifications in line with national legislation. The deterioration in access will be significantly greater in those professions to which automatic recognition applied (e.g. doctors, nurses, architects), or in which specific sectoral regimes for recognition of qualifications existed (e.g. lawyers, accountants, auditors).

5.29 In addition, professionals who provide cross-border services on a temporary basis to the EU27 or UK from one another's territory on the basis of Title II of the Professional Qualifications Directive will no longer be able to do so. In relation to legal services specifically, the Article 50 Task Force's slides on services[119] noted that UK lawyers would no longer be guaranteed the freedom to establish or provide cross-border legal services using their home country title, and would no longer be guaranteed the freedom to set up law firms, agencies or branches in Member States. National rules would apply.

Citizens' Rights: Recognition of professional qualifications in the Joint Report and draft Withdrawal Agreement

5.30 Regarding recognition of professional qualifications, paragraph 32 of the negotiators' Joint Report stated that:

> "Decisions on recognition of qualifications granted to persons covered by the scope of the Withdrawal Agreement before the specified date in the host State and, for frontier workers, the State of work (either the UK or an EU27 Member State) under Title III of Directive 2005/36/EC (recognition

115 House of Lords, 18th Report of Session 2016–17, Brexit: trade in non-financial services, pp36–37 (14 March 2017).
116 NHS Confederation, Submission to the Lords EU Internal Market Sub-Committee on the inquiry Brexit: future trade between the UK and the EU (TAS 0069).
117 Royal Institute of British Architects (RIBA), Submission to the Lords EU Internal Market Sub-Committee on the inquiry Brexit: future trade between the UK and the EU (TAS0045).
118 The Institute of Chartered Accountants in England and Wales (ICAEW), Submission to the House of Lords EU Internal Market Sub-Committee inquiry into the future of trade between the UK and the EU in non-financial services (TAS0020).
119 European Commission, Article 50 task force, Internal preparatory discussions on the framework for the future relationship — services (30 January 2018).

> of professional qualifications where the person concerned was exercising the freedom of establishment), Article 10 of Directive 98/5/EC (lawyers who gained admission to the host State profession and are allowed to practise under the host State title alongside their home State title) and Article 14 of Directive 2006/43/EC (approved statutory auditors) will be grandfathered. Recognition procedures under these Directives that are ongoing on the specified date, in respect of the persons covered, will be completed under Union law and will be grandfathered."[120]

5.31 This proposal has been translated into legal text in the form of Chapter 3 (Professional qualifications) of the draft Withdrawal Agreement.[121] All of the text in this chapter was highlighted as green, meaning that it was agreed at negotiators' level and would only be subject to technical legal revisions in the following weeks. The key effects of this text are that a UK or EU27 national who has had his or her professional qualification recognised, in either the United Kingdom or the EU27 country where he or she currently resides or, for frontier workers, where he or she works, will be able to continue to rely on any recognition decision which has taken place before the end of the transition period, for the purpose of carrying out the professional activities linked to the use of those professional qualifications.

5.32 In addition, if he or she has already applied for the recognition of his or her professional qualifications before the end of the transition period, his or her application will be processed domestically in accordance with the EU rules applicable when the application was made.[122]

5.33 This applies for recognitions of qualifications under the Professional Qualifications Directive (a very wide range of professions, including, those with harmonised minimum training conditions, including nurses, midwives, doctors, dental practitioners, pharmacists, architects and veterinary surgeons), those covered by the "general system", such as teachers, translators and real estate agents; those covered by the lawyers' Establishment Directive,[123] the Statutory Audit Directive,[124] and a Directive on intermediaries involved in trade and distribution of toxic products.[125]

5.34 Professions under specific legislation which are not referenced in the draft Withdrawal Agreement include insurance intermediaries, sailors, aircraft controllers, and other transport professions.

120 HM Government, Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union (8 December 2017).

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

122 European Commission — Fact Sheet, Questions & Answers: Publication of the draft Withdrawal Agreement between the European Union and the United Kingdom (28 February 2018).

123 Directive (EC) 98/5 of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

124 Directive (EU) 2014/56 of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.

125 Directive (EEC) 74/557 of 4 June 1974 on the attainment of freedom of establishment and freedom to provide services in respect of activities of self- employed persons and of intermediaries engaging in the trade and distribution of toxic products.

Professional qualifications and the future relationship

5.35 Mutual recognition of professional qualifications which have not been confirmed or requested before the end of the transition period, and which are not therefore covered by the draft Withdrawal Agreement, is a matter for the future relationship, and as such, subject to negotiation. In her Mansion House speech on 2 March 2018, the Prime Minister said that:

> "So we want to limit the number of barriers that could prevent UK firms from setting up in the EU and vice versa, and agree an appropriate labour mobility framework that enables UK businesses and self-employed professionals to travel to the EU to provide services to clients in person and that allows UK businesses to provide services to the EU over the phone or the internet. And we want to do the same for EU firms providing services to the UK.
>
> "Given that UK qualifications are already recognised across the EU and vice versa — it would make sense to continue to recognise each other's qualifications in the future".[126]

5.36 The European Council's guidelines for the framework for the future economic partnership state that:

> "The future partnership should include ambitious provisions on movement of natural persons, based on full reciprocity and non-discrimination among Member States, and related areas such as coordination of social security and recognition of professional qualifications."[127]

EU recognition of third country nationals' qualifications

5.37 Some of the EU's preferential trade agreements with third countries facilitate cooperation on professional qualifications:

- Annex III of the EU-Swiss Agreement on the Free Movement of Persons provides for the mutual recognition of professional qualifications, which has entailed the adoption of a large number of EU directives and regulations;[128] and
- CETA establishes a Framework for Mutual Recognition on Professional Qualifications, which will enable detailed negotiations on specific professions to begin in due course. It states that: " Each Party shall encourage its relevant authorities or professional bodies, as appropriate, to develop and provide to the Joint Committee on Mutual Recognition of Professional Qualifications […] joint recommendations on proposed MRAs [Mutual Recognition Agreements]".[129]

Previous Committee Reports

First Report HC 301-I (2017–18) chapter 3 (13 November 2017); Thirty-third Report HC 71–xxxi (2016–17), chapter 3 (1 March 2017).

126 HM Government, PM speech on our future economic partnership with the European Union (2 March 2018).
127 European Council, Guidelines — 23 March 2018 20001/18.
128 Swiss Confederation, Agreement on the Free Movement of Persons https://goo.gl/zpZSqe.
129 Text of the Comprehensive Economic and Trade Agreement — Chapter 11: Mutual recognition of professional qualifications.

6 Location of the European Medicines Agency and European Banking Authority

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	(a) Proposal for a Regulation amending Regulation (EU) No. 1093/2010 as regards the location of the seat of the European Banking Authority; (b) Proposal for a Regulation amending Regulation (EC) No 726/2004 as regards the location of the seat of the European Medicines Agency
Legal base	(a) Article 114 TFEU, QMV, Ordinary legislative procedure; (b) Articles 114 and 168(4)(c) TFEU, QMV, Ordinary legislative procedure
Department	Health and Social Care and Treasury
Document Numbers	(a) (39291), 15264/17, COM(17) 734; (b) (39292), 15263/17, COM(17) 735

Summary and Committee's conclusions

6.1 As a consequence of the UK's withdrawal from the EU, those EU Agencies with a seat in the UK must re-locate. The remaining EU countries (EU-27) decided on 20 November 2017 that the European Medicines Agency (EMA) should move from London to Amsterdam and that the European Banking Authority (EBA) should move from London to Paris. The Commission accordingly proposed the necessary legislative amendments, which must be agreed by the European Parliament and Council.

6.2 We first considered both of these proposals at our meeting of 10 January 2018, when we asked about any potential obstacles to agreement and whether the UK argued that the Agencies should not be re-located.

6.3 Ministers from both the Department for Health and Social Care and the Treasury have responded, reminding the Committee that the Government will not give a "running commentary on the negotiations" and identifying no obstacles to adoption of this legislation. The Parliamentary Under Secretary of State for Health (Lord O'Shaughnessy) requests that the proposal to amend the EMA Regulation be cleared from scrutiny.

6.4 Since Lord O'Shaughnessy wrote to us, the European Parliament has adopted its position on the re-location of the EMA, expressing concern about the process of identifying the new location but nevertheless allowing inter-institutional negotiations on the final text to commence. Consideration of the EBA re-location is progressing at a slower pace.

6.5 **These are uncontentious proposals and, as such, we are content to clear them from scrutiny. We would nevertheless welcome further information regarding:**

- **the progress of the draft legislation through the EU institutions, bearing in mind particularly that the City of Milan and the Italian Government have lodged court cases challenging the legality of the decision to move the seat of the EMA to Amsterdam; and**
- **the progress of any discussions between the EMA, EBA and the Government concerning how the UK might facilitate the Agencies' relocation, in particular as regards reducing the withdrawal costs.**

Full details of the documents

(a) Proposal for a Regulation amending Regulation (EU) No 1093/2010 as regards the location of the seat of the European Banking Authority: (39291), 15264/17, COM(17) 734; (b) Proposal for a Regulation amending Regulation (EC) No 726/2004 as regards the location of the seat of the European Medicines Agency: (39292), 15263/17, COM(17) 735.

Background

6.6 The Joint UK-EU Report on the first phase of the exit negotiations noted that the UK had offered to discuss with Union Agencies located in London how they might facilitate their relocation, in particular as regards reducing the withdrawal costs.

6.7 The annual accounts of the EMA for the financial year 2016 disclosed an estimated €448 million (£395 million)[130] rent for the remaining rental period between 2017 and 2039 as a contingent liability,[131] given that the rental contract does not include any exit clauses. While contingent liabilities in relation to other relocation costs are yet to be determined by the EMA, press reports in early August 2017 based on a private EMA briefing to MEPs put the total cost at over £500 million.[132] By contrast, the EBA's rental contract has a break-clause and so the relocation costs are likely to be substantially less.

6.8 In their Explanatory Memoranda, the Parliamentary Under Secretary of State for Health (Lord O'Shaughnessy) and the then Economic Secretary to the Treasury (Stephen Barclay) did not object to the EU's decision to relocate either the EMA or the EBA.

6.9 Lord O'Shaughnessy noted that the Commission's explanation of its proposal on the EMA included a "Budgetary Implications" section in which it asserted that relocation would have budgetary implications, not least due to the early termination of the lease in London. The Government observed that the budgetary section did not form part of the legislative change and so should not have been referenced by the Commission. This was particularly so, said the Minister, because relocation costs had not yet been resolved in the exit negotiations.

130 €1 = £0.88415 or £1 = €1.13103 as at 28 February.

131 Subject to the outcome of the withdrawal negotiations.

132 'Relocation cost for European Medicines Agency hits €600m after lease bungle', The Times, 2 August 2017.

6.10 As both proposals remained under scrutiny, the Government abstained from voting at the meeting of EU Ambassadors (COREPER) on 11 December 2017. A joint Commission-UK statement noted that adoption of the proposals would be without prejudice to the UK or EU positions on the costs of relocating the EMA and EBA.

6.11 At our meeting of 10 January 2018, we noted the Government's objection to the Commission's reference to the budgetary implications of relocating the EMA. While we considered it reasonable for the Commission to reference the potential budgetary consequence, we agreed that the Commission statement should have more clearly indicated that payment of the costs was subject to ongoing negotiations.

6.12 Noting that the Department for Exiting the EU had reportedly said in mid-April 2017[133] that no decisions had been taken on the question of moving the Agencies out of the UK, we asked whether the UK did indeed seek to retain the Agencies during the negotiations.

6.13 Finally, we asked whether the Government had identified any appetite in the European Parliament to amend the Regulations at all, or if the proposals were likely to pass swiftly through both institutions.

Letter of 8 March 2018 from Lord O'Shaughnessy (regarding the EMA)

6.14 On whether the UK sought to retain the Agencies during negotiations, the Minister says:

> "The Government has been clear that we will not provide a running commentary on negotiations. While the location of the European Union's agencies, including the European Medicines Agency, is for the European Union to determine, the Government is continuing to discuss with them how cooperation and regulation in these areas can best continue."

6.15 Concerning the progress of the proposals through the European Parliament, the Minister notes that both proposals are passing through the Council and European Parliament processes as expected.

Letter of 28 March from John Glen (regarding the EBA)

6.16 The Minister repeats the response from Lord O'Shaughnessy concerning the UK's approach to retention of the Agencies and the Government's intention to continue discussions on how cooperation and regulation in these areas can best continue going forward.

6.17 On the progress of the legislation through the institutions, the Minister notes that the ordinary legislative procedure is being followed and that, regardless of what amendments may be put forward over the current period, the Government still expects the proposal to progress with Paris as the seat.

Previous Committee Reports

Ninth Report HC 342–ix (2017–19), chapter 6 (10 January 2018).

133 'London battles to keep hold of two main EU agencies', Financial Times, 16 April 2017.

7 Union Customs Code: electronic systems

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs, the International Trade, and the Treasury Committees
Document details	Proposal for a Regulation amending Regulation (EU) No 952/2013 to prolong the transitional use of means other than the electronic data-processing techniques provided for in the Union Customs Code
Legal base	Articles 33 and 207 TFEU; ordinary legislative procedure; QMV
Department	Revenue and Customs
Document Number	(39530), 6235/18, COM(2018) 85

Summary and Committee's conclusions

7.1 The legal foundation for the operation of the EU's Customs Union vis-à-vis goods entering from other countries is the Union Customs Code (UCC).[134] It was adopted by the Member States and the European Parliament in 2013, and foresaw the upgrading or creation of various new electronic systems by the end of 2020 to automate the operation of the Customs Union and eliminate the need for physical paperwork when exporting goods to or from the EU.

7.2 In March 2018 the European Commission proposed to delay the legal deadline for implementation of seven of the UCC's electronic systems in view of the difficulties encountered in the preparatory process.[135] Instead, they would be allowed to become operational by the end of 2025, with paper-based processes valid until the new systems go live. The Financial Secretary to the Treasury (Mel Stride) has confirmed the Government supports pushing back the deadline,[136] although the substance of the UK's customs arrangement after its scheduled exit from the Customs Union by the end of the post-Brexit transitional period, and therefore HM Revenue and Custom's access to the various UCC systems, remain unclear.

7.3 **We are content to clear the proposal on delaying the full digitalisation of the Union Customs Code from scrutiny, given it makes no substantive changes to the Code itself.**

7.4 **The processes and systems established by the Union Customs Code apply only to movements of goods between the EU and third countries, as intra-EU customs controls have been abolished as part of the Single Market (and not as a function of**

134 Regulation 952/2013.
135 See Commission document COM(2018) 85.
136 Explanatory Memorandum submitted by HM Revenue and Customs (20 March 2018).

the Customs Union per se).[137] Given the Government's policy is to leave the Single Market and the Customs Union at the end of the post-Brexit transitional period, the delay in the establishment of the speedier electronic customs processes would have an impact on British businesses trading with the EU when the UK assumes 'third country' status. When those new, automated processes are fully operational, UK traders would benefit from them on the same terms as those from any other non-EU country. Given the volumes of UK-EU trade and the complete lack of customs controls at present, the Government has also rightly prioritised the conclusion of a customs cooperation agreement with the EU to further reduce formalities, checks and delays as much as possible when the UCC becomes applicable to flows of goods between the UK and EU Member States.

7.5 **However, as the Home Affairs[138] and Public Accounts Committees concluded late last year,[139] there is still no detailed clear prospectus from the Government about its desired customs arrangement with the EU to mitigate the impact of customs controls on trade. Under the draft Withdrawal Agreement presented by the European Commission in spring 2018, the UK would stay in the Customs Union — and therefore apply the UCC — until the end of December 2020.[140] After that, barring any legal agreement to the contrary, the UK would no longer be bound by the Code; customs checks would take place on trade in goods between the EU and the UK, with tariffs applied; and HM Revenue and Customs would lose access to the EU's electronic customs systems and databases.[141]**

7.6 **The Government has proposed two different options for the post-Brexit customs arrangement with the EU to minimise the need for customs checks on trade in goods:[142]**

- **a 'highly streamlined customs arrangement', which aims to ensure that trade with the EU is as simple as possible, with "the minimum extra requirements for businesses"; or**
- **a 'new customs partnership', which the Government itself describes as an "unprecedented and innovative approach" under which the UK and the EU would operate a different external tariff for imports destined for domestic consumption, but mirror each other's requirements for imports from the rest of the world destined for onward shipping to the other party. This would "remove the need for a customs border between the UK and the EU"; and**
- **it has also been reported recently that the Government may alternatively seek a customs arrangement that effectively keeps the UK in the Customs Union**

137 Membership of the Customs Union (CU) is a prerequisite for the abolition of internal customs controls, but the process is not automatic. The CU came into operation in 1958, but intra-EU customs controls were not abolished until 1992 when new Single Market legislation came into effect to create 'true' free movement of goods. Thus, while the EFTA-EEA countries face no regulatory border controls on exports of goods to the EU (because they adhere to all the relevant regulatory standards), customs, VAT and excise controls remain in operation along the Norway-Sweden border.

138 Home Affairs Committee Report, "Home Office delivery of Brexit: customs operations" (7 November 2017).

139 Public Accounts Committee Report, "Brexit and the future of Customs" (14 November 2017).

140 DExEU, "Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community" (19 March 2018).

141 European Commission Notice to Stakeholders, "Withdrawal of the United Kingdom and EU rules in the field of customs and indirect taxation" (30 January 2018).

142 Customs partnership.

and bound not to deviate from the EU's Common External Tariff, to avoid the need for certain custom controls. This, however, is not official Government policy.[143]

7.7 **It remains unclear which of these is the Government's preferred option, although it was recently reported in the press that talks have begun on the 'customs partnership' — by far the more ambitious of the two approaches outlined in the Government's policy paper.**[144] **It would require HMRC to continue applying the Union Customs Code and supplementary legislation indefinitely in parallel to any new UK Customs Code, without having any formal input when future amendments are considered. This would, presumably, also require the UK to remain part of all the new and enhanced electronic customs systems being implemented as part of the Union Customs Code. In any event, no customs partnership — however deep — would address non-customs related border checks, such as official controls on animal products, which EU Member States will have to perform on UK goods entering the Union (including via the border with Ireland).**

7.8 **The need to delay implementation of some of the electronic systems underpinning the Union Customs Code also shows the need for a realistic timetable for any new UK-EU customs cooperation agreement to be put in place. The UCC was agreed in 2013, meaning some of the new IT infrastructure — if delivered by the end of the proposed new deadline in 2025 — will have taken twelve years to complete. Moreover, the Commission proposal also notes that "Member States and businesses need on average two years to make arrangements for each electronic system".**

7.9 **The UK's exit from the Customs Union and the Single Market would present a technical and logistical challenge for both Government and businesses on a much larger scale, given that it entails the disentanglement from forty years of legal and regulatory entwinement. Given the need for UK and EU businesses to adapt to the new trading environment, they would need clarity by the end of this year at the latest about the nature of the post-Brexit frameworks for trade once the current regime, underpinned by shared EU membership, falls away. The more ambitious the agreement, the more extensive the necessary preparatory work will be. HM Revenue and Customs itself has said the new customs arrangements might take up to five years to implement,**[145] **and the Prime Minister herself recently conceded that it might take longer than initially stated by the Government.**[146]

7.10 **However, any implementation timetable for cooperation between the EU's customs authorities and HMRC obviously first requires an agreement with the EU on its scope and depth. Negotiations on a new customs cooperation agreement that minimises friction by reducing the need for inspections, while being outside of the Customs Union and the Single Market, will be complex and require a large degree of trust between the customs authorities involved. The UK's exit from the Customs Risk Management**

143 *Bloomberg*, " May's Brexit Red Line on Customs Union Could Be Next to Go" (11 April 2018).

144 *Financial Times*, "May plans 'customs partnership' to unlock Northern Ireland dilemma" (1 April 2018).

145 Oral evidence by HM Revenue and Customs to the Treasury Committee, 14 September 2017, Q17.

146 On 27 March 2018, the Prime Minister told the Liaison Committee: "As we get into the detail and look at the [customs] arrangements, what becomes clear is that sometimes the timetables that have originally been set are not the timetables that are necessary when you start to look at the detail and when you really delve into what it is that you want to be able achieve. It is important that we have been able to get on to that point of looking in that greater practical, pragmatic detail at what it would take."

System (CRMS)[147] means it will no longer be part of the EU's "common risk criteria and standards, control measures and priority control areas". More generally, the UK's domestic customs processes after Brexit will — in the eyes of the EU's customs authorities — be untested, and their ability to cope with the larger volume of customs activity unknown. This means that, in the absence of a comprehensive legal agreement on customs cooperation, EU customs authorities may initially have to apply a relatively high proportion of inspections to UK exports as part of their obligations pursuant to the Union Customs Code.[148]

7.11 **With respect to the robustness of the UK's post-Brexit systems, mutual trust may already be in short supply even while the Article 50 negotiations are still in progress. The Government is currently involved in a dispute with the European Commission about large-scale undervaluation of imports of Chinese textiles at UK ports since 2013. The fraud has allegedly led to a loss of customs duties — which are normally transferred to the EU budget — amounting to €2.7 billion euros (£2.4 billion).[149][150] The dispute recently escalated to the first step of a possible formal infringement procedure against the UK, when the Commission issued a 'letter of formal notice' in March 2018 asking for compensation from the public purse for the EU's lost income.[151] An outstanding dispute of the size and scale of the Chinese undervaluation fraud will not improve trust among EU Member States and the EU institutions that HM Revenue and Customs can apply customs controls effectively.**

7.12 **Given the time pressures and the complex nature of upcoming UK-EU trade negotiations, both technically and politically, it is worrying that the Government has, in public, provided only a vague outline of the new customs arrangements it is proposing. As of April 2018, the Government and the European Commission are apparently yet to begin the detailed technical negotiations on the new customs cooperation agreement. Under these circumstances, we share the Prime Minister's own doubts that a new regime sufficiently deep to minimise or eliminate the need for customs controls between the UK and the EU will be operational by December 2020. The possibility that no new customs arrangement will be ready for operation by the end of 2020 points to either an abrupt 'cliff edge' in the trade relationship between the UK and the EU at the end of the transitional period, with the attendant disruptive effect on bilateral trade in goods, or an effective extension of UK membership of the Customs Union and the Single Market.[152]**

147 The CRMS distributes and exchanges customs control and risk-related information directly among EU customs officials and risk analysis centres. It consists of a Risk Information Form (RIF) which is filled in on-line and instantly made available to all customs offices.

148 Article 46 of the UCC requires customs authorities to base their controls "primarily (…) on risk analysis using electronic data-processing techniques, with the purpose of identifying and evaluating the risks and developing the necessary countermeasures, on the basis of criteria developed at national, Union and, where available, international level".

149 €1 = £0.88415 or £1 = €1.13103 as at 28 February.

150 See the Committee's previous Reports of 29 November 2017 and 24 January 2018 for more information on the dispute with the EU over evaded customs duties.

151 See http://europa.eu/rapid/press-release_MEMO-18–1444_en.htm.

152 As we have noted elsewhere, the same 'cliff edge' implied by the UK's exit from the Single Market will be more disruptive, especially if the Government and individual businesses cannot secure all the necessary permissions and licences that 'third country' products need to be sold in the EU by the end of the transition. Whereas customs formalities can delay shipments, EU Single Market law means that many UK goods will not be permitted onto the EU market until all the relevant pre-conditions for 'third country' goods are met.

7.13 **In light of the above, and given the uncertainty about the UK's post-Brexit customs arrangements with the EU beyond the end of the transition period, we ask the Minister to clarify:**

- **which of the UCC systems affected by the current proposal to extend the implementation deadline were on track for delivery of any relevant national component in the UK under the original schedule set out in 2013;**
- **if the Government intends to make all the necessary changes required by the UCC to ensure the interoperability of HMRC's systems with EU-level systems, despite the UK's scheduled exit from the Customs Union after the end of the transitional period; and**
- **which pan-EU systems that form part of the UCC's regulatory infrastructure — including the Common Risk Management System — HMRC would ideally remain part of when the UK leaves the Customs Union.**

7.14 **With respect to the future customs arrangement, our main focus is the potential for continued long-term legislative and regulatory alignment with the EU after the UK has left the Customs Union. We therefore urge the Government to publish without delay its detailed proposals for either of the options set out in its "future partnership paper" on customs. We also ask the Minister to write to us by 11 May 2018 to clarify the following points:**

- **Is there any veracity to press reports that the Government is considering an arrangement which would keep the UK bound by the EU's Common External Tariff indefinitely, even if not formally described as being part of the EU Customs Union? If so, how would the UK influence its tariff walls after it loses its formal say over the EU's trade deals with third countries?**
- **How would the 'highly-streamlined customs arrangement' obviate the need for border controls at the UK border with Ireland, given that its aim is to "minimise" rather than eliminate customs and border tax formalities?**
- **Under the 'customs partnership' option, would the EU have to reciprocate in its treatment of goods arriving at EU ports from outside the Union, i.e. apply a tracking system and differentiated customs measures if the goods are declared to be destined for the UK?**
- **What estimate has the Government made of the costs of the 'customs partnership' proposal? Would the UK pay, partially or wholly, for any required physical and electronic infrastructure and on-going administrative costs?**
- **How long does the Government believe it would take to construct this new system, and what would be the situation between the UK's scheduled exit from the Customs Union in December 2020 and the new arrangement becoming operational?**
- **How would the new customs partnership account for VAT and excise duties, which are normally the subject of border controls before non-EU goods can enter the EU's territory? Would the UK still enforce EU VAT and excise**

legislation on goods imported via its ports destined for the EU, such as the Excise Movement and Control System? How would the new system account for the share of the EU's customs duties and VAT base that is passed to the EU budget?

- **How would the new customs partnership account for tariffs on bilateral UK-EU trade, if completely elimination of customs duties cannot be achieved under a new free trade agreement?**
- **What additional measures will the Government propose to eliminate non-customs border controls at the UK frontier with Ireland, such as official controls on animals and animal products, even *if* the new customs partnership is a mutually acceptable solution? What will the Government propose if removal of border controls on such products, based on mutual recognition but not UK adherence to the EU's regulatory framework, is not accepted by the remaining Member States?**

7.15 **Given their interest in the UK's post-Brexit customs regime, we also draw this proposal to delay implementation of parts of the Union Customs Code to the attention of the Home Affairs, International Trade, and Treasury Committees.**

Full details of the documents

Proposal for a Regulation amending Regulation (EU) No 952/2013 to prolong the transitional use of means other than the electronic data-processing techniques provided for in the Union Customs Code: (39530), 6235/18, COM(2018) 85.

Background

7.16 The Union Customs Code (UCC) entered into force on 30 October 2013, with application in its entirety from 1 May 2016.[153] The UCC requires national customs authorities of EU Member States to take a risk-based approach to inspections of goods. It applies only to goods entering from non-EU countries, as intra-EU customs controls were abolished as part of the Single Market in 1992.

7.17 The Union Customs Code does not cover all types of controls that are carried out at the EU's external borders on goods entering its Member States. Regulatory checks as part of the Single Market — such as official controls on animals and animal products[154] and phyto-sanitary checks on wood products — are outside its scope. Similarly, tax-related border controls on value added tax[155] and excise are governed by separate pieces of EU legislation.

Introduction of electronic customs systems

7.18 The Code provides that different customs processes should be covered by electronic systems. Article 278 of the UCC provides transitional arrangements allowing for the use

153 Regulation 952/2013.

154 See Regulation 2017/625 on official controls. It will replace the current legal framework for such border controls in December 2019.

155 For more information on EU VAT law and its implications in the context of Brexit, see our Report of 28 March 2018.

of electronic and paper-based systems that pre-dated the introduction of the UCC until 31 December 2020 in cases where the electronic systems envisaged under the Code are not yet operational. However, the December 2020 deadline has proven to be challenging for many Member States.

7.19 In recognition of the delays and difficulties encountered in delivering some of these electronic systems in time, the European Commission has now proposed an amendment to postpone the end of transitional arrangements in relation to seven of the electronic systems until 31 December 2025 at the latest. The seven systems include three entirely new ones, designed to support new features of the EU customs system introduced by the UCC, and improvements to four existing IT systems that were already in operation under the previous Community Customs Code. The systems affected are:

- the **Guarantee Management System** (GUM), which will provide a universal format for Member States' customs administrations to register, process and monitor the use of trader guarantees (when duties are deferred for later payment) throughout the EU;
- the **Import Control System 2** (ICS 2), an upgrade of the current system (ICS) that is responsible for the capture and processing of pre-arrival safety and security declarations. Importantly, it includes risk analysis of incoming goods and allows the results to be shared across Member States;
- the **Proof of Union Status** (PoUS), a new system that will automate the current paper based procedure used to demonstrate that goods have 'Union status' (i.e. they have been released for free circulation in the entire EU Customs Union after all customs formalities have been completed);
- **Centralised Clearance for Import** (CCI), a new system under article 179 of the UCC that will allow customs declaration information to be shared between Member States. This is part of an effort to simplify customs processes for businesses, by allowing a trader with 'Centralised Clearance' to lodge a customs declaration for goods with their national customs authorities, even if the goods are presented at another customs office in another Member State;
- the updated **New Computerised Transit System** (NCTS), which traders must use to submit information on imports so that non-EU goods can enter the Customs Union but with deferral of customs formalities until they reach their Member State of destination;
- the **Automated Export System**, an upgrade to an existing system that will enable the full automation of export procedures and exit formalities when goods are exported from the EU; and
- the export element of the new **Special Procedures/information Notices** (INF), a system that will harmonise the use of data and processes for Special Procedure declarations. The INF element relates to the replacement of a paper document with an electronic solution using that data. It is only the export element of this package that will now be delivered after December 2020.

The Government's view

7.20 The Financial Secretary to the Treasury (Mel Stride) submitted an Explanatory Memorandum on the proposal on 20 March 2018.[156] It notes the Government's agreement with the Commission that there is a need to "allow an extension of the delivery timetable" for the implementation date for the full complement of electronic systems required by the UCC. He adds that a "decision (…) on implementation of any of these electronic systems in the UK will depend on on-going EU Exit negotiations".

Previous Committee Reports

None, this is a new proposal.

156 Explanatory Memorandum submitted by HM Revenue and Customs (20 March 2018).

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

Department for Business, Energy and Industrial Strategy

(39589)
7423/18
COM(18) 141

Proposal for a Council Decision on the extension of the Agreement for scientific and technological cooperation between the European Union and the Government of the United States of America.

Department for Environment, Food and Rural Affairs

(39571)
7321/18
+ ADD 1
COM(18) 138

Recommendation for a Council Decision authorising the opening of negotiations on a Global Pact for the Environment.

Department for International Development

(39565)
7181/18
COM(18) 91

Communication from the Commission to the European Parliament and the Council Second Annual Report on the Facility for Refugees in Turkey.

Department for International Trade

(39458)
5544/18
+ ADDs 1–10
COM(18) 36

Report from the Commission to the European Parliament and the Council Report on the Generalised Scheme of Preferences covering the period 2016–2017.

Foreign and Commonwealth Office

(39579)
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Council Decision amending Decision (CFSP) 2017/1869 on the European Union Advisory Mission in Iraq.

(39580) — — Council Decision on the establishment of a warehouse capability for civilian crisis management missions.

(39599) — — Council Decision amending Decision 2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt.

(39600) — — Council Implementing Regulation implementing Regulation (EU) No 270/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (39600).

(39601) — — Council Implementing Decision (CFSP) 2018/421 of 19 March 2018 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria.

(39602) — — Council Implementing Regulation (EU) 2018/420 of 19 March 2018 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria.

HM Treasury

(39325) — — Report from the Commission to the European Parliament and the Council on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

(39468) — — Special report no 03/2018: Audit of the Macroeconomic Imbalance Procedure (MIP).

(39538) 6377/18 SWD(18) 226 Commission Staff Working Document Country Report United Kingdom 2018 accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Central Bank and the Eurogroup 2018 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of indepth reviews under Regulation (EU) No 1176/2011.

(39545) 7055/18 COM(18) 127 Proposal for a Decision of the European Parliament and of the Council providing further macro-financial assistance to Ukraine.

Office for National Statistics

(39574) Report from the Commission to the European Parliament and the Council on the quality of fiscal data reported by Member States in 2017.

7354/18

COM(18) 112

Department for Work and Pensions

(39536) European Court of Auditors Special Report no: 6 Free Movement of Workers — the fundamental freedom ensured but better targeting of

— EU funds would aid worker mobility.

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Formal Minutes

Wednesday 18 April 2018

Members present:

Sir William Cash, in the Chair

Richard Drax	Andrew Lewer
Kate Green	Michael Tomlinson
Kelvin Hopkins	Dr Philippa Whitford
David Jones	

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 8 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 25 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/Cooperative, Swansea West*)

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

Richard Drax MP (*Conservative, South Dorset*)

Mr Marcus Fysh MP (*Conservative, Yeovil*)

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

Kate Hoey MP (*Labour, Vauxhall*)

Kelvin Hopkins MP (*Independent, Luton North*)

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

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

Stephen Kinnock MP (*Labour, Aberavon*)

Andrew Lewer MP (*Conservative, Northampton South*)

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

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

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