



House of Commons
European Scrutiny Committee

**Thirtieth Report of
Session 2017–19**

Documents considered by the Committee on 6 June 2018

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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Meeting Summary

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

Brexit-related issues

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

Adoption of detailed EU fishing rules

There is no detail on how the UK will be involved in the design of UK-relevant detailed EU fishing rules during the post-Brexit implementation period.

Mobility package: market pillar

The EU internal market for freight is highly integrated and allows for unlimited international traffic between Member States, including cross-trade (cross-border journeys between countries other than the operator's home country) and some cabotage (journeys which begin and end within another country). Although the UK seeks to retain current levels of market access, the only non-EU Member States which have EU-levels of access are the EEA countries and Switzerland, which apply the relevant EU rules.

86% of the freight traffic moved in and out of the UK (not including Ireland) is currently moved by non-UK operators, which suggests that EU27 haulage operators have a strong interest in retaining current levels of reciprocal market access. Despite this, the European Commission has suggested that the Government's red lines mean that a UK-EU agreement will involve a switch to a quota-based system; UK freight groups are overwhelmingly opposed to a permit system, which would increase costs for businesses and consumers.

The European Conference of Ministers of Transport's (ECMT) multilateral permit system will provide limited fallback access for approximately 5–10% of UK operators. Cabotage is particularly common on the island of Ireland and this activity is facilitated by common rules on haulage; the Northern Ireland Assembly has legislative competence for road haulage and trailer registration. Transport-related qualifications and certificates have not been included in the citizens' rights section of the draft Withdrawal Agreement.

Summary

EU energy policy

Negotiations to finalise the EU's "Clean Energy for all Europeans" proposals are at an advanced stage. We considered various letters from the Government on energy efficiency, renewable energy and on governance. While agreement is in sight, we note that the respective positions of the Council and European Parliament on targets for both renewable

energy and energy efficiency are divergent, and so reaching agreement by the end of June will be challenging. The Government is negotiating in an expectation that the UK will apply the legislation.

Not cleared; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee.

Adoption of detailed EU fishing rules

The Committee had previously asked the Ministers for information on how, during the post-Brexit implementation period, the UK will engage in the design of detailed EU fishing rules that will apply to the UK but will be proposed and adopted after the UK's exit from the EU. While the Minister sets out his expectation that the UK will be fully involved and able to effectively represent UK fisheries interests, he is not able to substantiate this with any detail and acknowledges that discussion on those arrangements are yet to take place. Recognising the need for that discussion, the Committee requests a further update by the end of August.

Cleared; further information requested; drawn to the attention of the Environment, Food and Rural Affairs Committee.

Safeguarding competition in air transport

The Bulgarian Presidency seeks to agree a General Approach on the Regulation safeguarding competition in air transport at the 7 June Transport Council. The proposed Regulation would replace the Regulation (EU) 868/2004 which is unfit for purpose due to its narrow scope. The proposal would enable individual carriers and Member States to make complaints in their own right, and introduce investigation procedures covering the violation of applicable international obligations as well as practices adopted by either a third country or a third-country entity affecting competition and causing injury or threat of injury to Union air carriers.

The Government considers the latest text to be better aligned with UK objectives than the original proposal and wishes to participate in Council to ensure the best outcome for the UK. The draft compromise text now recognises that fair competition between air carriers should preferably be addressed in the context of air transport or air services agreements with third countries; contains provisions enabling an investigation to be suspended if the Member States involved intend to address the practice being investigated under an applicable agreement with that country; and states that harm to consumers should be specifically considered in investigations and when decisions to impose redressive measures are proposed.

On Brexit, the Regulation could apply to UK stakeholders after the end of the implementation period if there were concerns about unfair competition, but this is not a major concern as the UK has a highly liberalised aviation sector. Moreover, it is probable that the issue will be addressed within the future economic partnership, which would then take precedent over this Regulation.

Not cleared from scrutiny; scrutiny waiver granted; updates requested.

ENISA / EU Cybersecurity Agency

The Government has written in advance of the 8 June Telecoms Council, at which a General Approach on this proposal is sought. The Regulation would give the European Union Network and Information Security Agency (ENISA) a permanent mandate, and create a new Cybersecurity Certification Framework, which would enable the Commission to adopt EU-wide cybersecurity certification schemes in the form of implementing acts. ENISA would play a central role in the development of such schemes, supported by a Cybersecurity Certification Group consisting of national certification supervisory authorities of all Member States. The Minister (Margot James MP) and her predecessor (Matthew Hancock MP) has previously thoroughly addressed the Committee's questions about the implications of EU exit for cybersecurity.

The Minister assures the Committee, in response to a question in its previous report, that under the latest compromise text if the Commission wishes to adopt implementing acts which would establish a specific cybersecurity certification scheme those implementing acts must be adopted in accordance with the more stringent examination procedure. However, a new issue has arisen: the three “assurance levels” model—basic, substantial or high—that is proposed for EU cybersecurity certification schemes potentially conflicts with the Government's Secure by Design initiative, which focusses on the processes by which internet connected products and services are developed. The Minister states that some measures have already been taken in negotiations to increase the flexibility of this framework, and that the Government's support for a General Approach “will be dependent on reaching a satisfactory compromise in relation to the points noted above on ‘assurance levels’”. Due to this remaining point of concern the Committee wishes to retain the proposal under scrutiny. A waiver is therefore granted, rather than clearance from scrutiny.

Not cleared from scrutiny; waiver granted; updates requested.

Proposed Equal Treatment Directive

For years the EU has been trying to agree a proposed equal treatment Directive. A new Council text was produced in 2015 but is making very slow progress in the Council. It aims to extend protection against unfair discrimination on grounds of religion and belief, disability, age or sexual orientation beyond the labour market to housing, health care, social services, social security, education and the supply of goods and services. Even if adopted this year (very unlikely), long implementation dates of 4–5 years and longer mean that the UK would not have to implement the proposed Directive before the end of the transition period (31.12.20). It also mostly covers the same ground as the Equality Act 2010, though it also extends to:

- protection from harassment related to religion or belief and sexual orientation;
- and the under 18s in respect of age discrimination.

The text might also cover multiple discrimination if a recent proposed amendment gains support. This would enable the combination of different grounds of discrimination in one claim. The dual discrimination provisions of the Equality Act 2010 (section 14) have never been brought into force and the Minister makes clear the Government's opposition to the

proposed amendment to the Directive. We ask the Government for further information on its position. We also welcome the Government's vigilance on competence creep in relation to the proposal's application to aspects of the provision of education.

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

Mobility Package: market pillar

The Government seeks a scrutiny waiver to participate in the agreement of a General Approach at Transport Council on 7 June regarding a proposed Regulation which would modify the single market rules governing access to the commercial road transport market. The Government is content with the Bulgarian Presidency's compromise text and the Committee recommends granting a waiver as requested. Ahead of Council, the Government also seeks clearance of a technical proposal regarding hired vehicles, to allow transport operators to use them throughout the EU for up to four months (now reduced to one month). The proposal has few domestic implications for the UK, and so the Committee is willing to clear it from scrutiny.

The EU internal market for freight is highly integrated and allows for unlimited international traffic between Member States (including cross-border journeys where the operator's home country is not involved) as well as some cabotage. The legal default of EU exit is that this regime will cease to apply. It appears to be the intention of both sets of negotiators to negotiate a UK-EU arrangement on this issue as part of the future relationship.

Although the UK seeks to retain current levels of market access, the only non-EU Member States which have EU-levels of access are the EEA countries and Switzerland, all of whom apply EU rules. In every other case, individual EU Member States negotiate quota and permit systems with third countries. The European Commission has suggested that a UK-EU agreement will inevitably involve a switch to a quota-based system, because of the Government's red lines. This is striking given that over 86% of the freight traffic moved in and out of the UK (not including Ireland) is currently moved by non-UK operators, who would benefit from retaining high levels of reciprocal market access. We also note that transport-related qualifications and certificates have been excluded from the citizens' rights section of the draft Withdrawal Agreement.

UK freight groups are overwhelmingly opposed to a permit system which would increase costs for businesses and consumers. Nonetheless, the Committee concludes that addressing the wider range of customs and regulatory issues which will arise at the UK and EU's external borders is of greater importance to haulage operators than retaining current levels of participation to the EU internal market for road transport. The Committee seeks further information on a number of haulage-related EU exit issues.

(a) draft Regulation 9668/17: not cleared from scrutiny; waiver granted; further information requested; (b) proposed Directive 9669/17: cleared from scrutiny; drawn to the attention of the Transport Select Committee.

Mobility Package: road use charges

The Bulgarian Presidency is seeking a General Approach on 7 June on the proposed recast of the EETS (European Electronic Toll Service) Directive. The proposal seeks to facilitate the emergence of commercial EU-wide interoperable electronic road toll systems and to enable the cross-border exchange of information concerning the failure to pay road fees in the Union. The principal attraction of the proposal to the Government is that of making it easier to chase up non-payment of tolls by foreign drivers, which the Minister considers would improve compliance with tolling rules. The Minister considers the EETS aspect of the proposal is largely technical, and judges that a successful EETS would potentially benefit UK hauliers, who would have the option of subscribing to a single EETS service rather than having to comply with multiple distinct electronic tolling and charging systems across Europe. Follow-up with the department has clarified that, although EETS equipment would have to be compatible with the EU's Galileo satellite navigation service, UK manufacturers will remain free to manufacture Galileo-compatible EETS equipment even if we no longer participate in the EU space programmes, as such systems would rely on the open, not the encrypted, service.

Cleared from scrutiny.

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: Posting of workers Directive [Proposed Directive (NC)]; Energy Efficiency Directive [Proposed Directive (NC)]; EU Renewable Energy Directive [Proposed Directive (NC)]; Energy Union Governance [Proposed Regulation (NC)]; Agency for the Cooperation of Energy Regulators [Proposed Regulation (NC)]; Mobility Package: emissions and fuel consumption of heavy duty vehicles [(a) Proposed Regulation (C), (b) Commission Regulation (C)]

Digital, Culture, Media and Sport Committee: International measures on safety and security at football matches [Proposed Decision (NC)]

Environment, Food and Rural Affairs Committee: Adoption of detailed EU fishing rules [Report (C)]; Mobility Package: emissions and fuel consumption of heavy duty vehicles [(a) Proposed Regulation (C), (b) Commission Regulation (C)]

Home Affairs Committee: International measures on safety and security at football matches [Proposed Decision (NC)]

International Trade Committee: Possible EU countermeasures to US tariffs on steel and aluminium [Proposed Regulation (NC)]

Joint Committee on Human Rights: Equal Treatment [(a) (b), Proposed Directives (NC)]

Transport Committee: Mobility Package: emissions and fuel consumption of heavy duty vehicles [(a) Proposed Regulation (C), (b) Commission Regulation (C)]

Treasury Committee: SEPA: cost of cross-border money transfers [Proposed Regulation (NC)]

Women and Equalities Committee: Equal Treatment [(a) (b), Proposed Directives (NC)]

1 Posting of Workers Directive

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Directive amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services
Legal base	Articles 53(1), 62 TFEU; Ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(37591), 6987/16 + ADDs 1–2, COM(16) 128

Summary and Committee’s conclusions

1.1 In March 2016, the Commission proposed to amend current legislation on the rights available to “posted workers”—those who are temporarily posted to work in one country by a company based in another Member State—in order to apply the principle of “equal pay for equal work in the same place”.

1.2 The Minister for Small Business, Consumers and Corporate Responsibility (Andrew Griffiths) has [written](#)¹ to explain that agreement has been reached between the European Parliament and Council following the Council’s General Approach last October, although the Directive is yet to be formally adopted. The UK is maintaining its position of abstaining as the balance of the [text](#)² has not been materially changed throughout the inter-institutional negotiations. While some aspects of the text have become clearer, there are some areas where the text is now more legally ambiguous in terms of its legal effect.

1.3 In an earlier [letter](#),³ of 21 December, the then Minister (Margot James) had responded to our outstanding queries from our meeting of 22 November, explaining that the UK abstained on the General Approach in October 2017 because it recognised the progress made by the Presidency but that the overall balance of the text was not quite right. The main area of disagreement was on how the revisions would apply to the road transport sector. As to the adoption of this legislation post-Brexit, the Minister was non-committal.

1.4 The Directive as agreed has a two-year transposition period, meaning that the UK will be obliged to transpose the legislation into UK law before the end of the post-Brexit implementation period on 31 December 2020. While the Government has always maintained that the amended legislation is unlikely to have a significant impact in the UK given the proportionally small number of postings to and from the UK and given the nature of the labour market, we would welcome information from the Government on plans that it is making to implement the Directive.

1 Letter from Andrew Griffiths to Sir William Cash dated 5 April 2018.

2 Final compromise text—Council document 7350/18 ADD 1

3 Letter from Margot James to Sir William Cash, dated 21 December 2017.

1.5 We note that agreement has been secured, but that the UK’s position is unchanged. Our interpretation is that the UK plans to abstain in the final vote. We retain the proposal under scrutiny pending final confirmation from the Minister of the Directive’s adoption, the position taken by the Government and the reasons for that position.

Full details of the documents

Proposal for a Directive amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services: (37591), [6987/16](#) + ADDs 1–2, COM(16) 128.

Background

1.6 Full details of the proposal and its background were set out in our [Report](#) of 22 November 2017. In that Report, we noted that agreement was reached at the 23 October Council meeting but that the UK abstained. We made four follow-up requests for information:

- a clearer articulation of the transport-related concerns and their potential impact on the UK;
- clarity on why the UK chose to abstain rather than oppose the agreement;
- the likelihood of the UK implementing this legislation post-Brexit should the UK and EU agree the right to continue to post workers to and from their respective territories (noting that the Council had proposed to extend the transposition period until four years after adoption of the Directive); and
- an update on the negotiations.

1.7 On 18 February 2018, we responded to the then Minister’s letter of 21 December, looking forward to a further update and including information on progress made in relation to application of the rules to the road transport sector. We retained the proposal under scrutiny.

Previous Committee Reports

Second Report HC 301–ii (2017–19), [chapter 5](#) (22 November 2017); Sixth Report HC 71–ix (2016–17), [chapter 4](#) (15 June 2016); Thirty-second Report HC 342–xxxi (2015–16), [chapter 3](#) (4 May 2016); Twenty-eighth Report HC 342–xxvii (2015–16), [chapter 6](#) (13 April 2016).

2 Copyright in the Digital Single Market

Committee’s assessment	Legally and politically important
Committee’s decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Directive on Copyright in the Digital Single Market
Legal base	Article 114 TFEU; ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(38076), 12254/16 + ADDs 1– 4, COM(16) 593

Summary and Committee’s conclusions

2.1 This Directive forms part of the Commission’s “Copyright in the Digital Single Market” package of September 2016. Its broad range of measures was summarised in the [Report](#) of our predecessor Committee, referenced at the end of this Chapter.

2.2 The other legislative component of the package is a proposed Regulation on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmission of television and radio programmes, which was the subject of an earlier [Report](#).⁴

2.3 In the Government’s [EM](#),⁵ the Minister (Sam Gyimah MP) expressed some initial caution over a new press publications right, further regulation of online intermediaries and additional remuneration provisions which interfere with freedom of contract (‘fair remuneration’). The Committee notes that in his letter of [30 April](#) 2018 the Minister says that “amendments [to the Proposal] have been positive and in line with the UK’s negotiating position”.

2.4 In particular, with regard to ‘fair remuneration’ the Minister notes that the text of the Proposal at the time of writing (23 April 2018) introduces some flexibility in the way a contract adjustment mechanism for rightsholders can be given effect to in Member States, which would allow existing collective bargaining arrangements in the UK to be maintained, in line with Government negotiating objectives. (The 17 May and 25 May 2018 text is unchanged in this regard.)

2.5 In his letter of 30 April 2018 the Minister identified two main outstanding issues which remained subject to detailed Council discussions: press publishers’ rights and “the value gap” (when content is uploaded to an online content sharing service provider by users of the service provider, without permission from the rights holder). The Minister was of the view that although a consensus on these issues was emerging amongst Member States, further agreement on the detail would be necessary.

4 Considered by the Committee on 28 February 2018.

5 3 October 2016

2.6 The [text](#)⁶ has moved on since the Minister last wrote. In particular, with regard to the provisions concerning use of protected content by online content sharing service providers.⁷ Other notable changes⁸ are the inclusion of an obligation on Member States:

- to “ensure that online content sharing service providers and rightholders cooperate with each other in a diligent manner to ensure the effective functioning of the measures referred to in point (a) of paragraph 4⁹ over time”;
- to “endeavour to put in place independent bodies to assess complaints” where online content sharing service providers take measures to “prevent the availability”¹⁰ of certain copyright protected works on their service”;
- to “endeavour to establish mechanisms to facilitate the assessment of the effectiveness and proportionality of these measures [the measures at Article 13(4) (a) of the Proposal] and provide the Commission regularly with information on those mechanisms”.

2.7 We are grateful for the responses from the Minister to the matters raised by our predecessor Committee and the updates on the negotiations to this Committee. The Committee ask for a full update on the Council position going into trilogue with the European Parliament.

2.8 The Committee also asks for clarification on the matters below within 15 working days and a further update in the event of any significant developments.

- a) The Minister says¹¹ that “ The Government is of the view there should be greater clarity in the law in this area [the uploading of content to online content sharing sites without permission from right holders]”. The Proposal¹² introduces a copyright specific regime for exemption from liability (in place of the exemption from liability provided for in Article 14 of Directive 2000/31) in respect of ‘acts of communication’¹³ or ‘making available to’ the public of on-line content where no authorisation has been given by the rightholder. In particular, one limb of that exemption¹⁴ is dependent on the online content provider demonstrating that it has made “best efforts to prevent the availability of specific works or other subject matter by implementing effective and proportionate measures...to prevent the availability on its services of the specific works or other subject matter identified by rightholders...”. It is not clear to the Committee what steps an online content sharing service provider would need to take in order to meet the threshold established by this provision and so avoid liability in a given case. The Committee would be grateful for clarification as to how this provision meets the Government’s objective of clarity and so provides legal certainty to online content providers.

6 8672/18 17 May 2018 and 9134/18 of 25 May 2018 (and the earlier version of 17 May 2018).

7 Article 13 of the Proposal, 25 May 2018 version.

8 In the text of 17 May 2018, replicated in the text version of 25 May 2018.

9 ‘Best efforts’ by a service provider to prevent the availability of works being hosted on its service for which it holds no licensing agreement with the rights holder.

10 See Article 13(4)(a) of the Proposal, 17 May 2018, 8672/18.

11 Letter of 30 April, under the heading “value Gap”.

12 25 May text 2018 latest text.

13 Article 13 of the Proposal, 25 May 2018 text.

14 Article 13(4)(a).

- b) **Could the Government indicate whether it intends to address the issue of liability (in the context of uploading of content to on line content sharing sites) in its Future Arrangements Agreement with the EU, in particular as regards the liability of UK established online content sharing sites operating in the EU.**
- c) **In his letter of 30 March 2017, the then Minister (Jo Johnson) helpfully informed the then Committee of stakeholder views concerning various aspects of the Proposal. As regards the liability of online service providers which host copyright content those views indicated a substantial number of responses from members of the public who raised concerns around privacy, censorship and data protection. Could the Minister please set out how the current text of the Proposal addresses those concerns.**
- d) **Could the Government explain (i) how they intend to meet the obligations set out at paragraph 2.6 above if the transposition date for the Directive falls within the UK’s transitional/implementation period (ie currently until 31 December 2020) and (ii) the extent to which the UK is likely to want to mirror these provisions in domestic legislation post the transitional/implementation period (ie post 31 December 2020).**
- e) **More generally, whether it is intended to include, in the Future Relationship agreement with the EU, the substance of the legislative proposals and, if not, the extent to which the UK is likely to want to mirror, after the transitional/implantation period (post 31 December 2020), the substance of the legislative proposals where there is a deviation from current UK law.**
- f) **In his letter of 30 March 2017 the then Minister (Jo Johnson) identified the provisions on out-of-commerce works and the exception for education as having cross-border aspects which would require further agreement with the EU if they were to apply to the UK. The Minister said that “the extent to which the UK would wish to mirror these proposals would depend on the form the Directive takes when it is adopted”. Could the Minister update the Committee on whether the Government intends to seek agreement with the EU regarding those aspects of the Proposal.**

2.9 We ask for a response within 15 working days. In the meantime we retain the Proposal under scrutiny.

Full details of the documents

Proposal for a Directive on Copyright in the Digital Single Market: (38076), 12254/16 + ADDs 1– 4, COM(16) 593.

Background

2.10 Fuller details of the Proposal are set out in the Report of the Predecessor Committee referenced below.

Previous Committee Reports

See: Seventeenth Report HC 71–xv (2016–17), [chapter 5](#) (2 November 2016).

3 Energy Efficiency Directive

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Directive amending Directive 2012/27/EU on energy efficiency
Legal base	Article 194(2) TFEU; ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(38340), 15091/16 + ADDs 1–13, COM(16) 761

Summary and Committee’s conclusions

3.1 As part of its “Clean Energy for All Europeans” [proposals](#)¹⁵ in November 2016, the Commission proposed a binding EU-level energy efficiency target of 30%. The Commission also proposed to extend the national energy saving targets until 2030 and to make amendments to the provisions on metering and billing. Further details on the proposals were set out in our [Report](#) of 25 January 2017.

3.2 The Minister of State for Energy and Clean Growth (Claire Perry) has [written](#)¹⁶ to update the Committee on the progress of negotiations. The European Parliament has adopted a significantly different position to that of the Council (summarised in our [Report](#) of 13 December 2017), proposing a much more stringent approach to targets—including an EU-level binding energy efficiency target of 35% compared to 30% in the Council’s General Approach—and so the Government expects the process of securing an acceptable compromise to be challenging. The Minister says that the UK will continue to argue against raising targets and will urge the Presidency to defend the levels of ambition for 2030 agreed in the Council’s General Approach. Details of the EP position are set out in the Minister’s letter.

3.3 The Bulgarian Presidency would like to conclude negotiations between the Council and the EP by the end of June. The Minister will keep the Committee informed as the negotiations progress over the coming months and move towards a final agreement.

3.4 The Minister also addresses other issues raised by the Committee:

- the UK will continue to report annual energy savings in line with its interpretation of the joint understanding on what could be counted towards its 2020 target—if the Commission launched infraction proceedings due to disagreement over the calculation, the UK might be required to make up any shortfall for 2020;
- the Government considers that the 2030 targets agreed in the Council’s General Approach are consistent with the UK’s Clean Growth Strategy; and

15 “Commission proposes new rules for consumer centred clean energy transition”, European Commission, 30 November 2016.

16 Letter from Claire Perry to Sir William Cash dated 10 May 2018

- the Government has approached the negotiations on the basis that the UK may be required to implement the Directive’s provisions during the implementation period (30 March 2019–31 December 2020 inclusive).

3.5 We note the divergence of the respective positions of the European Parliament and the Council on energy efficiency targets and that the Minister expects reaching agreement to be challenging. We note too that the Government has been negotiating in the expectation that the UK will be required to transpose the Directive during the post-Brexit implementation period.

3.6 We look forward to a further update on the progress of negotiations. We draw this chapter to the attention of the Business, Energy and Industrial Strategy Committee.

Full details of the documents

Proposal for a Directive amending Directive 2012/27/EU on energy efficiency: (38340), [15091/16](#) + ADDs 1–13, COM(16) 761.

Background

3.7 The Minister for Industry and Energy (Richard Harrington) reported in his [letter](#)¹⁷ of 14 July 2017 that a General Approach was agreed at the June 2017 Energy Council and that the UK abstained. While the balance of the compromise reached was acceptable, the UK abstained as the Commission refused to confirm the joint understanding reached with the UK in 2013 on what could be counted towards the UK’s 2020 binding national energy savings target. In a [letter](#)¹⁸ of 10 August 2017 to the House of Lords EU Committee, the Minister explained that the Commission’s refusal to recognise the 2013 joint understanding could mean that the UK would fail to meet its 2020 target.

3.8 In our [Report](#) of 13 December 2017, we requested:

- an update on progress in persuading the Commission to recognise the earlier understanding as to what could be counted towards the UK’s 2020 binding national energy savings target and an explanation of the implications of failing to meet the 2020 target;
- the Government’s view on whether the measures set out in the Clean Growth Strategy were sufficient to meet the 2030 targets and how the Strategy was informing the UK’s approach to negotiations of the Directive; and
- an indication of whether the Government was negotiating on the basis that the UK may be required to implement the provisions of the Directive during the withdrawal period (scheduled to end on 31 December 2020).

Previous Committee Reports

Fifth Report HC 301–v (2017–19), [chapter 2](#) (13 December 2017); Fortieth Report HC 71–xxxvii (2016–17), [chapter 4](#) (25 April 2017); Twenty-ninth Report HC 71–xxvii (2016–17), [chapter 2](#) (25 January 2017).

¹⁷ Letter from Richard Harrington to the Chair of the European Scrutiny Committee, dated 14 July 2017.

¹⁸ Letter from Richard Harrington to Lord Boswell of Aynho, dated 10 August 2017.

4 EU Renewable Energy Directive

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Directive on the promotion of the use of energy from renewable sources (recast)
Legal base	Article 194(2) TFEU; Ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(38345), 15120/16 + ADDs 1–9, COM(16) 767

Summary and Committee's conclusions

4.1 The Commission's proposal forms part of the "Clean Energy for All Europeans" [package](#)¹⁹ proposed by the Commission at the end of November 2016. It aims to boost the proportion of EU energy generated by renewable energy sources.

4.2 The Commission set out a range of measures, including: an EU-wide target of 27% renewable energy by 2030; a requirement that any Member State falling below its 2020 target levels should pay into a fund to finance renewable projects; new provisions on financial support for renewable electricity schemes; new measures to boost the share of renewable energy in the heating, cooling and transport sectors; and an extension of the biofuels sustainability criteria. Further details on the proposal were set out in our predecessors' [Report](#) of 25 January 2017.

4.3 The Minister for Energy and Clean Growth (Claire Perry) has written to update the Committee on developments. Full details are set out in her [letter](#) of 14 May.²⁰ She explains that informal negotiations between the European Parliament (EP) and Council are underway and may be completed by the end of June, although she describes this as "challenging".

4.4 According to the Minister, key outstanding issues include:

- the level of the binding 2030 EU-level renewable energy target, where the European Parliament continues to push for a 35% target—the Government believes that the "at least 27%" EU-level renewable energy target agreed by Council in December 2017 struck the right balance between ambition and cost-effectiveness for Member States, but given the wider support for a higher target the UK may need to show some flexibility in order to reach a compromise that secures the UK's other objectives for the dossier such as the heating & cooling and transport provisions;

19 "Commission proposes new rules for consumer centred clean energy transition", European Commission, 30 November 2016.

20 Letter from Claire Perry to Sir William Cash dated 14 May 2018.

- how to calculate Member State contributions to the overall EU-level renewable energy target;
- the level of renewable energy in heating and cooling, with continuing debate over both the endeavour and how binding it should be; and
- the proposed transport sector target, where there is particular disagreement on the sub-target for advanced biofuels (those not produced from crops).

4.5 We note the divergence of views between the European Parliament and the Council—particularly on the key issues of targets and including the transport sector target—and that the Minister expects reaching agreement to be challenging.

4.6 On the UK’s withdrawal from the EU, we recall the Government’s earlier acknowledgement that this Directive may need to be transposed into national law before the end of the post-Brexit implementation period (31 December 2020). Consequently, the negotiations on this Directive are of relevance to the UK, irrespective of the longer-term energy policy relationship between the EU and the UK.

4.7 We look forward to a further update on the progress of negotiations. We draw this chapter to the attention of the Business, Energy and Industrial Strategy Committee.

Full details of the documents

Proposal for a Directive on the promotion of the use of energy from renewable sources (recast): (38345), [15120/16](#) + ADDs 1–9, COM(16) 767.

Background

4.8 In his [letter](#)²¹ of 30 November 2017 the Minister for Energy and Industry (Richard Harrington) updated the Committee and requested a scrutiny waiver in advance of agreement to a possible General Approach at the 18 December Energy Council. He explained that the text of the agreement was still open to change, but that some improvements had already been made in relation to heating and cooling, biomass sustainability and permit-granting. The Government would continue to seek maximum flexibility for Member States to be able to develop their most cost-effective pathway for delivering their ambitious emissions reductions commitments, including deciding what contribution renewable energy should make to meet that commitment, whilst recognising the need for mechanisms to give the EU assurance over the delivery of its objectives on renewables. Any nationally-binding targets or endeavours should not impose significant costs on the UK.

4.9 On Brexit, the Minister noted that it was still too early to assess whether and how the EU exit negotiations would affect the Clean Energy Package. While the Government expected the legislation to have been agreed before Brexit, the transposition deadline of at least some of the legislation, including the Renewable Energy Directive, might fall during any implementation period.

4.10 In our [Report](#) of 13 December 2017, we waived the scrutiny reserve in order that the Government might support a General Approach at the 18 December Energy Council—

21 Letter from Richard Harrington to Sir William Cash dated 30 November 2017.

which it subsequently did—based on the principles set out in the Minister’s letter of 30 November. On the implications of the UK’s exit from the European Union, we took note of the Minister’s view that it was still too early to assess whether and how the EU exit negotiations would affect the Clean Energy Package. We also noted the possibility that the transposition deadline for this legislation may fall within any implementation period. While we accepted that there could be no certainty at that stage over the future relationship in the energy sector, we signalled our continued interest in the matter and our expectation that the Government would continue to negotiate the proposal with EU exit in mind.

Previous Committee Reports

Fifth Report HC 301–v (2017–19), [chapter 3](#) (13 December 2017); Fortieth Report HC 71–xxxvii (2016–17), [chapter 5](#) (25 April 2017); Twenty-ninth Report HC 71–xxvii (2016–17), [chapter 3](#) (25 January 2017).

5 Agency for the Cooperation of Energy Regulators

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; but scrutiny waiver granted; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Regulation of the European Parliament and of the Council establishing a European Agency for the Cooperation of Energy Regulators (recast).
Legal base	Article 194(2) TFEU; Ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(38347), 15149/16 + ADD 1, COM(16) 863

Summary and Committee's conclusions

5.1 As part of its “Clean Energy for All Europeans” [package](#)²² proposed by the Commission at the end of November 2016, the Commission proposed to strengthen the role and responsibilities of the Agency for the Cooperation of Energy Regulators (ACER) in order to improve the effectiveness and speed of decision-making on cross-border issues. This was in line with wider changes to the set of rules establishing the principles and details for participation in, and oversight of, the energy market.

5.2 ACER has a role in approving the terms and conditions or methodologies for the implementation of network codes which require approval by all regulators or all regulators in a region. It also has an important role to play in disputes between national regulatory authorities, where it may arbitrate on issues with relevance to cross-border trade. Further details of the proposal on ACER were set out in our earlier Reports (see below).

5.3 At our meeting of 13 December, we granted a scrutiny waiver in advance of likely agreement in January. We noted that the proposed language on third country participation had reverted back to the current provisions, moving away from the Commission's proposal to tighten up the conditions under which third countries could participate. Further information on the provisions as regards third country participation are set out in the “Background” section below.

5.4 The Minister for Clean Energy (Claire Perry) has now [written](#) explaining that agreement was not reached in January, but that agreement is expected at the Energy Council on 11 June.²³ She requests scrutiny clearance so that the Government is able to signal its agreement.

5.5 The Minister explains that two issues have delayed agreement. They relate to the powers of ACER to resolve disputes between national regulators and the respective roles of ACER's Board of Regulators and Director in issuing opinions and recommendations and making decisions. The Minister considers that amendments proposed would reduce

22 “Commission proposes new rules for consumer centred clean energy transition”, European Commission, 30 November 2016.

23 Letter from Claire Perry to Sir William Cash, dated 4 June 2018.

the Agency’s ability to make the internal energy market work effectively and efficiently. Whatever the UK’s long-term relationship with the internal energy market, she says, it is in the UK’s interests for it to work well. The UK’s objective is thus to keep ACER’s arbitration powers and the respective roles of the Board of Regulators and the Director as close as possible to the existing arrangements. She assures the Committee that the text on third country participation has not undergone any further change.

5.6 We note that agreement was not reached in January 2018, as was originally envisaged when we waived scrutiny at our meeting of 13 December 2017. We are content to waive the scrutiny reserve again to allow the Government to signal its agreement to a General Approach at the 11 June Energy Council. Pending the outcome of negotiations with the European Parliament, however, the proposal remains under scrutiny.

5.7 As regards the UK’s withdrawal from the EU, we note that the text on third country participation has not undergone any further change and we also note the Government’s view that—regardless of the UK’s long-term relationship with the internal energy market—it is in the UK’s interest that ACER works well.

5.8 We draw this chapter to the attention of the Business, Energy and Industrial Strategy Committee.

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council establishing a European Agency for the Cooperation of Energy Regulators (recast): (38347), [15149/16](#) + ADD 1, COM(16) 863.

Background and Analysis

5.9 The Committee’s core area of interest in relation to this proposal has been the question of third country participation. Currently, participation of third countries in ACER is open to third countries which have concluded agreements with the EU whereby they have adopted and are applying EU law in the field of energy and, if relevant, in the fields of environment and competition. The Commission proposed that this be changed to remove “if relevant”, so that participation would effectively be conditional on applying EU energy, environment and competition law.

5.10 So far, no third country has been admitted formally to participate in the Agency. There has nevertheless been some cooperation, as set out at pages 33–35 of ACER’s latest [Programming Document](#).²⁴ Experts from the Swiss Federal Electricity Commission have been participating in the Agency’s Electricity Working Group since January 2016, on the basis of a Memorandum of Understanding (MoU) signed on 11 January 2016 and experts from the Norwegian Water Resources and Energy Directorate have been participating in the Agency’s Working Groups and in the REMIT²⁵ Coordination Group since June 2016, on the basis of a MoU signed on 2 June 2016.

Previous Committee Reports

Fifth Report HC 301–v (2017–19), [chapter 4](#) (13 December 2017); Fortieth Report HC 71–xxxvii (2016–17), [chapter 6](#) (25 April 2017); Twenty-ninth Report HC 71–xxvii (2016–17), [chapter 4](#) (25 January 2017).

24 Agency for the Cooperation of Energy Regulators, Programming Document 2018–2020 (September 2017).

25 Regulation on Wholesale Energy Market Integrity and Transparency

6 Energy Union Governance

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee
Document details	Proposal for a Regulation on the Governance of the Energy Union, amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EU, Directive 2012/27/EU, Directive 2013/30/EU and Council Directive (EU) 2015/652 and repealing Regulation (EU) No 525/2013
Legal base	Articles 192(1) and 194(2) TFEU; Ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(38352), 15090/16 + ADDs 1–5, COM(16) 759

Summary and Committee’s conclusions

6.1 The October 2014 European Council agreed that a reliable and transparent energy governance system without any unnecessary administrative burden would be developed to help ensure that the EU meets its energy policy goals, with the necessary flexibility for Member States and fully respecting their freedom to determine their energy mix.

6.2 On that basis, the Commission proposed—as part of its “Clean Energy for All Europeans” [package](#)²⁶—to streamline existing planning, reporting and monitoring obligations and require Member States to submit plans and reports to the Commission. Full details on the background and content of the proposal were set out in our predecessors’ [Report](#) of 25 January 2017.

6.3 The Minister for Energy and Clean Growth (Claire Perry) has written to update the Committee on developments. Full details are set out in her [letter](#) of 14 May.²⁷ She explains that informal negotiations between the European Parliament (EP) and Council are underway and may be completed by the end of June. The Minister considers that this is challenging, but potentially achievable, although such agreement will depend significantly on progress on linked sections of the Renewable Energy Directive (Recast) and Energy Efficiency Directive proposals, particularly with respect to the level and nature of EU-level targets.

6.4 The Minister indicates that discussions at the Informal Energy Council in Sofia on 19 April pointed to a relatively clear Council position on the key political items, including:

26 “Commission proposes new rules for consumer centred clean energy transition”, European Commission, 30 November 2016.

27 Letter from Claire Perry to Sir William Cash dated 14 May 2018.

strong opposition to making renewable energy targets binding at the Member State level; flexibility towards a slightly higher EU-level renewable energy target; and opposition to a commitment to net-zero emissions by 2050 for now.

6.5 The Minister identifies some of the contentious areas in negotiations with the EP as:

- backfill and baseline mechanisms (see below)—the EP is expected to push for increased and binding measures to ensure achievement of EU-level targets, although the Minister is “cautiously optimistic” that a strong coalition of Member States exists which will block any move to make targets binding at Member State level;
- energy poverty—several Member States are keen to resist EU-level reporting, on the basis that within their national systems they do not distinguish energy poverty from wider poverty questions dealt with by social security policies;
- climate change adaptation—the Commission and EP are expected to push for increased reporting which the UK views as going beyond the requirements of the UN Framework Convention on Climate Change; and
- public consultation and the establishment of a multi-level dialogue platform, including all relevant stakeholders.

6.6 While the Minister’s letter does not touch on Brexit, the Government explained in previous correspondence that at least some of the elements of the Clean Energy Package would need to be transposed into national law before 31 December 2020, which is the end of the post-Brexit implementation period. While the Governance Regulation does not fall into that category, the extent of its relevance to the UK in the future will depend on the nature of the agreement between the EU and the UK on energy policy.

6.7 We note the divergence of views between the European Parliament and the Council and that the Minister expects reaching agreement to be challenging. We note too that agreement on this document is intimately linked to agreement on the Energy Efficiency Directive and the Renewable Energy Directive, on which we are reporting separately.

6.8 We look forward to a further update on the progress of negotiations. We draw this chapter to the attention of the Business, Energy and Industrial Strategy Committee.

Full details of the documents

Proposal for a Regulation on the Governance of the Energy Union, amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EU, Directive 2012/27/EU, Directive 2013/30/EU and Council Directive (EU) 2015/652 and repealing Regulation (EU) No 525/2013: (38352), [15090/16](#) + ADDs 1–5, COM(16) 759.

Background

6.9 In his [letter](#) of 30 November 2017²⁸ the Minister for Energy and Industry (Richard Harrington) updated the Committee and requested a scrutiny waiver in advance of agreement to a possible General Approach at the 18 December Energy Council.

6.10 He explained that significant progress had been made in negotiations and that consensus had emerged among Member States on the key issues:

- the “backfill mechanism” (how to make up any gap between national contributions and the binding EU level renewable energy target);
- the baseline mechanism (in principle, Member States should not fall below their 2020 renewables target level between 2021 and 2030);
- and reporting requirements under the proposed National Energy and Climate Plans.

6.11 In negotiations, the Government would continue to focus on seeking maximum flexibility for Member States to be able to develop their most cost-effective pathway for delivering emissions reductions commitments.

6.12 On Brexit, the Minister noted that it was still too early to assess whether and how the EU exit negotiations would affect the Clean Energy Package. While the Government expected the legislation to have been agreed before Brexit, the transposition deadline of at least some of the legislation might fall during any implementation period.

6.13 In our [Report](#) of 13 December 2017, we waived the scrutiny reserve in order that the Government might support a General Approach at the 18 December Energy Council—which it subsequently did—based on the principles set out in the Minister’s letter of 30 November. On the implications of the UK’s exit from the European Union, we took note of the Minister’s view that it was still too early to assess whether and how the EU exit negotiations would affect the Clean Energy Package. While we accepted that there could be no certainty at that stage over the future relationship in the energy sector, we signalled our continued interest in the matter and our expectation that the Government would continue to negotiate the proposal with EU exit in mind.

Previous Committee Reports

Fifth Report HC 301–v (2017–19), [chapter 5](#) (13 December 2017); Fortieth Report HC 71–xxxvii (2016–17), [chapter 7](#) (25 April 2017); Twenty-ninth Report HC 71–xxvii (2016–17), [chapter 5](#) (25 January 2017).

7 ENISA / EU Cybersecurity Agency

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; waiver granted; further information requested.
Document details	Proposal for a Regulation of the European Parliament and of the Council on ENISA, the “EU Cybersecurity Agency”, and repealing Regulation (EU) 526/2013, and on Information and Communication Technology cybersecurity certification (“Cybersecurity Act”).
Legal base	Article 114 TFEU; ordinary legislative procedure; QMV
Department	Digital, Culture, Media and Sport
Document Number	(39045), 12183/17, COM(17) 477

Summary and Committee’s conclusions

7.1 In September 2017 the European Commission presented a draft Regulation which would make the European Union Agency for Network and Information Security (ENISA) permanent and update its mandate to reflect current and future needs in the field of cybersecurity.

7.2 The most notable aspect of the proposed Regulation is its creation of a new Cybersecurity Certification Framework, which would seek to limit market fragmentation in this area by enabling the Commission to adopt EU-wide cybersecurity certification schemes in the form of implementing acts. ENISA would play a central role in the development of such schemes, supported by a Cybersecurity Certification Group consisting of national certification supervisory authorities of all Member States.

7.3 In its initial [response](#) to the proposal, the Government did not raise any major concerns, acknowledging that a certain degree of EU coordination can be beneficial to manage cross-border cyber risks, and concluding that “the proposed measures remain proportionate to the need”.

7.4 In its [first consideration](#) of the proposal on 6 December 2017, the Committee sought further information from the Government about Foreign and Commonwealth Office concerns about a possible “operational” role for ENISA which might impinge on national competences, as well as the implications of EU exit for cybersecurity. The Minister’s [response](#) on 16 January 2018 concluded that the FCO’s concerns were not borne out by the text of the draft Regulation, but that the Government would continue to monitor the issue during negotiations.

7.5 The Minister also responded to the Committee’s questions regarding the implications of EU exit for UK cybersecurity. In its [second consideration](#) on 21 February 2018, regarding EU exit, the Committee concluded that:

- the existing and proposed mandates for ENISA provide for participation of competent authorities of third countries in the Agency, subject to approval by the

Commission, and agreements regarding, inter alia, financial contributions and staff. Norway is the only third country to participate in the ENISA Management Board, on which it has an observer role and no voting rights;

- the Network and Information Security (NIS) Directive (EU) 2016/1148 permits associate membership of the NIS Cooperation Group by third countries through a third country agreement. Norway and Switzerland have participated in NIS Cooperation Group Meetings. However, there is no equivalent provision for the Computer Security Incident Response Teams (CSIRT) Network that is established by the NIS Directive; and
- after the UK leaves the EU, under the NIS Directive, all UK-established Digital Service Providers will have to designate a representative in an EU Member State if they want to offer services within the EU. They would then have to comply with that Member State’s security and incident reporting requirements, along with the UK’s requirements.

7.6 The Committee also sought further information from the Government regarding the comitology procedure under which specific cybersecurity schemes could be adopted, as well as an update on progress in Council.

7.7 On 15 May 2018 the Minister of State for Digital and the Creatives Industries at the Department of Digital, Culture, Media and Sport (Margot James MP) provided the Committee with an [update](#). The Minister reassures the Committee that if the Commission wishes to adopt implementing acts which would establish a specific cybersecurity certification scheme Article 52(5) of the draft Regulation provides that those implementing acts must be adopted in accordance with the examination procedure. Moreover, Article 55(2) makes clear that Article 5(4)(b) of Regulation (EU) No 182/2011 applies, which means that any draft implementing act cannot be adopted if there is no opinion delivered by the committee. The more stringent examination procedure is therefore used.

7.8 On the implications of UK non-participation in ENISA and the CSIRT (Computer Security Incident Response Team) Network, the Minister states that if the UK does not secure agreement to participate in the ENISA Management Board or the CSIRT Network “we would instead use our bilateral relationships with EU Member States to share expertise and information.” The Minister is nonetheless of the view that the UK should continue to work with the EU to promote strategic frameworks for conflict prevention, cooperation and stability in cyberspace.

7.9 Regarding the progress of negotiations in Working Groups, the Minister reiterates how previous concerns have been addressed, and states that the Government’s only remaining point of concern relates to the proposed inclusion of three “assurance levels” for all EU certification schemes—basic, substantial or high. The Government is unsure whether this would provide sufficient flexibility or transparency as to what security measures have been taken. The Government would prefer an approach which gives consideration to the processes by which internet connected products and services are developed, in line with the Government’s [Secure by Design](#) initiative. The Minister states that some measures have already been taken in negotiations to increase the flexibility of this framework, and that work is ongoing in this regard.

7.10 The Minister states that the Presidency’s current intention is to seek agreement on a General Approach at the Telecoms Council on 8 June 2018. If there is a vote, the Minister states that the Government’s decision to vote in favour “will be dependent on reaching a satisfactory compromise in relation to the points noted above on ‘assurance levels.’” On this basis, the Minister asks the Committee to grant either scrutiny clearance or a scrutiny waiver.

7.11 We thank the Minister for her comprehensive update. The Government has now responded thoroughly to each of the Committee’s previous questions relating to this proposal. We are reassured that the draft text does not grant ENISA a role that would impinge on the activities of national intelligence agencies, and that future certification schemes will seek to align with global standards where they exist. The Minister emphasises that the more stringent examination procedure will be used when any implementing acts are to be adopted.

7.12 Nonetheless, because the Government’s support for the proposed Regulation at Telecoms Council on 8 June 2018 is contingent on securing a satisfactory compromise regarding the proposed system of ‘assurance levels’ for the cybersecurity certification framework, which could have implications for the Government’s Secure by Design initiative, and because this issue has not yet been sufficiently explained to the Committee, we are not yet prepared to clear the file from scrutiny.

7.13 We therefore grant the Government a scrutiny waiver to participate at Telecoms Council subject to a satisfactory outcome being reached on this point. We also ask the Government to provide us in due course with a fuller explanation of the extent to which the latest compromise text, whether agreed or not, is compatible with the Government’s proposed Secure by Design initiative, and could constrain it.

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council on ENISA, the “EU Cybersecurity Agency”, and repealing Regulation (EU) 526/2013, and on Information and Communication Technology cybersecurity certification (“Cybersecurity Act”): (39045), 12183/17, COM(2017) 477.

Previous Committee Reports

Fourteenth Report HC 71–xvi (2017–18), [chapter 2](#) (21 February 2018); Fourth Report HC 301–iv (2017–18), [chapter 3](#) (6 December 2017).

8 Mobility Package: market pillar

Committee's assessment	Politically important
Committee's decision	(a) Not cleared from scrutiny; waiver granted; further information requested (b) Cleared from scrutiny
Document details	(a) Proposal for a Regulation amending Regulation No. 1071/2009 and Regulation 1072/2009 with a view to adapting them to developments in the sector; (b) Proposal for a Directive amending Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road
Legal base	Article 91(1)TFEU; ordinary legislative procedure, QMV
Department	Transport
Document Numbers	(a) (38781), 9668/17 + ADDs 1–3 COM(17) 281; (b) (38782), 9669/17 + ADDs 1–4, COM(17) 282

Summary and Committee's conclusions

8.1 As part of the first mobility package the European Commission has proposed a number of changes to the internal market rules governing road transport, which are collectively referred to as the 'internal market pillar' of the package. The Commission proposes to amend the two current Regulations (EC) 1071/2009 and (EC) 1072/2009 on access to the occupation of road transport operator and access to the international road transport market, and to amend the current Directive (EC) 2006/1 on the use of vehicles hired without drivers for the carriage of goods by road.

8.2 The Government provided an initial response to these proposals in an [Explanatory Memorandum](#) dated 5 July 2017, in which the Minister indicated that the Government was still considering the detail of the proposals. Nonetheless, the Government identified a number of potential areas of concern. After a delay following the re-appointment of the Committee after the General Election, the Committee produced a [report](#) considering the Government's position on the proposals on 29 November 2017, in which it sought further information regarding a range of possible concerns identified by the Government. The Committee also asked the Government to set out its position vis-à-vis the proposed changes to the Hired Vehicles Directive.

8.3 The Parliamentary Under Secretary of State at the Department for Transport (Jesse Norman) provided the Committee with a short [response](#) to this report on 27 February 2018, which was followed by a more detailed letter on 8 May 2018 in advance of the June 7 Transport Council at which a General Approach will be sought on both proposals. The Minister reports that the compromise text which has been brought forward following negotiations in Council working parties makes a number of significant changes to the Commission's proposed text, all of which are amenable to the UK position:

- the requirement for light commercial vehicles (vehicles under the 3.5 tonne heavy goods vehicle threshold, or LCVs) to comply with the requirements of

the operator licensing regulations applicable to larger vehicles would now only apply to vans used to carry goods for hire and reward purposes which are (i) over a minimum weight threshold of 2.5 tonnes (vans of over 3.5 tonnes are already covered by the regulations) which (ii) do international work for hire or reward, meaning that only a very small proportion of LCVs would be affected. The Minister considers this outcome more proportionate to the objective of the proposal;

- the proposed enforcement quota for cabotage operations (haulage journeys undertaken entirely within the territory of one other EU member state) has been removed; and
- the Government will retain the freedom to continue to mandate the provision of sufficient parking for all vehicles operated in the UK.

8.4 The chief outstanding point of contention remains the proposed alteration of the current limits applicable to cabotage (three operations in seven days) to allow unlimited operations in a five day period. The Government did not provide a particularly comprehensive account of this aspect of the negotiations in either of its letters, however DFT officials subsequently provided further clarity: it is probable that the eventual outcome of negotiations will reduce the period of unlimited operations to three days, or even maintain the status quo. The Minister also sets out the Government’s support for the “technical, and much less controversial” Hired Vehicles Directive, which would make it easier for undertakings to use vehicles hired in a Member State other than that in which the undertaking is established.

8.5 The Minister considers that the proposed General Approach regarding the proposed Regulation is satisfactory provided that the proposal remains as summarised below and a balanced outcome is achieved on cabotage, and requests a scrutiny waiver to participate in Council. He also seeks clearance of the proposal for a Directive regarding the use of hired vehicles (9669/17), which does not have any significant implications for UK stakeholders.

8.6 A summary of some of the key EU exit issues affecting the international haulage sector is provided in the Background section of this report.

8.7 We thank the Minister for his updates. We have taken note of the improvements secured in working parties to the proposal to amend the regulations on access to the occupation of road transport operator and access to the international road transport market. We take particular note that the requirement for light commercial vehicles to comply with operator licensing regulations applicable to heavy goods vehicles has been restricted to vehicles over 2.5 tonnes used internationally to transport goods for hire or reward, meaning that it will only apply to a very small proportion of vehicles; the proposed cabotage enforcement quotas have been removed; and the Government will retain the ability to require operators to have sufficient parking for vehicles operated in the UK. The Minister considers that the proposed General Approach is satisfactory provided that the proposal remains as summarised above and a balanced outcome is achieved on cabotage, and requests that the Committee grant a scrutiny waiver.

8.8 The Government’s account of its position on the proposed changes to rules governing cabotage was not sufficiently clear. However, following an exchange with officials we now understand that Member States in Working Groups rejected

the Commission’s view that permitting unlimited cabotage within five days of the international journey did not constitute a liberalisation, and that the final compromise is thus likely to involve a reduction of the proposed period to three days, or even a reversion to the status quo, with both outcomes acceptable to the Government. This has adequately clarified the Government’s position regarding the central aspect of the proposed cabotage reforms.

8.9 The Minister also requests clearance of the less contentious proposal to allow undertakings to use vehicles hired in a Member State other than that in which the undertaking is established. This proposal is not expected to have a significant impact in the UK; nonetheless, the Minister considers that the Presidency’s compromise text offers a good balance between keeping the market of hired goods vehicles relatively open and allowing Member States the freedom to impose certain restrictions if they so wish.

EU exit implications

8.10 Regarding the implications of EU exit, we note the Government’s acknowledgement that 99% of the UK’s total international road freight (including foreign hauliers) is to and from the EU, and recognition of the enabling role played by road freight for the wider goods economy, and of the multiplier effect of disruption to road freight transport on GDP “given the impact on supply chains, production and the distribution of goods”.²⁹ This underlines the importance of securing a positive outcome in negotiations for the UK commercial road transport sector.

8.11 The EU internal market in road transport is deeply integrated and provides a high degree of reciprocal market access:

- for EU operators, no quota restrictions apply to intra-EU haulage for international traffic between Member States including cross-trade (international road transport between two Member States performed by a road motor vehicle registered in a third Member State), and transit traffic to and from non-Member States;
- cabotage³⁰ rights are also granted, enabling journeys entirely within one other EU member state, which (along with the measures described above) has helped to increase efficiency and to reduce “empty journeys”; and
- mutual recognition applies to the certifications, authorisations and licences applicable to companies, drivers and vehicles, with a Community Licence granted by a competent authority in any Member State granting full access to the internal market for road transport.

29 DEXEU, Road Haulage and Passenger Transport Sector Report, paragraphs 33 and 18 (21 December 2017).

30 Three such cabotage operations are permitted in a seven day period following delivery of goods on a cross-border country to any EU Member State.

8.12 This liberalisation has generated increased competition and efficiency, including through reducing the number of “empty journeys”, leading the Freight Transport Association and Road Haulage Association to advocate arrangements which would effectively retain the status quo in terms of market access.³¹

8.13 The legal default of becoming a third country vis-à-vis the EU is that, irrespective of whether the UK retains these rules in domestic law, in the absence of a negotiated agreement with the EU, UK operators will lose these rights. If concluded in its current form, the transitional arrangements provided for in the draft Withdrawal Agreement would postpone these effects from 29 March 2019 until the end of the implementation period (31 December 2020).

Third country arrangements

8.14 In terms of access to the EU market for operators from non-EU Member States, we observe that:

- outside the EU, only the EEA Member States participate completely in the internal road transport market; Switzerland also has a Land Transport Agreement with the EU which provides broadly similar rights (minus cabotage). Both the EEA countries and Switzerland follow the wider common EU rules for the sector on, inter alia, roadworthiness, working time and tachographs;
- the EU has not concluded a Land Transport Agreement with any other country: in every other case, bilateral arrangements exist between individual EU Member States and third countries, involving a quota system in which specific number of permits (which may vary in their effects) are allocated. However, EU Member States cannot negotiate bilaterally with third countries where the EU has exclusive external competence in a policy area, and it appears to be the intention of the negotiators to address road transport within the scope of the future relationship; and
- the European Conference of Ministers of Transport (ECMT) multilateral permit scheme does not provide access to the EU internal road transport market as such, but does provide permit-based access across 43 European states for some operators with vehicles compliant with Euro 4, 5 and 6 standards. The ECMT scheme is only designed to provide for a small proportion of the total international access that is needed (approximately 5–10% of international road haulage in Europe), with the principal objectives being to incentivise improvements in road safety and environmental standards. Post-EU exit, the UK will continue to be able to issue the limited number of permits allocated to it (up to 1,224). Increasing these quotas would require the unanimous consent of the 43 participating states. ECMT quotas will therefore mean that a small proportion of UK operators will be able to retain a reduced level of access to the EU market (not covering cabotage, transit to non-ECMT states, unaccompanied trailers or semi-trailers, or own account operations).

31 Freight Transport Association, FTA Brexit Manifesto: What does logistics need to make a success out of Brexit? (February 2017), and Road Haulage Association, Brexit—RHA Member Consultation: Proposal for a UK/EU Land Transport Agreement (5 May 2017).

8.15 The European Commission’s slides³² on the framework for the future relationship in the transport sector exclude the possibility of the UK continuing to participate in the EU’s internal market for transport, on the basis that the obligations that this would entail are incompatible with the Government’s red lines: they conclude that the UK will be “outside the single market ‘eco-system’” and gain access through a “bilateral quota system”. We also note that, while the draft Withdrawal Agreement provides for the continued recognition of certain professional qualifications for some citizens who have already exercised their rights, transport-related qualifications and certifications have been excluded.³³

8.16 We consider this stance striking, given that non-UK operators currently dominate the international market, with over 86% of the freight traffic moved in and out of the UK (not including Ireland) currently moved by non-UK operators (although some of these businesses are subsidiaries of UK companies that have based themselves in other EU States).³⁴ Considered in purely commercial terms, many EU27 operators have a clear interest in maintaining reciprocal market access in road transport.

Quota-based systems

8.17 While the Government’s negotiating aim “is to maintain and develop the existing level of transport connectivity with the EU, as part of the wider future partnership”,³⁵ given that all third country commercial road transport with the EU is currently managed through quota systems, and the Commission has identified such an arrangement as the basis for the future relationship in road transport, we consider it very possible that the future relationship will involve such a system. As such, it is appropriate that the Government is making contingency preparations for such arrangements through the Haulage Permits and Trailer Registration Bill.³⁶

8.18 Regarding the implications of a shift to such a scheme, the Road Haulage Association (RHA) has estimated³⁷ that “a simple bilateral permit system will add approximately £53 per movement in and out of the UK for UK operators and about £26 for EU operators”, and that such an arrangement would “impact greatly on the costs of services provided and also create impediments for the smooth and effective movement of goods.”³⁸ The Road Haulage Association concludes that this would be the worst possible outcome for the UK, and that there are no benefits for either the haulage industry or supply chains arising from the introduction of a system of bilateral permits. We nonetheless note that permit schemes can vary both in terms of cost and level of market access.

32 European Commission, Internal EU27 preparatory discussions on the framework for the future relationship: “Transport” (21 February 2018).

33 See Letter from the Minister, BEIS, to the Chairman of the European Scrutiny Committee (17 May 2018), in response to a previous [report](#) by the Committee.

34 Road Haulage Association, Evidence to the House of Lords EU Sub-Committee (4 October 2016).

35 DfT, “Policy paper: The Haulage Permits and Trailer Registration Bill: an overview” (20 March 2018).

36 DfT, “Policy paper: The Haulage Permits and Trailer Registration Bill: an overview” (20 March 2018).

37 Road Haulage Association, “Brexit—Unimpeded Access for International Road Haulage” (3 February 2017).

38 Road Haulage Association, Evidence to the House of Lords EU Sub-Committee (4 October 2016).

Other EU exit issues

8.19 We also wish to acknowledge a number of additional EU exit implications specific to the road haulage sector which have arisen in the course of our scrutiny:

- The Government’s internal analysis³⁹ shows that UK-registered HGVs carried 7.5 million tonnes of freight on cross border movements between Northern Ireland and Ireland in 2014, making Ireland the UK’s biggest freight trading partner. The Minister’s acknowledgement in his letter to the Committee that “cabotage operations are common on the island of Ireland”, and that an excessively long “cooling-off period” could impose unnecessary restrictions on Irish and Northern Irish hauliers, also highlights the local importance of this issue. We note in this regard that the Northern Ireland Assembly has legislative competence for road haulage and trailer registration.
- Although the issue of cabotage (foreign HGV operators providing domestic services exclusively within the UK) is politically sensitive, Department for Transport analysis⁴⁰ shows that foreign HGV cabotage accounts for just one per cent of road freight activity within the UK, meaning that bringing an end to foreign cabotage operations in the UK is likely to have a negligible effect on domestic operators.
- There is a well-documented driver shortage in the haulage industry,⁴¹ with the Freight Transport Association estimating a current shortage of 35,000 drivers. The UK haulage industry is heavily reliant on EU nationals, with the RHA estimating that at least 60,000 lorry drivers from the EU are now working in UK domestic transport.⁴² Sector bodies therefore emphasise that retaining access to the EU labour market is a priority.
- Regarding the EU road transport regulatory environment, the Road Haulage Association has noted that “the industry is generally content with the current regulatory framework including the major regulations derived from the EU”, but observes that there are “a small number of regulations which some of the RHA’s members would like to see scrapped”, notably Directive (EC) 2002/15 (the Road Transport Directive on Working Time) and Directive (EEC) 92/106 (the Combined Transport Directive).⁴³
- Finally, while the focus of this report is on access to the EU internal market for commercial road transport, we note that effectively addressing the range of customs and other operations which may become applicable to UK-EU trade at our external borders (e.g. customs declarations; Value Added Tax; conformity and other regulatory checks), is in our assessment a more strategically important challenge for the haulage sector. The Road Haulage Association observes that “seamless customs through ports and borders”

39 DEXEU, Road Haulage and Passenger Transport Sector Report (21 December 2017).

40 DfT, International Road Freight Statistics, United Kingdom, 2014 (26 November 2015).

41 Freight Transport Association, The driver shortage: issues and trends (October 2016).

42 Road Haulage Association, Evidence to the House of Lords EU Sub-Committee (4 October 2016).

43 Road Haulage Association, Evidence to the House of Lords EU Sub-Committee (4 October 2016).

should be a top priority, and that “failure to solve the problem will result in massive disruption—impacting manufacturing, food distribution and retail.”⁴⁴

Questions

8.20 On EU exit, we ask the Government:

- to identify any significant benefits or opportunities presented to the sector by the EU exit;
- whether the Government will review whether to scrap or substantially reform the drivers’ hours and working time rules applicable to the haulage sector, or the Combined Transport Directive, in due course;
- whether the Government considers that it will be able to agree bilateral haulage permit arrangements with individual EU Member States if provisions in the future relationship covering land transport are, in the Government’s assessment, inadequate (if so, what is the legal basis of its assessment);
- if cabotage rights cannot be secured in negotiations, whether the Government considers that specific solutions for the island of Ireland will be necessary in this regard, given the Government’s recognition in correspondence with the Committee of the higher incidence of cabotage occurring there (or whether such arrangements should be ruled out); and
- whether the Government has consulted the Road Haulage Association and/or the Freight Transport Association regarding the Government’s two proposed customs solutions (maximum facilitation and the customs partnership); if so, what feedback was received; if not, why it has not done so, whether it intends to do so, and when.

8.21 Regarding the proposal, we ask the Government to provide an update in due course on progress made in the June 7 Transport Council, with particular regard to any agreement on changes to the levels of cabotage that are permitted, including any “cooling-off period” for cabotage and how it might affect hauliers operating across the Northern Irish border. We also ask the Government to identify whether the European Parliament’s negotiating position would reverse any of the improvements secured in negotiations by the Government, to inform our decision as to whether to retain the document under scrutiny.

8.22 We grant the Government a scrutiny waiver to participate at Council regarding document (a), but are not yet willing to clear the document from scrutiny. We clear document (b) from scrutiny. We draw this report to the attention of the Transport Select Committee, which is currently conducting an inquiry into the implications of EU exit for the freight sector. In the meantime, we retain document (a) under scrutiny.

44 Road Haulage Association, “Brexit—Unimpeded Access for International Road Haulage” ([3 February 2017](#)).

Full details of the documents

(a) Proposal for a Regulation amending Regulation No. 1071/2009 and Regulation 1072/2009 with a view to adapting them to developments in the sector: (38781), 9668/17 + ADDs 1–3 COM(17) 281; (b) Proposal for a Directive amending Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road: (38782), 9669/17 + ADDs 1–4, COM(17) 282.

Background

8.23 The key developments related to each of the two legislative proposals, as set out in the Government’s explanatory memorandum and subsequent correspondence with the Committee, are summarised below.

Access to the occupation of road transport operator

8.24 The Mobility Package included proposals for changes to Regulation 1071/2009 governing access to the occupations of road transport operator and transport manager, as set out below.

(i) Inclusion of Light Commercial Vehicles (LCVs)

8.25 Draft Regulation 9668/17 proposed to introduce a requirement for Light Commercial Vehicles (LCVs, or vans) below 3.5 tonnes to be brought into the financial standing and effective establishment requirements of the operator licensing regulations applicable to larger vehicles. The other establishment criteria (good repute and professional competence) would not be mandatory, but Member States would retain discretion to apply them domestically.

8.26 In its initial response to the proposal, the Government suggested that the Commission’s impact assessment provided little evidence to support the need for this measure or the benefits of the proposal. However, the Minister indicated in his letter of 27 February that the Government had built support in working groups for a more measured approach. In his pre-Council letter the Minister reports that the requirement in the compromise text would only apply to vans over a minimum weight threshold which do international work for hire or reward. All four of the operator licensing requirements would apply to such vans.

8.27 The Minister indicates that the Government is willing to support this compromise text, which is “more proportionate “ and would greatly reduce the number of operators affected across the UK, but would enable the proposal to address the concerns of some Member States concerning operators of LCVs which may have an unfair competitive advantage vis-à-vis domestic industry.

(ii) Harmonisation of rules of establishment (including tackling “letterbox” companies)

8.28 The proposal would clarify the provisions regarding what constitutes an effective and stable establishment for the purposes of freight operator regulations by removing the ability of Member States to impose requirements additional to the core requirements set out in Regulation 1071/2009.

8.29 The use of “letterbox companies” to circumvent national laws would also be addressed by adding a requirement for undertakings to hold assets and employ staff in the Member State of establishment, to ensure undertakings established in a Member State have a real and continuous activity there.

8.30 In its Explanatory Memorandum the Government expressed support for the Commission’s attempts to prevent letterbox companies distorting competition. However, the Government also emphasised that it wished to retain at least the existing requirements placed on operators to have a sufficient number of parking spaces.

8.31 The Minister’s latest update confirms that Member States retain some freedom to impose additional requirements, which would “allow the UK to continue to mandate the provision of sufficient parking for all vehicles operated”.

Access to the international road transport market

8.32 The proposal would also amend Regulation 1072/2009 which governs access to the EU road transport market.

Cabotage operations

8.33 The principal effect of these changes would be to amend the time period allowed for cabotage from the current position (of three operations in seven days) to allow unlimited operations in a five day period. The Government’s Explanatory Memorandum was unclear on whether the Government supported this proposal, noting that the proposal to remove the maximum number of cabotage operations that can be carried out after an international carriage would simplify the enforcement process, but also that freight representative associations had also expressed concern that this liberalising measure could give foreign hauliers an unfair advantage by allowing them to operate more extensively in the UK market. In this regard, it is perhaps notable that other elements of the mobility package would have the opposite effect: for example, the proposed changes to the Driving Time Regulation would require transport operators to organise drivers’ work time so that they can return home for a weekly rest at least once every three weeks which the Minister has noted could reduce the exposure of British drivers “to competition from foreign drivers that spend many consecutive weeks (or even months) away from their home base.”

8.34 Regarding the proposals to change the number of days and number of trips allowed for cabotage, the Minister’s letter of 8 May 2018 states that Member States’ positions on this issue remain “entrenched and polarised”, and that the issue is therefore expected to be resolved at political level during the Transport Council negotiations. The Minister indicates that, given the finely balanced nature of Member States’ positions, with the UK “broadly in the middle in policy terms”, he expects that the outcome of the negotiations at

Transport Council will be a compromise that is in line with the UK objective of achieving “a balanced outcome”—however, despite having initially identified concerns about the original proposal (notably, freight representatives’ concerns about the impact of the proposed liberalisation for domestic operators) the Government did not provide any meaningful clarification of its position on this fundamental element of the proposal.

8.35 When contacted for further clarification on this point, Department for Transport officials clarified that:

- the Commission had originally suggested that its proposal to allow unlimited cabotage within five days of the international journey, as opposed to the status quo (three journeys in seven days), did not constitute a liberalisation;
- the Government’s initial position in negotiations was to question the need for the change in the first place (although, we note, this was not particularly clearly communicated to the Committee);
- a large number of Member States took the view the proposed change (unlimited cabotage within five days) did in fact constitute a liberalisation, and many have suggested that, if you are thinking of having unlimited journeys within a certain time, the logical period would be three days, rather than the five days that is proposed (or the current seven);
- on this basis the Government thinks it is highly likely that the original Commission proposal will be pushed back to fewer days of unlimited cabotage—three being the most likely outcome—or even the status quo. The Government is flexible on either outcome; and
- finally, this is a lesser order issue for the UK, because of its geography, than it is for most EU Member States: as the UK has just one land border, it is better able to monitor cabotage than most other EU Member States, and the penetration of EU vehicles from other EU Member States is comparatively low.

8.36 The Minister also notes an additional development: in negotiations, several proposals for an additional “cooling-off period” for cabotage have been made, which would set a period of days following the end of a cabotage operation during which an operator would not be able to begin a new one in the same Member State. The Minister considers that this is likely to be reflected in some form in a final deal. The Minister observes that:

“Given cabotage operations are common on the island of Ireland, an excessively long ‘cooling-off period’ could impose unnecessary restrictions on Irish and Northern Irish hauliers. For this reason, we have suggested that the provision be either optional for Member States to apply, or that it be very limited in duration. In practice, following a set of cabotage operations, a haulier is in any case likely to take a ‘break’ during which they make another international operation, so in our view a period of a few days is unlikely to make a great deal of operational difference. Nevertheless, we have engaged throughout with colleagues in Northern Ireland to ensure that they are satisfied that any negative impacts would be minimal.”

Cabotage enforcement

8.37 The revised Regulation provides that evidence of compliance with cabotage restrictions should be provided during roadside checks and possibly through electronic means, including transmission of information from the undertaking's head office. This is intended to simplify procedures and remove legal uncertainties over the timing of the presentation of the evidence required. Member States would also be required to carry out checks on a minimum two per cent of cabotage operations to determine compliance.

8.38 In the Government's Explanatory Memorandum, the Minister initially suggested that, although clarification of the legal framework allowing the use of electronic documents would help to reduce costs and simplify enforcement, the proposed additional requirements for Member States to conduct a minimum amount of compliance and roadside checks "may impose an undue burden on law enforcement bodies as this would involve additional levels of checking and may impact on their ability to do other, more road safety critical, activity". The Government's financial impact assessment concluded that this requirement would have significant cost implications for the UK.

8.39 In the Minister's letter of 1 May 2018, he clarified that the proposed requirement for a specific percentage of cabotage operations to be inspected has been removed, and that this "greater flexibility will make for significantly more targeted and efficient enforcement, and allow us to continue our risk-based approach to enforcing cabotage rules."

Proposed Directive on the use of hired vehicles

8.40 The internal market pillar also includes a separate proposal for increased flexibility on vehicles hired without drivers. This is intended to make it easier for undertakings to hire vehicles registered in a Member State other than that where the undertaking is established. The proposal would allow for these vehicles to be used without re-registration for four months. The proposal would enable operators to deal more efficiently with demand surges, have environmental and road safety benefits (as there is evidence to show that these vehicles are often newer and cleaner than regular vehicles) and reduce compliance costs for transport operators and vehicle renting companies.

8.41 In his first letter to the Committee the Minister noted that the proposal was expected to have a limited impact as UK freight vehicles are right hand drive, and there was therefore likely to be limited interest in hiring vehicles from mainland Europe for use in the UK and vice-versa. In his most recent update the Minister states that the compromise text grants the Member States flexibility to choose to restrict the hiring of vehicles for a period of greater than one month, reduced from three months in the original proposal, or where those vehicles would make up a proportion of greater than 25% of the overall fleet. He considers the current text to represent a good balance between keeping the market of hired goods vehicles relatively open and allowing Member States the freedom to impose certain restrictions if they so wish.

8.42 On that basis, he asks the Committee to clear this dossier from scrutiny in advance of the 7 June Council.

EU exit

The Government’s sectoral analysis

8.43 The implications of EU exit for the road transport sector are wide-ranging. The Government’s own [sectoral report](#) on the Road Haulage and Passenger Transport Sector is a useful starting point, providing a clear account of the intra-EU regime.

8.44 The Government’s main analysis states that there are common EU rules governing:

- the establishment of haulage operators and their access to the single market;
- access to the international market for coach and bus services;
- driver licensing and additional training for commercial vehicle drivers;
- safety and social rules for commercial vehicles, including maximum driving hours (and recording devices, known as tachographs);
- charging heavy vehicles for road use and road infrastructure;
- roadworthiness rules (including vehicle testing and checks); and
- permissible vehicle dimensions and weights.

8.45 The Government explains that EU legislation on market access is based on similar principles to those applied for rail and aviation. If an operator holds a “Community licence” it may carry out international haulage or passenger transport operations within the EU and, subject to some constraints, cabotage operations. The conditions for gaining and holding a “Community licence” are set out in legislation and include provisions on fitness and financial adequacy.

8.46 The Government’s analysis also noted that:

- around 99% of the UK’s total international road freight (including foreign hauliers) is to and from the EU;
- in 2014, Foreign-registered HGVs travelling to or from the UK carried nearly four times as much goods by weight as was carried by UK-registered HGVs, and that Polish HGVs lifted more freight in the UK than vehicles from any other EU nation; and
- UK-registered HGVs carried 7.5 million tonnes of freight on cross border movements between Northern Ireland and Ireland in 2014, making Ireland, the UK’s only shared EU nation border, the UK’s biggest freight trading partner.

The Haulage Permits and Trailer Registration Bill

8.47 This [Bill](#) was introduced in the House of Lords in February 2018. It completed its Lords stages on 23 May 2018. It is currently at the Report stage in the House of Commons.

8.48 As described by the House of Commons Library in its [briefing paper](#) on the Bill, although the Government’s policy is to work towards a Brexit deal that will not require the

Secretary of State to use the powers given to him under Part 1 of this Bill for EU countries, the Bill creates the architecture for a number of scenarios, including a ‘no deal’ Brexit. It would allow the Secretary of State to deal with the consequences of a range of exit scenarios on the UK haulage industry by creating an international road haulage permit scheme.

8.49 The Bill extends and applies to the whole of the UK. However, variations arise because the Northern Ireland Assembly has legislative competence for road haulage and trailer registration.

The Commission’s notice to stakeholders

8.50 On 19 January 2018 the European Commission published a [notice to stakeholders](#) outlining the legal effects of the withdrawal of the United Kingdom from the EU in the field of road transport.

8.51 These effects would take place from the moment of EU exit (30 March 2019), although if the draft Withdrawal Agreement is agreed by the negotiators the proposed implementation period would defer these effects until the conclusion of the implementation period (31 December 2020).

8.52 The principal effects described in the notice and slides are:

- The Community Licence—The international carriage of goods in the Union is subject to possession of a Community licence, in accordance with Regulation (EC) No 1072/2009, which is issued by the competent authority of an EU Member State to any haulier carrying goods by road for hire or reward who conforms to the requirements in the Regulation. As of the withdrawal date, Community licences issued by the competent authorities of the United Kingdom will no longer be valid in the EU-27. The effect of this will be that hauliers established in the UK will no longer have access to the EU’s internal road haulage market. This will mean the loss of current cabotage rights (the carriage of goods within country A by a haulier established in country B, subject to certain limitations) and unrestricted cross-trade (i.e. the carriage of goods from country A to country B by a haulier established in country C).
- Establishment—Undertakings that have their establishment in the United Kingdom will no longer meet the legal requirement, under Article 3(1)(a) of Regulation (EC) No 1071/2009, for undertakings engaged in the occupation of road transport operator in the Union to have an effective and stable establishment in an EU Member State. Article 5 of the Regulation sets out detailed conditions for operators to qualify for establishment in the Union: the establishment must have premises situated in that Member State in which it keep its core business documents as well as an operating centre with the appropriate technical equipment and facilities. In effect, the Regulation requires undertakings to have a significant commercial presence in the Member State, and prevents “letterbox” companies from gaining access to the internal road transport market.

- Transport managers—EU law (Article 4 of Regulation (EC) No 1071/2009) requires such undertakings to designate a transport manager, who must be resident in the Union. Transport managers resident in the UK working for a Union road transport operator will no longer fulfil this requirement.
- Certificates—As of the withdrawal date, certificates of professional competence issued by an authority of the UK or a body authorised by the UK will no longer be valid in the EU-27. Certificates of professional competence for drivers issued in the UK will not be valid and drivers who are nationals of the UK but employed by an undertaking established in the Union will have to follow the professional drivers training in the EU-27 Member State where the undertaking employing them is established.

8.53 A separate set of [slides](#) outline these effects in simpler terms, stating that the UK will exit the internal market for road transport, meaning that all current EU law-based rights, obligations and benefits will cease.

8.54 The slide on options for the future specifically rules out UK participation in the existing EU integrated transport area, as this would entail application of EU rules, and alignment with the Court of Justice of the European Union’s interpretation of the *acquis*, which would breach the UK’s red lines.

Third country arrangements

8.55 The House of Commons Library’s [briefing paper](#) on the Haulage Permits and Trailer Registration Bill summarises the international road haulage permits system.

8.56 In doing so, it differentiates between:

- the intra-EU regime of Community Licenses (described above);
- bilateral permits such as those the UK has with non-EU countries, which allow hauliers to travel to or through those countries if they hold a permit for the country with which the bilateral agreement has been made; and
- the European Conference of Ministers of Transport (ECMT) multilateral permit scheme, which enables hauliers to undertake an unlimited number of multilateral freight operations in 43 European member countries participating in the system.

8.57 The UK is entitled to issue up to 1,224 permits, depending on the environmental profile of the vehicles used.

8.58 The European Commission’s website notes that, while road transport within the EU is harmonised and thus based on common EU rules, road transport between EU and non-EU countries (third countries) is still largely based on bilateral agreements between individual Member States and third countries.

8.59 The Commission also notes that the EU has nonetheless concluded two agreements which take precedence over bilateral agreements:

- the [Agreement on the European Economic Area](#) (EEA Agreement) as regards transport with Norway, Iceland and Liechtenstein; and
- the [EC/Switzerland land transport agreement](#).

8.60 Both agreements provide for the application of the EU’s road *acquis* in the respective countries.

Stakeholder views

8.61 The Road Haulage Association published a [report](#) in February 2017 setting out its preferences for the sector, as part of the future UK-EU relationship. The report states that three outcomes need to be achieved during negotiations:

- seamless customs through ports and borders;
- unimpeded access for international road haulage operators in the UK and the EU (that is full access for UK and EU road operators transporting goods to, from and through the UK and the EU); and
- a system that allows lorry drivers to be recruited from outside the UK (including retaining current drivers from the EU, which we estimate to number 60,000).

8.62 In this paper the Road Haulage Association (RHA) sets out four possible scenarios for the future relationship:

- the ‘baseline’: the UK and EU Member States continue to use the complete Community Licence system and all EU rules for all road haulage once Brexit has happened;
- the UK and EU Member States continue to use the current Community Licence system and all EU rules, but only for international road haulage;
- the UK and the EU set up a new authorising system for international all road haulage; and
- the UK and individual EU Member States set up a new permit based system for international road haulage (bilateral permits).

8.63 In a subsequent [report](#) published in November 2017, the RHA stated that the UK should seek to enter into a Land Transport Agreement with the EU that would maintain the basic structure of the current Community Licence system and allow UK operators with an international operator’s licence to undertake unlimited international road haulage to, from and through all EU Member States.

8.64 Regarding bilateral permits, the RHA report⁴⁵ states that “with administration cost and the need for multiple permits for UK operators, a simple bilateral permit system will

45 Road Haulage Association, “Brexit—Unimpeded Access for International Road Haulage” ([3 February 2017](#)).

add approximately £53 per movement in and out of the UK for UK operators and about £26 for EU operators. This is just the direct permit costs, operator administration and enforcement will add to this.”

8.65 Of a permit system, the report concludes that:

- “There is no positive element for the industry or supply chains arising from the introduction of bi-lateral permits to authorise international road haulage. None.”
- “Bi-lateral permits will work badly for both UK and EU operators.”
- “The worst possible outcome would be any system which includes quota limitations on the number of international road haulage journeys undertaken.”

8.66 A Freight Transport Association [presentation](#) to the European Parliament on the impact of Brexit on land transport noted that:

- there is no “free market” in international haulage, and that the default option involves access restrictions;
- the European Conference of Ministers of Transport (ECMT) permits system covered less than 5% of the needs, that the volume of such permits was limited, and that over 90% of ECMT quotas were already used, and that ECMT quotas were therefore not a viable solution to this issue; and
- the Northern Ireland land border is the only EU-UK land border, and that many businesses operate on an ‘island of Ireland’ basis.

Previous Committee Reports

Third Report HC 301–iii (2017–19), [chapter 9](#) (29 November 2017).

9 Mobility Package: Social Pillar

Committee's assessment	Politically important
<u>Committee's decision</u>	(a) Not cleared from scrutiny; further information requested (b) Not cleared from scrutiny (c) Cleared from scrutiny
Document details	(a) Proposal for a Regulation amending Regulation EC 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation EC 165/2014 as regards positioning by means of tachographs; (b) Proposal for a Directive amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector; (c) Consultation Document: first phase consultation of the Social Partners under Article 154 of TFEU on a possible revision of the Road Transport Working Time Directive (Directive 2002/15/EC)
Legal base	(a) and (b) Article 91(1) TFEU; ordinary legislative procedure; QMV (c)—
Department	Transport
Document Numbers	(a) (38783), 9670/17 + ADDs 1–5, COM(17) 277; (b) (38784), 9671/17 + ADDs 1–5, COM(17) 278; (c) (38814),—, C(17) 3815

Summary and Committee's conclusions

9.1 This pillar of the first mobility package, presented by the Commission on 31 May 2017, included proposals to amend the EU driving and rest time rules, to strengthen the existing enforcement regime for the social legislation and to create a specific regime for the posting of workers employed in the road transport sector.

9.2 The Commission proposed two substantive amendments to the weekly rest components of the driving time rules:

- A requirement that operators must schedule work to enable drivers to return home for their weekly rest at least every third week; and
- A proposed increase in flexibility of the weekly rest rules,⁴⁶ allowing two consecutive weekly rests to be reduced to 24 hours.

46 Currently, EU rules require that a driver must take 45 hours of rest each week, although a 'reduced' weekly rest of 24 hours can be taken in place of the regular 45 hours, on the condition that this is only done once a fortnight and that the lost hours are compensated en bloc as part of one of the subsequent three weekly rest periods.

9.3 The principal effect of the proposed changes to the rules around enforcement of the social rules (including driving time and working time rules) would be to create a new obligation for Member States to add checks on compliance with the working time rules to existing roadside and premises checks of the driving time rules.

9.4 Sector-specific rules are also proposed which would clarify how the Posted Workers Directive should apply to road haulage workers. The changes would specify:

- the minimum period of posting below which the host Member States' rules on minimum rates of pay and on paid annual leave would not apply to international road transport operations (and therefore not affect “cabotage” operations undertaken by a foreign operator in a single Member State). The time threshold proposed is three days during a period of one calendar month.
- maximum administrative requirements that Member States can impose on operators in order to enforce compliance with the postings rules. For example, Member States may require a driver to carry a copy of his or her employment contract or payslips in the vehicle, but may not oblige foreign operators to have an ‘agent’ on their territory.

9.5 In the Government's [initial response](#) to the proposals, submitted to Parliament on 5 July 2017, the Parliamentary Under Secretary of State (Jesse Norman) provided an assessment of the implications of the different elements of the two proposals.

9.6 Regarding the proposed changes to the Driving Time Regulation, the Minister indicated that the proposed new obligation on transport operators to organise drivers' work time so that they can return home for a weekly rest at least once every three weeks would probably benefit those drivers engaged in longer international journeys, but also noted that “there are also potential downsides in terms of driver welfare and we will need to explore the potential implications of the proposals on driver fatigue”. The Minister indicated that UK drivers were generally able to, and do, return home at weekends, and were therefore unlikely to be impacted by the provisions, but that they could somewhat reduce the exposure of British drivers “to competition from foreign drivers that spend many consecutive weeks (or even months) away from their home base”.

9.7 Regarding the changes proposed to the enforcement rules applicable to the driving time and tachograph rules, the Minister expressed concern over the proposed obligation to require Member States to include checks on working time rules as part of roadside and premises checks, stating that “there are practical reasons why it may be time-consuming to check the working time rules alongside the driving time rules” and indicating that further analysis would be undertaken to understand the impacts of the proposals.

9.8 As regards the proposed sector-specific rules on posting of workers in the road transport sector, the Minister offered an explanation of the proposal, which was introduced in response to concerns from about uncoordinated national measures being brought forward by individual Member States, but did not provide a clear account of the Government's position in relation to the proposal.

9.9 In the Committee’s [first report](#) on the proposals, published on 13 December 2017, the Committee asked the Government to:

- provide information about the “practical reasons” why it may be time-consuming to check the working time rules alongside the driving time rules;
- provide an update on its assessment of the implications for driver fatigue and road safety of the proposals on the Driving Time Regulation, including whether the proposed Regulation strikes the right balance between improving working conditions for drivers and ensuring fair competition; and
- provide an update on the extent to which a proposed EU amendment to a wider UN agreement on international road transport workers, to which the UK is a contracting party, would enable the UK to protect and promote its interests in this sector effectively, post-EU exit.

9.10 The Minister provided a [response](#) to the Committee on 6 April 2018, which included detailed answers to the Committee’s questions, as set out below:

- The Minister explained that enforcing sector-specific working time rules at the roadside would be problematic because many of the relevant records are only held at the operator’s premises. Furthermore, as the rules limit drivers to an average 48-hour working week over a reference period of 17 weeks (which can be extended to 26 weeks), to enforce this at the roadside, enforcement officers would need to have access to 17 or 26 weeks of working time records, which would be burdensome on the driver and would take enforcement officers a disproportionate amount of time to check at the roadside. The Minister reports that other Member States shared this view and there is now majority support for the position that enforcement of working time rules should be restricted to operator premises.
- Regarding the implications of the proposals for driver fatigue and road safety of the proposals on the Driving Time Regulation, the Minister stated that the Commission’s proposals, and the subsequent direction of travel in working group discussions on driving time, broadly strike the right balance between improving working conditions for drivers and ensuring fair completion in the single market. However, the Minister also noted that the proposal to enable a driver to take a reduced weekly rest (of at least 24 hours) on two consecutive weeks could introduce risks in terms of driver fatigue, and that the Government would continue to engage on this point with other Member States.
- Regarding the extent to which the UN-ECE European Agreement concerning the Work of Crews of vehicles engaged in International Road Transport (AETR) would enable the UK to protect and promote its interests in this sector effectively, the Government merely notes that following EU exit, the UK will have the legal freedom to engage with such agreements as it sees fit.

9.11 On 8 May 2018 the Minister provided a further [update](#) in advance of the 7 June Transport Council. The Minister states that, overall, the negotiations to date on the social pillar “have been constructive and I consider they have greatly improved on the Commission’s proposals from the UK’s perspective”.

9.12 The Minister states that the UK’s chief concern regarding draft Regulation 9670/17 on driving and rest time has been addressed, as the additional flexibility that would allow a reduced weekly rest of 24 hours to be taken for two consecutive weeks has been removed from the text. As the Government had some concerns about potential adverse effects on road safety and driver welfare, the Minister regards this as a “significant success”. The obligation for drivers to return home periodically, which would potentially benefit UK operators through reduced competition, has been maintained, although the frequency has been reduced from every three to every six weeks. A provision has also been introduced to enable weekly rests to be taken in the vehicle, provided it is parked in a suitable area with adequate security and welfare facilities, which is in line with the UK’s view that it is proportionate to ban ‘cab sleeping’ where this is done in unsuitable locations such as lay-bys. The Minister states that the proposal now meets UK objectives, and asks the Committee to consider clearing the proposal from scrutiny ahead of the 7 June Transport Council.

9.13 On the enforcement aspect of the proposed Directive on enforcement and posting of workers (9671/17) the Minister notes that the amendments made in working group mean that roadside checks are now strictly limited to those provisions that can practicably be checked in this manner, without undue additional costs to enforcement authorities, addressing a key Government concern.

9.14 The Minister reports that the posting aspect of the proposed Directive on enforcement and posting of workers (9671/17) has made slower progress, with some Member States advocating a very lengthy exemption from postings rules for transport workers and others insisting on no exemption at all. The Minister anticipates that, given the fine balance between the two groups, the outcome of the negotiations will be a compromise that avoids radical changes to the Commission’s proposals and will be acceptable to the UK.

9.15 Given the continuing uncertainty of the outcome regarding the proposed Directive on enforcement and posting of workers (9671/17), the Minister sought a scrutiny waiver in advance of the Transport Council on 7 June, as opposed to clearance.

9.16 However, the Committee was subsequently contacted by an official at the Department for Transport who updated the Committee that following a meeting of Coreper on 25 May 2018 the Bulgarian Presidency concluded that General Approaches on the social pillar of the mobility package could not be achieved, and that the Transport Council would therefore take these items as a Progress Report.

9.17 We thank the Minister for his updates. We have taken note of the Government’s detailed responses to our questions, and the Government’s assessment that the negotiations “have greatly improved on the Commission’s proposals from the UK’s perspective.” The most notable changes include:

- **removal of the flexibility to allow drivers to take a reduced weekly rest of 24 hours for two consecutive weeks, a deletion which the Government supports on road safety grounds; and**
- **a reduction in the scope of proposed roadside enforcement checks to those provisions that can realistically be conducted in this manner, meaning that the authorities will not have to enforce the 48-hour maximum average working week by the roadside.**

9.18 The UK’s chief interests in both proposals have thus been successfully achieved in negotiations.

9.19 However, we note that General Approaches on these proposals will no longer be sought at the 7 June Transport Council. We therefore do not yet wish to clear either of the proposed documents from scrutiny. If the Government wishes to seek clearance of document (a), we ask that it provide detail in its next pre-Council letter of the European Parliament’s position vis-à-vis the proposal and whether the Parliament is seeking changes that would affect the UK interest (particularly, the changes secured in negotiations). In the meantime, we retain both documents under scrutiny.

Full details of the documents

(a) Proposal for a Regulation amending Regulation EC 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation EC 165/2014 as regards positioning by means of tachographs: (38783), [9670/17](#) + ADDs 1–5, COM(17) 277; (b) Proposal for a Directive amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector: (38784), [9671/17](#) + ADDs 1–5, COM(17) 278; (c) Consultation Document: first phase consultation of the Social Partners under Article 154 of TFEU on a possible revision of the Road Transport Working Time Directive (Directive 2002/15/EC): (38814), —, C(17) 3815.

Previous Committee Reports

Fifth Report HC 301–v (2017–19), [chapter 7](#) (13 December 2017).

10 Mobility Package: road use charges

Committee's assessment	Politically important
Committee's decision	(a) Not cleared from scrutiny; (b) Cleared from scrutiny; (c) Not cleared from scrutiny
Document details	(a) Proposal for a Directive amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures; (b) Proposal for a Directive on the interoperability of electronic road toll systems and facilitating cross-border exchanges of information on the failure to pay road fees in the Union; (c) Proposal for a Directive amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, as regards certain provisions on vehicle taxation
Legal base	(a) and (b) Article 91 TFEU; ordinary legislative procedure; QMV (c) Article 113 TFEU; special legislative procedure; unanimity
Department	Cabinet Office AND Foreign and Commonwealth Office AND Transport
Document Numbers	(a) (38792), 9672/17 + ADDs 1–4, COM(17) 275; (b) (38793), 9673/17 + ADDs 1–5, COM(17) 280; (c) (38827), 10175/17 + ADDs 1–4, COM(17) 276

Summary and Committee's conclusions

10.1 On 31 May 2017 the European Commission adopted a package of proposals referred to titled “Europe on the Move”, or the “first mobility package”, consisting of eight legislative initiatives which aim to promote sustainable and equitable road transport.

10.2 The road use charging pillar of the package consists of three proposals to update EU legislation on road charging:

- a recast of Directive (EC) 2004/52 on the interoperability of electronic road toll systems in the Community (the EETS Directive);
- a revision to the Eurovignette Directive 1999/62 which would replace time-based user charges by distance-based charges; and
- the revision of the Eurovignette Directive as regards certain provisions on vehicle taxation.

10.3 Due to the high volume of documents under consideration at the 7 June Transport Council, and based on the Government's assurance that the proposals which relate to the Eurovignette Directive have not made significant progress in Council negotiations, this report will focus exclusively on that element of the road charging pillar on which a General Approach will be sought: the proposed revisions to the EETS Directive.

10.4 The Government has previously indicated that it did not have major concerns about this proposal. In its initial [response](#) to the proposal on 5 July 2017, the Government indicated that the proposed recast of the EETS Directive complied with the principle of subsidiarity, as its objectives were cross-border in nature and could not be better achieved by the Member States. The Minister also noted that *if* the proposal resulted in a successful EETS coming into existence it would potentially benefit UK hauliers, who would have the option of subscribing to a single EETS service rather than having to comply with multiple distinct electronic tolling and charging systems across Europe. However, the Minister also acknowledged that the proposal to require information about vehicle owners to be shared across national boundaries to aid enforcement of road user charges could impose a cost to the Driver and Vehicle Licensing Agency (DVLA).

10.5 In its [first report](#) regarding the road charging pillar, the Committee sought further clarification from the Government on a number of points on the proposed recast of the EETS Directive, covering the relevance of data protection issues post-exit for the UK's ability to share vehicle registration data with the EU, the necessity of requiring that EETS systems must be compatible with the EU's Galileo system post-exit, and its potential implications for UK suppliers of such systems post-Brexit.

10.6 On 8 May 2018 the Parliamentary Under Secretary of State at the Department for Transport (Jesse Norman) provided the Committee with an [update](#). In addition to responding to the Committee's questions, he informs the Committee that the Bulgarian Presidency has pushed forward discussions on the European Electronic Tolling Service (EETS) proposal (9673/17), and now intends to seek a General Approach at the 7 June Transport Council. He therefore asks the Committee to clear the proposal from scrutiny.

10.7 Now that the Government has had more time to evaluate the detail of the proposed revision of the EETS proposal, we note the Minister's conclusion that it is "largely technical" and that the benefits it will bring, principally that of making it easier to chase up non-payment of tolls by foreign drivers, make it desirable to support the Presidency's compromise text. We also note the Government's previous assessment that, if the proposals were to result in the successful emergence of an EU-wide interoperable electronic road toll system, UK hauliers would have the option of subscribing to such a service, meaning that "they would only have to interact with a single EETS provider rather than multiple tolling and charging systems across Europe".

10.8 In response to the Committee's question concerning cross-border data sharing in cases of non-compliance, we take note of the Minister's assessment that the added benefits of the proposed system of information-sharing for the purposes of enforcing compliance outweigh the minor associated costs to the DVLA, which would have to oversee this administrative activity. More generally, UK-EU data sharing will be subject either to provisions which form part of the future relationship or the third country arrangements set out in Chapter V of Regulation (EU) 2016/679 (the General Data Protection Regulation).

10.9 Regarding Galileo, the Minister considers that the requirement for EETS tolling systems which use satellite-technology to be Galileo-compatible is not problematic. Manufacturers of EU-based tolling systems which use satellite technology will be free to use GPS technology as well. Manufacturers of tolling systems which do not use satellite technology will not have to be Galileo compatible. Officials have confirmed

that, even if the UK were to leave the Galileo space programme, UK manufacturers would continue to be able to manufacture Galileo-compatible EETS systems—the restrictions on third country manufacturers relate to participation in the programme itself and, in particular, work related to the encrypted Public Regulated Service. The Committee will continue to separately scrutinise the difficulties regarding the UK’s continued participation in the EU Galileo space programme.

10.10 We now clear the proposed recast of the EETS Directive (document b) from scrutiny. We retain the proposed revisions to the “Eurovignette Directive”—documents (a) and (c)—under scrutiny.

Full details of the documents

(a) Proposal for a Directive amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures: (38792), [9672/17](#) + ADDs 1–4, COM(17) 275; (b) Proposal for a Directive on the interoperability of electronic road toll systems and facilitating cross-border exchanges of information on the failure to pay road fees in the Union: (38793), [9673/17](#) + ADDs 1–5, COM(17) 280; (c) Proposal for a Directive amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, as regards certain provisions on vehicle taxation: (38827), [10175/17](#) + ADDs 1–4, COM(17) 276.

Background

10.11 On 31 May 2017 the European Commission adopted the first package of initiatives in this regard titled “Europe on the Move”, widely referred to as the First Mobility Package.

10.12 The initiatives in the package can be subdivided into three pillars:

- A road charging pillar (see the Committee’s first [report](#) on this pillar);
- A market pillar (see the Committee’s first [report](#) on this pillar); and
- A social pillar (see the Committee’s first [report](#) on this pillar).

The EETS Directive

10.13 Directive 2004/52/EC mandated the establishment of a European Electronic Toll Service (EETS) by which road users could, through a single contract with an EETS provider, and using a single on-board unit, pay electronic tolls throughout the EU. The objectives of the legislation were to establish technical, contractual and procedural interoperability of electronic tolls throughout the EU, which would reduce compliance costs for road users and administration costs for road operators managing electronic fee collection systems.

10.14 However, a 2016 evaluation found that the legislation had failed to deliver on most of its objectives. A European Electronic Toll Service has not been set up, there has been hardly any progress on interoperability, and, despite a reduction in the cost of on-board technologies, the costs of electronic tolling for toll chargers and road users has fallen very little. Reasons for this failure included that:

- EETS providers face many barriers to entry into national markets, including discriminatory treatment by authorities, cumbersome registration procedures and differing technical specifications in each market;

- an obligation to provide the light-duty vehicle market with costly satellite-based on-board units, despite the fact that, at present, electronic tolling systems for such vehicles do not use satellite positioning; and
- lack of specification on respective obligations of toll chargers and Member States in relation to EETS providers, which has allowed national barriers to remain in place without infringing EU law.

10.15 The Commission's proposed recast of the existing Directive would, inter alia:

- add as an objective the facilitation of the cross-border exchange of information on failure to pay road fees in the EU, in addition to the original objective of ensuring the interoperability of electronic road toll systems; introduce a procedure for the cross-border exchange of information on toll offenders;
- provide greater flexibility to EETS providers, who would be permitted to provide light-duty vehicles with systems using appropriate, i.e. non-satellite or mobile communications, technology; remove the obligation on EETS providers to make products suitable for all vehicles, with a choice now permitted between heavy-duty and light-duty vehicles; remove the requirement for EETS providers to have contracted with toll chargers in all Member States within 24 months; and
- require national vehicle registration authorities to provide vehicle owner details on request to enforcement authorities in another Member State.

10.16 The Government's Explanatory Memorandum regarding this proposal accepted that the proposed recast of the EETS Directive complied with the principle of subsidiarity, as the objectives of the proposals were inherently cross-border in nature and could not be achieved by Member States on their own because:

- given that the UK is geographically on Europe's periphery, EETS providers might decide that there is no business case to include UK tolls and charges within their service;
- the requirement for information on vehicle owners to be shared across national boundaries to aid enforcement of road user charges could help ensure higher compliance rates for UK tolls and charges, but could also impose a cost to the Driver Vehicle and Licensing Agency; and
- will allowing EETS providers a choice over which tolls and charges to include in their service encourage a market-led approach and reduce barriers to entry.

10.17 In its first report on the proposal, the Committee concluded that there were no issues with subsidiarity regarding this aspect of the proposal, and noted the Government's view that the UK's geographical position in Europe might mean that providers may decide that there is an insufficient business case to extend services to the UK. The Committee also:

- noted that the requirement in the EETS Directive to share vehicle registration data between Member States to aid better enforcement of toll charges across borders could raise data protection issues following the UK's departure from the EU; and

- sought clarification of the Government’s view regarding the necessity of requiring that EETS systems must be compatible with the EU’s GALILEO system (and its potential implications for UK suppliers of such systems post-Brexit).

The Minister’s letter of 8 May 2018

10.18 The Parliamentary Under Secretary of State at the Department for Transport (Jesse Norman) has provided the Committee with an [update](#) in which he states that the Bulgarian Presidency has pushed forward discussions on the European Electronic Tolling Service (EETS) proposal (9673/17), and intends to seek a General Approach at the 7 June Transport Council.

Data sharing

10.19 In response to the Committee’s question, the Minister states that the proposal to require information about vehicle owners to be shared across national boundaries to aid enforcement of road user charges could help ensure that compliance rates for UK tolls and charges are higher, but could also impose small additional administrative costs to the Driver and Vehicle Licensing Agency (DVLA). On balance, the Minister states that his view is that the added benefits of information-sharing for the purposes of enforcing compliance of tolls outweigh the minor associated costs to the DVLA.

Galileo

10.20 In response to the Committee’s question regarding the necessity of requiring that EETS systems be compatible with the EU’s Galileo global navigation satellite system, the Minister states that he has not identified any significant problems with this requirement. He explains that, under the Directive:

- manufacturers of EU-based tolling systems that make use of satellite positioning would have to make sure that their in-vehicle equipment was Galileo compatible, although it could continue to use Global Positioning System (GPS) technology as well, but that tolling systems that do not use satellite positioning would not need to be compatible with Galileo. Therefore, a UK electronic tolling system, if it used satellite positioning technology, would need to be compatible with Galileo to comply with the proposed new Directive;
- EETS providers would need to provide in-vehicle equipment that was compatible with all the technologies listed in the EETS Directive, including Galileo. However, EETS providers would not be obliged to provide interoperability for all those tolling systems, having the choice to do so only for a geographical subset of tolling systems if they wish; and
- if a UK company was seeking to establish itself as an EETS provider, it would thus need to ensure its equipment was compatible with Galileo. The same would apply to a UK company that was seeking to sell equipment or technical solutions to a tolling system or to an EETS provider.

10.21 Although the Minister did not address this point directly, when officials were contacted for further clarification, they offered assurances that, even if the UK were to

leave the Galileo space programme, UK manufacturers would continue to be able to manufacture Galileo-compatible EETS systems, as they are reliant on the Galileo Open Service, not the encrypted Public Regulated Service.

10.22 Wider UK concerns regarding Galileo, which relate principally to UK access to the PRS service and the ability of the UK space sector to participate in the Galileo space programme (i.e. the manufacturing of the satellites and involvement in the provision of ancillary services), and in particular the production of the PRS service, are wholly separate to the present proposal. The Committee has scrutinised these implications in a separate [report](#).

Previous Committee Reports

Fourth Report HC 301–iv (2017–19), [chapter 5](#) (6 December 2017).

11 Safeguarding competition in air transport

Committee's assessment	Politically important
<u>Committee's decision</u>	(a) Cleared from scrutiny; (b) Waiver granted; updates requested
Document details	(a) Commission Communication about competition in air transport; (b) Proposed Regulation about competition in air transport
Legal base	(a)—; (b) Article 100(2) TFEU, ordinary legislative procedure, QMV
Department	Transport
Document Numbers	(a) (38823), 9744/17 + ADD 1, COM(17) 286; (b) (38826), 10146/17 + ADDs 1–2, COM(17) 289

Summary and Committee's conclusions

11.1 On 8 June 2017 the Commission presented its Open and Connected Europe [package](#), which included a legislative proposal intended to safeguard competition in aviation. The proposed Regulation would replace Regulation (EC) 868/2004, which has not been used due to its narrow scope: it only covers unfair pricing practices or subsidisation, lacks a specific complaint mechanism and does not permit individual carriers and Member States to make complaints in their own right.

11.2 The Commission's [proposal](#) would enable individual carriers and Member States to make complaints in their own right, introduce investigation procedures which can cover both the violation of applicable international obligations and practices adopted by a third country or third country entity affecting competition and causing injury to Union air carriers, and widen the range of unfair practices covered to include practices such as discrimination in airport access and slot distribution.

11.3 In its initial [response](#) to the proposal, the Government identified a range of areas in which it felt that further information was necessary. In its first [report](#), the Committee asked for updates on a number of these issues, including the extent to which the Regulation would cut across EU-negotiated multilateral Air Transport Agreements with third countries (some of which also contain provisions on fair competition) and Member States' bilateral air services agreements with third countries.

11.4 In a [response](#) to the Committee on 17 April 2018, the Secretary of State for Transport (Chris Grayling) provided an update from the Transport Council in December 2017 and subsequent working groups. The Transport Secretary said that a number of Member States in the Aviation Working Group had pushed for “a clear distinction between air services covered by bilateral agreements and those covered by EU-level agreements when it comes to the Commission's decision to open an investigation or adopting redressive measures”, but that the Member States remained divided on key issues including whether the Regulation

should include the concept of a “threat of injury”, how decisions to open investigations and impose redressive measures should be taken, and how dispute mechanisms within Member state’s bilateral arrangements should interact with action by the Commission.

11.5 In a subsequent [update](#) on 8 May 2018, the Parliamentary Under Secretary of State at the Department for Transport (Baroness Sugg) indicated that the Bulgarian Presidency was likely to seek a General Approach at the 7 June Transport Council. She noted that the text of the proposal was now “more aligned with UK objectives” than the original proposal in the following respects:

- the draft compromise text Regulation now recognises that fair competition between air carriers should preferably be addressed in the context of air transport or air services agreements with third countries, rather than through the draft Regulation;
- the compromise text contains provisions enabling an investigation to be suspended if the Member States involved intend to address the practice being investigated under an applicable agreement they have concluded with the third country concerned;
- the provisions on redressive measures now specifically exclude the suspension or limitation of traffic rights granted by a Member State to a third country from being imposed as redressive measures; and
- the text states that harm to consumers should be specifically considered in investigations and the impact of redressive measures on them taken account of when imposing such measures.

11.6 The Minister notes that two additional issues are unresolved but of lesser concern to the UK. First, provisions regarding the concept of a “Threat of Injury” have been deleted from the text—a change supported by the Government, as it provides a greater level of certainty regarding the application of the Regulation. However, the Minister notes that a number of Member States want to see this text reinserted. Second, there is a discussion about the proposed procedure to be adopted for the imposition of redressive measures: a hybrid system is proposed, with some decisions being taken through comitology (examination procedure) and others by Council Decision.

11.7 In conclusion, the Minister considers that the proposed General Approach is satisfactory provided that a balanced outcome is achieved on these two points. As some of these issues are finely balanced, however, she does not seek clearance of the proposal and instead requests that the Committee grant a scrutiny waiver so that the Government can participate at Council.

11.8 On Brexit, the Secretary of State for Transport also responded to a number of the Committee’s queries in his earlier [letter](#) on 17 April 2018, in which he observed that:

- when the UK becomes a third country, UK stakeholders could be subject to the Regulation if there were any concerns regarding fair competition between EU carriers and UK stakeholders;
- although easyJet has established an Air Operator’s Certificate in Austria, they will remain a UK listed and headquartered company, and that this would not

lead to job losses. The Transport Secretary adds that the Government is not aware of other UK carriers looking to establish new European divisions as a result of the UK's decision to leave the EU; and that

- UK carriers are currently subject to EU ownership and control regulations which limit non-EU/EEA/EFTA investment in EU carriers to 49%. The Government would support a review of the Ownership and Control rules, particularly any proposals to further liberalise them.⁴⁷

11.9 We thank the Minister for her detailed update on progress regarding the draft Regulation safeguarding competition in air transport in advance of the 7 June Transport Council, at which the Bulgarian Presidency will seek a General Approach. We have taken note that the Government considers the latest compromise text to be more aligned with UK objectives than the original Commission proposal in many respects, as outlined above. The only remaining points of fluidity within the Council are the possible reinstatement of the concept of the “threat of injury” and the procedure that is to be used for the adoption of redressive measures. The Minister indicates that the proposed text is satisfactory provided that a balanced outcome is achieved on these two points.

11.10 Regarding the EU exit implications of the proposal, we note the Minister's assessment that, once the UK becomes a third country with respect to the EU's aviation acquis (i.e. following the conclusion of any implementation period, providing one is agreed, or in the event of a non-negotiated exit) UK stakeholders could be subject to the Regulation if there were any concerns regarding fair competition between EU carriers and UK aviation stakeholders. We do not consider this to be a cause for concern, given that the UK has a highly liberalised, aviation sector, which is compliant with EU rules. Given the preference expressed in the latest compromise text for resolving these issues through air transport or air services agreements with third countries, as well as the Commission's focus in Brexit negotiations on ensuring a “level playing field”, it seems probable that the Commission will seek to negotiate the inclusion of provisions relating to fair competition in relation to aviation specifically as part of EU exit negotiations. A bilateral arrangement of this kind which would also give the UK and UK stakeholders certain rights vis-à-vis the EU, is likely to be preferable to being unilaterally subject to the proposed Regulation.

11.11 We grant the Government a waiver to participate at Transport Council on 7 June, in line with the positions set out in the Minister's letter. We request an update on the outcome of the Transport Council, to be followed in due course by a further update on the outcome of trilogue negotiations and a request for clearance. In the meantime, we retain the proposed Regulation under scrutiny.

11.12 We now clear the Communication on an Open and Connected Europe from scrutiny.

⁴⁷ We note a Reuters [report](#) which states that easyjet intends to increase its EU shareholder base above 50 percent prior to Brexit to ensure its future EU-ownership base.

Full details of the documents

(a) Commission Communication about competition in air transport: (38823), [9744/17](#) + ADD 1, COM(17) 286; (b) Proposed Regulation about competition in air transport: (38826), [10146/17](#) + ADDs 1–2, COM(17) 289.

Previous Committee Reports

First Report HC 301–i (2017–19), [chapter 14](#) (13 November 2017).

12 Possible EU countermeasures to US tariffs on steel and aluminium

Committee's assessment	Legally and politically important
<u>Committee's decision</u>	Not cleared; further information requested; drawn to the attention of the International Trade Committee
Document details	OTNYR—Commission Implementing Regulation (EU) .../... of XXX on certain commercial policy measures concerning certain products originating in the United States of America pursuant to Article 4(1) of Regulation (EU) No 654/2014
Legal base	Regulation (EU) No 654/2014
Department	International Trade
Document Number	(39698),—

Summary and Committee's conclusions

Overview

12.1 On 8 March 2018, the US announced its intention to impose additional 25% tariffs on steel imports and 10% duties on aluminium imports to protect US national security.⁴⁸ It granted the EU a time-limited exemption from these tariffs—originally lasting until 1 May 2018 and subsequently extended to 1 June 2018. The EU has pressed the US for a permanent exemption, but on 31 May 2018 US Commerce Secretary, Wilbur Ross, stated that the steel and aluminium duties would apply to the EU from 1 June 2018.

12.2 The US argues that the tariffs fall outside the remit of the World Trade Organisation (WTO) as they have been imposed in the interests of national security. However, the EU is treating them as commercial safeguard measures (intended to protect US industry from foreign competition for commercial reasons).

12.3 The EU is considering its response to the US imposition of tariffs. One potential action involves implementing countermeasures (extra duties) on certain US imports in order to compensate the EU for the harm caused by the US tariffs (pursuant to the WTO Agreement on Safeguards).

12.4 The Commission has published the list of US products on which the EU may apply extra import duties⁴⁹ and notified the WTO of its proposed countermeasures on 18 May 2018. The notification to the WTO does not mean that the EU will definitely implement the countermeasures, but it is a procedural step that will enable the EU to impose them

48 Pursuant to Section 232 of the US Trade Expansion Act 1962.

49 [Commission Implementing Regulation \(EU\) 2018/724 of 16 May 2018 on certain commercial policy measures concerning certain products originating in the United States of America.](#)

if deemed necessary. If implemented, the first set of countermeasures will apply from 20 June 2018. The second set will apply from 20 March 2021 (or upon a WTO determination of inconsistency of the US safeguard measures).

The Government's view

12.5 The Minister of State for Trade Policy (Greg Hands) shared an “official text not yet received” version of the proposed countermeasures with the Committee in his [Explanatory Memorandum of 8 May 2018](#). As noted above, this document is now public given its publication in the EU's Official Journal on 18 May 2018.

12.6 The Minister states that the “UK Government supports the approach of the Commission and has voted in favour of this regulation”. He considers that “[t]he vote at the Trade Barriers Committee will serve as leverage in negotiations with the US to secure the maximum possible exemption for the EU from the new tariffs” and “...may help deter similar actions” by other countries.

12.7 The Minister notes that a further implementing regulation will be required for the countermeasures to come into effect and that the Government “will determine its position on that regulation at the appropriate time.” He stresses the importance of any response being “measured and proportionate” and that it must “work[...] within the boundaries of the rules-based international trading system”.

The Committee's questions and conclusions

12.8 The Committee notes the Government's support for notifying the WTO of the list of potential countermeasures. Given that the Government has yet to “determine its position” on whether it would support bringing these measures into effect, we ask the Minister to set out what criteria the Government will use to assess whether such countermeasures are necessary and proportionate. Given recent press reports questioning the legality of these retaliatory measures under WTO law we ask also for his analysis on this issue.⁵⁰

12.9 The Minister does not address the implications of these potential countermeasures after UK withdrawal from the EU on 29 March 2019. We ask the Minister to set out the legal and policy framework for the UK in its application and enforcement of international trade rules:

- a) **during the transition/implementation period (scheduled between 29 March 2019 and 31 December 2020): can he confirm that the first set of countermeasures (which would apply from 20 June 2018, if implemented) will automatically apply to the UK, and if so why (by reference, for example, to the draft Withdrawal Bill);**
- b) **in the event of a ‘no deal’ exit and no transition/implementation period: would the Government be minded to withdraw or continue these EU countermeasures (if in place) and, if so, how? Given recent reports questioning the legality of these retaliatory measures under WTO law, we ask also for his analysis on this line.⁵¹ and**

50 Politico Pro, [29 May 2018](#).

51 Politico Pro, [29 May 2018](#).

- c) **after any transition/implementation period (scheduled to end on 31 December 2020): what considerations, if any, has the Government given to continuing either the first set of countermeasures (if still in place) and/or applying the March 2021 tariffs after 31 December 2020? What would be the possible impacts on the UK if it were align with or diverge from the EU list of countermeasures?**

12.10 **We ask the Minister to respond to these questions within 5 working days, and we draw the document to the attention of the International Trade Committee.**

Full details of the documents

OTNYR—Commission Implementing Regulation (EU) .../... of XXX on certain commercial policy measures concerning certain products originating in the United States of America pursuant to Article 4(1) of Regulation (EU) No 654/2014: (39698),—.

Background

12.11 The WTO Agreement on Safeguards requires the notifying Member (in this case the EU) to give written notice before it can proceed with the suspension of trade concessions of another member (in this case the US).

12.12 The Commission published its proposed list of countermeasures on 16 March 2018 and completed a stakeholder consultation on 26 March. The Trade Barriers Committee (a management committee that assists the Commission) approved the list on 17 May 2018. The Commission estimates that the value of EU imports into the US of those steel and aluminium products affected by the US safeguards was at least €6.41bn (£5.66bn)⁵² in 2017.

12.13 The Minister's [Explanatory Memorandum of 8 May 2018](#) provides a helpful overview of the proposed measures. The products affected are listed in the annexes to the Regulation:

- Annex I of the draft regulation sets out the products originating from the US on which the EU will notify to the WTO it may apply a maximum tariff of 25% from 20 June 2018. This is in response to the US increase in tariffs of 25% on imports of certain steel products.
- Annex II sets out the products on which the EU will notify to the WTO it may impose maximum tariffs of 10%, 25%, 35% or 50% from 20 March 2021. This is in response to the US increase in tariffs of 10% on imports of certain aluminium products and of 25% on imports of certain other steel products.

12.14 The EU's potential responses to US tariffs on aluminium and steel is also set in the Minister's EU trade policy update to the Committee of 11 May 2018. He notes that the EU is also considering adopting safeguard measures to protect its steel and aluminium industries and lodging a dispute with the WTO (which could take three to five years to

conclude). On 31 May 2018, EU Trade Commissioner, Cecilia Malmström, said that the EU “will now trigger a dispute settlement case at the WTO, since these US measures clearly go against international rules”.⁵³

Previous Committee Reports

None.

53 EU to open WTO case against U.S. Tariffs-Malstrom, [31 May 2018](#).

13 SEPA: cost of cross-border money transfers

HMTSEPA: cost of cross-border money transfers

Committee’s assessment	Politically important
<u>Committee’s decision</u>	Not cleared from scrutiny; further information requested; drawn to the attention of the Treasury Committee
Document details	Proposal for a Regulation amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges
Legal base	Article 114 TFEU; ordinary legislative procedure, QMV
Department	Treasury
Document Number	(39616), 7844/18 + ADDs 1–2, COM(18) 163

Summary and Committee’s conclusions

13.1 Within the European Economic Area, electronic payments in euros are governed by the standardised rules and technical specifications of the Single European Payments Area (SEPA).⁵⁴ This has brought down the cost of payments in euro, and as a result payment services providers (PSPs) in any EEA country—including those outside of the Eurozone like the UK—have to price domestic and cross-border transfers in euros the same. Overall, SEPA has led to a significant reduction in the cost of transferring money within the single currency area for businesses and consumers: while sending €100 between Eurozone countries cost nearly €20 in 2011, it is virtually free of charge now.⁵⁵

13.2 However, the benefits of the restrictions on charges for cross-border money transfers or payments have been limited in 8 EU Member States,⁵⁶ including the UK, that do not use the euro. Although there were over 1.8 billion individual payments in euro made from these countries to another EU Member State in 2016,⁵⁷ such transactions—credit transfers in particular—are considerably more expensive than intra-Eurozone transfers. This is despite the fact that PSPs in all Member States, irrespective of its domestic currency, have access to the same payments infrastructure used within the Eurozone to keep costs low. Cross-border intra-EU payments in other currencies, like pound sterling, also remain more expensive than euro-denominated transfers between Euro area countries (but occur much less frequently).⁵⁸

54 See Regulation 2009/924, [incorporated](#) into the EEA Agreement in 2013.

55 See Commission Impact Assessment [SWD\(2018\) 84](#), p. 85.

56 Sweden has made use of a voluntary opt-in under Regulation 2009/924, under which it has by force of law equalised the pricing of domestic and cross-border transactions in Swedish krona. The Commission impact assessment for its new proposal does not refer to the EFTA-EEA countries.

57 Cross-border payments within the EU in other EU currencies, like pound sterling, amounted to 0.5 per cent of all cross-border transactions originating in non-Eurozone EU Member States.

58 The European Commission refers to the findings from a recent study into the differences in costs of cross-border money transfers between the Eurozone and other EU Member States in the impact assessment accompanying the proposal to amend Regulation 2009/924. We have cited some in the “Background” section of this Report.

13.3 To bring the costs of euro payments down for consumers and businesses in Member States that do not use the single currency locally, the European Commission in April 2018 proposed a change to the legal framework underpinning SEPA.⁵⁹ This would require the nine non-Eurozone Member States⁶⁰ to ensure that payment service providers in their territory equalise fees for sending or receiving a payment in euros with those for domestic transfers in their national currency. That means, for example, that the UK—while covered by the Regulation—will have to ensure that British banks treat an incoming or outgoing payment in euros as if it were in sterling (which, all other things being equal, would significantly reduce or altogether eliminate the fee charged for such transfers, card payments or cash withdrawals). The proposal would not affect cross-border credit transfers denominated in sterling or other non-euro currencies such as US dollars or Swiss francs (for reasons set out in “Background” below).

13.4 In addition to the new measures to bring down the costs of cross-border payments in euros to and from non-Eurozone Member States, the Commission also wants to introduce new transparency requirements where consumers are offered different options for currency conversion when making a card payment or cash withdrawal in a Member State that uses a different currency than their home country. These would be given force of law via a future Delegated Act of the Commission, which in turn would be based on new detailed technical standards to be developed by the European Banking Authority (EBA) in the coming years.

13.5 The Economic Secretary to the Treasury (John Glen) submitted an Explanatory Memorandum in April 2018 setting out the Government’s position on the proposal.⁶¹ In it, he notes the UK is “broadly supportive” of the new Regulation because it would “make financial services more affordable”. With respect to the new transparency requirements for currency conversions, the Minister says these would benefit consumers as well as the “UK’s strong position in international money transfers for FinTechs, many of whom already price transparently and are also frequently more competitively priced than other financial services providers”. As regards the implications of the UK’s withdrawal from the EU, and the Government’s policy of leaving the Single Market and therefore the effects of the EU’s directly-applicable SEPA framework, he adds only that “the applicability of the proposed Regulation will depend on the future relationship” with the EU.

13.6 Given the relatively straightforward nature of the proposal (as the infrastructure for processing euro-denominated payments is already used by all EU banks), formal adoption by the European Parliament and the Council is expected by the end of 2018, so that the new rules on equalisation of fees for euro payments would apply across the EU from 1 January 2019. The transparency requirements for currency conversion would then become binding by early 2022, in anticipation of the development of the necessary technical standards by the EBA.

13.7 The extension of the limitations on fees for cross-border payments to euro-denominated transfers involving a counterparty in a non-Eurozone EU country appears to be uncontroversial. We note that the Regulation is due to become applicable

59 See Commission document [COM\(2018\) 163](#).

60 The new requirement would also apply to Norway, Iceland and Liechtenstein as and when the new Regulation is incorporated into the EEA Agreement.

61 [Explanatory Memorandum](#) submitted by HM Treasury (26 April 2018).

in early 2019. It is therefore expected to apply to the UK for the duration of the post-Brexit transitional arrangement, pending formal ratification of the UK's Withdrawal Agreement under Article 50 TEU.

13.8 As such, the Regulation would allow those who make or receive euro payments in the UK to or from an EU Member State—at least for the duration of any transitional period—to benefit from any reduction in the fees charged by payment services providers for such transfers.⁶² The Minister has provided no indication of the overall impact of the Regulation for the UK while it remains applicable here, including the likely savings to payment services users. The Commission itself estimates the annual EU-wide benefit to consumers and businesses would amount to €900 million (£793 million)⁶³ at the expense of payment services providers.

13.9 The Minister says that the effects the new Regulation will have on inbound and outbound payments in euro handled by UK-based payment services providers after the UK leaves the Single Market (whether at the expiry of the Article 50 period on 29 March 2019, or at the end of any subsequent transitional period) are unclear and depend on the new UK-EU partnership. He does not explain the (default) implications of the UK's exit from the EU and the Single Market for its membership of the Single European Payments Area and the EU regulatory framework for cross-border provision of payment services more generally.

13.10 A large number of British banks make use of the UK's membership of SEPA, via its participation in the Single Market, to offer euro-denominated direct debits and credit transfers under the SEPA legal framework and payments infrastructure. UK banks also make use of the pan-EU payments clearing systems Target2⁶⁴ and EURO1,⁶⁵ but will by default lose their ability to do so as and when the UK becomes a “third country” outside of the European Economic Area.

13.11 SEPA is, in principle, open to non-EEA countries. Switzerland is the only member that is neither in the Single Market nor a user of the euro as its domestic currency. However, it is our understanding that—as the UK's current participation in SEPA results legally from its membership of the EU—*continued* and uninterrupted UK membership as a non-EEA country would have to be approved by the European Payments Council and the European Commission. This in turn would depend on the UK's continued adherence to several pieces of EU payments legislation⁶⁶ without having a formal say or vote over any future amendments or revisions, even if these would not have *de jure* direct effect domestically or supremacy over UK law.

13.12 Outside of SEPA, the costs of euro payments for UK businesses and consumers would be likely to rise as banks would lose access to the centralised payments clearing and

62 Similarly, it would become cheaper for consumers and businesses in other non-Eurozone EU countries to send euro-denominated credit transfers to the UK.

63 €1 = £0.87680 or £1 = €1.14051 at 30 M²y.

64 [TARGET2](#) is an inter-bank payments system for euros operated by the Eurosystem (the European Central Bank and the Central Banks of the Eurozone countries).

65 As [described](#) by the European Banking Authority, EURO1 is “the only private sector large-value payment system for single same-day euro transactions at a pan-European level. The EURO1 system processes transactions of high priority and urgency, and primarily of large amount, both at a domestic and at a cross-border level”. It is overseen by the European Central Bank.

66 Including parts of the second Payment Services Directive, the Funds Transfer Regulation, the Capital Requirements Directive, the SEPA Regulation and the Anti-Money Laundering Directive.

settlement infrastructure that currently keep costs low (including those that underpin the EPC's new instant credit transfer scheme for euros, which allows payments to be made and received across borders in 10 seconds).⁶⁷ Even if the UK remained part of SEPA but stayed outside the Single Market (like Switzerland), it is unclear whether the Regulation to equalise fees for cross-border euro payments with domestic payments in sterling would apply to British banks, or whether such a restriction pricing would need to be introduced separately for the UK by Parliament or the Financial Conduct Authority.

13.13 Given the uncertainty around Brexit and the future of the UK's participation in the Single European Payments Area, we ask the Minister to write to us by 22 June 2018 to:

- set out the annual volumes and value of payments in euro into and out of the UK, to and from other EEA countries (and therefore in scope of the proposed Regulation), and what proportion of the estimated €900 million annual savings for consumers and businesses resulting from the Commission proposal would relate to payments involving a counterparty in the UK;
- confirm whether it agrees that the UK's exit from the Single Market will by default result in the end of its current membership of the Single European Payments Area at the end of the transition, and what it estimates the cost of that would be for UK businesses and consumers;
- if so, clarify if it is indeed the Government's intention to ensure that the UK's membership of SEPA is preserved beyond that point so that British payment services providers can continue to interact with counterparts in other SEPA countries on current terms;
- clarify in what way the EU's regulatory measures on cross-border payments, with respect to the limits on charges for euro-denominated payments and the upcoming transparency requirements for currency conversions, would apply to the UK if it remained in SEPA after it leaves the Single Market in a manner similar to Switzerland (i.e. without the direct applicability of Regulation 2009/924 as amended); and
- explain if Government intends to use the process of converting Regulation 924/2009 into domestic UK law as part of the EU exit process to require UK banks to treat euro transfers or payments with a counterparty in the EEA as if they were denominated in sterling (and, if so, whether the Government intends to make this dependent on continued UK access to SEPA's clearing and settlement infrastructure).

13.14 In anticipation of the Minister's reply to our questions, we retain the proposed Regulation under scrutiny and draw it to the attention of the Treasury Committee. We also ask him to keep the Committee updated on any significant developments in the legislative process in the Council and the European Parliament. In due course, we also expect the Treasury to alert us to the publication of the European Commission's

67 See https://www.europeanpaymentscouncil.eu/sites/default/files/kb/file/2017-11/EPC232-17_SCT%20Inst%20press%20kit_November%202017_FINAL.pdf.

Delegated Act on the transparency of currency conversions, given that the UK is unlikely to have a vote when the Council considers this legal act but it may still apply in the UK under the terms of the post-Brexit transitional arrangement.⁶⁸

Full details of the documents

Proposal for a Regulation amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges: (39616), [7844/18](#) + ADDs 1–2, COM(18) 163.

Background

The Single European Payments Area

13.15 The Single Euro Payments Area (SEPA) harmonises the way electronic payments in the single currency are made across the European Economic Area. Its aim is to ensure that, through the “removal of all technical, legal and commercial barriers between [...] national payment markets”,⁶⁹ payments made in euros across borders within SEPA are indistinguishable from those made domestically.

13.16 While the practical implementation of SEPA is largely in the hands of the European banking and payment industry via the European Payments Council (EPC), the legal framework that underpins it is laid down in EU law.⁷⁰ The legal foundation for SEPA was laid in Regulation 2560/2001, which prohibited payment service providers from imposing different charges for domestic and cross-border payments or cash withdrawals in euro within the EU.⁷¹ In early 2008, the EPC introduced the Credit Transfer (SCT) scheme as a transfer service for either single or bulk payments made in euro within or between SEPA countries. This was followed in 2009 by similar schemes for euro-denominated Direct Debits and Business-to-Business (B2B) payments. A new scheme for instant credit transfers in euros was introduced in 2017.

13.17 In 2009, the European Parliament called for the mandatory transfer of national payment schemes within the EU for transactions in euro to the relevant EPC schemes. As a result, in February 2012 a new Regulation⁷² mandated the use of the SEPA credit transfer and direct debit schemes for all payments in euro within the EU. These were to take effect in February 2014 within the Eurozone (later postponed until August 2014)⁷³ and October 2016 in the other Member States, including the UK.⁷⁴ The practical effect of the Regulation was to replace national credit transfer and direct debit schemes for euros with the corresponding SEPA schemes.

68 The UK is due to cease being represented on the Council on 29 March 2019, whereas the Delegated Act is expected to be presented (based on a recommendation by the European Banking Authority) towards the end of that year.

69 See for more information the [website of the European Central Bank](#).

70 Electronic cross-border payments within the EU are also affected by general EU law on payment services, such as the first and second Payment Services Directives and the Interchange Fees Regulation for card payments.

71 This Regulation predated the physical introduction of euro notes and coins, which took place in January 2002.

72 Regulation 260/2012.

73 Regulation 248/2014.

74 Although the Regulation applies directly, it was implemented in the UK by means of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012.

13.18 The Single European Payments Area now comprises not only the European Union and the three EFTA-EEA states Norway, Iceland and Liechtenstein (which apply Single Market legislation), but also Switzerland, Monaco and San Marino.⁷⁵ However, the European Payments Council states on its website that “legislation adopted for the European Economic Area [...] only fully and directly applies to payment transactions between institutions located within the [...] EEA”.⁷⁶

Charges for cross-border transfers within SEPA

13.19 As part of the creation of a Single European Payments Area, EU law requires the equal treatment of domestic and international euro transfers within the European Union. Concretely, this means that a payment services provider like a bank cannot charge more for a cross-border transfer in euros (whether the user is receiving or sending a payment) than an identical payment *in euros* would cost if conducted domestically. The practical effect of the Regulation has been to almost eliminate fees for cross-border payments within the Eurozone (as well as euro payments sent from the Eurozone to a non-Eurozone EU country), as most payment services providers that operate within the single currency area do not charge users for domestic transactions in euro. For example, while sending €100 between Eurozone countries cost nearly €20 in 2001, it is virtually free of charge now.⁷⁷

13.20 The impact of SEPA for consumers and businesses in the EU’s Member States that do not use the euro has been far less pronounced. The requirement for cross-border transactions in euro to cost the same as a domestic transaction in euro has not led to significant reductions in charges, as domestic payments in euro are rare and therefore not normally free of charge, if a payment services provider offers the option at all. In an impact assessment on extending the price equalisation measure to the EU’s non-Eurozone countries, the Commission has cited figures that show that the cost to someone sending sterling or euro from the UK to another EU Member State could be up to €11.37 euro (£10)⁷⁸ for routine cross-border transfers between €10 and €1,000, where a transfer of the same value within the Eurozone would usually be free.⁷⁹ Similarly, making a €10 payment within the Eurozone using a UK debit or credit card could cost €1.98 with some card issuers, whereas a cash withdrawal in the Eurozone with the same card could cost up to €2.55 (£2.25), a twenty-five per cent mark-up.⁸⁰

13.21 Moreover, although Regulation 924/2009 allows individual non-Eurozone countries to extend the principle of equalisation of fees to their national currency (meaning that a cross-border transfer in that currency should cost the same as a domestic transaction of equal value), only Sweden has made use of this option.⁸¹ A second ‘opt in’ scheme, under which a non-Eurozone Member State could require their domestic payment

75 Monaco and San Marino have monetary agreements with the EU and use the euro as their official currency. Andorra and Vatican City are in a similar position, but are not members of SEPA.

76 See <https://www.europeanpaymentscouncil.eu/sites/default/files/KB/files/EPC409-09%20EPC%20List%20of%20SEPA%20Scheme%20Countries%20v2%204%20-%20April%202016.pdf>.

77 See Commission Impact Assessment [SWD\(2018\) 84](#), p. 85.

78 €1 = £0.87960 Or £1 = €1.13688 as at 30 April.

79 See Commission Impact Assessment [SWD\(2018\) 84](#), p. 14.

80 Among the non-Eurozone countries, the UK had the third-highest maximum charge for a €10 card payment but the second-lowest maximum charge for a €10 cash withdrawal. In Romania, some card issuers charged nearly €15 for a €10 cash withdrawal in the Eurozone.

81 This means that a transfer of Swedish krona to a payee based elsewhere in the EU costs the same as a transfer of krona to another Sweden-based payee. See articles 3(1) and 14 of Regulation 924/2009. The formal notification of the Swedish decision was published in the Official Journal [on 11 July 2002](#).

services providers to price a cross-border transfer in their local currency *and* euros the same as a domestic transfer in an (equivalent) amount of the national currency, has not been used by any Member State.⁸² The Commission has stated that the cost of either of the opt-ins for payment services providers would be high “in view of the major difference in costs [to the PSP] for domestic and cross-border payments, at least when it comes to non-euro transactions”, and could lead them to “raise the prices of domestic transactions to recoup the losses they would incur on costly cross-border transactions”.

13.22 As a result, the Commission concluded that fees for cross-border transactions outside the Eurozone have “remain[ed] very high”, and that “an extension of the Regulation to all currencies in the EU would bring down the costs of cross-border transactions in all Member States”.⁸³

Currency conversion charges

13.23 In addition to the persistent high fees for cross-border transactions for consumers and businesses in non-Eurozone EU countries (for payments in both the national currency and the euro), the Commission also identified a consumer protection issue where consumers use their domestic debit or credit card to make a payment or cash withdrawal in an EU Member State that uses a different currency (e.g. a British tourist withdrawing euros in France using a UK-issued debit card).

13.24 When making a card payment abroad (i.e. making a cash withdrawal at ATMs and card payments at a point of sale) in a different currency than their ‘home’ currency, a payment service user faces two possibilities:

- **Dynamic currency conversion (DCC)**, where the currency conversion is established by a DCC provider (plus a fee)⁸⁴ and the payer’s bank authorises the full payment in the ‘home’ currency without any further conversion. As a result, the consumer knows the final amount to pay in their own currency at the moment of payment or withdrawal; or
- **On-network or non-DCC currency conversion**, where the consumer pays in the local currency (e.g. euros) and the conversion to the consumer’s home currency happens later. The clearing and settlement of the payment typically takes place at least a day later, meaning that the final amount to be paid will be calculated using an exchange rate other than the one that applies at the moment of payment or withdrawal (plus any fees). As such, the consumer does not know the full cost of the transaction in their ‘home’ currency until after the transaction is completed.

13.25 While the EU’s second Payment Services Directive⁸⁵ requires any party offering currency conversion services to disclose to the payer all charges as well as the exchange rate used for converting the payment transaction, the nature of on-network conversion means that this cannot be disclosed at the time of the transaction itself. As such, the

82 See article 3(3) of Regulation 924/2009. This option, as formulated in the Regulation, can only be used in respect of cross-border transactions denominated in both the national currency and euros. It does not allow for the equalisation of fees for cross-border transfers of euros with domestic transfers in the national currency only.

83 See Commission document [COM\(2017\) 139](#).

84 The mark-up functions, partially, as a way of factoring in the risk of fluctuation in currency rates.

85 [Directive 2015/2366](#). See the previous Committee’s [Report of 3 December 2014](#) for more information.

consumer cannot compare the value of DCC versus on-network conversion.⁸⁶ In its 2017 Retail Financial Services Action Plan,⁸⁷ the Commission therefore committed itself to assess the options for further action to improve the transparency of currency conversion charges for consumers.

The Commission proposal

13.26 On 28 March 2018, the European Commission published a legislative proposal to bring down the fees faced by payment services users within the EU but outside the Eurozone when receiving or making payments in euros from another EU country, and to impose new statutory transparency requirements for firms that offer currency conversion to consumers.⁸⁸

Charges for cross-border transfers in euro

13.27 The amendment to Regulation 924/2009 put forward by the Commission would instead require PSPs to treat euro-denominated transfers as if they are a domestic transfer in the national currency. In practice, it would mean for example that a UK bank has to price a receipt of euros into a customer's bank account as if it were a deposit in sterling. Similarly, for withdrawals of cash in another currency within the EU—e.g. a British tourist withdrawing cash in France using a UK debit card—the change means the fee charged would have to be the same for making a withdrawal in the UK in pound sterling.

13.28 The Commission estimates that the reduction in cross-border fees resulting from the changes to the Regulation “will result in overall savings for consumers of €900 million [a] year at the expense of PSPs”.

No change for cross-border transfers in non-euro EU currencies

13.29 With respect to the cost of non-euro cross-border transactions within the EU, the European Commission assessed whether it was feasible to require all Member States to impose equalised fees for cross-border and domestic transactions in their national currency (as the Eurozone and Sweden currently do). The Commission also considered the creation of a ‘true’ Single European Payments Area where transfers in *any* EU currency between *any* two EU countries would have to be priced the same as a domestic transfer in the national currency of the payment services provider. For example, a UK bank would have to price a transfer of Polish zloty to an account in France as if it were a domestic transfer in sterling.

13.30 The Commission ultimately dismissed these options because of the low volume of transactions in non-euro currencies that would benefit (as only 0.5 per cent of cross-border transfers made from non-Eurozone EU countries to another EU Member State are

86 The Commission notes that the ability of consumers to make an informed choice is further constrained by the environment in which the decision for DCC or non-DCC has to be made, i.e. a queue in a shop or for a cash machine.

87 See Commission document [COM\(2017\) 139](#). The Action Plan was considered by the previous European Scrutiny Committee [on 1 March 2017](#).

88 See Commission document [COM\(2018\) 163](#).

not denominated in euro),⁸⁹ and—especially in the case of the last option—the high costs⁹⁰ it would impose on payment services providers when creating the necessary clearing and settlement infrastructure.⁹¹ Under any of these options, PSPs would likely have to offer cross-border transactions at a loss, leading to higher fees for domestic transfers to act as a cross-subsidy.⁹² As such, the Commission judged the cost-to-benefit ratio to be too low to pursue legal EU-wide restrictions on the costs of cross-border transactions involving currencies other than the euro. Its latest proposal therefore only affects payments made or received in euros in non-Eurozone Member States.⁹³

Transparency of currency conversion charges

13.31 The second element of the Commission proposal would mandate greater transparency for cross-border payments that include a currency conversion. From 2022 onwards, payment services providers will have to provide consumers with details of the difference between the exchange rate they receive and the inter-bank exchange rate that the PSP can use when actually converting the transaction. These requirements will apply to any cross-border payments within the EU, irrespective of whether they are denominated in euros.

13.32 The European Banking Authority (EBA) will develop regulatory technical standards with detailed rules to ensure the comparability of different currency conversion-service options available to users of payment services, for example an estimated total local currency equivalent for non-DCC models to be presented in parallel to the DCC offer at the spot. The EBA will also propose a maximum currency conversion charges that can be applied in between the adoption of the technical standards (which is likely to be in late 2019) and their entry into force (in early 2022). The EBA's proposals would have to be given legal force by the Commission in the form of a Delegated Act, which can be vetoed by the European Parliament or a qualified majority of Member States.⁹⁴ The Commission additionally notes that increasing transparency of conversion charges would dissuade payment services providers from trying to recoup revenue lost from restrictions on charges for cross-border payments in euros (as required by the new Regulation) by increasing currency conversion charges.⁹⁵

89 See Commission [Impact Assessment](#), p. 42.

90 The Commission estimated that the investment necessary to create the true 'Single European Payments Area' would amount to 30 billion euro (£26.5 billion), which would only be recouped after thirty years of efficiency gains. Moreover, the future adoption of the single currency by more Member States would reduce the need for this option and further increase costs vis-à-vis benefits.

91 Euro payments benefit from standardised technical standards combined with EU-wide clearing and settlement infrastructures (EBA Clearing and Target 2). Non-euro transfers are not harmonised in this way, and there is no common European platform such as TARGET 2 for such payments. Therefore, in order to transfer money in another currency, the bank of the initiator needs a partner bank called 'a correspondent bank' which facilitates credit transfers completed in the correspondent bank's local currency by having access to local clearing systems.

92 See the Commission [Impact assessment](#), section 6.3.2.

93 However, these countries would remain free to 'opt in' to the other schemes available under the Regulation (i.e. the equalisation of fees between domestic and cross-border transfers in the national currency). As the second 'opt in' under Regulation 2009/924 relates to equalization of fees between domestic payments in the local currency and cross-border payments in euro, this will effectively become obsolete as this would be mandatory under the Commission proposal.

94 The UK is not expected to have a vote at this stage as it will cease to be represented on the Council on 29 March 2019.

95 Two-thirds of individuals' responses to a public consultation by the Commission on cross-border payments argued consumers are not aware of the different options for currency conversion.

13.33 Given the nature of the proposal, and the fact that the clearing and settlement infrastructure for payments in euros is already in place for all EU banks, formal adoption by the European Parliament and the Council is expected by the end of 2018. The new rules on equalisation of fees would then apply from 1 January 2019, while the transparency requirements for currency conversion would become binding by early 2022.

Previous Committee Reports

None, this is a new legislative proposal.

14 Equal Treatment

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Women and Equalities Committee and the Joint Committee on Human Rights
Document details	(a) New Council text for a proposal for an Equal Treatment Directive; (b) Original Commission proposal for an Equal Treatment Directive
Legal base	(a) Article 19(1) TFEU; EP consent; unanimity; (b) Article 13 EC; EP consultation; unanimity
Department	Home Office (Government Equalities Office)
Document Numbers	(a) (37064), 9010/15,—; (b) (29819), 11531/08 + ADDs 1–2, COM (08) 426

Summary and Committee's conclusions

14.1 In 2008 the Commission proposed an Equal Treatment Directive, (document (b)), which has been under negotiation ever since. In September 2015, the Council published a new text (document (a)), following six years of unproductive negotiations. The proposed Directive aims to extend protection against unfair discrimination on grounds of religion or belief, disability, age or sexual orientation beyond the labour market to housing, health care, social services, social security, education and the supply of goods and services. It also proposes to extend protection from age discrimination to the under 18s.

14.2 Document (b) was modelled on existing anti-discrimination Directives. The Council has already adopted three Directives prohibiting discrimination in the fields of employment and occupation or training on all the grounds which were then set out in Article 13 of the EC Treaty: sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. There is also existing EC legislation prohibiting discrimination on grounds of sex and racial or ethnic origin in education, health care and goods and services.

14.3 In October 2015 the Government submitted its Explanatory Memorandum on the new text. It remained largely supportive of the proposal, as many of the proposal's requirements already exist in domestic law. But it had some reservations about aspects of the Commission's competence and therefore the scope of the proposal.

14.4 We last reported on a Government update on 23 March 2016 (see our Report of 13 April 2016). The Committee office has no record of receiving a subsequent letter of 19 September 2016 from the former Minister for Women (Caroline Dinéage) to our Chairman, but which has been recently discovered on the Cabinet Office website. As the letter was therefore not reported by us to the House at the time, we now reproduce it in full

at paragraph 14.12. In short, the Government wrote to explain its competence concerns relating to the proposal, mainly concerning the provision of education:⁹⁶ this was in response to the previous Committee’s report in October 2015.⁹⁷

14.5 We wrote to the current Minister for Women (Victoria Atkins) on 28 March⁹⁸ of this year asking for an update. She now responds by letter of 24 April.⁹⁹ In that letter she informs us that there have been a few changes since the last time the Government updated the previous Committee in 2016. However, the changes have all been minor, except for those concerning the relationship with the European Accessibility Act and multiple discrimination. On those changes, the Minister says:

- one change would mean that compliance with any of the proposal’s requirements on accessibility or reasonable accommodation would automatically be assumed wherever EU law already provides standards or specifications for goods and services to be used by disabled individuals. It would be pointless and potentially confusing for the proposed Directive to impose any requirements on top of those already included in the proposed Accessibility Act; and
- a definition of multiple discrimination has been added. This would consist of a combination of two or more grounds of religion or belief, disability, age, sexual orientation, sex, racial or ethnic origin. The intention is that a combination of grounds could amount to discrimination in circumstances where a case could not be mounted on a single ground. The Government opposes its inclusion in the absence of evidence that there is a gap in protection under the Equality Act 2010 which might justify the burden of adding more definitions of discrimination. The Minister notes that it is currently open to claimants in the UK to claim on one or more concurrent grounds of discrimination. She is also concerned about burdens for individuals¹⁰⁰ and for service providers involved in such an approach.

14.6 The Minister then addresses Brexit implications. On the question of any UK alignment with EU equalities legislation, she says that it will be a matter for the wider exit negotiations. But that almost all the protections encompassed in this proposed Directive will be covered by the preservation of the Equality Acts 2006 and 2010 and the equivalent Northern Irish legislation. She says that the Government has “no plans to change that position”.

14.7 The Minister will update us again once there is any significant progress in the negotiations.¹⁰¹

14.8 Clearly this proposal is only progressing slowly. In any case, the proposed Directive currently envisages very long implementation dates of four and five years

96 Letter from Caroline Dinenage to Sir William Cash, [19 September 2016](#).

97 Seventh Report HC 342–vii (2015–16), [chapter 6](#) (28 October 2015).

98 The text of this letter will be loaded shortly here on our Committee’s [website](#).

99 Letter from the Minister for Women (Victoria Atkins) to Sir William Cash, [24 April 2016](#).

100 The Minister refers to the difficulty for individuals to self-identify. We understand that that to mean identifying what are the protected characteristics at issue in any case and therefore the combined grounds of discrimination.

101 Proposal for a Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services: (37371), [14799/15](#) + ADDs 1–8, COM(15) 615. Our last Report on this proposal was published on 31 January 2018: Twelfth Report, HC 301–xii (2017–19), [chapter 1](#) (31 January 2018).

and even longer in relation to certain requirements. Even in the unlikely event that the proposal was adopted later this year, the UK would not need to implement it before the end of the proposed transition/implementation period. We also accept that much of the proposal is already covered by the Equalities Acts which the EU (Withdrawal) Bill will preserve in UK law on exit day. We therefore limit our comments and questions accordingly.

14.9 We have only become aware recently of her predecessor’s letter of 19 September 2016 but we welcome the Government’s continued vigilance against EU competence creep on this proposal, particularly relating to the provision of education.

14.10 We note the Government’s opposition to the inclusion of a definition of multiple discrimination in the proposal. Section 14 of the Equality Act 2010 is drafted to allow some limited explicit prohibition of combined discrimination but it has not been brought into force. We recall that the current Prime Minister in her former role as Minister for Women and Equalities in a previous Government, laid a Written Ministerial Statement on 15 May 2012,¹⁰² explaining that the commencement of Section 14 was being delayed as part of the “Equalities red tape challenge”. We simply observe that if the proposed Equal Treatment Directive was adopted and included a multiple discrimination definition, this would represent an interesting example of divergence in EU and UK equalities protections after 31.12.20. Could the Minister please:

- clarify that the current Government does not intend to bring Section 14 of the Equality Act 2010 into force; and
- provide any further substantiation of why there is no gap in equalities protection under the Equality Act 2010 caused by the availability of dual or combined discrimination grounds—using case law and other evidence, where possible.

14.11 In the meantime, we retain these documents under scrutiny but draw them to the attention of the Women and Equalities Committee and the Joint Committee on Human Rights.

Full details of the documents

(a) Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation: (37064), [9010/15](#),—; (b) Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, age or sexual orientation: (29819), [11531/08](#) + ADDs 1–2, COM (08) 426.

Letter of 19 September 2016 from the previous Minister

14.12 The previous Minister for Women (Caroline Dinenage) wrote:

“Further to my letter of 15 March¹⁰³ in response to yours of 10 February, there was a further question raised by the Committee in its report of 28

102 See Written statement to Parliament “Equalities red tape challenge and reform of the Equality and Human Rights Commission: outcome”, laid in the House of Commons by Theresa May on [15 May 2012](#).

103 This should be a reference to the previous Minister’s letter of 23 March 2016.

October 2015 on which I promised to write to you, once I had received and considered the input of other Government Departments. This earlier correspondence did of course pre-date the referendum on EU membership.

“This concerned how the exclusion of matters in Article 3(2) of the draft directive relates to the established division of competences between Member States and the EU, and particularly in social protection (including social security and healthcare), social advantages, education and the provision of services such as housing.

“On social protection, social security and welfare provision in the draft is intended to complement the provisions on free movement of workers in an area of shared competence (**Art 45, 48, 21, 79 TFEU**). In practice this means that Member States remain free to determine the contours of their own social security and healthcare systems: they may decide what the contribution levels should be, what benefits are available and what the level of benefits provided shall be, and may determine any conditions of entitlement (subject to free movement/equal treatment principles).

“**Regulation (EC) No 883/2004** on the coordination of social security systems provides for co-ordination not harmonisation of the social security benefits: the aim is to negate the effect of rules within national social security systems which might act as a barrier to workers or their families moving between Member States. It is worth noting that Social security for the purposes of EU law is a narrower concept than social protection or social advantages—in other words social security only covers benefits that address one of the ‘social security risks’ in the relevant EU Regulation.

“Workers have greater rights in that they are afforded equal treatment rights as regards social advantages—a wider concept than social security. Nevertheless, Member States still decide what the contribution levels are and what benefits are available, subject to this equal treatment principle, which is also enshrined in the draft directive. Given that the Draft Directive explicitly excludes in the context of social protection “conditions of entitlement to benefits and services” from its scope, the Government does not have concerns about the division of competence in this sphere.

“In relation to **education** the treaty base for the draft Directive is Article 19(1) TFEU, together with Articles 2 and 6 TEU. Article 19, giving the Union the competence to take action to combat discrimination, is expressly stated to be within the limits of the powers conferred by the Council and Parliament. Likewise, Article 6 TEU expressly states that it does not extend the competences of the Union as defined in the Treaties. Article 2 does not appear to add anything in this regard to the operative effect of Article 6 TEU or Article 19(1) TFEU).

“Article 165 on competence in education states that:

“1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary,

by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.”

“It is the Government’s position that there is no competence to legislate in any respect where the subject matter is the content of teaching and the organisation of the UK’s education system. By contrast, if the subject matter is something about which there is competence (e.g. equal treatment) then the EU can act within the limits of the Treaty. We are negotiating to ensure sufficient clarity of what is subject to the Directive, and what is not, in the field of education and to ensure this does not exceed the Commission’s competence.

“As we have previously registered with the Committee, we remain concerned that the text is ambiguous on the limits of EU competence, in that it can be construed in places, as extending EU competence in the field of equal treatment where other parts of the treaty make clear that areas such as education are reserved.

“Regarding the **wider provision** of services, this is clearly a broad area which it would be impractical to cover exhaustively and accordingly, as suggested by the Committee’s question, we have looked at the example of housing, but accept it is possible that there will be variations in other areas.

“Our starting point is that this draft directive only concerns matters within the limits of competences conferred by the EU (Article 3) and housing is not an EU competence, it is entirely within Member state competence. That said, housing matters do however engage EU law where they have an impact on the fundamental freedoms as in, for example, freedom of movement or where discrimination matters come into play. Along with other fields already discussed, housing is mentioned in the Charter of Fundamental Rights of the European Union which enshrines certain political, social, and economic rights for EU citizens and residents into EU law. Article 34 of the Charter of Fundamental Rights of the EU, is devoted to social security and social assistance. Paragraph 3 reads:

“In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.”

“Under the Charter, the European Union must act and legislate consistently with it and the European Union’s courts will strike down legislation adopted by the EU’s institutions that contravenes it. But the Charter does not extend the competences of the EU and the Government is accordingly content with the position on housing.

“In terms of future negotiations on the directive, until exit negotiations are concluded, the UK remains a full member of the European Union and all

the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

“I hope that this analysis will be of assistance to the Committee and as ever I am happy to consider any further questions that may arise”.

Previous Committee Reports

(a) Twenty-Eighth Report, HC 343–xxvii (2015–16), [chapter 7](#) (13 April 2016), ; Seventh Report HC 342–vii (2015–16), [chapter 6](#) (28 October 2015) (b) Ninth Report HC 5–viii (2009–10), [chapter 1](#) (27 January 2010); Fifteenth Report HC 19–xiii (2008–09), [chapter 3](#) (1 April 2009); Thirtieth Report HC 16–xxvii (2007–08), [chapter 8](#) (16 July 2008).

15 International measures on safety and security at football matches

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the Digital, Culture, Media and Sport Committee
Document details	Proposal for a Council Decision authorising Member States to become party to the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events (CETS no 218)
Legal base	Articles 87(1), 218(6)(a)(v) and 218(8) TFEU, QMV
Department	Home Office
Document Number	(39689), 8577/18, COM(18) 247

Summary and Committee's conclusions

15.1 In the aftermath of violent confrontations and the loss of 39 lives at the 1985 European Cup final between Liverpool and Juventus held in the Heysel Stadium, Belgium, the Council of Europe drew up a Convention to prevent and control violence and misbehaviour by spectators at football matches and other sports events.¹⁰⁴ Since then, efforts have focussed on developing a more holistic approach towards the safety and security of spectators by creating an inclusive and welcoming environment for all sections of society, including children, the elderly and people with disabilities. To reflect these developments and disseminate good practices more widely, the Council of Europe has drawn up a new Convention which will eventually replace the earlier 1985 Convention.¹⁰⁵

15.2 The EU cannot itself become a party to the Convention but the European Commission considers that the provisions requiring contracting parties to set up or designate a National Football Information Point (“NFIP”) within their police forces and setting out the tasks assigned to each NFIP fall within the EU’s exclusive competence, meaning that EU Member States can only sign and ratify the Convention if authorised to do so by the EU.¹⁰⁶ It says that these provisions take their inspiration from, and “coincide almost fully” with, existing EU measures requiring each Member State to establish a national football information point to share information and facilitate cooperation between police forces on football matches with an international dimension.¹⁰⁷ The Commission has therefore

104 See the [European Convention](#) on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches. It has been ratified by 26 of the EU’s 28 Member States—the exceptions are Ireland and Malta.

105 See the [European Convention](#) on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events which was opened for signature in July 2016.

106 See Article 11(2)-(4) of the Convention.

107 See [Council Decision 2002/348/JHA](#) concerning security in connection with football matches with an international dimension, as amended by [Council Decision 2007/412/JHA](#). The UK participates in both Council Decisions. See also the Commission’s competence analysis on pp 3–4 of its explanatory memorandum accompanying the proposed Council Decision.

proposed a [Council Decision](#) which would authorise Member States to become parties to the Convention “in respect of those parts falling under the exclusive competence of the Union”.¹⁰⁸

15.3 Although the proposed Council Decision cites a Title V (justice and home affairs) legal base—Article 87(1) of the Treaty on the Functioning of the European Union (TFEU) on cross-border police cooperation—the European Commission does not consider that the UK’s Title V opt-in Protocol applies. An introductory recital to the proposal states that the UK is bound to take part in the Council Decision (and so cannot rely on its Title V opt-in Protocol to decide not to participate) as the UK participates in the existing measures on which the EU’s claim to exclusive external competence is based.¹⁰⁹

15.4 In his [Explanatory Memorandum](#) of 18 May, the Minister for Policing and the Fire Service (Mr Nick Hurd) says that the UK already complies with the Convention and that the emphasis it places on promoting “integrated, multi-agency approaches to deliver safe and secure sporting events” reflects the UK’s approach. The UK Football Policing Unit (based in the Home Office) operates as the UK’s national football information point and is “crucially important” in ensuring effective information and intelligence exchange as UK football clubs and national teams are involved in more than one hundred international matches each year. The Minister agrees that the EU has exclusive competence insofar as the Convention “relates to relations between EU Member States’ NFIPs”. He says that the UK’s Title V justice and home affairs opt-in applies to measures based on Article 87 TFEU, adding:

“The Government is committed to taking all opt-in decisions on a case-by-case basis, putting the national interest at the heart of the decision-making process. In making the opt-in decision on this proposal, the Government will have particular regard to the functionality of the UK’s NFIP and whether the Government agrees that there is exclusive EU competence in relation to NFIPs.”

15.5 The Minister is unable at this stage to confirm when the three-month deadline in which to decide whether to opt into the proposed Council Decision will expire but undertakes to inform us at the earliest opportunity.¹¹⁰

15.6 In one part of his Explanatory Memorandum, the Minister appears to accept that the EU *does* have exclusive external competence insofar as the Convention “relates to relations between EU Member States’ NFIPs”, yet later he says that one of the factors informing the Government’s opt-in decision will be “whether the Government agrees that there is exclusive EU competence in relation to NFIPs”. We ask him to reconcile these two seemingly contradictory positions and to clarify the Government’s view on the nature and extent of the EU’s competence in relation to the Convention.

15.7 The Minister asserts that the UK’s Title V (justice and home affairs) opt-in applies to the proposed Council Decision but the proposal itself states the opposite—according

108 Article 1 of the proposed Council Decision.

109 See recital (7) of the proposed Council Decision.

110 The three-month opt-in period starts to run from the date on which the last language version of the proposal is published.

to recital (7), the UK has no choice but to participate as it is already bound by existing EU measures concerning the security of football matches with an international dimension which the Convention largely replicates. We ask the Minister to explain:

- whether the Commission and other Member States accept that the UK’s Title V opt-in applies if (as the Commission asserts in this case) the EU has exclusive external competence based on the adoption of internal justice and home affairs rules that bind the UK;
- if they do not, what action the Government intends to take to make clear whether or not the UK is participating in the proposed Council Decision; and
- whether the Government intends to ratify the Convention.

15.8 We ask the Minister to inform us as soon as possible of the three-month deadline for opting into the proposed Council Decision. Pending further information, the proposal remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee and the Digital, Culture, Media and Sport Committee.

Full details of the documents

Proposal for a Council Decision authorising Member States to become party, in the interest of the European Union, to the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events (CETS no 218): (39689), [8577/18](#), COM(18) 247.

Background

15.9 The purpose of the Council of Europe Convention is to “ensure that football and other sports events provide a safe, secure and welcoming environment for all individuals through the implementation of an integrated approach on safety, security and service at sports events by a plurality of actors working in a partnership amid an ethos of co-operation”. It requires contracting parties to:

- encourage public agencies and private stakeholders (local authorities, police, football clubs and national federations, and supporters) to work together in the preparation and running of football matches;
- ensure that stadium infrastructure complies with national and international standards and regulations for effective crowd management and safety, and to draw up, test and refine emergency and contingency plans in the course of regular joint exercises; and
- ensure that spectators feel welcome and well-treated throughout events, including by making stadiums more accessible to children, the elderly and people with disabilities and improving sanitary and refreshment facilities.

15.10 The Convention also includes measures to prevent and punish acts of violence and misbehaviour, such as stadium bans, sanctions procedures in the country where the offence is committed or in the offender’s country of residence or citizenship, or restrictions on travelling abroad to football events. The designation of a national football information

point within the police force (NFIP) of each country participating in the Convention is intended to “step up” international police co-operation by facilitating exchanges of information and personal data in connection with international football matches.¹¹¹

15.11 All EU Member States have a national football information point to act as “the direct, central contact point for exchanging relevant information and for facilitating international police cooperation in connection with football matches with an international dimension”.¹¹² The main tasks of the information points are to:

- exchange strategic, operational and tactical information on football matches which have an international dimension;
- facilitate, coordinate or organise international police cooperation; and
- carry out risk assessments of their own country’s clubs and national team as well as regular national football disorder assessments.

15.12 In addition, the EU Football Handbook (last updated in 2016) contains detailed guidance on international police cooperation, the exchange of police information and the role and tasks of national football information points.¹¹³

Previous Committee Reports

None on this document.

111 See the [description](#) of the Convention on the Council of Europe’s Treaty Office website.

112 See Article 1(3) of [Council Decision](#) 2002/348/JHA.

113 See [Council Resolution 2016 C 444/01](#) concerning an updated handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, in which at least one Member State is involved (“EU Football Handbook”).

16 Adoption of detailed EU fishing rules

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Environment, Food and Rural Affairs Committee
Document details	Report from the Commission 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

16.1 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 (30 March 2019–31 December 2020 inclusive), such Acts will apply to the UK, including those Acts adopted after the UK's withdrawal.

16.2 In our [Report](#) of 18 April 2018, we set out further details and raised a number of issues to which the Minister has responded in his [letter](#) of 16 May 2018.¹¹⁴

16.3 The Minister for Agriculture, Fisheries and Food (George Eustice) says that he is very aware of the need to ensure the UK maintains a close involvement in CFP decision-making processes during the implementation period. He confirms that, under the terms of the draft Withdrawal Agreement, the UK would expect to be consulted on Delegated Acts that refer to the UK and to be provided with an opportunity to comment.

16.4 The Government is confident, says the Minister, that it will be able to effectively represent UK fisheries' interests during the implementation period. The Government is considering details of how the UK will be consulted and will be able to engage in discussion through relevant groups and Committees. This will be discussed with the Commission and regional group Member States with a view to agreeing a clear process for how UK engagement will work in practice, reflecting the obligation on both sides to act in good faith during the implementation period. The Minister goes on to set out his expectations

114 Letter from George Eustice to Sir William Cash, dated 16 May 2018.

of that involvement, noting that “it is in all our interests to work collaboratively to ensure the sustainable management of our shared stocks”, but provides no detail of any processes that have been agreed.

16.5 Finally, the Minister considers that it would be counter-productive to the UK and EU to oppose the tacit extension of the delegation of powers, given the need to benefit from the further flexibilities and exemptions from the landing obligation that can be provided through these Delegated Acts.

16.6 While we would agree with all that the Minister says, and welcome his recognition of the important issues raised, we note that his response is only at the level of expectation and he is unable to set out any detail of how these arrangements might work in practice. According to the Minister, discussions are yet to take place with either the Commission or relevant Member States. We emphasise that, without clarity on the practical arrangements, any form of public or parliamentary scrutiny of—and engagement in—the decision-making process during the implementation period will be very challenging. Equally, it cannot be possible to draw firm conclusions about the Government’s ability to represent the UK effectively before clear arrangements have been agreed.

16.7 Recognising the need for discussion with the Commission and Member States, we look forward to an update by 31 August 2018 on progress made in determining the future working arrangements. We clear this non-legislative document from scrutiny and draw this chapter to the attention of the Environment, Food and Rural Affairs Committee.

Full details of the documents

Report from the Commission 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

16.8 As an EU Member State, the UK is involved in the development of CFP Delegated 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.

Previous Committee Reports

Twenty-fourth Report HC 301–xxiii (2017–19), [chapter 3](#) (18 April 2018).

17 European Centre for the Development of Vocational Training (Cedefop)

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council establishing a European Centre for the Development of Vocational Training (Cedefop) and repealing Regulation (EEC) No. 337/75
Legal base	Commission proposed: Articles 149, 165(4) and 166(4) TFEU; Council compromise: Article 166(4) TFEU only; ordinary legislative procedure; QMV
Department	Education
Document Number	(38026), 11532/16, COM(16) 532

Summary and Committee's conclusions

17.1 The European Centre for the Development of Vocational Training (Cedefop) aims to provide the evidence on which to base European Vocational Education and Training (VET) policy. In 2016, the Commission [proposed](#) to update Cedefop's objectives and tasks in the light of changing circumstances and changes that have been agreed for all EU agencies under the Common Approach to EU Decentralised Agencies.¹¹⁵ Background to the Agency and further information on the proposal were set out in our [Report](#) of 19 October 2016.

17.2 The Minister of State for Apprenticeships and Skills (Anne Milton) [explains](#)¹¹⁶ that negotiations on this proposal had been delayed in order to align the outcome with parallel proposals on other agencies (European Foundation for the Improvement of Living and Working Conditions and the European Agency for Safety and Health at Work), as well as the more recent proposal on the European Labour Authority. Negotiations between the EU institutions finally began on 24 April following the earlier Council [General Approach](#)¹¹⁷ and agreement could be swift, as the negotiations are likely to be uncontentious given the similar positions of the institutions. Differences that remain to be resolved concern:

- a proposed extension of Cedefop's remit, allowing it to provide policy makers with research-based policy proposals in addition to its primary research and dissemination role—the Government is not concerned with this proposal; and
- reversion to the legal bases initially proposed by the Commission—i.e. to include Article 165(4) TFEU (education) and Article 149 (employment) as well as Article 166(4) (vocational training), agreed by the Council as the sole legal base. While the Government would not dispute the inclusion of Article 149, it still takes

115 [Common Approach to EU Decentralised Agencies](#), 19 July 2012.

116 Letter from Anne Milton to Sir William Cash, dated 16 May 2018.

117 Council document 15524/16

the view that—as summarised in our predecessors’ [Report](#) of 15 March 2017—Article 166(4) is the more appropriate legal base. These matters will be kept under review during the negotiations.

17.3 Concerning future UK engagement in the Agency, the Minister notes that the UK will continue to be bound by the Cedefop Regulation during the post-Brexit implementation period (until 31 December 2020). The approach to future membership of EU agencies is subject, says the Minister, to the ongoing negotiations regarding UK withdrawal. It should be noted that the Cedefop Regulation allows for cooperation agreements with third countries.

17.4 We note that the main difference between the institutions relates to the legal base. We agree with the view set out by our predecessors that a legal base aligned with the predominant aim and content of the instrument is appropriate.

17.5 Given the Minister’s assessment that negotiations are likely to be uncontentious and so the file could move quickly to Council agreement, we are content to release the proposal from scrutiny. We look forward to confirmation of adoption, including an assessment of the outcome on the legal base.

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council establishing a European Centre for the Development of Vocational Training (Cedefop) and repealing Regulation (EEC) No. 337/75: (38026), [11532/16](#), COM(16) 532.

Previous Committee Reports

Thirty-fifth Report HC 71–xxxiii (2016–17), [chapter 3](#) (15 March 2017); Twenty-Second Report HC 71–xx (2016–17), [chapter 3](#) (7 December 2016); Fourteenth Report HC 71–xii (2016–17), [chapter 2](#) (19 October 2016).

18 Mobility Package: emissions and fuel consumption of heavy duty vehicles

Committee's assessment	Politically important
<u>Committee's decision</u>	Cleared from scrutiny; drawn to the attention of the Select Committees for Transport; Environment, Food and Rural Affairs; and Business, Energy and Industrial Strategy.
Document details	(a) Proposal for a Regulation on the monitoring and reporting of CO ₂ emissions from and fuel consumption of new heavy-duty vehicles; (b) Commission Regulation implementing Regulation (EU) No 595/2009 as regards the determination of the CO ₂ emissions and fuel consumption of heavy-duty vehicles and amending Directive 2007/46/EC and Commission Regulation (EU) 582/2011
Legal base	(a) Article 192(1) TFEU; ordinary legislative procedure; QMV; (b) Articles 4(3) and 5(4)(e) of Regulation 595/2009
Department	Transport
Document Numbers	(a) (38794), 9939/17 + ADDs 1–3, COM(17) 279; (b) (39318), 11880/17;—

Summary and Committee's conclusions

18.1 Heavy-duty vehicles (HDVs), which include trucks, buses and coaches, account for 25% of road transport-based greenhouse gas emissions in the EU.

18.2 On 31 May 2017, as part of the first phase of its 'mobility package', the European Commission brought forward draft Regulation [9939/17](#) which aimed to reduce these emissions by requiring Member States and vehicle manufacturers to monitor and report on the fuel consumption and CO₂ emissions of all new HDVs registered in the EU market from 2019 onwards. Vehicle testing would be carried out through a Commission-developed simulation software system called VECTO.

18.3 In the Government's initial [response](#) to the proposal, the Parliamentary Under-Secretary of State for Transport (Jesse Norman) at the Department for Transport indicated that the Government supported EU-level action to reduce HDV emissions and to set fuel consumption standards, and that the Government also agreed with the Commission's assessment that a lack of market transparency on HDVs' fuel consumption and CO₂ emissions contributes to a lack of incentive for innovation.

18.4 In a subsequent [letter](#) to the Committee on 7 December 2017, the Minister indicated that the potential concerns previously identified with the proposal had been satisfactorily addressed. Most notably, following consultation with the Driver and Vehicle Licensing Agency (DVLA) the Government concluded that the delegated powers that were proposed to allow the Commission to amend the annexes to the Regulation to modify data reporting requirements were necessary for the Commission to verify the results of future modelled tests. A compromise was also reached regarding the publication of certain data

(such as engine and aerodynamic performance data) which had the potential to damage the commercial interests of manufacturers: all data will be available to accredited third parties, such as type approval authorities, to allow them to recreate tests and verify the results of modelling through real world testing; the most commercially sensitive data will be made available publicly, but grouped into performance bands, addressing manufacturer concerns.

18.5 On this basis a negotiating mandate was issued at a meeting of COREPER on 15 December 2017.

18.6 On 1 May 2018 the Minister submitted a further [letter](#) to the Committee in which he provided an update on the progress of trilogue negotiations which took place on 27 February and 26 March 2018. The Minister states that discussions focussed on delivering greater transparency on fuel consumption and CO₂ emissions to the market, allowing operators to purchase more efficient heavy duty vehicles. Key developments include:

- the addition of references to the Paris Agreement and the Commission’s 2016 low emission mobility strategy to ensure that the HDV Regulation has a direct link to long term objectives and to encourage Member States to continue to pursue carbon reduction policies in the transport sector; and
- the decision to introduce an element of on-road verification tests to ensure the results from the VECTO model accurately reflect real world emissions performance. However, the Minister notes that difficulty in developing a suitable procedure means that this element of the proposal will be delivered as part of the recently adopted third phase of the Mobility Package.

18.7 The Minister emphasises that the Government is content with the outcome of the negotiations on the proposal and wishes to support it, when it is considered by the Council in the summer. On this basis he requests that the Committee clear the proposal from scrutiny.

18.8 The Implementing Regulation which will require vehicle manufacturers to use the EU’s VECTO simulation software to measure and certify the fuel consumption and CO₂ emissions of HDVs as required under proposal (a) was adopted as EU law in October 2017 by the Council of Ministers in October 2017, before the Committee resumed business after the General Election.

18.9 Regarding the implications of EU exit, in our [first report](#) on this proposal we took note of the Government’s comment that, regardless of the outcome of EU exit negotiations, the proposed Regulation was likely to impact on the UK, since HDVs are typically manufactured for a Europe-wide market. The Committee concluded from this that, although the UK would no longer be bound by EU commitments on greenhouse gas emissions and fuel-efficient vehicles, UK freight transport operators were likely to continue to use HDVs compliant with EU standards. The Committee also noted that this raised the question of whether the Government might choose to align with EU regulation in this area. In response to these conclusions, the Minister’s latest letter provides some additional information about the implications of EU exit for the proposal.

18.10 We thank the Minister for his update on the outcome of trilogue negotiations, summarised above, and have taken note that the Government supports the compromise text which has been agreed by the negotiators.

18.11 **On EU exit, we have taken note that:**

- **In response to the Committee’s previous conclusion that the UK would no longer be bound by EU commitments on greenhouse gas emissions and fuel-efficient vehicles, the Government has clarified that it does “not know whether the UK will be bound by EU commitments on greenhouse gas standards and fuel efficient vehicles as this will be subject to negotiations”; and**
- **Following the Government’s previous observation that Heavy Duty Vehicles (HDVs) are typically manufactured for a Europe-wide market, which led the Committee to conclude that UK freight transport operators, irrespective of the outcome of EU exit negotiations, were therefore “likely to continue to use HDVs complying with EU standards”, which in turn raised the question of regulatory alignment/divergence, the Government now refers the Committee to the Prime Minister’s Mansion House speech which states that the Government will seek a comprehensive system of mutual recognition. The Minister emphasises that such a system means that the UK “will need to make a strong commitment that its regulatory standards will remain as high as the EU’s” which “in practice, will mean that UK and EU regulatory standards will remain substantially similar in the future” and that the UK will not participate in a race to the bottom.**

18.12 **We note that we have considered the question of mutual recognition in a recent [report](#), and will continue to scrutinise this issue.**

18.13 **We clear the draft Regulation from scrutiny so that the Government can support its adoption in the Council. We also clear from scrutiny the now adopted Implementing Regulation regarding the use of VECTO simulation software, which was adopted as EU law before the Committee resumed its scrutiny activities following the General Election.**

18.14 **We draw the EU exit implications noted above to the attention of the Select Committees for Transport; Environment, Food and Rural Affairs; and Business, Energy and Industrial Strategy.**

Full details of the documents

(a) Proposal for a Regulation on the monitoring and reporting of CO₂ emissions from and fuel consumption of new heavy-duty vehicles: (38794), 9939/17 + ADDs 1–3, COM(17) 279; (b) Commission Regulation implementing Regulation (EU) No 595/2009 as regards the determination of the CO₂ emissions and fuel consumption of heavy-duty vehicles and amending Directive 2007/46/EC and Commission Regulation (EU) 582/2011: (39318), 11880/17,—; (c) Commission Recommendation on the use of fuel consumption and CO₂ emission values type-approved and measured in accordance with the World Harmonised Light Vehicles Test Procedure when making information available for consumers pursuant to Directive 1999/94/EC: (38813),—,—.

Previous Committee Reports

Fifth Report HC 301–v (2017–19), [chapter 8](#) (13 December 2017).

19 Safeguard clauses in EU trade agreements

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Draft Regulation implementing the safeguard clauses and other mechanisms allowing the temporary withdrawal of preferences in certain agreements concluded between the EU and certain third countries
Legal base	Article 207(2) of the TFEU
Department	International Trade
Document Number	(39641), 8141/18 + ADD 1 COM(18) 206

Summary and Committee's conclusions

19.1 Safeguard clauses in bilateral free trade agreements (FTAs) enable the temporary suspension of trade preferences or reinstatement of WTO Most Favoured Nation (MFN) customs duty rates if, as a result of bilateral trade liberalisation, an increase in imports from the partner country causes or threatens to cause serious injury to domestic producers.

19.2 The draft proposal aims to streamline the process for implementing safeguard clauses in EU FTAs, by introducing a 'horizontal' bilateral safeguard Regulation (rather than proposing an Implementing Regulation for each separate trade agreement, as has been Commission practice to date). It is intended to apply to new EU bilateral FTAs, including with Singapore, Vietnam and Japan.

19.3 In his [Explanatory Memorandum of 3 May 2018](#), the Minister of State for Trade Policy (Greg Hands) supports the proposal and confirms that the UK will continue to "actively engage alongside other EU Member States and the European Parliament on implementation of safeguard measures". He considers that the document has "no immediate EU Exit implications" as the proposal (once adopted) "will not become retained EU law" under the EU Withdrawal Bill and it will be for the UK to decide whether to "seek to give effect to obligations in FTAs in domestic legislation" once the UK operates its own trade policy and enters into FTAs in its own right.

19.4 We are content to clear the document from scrutiny, but draw the proposal to the attention of the International Trade Committee and ask the Minister to provide further information (within two weeks) on whether the Government intends to replicate this 'horizontal' safeguard provision in the negotiation and conclusion of future UK FTAs after 29 March 2019, and the reasons (including supporting analysis) for this.

Full details of the documents

Draft Regulation implementing the safeguard clauses and other mechanisms allowing the temporary withdrawal of preferences in certain agreements concluded between the EU and certain third countries: (39641), 8141/18 + ADD 1; COM(18) 206.

Background

19.5 The Minister provides a useful summary of the proposal:

“The purpose of this proposed regulation is to incorporate into European Union (EU) law the (i) bilateral safeguard clauses and (ii) any special mechanisms for withdrawal of tariff preferences or other preferential treatments as a result of the imposition of bilateral safeguards in future trade agreements concluded by the EU.

“The majority of EU trade agreements include a bilateral safeguard clause, which provides for the temporary suspension of trade preferences or reinstatement of Most Favoured Nation (MFN) customs duty rates with respect to the FTA partner if, as a result of trade liberalisation, imports increase so as to cause or threaten to cause serious injury to domestic producers. Such clauses do not have their legal basis in the WTO Agreement on Safeguards, which covers multilateral safeguard measures. Some EU trade agreements also include special mechanisms conferring powers to reintroduce MFN customs duty rates.

“To date, the Commission’s practice has been to propose an implementing regulation in conjunction with each separate recent trade agreement. The Commission now seeks to streamline the process by introducing a horizontal bilateral safeguard regulation which could be used for all future FTAs. The proposed regulation, which largely reflects existing implementing regulations, sets out provisions that are common in bilateral safeguard clauses in FTAs, for example, provisions on the conduct of investigations, and procedures for the imposition of provisional and definitive measures. It also sets out the procedures that the Commission would need to follow in order to implement special mechanisms that are found in some FTAs. The annex to the proposed regulation reflects the FTAs that are within the scope of this regulation, and any specificities of the trade agreement in question.

“The proposed regulation foresees the publishing of an annual report to Council and the European Parliament outlining trade statistics with the relevant FTA partner country and information on the application of the regulation.”

19.6 The Minister is not able to provide “a date for when this will go to the Council for approval”; however, given that the EU-Japan Economic Partnership Agreement is expected to be adopted in the Council on 26 June 2018 (and this bilateral clause is intended to apply to it), adoption could be imminent.

Previous Committee Reports

None.

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

Department for Culture, Media and Sport

(39674) Report from the Commission to the European Parliament and the
8546/18 Council Mid-term evaluation of the Creative Europe programme (2014–2020).

+ ADD 1

COM(18) 248

(39677) Report from the Commission to the European Parliament, the Council,
8403/18 the European Economic and Social Committee and the Committee of the Regions Ex Post evaluation of the 2016 European Capitals of Culture (Donostia San Sebastian and Wroclaw).

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Department for Environment, Food and Rural Affairs

(38801) Proposal for a Council Decision on the conclusion of the International
9933/17 Agreement on Olive Oil and Table Olives, 2015.

COM(17) 264

(38802) Proposal for a Council Decision laying down a simplified procedure for
9935/17 the drawing up of Union positions in the Council of Members of the International Olive Council.

+ ADD 1

COM(17) 263

(39711) Recommendation for a COUNCIL DECISION authorising the opening
8639/18 of negotiations with Cabo Verde for the conclusion of a Protocol implementing the Fisheries Partnership Agreement between the European Communities and Cabo Verde.

+ADDS 1–3

COM(18) 299

Foreign and Commonwealth Office

(39650) Joint Report to the European Parliament and the Council Hong Kong
8316/18 Special Administrative Region: Annual Report 2017.

JOIN(18) 17

- (39654) Joint Report to the European Parliament and the Council Macao Special Administrative Region: Annual Report 2017.
8317/18
JOIN(18) 8
- (39715) Council Decision amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO).
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- (39769) Council Decision (CFSP) 2018/706 of 14 May 2018 amending Decision 2014/145/CFSP concerning restrictive measures directed against actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
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- (39770) Council Implementing Regulation (EU) 2018/705 of 14 May 2018 amending Regulation (EU) No.269/2014 concerning restrictive measures directed against actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
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- (39772) Council Decision (CFSP) XXX amending Decision 2013/255/CFSP concerning restrictive measures against Syria.
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- (39773) Council Implementing Regulation XXX implementing Regulation (EU) No.36/2012 concerning restrictive measures in view of the situation in Syria.
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HM Treasury

- (39421) Report from the Commission to the European Parliament and the Council: Mid-term evaluation of Regulation (EU) No 250/2014 of the European Parliament and of the Council of 26 February 2014 establishing a programme to promote activities in the field of the protection of the financial interests of the European Union (Hercule III programme) and repealing Decision No 804/2004/EC.
5194/18
+ ADD 1
COM(18) 3
- (39525) Report from the Commission to the European Court of Auditors, the Council and the European Parliament: Member States' Replies to the European Court of Auditors' 2016 Annual Report.
6744/18
+ ADD 1
COM(18) 117
- (39699) Draft amending budget N° 2 to the general budget 2018 entering the surplus of the financial year 2017.
7992/18
COM(18) 227

Home Office

- (39681) Proposal for a Council Implementing Decision on subjecting the
new psychoactive substances N-phenyl-N-[1-(2-phenylethyl)
8654/18 piperidin-4-yl]cyclopropanecarboxamide (cyclopropylfentanyl) and
COM(18) 253 2-methoxy-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]acetamide
(methoxyacetylfentanyl) to control measures.

Department for Transport

- (39739) Proposal for a Council Decision on the position to be taken on behalf
of the European Union in the relevant Committees of the United
(178/8 Nations Economic Commission for Europe as regards the proposals for
amendments to UN Regulations Nos 13, 13-H, 14, 16, 22, 44, 49, 51, 54,
+ADD 1 75, 83, 85, 89, 96, 106, 108, 109, 120, 129, 137, 139 and 140, to UN Global
COM(18) 363 Technical Regulations Nos 15 and 19, and as regards the proposals for
two new UN Regulations and two new listings in the Compendium of
Candidate Global Technical Regulations.

Formal Minutes

Wednesday 6 June 2018

Members present:

Sir William Cash, in the Chair

Geraint Davies	Darren Jones
Steve Double	Mr David Jones
Richrad Drax	Andrew Lewer
Mr Marcus Fysh	Michael Tomlinson
Kate Hoey	Dr Philippa Whitford
Kelvin Hopkins	

2. Scrutiny Report

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

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

Paragraphs 1.1 to 20 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Thirtieth Report of the Committee to the House.

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

[Adjourned till Wednesday 13 June 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*)