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Documents considered by the Committee on 9 May 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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Contents

Meeting Summary

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

Brexit-related issues

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

- **The European Citizens' Initiative**
- **Supervision of UK central counterparties after Brexit**
- **European Defence Industrial Development Programme**

Summary

The European Citizens' Initiative

The European Citizens' Initiative (ECI) was introduced by the Lisbon Treaty and is intended to give EU citizens a direct say in shaping the laws that govern them. A 2011 Regulation sets out the procedures and conditions for implementing the ECI. The Commission considers that there is scope to clarify and simplify the existing rules to make ECIs more accessible for EU citizens and less burdensome for their organisers. Most of the changes proposed are designed to streamline the ECI process. The most eye-catching is giving 16-year olds the right to support an ECI (currently they have to be of voting age). The Government told the Committee in December that it broadly supported the changes proposed but alluded to "timing and implementation" issues connected with the UK's exit negotiations. Since then, EU and UK negotiators have agreed a transition/implementation period which extends the application of EU law in the UK to 31 December 2020. In her latest update, the Minister for the Constitution (Chloe Smith) says that the ECI legislation will apply in the UK during a transition/implementation period but that UK nationals will not be able to take part as they will no longer be EU citizens from 30 March 2019. This is at odds with our understanding of the draft Withdrawal Agreement which provides that the ECI legislation will not apply during the transition/implementation period but makes clear that certain rights associated with EU citizenship will continue to apply until the end of 2020. The Minister is asked to explain this apparent contradiction, clarify the status of UK nationals during the transition/implementation period, and provide further information on the concept of "associated citizenship" mentioned in her letter.

Supervision of UK central counterparties after Brexit

The Committee has considered progress in the Government's efforts to block EU proposals that would allow it to force relocation of UK-based central counterparties—a crucial part of the market infrastructure for trade in derivatives—to the EU after Brexit. The latest

update from the Government shows that the UK has the support of Sweden and the US in opposing the proposals, but it appears likely the 'location powers' will appear in the legislation (which is due to be formally adopted in early 2019, after the Member States and the European Parliament have agreed on the definitive legal text). The Committee has drawn these developments to the attention of the Treasury Committee, and again expressed its concern over the apparent disconnect between the Government and the EU-27 over the scope and depth of any post-Brexit free trade agreement on financial services.

In June 2017, the European Commission presented proposals on EU regulatory oversight of central counterparties (CCPs) based outside the EU. CCPs are a crucial part of the market infrastructure for the trade in derivatives, which largely takes place in the UK. The proposals are driven by the perception that it would be unsafe for the EU to allow substantial volumes of CCP activity to take place outside of the EU's legal framework (called EMIR) when the UK leaves the Single Market, In the most extreme cases, the proposed legislation could allow the EU to require a British CCP to relocate to an EU country or ban them from servicing EU-based counterparties to a derivatives transaction.

The Government has opposed these proposals, arguing that they would "risk fragmenting global derivatives markets", which in turn would "increase the cost of trading and clearing, acting as a drag on growth and could discourage firms from hedging their risks using derivatives markets". Instead, it has called for a new "regulatory and supervisory model" between the EU and the UK after the latter leaves the Single Market, which would preserve cross-border market access in the CCP industry on a more permanent basis without the need for the UK to continue applying EU legislation on CCPs (over which it will have no say after 29 March 2019).

The Committee has now published a Report on the latest information received from the Treasury about negotiations on the proposal, which indicates that some form of the new 'location policy' powers will be maintained in the final legislation despite opposition from the UK, Sweden and the US. The main unresolved issue, therefore, is the exact requirements that must be fulfilled before the location policy could be invoked against British (and other non-EU) CCPs. While the Government has welcomed some amendments to the proposals by the European Parliament's Rapporteur, the Committee notes that those amendments are yet to receive any formal approval from the Parliament as a whole.

Finally, the Committee has considered the Government's broader approach to the post-Brexit flow of financial services between the UK and the EU. This is based on mutual recognition of regulatory standards which, in the case of CCPs, would obviate the need for any forcible relocation of a clearinghouse from the UK to the EU because the two would agree their respective regulatory frameworks offered the same degree of financial stability. However, there has been no indication from the EU that it is willing to consider such an approach and as recently as 26 April Michel Barnier said that "the EU cannot accept mutual market access without the common safeguards that underpin it", namely "EU rules [and] common EU supervision and enforcement tools".

Not cleared from scrutiny; further information requested; drawn to the attention of the Exiting the EU and Treasury Committees

European Defence Industrial Development Programme

The Committee has considered an update from the Ministry of Defence on the new European Defence Industrial Development Programme (EDIDP), part of the new European Defence Fund. It will co-finance the development of prototypes for new military technology from the EU budget. The Government is keen to ensure the UK defence industry has the option of participating in projects financed by the Fund after Brexit, but it appears unlikely UK companies could receive any EU funding directly and the MOD would have no input into the governance of the Fund (i.e. its priorities and funding decisions). The Committee has drawn these developments to the attention of the Defence Committee.

Not cleared from scrutiny; further information requested; drawn to the attention of the Defence and Business, Energy and Industrial Strategy Committees

Energy Performance of Buildings

The Commission proposed this Directive in December 2016 with the aim of accelerating the cost-effective renovation of the existing building stock. The Committee considered the Government's latest letter on this proposal, noting that the UK is largely content with the agreement but plans to abstain in the final vote on this proposal due to concerns about the introduction of a requirement for non-domestic buildings with large heating or air conditioning systems to have automation and control systems by 2025. Even though the requirement would apply only if it is economically and technically feasible, the Government considers that the requirement is not practical or proportionate. The Committee notes that the 20-month transposition period means that the UK will be required to transpose the legislation, but would be able—post-transition and subject to the outcome of negotiations on the future relationship—to amend the provision that the Government dislikes in advance of the 2025 deadline. As the proposal has now reached the end of the decision-making procedure and there are no outstanding issues, the Committee clears the proposal from scrutiny, while clarifying a number of matters. These include a request for the Minister to explain the decision to abstain rather than oppose.

Cleared from scrutiny; drawn to the attention of the Environment, Food and Rural Affairs Committee

Documents drawn to the attention of select committees:

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

Business, Energy and Industrial Strategy Committee: European Defence Industrial Development Programme (EDIDP) [Proposed Regulation (NC)]

Environment, Food and Rural Affairs Committee: Animal welfare and international competitiveness [Report (C)]

Exiting the European Union Committee: The European Citizens' Initiative [Proposed Regulation (NC)]; Brexit: EU supervision of UK-based central counterparties [(a) Proposed Regulation (NC), (b) Recommendation (NC)]

Health and Social Care Committee: Workplace safety: amendments to the Carcinogens and Mutagens Directive (Phase II and Phase III) [(a) Proposed Directive (NC), (b) Proposed Directive (NC)]

Defence Committee: European Defence Industrial Development Programme (EDIDP) [Proposed Regulation (NC)]

Treasury Committee: The Law Applicable to Assignment of Claims in the Capital Markets [(a) Proposed Regulation (NC), (b) Communication (NC)]; Brexit: EU supervision of UK-based central counterparties [(a) Proposed Regulation (NC), (b) Recommendation (NC)]

Work and Pensions Committee: Workplace safety: amendments to the Carcinogens and Mutagens Directive (Phase II and Phase III) [(a) Proposed Directive (NC), (b) Proposed Directive (NC)]

1 Mutual recognition of goods

Committee's assessment	Politically important
Committee's decision	(a) Not cleared from scrutiny; further information requested; (b) and (c) cleared from scrutiny
Document details	(a) Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State; (b) Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the Operation of Directive 2015/1535 from 2014 to 2015; (c) Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: The Goods Package: Reinforcing trust in the single market
Legal base	(a) Article 114 TFEU; (b)—(c)—
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (39393), 15965/17 + ADDs 1–6, COM(17) 796; (b) (39405), 5107/18 + ADD 1, COM(17) 788; (c) (39398), 16016/17, COM(17) 787

Summary and Committee's conclusions

1.1 The principle of mutual recognition, derived from Articles 34–36 of the Treaty on the Functioning of the European Union (Measures of equivalent effect) and the Court of Justice's landmark *Cassis de Dijon* ruling (Case 120/78) on the application of these articles, is a well-known element of the EU single market for goods. The principle provides that where harmonising EU-level product rules do not exist for a particular type of good—significant examples include shoes, furniture and tableware—then the Member States must accept the national technical standards of the Member State in which a good has been placed on the market as equivalent to their own, and cannot restrict its circulation within the single market by imposing additional technical requirements at national level.

1.2 However, the principle of mutual recognition is not an absolute: Member States are permitted to derogate from the principle if they can demonstrate that a product is not safe or does not respect the public interest. The principle only applies to approximately 25%[1] of products on the EU market for which harmonised standards do not exist; where harmonised EU product standards exist, there is no mutual recognition of national technical standards, as these have been approximated by EU law.

1.3 A further limitation of the mutual recognition principle concerns its implementation. A 2015 Commission evaluation found that mutual recognition was not functioning as well as it should, with some Member States introducing additional requirements

1 European Commission, Evaluation of the Application of the mutual recognition principle in the field of goods, p31 (June 2015). A European Parliament briefing paper states that non-harmonised products represent 31% of the overall value of industrial products in the internal market.

and duplication of testing. If Member States deny a product access to their market for illegitimate or disproportionate reasons, and the SOLVIT[2] procedure does not resolve the issue, challenging national decisions through the courts can be costly and time-consuming, particularly for Small and Medium Businesses. The effect of this is that, in many cases, manufacturers end up adapting their product to comply with host country regulations at additional cost, or choosing not to enter a new market.

1.4 In response to these concerns, as part of a wider Goods Package, the Commission has published a proposal for a regulation on the mutual recognition of goods which would replace the current piece of secondary legislation which seeks to improve the implementation of the mutual recognition principle, Regulation 764/2008. The principal changes proposed are:

- *The introduction of a voluntary mutual recognition declaration*. This declaration would include set information about the product being marketed, such as a description of the good and the applicable regulation in the Member State where it is lawfully marketed. The declaration should be accepted by a competent authority as sufficient to demonstrate that the goods are lawfully marketed in another Member State;

- *The introduction of a problem-solving procedure* which will apply if an economic operator is affected by an administrative decision to suspend the availability of their good on the domestic market of a Member State. This procedure would permit the home SOLVIT Centre to ask the Commission to give an opinion to assist in solving the case. The Commission's opinion will identify concerns and make recommendations to assist in solving the case, and be taken into account in the SOLVIT procedure. If the Commission identifies systemic problems with application of the principle, it retains the option of using its existing enforcement powers to initiative infringement proceedings under Article 258 TFEU; and

- *Provisions to strengthen the role of Member State Product Contact Points (*PCPs*).* The proposal further specifies the roles of PCPs in facilitating the application of the mutual recognition principle by explicitly requiring them to provide online information on its application in their territory, and the remedies available in case of a dispute. The proposal also calls for administrative cooperation between national authorities and PCPs of different Member States, with information being relayed through the 'Union information and communication support system'.

1.5 The Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy (Lord Henley) informs the Committee in his Explanatory Memorandum that the Government supports the proposal's objective of better implementing the mutual recognition principle and thereby facilitating the free movement of non-harmonised goods. The Minister is particularly supportive of the voluntary mutual recognition declaration, which he considers has the potential to address the lack of a common approach among Member States for demonstrating that a product should benefit from the MRP, and also supports the provisions to enhance the role of Member

2 SOLVIT is an informal dispute-resolution network which enables EU citizens and businesses are breached by public authorities in another EU country. The SOLVIT service is provided by the national administration in each EU country and in Iceland, Liechtenstein and Norway.

State Product Contact Points (PCPs) on the basis that the quality of online information they provide can vary. In his assessment, the proposal complies with the principles of proportionality and subsidiarity.

1.6 Regarding EU exit, the Minister observes that businesses based outside the single market can still benefit from the free movement of non-harmonised goods under the mutual recognition principle once they have legally marketed a product in one Member State. As such, he concludes that improving the implementation of mutual recognition within the EU is in the interest of the UK because it will enable UK goods (as third country goods) to circulate freely once inside the EU.

1.7 On a wider level, mutual recognition has become an important element of the Article 50 negotiations regarding the framework for the future economic partnership: the Prime Minister indicated in her speech at Mansion House that the Government seeks a "comprehensive system of mutual recognition", which would exceed what is on offer either within the EU or to third countries outside the single market. Commission officials have suggested that this proposal is not compatible with the EU legal order, although the matter remains subject to negotiation.

1.8 The background section of this report provides an overview of mutual recognition of goods within the single market, the EU's existing mutual recognition arrangements with third countries, and the UK and the EU's public positions on this issue in the Brexit negotiations.

1.9 **We have taken note of the Government's support for the proposed regulation, which aims to improve implementation of the mutual recognition principle within the EU, and thus make it easier for manufacturers to export to other Member States without having to comply with additional technical rules in the country-of-destination. This proposal will benefit UK businesses as long as the UK remains a Member State, as well as during the proposed implementation period.**

Brexit and EU mutual recognition of non-harmonised product standards

1.10 **We share the Minister's view that, post-exit, UK businesses will "still benefit from the free movement of non-harmonised goods under the MRP, once they have legally marketed a product in one Member State". However, the Minister's analysis implicitly acknowledges that, post-exit, UK businesses would not benefit from the mutual recognition principle as they do at present.**

1.11 **In the absence of any new arrangements, when the UK becomes a third country vis-à-vis the European Union:**

- **the principle of mutual recognition of non-harmonised goods within the EU will cease to apply to products placed on the UK market: authorities in the EU27 will no longer have to recognise as equivalent to their own the UK technical rules based on which goods were placed on UK market, and will be able to require that goods from the UK comply with their own state's national technical rules, before they are placed on their market;**
- **UK businesses will not be able to directly access the range of EU-related systems which support the implementation of the mutual recognition**

principle, including the procedures established by the Mutual Recognition Regulation, the SOLVIT network, and the problem-solving procedure which would be introduced by the present proposal; and

- **after the end of the implementation period, UK businesses, like all other third country economic operators, *will* be able to benefit from the mutual recognition principle once they have placed a product on the market of any one EU Member State in line with that state's national technical requirements. Once they have done so, UK businesses will also be able to benefit from the various intra-EU rights, systems and procedures which support the implementation of the mutual recognition principle, although to do so they will have to use the facilities of the host EU Member State (e.g. the SOLVIT office/notification mechanism in the host country).**

1.12 **We conclude that, although the increased complexity of benefiting from the mutual recognition principle post-exit will increase the costs and bureaucracy incurred by some UK businesses, the fact that they will be able to continue to benefit from the principle to some extent, taken with its imperfect state of implementation and the fact that it only applies to approximately 25% of goods, means that we do not consider this added difficulty to be a major concern. The more salient issue concerns UK-EU trade in goods for which harmonised EU product rules exist.**

Divergent conceptions of mutual recognition

1.13 **We note the Prime Minister's preference for the future UK-EU economic partnership to contain a "comprehensive system of mutual recognition" under which some regulatory divergence would be permitted, but reciprocal market access would be maintained on the basis that both regulatory systems would seek to achieve the same outcomes: "UK law may not necessarily be identical to EU law, but it should achieve the same outcomes." More fundamental divergence would result in reduced market access.**

1.14 **To avoid confusion, it is important to differentiate this proposed UK-EU form of mutual recognition from (i) that which currently exists within the EU and (ii) existing EU mutual recognition arrangements with third countries.**

1.15 **In terms of the EU's current approach to mutual recognition of product standards *within the internal market*, we observe that:**

- **where harmonised EU product standards do not exist, the mutual recognition principle applies, meaning that national technical rules of one EU Member State must, in principle, be recognised as equivalent by another; and**
- **where the EU has introduced harmonised product rules EU the mutual recognition principle does not apply: EU businesses must simply comply with those EU rules.**

1.16 **In terms of the EU's current approach to mutual recognition of product standards *vis-à-vis third countries*, we observe that:**

- **if third country businesses wish to take advantage of the intra-EU system of mutual recognition which applies to non-harmonised goods, they must first place a product on the market of one EU Member State in compliance with the national technical rule of the state in question;**
- **where the EU has introduced harmonised requirements for a product, third country operators must (like EU operators) comply with these requirements;**
- **existing EU Mutual Recognition Agreements (MRAs) with third countries do not provide for mutual recognition of substantive product rules:**
    - **EU Mutual Recognition Agreements which relate to industrial products with third countries allow conformity-assessment bodies in third countries to certify conformity with harmonised EU product requirements for a limited range of goods, and do not involve mutual recognition of regulatory standards between the EU and the third country;**
    - **Switzerland's unique "enhanced" Mutual Recognition Agreement required Switzerland to unilaterally incorporate relevant EU law into domestic law, meaning that it does not provide substantive mutual recognition of regulatory standards either; and**
    - **agreements on Conformity Assessment and Acceptance (ACAAS), such as that with Israel on pharmaceuticals, also require full alignment with EU rules for the products covered.**

1.17 **The Commission's public position on mutual recognition in the context of the UK's withdrawal from the EU has been to emphasise that it is an intra-EU arrangement which is complemented by harmonised rules; that the EU's mutual recognition agreements with third countries respect the regulatory autonomy of both parties' legal orders and do not entail substantive mutual recognition of regulatory standards; and that mutual recognition within the EU is enabled by a pooling of sovereignty which involves the creation of a regulatory union as well as common institutions including the Court of Justice of the European Union (CJEU).**

1.18 **In our assessment this final point is not overstated: the principle of mutual recognition within the EU was given effect by a ruling of the CJEU, the principle's functioning continues to depend on the Court's clarification of the scope of derogations from the principle that are permitted, and its operation is enabled by a notification mechanism which requires Member States to submit draft technical rules to scrutiny by the Commission and other Member States, and provides for sanctions in the event of non-compliance. The extensive nature of the regulatory environment which oversees the operation of the mutual recognition principle calls into question the extent to which the mutual recognition of the substantive product rules of third countries is compatible with the EU's single market.**

1.19 **A further difficulty is that a truly comprehensive system of substantive mutual recognition of regulatory standards, including those products for which harmonised EU rules exist, would go much further than what currently exists even within the single market, in which EU Member States must themselves comply with harmonised EU rules. One consequence of this would be that the UK would retain full market access while gaining some freedom to diverge, whereas EU Member States (and all other third countries) would remain obliged to conform with EU product rules when placing goods on the market.**

1.20 **We conclude that the UK and the EU's visions of the level of mutual recognition that is possible within the future economic partnership diverge so considerably that it may not be possible for the negotiators to find a middle ground. The Government may therefore eventually face a choice between two things: either a conventional Mutual Recognition Agreement which would enable UK conformity assessment bodies (CABs) to certify conformity with EU product rules and vice-versa, or a market integration agreement which would require *de facto* continued adherence to EU rules.**

1.21 **We ask the Government to respond to the following questions:**

- **Which sectors have generally been excluded from standard EU Mutual Recognition Agreements and why?**
- **If substantive mutual recognition of regulatory standards cannot be secured within the future economic partnership, to what extent would a standard Mutual Recognition Agreement between the UK and the EU, that permitted UK authorities to certify compliance with EU standards within the UK, with similar sectoral coverage to the EU-Canada Comprehensive Economic and Trade Agreement (CETA), satisfy UK needs?**
- **To what extent would UK needs be satisfied by a standard EU Mutual Recognition Agreement which was significantly more comprehensive in the range of sectors covered?**
- **While we note that Agreements on Conformity Assessment and Acceptance of Industrial Products (ACAAs) require full alignment with EU rules in the sectors covered, is there any difference in the Government's assessment of the degree of alignment that such agreements require compared to "enhanced" MRAs such as the EU-Switzerland agreement?**

1.22 **We ask that the Government respond to these questions by 13 June 2018. In the meantime, we retain the proposal under scrutiny and draw this report to the attention of the Committees for Business, Energy and Industrial Strategy and the Committee for Exiting the European Union.**

1.23 **We are aware that rapid progress has been made on the proposed Regulation in Council Working Groups and expect an update from the Government imminently regarding a possible General Approach in Council, to which we will endeavour to respond promptly.**

Full details of the documents

(a) Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State: (39393), 15965/17, COM(17) 796; (b) Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the Operation of Directive 2015/1535 from 2014 to 2015: (39405), 5107/18, COM(17) 788; (c) (39398) 16016/17 COM(17) 787.

Background

1.24 For a full account of the spectrum of mutual recognition arrangements globally, the OECD has published a working paper, The contribution of mutual recognition to international regulatory co-operation. The EU's 'Blue Guide' on the implementation of EU products rules 2016 provides a comprehensive overview of the EU's internal and external approaches to mutual recognition. Jacques Pelkmans' Mutual recognition in goods and services: an economic perspective, provides an appraisal of the development of the principle within the EU.

The EU mutual recognition principle

1.25 The mutual recognition principle (MRP) is a well-known element of the Single Market for goods. This principle, also known as the presumption of equivalence or mutual recognition, was established by the Court of Justice's landmark Cassis de Dijon ruling (Case 120/78) which established that, for those products where the EU has *not* replaced national rules with harmonising EU-wide legislation, goods lawfully marketed in one Member State can be sold in another Member State without having to comply with technical rules at national level, as to do otherwise would constitute an unjustified restriction on trade (or 'measure of equivalent effect'). In effect, each Member State must recognise other Member States' standards as equivalent to their own.

1.26 This regulatory approach effectively replaces a situation of dual regulation (in which manufacturers must comply with two different sets of national technical rules in order to operate in both markets) with one of 'home country' or 'country-of-origin' regulation, reducing the amount of red tape with which manufacturers must comply, and making it easier for manufacturers to export their goods to other Member States. The rationale of this regulatory approach is that it can effect deep market integration while respecting 'diversity' amongst the participating countries, and avoiding the need for exhaustive, prescriptive regulation where it is unnecessary.

1.27 However, the mutual recognition principle is not an absolute within the EU, as certain exceptions to it are permitted. The EU's 'Blue Guide' explains that products lawfully produced and/or marketed in another Member State do not enjoy the right of mutual recognition "if the Member State of destination can prove that it is essential to impose its own technical rule on the products concerned based on the reasons outlined in Article 36 TFEU (protection of public morality or public security, protection of the health and life of humans, animals or plants, etc.) or in the mandatory requirements developed in the Court's jurisprudence and subject to the compliance with the principle of proportionality". Despite this flexibility, the Court of Justice of the European Union has been active in defining what constitutes a justified derogation, and derogations from

the principle must meet various requirements—i.e. they must be non-discriminatory on grounds of nationality, be justified by a detailed risk analysis, and that any intervention is necessary and proportionate.

1.28 Furthermore, the mutual recognition principle does not apply to products for which harmonised EU requirements exist, which account for approximately 69% of goods on the EU market.[3] In such cases, divergent national standards are replaced with a single EU standard with which manufacturers must comply. Although the regulatory approaches of harmonisation and mutual recognition are therefore mutually exclusive, they are also complementary: if Member States frequently apply derogations to a particular type of non-harmonised product, with the effect that mutual recognition does not work in practice for this product, then the Commission may consider introducing harmonised rules to facilitate the free movement of goods.

1.29 Two pieces of secondary EU law are of particular relevance to the functioning of the principle of mutual recognition. Regulation 764/2008, the Mutual Recognition Regulation, seeks to ensure the effective implementation of the principle. This regulation defines the rights and obligations of national authorities and businesses where the former intend to refuse market access to a product lawfully marketed in another Member State, and covers administrative decisions based on a technical rule that lead to the prohibition of market placement or require additional testing of products before their placement or withdrawal.

1.30 Key effects of the Mutual Recognition Regulation are:

- to require Member States to make clear the product categories to which mutual recognition applies;
- to require Member States to maintain product contact points providing free information on any national rules that apply to non-harmonised goods;
- to place the burden of proof on the national authorities that intend to deny market access: they must set out in writing the precise technical or scientific reason for their intention to deny the product access to the national market in a written notice which must be produced within a specified deadline;
- to ensure that such notices include the relevant technical or scientific evidence justifying their intention, and explain how the authorities' decision is justified by overriding reasons of public interest and why no less trade-restrictive measures can be taken;
- to require national authorities to begin a dialogue in which the economic operator has the opportunity to defend its case and submit evidence; and
- to require each Member State to set up 'product contact points' (at least one per country), which provide information about technical rules, advice on prior authorisation, give contact details for responsible authorities and advise on remedies available in case of dispute.

3 A European Parliament briefing paper suggests that non-harmonised products represent 69% of the overall value of industrial products in the internal market, implying that non-harmonised products account for the remaining 31%. As noted above, a European Commission evaluation report cites estimates that harmonised standards do not exist for 25% of products on the EU market.

1.31 Also important to the functioning of the mutual recognition principle is the notification procedure laid down by Directive 2015/1535, the Single Market Transparency Directive. It requires the Member States to notify to the Commission draft national technical regulations at least three months in advance of their proposed adoption (the "standstill" period). Once a measure is notified, the Member States and the European Commission can examine the text and deliver a detailed opinion or comment, seeking clarification, modification or withdrawal of the draft legislation. The main purpose of the notification procedure is to prevent the creation of new barriers to the internal market before they have been put in place and have produced any negative effects. Any technical requirements must be proportionate and the minimum necessary to achieve the aim of protecting the public. All notifications are available to view on the Commission's Technical Regulations lnformation System (TRIS), which is publicly available and so enables stakeholders to review proposals and submit their views via their Member State.

1.32 A recent Commission report concluded that the notification procedure continues to demonstrate its value and to reduce likelihood of protectionist national technical legislation being put in place.

Mutual recognition in the context of EU exit

The Government's vision for mutual recognition

1.33 In her Mansion House speech on 2 March 2018 the Prime Minister said that, in order for UK-EU trade to remain frictionless, the Government wished to ensure that "as now, products only need to undergo one series of approvals, in one country, to show that they meet the required regulatory standards" and that, to achieve this, a "comprehensive system of mutual recognition" would be needed. The Prime Minister said that, for this arrangement to work, UK and EU regulatory standards would have to remain "substantially similar" in the future in terms of the outcomes that they sought to achieve, but that some regulatory divergence should be permitted within this: "Our default is that UK law may not necessarily be identical to EU law, but it should achieve the same outcomes." The Prime Minister noted that, in some cases, Parliament might choose to pass an identical law to the EU; in others, it might choose to diverge more fundamentally, without aiming to achieve the same regulatory outcomes, which would have "consequences for our market access."

1.34 The Prime Minister accepted that there would need to be "an independent mechanism to oversee these arrangements", which would therefore not fall within the direct jurisdiction of the Court of Justice of the European Union.

1.35 As well as mutual recognition of regulatory standards of goods, the Prime Minister's proposed comprehensive system would also encompass mutual recognition of regulatory standards in a range of service sectors. This report confines itself to consideration of mutual recognition of product standards.

The EU position on mutual recognition

1.36 The European Commission's Article 50 Task Force's slides on regulatory issues constitute the clearest exposition of its position on the subject of mutual recognition in the context of negotiations with the UK.

1.37 The slides emphasise that the EU's internal market, which facilitates the operation of the four freedoms, including the free movement of goods, is an "ecosystem" of regulatory instruments and structures. Within the Single Market, sovereignty is pooled, meaning that there is deep regulatory integration—comprising full EU-level harmonisation of product rules and compliance methods, with mutual recognition of national rules where this is not the case—underpinned by an integrated regulatory, supervisory, judiciary and enforcement system.

1.38 Subsequent slides differentiate the intra-EU regime from its agreements with third countries. In contrast to the EU regime, the Commission argues that its Free Trade Agreements with third countries do not entail any significant pooling of sovereignty, meaning that two separate regulatory spaces continue to exist. In this situation, there is "no harmonisation" of rules between the two parties to the agreement, and "no mutual recognition/equivalence of substantive rules", only "limited mutual recognition of conformity assessment results with host rules". Reciprocal recognition is confined to verifying compliance with host state rules: the opposite of mutual recognition.

1.39 The remainder of the slides reiterate these points in relation to a variety of sectors, stating that:

- FTAs preserve EU decision-making autonomy, which means that although "mutual recognition of certain conformity assessment results [is permitted] in some areas" there is "no mutual recognition of substantive rules, autonomy of regulatory approval";
- FTAs entail "no mutual recognition of substantive rules, autonomy of regulatory approval: e.g. Cars; Chemicals; Pharma; SPS [sanitary and phytosanitary] area";
- For automotive, "no general mutual recognition or equivalence of regulatory frameworks" is granted, although a more limited form of mutual recognition of component approvals and tests under UNECE would apply by default;
- For chemicals, outside the EU's fully harmonised system (REACH), FTAs provide "no mutual recognition / equivalence", "operators exporting chemicals from the UK to the EU must comply with REACH fully", and the registration of substances by an operator established in the EU-27 would be a pre-requisite for access to the EU market; and
- For trade in agri-food, certain arrangements in FTAs do provide for preferential market access based on trust, for example through setting up the conditions for recognition of certain production standards and establishing common principles for co-operation, but that these agreements "do not amount to 'mutual recognition' of product standards, labelling of food, food ingredients, etc." or "remove mandatory border controls and country specific approval processes."

1.40 A more detailed account of the EU's current "mutual recognition" arrangements with third countries is provided below.

EU 'mutual recognition' arrangements with third countries

(i) Mutual recognition agreements (MRAs)

1.41 Traditional mutual recognition agreements, which can be found in standalone mutual recognition agreements (MRAs) or embedded in trade deals, acknowledge the differences between two regulatory regimes and permit the Conformity Assessment Bodies (CABs) of one party to locally test and certify that a product complies with the other party's regulations.

1.42 An Institute for Government paper explains that such conformity assessment agreements only deal with one aspect of regulatory barriers: those created by duplication of testing and certification at the border. Neither the regulatory objectives, nor the technical requirements, nor the conformity assessment procedures are the same or 'equivalent'. They do not entail mutual recognition/equivalence of different regulatory standards, as occurs within the Internal Market.

1.43 Such MRAs are also typically quite limited in their scope: the Commission web-page which summarises its MRAs with third countries shows that no EU MRA covers chemicals, while its MRA with the US covers only safety tests for electrical goods and radio equipment.

(ii) The EU-Swiss MRA

1.44 As part of its wider arrangements with the EU, Switzerland and the EU have a unique "enhanced" MRA, which, according to an Institute for Government report provides Switzerland "near-complete" access to the Single Market for industrial goods in those sectors in which it is deemed equivalent. However, as outlined in the Blue Guide on implementation of EU product rules, this agreement involves the harmonisation of Swiss technical regulations with those of the EU:

> "Switzerland has chosen to modify its legislation in the sectors covered by the agreement, in order to align it with that of the Union. Furthermore, it has committed to maintain its legislation aligned whenever amendments to it are introduced by the Union to the applicable EU legal framework."

1.45 As such, the enhanced MRA that forms part of the wider bilateral EU-Swiss relationship constitutes a market integration agreement, in which Switzerland applies EU regulatory product standards to its own market, rather than an agreement in which there is substantive mutual recognition of divergent regulatory standards.

(iii) Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA)

1.46 As set out in the European Commission's Blue Guide on the implementation of EU product rules, ACAAs are based on "mutual recognition of equivalence in technical regulation, standardisation and conformity assessment" and allow industrial products

covered by the agreements and attested as compliant with the procedures in the European Union to be placed on the market of the partner country without having to undergo any further approval procedures, and vice versa.

1.47 ACAAs consist of a framework agreement and one or more annexes, setting out the products covered, and the means adopted to extend the benefit of trade in that sector. The framework agreement provides for two mechanisms: (a) the recognition of equivalence in technical regulation, standardisation and conformity assessment for industrial products subject to equivalent regulation in Union law and the national law of the partner country, and (b) the mutual acceptance of industrial products that fulfil the requirements to be lawfully placed on the market in one of the Parties in cases where there is no European technical legislation applicable to relevant products.

1.48 The Commission's guidance states that an ACAA "requires the prior full alignment of the partner country's legal framework with EU legislation and standards and the upgrading of the implementing infrastructure in line with the model of the EU system, in relation to standardisation, accreditation, conformity assessment, metrology and market surveillance." The alignment required is described as similar to that of Candidate countries seeking to accede to the EU.

1.49 The Institute for Government states that existing ACAAs, such as the EU-Israel ACAA which covers pharmaceutical products, have "required the third country to accept EU rules for certain products, in return for allowing these products to be sold in the EU market without checks required at the border." As such, existing ACAAs constitute, like the Swiss enhanced MRA, a market integration agreement with the EU, rather than an agreement in which there is mutual recognition of substantially divergent regulatory standards.

(iv) Technical Barriers to Trade chapters in FTAs

1.50 Chapters on Technical Barriers to Trade in Free Trade Agreements maintain the autonomy of the regulatory orders of both parties to the agreement, but provide for targeted mutual recognition of results of conformity assessment in line with host country rules. For example, under the CETA Protocol on Conformity Assessment, a designated conformity assessment body in the EU can test EU products for export to Canada according to Canadian rules and vice versa. In all cases these conformity assessments are checking compliance with host country rules, meaning that there is no substantive mutual recognition of divergent regulations.

1.51 Products covered by the CETA Protocol on Conformity Assessment include:

- electrical and electronic equipment, including electrical installations and appliances, and related components;
- radio and telecommunications terminal equipment;
- toys;
- construction products;

- machinery, including parts, components, including safety components, interchangeable equipment, and assemblies of machines;
- measuring instruments;
- hot-water boilers, including related appliances;
- equipment, machines, apparatus, devices, control components, protection systems, safety devices, controlling devices and regulating devices, and related instrumentation and prevention and detection systems for use in potentially explosive atmospheres (ATEX equipment);
- equipment for use outdoors as it relates to noise emission in the environment; and
- recreational craft and their components.

1.52 This list can be broadened to additional categories of goods in the future, subject to agreement by both parties.

The Trans-Tasmanian MRA

1.53 Apart from the EU's internal system of mutual recognition of non-harmonised goods, the only major mutual recognition arrangement is the Trans Tasmanian Mutual Recognition Agreement between Australia and New Zealand. This deal excludes vehicles and pharmaceuticals, and can be revoked by one side for up to a year. An OECD study on regulatory cooperation notes that both the EU and Trans-Tasman systems of mutual recognition are made possible through a "uniquely deep form of economic integration and common institutional frameworks". The OECD report also notes that, as with the EU's system of mutual recognition, the mutual recognition principal "is embedded in a more extensive system of mutual market access, which also makes use of harmonisation and selective centralisation".

Previous Committee Reports

None.

2 Market surveillance

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council
Legal base	Articles 33 (customs co-operation), 114 (internal market), and 207 (common commercial policy) TFEU; OLP; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39394), 15950/17 + ADDs 1–11, COM(17) 795

Summary and Committee's conclusions

2.1 The European Commission has introduced a package of measures on the Single Market for Goods which it intends to make it easier for companies to sell their products across Europe, and to strengthen controls by national authorities and customs officers to prevent unsafe products from being sold to European consumers.

2.2 As part of this package, an amending Regulation is proposed which sets out a range of provisions aimed at increasing the levels of deterrence to non-compliant economic operators, increasing market surveillance, strengthening the controls on products entering the EU, and offering incentives for regulatory compliance.

2.3 The proposal would replace the market surveillance provisions of the 2008 Regulation on Accreditation and Market Surveillance (RAMS).

2.4 Key new elements in the compliance and enforcement proposal include:

- increased co-operation and sharing of responsibilities between market surveillance and customs authorities;
- defined minimum powers for national market surveillance authorities;
- establishment of an EU Product Compliance Network to increase co-operation between national market surveillance authorities;

- introduction of a new system of pre-export checks and controls on products entering the EU from third countries with the intention of expediting legitimate trade; and
- the mandatory presence within the EU of a person responsible for proving compliance information to competent authorities before a product can be made available.

2.5 In a detailed Explanatory Memorandum the Minister of State for Consumers at the Department for Business, Energy and Industrial Strategy (Andrew Griffiths) says that the Government supports measures which address non-compliant products, but indicates that it intends to investigate various aspects of the proposal to ensure that they are proportionate, not overly prescriptive, and will not constrain UK market surveillance authorities.

2.6 **We have taken note of the Minister's assessment of the proposed amending Regulation, which seeks to achieve increased consistency in the enforcement of EU product rules across the single market. We note that the Government supports better enforcement of single market rules, that a minimum harmonisation approach is proposed, and that the Minister's subsidiarity assessment concludes that the proposed policy objective can only be achieved at EU level.**

2.7 **Nonetheless, given the wide-ranging nature of the proposal and the lack of clarity about some of its impacts, we welcome the Government's intention to critically evaluate the proposal in order to determine whether specific provisions within it are necessary, proportionate, allow sufficient national flexibility, and would not restrict the competence of UK surveillance authorities to act. We request an update on the Government's analysis in this regard, highlighting any areas in which concerns remain and how the Government intends to proceed. We particularly request an update regarding the Union Product Compliance Network—potentially the most problematic aspect of the proposal in our assessment—including an assessment as to whether it could limit the ability of the Member States and their competent authorities to act, and an indication of how the Government intends to proceed regarding this aspect of the proposal.**

2.8 **The proposed Regulation would have implications for the UK post-exit. A system of pre-export checks and controls is proposed (the detail of which will be specified in a subsequent implementing act) which could reduce the need for compliance checks at the EU's external borders. Conversely, it proposes to reduce the number of non-compliant goods entering free circulation at the EU's external borders, which could conceivably lead to increased checks at its external borders. A requirement would be introduced for there to be established within the Union a person responsible for proving compliance information to competent authorities before a product can be made available, which would have cost implications for UK-based businesses post-exit.**

2.9 **In relation to these implications, we ask the Government:**

- **to clarify how it intends to proceed regarding the proposal to mandate the presence of a person responsible for proving compliance within the Union; and**

- **to quantify how and to what extent those provisions of the draft Regulation which would affect regulatory activity at the border (i.e. improved enforcement of product standards at the EU's external borders to prevent non-compliant goods being placed on the market, and the introduction of a system of pre-export checks and controls) are expected to alter the level of checks for industrial goods which will have to take place at the EU's external borders, including the land border on the island of Ireland.**

2.10 **We retain this proposal under scrutiny, and request a response by 20 June 2018, or sooner if progress in Council necessitates it.**

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council.: (39394), 15950/17 + ADDs 1–11, COM(17) 795.

Background

2.11 The functioning of the UK's system of market surveillance in the context of the EU regulatory framework is set out in the UK National Market Surveillance Programme 2016–17. Within the UK:

- consumer safety and construction products are the responsibility of the UK's Local Authorities (Trading Standards in Great Britain and District Councils in Northern Ireland);
- safety of goods for workplaces are the responsibility of the Health and Safety Executive (HSE) in Great Britain and the Health and Safety Executive for Northern Ireland (HSENI);
- Medical Devices Regulations and related legislation (which includes products for professional use) are enforced by the Department for Health's (DH) specialist Medicines and Healthcare products Regulatory Agency (MHRA); and
- automotive related products are the responsibility of the Driver & Vehicle Standards Agency (DVSA).

The Government's view

2.12 The Minister of State at the Department for Business, Energy and Industrial Strategy (Andrew Griffiths) indicates in the Government's Explanatory Memorandum that the Government supports measures which address non-compliant products, but that the

proposal is more prescriptive than the current framework and that careful analysis is necessary of each of its elements, to determine whether they are warranted and "whether voluntary measures would be more effective".

2.13 The chief elements of the Commission's proposal are summarised below, with the Government's views interleaved.

(i) Market surveillance organisation: single liaison office and mutual assistance procedure

2.14 Member States would still determine the internal organisation of their market surveillance authorities, however the proposal sets out at a high-level their obligations as regards organisation of market surveillance within their territory, including specifying the types of procedures they must establish, and general principles for the activities of market surveillance authorities (e.g. that measures be proportional and authorities take a risk-based approach and act with transparency, independence and impartiality).

2.15 Two specific requirements are introduced, with the aim of facilitating better coordination and more effective cross-border enforcement in the event of non-compliance:

- *Member States would be required to designate a single liaison office,* which must be an existing market surveillance authorities or other competent authority, which would be responsible for coordinating enforcement and market surveillance activities within their territory and cross-border; and

- *A mutual assistance procedure is introduced*, whereby surveillance authorities in Member States may request either information or that enforcement measures be taken. These requests must be sent to the single liaison offices in both countries, using the information and communication system that the proposed Regulation would create. The proposal also provides that evidence obtained in one Member State may be used in another Member State, and that products deemed to be non-compliant on the basis of a decision taken by market surveillance authorities in one Member State should be presumed to be non-compliant by market surveillance authorities in another Member State, unless the concerned economic operator can provide evidence to the contrary.

2.16 The Government does not raise any specific concerns about these aspects of the proposal, but the Minister notes that the Government will carefully evaluate the extent to which the proposed measures are necessary.

(ii) Market surveillance powers and measures

2.17 Article 14 of the Regulation would harmonise the minimum powers of national market surveillance authorities. These would include:

- the power to access data and documents related to an instance of non-compliance;

- the power to carry out on site inspections;

- the power to make test purchases and carry out mystery shopping;

- the power to require economic operators and public entities to provide all information related to an incidence of non-compliance; and
- the power to impose penalties and order the recovery of profits obtained as a result of non-compliance.

2.18 Article 20 of the Regulation also permits the Commission to designate Union testing facilities for specific products or a specific category or group of products or for specific risks related to a category or group of products which are made available on the market.

2.19 The proposal is not a maximum harmonisation and Member States would retain freedom to grant their national market surveillance authorities additional powers. Member States would also retain the freedom to determine whether the competent authorities would exercise the powers directly or by application to national courts.

2.20 While the Government agrees that a more consistent approach to enforcement would send a clear message to economic operators, the Minister emphasises that "it will also be important that the powers do not have unintended consequences". Regarding the proposal for market surveillance authorities to have the power to order the recovery of profits obtained as a result of non-compliance, the Minister states that the Government's approach will be to ensure that the provisions "allow national flexibility to ensure proportionality of approach".

(iii) Union Product Compliance Network

2.21 It is proposed that an EU Product Compliance Network be created within the Commission which would be responsible for coordinating market surveillance cooperation at EU level. The network would consist of representatives of the Commission, national single liaison offices, competent national surveillance authorities, and, in some cases, representatives of business and consumer associations.

2.22 Article 33 of the Regulation identifies a wide range of "coordinated enforcement tasks" for the Commission, including:

- supporting the functioning of the Product Contact Points;
- coordinating the activities of the single liaison offices; and
- organising cooperation and the effective exchange of information and best practices between market surveillance authorities.

2.23 The tasks of the Union Product Compliance Network Board, which would consist of one representative from each of the national single liaison offices referred to in Article 11, and two representatives from the Commission, would include:

- defining the priorities for common market surveillance actions; and
- ensuring the coordination and monitoring of the administrative coordination groups and their activities.

2.24 Although the Government supports measures that would increase cooperation between the market surveillance authorities of Member States, the Minister states that

the Government is concerned that this group might be indirectly empowered to impose obligations on market surveillance authorities that could remove competence from national governments. The Government will scrutinise the proposals to ensure that the network and its membership will support good market surveillance, rather than directing it.

(iv) Information and communication systems

2.25 The proposal also sets out measures for maintaining and developing the existing Information and Communication System for Market Surveillance (ICSMS). An electronic interface would also be developed to allow the effective exchange of information between national customs systems and market surveillance authorities. The Union Product Compliance Network will be placed in charge of maintaining this system, which would collect and store information on the enforcement of Union harmonisation legislation on products. The system is available to the Commission and market surveillance authorities in the Member States and will have a public interface. The detailed operation of this system will be set out in implementing acts.

(v) Products entering the Union market

2.26 On the basis that the most effective way to ensure that unsafe products are not placed on the market is to carry out adequate checks before they are released for free circulation, a requirement is introduced for market surveillance authorities to provide customs authorities with information on categories of products or the identity of economic operators where a higher risk of non-compliance has been identified.

2.27 The Minister states that the Government supports a risk-based approach to market surveillance and controls at the border, and that "it will closely analyse the proposal to ensure that the actions proposed are proportionate."

(v) Framework for international cooperation

2.28 The proposal also sets out a framework for international cooperation with third countries.

2.29 This would include a system for *product related pre-export controls* carried out by a third country on products, before they are exported to the Union. The details of the implementation of this system will be established by implementing acts.

2.30 The Minister notes that the effect of the proposed system would be to reduce the number and frequency of import controls for certain products or categories of product if they satisfy the requirements set out in EU harmonisation legislation, where the controls carried out in those third countries are considered sufficiently effective and efficient. He states that the Government is broadly supportive of these measures, which it considers will expedite legitimate trade with countries outside the Union.

2.31 The Commission proposal would also give it the power to *exchange market surveillance related information with the regulatory authorities of third countries and organisations*, also

with a view to ensuring compliance prior to their export of products to the Union market. The Minister indicates that the Government will need to consider the full implications of this aspect of the proposal as the UK's relationship with the EU changes.

(vi) Responsible person

2.32 For products subject to EU harmonisation legislation, Article 4 of the proposal would require a person responsible for compliance information to be established in the EU to engage and communicate with market surveillance authorities. The proposal states that the person responsible for compliance information can be the manufacturer, an importer or another natural or legal person with a written mandate from the manufacturer but that, whichever of these roles the person occupies, they must be established in the Union.

2.33 The Minister states that the Government will analyse this aspect of the proposal to ensure that this is managed in a way that does not compromise business growth, in particular small businesses.

2.34 In an update to the Lords which was shared with the Committee, the Minister explains that:

- the Commission has explained to the Council Working Party that this measure is intended to ensure that EU Market Surveillance Authorities have fast and easy access to a named person who is responsible for compliance information;
- it has cited concerns that this information can be difficult to obtain and that in some cases it has been impossible to contact key actors in the supply chain and that it is difficult for market surveillance authorities to take appropriate enforcement action as a result; and
- the UK and other Member States are discussing the potential implications of this measure with the Commission.

Previous Committee Reports

None.

3 The European Citizens' Initiative

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Committee on Exiting the European Union
Document details	Proposed Regulation on the European Citizens' Initiative
Legal base	Article 24 TFEU, ordinary legislative procedure, QMV
Department	Cabinet Office
Document Number	(39040), 12307/17 + ADDs 1–2, COM(17) 482

Summary and Committee's conclusions

3.1 The European Citizens' Initiative (ECI) was introduced by the Lisbon Treaty. It is intended to give EU citizens a direct say in shaping the laws that govern them by inviting the Commission to propose new measures in areas where it has powers to act under the EU Treaties. A 2011 Regulation sets out the procedures and conditions for implementing the ECI. These seek to ensure that an ECI is representative of opinion across the EU. To reach the stage of formal examination by the Commission, the ECI must attract the support of at least one million EU citizens and achieve a minimum number of signatories in at least a quarter of all Member States—the qualifying threshold for signatories in the UK is currently 54,000.[4]

3.2 Following a process of review and consultation, the Commission has concluded that the ECI has not met its full potential and, unless made more accessible for EU citizens and less burdensome for organisers, could eventually become obsolete.[5] It has proposed a new Regulation to remove "bottlenecks" in the operation of the ECI and clarify the rules and conditions governing its use.[6] Most of the changes are designed to streamline the ECI process. The most eye-catching is giving young people aged 16 the right to support an ECI, even if they have not reached voting age in their home Member State. The Regulation is expected to apply from 1 January 2020, although some preparatory provisions would take effect earlier.

3.3 The Government largely supports the changes proposed by the Commission and intends to "engage openly and cooperatively with our EU partners" while still a member of the EU and "consider all our obligations and take decisions in relation to the timing and implementation of these proposals as required during the exit negotiations period".[7] The Government has made clear that extending the right to participate in an ECI to 16-year olds would not affect the franchise for elections in the UK.

4 The threshold for signatories corresponds to the number of MEPs elected in each Member State, multiplied by 750 (roughly approximating to the total number of MEPs—751—in the European Parliament). Under the changes proposed by the Commission, the minimum number of signatories in the UK would increase to 54,750.

5 See p.8 of the Commission Staff Working Document—ADD 2.

6 See p.3 of the Commission's explanatory memorandum accompanying the proposed Regulation.

7 See the Explanatory Memorandum of14 November 2017 submitted by the Parliamentary Secretary to the Cabinet Office (Chris Skidmore).

3.4 When we first considered the proposed Regulation last December, we sought further information on:

- the progress of negotiations and the likelihood that the proposal would be adopted before the UK leaves the EU;
- how the 2011 Regulation on the European Citizens' Initiative and its proposed successor would be dealt with under the European Union (Withdrawal) Bill; and
- the status of UK citizens post-exit and the implications this will have for their participation (either as organisers or as signatories) in ECIs initiated before Brexit day.

3.5 In her response, the Minister for the Constitution (Chloe Smith) tells us that she expects the proposed Regulation to be adopted before the UK leaves the EU but that it is only likely to apply from 1 January 2020. She alludes to the draft Withdrawal Agreement which sets out the terms on which the UK will leave the EU and makes provision for a transition or implementation period ending on 31 December 2020. She says that the Withdrawal Agreement and Implementation Bill ("WAIB") will give effect to the Withdrawal Agreement in domestic law and explains that "during the implementation period, the UK will continue to align with EU rules and regulations", adding:

> "This means that, should the Regulation come into force during this period, it will be applied in the UK by the WAIB."

3.6 The Minister confirms that UK nationals will "no longer be EU citizens from 30 March 2019" but says the Government will "continue to listen to proposals from the EU on associated citizenship for UK nationals—although, to date, this has not been formally proposed to the UK in negotiations". She doubts whether it will be necessary to use the correcting powers in clause 7 of the EU (Withdrawal) Bill to make clear that UK nationals would no longer be entitled to take part in European Citizens' Initiatives after Brexit as "the legislation in question only refers to EU citizens".

3.7 The Minister says that the Government will continue to engage with the ECI process "until such time as the UK is no longer an EU Member State". As the draft Withdrawal Agreement "does not address the practicalities of separation from the ECI" during the transition/implementation period, further discussions will be needed within Government and with the European Commission to clarify "transitional arrangements regarding UK nationals' participation in an ECI".

3.8 **Since we first considered the proposed Regulation, EU and UK negotiators have provisionally agreed the terms of the UK's withdrawal from the EU, including a transition or implementation period ending on 31 December 2020. Under the terms of the draft Withdrawal Agreement, the 2011 Regulation on European Citizens' Initiatives and any successor agreed before the UK leaves the EU or during the transition/implementation period will *not* apply to the UK.[8] The Minister, however, tells us that the Regulations *will* apply in the UK during the implementation period "under general provisions in the Withdrawal Agreement and Implementation Bill". We ask her to explain this apparent contradiction. We also ask her to explain:**

8 See Articles 121 and 122 of the draft Withdrawal Agreement.

- **whether the 2011 Regulation on European Citizens' Initiatives and the proposed successor Regulation (if adopted before exit day) will form part of the body of retained EU law incorporated by the EU (Withdrawal) Bill; and**
- **if so, what further action will need to be taken to disapply the legislation in the UK during the transition/implementation period.**

3.9 **The Minister "confirms that UK nationals will no longer be EU citizens from 30 March 2019". This does not reflect our understanding of the draft Withdrawal Agreement which provides that "Union law shall be applicable to and in the United Kingdom during the transition period" unless it is expressly stated not to apply and that any reference to Member States in EU law "shall be understood as including the United Kingdom".[9] We ask the Minister to clarify the status of UK nationals during the transition/implementation period and the extent to which they will be entitled to exercise rights associated with EU citizenship.**

3.10 **The Minister says that the Government will "continue to listen to proposals from the EU on associated citizenship for UK nationals" although no formal proposals have been put forward as part of the exit negotiations. We would welcome further information on the concept of associated citizenship being mooted within the EU and the Government's position on its feasibility.**

3.11 **Pending further information, the proposed Regulation remains under scrutiny. We ask the Minister to provide a further update before a general approach, political agreement or negotiating mandate is agreed within the Council or COREPER. We draw this chapter to the attention of the Committee on Exiting the European Union.**

Full details of the documents

Proposed Regulation on the European Citizens' Initiative: (39040), 12307/17 + ADDs 1–2, COM(17) 482.

Background

3.12 Our earlier Report listed at the end this chapter provides a more detailed overview of the changes proposed by the Commission and the Government's position.

The Minister's letter of 25 April 2018

3.13 The Minister apologises for the "considerable delay" in responding to our earlier Report agreed in early December.

Progress of negotiations

3.14 She expects the Council and European Parliament to conclude negotiations on the proposed Regulation in 2018, before the UK leaves the EU, but adds that "it is likely to be applicable only from 1 January 2020 […] once we have ceased to be a Member State".

9 See Article 122 of the draft Withdrawal Agreement.

Retained EU law under the EU (Withdrawal) Bill

3.15 We noted in our earlier Report that the proposed Regulation envisages the staggered implementation of its provisions, with some taking effect shortly after formal adoption by the Council and European Parliament but most—including the repeal of the 2011 Regulation—only taking effect from 1 January 2020, after the date on which the UK expects to leave the EU. Under the European Union (Withdrawal) Bill, directly applicable EU Regulations which are "operative immediately before exit day" will form part of domestic UK law "on and after exit day".[10] We asked whether the proposed Regulation (if adopted before exit day) would be regarded as "operative" for the purposes of the Bill and form part of the body of retained EU law which would apply in the UK post-Brexit, even though some of its provisions would only take effect after exit day.

3.16 The Minister alludes in her reply to "the implementation period" which forms part of the draft Withdrawal Agreement negotiated by the EU and the UK and which will require the UK to "continue to align with EU rules and regulations" until the end of 2020. She continues:

> "The Withdrawal Agreement & Implementation Bill (WAIB) will give effect to the Withdrawal Agreement in domestic law, including the implementation period. This means that, should the Regulation come into force during this period, it will be applied in the UK by the WAIB. This will happen under general provisions in WAIB that provide for the role of Union law in the UK during the implementation period."

Status of UK nationals and participation in EU citizens' initiatives

3.17 We noted that the European Citizens' Initiative is only available to EU citizens—that is, the nationals of EU Member States—and asked:

- whether it was the Government's position that UK nationals would cease to be EU citizens on Brexit day; and
- if so, whether the Government would need to use its correcting powers under clause 7 of the EU (Withdrawal) Bill to make clear that UK nationals would no longer be entitled to take part in European Citizens' Initiatives.

3.18 The Minister confirms that "UK nationals will no longer be EU citizens from 30 March 2019" and adds:

> "We will continue to listen to proposals from the EU on associated citizenship for UK nationals—although, to date, this has not been formally proposed to the UK in negotiations. EU treaty provisions make it clear that only citizens of EU Member States are able to hold EU citizenship. Therefore, when the UK ceases to be a member of the European Union, British nationals will no longer hold EU citizenship, unless they hold dual nationality with another EU Member State."

10 See clause (1) of the Bill.

3.19 Given this, the Minister does not consider that it would be necessary to use the correcting powers contained in clause 7 of the EU (Withdrawal) Bill to make clear that UK nationals would no longer be entitled to take part in the European Citizens' Initiatives, "as the legislation in question only refers to EU citizens".

Involvement of UK nationals in ECIs initiated before exit day

3.20 We asked the Government how Brexit would affect the involvement of UK nationals in ECIs (either as organisers or as signatories) which were initiated before Brexit day and whether it would seek transitional arrangements to ensure that their participation would count towards meeting the requirements for registering an ECI and securing sufficient statements of support for formal examination by the Commission.

3.21 The Minister replies:

> "Until such time as the UK is no longer an EU Member State we will continue to liaise with any petition organisers and validate any signatories by UK nationals for successful ECI petitions. The Withdrawal Agreement Implementation Period text does not address the practicalities of separation from the ECI. Cabinet Office will continue to work with Department for Exiting the European Union to consider the impact of Brexit on the operation of the ECI during the implementation period before discussing further with the Commission. This includes the transitional arrangements regarding UK nationals' participation in an ECI."

Previous Committee Reports

Fourth Report HC 301–iv (2017–19), chapter 2 (6 December 2017).

4 Brexit: EU supervision of UK-based central counterparties

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Exiting the EU and the Treasury Committees
Document details	(a) Proposal for a Regulation on the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs; (b) Recommendation for a Decision amending Article 22 of the Statute of the European System of Central Banks and of the European Central Bank
Legal base	(a) Article 114 TFEU; ordinary legislative procedure; QMV; (b) Article 129(3) TFEU; ordinary legislative procedure; QMV
Department	Treasury
Document Numbers	(a) (38840), 10363/17 + ADDs 1–3, COM(17) 331; (b) (38883), 10850/17

Summary and Committee's conclusions

4.1 In response to the risks posed by the trade in over-the-counter (OTC) derivatives during the financial crisis,[11] the EU in 2012 adopted the European Markets Infrastructure Regulation (EMIR).[12] EMIR requires most[13] OTC transactions that involve an EU-based counterparty, for example interest rate or currency swaps, to be 'cleared' through a central counterparty (CCP). This means the CCP steps in if either of the other two counterparties defaults. If a default occurs it is reported to a trade repository to enhance the transparency of the market.

4.2 The UK's clearing industry plays a leading role in this process EU-wide, clearing 75 per cent of all euro-denominated interest rate derivatives (the largest single category of OTC derivatives). The Bank of England has said that the notional amount of outstanding cleared UK-EU derivative contracts is £70 trillion. Crucial—from the UK's post-Brexit perspective—is the fact that the Regulation requires EU-based counterparties to use a CCP supervised by a country within the Single Market (or based in a "third country" whose regulatory regime has been deemed "equivalent" to EMIR by the European Commission).[14] This poses a problem for both the continuity of existing clearing contracts when the UK

11 For example, a lack of transparency of the trade in derivatives masked unsustainable exposures of major market participants, which ultimately led to the collapse of both Lehman Brothers and AIG.

12 The UK voted in favour of the Regulation.

13 For example, the clearing obligation does not apply to pension funds.

14 Under EU law, regulated financial services providers that trade in derivatives—notably banks and investment firms—face additional prudential requirements if they clear transactions on CCPs that are not authorised or recognised under EMIR.

becomes a "third country",[15] which may become invalid overnight, and continued access of EU customers to London's clearing services for new OTC transactions after the UK leaves the Single Market.[16]

4.3 The UK and the EU have not, so far, agreed on a joint approach to cooperation on, and market access for, clearing services after the UK leaves the Single Market. The EU has repeatedly stated that market access by the UK financial services industry, including clearing houses, after Brexit will be on the same basis as other 'third countries'.[17] Under EMIR, that means that cross-border market access (i.e. without a CCP establishing an independently-authorised subsidiary within the EU) would be severely limited by European law. The industry would have to rely instead on the UK obtaining an 'equivalence' decision from the European Commission, which would allow British CCPs to be used by EU counterparties to fulfil their clearing obligation (but under the proviso that 'equivalence' can be withdrawn unilaterally by the EU at short notice).

4.4 Moreover, in June 2017, the European Commission and the European Central Bank presented proposals[18] to increase EU regulatory oversight of non-EU CCPs. These are driven by the perception that it would be unsafe for the EU (minus the UK after Brexit) to allow substantial volumes of clearing activity to take place outside of the EMIR framework when the UK leaves the Single Market, even if an 'equivalence' determination was in place. In the most extreme cases, the new legislation would allow the European Commission or the European Central Bank to require a "third country" (i.e. British) clearing house to relocate to the EU or lose their recognition under EMIR, which would effectively render them unable to fulfil the clearing obligation for EU-based counterparties. This would apply only to CCPs considered 'systemically important' (termed "tier II" entities in the Regulation).[19] We set out the detail of the proposals in some detail in November 2017.[20]

4.5 The Government has not supported the proposals relating to "third country" CCPs. In particular, it has strongly opposed the proposed relocation powers for either the Commission or the ECB, which the Treasury has argued would "risk fragmenting global derivatives markets", which in turn would "increase the cost of trading and clearing, acting as a drag on growth and could discourage firms from hedging their risks using derivatives markets". Instead, it has called for a new "regulatory and supervisory model" between the EU and the UK after the latter leaves the Single Market, which would preserve cross-border market access in the clearing industry on a more permanent basis than would be

15 This is expected to occur either on 29 March 2019, when the UK ceases to be a Member State, or at the end of the subsequent transitional period (due to end on 31 December 2020, pending formal ratification of the UK's Withdrawal Agreement).

16 The Financial Policy Committee reports regularly on this risk. See for example FPC judgement of progress against actions to mitigate the risk of disruption to end users of financial services as at 12 March 2018.

17 Most recently, the EU's Chief Negotiator—Michel Barnier—stated on 26 April 2018: "The EU cannot accept mutual market access without the common safeguards that underpin it. This is needed to maintain financial stability, investor protection, market integrity and a level playing field. This objective would not be reached if financial institutions could operate in the EU, or serve clients in the EU, based on an authorisation by the supervisors of a third country, subject to the rules, supervision and enforcement mechanisms of this third country alone".

18 See COM(2017) 331 and Council document 10850/17.

19 The Minister has explained that the new classification system (tier II for systemically-important CCPs and tier I for all others) would also apply to non-EU CCPs already recognized by ESMA under EMIR. As such, the Minister explains, "existing recognition decisions will be reviewed" and "CCPs applying for recognition, and those already recognised, will be subject to classification".

20 See our Report of 22 November 2017 for more information.

achieved by the EU recognising the UK's post-Brexit regulatory regime as 'equivalent'.[21] This proposal has not so far produced any tangible change in the public negotiating position of the EU on a future financial services agreement with the UK.

4.6 The European Scrutiny Committee first considered both "third country" proposals in November 2017. It concluded they were important for the UK since they were clearly intended, in part, to extend the EU's supervisory oversight and regulation to British clearinghouses even after Brexit. In particular, the Committee shared the Government's concerns about the proposed powers for both the European Commission and the European Central Bank to effectively demand relocation of a central counterparty to the EU or the Eurozone respectively for reasons of financial stability.[22] In anticipation of further information from the Minister about developments in the negotiations, we retained the legislative proposals on central counterparties under scrutiny.

4.7 On 19 April 2018, the new Economic Secretary to the Treasury (John Glen) wrote to the Committee with further information on the negotiations.[23] He notes:

- some other Member States, notably Sweden, have shared the UK's misgivings about the location policy for non-EU CCPs, expressing concerns "over the consequences of such a tool being applied and take the position that the tool to deny recognition purely on the basis of a CCP's systemic importance to the EU should only be considered a last resort". In addition, the US authorities have noted that the proposal "goes beyond the US framework and indicated that the US may need to reconsider their regulatory framework in response to the final outcome";

- similarly, the Rapporteur on the European Parliament's ECON Committee has suggested[24] amendments to clarify that the location policy tool "should remain in place as an 'insurance' mechanism for the EU", and "should only be used as a last resort tool". The Government has welcomed similar proposals to "make the process of denying recognition to substantial systemically important CCPs more evidence based" by requiring ESMA[25] and the Central Bank of Issue (e.g. the European Central Bank for derivatives denominated in euro) to "conduct a thorough cost-benefit analysis before this tool can be used"; and

- the Government has also welcomed the European Parliament Rapporteur's proposal to introduce an transitional period allowing a third country CCP to remain temporarily "recognised". This would allow the European Commission, with the support a qualified majority of Member States, to adopt an Implementing Act allowing a systemically-important non-EU CCP to continue servicing EU-based counterparties despite a determination that it will not be fully recognised by ESMA because its location outside the EU posed a risk to the Union's financial stability.

21 See for example the Chancellor's speech of 7 March 2018 on trade in financial services with the EU after Brexit.

22 In addition, as the Government had not reached a provisional agreement with the Commission on a post-Brexit transitional period, the Committee queried how the Treasury was seeking to ensure the continuity of the provision of clearing services under existing contracts when the UK exits the Single Market (and, therefore, can no longer fulfil the clearing obligation for EU-based counterparties on the same terms as it does now).

23 Letter from John Glen to Sir William Cash (19 April 2018).

24 See the draft European Parliament Report (document PE616.847). Please note this represents only the view of the Rapporteur.

25 ESMA is the European Securities & Markets Authority.

4.8 With respect to the future of the provision of clearing services by UK-based CCPs to EU-based counterparties (and, to a lesser extent, vice versa) after the UK leaves the Single Market, the Minister said:

- any new financial services agreement with the EU should acknowledge that, once the UK leaves, its rulebook "will be the same" and that, in view of the fact that UK CCPs already provide significant services to EU firms (and vice versa), "both the UK and EU will have an interest in closely monitoring the risks that the other's CCPs pose and any model should reflect these inter-linkages and the close relationships between UK and EU CCPs, firms and their supervisors"; and

- moreover, the Minister says, "any arrangement will need to be effective and proportionate, in line with the G20 commitment to exercise regulatory 'deference' when it is justified by the quality of others' regulatory and enforcement regimes when these achieve similar regulatory outcomes, in a non-discriminatory way". This is also linked to 'comparable compliance', a new concept proposed by the Commission under EMIR when a systemically-important non-EU CCP seeks recognition from ESMA, under which the regulatory requirements in its home country could be assessed as 'comparable' to the analogous parts of EMIR.

4.9 **We thank the Minister for the additional information he has provided on the "third country" CCP proposals under consideration at EU-level, and the implications of those proposals for the UK's clearing industry.**

4.10 **As the Bank of England and its Financial Policy Committee have repeatedly emphasised, the UK's withdrawal from the EU poses problems for derivatives contracts involving an EU counterparty cleared using a UK-based CCP. Brexit means that EMIR's provisions on restricting non-EU CCPs from performing a clearing function in the EU will automatically apply to British clearing houses and the status of existing clearing contracts still outstanding becomes uncertain. In the immediate aftermath of 29 March 2019, those effects will be obviated by the proposed post-Brexit transitional period. From March 2019 until December 2020, the UK would stay bound by EU law (including EMIR) and effectively remain in the Single Market.**

4.11 **However, the transitional arrangement only postpones the crunch moment of the UK becoming a 'third country'. At that point, the scope of the 'equivalence' regime under EMIR (as affected by the recent proposals) is therefore likely to be crucial. Equivalence is the only legal mechanism currently available for British CCPs to continue servicing EU-based counterparties in the derivatives market after the UK leaves the Single Market. The Commission and European Central Bank proposal would add additional hurdles for British CCPs to obtain recognition from ESMA under the equivalence regime, and in extreme cases effectively force relocation of the company to the EU if it wants to continue servicing EU counterparties.**

4.12 **We have taken note of the Minister's comments on the deliberations on this aspect of the proposals within the Council. It appears likely that some form of the new 'location policy' powers for the European Commission and the European Central Bank will be maintained in the final legislation despite opposition from the UK, Sweden and the US. The main unresolved issue, therefore, is the exact requirements that must be fulfilled before the location policy could be invoked against British (and**

other non-EU) CCPs. However, it is unclear from the Minister's letter to what extent any amendments to the proposed legal framework for the location policy for third country CCPs have been put forward by Member States in the Council (or even agreed) in view of the UK's concerns, or when a general approach on these issues might be submitted to the ECOFIN Council for formal approval.

4.13 **Moreover, the position of the Member States is only one half of the equation. The proposals are subject to co-decision by the European Parliament. We have noted with interest the Minister's support for some of the Parliament's proposed amendments, which aim make the location policy for third country CCPs more proportional. However, the Parliament's amendments to the legislation are, at this stage, only provisional. They have been put forward by the Rapporteur in the ECON Committee but not formally endorsed by that Committee or, indeed, the Parliament's Plenary. Those steps are yet to be taken in May and June, after which we ask the Minister to report to us again about the implications of the Parliament's position. The timetable for formal adoption of the amendments to EMIR and the Statute of the ECB remains unclear given the need for the Parliament and the Council to engage in trilogues on the final legal text.**

4.14 **In the broader Brexit negotiations with the EU, the Government is also seeking to avoid the application of the 'third country' regime under EMIR to the UK clearing industry altogether under a new financial services agreement. Its proposals, set out in a speech by the Chancellor in March 2018, would see continued cross-border market access underpinned by regulatory cooperation and dispute resolution (but, crucially, without a common legal framework or continued UK adherence to EU financial services law), rather than relying on 'equivalence'.**

4.15 **There has been no indication from the EU that it is willing to consider this offer. As recently as 26 April, Michel Barnier said that "the EU cannot accept mutual market access without the common safeguards that underpin it", namely "EU rules [and] common EU supervision and enforcement tools".[26] Instead, he has insisted the UK could seek 'equivalence' decisions under EU financial services legislation—including EMIR—during the post-Brexit transitional period to take effect immediately afterwards.[27]**

4.16 **In view of the above, we will continue to follow the negotiations on the new UK-EU trade agreement closely, especially with respect to its implications for the UK's post-Brexit regulatory autonomy if the Government had to rely on equivalence to secure cross-border market access for its financial services industry in the long-term. We have also invited the Economic Secretary to give evidence to us in person about the Government's proposals for a new financial services agreement with the EU.**

4.17 **Finally, we ask the Minister whether he agrees that Section 10(1)(b) of the European Union Act 2011 (the EU Act) applies to document(b)? Also, we note that the repeal of the EU Act is envisaged by the combination of Clause 17(7) and Schedule 9 of the European Union (Withdrawal) Bill. However, as currently drafted, those repeal provisions would not come into force on the day on which the Bill is enacted (Clause**

26 http://europa.eu/rapid/press-release_SPEECH-18–3569_en.htm.

27 Speech by Michel Barnier (26 April 2018): "The 21-month transition period that we have proposed could be useful to prepare for the new relationship. That transition will also allow the EU to consider the adoption of equivalence decisions."

19(1)) but instead on "such a day" as a Minister "may by regulations appoint" (Clause 19 (2)).[28] Can the Minister tell us what date the Government has in mind for these purposes?

4.18 **Given the importance of the proposals to increase EU oversight of the UK clearing industry after Brexit, we retain the document under scrutiny and draw these latest developments to the attention of the Exiting the EU Committee and the Treasury Committee.**

Full details of the documents

(a) Proposal to amend Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories: (38703), 8890/17 + ADDs 1–3, COM(17) 208; (b) Proposal to amend Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs: (38840), 10363/17 + ADDs 1–3, COM(17) 331; (c) Recommendation for a Decision of the European Parliament and of the Council amending Article 22 of the Statute of the European System of Central Banks and of the European Central Bank: (38883), 10850/17,—.

Previous Committee Reports

Second Report HC 301–ii (2017–19), chapter 20 (22 November 2017).

28 Clause 19(2) continues "and different days may be appointed for different purposes".

5 The Law Applicable to Assignment of Claims in the Capital Markets

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Treasury Committee
Document details	(a) Proposal for a Regulation on the law applicable to the third-party effects of assignment of claims; (b) Communication from the Commission on the applicable law to the proprietary effects of transactions in securities
Legal base	(a) Article 81(2); TFEU (b)—
Department	Treasury
Document Numbers	(a) (39603), 7222/18 + ADDs 1–3, COM(18) 96; (b) (39577), 7358/18 + ADDs 1–2, COM(18) 89

Summary and Committee's conclusions

5.1 The Commission's 2015 Capital Markets Union Action Plan, endorsed by the Council is intended to foster cross-border investment in the EU and thereby facilitate access to finance by firms and consumers. When the Action Plan was reviewed in 2017 the Commission announced future action on rules on the ownership of securities and the third-party effects of assignments of claims.

5.2 Examples of common financial transactions involving assignment are:

- *Factoring*; for example, a company assigns the benefit of its invoices at a discounted price to receive immediate cash;
- *Collateralisation*; for example, the benefit of cash in a bank account is assigned as collateral to secure a loan agreement;
- *Securitisation*; for example, a large retail chain assigning the receivables from its in-house credit card to a special purpose vehicle which then issues debt securities to investors in the capital markets. This can provide access to credit at a lower cost than a bank loan.

5.3 The EU already has comprehensive rules of private international law governing which law is applicable to cross-border contracts, the Rome I Regulation.[29] The UK opted in to this Regulation. Whilst it covers the contractual obligations of assignment (for example, the obligations between the assignor and the assignee and between the assignor and the original debtor) it does not cover proprietary rights (for example, which Member State's formal requirements apply for an assignment to be legally effective, what happens if the same debt has been assigned more than once, or which claim takes priority in the case of insolvency).

29 Regulation 593/2008.

5.4 The general principle which the Commission is seeking to apply, albeit with exceptions, is that the law of the Member State where the assignor has its habitual residence should apply. Its guidance and proposal are set out in more detail below.

5.5 Document (a), the draft Regulation, would apply to assignments of financial instruments which are not already governed by specific EU rules.

5.6 Document (b) seeks to provide a consistent interpretation to specific existing EU rules applicable to cross-border transactions in securities found in:

- the Settlement Finality Directive;[30]
- the Winding-up Directive;[31] and
- the Financial Collateral Directive.[32]

5.7 These Directives make differently worded provisions as to the applicable law. In its Communication, the Commission seeks a common interpretation to make the applicable law that of the place of any register or account, and gives guidance for determining that place.

5.8 In his Explanatory Memorandum on the Communication, the Minister (John Glen) confines his analysis to indicating that the Government has triggered Brexit, that the UK supports the Capital Markets Union project and suggesting that the Government would want to consider whether the UK would want to align itself to legislative and other changes in securities law.

5.9 The Explanatory Memorandum in respect of the proposed Regulation provides a fuller analysis and indicates that:

- the Government supports identifying ways to deliver greater legal certainty and reduce legal risk in cross-border assignments, although further consideration of the application of subsidiarity is required;
- the draft encompasses "all claims" whether monetary or non-monetary and cautions against unintended consequences;
- the Government has yet to be persuaded that the proposal is the most effective way of achieving the stated objectives;
- the Government intends to seek the views of interested parties;
- the UK opt-in applies and for the UK to participate in the adoption of the Regulation it must opt-in by 28 June. In considering whether to do so the Government will take into account these policy concerns; and
- discussions at Working Group level on the legislative proposal are expected to continue into 2019.

5.10 The Commission has indicated that the greatest response to its consultations has come from the UK. Furthermore, it is suggesting that the Regulation should not apply until 18 months after it has come into force. Therefore, the Regulation is not likely to apply to the UK.

30 98/26.
31 2001/24.
32 2002/47.

5.11 **We retain these documents under scrutiny pending the Government's further consideration (including on the specific concerns it has raised, on subsidiarity, and on whether or not to exercise the UK opt-in) and consultation with interested parties.**

5.12 **We ask to be notified of the Government's decision on the opt-in, and the reasons for it, before it is exercised.**

5.13 **Because of their significance to the Capital Markets we draw these documents to the attention of the Treasury Committee.**

Full details of the documents

(a) Proposal for a Regulation on the law applicable to the third-party effects of assignment of claims: (39603), 7222/18 + ADDs 1–3, COM(18) 96; (b) Communication from the Commission on the applicable law to the proprietary effects of transactions in securities: (39577), 7358/18 + ADDs 1–2, COM(18) 89.

The Commission Communication

5.14 This Communication sets out the different wording in the three Directives with regard to determining the applicable law in respect of the proprietary effects of transactions in securities. These refer either to a securities register or account being located or maintained in a particular Member State. The Commission sets out the arguments why, in this context, "located" and "maintained" have the same meaning and indicates that the current criteria used by some Member States to determine that place all appear to be valid i.e.

- the place where custody services are provided;
- by reference to the account agreement; or
- by reference to a choice that is valid under the Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary.

The Proposed Regulation

5.15 The proposal applies to third-party effects of assignments of claims in civil and commercial matters which give rise to a conflict of law between Member States, subject to exceptions—including for claims arising from family relationships, trusts and insurance contracts. The third party effects cover, in particular, matters such as the requirement to register or publication formalities, the priority of rights of the assignees where there is more than one, the priority of the rights of the assignee over the assignor's creditors, the priority of the rights of the assignee over the rights of a beneficiary of a transfer of contract in respect of the same claim and the priority of the rights of the assignee over the rights of the beneficiary of a novation contract[33] against the debtor in respect of an equivalent claim.

5.16 The proposal sets out the general rule that the applicable law should be that of the habitual residence of the assignor, even if that is the law of a third country. There are exceptions, notably to allow a choice of law to be made by the assignor and the assignee in respect of assignments with a view to securitisation.

33 Novation occurs for example when a contractual obligation is replaced with another, or added to or replaced.

5.17 The determination of the applicable law under the proposal is made subject to mandatory requirements and a public policy exception.[34]

Our subsidiarity analysis

5.18 We do not consider it appropriate to recommend to the House that it issue a reasoned opinion that the proposed Regulation does not comply with the principle of subsidiarity. This principle requires, in areas of shared competence such as this, that the Union should only act if and so far as the objectives of the proposal cannot be sufficiently achieved by the Member States, but can, by reason of the scale and effect be better achieved at Union level.

5.19 By its proposed Regulation the Commission is seeking to harmonise the conflict of laws principles that should be applied to determine which law is applicable in a dispute arising on a cross-border assignment. It is not seeking to harmonise the law relating to assignments itself. The inherent cross-border nature of the objective of addressing conflict of law rules, and not the substantive law of Member States, makes it less likely that the principle of subsidiarity has been breached.

5.20 Whilst the Government indicates that further consideration of the application of the principle of subsidiarity is required, it recognises that there are different applicable law rules in this area and supports identifying ways to deliver greater certainty. This implicitly supports prospect of the objective of the proposal being tackled at EU level.

5.21 One objection raised by the Government is that it has yet to be persuaded that the proposed Regulation as currently drafted is the most effective way of achieving the stated objectives of the proposal. Again, that points towards it being appropriate to tackle the objective at EU level, albeit by taking a different policy approach.

5.22 The Government also point out that the Regulatory Scrutiny Board, which examines the Commission's justification for proposing legalisation, originally gave a negative assessment of the Commission's Impact Assessment. This can be a pointer to subsidiarity concerns. However, that Board then gave a positive opinion on a revised version on the understanding that there would be a strengthened justification of the option chosen on securities in relation to the evaluation, and to address the consistency between the two solutions found for claims and securities. This again points to there having been concerns as to the policy choice for achieving the objective rather than concerns that the EU might not be better placed to act than the Member States

5.23 At a practical level this proposal is unlikely to be adopted before the end of the transitional/implementing phase of the UK's withdrawal from the EU.

Previous Committee Reports

None.

34 Mandatory requirements are rules which must be applied to protect interests which are regarded in the place of determination of the dispute as crucial for that countries' economic, social or political purposes; a public policy exception should only be applied if the result of apply the rule laid down in the proposed Regulation would be unacceptable in the framework of national law.

6 Workplace safety: amendments to the Carcinogens and Mutagens Directive (Phase II and Phase III)

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; drawn to the attention of the Health Committee and the Work & Pensions Committee
Document details	(a) Proposal for a Directive amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Phase II); (b) Proposal for Directive amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Phase III)
Legal base	(a) and (b) Article 153(2) TFEU; ordinary legislative procedure; QMV
Department	Health and Safety Executive
Document Numbers	(a) (38447), 5251/17 + ADDs 1–3, COM(17) 11; (b) (39612), 7733/18 + ADDs 1–3, COM(18) 171

Summary and Committee's conclusions

6.1 Cancer is the leading cause of work-related deaths in the EU, accounting for 53% of the total. In the UK alone, around 3,500 people die each year from occupational cancer caused by exposure to carcinogenic substances, principally through inhalation. To reduce these numbers, the EU has legislation in place to prevent dangerous levels of workplace exposure to such substances in the form of the Carcinogens and Mutagens Directive (CMD).[35] Since May 2016, the European Commission has put forward three separate sets of amendments to the Directive to further restrict the use of certain carcinogenic substances in the light of the latest scientific evidence (termed Phase I to III respectively).

6.2 The substances now being added to the Directive have been discussed over several years in the Working Party on Chemicals (WPC), a sub-group of the EU's Advisory Committee on Safety and Health at Work (ACSH). The UK is currently one of four Member State governments represented on the WPC, which issues opinions on appropriate limits and notations for carcinogenic substances. These were subsequently endorsed by the ACSH (where all Member States are represented), and formed the basis for the three sets of amendments that have been proposed by the European Commission. From 29 March 2019, the UK will no longer be represented on the WPC and the ASCH when it ceases to be an EU Member State.

6.3 We last considered the Carcinogens and Mutagens Directive and the proposed amendments at our meeting on 31 January 2018. While Phase I has been formally adopted

35 Directive 2004/37/EC, as amended.

(and will take effect from 2020 onwards), the Phase II and III proposals to amend the CMD are still subject to negotiations between the European Parliament and the Member States in the Council.[36]

The Phase II proposal: exposure limits for engine oils, PAHs, diesel exhaust fumes and cytotoxic drugs

6.4 The Phase II proposal would bring exposure to used engine oils within the scope of the CMD, and assign a skin notation[37] to such oils. It would also add five specific carcinogenic substances to the list of chemicals covered by the requirements of the Directive, and set accompanying exposure limit values and a skin notation for each.[38] The Member States provisionally approved the changes in June 2017,[39] and also included new exposure limits for Polycyclic Aromatic Hydrocarbons (PAHs).[40]

6.5 The Minister for Disabled People, Health and Work (Sarah Newton) wrote to the Committee on 24 April 2018 with information on the European Parliament's position on Phase II.[41] The Government views some of the Parliament's amendments as problematic, notably those for calling for an exposure limit for Diesel Exhaust Emissions (DEEEs). The Parliament has proposed to introduce limits for two different materials present in such emissions (elemental carbon and nitrogen dioxide). These had been omitted from the original proposal due to "practical difficulties with measuring techniques and concerns about the legal clarity of a definition".[42] For this reason, the Government is opposed to its inclusion in the Directive "without the Commission providing assurances that" these technical obstacles "are no longer an issue".[43]

6.6 Similarly, the Minister notes that the Government opposes a proposal by MEPs calling on the European Commission to make proposals for exposure limits for cytotoxic

36 The Phase I proposal was cleared from scrutiny on 13 November 2017 and subsequently published in the Official Journal as Directive 2017/2398/EU. The Committee has previously considered the recent spate of amendments to the CMD in its Reports of 25 April and 13 November 2017 and of 31 January 2018.

37 A skin notation assigned to a substance identifies the possibility of significant exposure through the skin which contributes to the total body burden of exposure, and consequently to possible health effects. This must be taken into account by employers when undertaking a risk assessment. For substances which cannot enter the body via the skin, the notation is absent.

38 The previous Committee considered the contents of the Phase II two proposal in more detail in its Report of 8 February 2017.

39 Although the European Scrutiny Committee had granted a scrutiny waiver in April 2017, the Government abstained from supporting the Council general approach because of the last-minute addition of PAHs to the scope of the Directive.

40 PAHs consists of a group of over a hundred substances released from burning coal, oil, wood, general waste and other organic materials. The Health and Safety Executive considers that the impact of extending the CMD to PAHs in the UK is likely to be low as exposure of a substance via any route, including the skin, "already needs to be considered as part of the risk assessment required by UK legislation".

41 Letter from Sarah Newton to Sir William Cash (24 April 2018). See also European Parliament document A/2018/142.

42 In Great Britain, the Control of Substances Hazardous to Health Regulations (COSHH) already requires industry to put control measures in place to reduce exposure to a level that is proportionate to the health risk, including for DEEEs. Similar arrangements are in place for Northern Ireland and Gibraltar.

43 The Minister explains that DEEEs are a "complex mixture of a variety of substances", meaning that "it is not possible to set a single limit for DEEEs in its form as a mixture of different substances". The values presented by the European Parliament are for 'markers' for 2 different materials present in DEEEs—elemental carbon and nitrogen dioxide—and "both of them have their limitations as a measure of occupational exposure. They may be difficult for industry sectors, such as mining and tunnelling, to meet".

drugs[44] and other pharmaceuticals within the CDM,[45] because this is "not supported by any specific evidence and at present the UK is not convinced that it is necessary to include such drugs within the scope of the Directive". The Minister adds that the UK would need assurance that "any future inclusion would not impact on the availability and use of such drugs and would not have an adverse impact on treatments available to patients".[46]

6.7 The Member States and the European Parliament have scheduled three rounds of negotiations on the final text of the Phase II proposal before the 2018 summer recess. The Minister says the proposed addition of DEEEs "will be the predominant issue during trilogues". The new Directive is likely to be adopted before the end of the year.

Phase III: cadmium, beryllium, arsenic acid, formaldehyde and MOCA

6.8 On 5 April 2018 the European Commission published a proposal for a third phase of amendments to the Carcinogens and Mutagens Directive.[47] This sets out occupational exposure limit values (OELVs) for five substances: cadmium, beryllium, arsenic acid, formaldehyde and MOCA.[48] This amendment would also set a skin notation[3] for MOCA, a notation for skin sensitisation[49] for formaldehyde, and a notation for both skin and respiratory sensitisation[50] for beryllium.

6.9 The proposal contains a number of transition periods, which will delay the entry into force of the new exposure limits after they are agreed by the Member States and the European Parliament (beyond the normal two-year transposition deadline for most EU Directives and for this proposal as currently drafted). The transition is intended to reduce the impact of the changes on businesses by making it possible to anticipate the changes, gradually introduce improvements and plan necessary investments to meet the limits. Because of this, the Government expects the new exposure limits to take effect in 2021, 2024 and 2026 for arsenic acid, beryllium and cadmium respectively.

6.10 The Minister submitted an Explanatory Memorandum on the Phase III proposal on 24 April 2018.[51] In it, she "broadly welcomes" the new exposure limits, noting that current UK legislation already requires employers to consider "all routes of exposure to carcinogens to be considered, including skin" and ensure any exposure to carcinogenic

44 Cytotoxicity refers to the ability of a drug to kill cells. Cytotoxic pharmaceuticals are used widely in cancer treatments, such as chemotherapy.

45 The European Parliament has proposed a new recital 3b to the Directive which would read: "Further amendments to that Directive should address the issue of exposure of workers to carcinogenic or mutagenic substances resulting from the preparation, administration or disposal of hazardous drugs, including cytotoxic drugs, and work involving exposure to carcinogenic or mutagenic substances in cleaning, transport, laundry and waste disposal of hazardous drugs of materials contaminated by hazardous drugs and in personal care for patients under treatment of hazardous drugs."

46 The Minister notes in her letter that "my officials are consulting with the Department of Health and Social Care on this proposed addition" of exposure limits for cytotoxic drugs to the Directive.

47 He Phase III proposal is contained in Commission document COM(2018) 171.

48 MOCA stands for 4,4'-Methylene-bis(2-chloroaniline). It is listed as a 'substance of very high concern' by the European Chemicals Agency.

49 A notation for 'skin sensitisation' is made where exposure to a substance can cause adverse skin reactions (in this case for formaldehyde and beryllium and its inorganic compounds).

50 A notation for 'respiratory sensitisation' is assigned where exposure to a substance by inhaling can cause adverse reactions in the respiratory tract (in this case beryllium and its inorganic compounds). Employers are under a legal obligation to take into account skin, skin sensitisation and respiratory sensitisation notations when performing risk assessments, and when implementing preventive and protective measures for a particular carcinogen or mutagen in accordance with the CMD.

51 Explanatory Memorandum submitted by the Health & Safety Executive on 24 April 2018.

substances are "controlled to as low a level as is reasonably practicable". The new EU limits for the five substances affected by the latest proposal are lower than current UK limits, with the exception of MOCA (where the UK workplace exposure limit is already lower than proposed by the Commission).

6.11 With respect to the implications of the Phase III proposal for health & safety legislation in the UK in the context of Brexit, the Minister says:

> "The transition periods for these substances will extend beyond the end of the proposed EU exit implementation period, we will apply the same evidence-based rigour to our assessment of these proposals as we have to the other limits proposed in this, and previous amendments to the Directive. […] We are proceeding on the basis that these amendments to the CMD will need to be transposed into UK law as the likely date of coming into force of the proposal will fall before 31 December 2020."

6.12 It has since been clarified by officials that this reference to the "coming into force of the proposal" should be understood to be a reference to the transposition date of the proposed Directive.

6.13 The exact timetable for adoption of the Phase III amendments by the European Parliament and the Council is uncertain at this stage, although as noted the Government believes the likely transposition date will be before the end of 2020.

6.14 **We thank the Minister for her latest update on the proposed amendments to the Carcinogens and Mutagens Directive. The Committee retains both the Phase II and Phase III proposals under scrutiny in anticipation of further information on the final legal texts and attendant implications for UK workers and businesses. We also draw these developments to the attention of the Health Committee and the Work and Pensions Committee.**

6.15 **During the post-Brexit transitional period sought by the Government, and included in the draft Withdrawal Agreement, the UK will be under an obligation to implement any changes to the Carcinogens and Mutagens Directive if the transposition date falls during that period. As such, the Minister has previously confirmed that the Government is "proceeding on the basis that amendments to the CMD could be implemented despite their likely dates of application falling after March 2019 but stand ready to react swiftly to developments as they occur".[52] She has reiterated in her latest Explanatory Memorandum that the 'Phase III' changes now under consideration are also likely to require transposition in UK law before the end of the implementation period, regardless of the proposal's own transitional provisions.**

6.16 **With respect to the Phase II proposal, we note that the European Parliament has called for the inclusion of exposure limits for cytotoxic and other types of drugs in the Directive. The Government is opposed to any such measures, at least in the absence of assurances that this would not impact negatively on the availability of such pharmaceuticals for treatment of patients. We ask the Minister to provide further information on the possible implications of the inclusion of the Parliament's suggestions into the CMD if it is retained during the trilogue process, especially in**

52 Letter from Sarah Newton to Sir William Cash (17 January 2018).

view of the fact that any further amendments to the Directive may be agreed at EU-level after the UK loses its institutional representation in March 2019 (and, possibly, have to be implemented in the UK if the relevant transposition deadlines fall during the post-Brexit transitional period).

6.17 **More generally, the Committee remains concerned about the implications of the post-Brexit transitional arrangement, as it will see the UK under a legal obligation to apply and, where required, implement EU law over which it will no longer have any substantive influence within the Council or the European Parliament. In the area affected by the Carcinogens and Mutagens Directive, the UK will lose its position on the Advisory Committee on Safety and Health, which has been the driving force behind the modernisation of the Directive. The Committee has already raised with the Government the question of oversight of the transitional arrangement by Parliament, in particular with respect to the functioning of the proposed UK-EU Joint Committee that will seek to resolve any disputes over the applicability or, where required, implementation of new EU law in the UK during that period.**

Full details of the documents

(a) Proposal for Directive amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Phase II): (38447), 5251/17 + ADDs 1–3, COM(17) 11; (b) Proposal for Directive amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Phase III): (39612), 7733/18 + ADDs 1–3, COM(18) 171.

Previous Committee Reports

For Phase I, see: (37758), 8962/16: HC 71–iv Sixth Report (2016–17), chapter 6 (15 June 2016); Thirteenth Report HC 71–xi (2016–17), chapter 6 (12 October 2016); First Report HC 301–i (2017–19), chapter 29 (13 November 2017); and Twelfth Report HC 301–xii (2017–19), chapter 9 (31 January 2018).

For Phase II, see: (38447), 5251/17: Thirty-first Report HC 71–xxix (2016–17), chapter 9 (8 February 2017); Fortieth Report HC 71–xxxvii (2016–17), chapter 16 (25 April 2017); First Report HC 301–i (2017–19), chapter 29 (13 November 2017); and Twelfth Report HC 301–xii (2017–19), chapter 9 (31 January 2018).

There are no previous Reports on the Phase III proposal.

7 European Defence Industrial Development Programme (EDIDP)

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 and Defence Committees
Document details	Proposal for a Regulation establishing the European Defence Industrial Development
Legal base	Article 173 TFEU; ordinary legislative procedure; QMV
Department	Ministry of Defence
Document Number	(38831), 10589/17 + ADD 1, COM(17) 294

Summary and Committee's conclusions

7.1 In June 2017 the European Commission proposed the creation of a European Defence Industrial Development Programme (EDIDP) as part of the new European Defence Fund.[53] The EDIDP would allow the EU budget to co-fund the final stages of the development of military technology (in particular the manufacture of prototypes), with a coordination role for the European Defence Agency in deciding on specific projects to be funded.[54] While the Programme does not create new EU military structures, it is part of wider efforts to create a European 'Defence Union' in which the armed forces and military capabilities of the EU's Member States are increasingly integrated.[55]

7.2 If the Member States and the European Parliament agree on the Programme's legal foundations as planned by summer 2018, it will initially run for a period of two years to align with the EU's current long-term budgetary cycle (which ends in December 2020), although it is expected to be extended for at least a further seven years from 2021 onwards. The EDIDP is due become operational in early 2019 with a budget of €500 million (£439 million)[56] in 2019–20. The Committee set out the details of the EDIDP proposal at some length in its previous Reports on this subject.[57]

7.3 The Government has consistently supported the creation of the EDIDP in view of the perceived opportunities and economies of scale it offers for the UK's defence industry. Given the UK's exit from the EU, its efforts have therefore focussed on ensuring that "third country" companies would be able to participate in some way in projects funded by the Programme. In December 2017, the Member States—the UK included—put forward a number of amendments to the legal text underpinning the EDIDP. Notably, in a partial victory for the Government, they watered down the initial prohibition on any third country

53 See our Report of 13 November 2017 for more information on the European Defence Fund.

54 The EDIDP is one half of the European Defence Fund. The other half, the European Defence Research Programme (EDRP), will finance the earlier R&D stages of new defensive technology.

55 These wider efforts include for example Permanent Structured Cooperation on defence between 25 EU countries, the establishment of a Military Planning & Conduct Capability Unit for advisory EU military missions, and the launch of the 'research' window of the European Defence Fund.

56 €1 = £0.88415 or £1 = €1.13103 as at 28 February.

57 See in particular our Reports of 13 November 2017 and 31 January 2018.

participation in the EDIDP. Although the Member States retained the requirement that direct beneficiaries of the Programme must be based in the EU, businesses within the UK defence industry would be able to participate in the EDIDP-funded programmes either:

- via EU-based subsidiaries, provided it has an "executive management structure" in the EU and the Member State where the subsidiary is based has provided "sufficient assurances in accordance with its national procedures" that such funding would not "contravene […] the security and defence interests" of the EU or the other Member States; and

- without an EU-based subsidiary, in which case they could work on a project with EDIDP-participants but without receiving any funding from the EU budget and with any use of assets, infrastructure, facilities and resources located outside the EU or controlled by non-EU entities could only if "there are no readily available competitive substitutes in the EU".

7.4 The Member States did not include any provision for participation by a third country's Government to be represented in the governance structures of the European Defence Fund. They also did not substantively define the concepts used to frame the 'third country' restrictions—including "sufficient assurances", "national procedures", "executive management structure" and "competitive substitutes". Moreover, when the Committee last considered the EDIDP in January 2018, the European Parliament had yet to establish its position on the proposal before entering into negotiations with the Member States on the final legal text to establish the Programme. The Committee therefore retained the proposal under scrutiny and asked the Minister to provide further information on the negotiations as they progressed.

7.5 The Minister for Defence Procurement (Guto Bebb) wrote to the Committee in April 2018.[58] His letter notes that the European Parliament's Industry, Research & Energy (ITRE) Committee adopted its position on the EDIDP proposal on 28 February and received endorsement from the Plenary on 13 March.[59] The Minister notes that MEPs maintained a ban on non-EU firms receiving funding from the EDIDP, as well restricting parent company outside the EU from being involved in any decisions made by their EU-based subsidiaries related to EDIDP-funded activity. However, like the Member States, the Parliament supported allowing "third country" defence industry companies to cooperate as third parties in EDIDP-funded projects on an ad hoc "pay for play" basis, i.e. without an arrangement that allows a non-EU country to be treated as if it were a Member State for the purposes of the Programme in return for an annual financial contribution.

7.6 The Minister's letter also clarified a number of technical points about how the proposed restrictions on third country participation in EDIDP-funded projects would work:

- each Member State will have to establish its own procedures for assessing whether a company based in its territory, but which is controlled from outside the EU, was sufficiently independent to be eligible for EDIDP funding. The Minister says there is an assumption that "it would as a minimum entail some form of confirmation from a recognised source, for example a department of defence

58 Letter from Guto Bebb to Sir William Cash (17 April 2018).
59 See European Parliament document A8/2018/37.

or economics". While other Member States "could theoretically challenge these assurances" before funding is formally awarded (as funding decisions must be approved by a qualified majority of Member States), the general assumption is that this will be rare;

- similarly, the assessment of whether an EU subsidiary of a third country entity has an "executive management structure" within the Union (another requirement for a subsidiary to be eligible for EDIDP funding) will be a "national decision";
- the prohibition for EDIDP-funded projects to use any assets or infrastructure located outside the EU, except where there is no "competitive substitute" available within the EU, would be enforced by the industrial consortia in receipt of funding themselves, although they may be required to provide evidence for the lack of such substitutes to the European Commission; and
- the Government accepts that the UK—under the terms of the draft Withdrawal Agreement—will have no right after 29 March 2019 to attend the Committee in which Member States will discuss and approve EDIDP work programmes and funding decisions. However, the Minister says that the Government "will be making the case for UK participation in the programme committees [because of] a desire to remain associated with the [European Defence Fund] long term; we will still be contributing; and we are supporting UK industrial participation where we believe we have a lot to offer".

7.7 Trilogue negotiations on the EDIDP Regulation between the European Parliament and the Member States began on 15 March 2018, and we understand they are likely to be completed by the end of May. This would allow for the first funding to be awarded from the EDIDP in January 2019. The future of the Programme after the end of the current EU budgetary cycle in December 2020 is to be decided as part of the negotiations on the EU's next long-term budget, which began in earnest in May 2018.[60] The Government is of the view that the European Commission, when proposing the post-2020 successor to the current two-year EDIDP framework, is "likely to be guided" by the substance of the EDIDP Regulation currently being finalised.[61]

7.8 **We are grateful to the Minister for his latest update on the state of play in the negotiations on the European Defence Industrial Development Programme, and look forward to receiving further information from him shortly about the outcome of the trilogue process with the European Parliament.**

7.9 **The Government has consistently supported a legal framework that allows UK firms to seek involvement in EDIDP-funded projects after Brexit, which both the Parliament and the Council are minded to allow via a subsidiary in the EU or indirectly on a "pay for play" basis. This is far more limited than the involvement available to entities based in and controlled from the EU, and as such there is still significant**

60 The European Commission tabled a proposal for the EU's overall long-term budget for the 2021–2027 period, known as the Multiannual Financial Framework, on 2 May 2018. A specific proposal relating to the long-term future of the EDIDP is expected on 12 June.

61 The formal European Commission proposal for the European Defence Fund—which will succeed both the existing Preparatory Action on Defence Research and the 2019–2020 EDIDP—is due in late June 2018.

uncertainty about the extent to which the UK defence industry will be able to make use of any opportunities afforded by the Programme—both during and after the post-Brexit transition.

7.10 **We note in this respect that Norway—which participates in the EU's Preparatory Action for Defence Research, the EDIDP's counterpart vehicle to fund early-stage defence R&D—was not awarded any funding from that programme despite being in the Single Market, applying the EU's Defence Procurement Directives and having 'associate' status within the EU's civilian research programme.[62] It is therefore not a given that UK industry, even if theoretically able to participate in the European Defence Fund during the transition or afterwards, would substantially benefit in practice. We also note that the defence industry with pan-EU supply chains that include the UK will be impacted by the new trade barriers likely to arise when it leaves the Customs Union and Single Market, which may diminish the attractiveness of UK companies as partners in the eyes of EU industrial consortia in EU-funded research and development projects.**

7.11 **In January 2018 the Minister told us that it was the Government's position that UK undertakings should remain fully eligible for funding from the EDIDP during the transitional period (due to last until the end of 2020), in view of the fact that the UK will contribute to the EU budget in 2019 and 2020 as if it were still a Member State. However, article 122(7)(b) of the draft Withdrawal Agreement, published in March 2018, allows the EU to exclude the UK from specific programmes during transition in certain cases, namely where Union legislation restricts access to "security related sensitive information" only to EU-based natural or legal persons. This provision is shaded in green in the published text, indicating "the text is agreed at negotiators' level". In other words, the Government has agreed to it in substance subject only to minor technical modifications. We have previously concluded that this provision would allow the EU to exclude the UK from the military applications of the EU's Galileo satellite navigation system during the transition.[63]**

7.12 **Moreover, as we noted in our previous Report on the EDIDP, the practical level of cooperation by UK industry in EU-funded projects under the Programme *after* the transitional period also remains highly uncertain. While the eligibility requirements for the EDIDP after 2020 will need to be set down in a new Regulation before the end of 2020, it is likely that they will in substance be the same as those to be agreed by the Parliament and Council in the coming months. As such, we note that the EDIDP Regulation is unlikely to contain a formal mechanism for a non-EU country to seek full 'membership' of the Programme.[64] While the EU's civilian research programme, Horizon 2020, allows 'association' of a third country (which means that, in return for a financial contribution by its taxpayers, entities from that country can participate in EU-funded projects as if they were based in a Member State), the EDIDP Regulation contains no such mechanism.**

7.13 **By default therefore, the involvement of UK companies in any EDIDP-funded projects—whether directly or through an EU-based subsidiary—will be assessed by**

62 http://www.cer.eu/sites/default/files/pbrief_plugin_def_25.4.18.pdf.

63 See our Report of [date] on Galileo and the post-Brexit transitional period.

64 See our Report of 2 May 2018 for more information on the UK's options for participation in the EU's civilian Framework Programme for Research after Brexit.

the EU on a case-by-case basis (including during the transitional period, if the UK is to be considered a 'third country' for the purposes of the EDIDP). Each funding decision where the project involves a British company would have to meet the additional requirements that apply when a 'third country' is involved, and be approved by a qualified majority of Member States. Similarly, unless the Government can secure a different arrangement, there will be no participation of the Ministry of Defence in the governance structures of the European Defence Fund either during or after the post-Brexit transition. Any involvement by UK companies in the EDIDP after Brexit would be *ad hoc* and based on mutual agreement between the EU and the UK.

7.14 **However, as has been suggested by the Centre for European Reform,[65] the UK could seek to secure a higher level of access to the European Defence Fund (including both the research and capability components) via an international agreement (treaty) between the UK and the EU. This would likely require an annual contribution to the European Defence Fund, with the manner of its calculation a matter for negotiation. Any formalised agreement on European Defence Fund participation, however, would have potential consequences for the continued integration of the UK's defence capabilities with those of the EU-27, even though the Government would have very limited influence over the direction of the Common Security & Defence Policy or even the way in which EDF funding was spent.[66] It is therefore imperative the Ministry of Defence set out its detailed proposals for what it has called the possible "models for participation" for the UK's continued involvement in the EDIDP, especially—as we have noted—the Programme's legal framework does not contain a model 'third country' mechanism the UK can seek to use.[67]**

7.15 **In view of the timetable for formal adoption of the EDIDP Regulation—expected to take place in summer 2018 after informal agreement between the co-legislators in May or June—we expect to receive a further update from the Minister before too long. In addition to the Government's assessment of the outcome of the trilogue process, we ask that the Minister's next update to Parliament on the EDIDP negotiations also clarifies:**

- **whether article 122 of the draft Withdrawal Agreement could be used by the EU to exclude the UK from the European Defence Industrial Development Programme and/or the related Preparatory Action on Defence Research, and if so whether the European Commission has indicated the EU might make use of this option;**
- **what proportion of funding available under the Preparatory Action on Defence Research has been awarded to UK firms;**
- **what progress the Government has made in securing the level of representation it is seeking on the EDIDP Programming Committee, both during and after the post-Brexit transition; and**

65 Centre for European Reform, "Plugging in the British: EU defence policy" (April 2018).

66 The Government has previously told us in January 2018: "From the Government's perspective, we recognise that one option could be a financial contribution in return for some kind of special status in the European Defence Fund, however, this has yet to be explored in any detail with the European Commission and the remaining Member States. Subject to the outcome of these discussions we will make an assessment of the available options, taking into our account our political, capability and industrial interests."

67 See the Government's policy paper, "Framework for the UK-EU Security Partnership" (9 May 2018), p. 37.

- **whether the Government will seek a formal agreement with the EU giving the UK defence industry 'associated' status with the post-2020 European Defence Fund, comparable to such status available to third countries under the civilian Framework Programme for Research.**

7.16 **In the meantime, we retain the proposal under scrutiny and also draw these developments to the attention of the Defence Committee and the Business, Energy and Industrial Strategy Committee.**

Full details of the documents

Proposal for a Regulation establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovative capacity of the EU defence industry: (38831), 10589/17 + ADD 1, COM(17) 294.

Previous Committee Reports

First Report HC 301–i (2017–19), chapter 30 (13 November 2017) and Twelfth Report HC 301–xii (2017–19), chapter 10 (31 January 2018).

8 Animal welfare and international competitiveness

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: On the impact of animal welfare international activities on the competitiveness of European livestock producers in a globalized world
Legal base	—
Department	Environment, Food and Rural Affairs
Document Number	(39483), 5787/18 + ADD 1, COM(18) 42

Summary and Committee's conclusions

8.1 The Commission's Report concluded that the EU 's international efforts to communicate EU and global animal welfare standards over the period 2004–15 were effective in improving awareness of European and global animal welfare standards with particular success in welfare at slaughter, although not so much progress had been achieved on welfare in transport and on farm. Further information was set out in our Report of 18 April.

8.2 We raised a number of queries to which the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity (Lord Gardiner of Kimble) has responded. He emphasises that World Trade Organisation (WTO) rules allow WTO members to adopt measures necessary to protect public morals, which could include the moral value that the UK places on animal welfare. Any such measure would need to be based on evidence that it addresses a moral concern of the UK public and is necessary to protect public morals.

8.3 The Minister notes that the Commission has successfully used a range of methods to influence the raising of welfare standards internationally. Looking forward, animal welfare is a UK priority for international engagement and trade policy and the Government is committed to being a world leader in this area, acting by example and seeking to influence the raising of standards globally.

8.4 **We are grateful for the Minister's response and will monitor developments in this area with interest. We require no further correspondence on this document, which we clear from scrutiny. We draw this chapter to the attention of the Environment, Food and Rural Affairs Committee.**

Full details of the documents

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

Background

8.5 Following consideration of the document and the Minister's Explanatory Memorandum of 22 February at our meeting of 18 April, we requested the following information from the Minister:

- an assessment of what has worked well and what has worked less well and therefore how a post-Brexit UK strategy in this area might take a different approach; and
- any progress made by the Government in advocating greater flexibility to be able to make imports conditional on compliance with animal welfare standards.

The Minister's letter of 27 April 2018

8.6 On the question of making imports conditional on compliance with animal welfare standards, the Minister observes that the General Agreement on Tariffs and Trade provides WTO members with the ability to adopt measures necessary to protect public morals. These could, he says, include the moral value that the UK public places on animal welfare. Any such measures must not be applied in a manner which would constitute arbitrary or unjustifiable discrimination between countries, or as a disguised restriction on international trade. The Minister notes that the measure must be based on robust evidence that it addresses a moral concern of the UK public and is necessary to protect public morals.

8.7 Turning to the Commission's strategy and the future UK approach, the Minister says:

> "The EU Commission has used a range of methods to influence the raising of welfare standards internationally, including supporting the development and adoption of international standards, bringing animal welfare into the scope of collaborative frameworks under free trade agreements, and promoting scientific research and awareness raising. These methods are helping to raise the profile of animal welfare internationally, and are helping to ensure it is a key consideration in facilitating trade in animals and animal products.
>
> "Animal welfare is a priority for international engagement and trade policy as we leave the EU and the Government is committed to being a world leader in this area, acting by example and influencing the raising of standards globally through the World Organisation for Animal Health (OIE) and through bilateral discussions and agreements."

Previous Committee Reports

Twenty-fourth Report HC 301–xxiii (2017–19), chapter 4 (18 April 2018).

9 Energy Performance of Buildings

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Proposal for a Directive amending Directive 2010/31/EU on the energy performance of buildings.
Legal base	Article 194(2) TFEU; Ordinary legislative procedure; QMV
Department	Housing, Communities and Local Government
Document Number	(38339), 15108/16 + ADDs 1–5, COM(16) 765

Summary and Committee's conclusions

9.1 The building sector is the largest single energy consumer in Europe, absorbing 40% of final energy. About 75% of buildings are energy inefficient according to the European Commission, yet only around 1% of the building stock is renovated each year.

9.2 In order to accelerate the cost-effective renovation of the existing building stock, the Commission proposed in December 2016 to update the existing Energy Performance of Buildings Directive (EPBD) by:

- encouraging the use of modern technologies, including building automation and charging infrastructure for electric vehicles, to ensure buildings operate efficiently;
- streamlining or deleting provisions that have not delivered the expected output;
- strengthening the links between achieving higher renovation rates, funding and energy performance certificates; and
- reinforcing provisions on national long-term building renovation strategies, with a view to decarbonising the building stock by 2050.

9.3 Since the Committee last considered the proposal, on 22 November 2017, the Government has written twice. In its most recent letter, the Minister of State for Housing and Planning (Dominic Raab) explains that agreement has been reached between the EU institutions. While the agreement largely reflects the Council General Approach—supported by the UK—there have been some changes to accommodate the European Parliament. These include a requirement that, where technically and economically feasible, non-domestic buildings with large heating or air conditioning systems should have automation and control systems[68] by 2025.

9.4 The agreement also includes a 20-month transposition deadline which—assuming the text is adopted as expected in Council—would fall in early 2020 and would thus need to be applied in the UK during the post-Brexit withdrawal period. This was a change from the 24 months agreed by the Council.

68 A system comprising all products, software and engineering services that can support energy-efficient, economical and safe operation of technical building systems through automatic controls and by facilitating the manual management of those technical building systems.

9.5 The Government is concerned that the new requirement to have automation and control systems non-domestic buildings with large heating or air conditioning systems is neither practical nor proportionate. For that reason, the UK will abstain when the proposal comes to a final vote. The Minister requests that the Committee releases the document from scrutiny in advance of that vote, which could be as soon as 14 May.

9.6 In his earlier letter—of 12 December 2017—the then Minister (Alok Sharma) apologised for the failure to respond more promptly to the previous Committee's report of 25 January 2017, a failure which resulted in a scrutiny override. He explained that this was due to an administrative oversight.

9.7 **We note the outcome of negotiations and that the agreement struck between Member States at the June 2017 Energy Council remains largely in place, with some concessions made to the European Parliament. The concession relating to automation and control systems in non-domestic buildings with large heating or air conditioning systems is not, we understand, acceptable to the UK despite its application being subject to economic and technical feasibility. The UK therefore proposes to abstain.**

9.8 **We note that a 20-month transposition deadline has been agreed, rather than the 24 months proposed by the Council, and that this will fall within the post-Brexit implementation period. The Directive will therefore need to be transposed into UK legislation. That said, the particular clause of concern to the UK will not come into effect until 2025 and so—subject to the terms of the future EU-UK agreement—could be amended post-transition.**

9.9 **We note the Government's apology for the failure to respond more promptly to the previous Committee's report of 25 January 2017, a failure which led to a scrutiny override. Administrative oversight should not have such implications, but we do not take further issue with this matter given that the detail provided by the Department has otherwise been helpful.**

9.10 **We are content to release the proposal from scrutiny and would request the following information before closing correspondence:**

- **confirmation of Council adoption;**
- **an explanation of why the Government chose to abstain, rather than oppose, the agreement;**
- **whether the Government tabled a formal statement explaining its position when the proposal was put forward for final adoption;**
- **why a 20-month transposition period was agreed as opposed to the 24 months proposed by the Council; and**
- **confirmation that the UK will transpose the legislation given the 20-month transposition period and recent provisional agreement to a post-Brexit withdrawal period.**

Full details of the documents

Proposal for a Directive amending Directive 2010/31/EU on the energy performance of buildings: (38339), 15108/16 + ADDs 1–5, COM(16) 765.

Background

9.11 Details of the proposal—and of the other elements of the Clean Energy Package—were set out in our Report of 25 January 2017.[69] At that meeting, the previous Committee noted that the Government had concerns about the proposal and requested further details of the Government's analysis once available.

9.12 The Government did not write again until shortly before the June 2017 Energy Council. At that stage, the Government summarised progress, noting that agreement was likely at the Council and that the compromise proposals were more proportionate than the original proposals. Particular attention was drawn to the changes negotiated on electric vehicle charging infrastructure. Details of the changes were set out in our Report of 22 November 2017.[70]

9.13 At our meeting of 22 November 2017, we noted that the Government had overridden scrutiny and could have written to the previous Committee before Council and ought certainly to have responded to the previous Committee's Report of 31 January 2017 at an earlier stage. We sought an explanation as to why the Government did not communicate with our predecessors at an earlier stage.

9.14 Regarding Brexit, we noted that the transposition deadline would be likely to fall within the post-Brexit implementation period and sought confirmation that the Government would expect to transpose the measure into UK law.

9.15 On electric vehicle charging, we noted the Government's satisfaction with the changes negotiated and asked the Government to set out its position on how new and renovated building stock could contribute to the low carbon transport shift.

Ministerial letter of 12 December 2017

9.16 The Minister (Alok Sharma) apologises for the delay in responding to the previous Committee first report in the following terms:

> "I am very sorry for the delay in responding to the Committee's first report in January 2017. Regrettably, due to an administrative oversight we did not see the report until late March. The response was further delayed by the Easter recess and then the dissolution of Parliament, though I acknowledge the Committee was meeting up until 25 April."

9.17 On transposition of the Directive during a post-Brexit implementation period, the Minister recalls the Prime Minister's statement in her Florence speech on 22 September 2017 that the UK would honour its commitments made during the period of its membership. The exact terms of an implementation period are, he says, subject to agreement and Government will set out more detail following negotiations.

9.18 Regarding how new and renovated building stock can contribute to the low carbon transport shift, the Minister says:

> "The Government's recently published Industrial Strategy recognises that building stock can contribute to the low carbon transition and plays

69 Twenty-ninth Report HC 71–xxvii (2016–17), chapter 1 (25 January 2017).
70 Second Report HC 301–ii (2017–19) chapter 8 (22 November 2017).

> an important role in the shift to electric vehicles. The Strategy commits to updating the Building Regulations to mandate that all new residential developments must contain the enabling cabling for charge-points in these homes. Any future changes to the Building Regulations will need to take account of the independent review of Building Regulations and fire safety led by Dame Judith Hackitt. The review is due to produce its final report in spring 2018."

Ministerial letter of 24 April 2018

9.19 The Minister (Dominic Raab) explains that, following the conclusion of trilogue discussions, the Bulgarian Presidency presented a text based on political agreement with the European Parliament to a meeting of Permanent Representatives (COREPER) on 31 January. The European Parliament formally voted on the final text in plenary on 17 April.

9.20 On the content of the agreement, the Minister comments in the following terms:

> "Most of the changes in the text do not deviate significantly from the general approach text and are broadly in line with our agreed negotiating position—to ensure that the proposals are proportionate, practical, and cost effective and in line with UK policy. However, we have a concern with the introduction of a requirement for non-domestic buildings with large heating or air conditioning systems to have automation and control systems by 2025. This would be required irrespective of whether or not the building owner is undertaking any work to the building. While the requirement is caveated so that a building owner would not need to install such a system in place unless it is economically and technically feasible, we consider this requirement is not practical or proportionate.
>
> "The trilogue agreement also includes a requirement for electric vehicle charging infrastructure for existing non-residential buildings with more than 20 parking spaces by 2025. However, this is more in line with UK policy to improve electric vehicle charging infrastructure and it will be up to Member States to set such requirements according to their national needs."

9.21 The UK argued that there should be further trilogue negotiations, but the majority of Member States agreed that the text should go forward for adoption. The text will now be put forward for Council adoption as an 'A' Point (i.e. without further discussion). The earliest the Council will consider the EPBD will be 14 May.

9.22 The Minister concludes:

> "The UK intends to register an abstention at the Council meeting to indicate that we do not support all the changes to the EPBD. I hope this update allows the Committee to complete its scrutiny of this proposal."

Previous Committee Reports

Second Report HC xx-ii (2017–19), chapter 8 (22 November 2017); Twenty-ninth Report HC 71–xxvii (2016–17), chapter 1 (25 January 2017).

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

Cabinet Office

(39605)
7644/18
COM(18) 157

Report from the Commission to the European Parliament and the Council Report on the application of Regulation (EU) No 211/2011 on the citizens' initiative.

Department for Environment, Food and Rural Affairs

(39629)
7953/18
COM(18) 181

Report from the Commission to the European Parliament and the Council on the application of Directive 2007/43/EC and its influence on the welfare of chickens kept for meat production, as well as the development of welfare indicators (Text with EEA relevance).

Foreign and Commonwealth Office

(39517)
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Council Decision (CFSP) 2018/283 of 26 February 2018 amending Decision (CFSP) 2016/1693 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them.

(39518)
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—

Council Implementing Regulation (EU) 2018/281 of 26 February 2018 implementing Regulation (EU) No 2016/1686 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them.

(39608)
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Council Decision (CFSP) 2018/475 of 21 March 2018 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2017/1426.

(39609)
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—

Council Implementing Regulation (EU) 2018/468 of 21 March 2018 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Implementing Regulation (EU) No 2017/1420.

(39671) — —	Joint Proposal for a Council Decision on the Union position within the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Tunisia, of the other part, with regard to the adoption of the document: 'Strengthening the EU-Tunisia privileged partnership: strategic priorities for the period 2018–2020'.

HM Treasury

(39501) 6227/18 + ADD 1 COM(18) 41	Report from the Commission to the European Parliament and the Council on the implementation and impact of Directive 2009/110/EC in particular on the application of prudential requirements for electronic money institutions.
(39539) 6377/18 COM (18) 120	Communication from the Commission to the European Parliament, the Council, the European Central Bank and the Eurogroup 2018 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of indepth reviews under Regulation (EU) No 1176/2011.
(39611) 7699/18 COM(18) 169	Report from the Commission to the European Parliament and the Council on the application of Title III of Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) as regards the supervision of insurance and reinsurance undertakings in a group, and the assessment of the transitional period for the occupational retirement provision business of life insurance undertakings.
(39614) 7783/18 COM (18) 165	Proposal for a decision of the European Parliament and of the Council on the mobilisation of the European Globalisation Adjustment Fund (EGF/2018/000 TA 2018—Technical assistance at the initiative of the Commission).
(39422) — —	Single Resolution Board: Work on a challenging Banking Union task started, but still a long way to go.
(39463) 5647/18 + ADD 1 —	European Court of Auditors' Special Report No 2/2018: "The operational efficiency of the ECB's crisis management for banks".

Home Office

(39317) 15438/17 COM(17) 728	Communication from the Commission to the European Parliament and the Council Reporting on the follow-up to the EU Strategy towards the Eradication of trafficking in human beings and identifying further concrete actions.

Formal Minutes

Wednesday 9 May 2018

Members present:

Sir William Cash, in the Chair

Steve Double	Kelvin Hopkins
Mr Marcus Fysh	David Jones
Kate Green	Michael Tomlinson
Kate Hoey	Dr Philippa Whitford

2. Scrutiny report

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

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

Paragraphs 1.1 to 10 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 16 May 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*)