



House of Commons
European Scrutiny Committee

Thirty-first Report of Session 2017–19

Documents considered by the Committee on 13 June 2018

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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Meeting Summary

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

Brexit-related issues

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

Digital Revenue Tax

Whether the Government would be willing to accept any constraints on its tax policies within the scope of the future economic partnership, and (if so) what types of constraint would be acceptable and unacceptable to the Government?

Working Conditions Directive and Parental & Carers' Leave Directive

We have discussed two pending EU proposals on employment law, relating to paid leave entitlements and employment rights for workers on variable hours contracts. The exact legal implications of the proposals for the UK are unclear because it is not yet known if they will have to be implemented in UK law under the post-Brexit transitional arrangement.

Summary

Digital Revenue Tax

Following the failure of the OECD's Task Force for the Digital Economy (TFDE) interim report to the G20 to present meaningful policy options on taxing the digital economy, the European Commission has brought forward two legislative proposals to address this issue: Directive 7420/18 would apply a 3% tax to revenues from digital service providers on an interim basis; Directive 7419/18 would reform corporate taxation by creating a new form of "virtual" permanent establishment based on the concept of "significant digital presence", which would enable Member States to tax digital businesses which fulfilled the criteria. The proposals have been discussed on the floor of the House as part of a wider debate on digital taxation, in which support was expressed for both measures, but particularly the proposed levy on revenues, whether it originated in the EU or domestically.

The Government reiterates its opposition to the existing proposal for a Common Consolidated Corporate Tax Base, but indicates that these more targeted proposals comply with the principles of subsidiarity and proportionality. The Minister (the Rt. Hon. Jesse Norman MP) suggests that the proposed levy on revenues aligns with a recent Treasury position paper in which the Government indicated that a revenue levy applied to digital service providers was its preferred interim solution. As, in order to be fully effective, the corporate tax reforms would require Member States to amend their double tax treaties with third countries, which the US is unlikely to be willing to do, the Minister suggests

that the principal benefit of the latter proposal is likely to be its potential to move the global debate forward. In practice, neither proposal is likely to be agreed as unanimity is required in the Council of Ministers, and countries such as Ireland and Luxembourg are unlikely to accept them. We seek further information about the proposals and their EU exit implications.

The Committee's decision: not cleared from scrutiny; further information requested.

Exchanging information on criminal convictions

The European Criminal Records information System—ECRIS—enables Member States to exchange information on previous convictions so that they can be taken into account in criminal proceedings across the EU. The Commission has put forward two proposals to improve the operation of ECRIS and create a new EU information system—ECRIS-TCN—containing the biographical and fingerprint data of third country nationals convicted in the EU. The UK has opted into both proposals even though they are unlikely to become operational before the UK's post-exit transition/implementation period ends on 31 December 2020. In his latest update, the Minister for Policing and the Fire Service (Nick Hurd) provides a progress report on the final stages of trilogue negotiations and (implicitly) confirms that ECRIS and ECRIS-TCN are amongst the measures the Government wishes to include in a future internal security treaty with the EU. The Committee accepts that UK support for the ECRIS package is consistent with the Government's wider post-exit objectives but considers that it would be premature to clear the proposals from scrutiny at this stage, not least because the Government has yet to provide a Justice Impact Test and Impact Assessment (promised for early 2018).

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

Europol: exchanging personal data with third countries

The Government informs us that it has decided to opt into proposals authorising the Commission to negotiate agreements which would enable Europol to exchange personal data with the law enforcement authorities of eight countries in the Middle East and North Africa (Jordan, Turkey, Lebanon, Israel, Tunisia, Morocco, Egypt and Algeria). We previously cleared the proposals from scrutiny as we considered it would be beneficial for the UK to be involved in the negotiations, not least because they might serve as a model for a future agreement on the exchange of personal data between the UK and Europol. We ask the Government to provide further information on the legal base for the proposals, the application of the UK's justice and home affairs opt-in (as it is not mentioned in the proposals themselves), and the necessary human rights and data protection safeguards. We also ask the Government to comment on the criteria (identified by the European Data Protection Supervisor) that a third country should be required to meet to enter into a data-sharing agreement with the EU.

Previously cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the Joint Committee on Human Rights.

Strengthening the Schengen Information System

This package of three Regulations is intended to make the Schengen Information System—SIS II—a more effective tool for border management and law enforcement cooperation. The UK is participating in the proposed Regulation on cross-border police cooperation, even though it is unlikely to become operational before the transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement has expired. The Council agreed a mandate to enter into trilogue negotiations with the European Parliament last November. Although the Government considered the text of the proposed police cooperation Regulation to be broadly acceptable, it had some outstanding concerns and voted against. Trilogue negotiations are nearing completion and the Government invites us to clear the proposals from scrutiny ahead of a Coreper meeting in mid-June. The Minister for Policing (Mr Nick Hurd) indicates that SIS II is one of the measures the Government will seek to include in a future internal security treaty with the EU but makes clear that “we are preparing for all eventualities”, including no deal. We note that the Minister has not explained why the Government now wishes to vote for the trilogue text when it voted against the Council text last November. We ask the Minister provides this explanation, as well as details of when the SIS II reform package is expected to become operational.

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

Transparency of EU food safety risk assessment

The Commission proposes measures to improve the transparency of risk assessments undertaken by the European Food Safety Authority (EFSA). The degree of the proposal’s long-term relevance to the UK remains unclear, but there will undoubtedly be some relevance as adherence to these rules will be a pre-condition for the placing of UK food products on the EU market. The Committee raises a number of queries about the proposal, including: the need for an impact assessment; the UK’s ambition in terms of the future relationship with EFSA; the risks of increased political involvement in the risk assessment process; progress being made by the Food Standards Agency towards increasing its scientific and other capacities in advance of Brexit; and progress towards ensuring that measures are in place to facilitate the continued trade in food of animal origin in the event of a no-deal.

Not cleared; further information requested; drawn to the attention of the Health and Social Care Committee and 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: Working Conditions Directive [Proposed Directive (NC)]; Parent and Carers’ Leave Directive [Proposed Directive (NC)]; Non-performing loans: debt management and out-of-court collateral recovery [Proposed Directive (NC)]

Environment, Food and Rural Affairs Committee: Transparency of EU food safety risk assessment [Proposed Regulation (NC)]

Exiting the European Union Committee: Apportionment of the EU's concessions on Tariff Rate Quotas (WTO) in view of UK withdrawal from the EU [Proposed Decision, Proposed Regulation (NC)]; Exchanging information on criminal convictions [Proposed Directive, Proposed Regulation (NC)]; Enhancing law enforcement cooperation and border control: strengthening the Schengen Information System [Proposed Regulations (NC)]

Health and Social Care Committee: Health and care in the digital single market [Communication (C)]; Transparency of EU food safety risk assessment [Proposed Regulation (NC)]

Home Affairs Committee: Exchanging information on criminal convictions [Proposed Directive, Proposed Regulation (NC)]; Europol: exchanging personal data with third countries [Proposed Decisions (C)]; Enhancing law enforcement cooperation and border control: strengthening the Schengen Information System [Proposed Regulations (NC)]

Justice Committee: Exchanging information on criminal convictions [Proposed Directive, Proposed Regulation (NC)]; Enhancing law enforcement cooperation and border control: strengthening the Schengen Information System [Proposed Regulations (NC)]

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

Treasury Committee: Non-performing loans: debt management and out-of-court collateral recovery [Proposed Directive (NC)]

Women and Equalities Committee: Parent and Carers' Leave Directive [Proposed Directive (NC)]

Work and Pensions Committee: Working Conditions Directive [Proposed Directive (NC)]; Parent and Carers' Leave Directive [Proposed Directive (NC)]

1 Parental and Carers' Leave Directive

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; scrutiny waiver granted for the EPSCO Council of 21 June 2018; further information requested; drawn to the attention of the Business, Energy & Industrial Strategy Committee, the Women & Equalities Committee, and the Work & Pensions Committee
Document details	Proposal for a Directive on work-life balance for parents and carers, and repealing Council Directive 2010/18/EU
Legal base	(a) Article 153(1)(i) and (2)(b) TFEU; ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(38689), 8633/17 + ADDs 1–3, COM(17) 253

Summary and Committee's conclusions

1.1 In April 2017, as part of a new push to modernise the EU's social policy framework under the 'Pillar of Social Rights',¹ the European Commission published a [proposed Directive](#) on statutory entitlements to paternity, parental and carers' leave for workers.² The draft legislation would establish EU-wide statutory minimum requirements for paid paternity, parental and carers' leave for workers with an employment contract. The Commission has proposed that Member States should compensate workers who make use of any of the leave entitlements under the Directive by at least the same amount as national sick pay.

1.2 The Minister for Small Business (Andrew Griffiths) [told us](#) in July 2017 that the Government was not convinced that legislation at EU-level is necessary in this area, adding that the proposal as put forward by the Commission would make substantial changes to existing UK law on statutory rights for workers (for example by creating an entirely new entitlement to paid carers' leave). His Department has estimated that the full cost of the new Directive to the Exchequer and to businesses could run into hundreds of millions of pounds annually,³ but was [unable to say](#) with certainty whether the new Directive would apply in the UK under the terms post-Brexit transitional period (when the Government will still be under an obligation to apply EU law).

1.3 The Committee was last considered the proposal [in January 2018](#), we concluded based on a [progress report](#) that Member States were likely to press for caps on the level of pay below the limits foreseen by the Commission, or even removing the requirement to provide compensation for loss of salary altogether. The Council also looked set to recommend changes to the scope of the carer's leave entitlement by defining the conditions under which the Directive would apply more strictly.

1 See for more information the Committee's [Report of 29 November 2017](#) on the "European Pillar of Social Rights".

2 In July 2016, the Commission had asked the EU social partners (trade unions and employer's organisations) if they wanted to negotiate an agreement among themselves on parental and carers' leave entitlements, but no talks took place because the positions of the two sides were too far apart.

3 [Explanatory Memorandum](#) submitted by the Department for Business, Energy & Industrial Strategy (6 July 2017).

1.4 By letter dated 1 June 2018, the Minister now says there have been “positive developments” in the Council over recent months, leading to the Government having “achieved or made significant progress on” its objectives. In particular, he notes that a majority of the Council support amendments that would explicitly give Member States the flexibility to define at national level who is a “worker” for the purposes of the leave entitlements created by the Directive;⁴ introduce a less restrictive pay requirement for non-transferable parental leave than originally proposed by the Commission; and remove the requirement for paid carers’ leave.⁵ In the UK, the Directive as re-drafted by the Council would nevertheless create a new statutory entitlement to unpaid carers’ leave, as well as a new form of paid parental leave (which is, at present, [unpaid in the UK](#)).

1.5 As a result of the Council’s proposed changes to the Directive, the Government is now broadly supportive of the legislation; accordingly, the Minister has asked for a scrutiny waiver to allow him to support the general approach at the forthcoming meeting of EU Employment Ministers on 21 June 2018. Following a similar vote in the European Parliament in July 2018, the final text of the new Directive would be the subject of negotiations between the two institutions. If there is agreement on the new legislation by the end of the year, Member States would then have two to three years to transpose the Directive into domestic law, i.e. in 2020–2021.⁶ It is therefore still possible that the legislation may have to be transposed into UK law before the end of the post-Brexit transitional period (during which the Government will remain under an obligation to apply EU law, including legislation adopted after it ceased to have voting rights on the Council, as if it were still a Member State).⁷

1.6 We thank the Minister for his update on the Government’s position on the proposed Directive, which now appears ready for endorsement at ministerial level during the EPSCO Council on 21 June 2018. We have taken note of the changes to the legislation supported by a majority of Member States which, if also approved by the European Parliament, would substantially reduce the impact of the Directive on UK employment law compared to the original Commission proposal.

1.7 We note the Government’s opposition to any EU-level restrictions on who Member States can define as a “worker” for the purposes of the Directive. Based on the Council’s proposed text, we consider it likely that the new leave entitlements (if transposed into UK law during the post-Brexit transitional period) would be available only to ‘employees’, and not ‘workers’ generally. The Government is also seeking to remove a statutory definition of “worker” from a parallel Commission proposal for a Working Conditions Directive, which we have considered in a separate chapter of this

4 A parallel Commission proposal for a Working Conditions Directive, aimed primarily at improving the rights of workers in variable or precarious work, also contains an EU-wide statutory definition of “worker” based on the case law of the European Court of Justice. The Government opposes such a definition in principle, preferring national flexibility to structure employment rights to respond to changes in the labour market. However, it is not yet clear if this other proposal could ultimately contain such a definition. Please refer to our separate Report on the Working Conditions Directive of 13 June 2018 for more information.

5 As with all EU employment law, individual Member States would be free to legislate for more generous leave entitlements domestically. See “Background” for more information about the Council’s amendments to the pay requirements.

6 The exact deadlines for transposition of the Directive into domestic law will be subject to discussions between the Parliament and the Council. The Commission originally proposed two years, whereas the Council is seeking a three year implementation period,

7 The EU and the UK are currently agreed on a transitional period lasting until 31 December 2020, subject to ratification of the Withdrawal Agreement.

Report. We believe the Government’s position on this particular aspect of changes in EU employment law will be of particular interest to the Business, Energy & Industrial Strategy and Work & Pensions Committees in the context of their response to the Taylor Review, and in particular their reflections on the difference in legal status for “employees” and “workers” under UK law.⁸

1.8 More generally, despite the UK’s exit from the EU, we still consider this Directive on leave entitlements to be politically important. If it applied in the UK during the post-Brexit transitional period, which the Minister has not ruled out, it would trigger substantial changes in UK employment law even taking into account the changes proposed by the Member States.⁹ In particular, even the Council’s version—which gives significantly more flexibility to Member States about leave entitlements and compensation levels—would still require the introduction of two months of paid parental leave and a new carers’ leave entitlement. Moreover, the issue of minimum pay levels for paternity, parental and carers’ leave is likely to be a key point of contention in the upcoming negotiations between the European Parliament and the Member States on the final text of the Directive.¹⁰

1.9 At present, it is too early to establish with any certainty the timetable for formal adoption of the Directive. As such, we cannot yet rule out that this new legislation will be agreed and require implementation before the end of the post-Brexit transitional period. In such an eventuality, the new leave entitlements as decided by the Council and the Parliament would have to be given effect in UK law. Given the current state of play, it seems possible that the legislation could be formally adopted after 29 March 2019 (when the UK no longer has a vote in the Council). In such an event, it could be easier for the European Parliament or other Member States to disregard the Government’s views (as the UK could not form part of any blocking minority in the Council). The Committee will therefore continue to monitor developments in the legislative process closely and report them to the House whenever necessary, especially if the Government refuses to rule out seeking an extension of the transitional period (which would make it more likely that the Directive would have to be transposed into UK law).

1.10 As such, it is in the UK’s interest for this Directive to be adopted while the Government is still fully involved in the EU’s legislative process. In light of the Minister’s reassurances about the effect of the Council’s proposed amendments, we are content to grant the Minister a scrutiny waiver ahead of the June EPSCO Council. We emphasise that the scrutiny reserve will continue to apply thereafter. We also draw these latest developments to the attention of the Business, Energy and Industrial

8 See https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/352/35205.htm#_idTextAnchor007.

9 The same also applies to a sister proposal for a Working Conditions Directive, which we have discussed separately in a different chapter of this Report.

10 For example, the European Parliament’s Rapporteur has [proposed](#) that during periods of parental leave under the Directive, a worker should receive “a payment or allowance of at least equivalent to 75% of [their] gross wage” (amendment 14). The last attempt at EU-level to amend the rules relating to paid leave for parents took place in 2008, when the European Commission [proposed amendments](#) to the [Maternity Leave Directive](#) to [increase the duration of minimum paid maternity leave](#) in the EU from 14 to 18 weeks. The Member States and the European Parliament never reached agreement on the proposal, and it was formally [withdrawn](#) in July 2015. At the time, the Commission stated that it would focus its efforts on a “broader initiative [to] provide minimum protection (...) [for] working parents and carers.”

Strategy Committee, the Work and Pensions Committee and the Women and Equalities Committee. Given our considerations above, they may wish to consider the implications of the new Directive having force of law in the UK during the transition.¹¹

Full details of the documents

Proposal for a Directive on work-life balance for parents and carers, and repealing Council Directive 2010/18/EU: (38689), 8633/17 + ADDs 1–3, COM(17) 253.

Background

1.11 In April 2017, nearly ten years after a failed attempt to update the EU’s Maternity Rights Directive, the European Commission proposed a new EU Directive on statutory entitlements to parental and carers’ leave.¹² It is part of a wider effort by the European Commission to revise and update the EU’s corpus of employment and social law, in line with the ambitions set out in the European Pillar of Social Rights as adopted in November 2017.¹³

1.12 The draft legislation aims to improve access to work-life balance arrangements such as leave and flexible working arrangements, in particular by men, by introducing new entitlements for paternity and carers’ leave, but leaving the current EU minimum requirements for maternity leave un-amended. The Directive as proposed by the Commission would establish a right to paid paternity leave for fathers for at least 10 days at the time of the birth of their child; a right to four months of paid parental leave for both mothers and fathers during the first twelve years of each of their children’s lives;¹⁴ and a carer’s entitlement to five days’ paid leave annually for the purposes of providing care. These periods of leave would also require compensation at least equivalent to sick pay.

1.13 The Minister for Small Business (Margot James) submitted an Explanatory Memorandum on the proposal in July 2017.¹⁵ She noted that that the entitlement to paid carers’ leave would be a “completely new entitlement” in the UK from which workers could benefit. In addition, the Minister explained that the provisions of the proposed Directive dealing with paid paternity and parental leave would cut across existing domestic

11 The legal implications of the Directive after the of the transitional period will depend on the terms of the new economic partnership with the EU (in particular the ‘level playing field’) and the way in which it is retained in UK law. Under the European Union (Withdrawal) Bill, Directives which have been transposed into UK law before the end of the transitional period. The legal implications of the Directive after the of the transitional period will depend on the terms of the new economic partnership with the EU (in particular the ‘level playing field’) and the way in which it is retained in UK law. Under the European Union (Withdrawal) Bill, Directives which have been transposed into UK law before the end of the transitional period

12 In July 2016, the Commission had asked the EU social partners (trade unions and employer’s organisations) if they wanted to negotiate an agreement among themselves on parental and carers’ leave entitlements, but no talks took place because the positions of the two sides were too far apart.

13 See the Committee’s [Report of 29 November 2017](#) for more information on the European Pillar of Social Rights.

14 This leave entitlement would be non-transferable to the other parent (to encourage men to make use of it), but could be taken flexibly (e.g. full-time, part-time or in separate blocks).

15 [Explanatory Memorandum](#) submitted by the Department for Business, Energy & Industrial Strategy (6 July 2017).

legislation to a lesser or greater extent, in particular in respect of paid parental leave.¹⁶ She added that the full cost of the new Directive to the Exchequer and to businesses were difficult to predict, but could run into hundreds of millions of pounds annually.

1.14 In January 2018, the new Parliamentary Under Secretary of State for Small Business (Andrew Griffiths) wrote with further information on the Government’s position on the proposal.¹⁷ He emphasised the Government’s commitment to facilitating the balance of work with family and other commitments, but that the Directive should “not disrupt existing national systems unfavourably”. In addition, he said the UK was “not yet convinced that legislation at EU-level is the best way of achieving this objective” and would seek to “retain as much flexibility as possible for Member States to maintain or develop their own systems of leave and pay for workers with caring responsibilities”.

Changes sought by the Member States

1.15 Following its publication by the Commission, the proposed Directive has been discussed by Member State representatives at both technical and political level. At political level, EU Employment Ministers considered the proposal at the meeting of the EPSCO Council in Brussels on 7 December 2017 based on a [progress report](#) prepared by the Estonian Presidency.¹⁸ At that point, all EU countries retained a general scrutiny reservation on the Directive and numerous amendments were under consideration to reduce the extent and costs of the leave entitlements proposed by the Commission. We described the changes the Member States were considering in more detail in our [Report of January 2018](#).

1.16 By letter dated 1 June, the Minister has provided further information on the negotiations between the Member States. He explained that a qualified majority within the Council was expected to support a common position on the legal text of the Directive at the June 2018 EPSCO Council (a so-called ‘general approach’). The Council’s position would recommend a number of substantial changes compared to the original Commission proposal (which we [described in detail](#) in November 2017), subject to any future negotiations with the European Parliament on the final legal text of the Directive.

1.17 In particular, the Member States want to drastically water down the Commission’s stipulation that workers should “receive a payment or an adequate allowance at least equivalent to what the worker concerned would receive in case of sick leave” for any paternity, parental and carers’ leave they take under the Directive. Overall, the Council’s general approach—if adopted—would seek to amend the draft legislation in the following ways:

- while a majority of countries support the proposal for an EU-wide minimum standard of 10 days of **paternity leave** around the birth of a child (**article 4**), they have inserted a clarification that the entitlement should be calculated pro-rata for part-time employees. For paternity leave, there would be a statutory requirement

16 Domestic UK law provides for unpaid parental leave for a period of up to 18 weeks for all parents for each child, which can be taken up until the child’s 18th birthday. The Commission went considerably further by proposing an entitlement to 4 months of non-transferable parental leave per parent, compensated at least at the level of sick pay, although the leave must be taken before the child turns 13 years old.

17 [Letter](#) from Andrew Griffiths to Sir William Cash (17 January 2018).

18 See for more information the [progress report](#) prepared by the Estonian Presidency of the Council (Council document 14280/17).

to provide an allowance equivalent to national sick pay or, if it is lower, 1.5 the average national monthly gross wage (these would be pay floors; individual EU countries would be free to offer paternity pay at higher levels);

- as regards the Commission proposal to introduce a minimum of four months paid non-transferable **parental leave (article 5)**, to be taken flexibly before a child is 12 years old, the Member States want more flexibility to determine the period over which such leave can be taken. They also want to reduce the non-transferable portion by 50 per cent (i.e. two months), meaning the other half could be transferred to the other parent.¹⁹ With respect to parental pay, the Council wants all Member States to be under an obligation to provide some form of compensation, but the Directive would not specify a statutory minimum;²⁰ and
- with respect to **carers' leave (article 6)**, the original Commission proposal envisaged five days of such leave annually to provide “personal care or support in case of a serious illness or dependency of a relative”. The Council has maintained this provision, but added a number of qualifying provisions to ensure Member States can apply this new entitlement within their domestic frameworks for leave and care.²¹ They have also removed any obligation on Member States to provide pay or compensation for carers' leave (although, again, individual EU countries would be free to provide carers' pay).

1.18 Even though substantially watered down from the original Commission proposal, the Council's re-drafted version of the Directive (if it applied to the UK) would still require the Government to introduce some form of paid parental leave, as current legislation only provides for an unpaid entitlement in this regard. In addition, the new entitlement to (unpaid) carers' leave would also be a new addition to UK employment law.²² The paternity leave provisions are already largely in line with current UK practice.

1.19 The European Parliament's Employment & Social Affairs (EMPL) and Women's Rights (FEMM) Committees has not yet adopted their own proposed amendments to the Directive. They are currently scheduled to do so at a meeting in July 2018. Once both the Council and the Parliament have agreed their respective negotiating positions, they will engage in trilogue negotiations on the final text of the Directive. A key flashpoint is likely to be the levels of pay during periods of leave: the Parliament's Rapporteur has [proposed](#) that minimum compensation requirements for both parental and carers' leave should be set out in the Directive (at 75 per cent of the *worker's* gross wage).²³

1.20 Until the negotiations between the two institutions are completed, the timetable for formal adoption of the legislation remains unclear. Consequently, it is not yet certain at

19 In practice, this usually means the leave entitlement will be transferred from the father to the mother.

20 For the two months of *transferable* parental leave, the Member States do not want an EU-wide statutory requirement for a payment or allowance for the employee (but Member States would be free to provide for such compensation in domestic law).

21 For example, the Council's version of article 6 of the Directive allows Member States to prevent multiple people from claiming paid carers' leave for care of the same person, and defers to national legislation on proof of the seriousness of the medical condition of the relative.

22 The Minister's original [Explanatory Memorandum](#) on the proposal stated: “An entitlement to carers' leave would be a completely new entitlement.”

23 See European Parliament document [PE618.193](#).

this stage whether the Directive could have to be transposed into UK law during the post-Brexit transitional period (when the Government will have to apply new EU law as if the UK were still a Member State).²⁴

Previous Committee Reports

Third Report HC 301–iii (2017–19), [chapter 1](#) (29 November 2017) and Eleventh Report HC 301–xii (2017–19), [chapter 3](#) (31 January 2018).

24 The Government and the European Commission have provisionally agreed on a transitional period lasting from 30 March 2019 until 31 December 2020. However, that is subject to an overall agreement on all withdrawal issues and formal ratification of the Withdrawal Agreement.

2 Working Conditions Directive

Committee’s assessment	Legally and politically important
Committee’s decision	Not cleared from scrutiny; scrutiny waiver granted for the EPSCO Council meeting of 21 June 2018; further information requested; drawn to the attention of the Business, Energy and Industrial Strategy Committee and the Work and Pensions Committee
Document details	Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions
Legal base	Article 153(1)(b) and Article 153(2)(b) TFEU; ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Number	(39396), 16018/17, + ADDs 1–2, COM(17) 797

Summary and Committee’s conclusions

2.1 In December 2017, the European Commission proposed a [new Directive](#) to establish EU-wide minimum employment rights, especially for workers on variable or zero-hours contracts. As we set out in more detail in “Background” below, the legislation would establish a statutory definition of “worker” for the first time; limit probationary periods; update the written statement of employment rights workers receive; restrict exclusivity clauses that unfairly prevent parallel work; and give workers more certainty about the hours they are expected to work.

2.2 In its initial [Explanatory Memorandum](#), the Government appeared broadly supportive of the Commission proposal, noting the overlap with the findings of the recent [Taylor Review of modern working practices](#).²⁵ However, the Minister for Small Business (Andrew Griffiths) did raise concerns over certain aspects of the material new employment rights proposed, including the extent to which the proposal would allow for unfair dismissal claims from the very start of an employment relationship (given that under current UK law only employees who have been in service for two years or more can make such a claim) and the proposed introduction of an EU-wide statutory definition of “worker”, which reduces national flexibility when applying EU employment law. We considered the Government’s position, and the substance of the Directive more generally, in our [Report of 31 January 2018](#).

2.3 The Minister provided further information on the negotiations on the Directive among the EU’s Member States by letters of [11 May 2018](#) and 1 June 2018. In these, he is noticeably more relaxed about the implications of the Working Conditions Directive for UK employment law following deliberations with the other Member States. In his latest letter, the Minister says the Government “have made significant progress on the text and have achieved [its] objectives” particularly with regards to “better alignment with [the UK] domestic agenda on written statements, employment in parallel and the right to

25 <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>.

request a more secure form of employment”. As a result, he says, the Minister wants “to be able to vote in support” of a Council general approach at the meeting of EU Employment Ministers on 21 June 2018, paving the way for discussions with the European Parliament on the final text of the Directive.

2.4 In spring 2018, we also received an opinion from the Business, Energy and Industrial Strategy and Work and Pensions Committees on the proposal in the context of their [recent inquiry](#) into working conditions in the UK.²⁶ These two Committees are broadly supportive of the Directive, but wary of some of the unintended changes that EU-wide legislation may create within the UK’s domestic framework employment law (especially in the area of unfair dismissal). They also concluded that a full assessment of the potential implications of the Directive for the UK would depend on the outcome of the Government’s consultation exercise on the Taylor Review on working practices.²⁷

2.5 The Minister indicates that negotiations with the European Parliament on the final text of the Directive are unlikely to be concluded before spring 2019 at the earliest. It remains unclear if the Directive would need to be transposed into UK law. Although it clearly will not apply before the UK is due to leave the EU on 29 March 2019, its eventual transposition deadline may fall within the subsequent post-Brexit transitional period (during which the Government would continue applying EU law, including new legislation, as if the UK were still a Member State).²⁸

2.6 We thank the Minister for his latest updates on the Working Conditions Directive. Given the chequered history of EU employment law in the UK, and the possibility that this new Directive may have to be transposed as part of the post-Brexit transitional period, we remain of the view that the new legislation is politically important. In this respect, we are concerned that there could be some degree of legal uncertainty about the exact implications of the Directive for UK employment law: some of the Government’s initial concerns about the drafting of the legislation—relating to the definition of ‘worker’, the time limit on probationary periods, and protection against dismissal—do not appear to have been fully addressed at this stage, although discussions within the Council are on-going ahead of a vote on a general approach by EU Employment Ministers later this month.

2.7 In view of the Minister’s reassurances however, we are content to grant him a scrutiny waiver ahead of that meeting so that the Government can support the general approach if it considers it appropriate to do so. However, we also ask him to provide further information about the potential impact of the Directive on UK employment law:

- **If the final Working Conditions Directive were to include a statutory definition of “worker”,²⁹ would there be any additional impact on existing EU or UK employment law arising beyond establishing the personal scope**

26 The full text of the Committees’ joint letter is reproduced in the annex to this Report.

27 The [Government consultations](#) closed in early June 2018.

28 The transitional period is currently scheduled to last until 31 December 2020, pending ratification of the UK’s Withdrawal Agreement.

29 In the context of a parallel Commission proposal on a Parental and Carers’ Leave Directive, the Government told us it had successfully argued within the Council for explicit flexibility for Member States to determine the personal scope of the legislation by allowing each EU country to define a ‘worker’ for its purposes. However, that Directive is also still subject to negotiations with the European Parliament.

of the rights contained in the Working Conditions Directive? To what extent does the definition adequately codify existing Court of Justice case law on the concept of “worker”?

- Would Article 17 of the Directive create a new right for workers to challenge their unfair dismissal where none exists under UK law at present?
- What would be the practical impact in the UK of the proposed time limit on probationary periods, in particular with respect to the ability of workers to challenge dismissal based on a probationary period lasting beyond the new six-month limit?
- Would Member States, when transposing the Directive, be *required* to set reasonable limits on the maximum permitted ‘reference hours’ and the minimum ‘advance notice’ for workers on variable hours, or will that be a matter of national and/or employer discretion?

2.8 We would be grateful to receive a reply to these questions by 16 July. We also draw the Minister’s attention to the position of the Business, Energy and Industrial Strategy and Work and Pensions Committees on the proposal. Conversely, we draw the Minister’s letter and the latest developments in the legislative process towards adoption of the Directive to the attention of those two Committees. We note the scrutiny reserve will continue to apply after the adoption of the general approach, and ask the Minister to keep the Committee informed of the position of the European Parliament and, in due course, developments in the trilogue process.

Full details of the documents

Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions: (39396), [16018/17](#), + ADDs 1–2, COM(17) 797.

Background

2.9 As part of the new “[European Pillar of Social Rights](#)“, the European Commission last December tabled its first concrete proposal for a new piece of EU employment legislation: a [draft Directive](#)³⁰ to “promote more secure and predictable employment while ensuring labour market adaptability and improving living and working conditions” throughout the European Union.

2.10 We set out the substance of the proposal in some detail in our [Report of 31 January 2018](#). In summary, the purpose of the Directive is to:

- update the types of information employers must provide to new starters on their employment conditions under the existing 1991 [Written Statement Directive](#),³¹

30 Other initiatives the Commission is preparing as part of the Pillar of Social Rights are a legislative initiative on access to social security for atypical workers and the self-employed; an evaluation of existing EU Directives on fixed-term contracts and part-time work; and legislative proposals for a European Labour Authority and a European Social Security Number. See “Background” for more information.

31 Directive 91/533/EEC, transposed into UK law under the Employment Rights Act 1996.

- expand the scope of that Directive by introducing an explicit definition of the type of “worker” covered, based on the case law of the European Court of Justice;³² and
- add EU-wide minimum statutory employment conditions, primarily for workers with precarious or variable hours (including limits on probationary periods, restricting exclusivity clauses for zero-hours workers and giving workers with variable hours “reasonable advance notice” of when they are expected to work).

2.11 Under the terms of the proposed Directive, workers would be able to challenge their dismissal from work if it was based on an attempt to enforce any of these new rights.³³

2.12 The Minister for Small Business (Andrew Griffiths) submitted an [Explanatory Memorandum](#) on the proposed Directive in January 2018.³⁴ The Minister appeared broadly supportive of the Commission’s objectives, noting the overlap with the findings of the Taylor Review of modern working practices.³⁵ However, he did raise concerns over certain aspects of the material new employment rights proposed by the Commission, including the perceived link between probation and statutory employment rights in the UK; and the extent to which the proposal would allow for unfair dismissal claims from the very start of an employment relationship, given that under current UK law only employees who have been in service for two years or more can make such a claim.

2.13 When we considered the proposal [in January 2018](#), we concluded the Directive would mark a significant expansion of EU employment law, and require substantial changes to the UK’s domestic legislation if adopted in the form proposed by the Commission. However, we expressed concern about the lack of evidence adduced by the Commission to support the need for EU-level action to protect workers in the “gig economy”; the lack of formal definition for a number of key concepts in the Directive;³⁶ and the inaccurate link drawn by the Commission between the length of the probationary period and the enjoyment of statutory employment rights in the UK.

2.14 Given that the new Directive could have force of law in the UK if it has to be implemented during the proposed post-Brexit transitional period (currently projected to run until 31 December 2020, until which EU law would continue to apply as if the UK were still a Member State), we retained it under scrutiny and asked the Minister to keep the Committee informed of developments in the legislative process. We also formally sought the views of the Business, Energy and Industrial Strategy and Work and Pensions Committees on this proposal, as they have been undertaking an inquiry into employment conditions in the UK.

32 The proposed definition of worker is: “A natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration”.

33 Article 17: “Member States shall take the necessary measures to prohibit the dismissal or its equivalent and all preparations for dismissal of workers, on the grounds that they exercised the rights provided for in this Directive”.

34 [Explanatory Memorandum](#) submitted by the Department for Business, Energy & Industrial Strategy on 15 January 2018.

35 <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>.

36 Including, for example, “reasonable advance notice” in relation to variable hours; the “interest of the worker” test for extending probation periods; and the “legitimate reasons” test for using exclusivity clauses to prevent parallel employment.

Developments since January 2018

2.15 In May 2018, the Government provided an [update](#) on the state of play in the negotiations on the Directive between the Member States in the Council. This was followed by a second letter from the Minister on 1 June, which confirmed that the Member States are now largely agreed on some amendments to the Directive [as originally proposed](#) by the Commission.³⁷ In particular, the Council’s version of the legal text includes the following key components:

- **Definition of a worker (Article 2):** a blocking minority of Member States—including the UK—has proposed to remove or modify the statutory definition of “worker” as proposed by the Commission.³⁸ This is because of concerns that, as a matter of principle, national governments should have flexibility to decide how employment rights apply within the context of their domestic labour market. If the definition as proposed was maintained, this would significantly broaden the personal scope of the rights contained in Directive (such as the right to an enhanced written statement and the right to request a contract variation to those with ‘worker’ status in the UK, which are currently limited to those with ‘employee’ status only);
- However, even if the UK had the flexibility to decide to which “workers” the new rights contained in the Directive applied, the Minister has now also told us that the “impact of extending certain rights to all workers may be more limited than [the Government’s] initial assessments”. This could indicate that the Government would voluntarily use an approximation of the proposed definition of “worker” in any event to define the eligibility criteria for the new employment rights, if it had to transpose the Directive into UK law;³⁹
- **Right to a written statement (Article 3):** As proposed by the Commission, the Council wants any worker within the scope of the Directive to have a right to a written statement of their employment rights on ‘day one’ of their work for a new employer. The Government supports this change;
- **Probationary periods (Article 7):** Although the Government raised concerns in its initial Explanatory Memorandum that the Commission proposal erroneously linked a probationary period to reduced statutory employment rights in UK (and Irish) law,⁴⁰ the Minister now notes that “in many Member States reduced protections are associated with probationary periods” and adds that the

37 In relation to the limit on probationary periods; the protection against unfair dismissal; and the definition of ‘worker’ the Council’s proposed text does not differ materially in substance from the original Commission proposal, despite the Government’s initial concerns about these aspects of the Directive.

38 Based on the case law of the European Court of Justice, the definition of worker reads “a natural person who for a certain period of time performs services for and under the direction of another person in return for remuneration”.

39 The Taylor Review looked closely at employment status and recommended retaining the UK’s three tier approach while extending certain rights to all workers, including the right to a written statement.

40 The Department’s original Explanatory Memorandum said: “We note that the Commission says this new right [to limit probationary periods] would require legislative changes only in the UK and Ireland and are not yet convinced of the case for EU-level action concerning probationary periods given the lack of justification for legislative intervention, since there is no relationship between a workers’ probationary period and their statutory rights in the UK. We will need to explore with the Commission the potential impact of Article 7 (maximum duration of any probationary period) on the unfair dismissal qualifying period of 2 years under the Employment Rights Act.”

Commission also argued that that prolonged probationary periods can “have other limiting effects such as a worker’s ability to access finance” (because of the uncertainty about their future income). As a result, it appears the proposed 6-month limit on probationary periods will be maintained by the Council;

- **Employment in parallel (Article 8):** The Directive would prohibit the use of **exclusivity or incompatibility clauses** that prevent employees from taking up parallel employment with another employer, unless such a clause is used for “legitimate reasons” such as the protection of business secrets or for the avoidance of conflicts of interests. The Government had expressed concern that the ‘legitimate reasons’ test could also be used to circumvent the UK’s existing (complete) ban on exclusivity clauses in zero-hours contracts.⁴¹ The Minister is now satisfied that the Directive as drafted “is sufficient to prevent existing rights in Member States being undermined or reduced”, as the “conditions of incompatibility” would be decided by Governments rather than individual employers;
- **Minimum predictability of work (Articles 3(2)(l) and 9):** The Commission proposed that workers with unpredictable or variable working hours (e.g. those in the ‘gig economy’) would have to agree “reference hours” with their employer (within which they may be required to work) as well as the minimum advance notice before they are assigned work. The Directive would legally prevent a worker from suffering detriment (e.g. dismissal or not being assigned any work at all) if they refuse to work outside the reference period or without the minimum advance notice period being observed by their employer. The Council looks set to maintain this provision, and the Government has not raised concerns about it;⁴²
- **Transition to another form of employment (Article 10):** The Directive would build on UK law⁴³ to give all workers the right to make a statutory request for a contract variation to a different form of work (for example from variable hours to permanent employment). The Minister explains that it has the support of other Member States to explicitly limit the number of requests a worker can make within a given period; moreover, this new statutory right does not place an obligation on the employer to accept the request; and
- **Protection from unfair dismissal (Article 17):** This is one of the areas where the Minister initially expressed concern. Under UK employment law, unfair dismissal claims require at least two years of service, whereas the new Directive as proposed would allow workers to challenge dismissal which they can justifiably assert was based on seeking to exercise their rights under the Directive irrespective of length of work. The Minister now says that “the protections from dismissal outlined in Article 17 of the proposed Directive refer specifically to the rights provided for in the Directive”, and “so do not raise concerns of extension

41 Section 27A of the Employment Rights Act 1996.

42 The Government has said that the provisions on predictability of working hours “[do] not correspond with any domestic legislation and would therefore introduce a new entitlement in the UK”.

43 Section 80F of the Employment Rights Act 1996.

beyond this scope”. However, it is not clear if this would still require changes to the scope of unfair dismissal in UK law in relation to the rights contained in the Directive. We are seeking further clarification from the Minister on this point.⁴⁴

2.16 We have also received a reply from the Business, Energy and Industrial Strategy and Work and Pensions Committees outlining their position on the proposal (reproduced in full in the Annex to this chapter). They told us:

- they welcome the general principles on which the Commission’s proposals for transparent and predictable working conditions in the European Union are founded as they echo some of the work of the Taylor Review and the Committees’ own work on ‘A Framework for Modern Employment’;
- they agree with the Commission that clarity on the status of ‘worker’ is “an urgent requirement for the millions of workers who are facing uncertainty and risk losing out on rights. We also agree that those workers deserve certainty around working hours” (in relation to the requirements around predictability of working hours and reasonable advance notice, see above);
- the Committees had not yet considered other areas covered by the proposed Directive, notably exclusivity clauses preventing parallel work and protection against unfair dismissal. However, they note they were “not convinced by the Government’s suggestion that a [complete] ban on exclusivity contracts might unintentionally harm people on zero-hour contracts” (for whom exclusivity clauses are already prohibited);
- however, they did recognise that the Commission’s proposed changes to rights on unfair dismissal are “significantly different” from the current framework of rights for UK workers and asked for certainty that the Directive would have “no consequences (intended or otherwise) that would see a dilution in rights as a result of the proposal”; and
- finally, the Committees recommend a reappraisal of the potential implications of the Working Conditions Directive on the UK once the Government’s consultations following the Taylor Review are completed, and there will be more clarity about domestic legislative change in the areas covered by the Directive.

Timetable for adoption of the Directive

2.17 The Minister’s letter of 1 June also confirmed the Bulgarian Presidency of the Council was seeking to secure a ‘general approach’ (common negotiating position) at the meeting of EU Employment Ministers on 21 June 2018. This would allow the incoming Austrian Presidency to negotiate with the European Parliament on the final text of the Directive. He

44 The question of the scope of the unfair dismissal claims also touches on the legal base for the Directive: under Article 153 TFEU, any proposals relating to “protection of workers where their employment contract is terminated” requires a different legislative procedure, where every Member State has a veto (the Directive as proposed is subject to the ordinary legislative procedure instead, where QMV voting rules apply). In his latest letter, the Minister says the Government’s concerns about the legal base have been assuaged because it has received “assurances that this is not about limiting Member States ability to regulate the length of qualifying periods in respect of unfair dismissal and redundancy protection”.

added that the Government, based on the draft legal text, would want to be in a position to support the Council’s negotiating position and therefore requested a scrutiny waiver from the Committee ahead of the Council meeting.

2.18 The European Parliament’s Employment & Social Affairs (EMPL) Committee has provisionally scheduled a vote on the proposed Directive in mid-October 2018. The Minister says his “best estimate” is that trilogue negotiations between the Parliament and the Council could be concluded in the first quarter of 2019. Depending on the transposition deadline chosen by the Parliament and the Member States, that would result in the Directive becoming applicable in 2021 or 2022. Whether it will have to be transposed into UK law will therefore depend primarily on the length of any post-Brexit transitional period, during which EU law would continue to apply.⁴⁵

Previous Committee Reports

Twelfth Report HC 301–xii (2017–19), [chapter 5](#) (31 January 2018).

45 The EU and the UK are currently agreed on a transitional period lasting until 31 December 2020, subject to ratification of the Withdrawal Agreement.

Annex: Letter from the Business, Energy and Industrial Strategy and Work and Pensions Committees

Dear Sir William,

Thank you for your letters of 31 January to us, seeking our views on the EU proposal for a Working Condition Directive. Given our Committees' joint working on modern employment, we are responding together on behalf of both our Committees. We agree with the European Commission that the flexibility offered by new forms of employment has been a major driver of job creation and labour market growth, but that these present risks for low-paid and insecure workers.

We also recognise that the means by which a balance between flexibility and security is best achieved are complex. We welcome the general principles on which the Commission's proposals for transparent and predictable working conditions in the European Union are founded. Not least as they echo some of the work of Matthew Taylor's Government commissioned review into Employment Practices in the Modern Economy ("The Taylor Review") and our own work on 'A Framework for Modern Employment', which built on and advanced some of the most important recommendations from The Taylor Review.

You have asked for our views on four areas: employment status, predictability, exclusivity, and unfair dismissal. Our Committees made recommendations to Government on both employment status and predictability of work in our report on modern employment. We welcome the Commission's pursuit of reform in these areas and agree that clarity on worker status is an urgent requirement for the millions of workers who are facing uncertainty and risk losing out on rights. We also agree that those workers deserve certainty around working hours.

However, our Committees recognised that some casual workers welcome the flexibility zero- and low-hour contracts provide and we supported Taylor's recommendation that where certainty is not possible, workers should receive a premium on their pay to compensate. The Government are now consulting on both of these areas, although they have not yet committed to taking forward these changes. On the areas we had not considered as part of our previous work, exclusivity contracts and unfair dismissal, we are not convinced by the Government's suggestion that a ban on exclusivity contracts might unintentionally harm people on zero-hour contracts (for whom exclusivity clauses are already prohibited). However, we do recognise that the Commission's proposed changes to rights on unfair dismissal are significantly different from the current framework of rights for UK workers. We would therefore want certainty that there were no consequences (intended or otherwise) that would see a dilution in rights as a result of the proposal.

Since your initial letter, the Government has launched a series of consultations on enhancing workers' rights, as part of its response to The Taylor Review and our report. We regret that these consultations add further delay to overdue action on an already thorough report. However, as the Government is taking further evidence on issues covered by the Commission's proposed directive, we recommend waiting for the outcome of this work in order to understand fully the potential impact of the EU's proposals on working conditions in the UK.

Yours sincerely,

Rt Hon Frank Field MP
Chair, Work and Pensions Committee

Rachel Reeves MP
Chair, Business, Energy and Industrial Strategy Committee

3 Transparency of EU food safety risk assessment

Committee's assessment	Politically important
<u>Committee's decision</u>	Not cleared from scrutiny; further information requested; drawn to the attention of Health and Social Care and Environment, Food and Rural Affairs Committees
Document details	Proposal for a Regulation of the European Parliament and of the Council on the transparency and sustainability of the EU risk assessment in the food chain amending Regulation (EC) No 178/2002 [on general food law], Directive 2001/18/EC [on the deliberate release into the environment of GMOs], Regulation (EC) No 1829/2003 [on GM food and feed], Regulation (EC) No 1831/2003 [on feed additives], Regulation (EC) No 2065/2003 [on smoke flavourings], Regulation (EC) No 1935/2004 [on food contact materials], Regulation (EC) No 1331/2008 [on the common authorisation procedure for food additives, food enzymes and food flavourings], Regulation (EC) No 1107/2009 [on plant protection products] and Regulation (EU) No 2015/2283 [on novel foods]
Legal base	Articles 43, 11, and 168(4)(b) TFEU; Ordinary legislative procedure; QMV
Department	Food Standards Agency
Document Number	(39676), 8518/18 + ADD 1, COM(18) 179

Summary and Committee's conclusions

3.1 The EU's General Food Law (GFL) Regulation⁴⁶ was adopted in 2002 as a response to a series of food safety crises, including BSE in the UK. An important innovation was the separation of risk assessment⁴⁷ from risk management. The GFL Regulation established a new body, the European Food Safety Authority (EFSA), to carry out risk assessment, whereas risk management is undertaken by the European Commission and other EU institutions.

3.2 Despite the overall effectiveness of the more systematic approach to risk analysis introduced through the GFL Regulation, concerns have been expressed about the transparency of EFSA's risk assessment process as well as the effectiveness of risk communication. The Commission has therefore proposed a number of improvements to the GFL Regulation and consequential amendments to a series of sectoral laws relating to specific types of food.

46 Regulation No 178/2002.

47 Risk assessment is defined as the scientifically based process consisting of four steps: hazard identification, hazard characterisation, exposure assessment and risk characterisation.

3.3 In order to allow for greater transparency of the risk assessment process and ensure the reliability and independence of the studies used to determine authorisation applications, the Commission proposes to make public supporting studies submitted by industry, with an exemption for confidential or commercially sensitive data. It will also develop a register which industry will need to use to notify EFSA and the public of planned studies at a pre-submission stage. In order for the process to be robust, the laboratories, within the EU, undertaking the studies would also be required to register any studies in a similar fashion.

3.4 It is also proposed to bring elements of the governance of EFSA into line with the [Common Approach](#) on Union decentralised agencies.⁴⁸ Under this approach all Member States will nominate representatives to be on the Management Board. Currently, EFSA Board Members are recruited via open competition.

3.5 The proposals would create more responsibilities for Member States to nominate experts to sit on scientific expert panels. This includes a need for assurances to be provided by Member States regarding the ability of experts to serve effectively.

3.6 Finally, the proposals look to improve the risk communication element of EFSA's work. The proposals would put objectives and general principles governing risk communication into legislation. Based on these objectives and general principles, the intention would then be to draw up a general plan on risk communication to be followed by EFSA and Member States.

3.7 The Parliamentary Under Secretary of State for Public Health and Primary Care (Steve Brine) and the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity (Lord Gardiner of Kimble) say in their joint [Explanatory Memorandum](#)⁴⁹ that the United Kingdom has consistently supported the need for independent and scientifically led evidence-based policymaking. Nevertheless, the proposals raise some concerns for the UK, such as:

- increasing national level involvement in the EFSA risk assessment process may subject it to increased political involvement—this is particularly the case for the proposed changes to how EFSA recruits its Management Board;
- the approach to the provision of data not considered to be commercially sensitive needs to be sufficiently flexible for business operators;
- the proposals could represent an increased administrative burden for Member States; and
- the efficiency of how EFSA works might be reduced by prioritising Member State participation over the individual merit of candidates.

3.8 On the other hand, say the Ministers, the proposal to create shared guidelines for risk communication addresses an area where increased clarity could benefit Member States.

3.9 On the UK's exit from the EU, the Government considers that further scrutiny of these proposals is required taking into account possible implications for EU exit and any future relationships the UK may have with EU systems and agencies. The timetable for discussion and adoption is unclear.

48 Joint Statement and Common Approach (Parliament, Council & Commission), 2012.

49 Explanatory Memorandum from the Food Standards Agency, dated 18 May 2018.

3.10 While the Commission is not planning an Impact Assessment, the Government might challenge this decision given the potential impact on business and might develop its own Impact Assessment. The Government notes that a legislative financial statement is appended to the proposal, forecasting an increase in EFSA expenditure beginning in 2020 due to the proposed changes to recruitment processes and increased staffing costs. Overall, this represents a proposed increase from €25 million per annum in 2020 to €62.5 million in 2022.

3.11 We agree with the Ministers that further scrutiny of these proposals is required taking into account possible implications for EU exit and any future relationships the UK may have with EU systems and agencies. While the timing for the negotiation and adoption of the legislation is unclear, it can be anticipated, for the reasons set out below, that there will be some impact on the UK in the expectation that food will continue to be exported from the UK to the EU-27. We support the Government’s view that an assessment of the impact of the proposal is required and would welcome further information on the progress of such an assessment.

3.12 No indication is given as to the desired relationship in the future between the UK and EFSA. To assist us in our scrutiny of this proposal, it would be very helpful if the Government could set out at the very least the UK’s ambition in terms of the future relationship with EFSA. We recognise that the final outcome is subject to negotiation.

3.13 Assuming that the UK may wish to have some type of relationship with EFSA in the future, possibly incurring a payment, we note with interest the anticipated increase in EFSA expenditure from 2020. To what extent is the likely impact of the proposal on the overall costs of EFSA likely to be a consideration that the UK will address during these negotiations?

3.14 We see a clear implication for UK business, regardless of the exit negotiations, which concerns those wishing to renew an existing authorisation or submit a new authorisation for the placing of their products on the market. For such companies, a clear, comprehensible approach is necessary, as is confidence in the assessment system. In that light, any increased political involvement in the process may be a cause for concern and we would therefore support the Government’s intention to query that aspect of the proposal.

3.15 The Food Standards Agency (FSA) has previously recognised the need for a significant increase in existing scientific and other capacities in relation to public health and food safety risk assessment in the light of EU exit. We would welcome information on the progress being made in that regard.

3.16 While we hope, and expect, that there will be a satisfactory outcome to the withdrawal negotiations, this cannot be taken for granted. The Commission was clear in its Notice to Stakeholders on 1 February⁵⁰ that a number of measures as set out below will need to be in place in order that food of animal origin in particular can continue to be exported from the UK to the EU-27. What progress is being made, working with the Commission, to ensure that such measures are in place?

50 Notice to Stakeholders, [Withdrawal of the UK and EU Food Law](#), European Commission, 1 February 2018.

3.17 We retain the proposal under scrutiny and draw it to the attention of the Health and Social Care Committee and of the Environment, Food and Rural Affairs Committee. We would welcome a response to this Report within twenty working days.

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council on the transparency and sustainability of the EU risk assessment in the food chain amending Regulation (EC) No 178/2002 [on general food law], Directive 2001/18/EC [on the deliberate release into the environment of GMOs], Regulation (EC) No 1829/2003 [on GM food and feed], Regulation (EC) No 1831/2003 [on feed additives], Regulation (EC) No 2065/2003 [on smoke flavourings], Regulation (EC) No 1935/2004 [on food contact materials], Regulation (EC) No 1331/2008 [on the common authorisation procedure for food additives, food enzymes and food flavourings], Regulation (EC) No 1107/2009 [on plant protection products] and Regulation (EU) No 2015/2283 [on novel foods]: (39676), [8518/18](#) + ADD 1, COM(18) 179.

Background and Analysis

3.18 This proposal has been made in response partly to a European Citizens' Initiative calling on the European Commission to “ensure that the scientific evaluation of pesticides for EU regulatory approval is based only on published studies, which are commissioned by competent public authorities instead of the pesticide industry”.⁵¹ It also follows the recent ‘[Fitness Check](#)’ of the General Food Law which began in 2014 and identified several areas of the legislative framework in this area which required updating.

3.19 On the UK's withdrawal from the EU, the Food Standards Agency (FSA) has previously recognised the need for it to undertake significant preparation in advance of Brexit. A Note to the FSA Board meeting on 20 September 2017 noted in relation to risk assessment that the FSA Brexit contingency planning “allows for a significant increase in our existing scientific and other capacities in relation to public health and food safety risk assessment.”

3.20 The European Commission prepared a “[Notice to Stakeholders](#)” in which it set out the implications of no deal in the area of food law. As of the withdrawal date, the import of food of animal origin from the UK into the EU-27 would be prohibited under a no-deal scenario unless:

- the UK is “listed” by the Commission for public and animal health purposes;
- the establishment in the United Kingdom from which the food is dispatched, and obtained or prepared in, is “listed” by the Commission for public health purposes;
- the United Kingdom is “listed” by the Commission as having a residue control plan approved in accordance with EU law (Directive 96/23/EC); and
- the imported food satisfies all relevant EU food hygiene requirements.

51 Communication from the European Commission on the European Citizens' Initiative “Ban glyphosate and protect people and the environment from toxic pesticides”, [C\(2017\) 8414](#).

3.21 As of the withdrawal date, the Commission went on to state, these requirements would be controlled upon entry into the EU-27 by applying mandatory border checks at the first point of entry into the Union territory:

- this food can only enter the EU-27 through approved “border inspection posts”;
- each consignment undergoes documentary and identity checks, as well as at an appropriate frequency physical checks; and
- each consignment has to be accompanied by a certificate in compliance with EU food legislation.

3.22 The import of food of non-animal origin from the UK would not be subject to listing requirements, but EU Member States would carry out regular official controls on such food.

3.23 Certain food cannot be placed on the EU market unless it has been approved by the Commission (for example for food additives, food flavourings, smoke flavourings, vitamins and minerals used in food, including in food supplements and any novel food) or an individual applicant has obtained an authorisation by the Commission (for example for genetically modified food). Certain food is subject to specific composition requirements and EU food law sets limits for contaminants, and maximum residue levels of active substances. Food contact materials placed on the EU market are subject to EU rules, and certain food contact materials are subject to additional specific measures.

Previous Committee Reports

None.

4 Digital revenue tax

Committee's assessment	Politically important
Committee's decision	(a) (b) (c) Not cleared from scrutiny; further information requested; (d) (e) Cleared from scrutiny.
Document details	(a) Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services; (b) Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence; (c) Commission Recommendation of 21.3.2018 relating to the corporate taxation of a significant digital presence; (d) Communication from the Commission to the European Parliament and the Council: Time to establish a modern, fair and efficient taxation standard for the digital economy; (e) Communication from the Commission to the European Parliament and the Council: A Fair and Efficient Tax System in the European Union for the Digital Single Market.
Legal base	(a) Article 113 TFEU; special legislative procedure; unanimity, (b) Article 115 TFEU; special legislative procedure; unanimity, (c)—, (d)—, (e)—.
Department	Treasury
Document Numbers	(a) (39585), 7420/18+ ADDs 1–3, COM(18) 148; (b) (39586), 7419/18 + ADDs 1–3, COM(18)147; (c) (39590), 7421/18; (d) (39591), 7418/18 + ADD 1, COM(18) 146; (e) (39054), 12429/17, COM(17) 547

Summary and Committee's conclusions

4.1 On the 21st of March 2018, the European Commission published proposals for two Council Directives and a Commission Recommendation on the taxation of businesses in the digital economy. This follows on from a Commission [communication](#) published on 21 September 2017, which the Committee has scrutinised separately.⁵²

4.2 The chief effect of the Communication was to press the OECD's Task Force for the Digital Economy's (TFDE) interim report to the G20 in spring 2018 to present "meaningful policy options" which have the potential to tackle these concerns. The Commission's Communication also outlined three possible short-term approaches which could be used to address the issue on a temporary basis at EU-level, if progress was not made at a global level: an equalisation tax, a withholding tax on digital transactions, and a levy on revenues generated by digital transactions or advertising activity. The Government said that it would evaluate these proposals on their merits.

4.3 In the Government’s response⁵³ to the Committee’s [report](#) on this proposal on 13 December 2017, the Financial Secretary to the Treasury, the Rt. Hon Mel Stride MP, drew the Committee’s attention to a Treasury [position paper](#) “Corporate tax and the digital economy”, informing the Committee that the position paper:

- agrees with the principle that profits should be taxed where value is created, and that the application of this principle is being challenged by the way in which certain digital businesses create value;
- argues that the current international corporate tax system does not fully reflect how certain digital business models create value through user participation;
- advocates reform of the internationally agreed rules that determine the allocation of taxing rights and taxable profits among the different countries in which a multinational business operates, to better reflect how certain digital businesses create value; and
- sets out the government’s desire to explore interim solutions until that can be achieved, noting that the most attractive option that has so far been put forward is a tax on the revenues that businesses which generate value through user participation derive from the UK market.

4.4 On 16 March 2018 the OECD Task Force on the Digital Economy released its [interim report](#) on the tax challenges arising from digitalisation. The report was unable to reach a consensus on either the need or justification for interim measures or the direction of any long-term solution. It set out a proposed direction of work on digitalisation and the international tax rules through to 2020.

4.5 On 22 March 2018 the Treasury published an [update](#) to its position paper on corporate taxation in the digital economy, which firmly established that its preferred interim solution was a revenue tax applicable to certain digital providers. The Minister [told](#) the BBC that the Government considered a revenue-based tax to be “the potentially preferred route” to address the issue.

4.6 The following week, the Commission presented two legislative proposals:

- draft Directive 7420/18, which would introduce an EU-wide interim tax, applicable at 3% on certain digital activities for which user participation is considered to constitute an essential input and an important source of value; and
- draft Directive 7419/18, which would enable Member States to tax profits generated in their territory, even if a company does not have a physical presence there, by deeming digital platforms who fulfil the applicable criteria to have a taxable “significant digital presence” or “virtual permanent establishment” within the Member State.

4.7 The proposals are described in more detail in the background section of this report, along with the Government’s response to the proposals in its Explanatory Memoranda, which were submitted one month after the due date because of unspecified difficulties in gaining internal clearance. The Minister indicates that both proposals comply with

53 Letter from the Financial Secretary to the Treasury to the Chair of the European Scrutiny Committee ([19 February 2018](#)).

the principles of proportionality and subsidiarity in the Government’s assessment, and that both are broadly in line with Government thinking—particularly the proposed levy on revenues—although the Government also identifies a wide range of aspects of both proposals in relation to which further exploration is needed. Furthermore, the Government clearly regards Directive 7419/18, which would create a virtual permanent establishment, as an attempt to move the global debate forward, as opposed to something which is likely to be agreed by the Member States.

4.8 A debate on digital taxation was held in the House of Commons on 27 March 2018,⁵⁴ during which the current proposals were discussed, with members generally expressing support for a levy on the revenues of digital service providers, irrespective of whether it was an EU or a domestic measure.

4.9 Since the adoption of the proposals, a significant number of Member States—led by Ireland and Luxembourg, but also including the Netherlands, Greece, Belgium and Denmark—have indicated that they do not support the proposals.⁵⁵ As unanimity is applicable to both measures in the Council of Ministers, it is therefore unlikely that either Directive will ever be agreed.

4.10 We have taken note of the Government’s Explanatory Memoranda regarding the proposed Directives. While the Government would prefer global solutions, the lack of progress at global level means that it is potentially willing to support action on a multilateral basis, including possible interim measures, to address what it describes as the “mismatch between the location of value-creating activities and taxable profit for certain digital business models”.⁵⁶

4.11 The Government has been proactive over the past year in developing its own proposals as to how the digital economy should be taxed, and its thinking appears to be reflected in the Commission’s proposals, particularly the proposed levy on revenues of certain digital service providers—which the Government had identified as its preferred interim solution in advance of the Commission issuing its proposal. This could potentially raise €5bn in annual tax receipts across the EU, and help to reduce the discrepancy between the levels of tax paid by the digital economy and traditional brick and mortar businesses.

4.12 The long-term solution proposed by the Commission, which would introduce a new form of permanent establishment based on “significant digital presence”, and lay down general principles for allocating profits to that presence which would allow for the market value of users and data to be taken into account, appears to be more speculative in character, because, to be fully effective, it would require third countries to modify their double tax treaties with Member States. We share the Government’s assessment that its principal effect is to provide “a basis upon which to explore options for global reform and may act to encourage non-EU countries to consider changes.”⁵⁷ Nonetheless, this proposal is also broadly in line with the Government’s position paper, which posits that “user participation creates value for certain digital businesses”,

54 HC Deb, 27 March 2018, [volume 638](#).

55 Politico.eu, Europe’s digital tax map: Where countries stand ([6 April 2018](#)).

56 HM Treasury, Corporate tax and the digital economy: position paper update ([March 2018](#)). (March 2018). (m

57 Explanatory Memorandum submitted by the Treasury on [4 May 2018](#).

“jurisdictions in which users are located should be entitled to tax a proportion of those businesses’ profits”, and that “some reallocation of the profits currently recorded by these companies to user jurisdictions is justified”.⁵⁸

4.13 Given that unanimity is required for both proposals in the Council of Ministers, and it is manifestly not in the national interest of some Member States such as Ireland and Luxembourg to agree to the proposals, we conclude that it is highly unlikely that either proposal will be agreed. This may lead some Member States to propose the use of enhanced cooperation in this policy area in the future.

4.14 We request that the Minister provide us with any relevant updates on its position regarding those aspects of the proposals which the Government has identified as requiring further exploration or clarification, as enumerated in paragraphs 4.35 and 4.50 of this report.

4.15 We also ask for responses to the following questions:

- What proportion of the estimated additional €5bn in annual tax receipts generated by the proposed levy does the Government believe would accrue to the UK?
- When the UK leaves the EU Single market, if it chooses to unilaterally impose an equivalent levy at the same rate, how would the yield differ? Given that the current proposal would entail some transfer of levy revenues from countries such as Ireland, to countries with large numbers of users, is it reasonable to assume that the yield would be reduced?
- If draft Directive 7419/18 were adopted and the US were unwilling to amend its double tax treaties with EU Member States, what would be the overall effect of the measure in terms of tax receipts from US digital businesses to which the EU measure would apply? Please provide an explanation of the Government’s reasoning, on this point.

4.16 Regarding EU exit, we ask the Government:

- whether the agreement of Directive 7420/18 would be advantageous to the UK after it has left the EU (and any implementation period has ended), by raising overall levels of digital taxation within the Single Market;
- whether the UK’s intention to leave the EU’s Digital Single Market, announced in the Prime Minister’s Mansion House speech, could negatively impact the ability of the UK to attract large digital businesses to establish taxable business presences in the UK, given the importance of scale markets to the digital economy; and
- whether, as part of the “level-playing field” pillar of the future economic partnership, the Government would be willing to accept any constraints at all on its taxation policies? Please describe which types of constraint would be acceptable within the context of the partnership, and which would not.

58 HM Treasury, Corporate tax and the digital economy: position paper update ([March 2018](#)).

4.17 We ask the Government to reply to these questions, and to provide the requested clarifications regarding the proposals themselves, along with any relevant updates on negotiations in the Council, by 25 July 2018. In the meantime, we retain the two proposed directives and recommendation under scrutiny. We clear the two communications relating to digital taxation from scrutiny.

Full details of the documents

(a) Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services: (39585), 7420/18 + ADDs 1–3, COM(18) 148; (b) Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence: (39586), 7419/18 + ADDs 1–3, COM(18) 147; (c) Commission Recommendation of 21.3.2018 relating to the corporate taxation of a significant digital presence: (39590), 7421/18; (d) Communication from the Commission to the European Parliament and the Council: Time to establish a modern, fair and efficient taxation standard for the digital economy: (39591), 7418/18, COM(18) 146 + ADD 1 ; (e) Communication from the Commission to the European Parliament and the Council: A Fair and Efficient Tax System in the European Union for the Digital Single Market: (39054), 12429/17, COM(17) 547.

Background

4.18 Internet companies, as with any multinational with operations in the UK, are liable to tax on that part of their profit which arises from value created in the UK. This source-based approach is the principle underlying all corporate tax regimes across the OECD.

4.19 The rules are reflected in the OECD Model Tax Convention:

- Article 9: The profits of a company within a group should be commensurate with the value it generates for the group through its activities, and commensurate with the reward that it would receive in undertaking those activities for an unrelated party at arm's length;
- Article 5: In addition to their rights over resident companies, countries have a right to tax non-resident companies that have a permanent physical presence in their jurisdiction, termed a permanent establishment;
- Article 7: Countries are entitled to tax non-resident companies on profits attributable to the activities undertaken through that local physical presence or permanent establishment.

4.20 In its [position paper](#) on Corporate tax and the digital economy, the Government concluded that this arrangement was not sustainable:

“These rules, and the guidelines underpinning these rules, do not give recognition to the value created by user participation.”

“For example, the presence of an active user base in a jurisdiction is not of itself sufficient to evidence a permanent establishment in that jurisdiction, and does not therefore entitle the jurisdiction to tax the business's profits.”

“Equally, even if a business has a physical presence in a jurisdiction that gives rise to a permanent establishment, the jurisdiction will only have a right to tax profits attributable to the economic activities and assets of that permanent establishment. It will not be entitled to tax profits that are considered attributable to value creating activities of local users based on the channels set out above.”

“The government thinks that this is creating a mismatch between the location of value-creating activities and taxable profit for certain digital business models. This chapter therefore sets out possible options for reforming the international tax rules to take account of the value created by users.”

The Commission’s proposals

Directive 7420/18: Digital services tax (DST)

4.21 The Commission has proposed a Directive that would put in place a digital services tax (DST) which would apply to revenues, as opposed to profits, generated by digital services to which user participation is an essential input. The proposal is closely aligned with recent Treasury policy papers on the same subject.

4.22 The tax would be levied at 3%, net of VAT, and it is suggested that this would raise €5bn annually in tax receipts across the Union.

4.23 The tax would cover the following three sources of revenue:

- the placing of adverts on a digital interface (e.g. a website or app);
- the transmission of data collected about users generated from the users’ activity on a digital interface; and
- intermediation services, allowing users to find and interact with other users, which may also facilitate the provision of goods or services between users.

4.24 According to the Commission, these are also the main digital activities that currently escape tax altogether in the EU.

4.25 A number of services are excluded from the scope of the proposed DST. Although all online advertising is included, in cases where the supplier of the advertising and the owner of the digital interface are separate, only the supplier will be subject to the tax (e.g. if Google provides advertising services on the dailymail.co.uk web-page, Google would be subject to the tax on its advertising services). Services not included are media and content distribution, communication services, and the sale of goods and services online (although the facilitation of e-commerce through an intermediation platform is). Most regulated financial services, including platforms for savings and investment and crowdfunding for investment, are excluded—it is unclear whether any are in scope, although further clarification may be sought on whether funding platforms such as TransferWise, which are arguably intermediation services, would be in scope.

4.26 Two thresholds would have to be met for a company to be subject to the tax:

- the company or the consolidated group to which it belongs has global revenue from all sources of €750mn a year; and
- the company or the consolidated group to which it belongs has revenue taxable under the DST of €50mn (£44,207,500) a year in the EU.

4.27 The global threshold is intended to target large businesses for which the mismatch between value creation and corporate tax may be greatest. It is intended to exclude start-ups and growth companies, and to give a large, simple threshold so that companies can know easily that they are not within scope of the tax. The threshold is set at the Union level to disregard differences in market size between Member States.

4.28 Taxing rights would be split between Member States according to different criteria depending on the service in question, although in all cases this would be based on the location of users and not the place of payment or underlying transaction. The location of users would be determined using internet protocol (IP) addresses, or alternative methods if businesses can argue for their effectiveness. Member States will be responsible for identifying the taxpayer, collecting the tax and allocating it to other Member States as appropriate. A digital One-Stop-Shop portal will be set up to help companies comply.

4.29 In order to avoid the possibility of double taxation, companies will be able to deduct the tax as a cost from their corporate tax base.

4.30 The proposed DST would only apply on an interim basis, until the reforms proposed in the second Directive (see below) were implemented.

The Government's view

4.31 The Government's Explanatory Memorandum recognises that the taxation of the digital economy is an important issue which raises challenges, supports the view that global tax agreements no longer accurately capture how value is created by digital businesses and concludes that, although global action is preferable, interim measures such as a revenue tax—implemented either through the EU or more widely—may be appropriate.

4.32 The Commission's proposal appears to be broadly in line with a number of recent Government policy papers on this subject. The Treasury's November 2017 [position paper](#), "Corporate tax and the digital economy", and a March 2018 [update](#) to that paper, broadly align with the Commission's analysis. The latter paper specifically suggests that an interim measure might take the form of a revenue tax:

"Without reform, the disconnect in the digital economy between the location of value creation and taxable profit challenges the fair application of the UK corporate tax regime. This disconnect has implications for both market outcomes and the system's sustainability."

"As set out at Autumn Budget, it is for that reason the government has outlined its receptiveness to an interim measure, preferably implemented on a multilateral basis, to compensate for unrecognised user-created value pending wider reform of the international corporate tax system."

“It is envisaged that an interim measure would be a tax on the revenues of digital businesses deriving significant value from UK user participation.”

4.33 The Government also indicates that the proposal complies with the principle of subsidiarity, reasoning that:

“Actions undertaken by individual states would likely differ from each other, which could increase complexity, creating compliance burdens for businesses. In addition, the nature of digital activity is often cross-border, so multilateral solutions could generally be assumed to be more effective.”

“Thus, there are significant benefits to interim solutions such as a revenue-based tax, to the extent they become necessary, being implemented on a multilateral basis—either in the EU or more widely.”

4.34 The Government expresses support for a number of specific aspects of the proposal, including:

- the three revenue streams identified by the Commission (online advertising, sale of user data and intermediation services), which it considers to be key ways in which user participation generates revenue for businesses;
- the use of revenue thresholds below which businesses would not be subject to an interim tax, which would protect smaller businesses and start-ups from the costs of complying with the tax; and
- that any tax on revenues should be charged at a low percentage rate.

4.35 Nonetheless, the Government considers that further work is needed to ascertain:

- how the question of “revenue pass-through”; In some cases, suppliers of (for instance) online advertising may record revenues which include money that is passed directly on to a host website but recorded as a separate payment. It may or may not be appropriate to charge tax on the whole amount of such revenues;
- whether the scope of the measure can be made more targeted;
- whether the Commission’s suggested revenue thresholds are appropriate; and
- whether the Commission’s proposed flat rate 3% rate is the most appropriate level.

4.36 It is suggested in the Communication, although not in the Directive itself, that a proportion of the tax raised could be dedicated as revenue for the EU budget. The government does not support this suggestion.

Directive 7419/18 and Recommendation 7421/18: Rules relating to the corporate taxation of a significant digital presence

4.37 Alongside the proposal for an interim revenue tax on some digital service providers, the Commission has proposed an addition to existing corporate tax rules, which would enable Member States to tax profits that are generated in their territory, even if a company

does not have a physical presence there, the aim being to ensure that online businesses contribute to public finances at comparable levels to traditional ‘brick-and-mortar’ companies. Member States would determine and apply their own corporate tax levels.

(i) Modify permanent establishment rules

4.38 The first effect of the proposal is to modify permanent establishment rules so that it is not necessary for a company to be physically present in a Member State in order for it to be taxed. Permanent establishment rules will be modified to introduce a new form of permanent establishment based on “significant digital presence”. A significant digital presence, which has the effect of establishing taxing rights (a taxable nexus) for the host country, is deemed to exist if a company’s business consists wholly or partly in the supply of digital services through a digital interface (such as a website or an app) and one of the following conditions is met:

- It derives revenue of €7mn (£6,189,050) or more from the supply of digital services to users in the country in a tax year;
- It has more than 100,000 users in the country in a tax year; and
- It concludes more than 3,000 contracts for the supply of digital services in the country in a tax year.

4.39 These criteria are proxies for determining the ‘digital footprint’ of a business in a jurisdiction based on certain indicators of economic activity. They are intended to reflect the reliance of digital businesses on a large user base, user engagement and user’s contributions as well as the value created by users for these businesses.

(ii) Modify rules for attributing profits

4.40 In addition to creating the concept of a significant digital presence, which will enable Member States to tax companies where they meet the criteria, the proposal also sets out principles for attributing profits to the significant digital presence, in order to establish which profits they are entitled to tax. The Commission proposes adaptations to the standard methodology (functional analysis of the permanent establishment) in order to better capture the value creation of digital business models by allowing the market value of users and data in the provision of digital services to be taken into account when allocating profits to tax in the future.

4.41 The proposed rules only lay down general principles for allocating profits to a significant digital presence: the Commission envisages that more specific guidelines on the allocation of profits could be developed at the appropriate international fora or at EU level.

4.42 The proposal would (i) enable Member States to tax significant digital presences where they met the criteria, and (ii) define which of the profits generated by significant digital presences Member States were able to tax through the incorporation of various intangible assets such as number of users in the analysis of the activities of the permanent establishment. This would modify which Member States were able to tax which profits,

and result in a different reallocation of profit, but would not function like the Common Consolidated (Corporate) Tax Base proposal, by collating profits throughout the EU and then reallocating those profits according to a common EU formula.

(iii) Updating tax treaties with third countries

4.43 The proposed new rules would also apply where a Member State does not have a double taxation treaty with a third country. However, when Member States have double tax treaties with third countries, the proposed new rules will not apply, as they will be superseded by those treaties. This means that, unless the tax treaties are adapted, the new provisions will not apply in situations where a business with EU users is tax resident outside the EU, and would only apply between EU Member States or between Member States and third countries where there is no tax treaty.

4.44 The Commission has therefore issued a recommendation that countries update their tax treaties with third countries to reflect the new rules.

4.45 In addition to the above changes, the Commission repeats its position that the Common Consolidated Corporate Tax Base (CCCTB) would lead to fairer and more efficient corporate taxation in Europe. The proposed Directive is separate from the CCCTB. However, the Commission say that if in future the CCCTB is introduced, it should incorporate the provisions of this Directive.

The Government's view

4.46 The Minister states that the Government welcomes the Commission proposals as a constructive step forward on the taxation of the digital economy, noting that the main potential benefits of this are that it provides a basis upon which to explore options for global reform and may act to encourage non-EU countries to consider changes.

4.47 The Government outlined its own views on long-term reform of digital taxation in a [position paper](#) update published in March 2018, chapter 3 of which indicated that the government's position was that "active user participation creates value for certain digital businesses, and that jurisdictions in which users are located should be entitled to tax a proportion of those businesses' profits", and that "some reallocation of the profits currently recorded by these companies to user jurisdictions is justified, and achievable in a way that minimises the impact on the current approach". The paper then explored how user-created value could be measured and allocated to different user jurisdictions.

4.48 Regarding subsidiarity, the Government states that global reform of the international tax rules would be preferable, but accepts that in the absence of agreement to do so there is scope for the European Commission to propose solutions. The Government concludes that the proposals "are justifiable under the principle of subsidiarity" because of the difficulty of acting unilaterally, and because actions undertaken by individual states would increase complexity of the tax environment and create compliance burdens for businesses.

4.49 The Government also agrees with the Commission that any comprehensive solution will mean updating both the definition of permanent establishment and methods for allocating profits between different entities.

4.50 However, the Government highlights a number of areas where further information is required. It suggests that:

- further refinement may be needed to focus the proposal more closely on services where value is created by users;
- a detailed discussion is needed to ascertain the precise activities the proposal may bring within a Member States’ right to tax;
- it is important to consider whether the thresholds for these activities are proportionate;
- although the proposal that the location of users and of business contracts can be determined by reference to the internet protocol (IP) addresses of users is promising, there are issues such as the use of virtual private networks (VPNs) or cross-border travellers which may need further consideration; and
- alternative approaches should continue to be considered.

4.51 The Government emphasises that it continues to view the Common (Consolidated) Corporate Tax Base proposals as disproportionate, and that this would also apply to the merger of these proposals with the C(C)CTB, which is suggested in the Communication relating to these proposals, but not contained in the proposals themselves.

Debate in the House

4.52 On 27 March 2018 a debate on Digital Taxation⁵⁹ was held in the House of Commons, within the context of which the current proposals were discussed.

4.53 The House of Commons Library has produced a short [briefing](#) on this debate.

4.54 The motion was moved by Neil O’Brien MP (Con), who drew attention to the Treasury’s [position paper](#), OECD work on base erosion and profit shifting, and both of the European Commission’s legislative proposals, which had been published five days previously. Regarding the Commission’s proposals, O’Brien noted the similarity between the Commission proposals and the Treasury papers, particularly on the levy on revenues, summarised the shared diagnosis of the underlying problem (“there is no real link between where value is being created and where tax is being paid”) and said that, as the UK moved towards being independent of the EU, he was sure that the Minister would be thinking about “how a UK tax might fit alongside an EU one”.

4.55 Nick Boles, Damien Moore, Robert Courts, Lee Rowley, Ranil Jayawardena, Luke Graham, and Chris Philp took part in the debate. Most expressed support for digital tax reform, and for a revenue tax in particular. Chris Philp MP engaged specifically with the Commission proposal, stating that he supported a revenue tax, and that the proposed threshold seemed reasonable; that “care should be taken to ensure that the EU does not use it as a pretext for retaining the tax receipts and developing a European Union treasury function for the first time”; and that if the EU did not move quickly enough, the UK should take unilateral action.

59 HC Deb, 27 March 2018, [volume 638](#).

4.56 Mel Stride MP, Financial Secretary to the Treasury, responded to the debate by summarising aspects of the Commission proposals, suggesting that “a 3% tax on revenues would be appropriate ... but that there should be a de minimis on the basis of those companies’ worldwide turnover and the level of taxable revenues that would fall due within the European Union”, and that it was “important, within EU domestic tax legislation and the treaties between member states, that we have a definition of the concept of significant economic presence, which captures this idea of creating value in the way that I described”.

Previous Committee Reports

Fifth Report HC 301–v (2017–19), chapter 10 ([13 December 2017](#)).

5 Non-performing loans: debt management and out-of-court collateral recovery

Committee's assessment	Politically important
<u>Committee's decision</u>	Not cleared from scrutiny; further information requested; drawn to the attention of the Treasury and the Business, Energy & Industrial Strategy Committees
Document details	Proposal for a Directive on credit servicers, credit purchasers and the recovery of collateral
Legal base	Articles 53 and 114 TFEU; ordinary legislative procedure; QMV
Department	Treasury
Document Number	(39588), 7403/18 + ADDs 1–4, COM(18) 135

Summary and Committee's conclusions

5.1 In summer 2017, EU Finance Ministers called for a [package of EU-level measures](#) to reduce the stock of non-performing loans (NPLs) on banks' balance sheets, to improve availability of credit and reduce risks to financial stability. In response, in March 2018, the European Commission published a [proposal for a Directive](#) to improve banks' access to accelerated recovery of collateral against secured loans, and to create a more efficient secondary market for NPLs by setting standardised EU-wide rules for the specialist companies that purchase non-performing loans or seek to enforce them on a bank's behalf.

5.2 The bulk of the proposed Directive would create a common set of rules that third party credit servicers (debt administration firms)⁶⁰ would need to abide by in order to operate. In return for EU-wide harmonisation of the regulation that underpins their conduct, a credit servicing company could use its licence from any one EU country to provide its services in any other Member State without needing to apply for regulatory permissions from that country's national regulator (the so-called 'passport') or even establish a physical presence in the 'host state'. The proposal also contains several provisions relating to credit purchasing, where a company buys a loan book from a bank and becomes the creditor vis-à-vis the borrower.⁶¹

5.3 The second part of the Directive aims to create a framework for faster enforcement of collateral by banks when a borrower is not making sufficient loan repayments.⁶² The

60 Credit managers would be able to carry out tasks such as monitoring the performance of loan agreements, communicating with the borrower, and enforcing or renegotiating the creditor's rights. Banks make use of this secondary market where they themselves are unable to effectively manage bad loans.

61 It would sets out minimum disclosure requirements by the bank towards the prospective buyer of a loan agreement, as well as requiring the sale to be notified to the financial regulator.

62 While banks can enforce collateral under national insolvency and debt recovery frameworks, the Commission argues that this process "can often be slow and unpredictable" (e.g. 'collateral meltdown', the simultaneous sale of collateral by all lenders leads to a sharp fall in asset prices, and therefore a lower likelihood the collateral will cover the outstanding debt, or court congestion).

legislation would require each Member State to establish, in law, a method for banks and credit purchasers to recover money from secured loans to business borrowers⁶³ without recourse to legal action in court (termed accelerated extrajudicial collateral enforcement procedure” or AECE). In order to ensure fair treatment of the business whose collateral is subject to recovery, the Directive would require the creditor to have the assets independently valuated to determine the appropriate reserve price for auction or private sale (or its value to the bank in case of appropriation). The valuer would have to be appointed by common consent of both lender and borrower.

5.4 The Committee first considered the proposal, and the Treasury’s [Explanatory Memorandum](#) on its substance, [on 2 May 2018](#). It noted that the Directive may have to be transposed into UK law under the terms of the post-Brexit transitional arrangement (depending on the timetable of its adoption and the agreed implementation date).⁶⁴ With respect to AECE, it noted that the issue of recovery of collateral by banks from business borrowers remains highly topical, given the [recent controversy](#) over RBS’ treatment of its business customers in arrears, and emphasised that any new EU rules on out-of-court debt enforcement should contain robust protections for borrowers.

5.5 The Committee also queried the potential implications of the proposed ‘passport’ for debt administration firms.⁶⁵ In particular, it asked the Minister to clarify:

- whether the new EU ‘passport’ for credit servicers could allow a bank to have its loan agreements—with both consumers and businesses—managed by a third party that may not even have a domestic presence in the UK, or be subject to the supervision of a UK-based regulator like the Financial Conduct Authority;
- whether credit servicing companies as defined in the proposed Directive already have any cross-border access to the UK market without supervision by the Financial Conduct Authority; and
- if Member States could still require credit servicers based in another EU country to establish a physical presence in their territory before providing services there based on a licence issued by another Member State.

5.6 In anticipation of further information from the Minister, we retained the document under scrutiny and drew it to the attention of the Treasury and Business, Energy & Industrial Strategy Committees.

The Minister’s letter of 24 May 2018

5.7 In late May, the Economic Secretary (John Glen) supplied a response to the concerns raised by the Committee about the cross-border ‘passporting’ regime for debt

63 Under the proposal, AECE would be available only when agreed on in advance by means of the loan agreement, and could not be used in relation to secured consumer credit agreements (including mortgages).

64 The Government and the European Commission have provisionally agreed on a transitional period, during which EU law will continue to apply in the UK, until 31 December 2020.

65 The Committee was mindful of the controversy around the Government’s sale of Northern Rock’s loan-book of distressed mortgages to a private equity firm in 2015, which sparked concerns about the protection available to borrowers whose loans were sold.

administration firms⁶⁶ (credit servicers). The Minister confirms that the Directive would, for the first time, allow debt administration firms who act on behalf of lenders to operate on a cross-border basis within the EU, without requiring local authorisation or a physical presence in another Member State (after having obtained a licence in any EU country). While the UK remains part of the Single Market, that will also apply for the UK market. This will mark a significant shift: the Minister notes that any firm offering or providing debt administration services in the UK at present (from within the UK or on a cross-border basis) would require authorisation by the Financial Conduct Authority. As a result, the Minister says:

“Given that the proposal aims to create a harmonised set of rules for the conduct and supervision of third party credit servicers operating in the EU, the Government will closely monitor the development of these proposals to ensure that these provide the appropriate level of consumer protection. The proposed Directive does note that the protection granted to consumers under both the Consumer Credit Directive and the Mortgage Credit Directive, and the national provisions transposing these Directives, is not affected.

The Government will continue to undertake extensive bilateral and multilateral consultation with regulatory authorities, other Member States, the EU institutions, and industry stakeholders on the [non-performing loans] proposals to ensure that the proposed measures remain targeted at the problem areas, are proportionate and do not undermine borrower protections or the fair treatment of consumers.”

5.8 The Minister’s letter also informs the Committee that the Government had belatedly identified “Justice & Home Affairs content” in the Directive, with respect to some of the “applicable law” provisions in the out-of-court collateral enforcement procedure. As the Directive does not have a Title V legal base, and the Minister himself admits there is no real prospect of securing such an additional legal base during the legislative process, the Committee has written to the Government separately to reiterate its long-standing position that the UK’s opt-in protocol for Justice & Home Affairs legislation is not engaged in this case.

Our assessment

5.9 We thank the Minister for his latest update on the Directive and its potential implications for the UK.

5.10 Because of the UK’s exit from the EU, the overall impact the Directive may have in the UK, once agreed between the European Parliament and the Council, remains unclear. Given the early stage of the negotiations, it appears unlikely that it will have a transposition deadline that falls within the post-Brexit transitional period as defined in the current draft of the UK’s Withdrawal Agreement.⁶⁷ If the transposition deadline does apply while the transition is still in effect, the UK will have to transpose the Directive’s provisions into domestic law (including, if necessary, the creation

66 The Directive, while referring to ‘debt management’, does not accord the same meaning to this term as the UK regulatory regime does. In the UK, it refers to a firm which acts on behalf of a debtor; the Directive uses it to refer to debt administration, i.e. acting on behalf of the lender (including enforcing their rights under a loan agreement).

67 The transitional period is currently due to end on 31 December 2020.

of a new out-of-court collateral recovery procedure) and accept the provision of administration of loans between UK banks and UK-based customers by credit servicers based elsewhere in the EU, without direct oversight of their activities by the Financial Conduct Authority.

5.11 The situation after the transition is less clear-cut. In principle, after the UK leaves the Single Market, credit servicing companies based in the EU would no longer have a right to ‘passport’ their activities into the UK domestic market (and vice versa for British firms). At that point, UK-based credit servicers would only be able to operate within the Single Market if they establish a separate legal entity in an EU country, subject to authorisation and supervision by that country’s domestic regulator. When EU law ceases to have effect, the UK would also be free to modify or disregard any of the other provisions of the Directive.

5.12 However, the Government is seeking a new financial services agreement with the EU based on dynamic ‘mutual recognition’, where in principle both sides would commit to the same regulatory outcomes without operating in a common legal framework. This would still allow UK firms to provide financial services into the EU on a cross-border basis and vice versa, without facing the usual market access restrictions for ‘third countries’. While facing substantial political and legal hurdles, calling into question whether such an agreement could be negotiated with the EU at all (let alone by the end of the transitional period), it is unclear what it would in practice entail for the UK’s debt recovery regulations and to what extent these would stay aligned with the new Directive as a quid pro quo for continued access to the EU market for British banks.

5.13 Given the uncertainty around the exact legal impact of the Directive in the UK, we remain particularly concerned about its implications as regards both the out-of-court collateral recovery and the new passporting regime for debt administration firms. With respect to the latter, we remain to be convinced that it is in the interest of UK borrowers to have their loan agreement with a UK bank administered by an credit servicing firm which is not subject to FCA oversight or embedded in the UK’s regulatory culture for debt administration. We would welcome further information from the Minister in due course about the specific borrower protection this may raise, including—for example—in relation to redress, debt collection practices or errors in tracing the correct debtor.

5.14 Given these outstanding issues, we retain the proposal under scrutiny and draw the Minister’s latest information to the attention of the Treasury and Business, Energy & Industrial Strategy Committees. We also ask him to keep the Committee informed of any developments in the legislative process, especially with respect to borrower protection and the implications of the new ‘passport’ for debt administration firms.

Full details of the documents

Proposal for a Directive on credit servicers, credit purchasers and the recovery of collateral: (39588), 7403/18 + ADDs 1–4, COM(18) 135.

Previous Committee Reports

Twenty-Sixth Report HC 301–xxv (2017–19), [chapter 4](#) (2 May 2018).

6 Exchanging information on criminal convictions

Committee's assessment	Legally and politically important
<u>Committee's decision</u>	Not cleared; further information requested; drawn to the attention of the Home Affairs, the Justice Committees and the Committee on Exiting the European Union
Document details	(a) Proposal for a Directive amending Council Framework Decision 2009/315/JHA as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS) and replacing Council Decision 2009/316/JHA; (b) Proposal for a Regulation establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN) and amending Regulation No 1077/2011
Legal base	(Both) Article 82(1)(d) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(a) (37463), 5438/16 + ADDs 1–2, COM(16) 7; (b) (38886), 10940/17 + ADD 1, COM(17) 344

Summary and Committee's conclusions

6.1 These proposals are intended to improve the operation of the European Criminal Records Information System—ECRIS—which enables Member States to exchange information on the previous convictions of EU citizens, ensuring that they cannot escape their criminal past by offending in a different Member State. The UK has participated fully in ECRIS since it became operational in April 2012 and is one of the most active users.

6.2 In early 2016, the Commission proposed a Directive—document (a)—to make ECRIS a more effective tool for exchanging information on third country national offenders in the EU. It envisaged that this information would be held on interconnected systems at national level. Following the completion of a feasibility study, EU justice and home affairs Ministers decided that this decentralised model would be too burdensome and costly to implement. In July 2017, the Commission proposed a Regulation—document (b)—which would establish a centralised EU information system containing biographical information, fingerprints and facial images of third country national offenders who have been convicted of a criminal offence in the EU. This central system—ECRIS-TCN—would enable a Member State to discover whether any relevant criminal records information is held elsewhere in the EU and to obtain access to that information by submitting a request to the relevant Member State(s) through the decentralised ECRIS system.

6.3 Both proposals are subject to the UK’s Title V (justice and home affairs) opt-in. The Government opted in to the proposed Directive in May 2016, shortly before the referendum in which the UK decided to leave the UK. It opted into the proposed Regulation in October 2017, stating that it would increase the efficiency of ECRIS and “help ensure that our law enforcement agencies have more information available to them when they encounter third country nationals than they do at present”.⁶⁸

6.4 The Justice and Home Affairs Council agreed a general approach on the ECRIS package last December. The Minister for Policing and the Fire Service (Mr Nick Hurd) described the outcome of negotiations as “broadly acceptable” but abstained during the vote as both proposals remained under scrutiny.⁶⁹ In his letters, the [first](#) dated 30 May, the second 7 June, the Minister explains that the Bulgarian Presidency is keen to complete trilogue discussions between the Council, European Parliament (EP) and Commission and put the final compromise texts to COREPER for political agreement by the end of its term (30 June). Although “some issues remain under discussion”, he outlines the progress made so far and invites us to consider clearing the proposals from scrutiny as he anticipates that the final texts will establish “a much more efficient mechanism for identifying where convictions of Third Country Nationals (TCN) are held in the EU than is the case now” and that the Government will wish to vote in favour. He adds:

“Positively supporting the approach at Council would underline our ambition for a future relationship with the EU providing for data-driven law enforcement and sustaining information sharing capabilities as set out in the UK Government’s vision for the future [UK-EU Security Partnership](#) published on 9 May.”

Outstanding issues in the trilogue negotiations

6.5 The Minister identifies three areas in which the EP’s position differs from the Council’s general approach. First, the EP (supported by the Council Legal Service) “remains strongly opposed” to the inclusion in the ECRIS-TCN centralised system of criminal record information on individuals who are nationals of an EU Member State *and* a third country (“dual EU/TCN nationals”). This is because it would be discriminatory to treat EU citizens who are also a dual national of a third country differently from EU citizens who are not. The Minister makes clear that including these individuals is important “to close a loophole in which criminals with dual nationality could hide their previous criminality by failing to disclose certain nationalities they hold” but indicates that “the Bulgarian Presidency may look to find a compromise in the interests of expediency”. His later letter (of 7 June) indicates that the Government is willing to show flexibility on this issue.

6.6 Second, the Minister notes that the existing ECRIS legislation allows Member States to request criminal record information for use in criminal proceedings or for any other purposes permitted under national law. The EP considers that the “other purposes” for which checks against ECRIS-TCN can be made should be explicitly listed in the proposed Regulation establishing the new centralised system for third country national offenders.⁷⁰

68 See the [Written Ministerial Statement](#) of 2 November 2017 issued by the then Home Secretary (Amber Rudd) on ECRIS and on the EU justice and home affairs IT Agency (“eu-LISA”).

69 See the Minister’s letter of 1 December 2017 to the Chair of the European Scrutiny Committee.

70 The purposes listed would include employment vetting, visas and immigration, and combating child sexual exploitation.

Although the UK and most other Member States oppose this “so as not to unnecessarily limit the usage of the system”, he considers that a compromise enabling Member States to notify the Commission when they intend to check ECRIS-TCN for purposes other than those listed in the Regulation would be acceptable as it would “not limit usage of ECRIS-TCN in any way”.

6.7 Third, the Minister expresses concern that the EP may seek to “water down the circumstances under which fingerprints must be taken and loaded into the proposed ECRIS (TCN) centralised system”, given that they are the primary form of identification. Whilst the Government will “continue to defend a position of high ambition”, he says it will not oppose a compromise.

6.8 The Minister welcomes the EP’s willingness to incorporate facial imaging software in ECRIS-TCN in the future, to confirm identity, but only once the technological implications have been fully assessed and understood. He expects the Council and EP to agree on the role of eu-LISA (the EU agency for managing large-scale justice and home affairs information systems) in developing ECRIS-TCN.

Third country access to ECRIS-TCN

6.9 The Minister also responds to the questions we raised in our earlier [Report](#) (agreed on 24 January) on the ECRIS package. We set out our understanding of the general approach texts agreed by the Council in December and asked him to confirm that:

- there is (as now) no mechanism in ECRIS to enable a third (non-EU) country to obtain information on the previous convictions of *EU citizens*, meaning that this information would have to be obtained on a bilateral basis by sending formal letters of request;
- there is a mechanism in ECRIS-TCN to enable a third country to request information on the offending history of *third country nationals* convicted in the EU, but this information can only be requested for the purpose of criminal proceedings;
- a third country cannot, therefore, request information from ECRIS-TCN for wider public protection purposes, such as pre-employment checks on third country nationals seeking to work with children or vulnerable adults or to inform decisions on deportation and removal or inclusion on the sex offenders register; and
- requests for information from ECRIS-TCN would have to be routed through Eurojust (to ascertain whether Member States hold relevant criminal records information) and followed by a formal request to the relevant Member State(s).

6.10 The Minister does not comment on the absence of a mechanism within the current ECRIS system to enable third countries to obtain criminal record information on EU citizens (the first bullet point listed above), but he does confirm that:

- third (non-EU) countries would be able to request criminal record information on third country (non-EU) nationals convicted in the EU, but only for criminal proceedings, not for wider public protection purposes; and
- these requests would have to be routed through Eurojust.

6.11 Obtaining this information via Eurojust would, however, take time:

“Eurojust can query the ECRIS-TCN system to find this information. If a ‘hit’ is identified, Eurojust may, with permission from the identified Member States, inform the third country which Member States hold the information. This would, subject to their ability to request criminal records information via other channels, allow the third country to make a targeted request for the conviction information to the Member States themselves outside of the ECRIS system.”

6.12 The Minister nonetheless considers that the outcome agreed will provide “a helpful route in for third countries and other international organisations to identify where TCN convictions are held across the EU”. He confirms that Eurojust, Europol and the EPPO (European Public Prosecutor’s Office, once established) will be able to access ECRIS-TCN but the latest compromise text makes clear that they will not be able to access criminal records held in Member States’ national registries, nor make requests via the decentralised ECRIS network, “the expectation being that they should use other established channels for requesting the information”.

Implementation of ECRIS-TCN

6.13 The general approach texts agreed by the Council would give Member States a longer deadline for implementing the ECRIS package (36 months rather than the 24 months envisaged by the Commission). We asked the Minister to explain:

- whether he expects the ECRIS package to be agreed and formally adopted before the UK leaves the EU;
- if he does, whether the UK would be under an obligation to implement the package during any post-exit transitional/implementation period—under the draft Withdrawal Agreement negotiated by the EU and the UK, this period will end on 31 December 2020;
- whether the Government would, in any event, wish to implement the legislation to strengthen the prospects for securing a deal with the EU on ECRIS and ECRIS-TCN post-exit; and
- whether the UK would be at risk of being ejected from ECRIS during the transitional/implementation period or otherwise sanctioned if it failed to implement the new legislation.

6.14 The Minister says that the implementation period for ECRIS-TCN is still to be agreed. He confirms that the UK “will be under an obligation to implement” the ECRIS package if the implementation deadline falls within the transition/implementation period. If the deadline is later, the Government’s approach to implementation “will need to take into account the UK’s future relationship with the EU insofar as it concerns the arrangements for exchanging criminal records information between the UK and the EU”.

UK participation in ECRIS and ECRIS-TCN post-exit

6.15 We asked the Minister to confirm that the Government intends ECRIS and ECRIS-TCN to be included in the future agreement it is seeking with the EU on security, law enforcement and criminal justice cooperation. Given the constraints on the ability of third countries to access information through ECRIS and ECRIS-TCN, we made clear that the Government’s Justice Impact Test and Impact Assessment on the ECRIS package (promised “in early 2018”) should set out the operational impact for the UK if it does *not* secure a post-exit agreement encompassing ECRIS and ECRIS-TCN.

6.16 The Minister refers us to the Government’s [policy paper](#) *Framework for the UK-EU Security Partnership*, published on 9 May, which “explains the Government’s vision for the future UK-EU Security Partnership”. He adds:

“The paper noted that sustaining cooperation on the basis of existing EU measures in this field represents the most effective and efficient means of continuing to work together in the future. In particular, the paper proposed that a new internal security treaty should facilitate data-driven law enforcement and sustain information sharing capabilities, including those currently provided through ECRIS.”

6.17 He tells us that “it would not be appropriate to conduct an impact assessment on a ‘no deal’ scenario as the exact structures to allow security, law enforcement and criminal justice cooperation to continue once the UK has left the EU, including the nature of our cooperation via ECRIS, will be a matter for negotiations”.

6.18 In his later letter of 7 June, the Minister apologises that the Government’s Justice Impact Test and Impact Assessment are not yet available and says officials will endeavour to provide them before the summer recess.

Our Conclusions

Completion of trilogue negotiations

6.19 We note the Presidency’s intention to conclude trilogue negotiations on the ECRIS package and secure a political agreement in Coreper by the end of June so that the final texts can be sent to the Council for formal adoption. We are grateful to the Minister for endeavouring to provide the information we have requested ahead of the Coreper meeting. Whilst some questions remain unresolved, we share the Minister’s view that the ECRIS package will improve the mechanism for obtaining information on the offending history of third country nationals within the EU. We also accept that UK support for the package is consistent with the Government’s wider objective of securing a new internal security treaty with the EU post-exit. We nonetheless consider that it would be premature to clear the proposals from scrutiny at this stage but are willing to consider clearance before the ECRIS package is put to the Council for formal adoption, provided the Minister provides us with copies of the compromise texts agreed during the trilogue negotiations, as well as the Government’s Justice Impact Test and Impact Assessment (see below), and explains how the outstanding issues in trilogue negotiations have been resolved.

Brexit implications

6.20 In its recent [Framework](#) for the UK-EU Security Partnership, the Government says there are “no viable existing third country alternatives” to ECRIS and concludes that there would be “a clear mutual loss of operational law enforcement and criminal justice capability” and “substantial security consequences” if the UK were no longer able to participate in ECRIS and other elements of the EU’s internal security toolkit. The Government makes clear that it wishes to “sustain cooperation on the basis of existing measures”. It is regrettable that it has taken so long for the Government to share this information (and the outcome of its analysis of EU police and criminal justice measures) with Parliament.

6.21 To avoid a loss of operational capability and minimise the risk that criminal record information will not be available to inform sentencing decisions or enhance public protection, a new internal security treaty will need to be in place by the end of December 2020 when existing EU mechanisms will cease to apply to the UK. We ask the Minister to:

- update us on the progress being made in negotiations for a new EU/UK internal security treaty;
- indicate whether detailed arrangements for the UK’s future relationship with the EU in the field of internal security will form part of the political declaration to be agreed at the same time as the EU/UK Withdrawal Agreement; and
- explain whether a new EU/UK internal security treaty will need to be ratified individually by each Member State.

6.22 Given the risk of delay in the negotiating and/or ratification process, we disagree with the Minister’s view that it “would not be appropriate” for the Government’s Justice Impact Test and Impact Assessment on the ECRIS package to examine the impact of a “no deal” outcome. The Government’s own [Framework](#) for the UK-EU Security Partnership highlights “serious attendant risks” if the UK were compelled to fall back on existing precedents for EU agreements with third countries, rather than a new bespoke agreement, as the basis for the UK’s future relationship. We ask the Minister to reconsider his position and ensure that his Justice Impact Test and/or Impact Assessment also examine the operational impact for the UK of not securing a post-exit security treaty encompassing ECRIS and ECRIS-TCN before the end of the transition/implementation period. We also seek an assurance that the Government’s Brexit planning includes an assessment of the impact on the UK of not securing post-exit agreements in the other areas envisaged by the Government before the end of the transition/implementation period.

6.23 We ask the Minister to respond by the end of June. We draw this chapter to the attention of the Home Affairs, the Justice Committees and the Committee on Exiting the European Union.

Full details of the documents

(a) Proposal for a Directive amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the

European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA: (37463), [5438/16](#) + ADDs 1–2, COM(16) 7. (b) Proposal for a Regulation establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN) and amending Regulation No 1077/2011: (38886), [10940/17](#) + ADD 1, COM(17) 344.

Background

6.24 Our earlier Reports listed at the end of this chapter provide an overview of ECRIS, the changes put forward by the Commission in the proposed Directive and Regulation and the Government’s position.

Previous Committee Reports

Eleventh Report, HC 301–xi (2017–19), [chapter 3](#) (24 January 2018); Seventh Report HC 301–vii (2017–19), [chapter 7](#) (19 December 2017) and First Report HC 301–i (2017–19), [chapter 22](#) (13 November 2017). On document (a) only, see our Twenty-second Report HC 71–xx (2016–17), [chapter 8](#) (7 December 2016), Fourteenth Report HC 71–xii (2016–17), [chapter 4](#) (19 October 2016), Fourth Report HC 71–iii (2016–17), [chapter 6](#) (8 June 2016) and Twenty-fourth Report HC 342–xxiii (2015–16), [chapter 10](#) (24 February 2016).

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

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

Summary and Committee’s conclusions

7.1 This package of three proposed Regulations is intended to improve the functioning of the Schengen Information System—SIS II—and strengthen border control and counter-terrorism efforts across the EU by closing information gaps so that “in the future, no critical information should ever be lost on potential terrorist suspects or irregular migrants crossing our external borders.”⁷¹ Three Regulations are needed to reflect differing degrees

71 See the European Commission’s [press release](#) on the proposed Regulations, issued on 21 December 2016, as well as its [Fact Sheet](#) and its [infographic](#).

of Member State participation in Schengen but the Commission says they have been drafted to “work seamlessly together” to ensure the “comprehensive operation and use” of SIS II.⁷² For this reason, we are holding all three proposals under scrutiny.

7.2 Our main focus of scrutiny is the proposed police cooperation Regulation—document (c)—as this is the only measure in which the Government has decided to participate. The Minister for Policing and the Fire Service (Mr Nick Hurd) has made clear that UK participation has “no implications for our general opt out from the internal border-free zone established by Schengen” but is beneficial for UK law enforcement agencies as they are able to obtain intelligence on suspected criminals and security risks from police forces across the EU and detain at the border individuals wanted under a European Arrest Warrant.⁷³

7.3 Our earlier Reports listed at the end of this chapter provide a comprehensive overview of the SIS II reform package and the Government’s approach. In summary, the proposed police cooperation Regulation would:

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

7.4 The Council and the European Parliament each agreed their negotiating positions on the SIS II package in November 2017 with a view to reaching a First Reading agreement. The Government considered the Council text to be “broadly acceptable” but nonetheless decided to vote against as it considered that:

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

72 See p.3 of document (c).

73 See the Minister’s [Written Ministerial Statement](#) of 20 July 2017, Hansard, 96WS.

7.5 In his [letter](#) of 30 May, the Minister informs us that the Bulgarian Presidency hopes to conclude trilogue negotiations with the European Parliament and seek political agreement on a compromise text at COREPER by the end of June. He undertakes to give as much notice as possible of the agreed text so that we can consider clearing it from scrutiny before final agreement. He also responds to concerns we raised in our Report (agreed on 21 March) about:

- the timeframe and preparations for implementing the proposed police cooperation Regulation, given that it may not take effect until around 2021, after the UK's exit from the EU (on 29 March 2019) and after the end of the transition/implementation period envisaged in the draft EU/UK Withdrawal Agreement (31 December 2020); and
- the impact of the other elements of the SIS II package (the proposed Regulations on Returns and on Borders) on UK citizens once they cease to be EU citizens following the UK's exit from the EU.

7.6 The Minister reiterates the Government's position that "continued cooperation between the UK and the EU on security, law enforcement and criminal justice is in the interests of both sides" and refers us to the recently published [Framework for the UK-EU Security Partnership](#) which states that a new internal security treaty "should facilitate data-driven law enforcement as real-time information sharing has proved to be invaluable in recent years". He adds, however, that it is not feasible at this stage to assess how the UK's exit from the EU will affect implementation of the police cooperation Regulation in the UK "until the specific terms of any potential future treaty are known". He makes clear that the Government is "preparing for all eventualities" and that, in the event of a 'no deal', the police cooperation Regulation would "cease to apply to the UK in international law".⁷⁴

7.7 The Minister notes that the other elements of the SIS II reform package—the proposed Borders Regulation and Returns Regulation—will introduce new requirements for EU Member States (and non-EU associated countries participating in Schengen) when they are dealing with non-EEA nationals for immigration purposes. He continues:

"It is uncertain at this juncture what the precise implications might be in any post Brexit scenario. This will ultimately depend on the final terms of the Withdrawal Agreement and the future relationship. However, should UK/EU nationals be treated as 'Third Country' nationals for immigration purposes in future, it is reasonable to assume that these Regulations would apply. As you will be aware, the Government is currently considering a range of options for the future immigration arrangements, and will be setting out more detail in the coming months."

7.8 In a further letter dated 7 June, the Minister says that "the Committee has not recently raised any substantive issues" on the content of the proposed police cooperation Regulation and asks us to consider lifting our scrutiny reservation so that the Government can endorse the compromise texts which emerge from the trilogue negotiations when they are brought to COREPER "in mid-June".

74 We understand the Minister to mean that the proposed police cooperation Regulation will continue to apply to the UK post-exit as a matter of international (rather than EU) law under the EU/UK Withdrawal Agreement but will cease to apply once the transition/implementation period envisaged in that Agreement has expired *unless* a new internal security treaty is in place by 1 January 2021.

Our Conclusions

7.9 The [Framework for the UK-EU Security Partnership](#) (published in May) leaves little room for doubt that the Government considers continued UK participation in SIS II post-exit to be an operational necessity for law enforcement purposes. No other conclusion could explain the Government’s decision (taken nearly a year ago) to participate in an EU measure—the proposed police cooperation Regulation—which is only expected to become operational after the post-exit transitional/implementation period envisaged in the draft EU/UK Withdrawal Agreement has expired. Despite this, the Government has been unwilling in its correspondence with this Committee to speculate on “what future cooperation we may have in relation to individual measures”, even though decisions taken since the June 2016 referendum suggest a clear intention to build on and extend cooperation on the 40 plus EU police and criminal justice laws which already apply to the UK. It is deeply disappointing that it has taken so long for the Government to explain its approach to Parliament.

7.10 We note that the Minister hints at some flexibility on the immigration status of UK nationals and EU citizens post-exit, to the extent that he does not indicate that they will necessarily be treated as third country nationals for immigration purposes and makes clear that their future status will “ultimately depend on the final terms of the Withdrawal Agreement and the future relationship”. The Government’s Immigration White Paper, now expected to be published before the summer recess, should provide further insight.

7.11 The Minister indicates that the Government wishes to support the compromise text on the proposed police cooperation Regulation agreed during trilogue negotiations once it is brought to COREPER, despite having voted against the general approach agreed by the Council last November. He does not explain whether and (if so) how the concerns he expressed at that time have now been resolved. Nor does he make good on his undertaking (in March) to provide “a wider update on the trilogue negotiations when they are more advanced” and have addressed the issues raised in our earlier Report (agreed in December) concerning Article 21 of the proposed police cooperation Regulation on proportionality (which determines how much discretion a Member State has to create an alert on a terrorist suspect), Article 37 on “specific checks” and “inquiry checks”, and Article 53 on purpose limitation.⁷⁵ We ask him to provide this information as well as a copy of the final compromise text agreed in trilogue negotiations. Once we have this information, as well as details of the date on which the proposed police cooperation Regulation is expected to become operational, we will consider the Minister’s request for scrutiny clearance and seek to reach a decision before the Council is invited formally to adopt the proposed police cooperation Regulation.

7.12 We also ask the Minister to inform us of any significant changes to the other elements of the SIS II reform package (the proposed Borders Regulation and Returns Regulation) since they were first presented by the Commission in 2016. Meanwhile all three proposed Regulations remain under scrutiny. We draw this chapter to the attention of the Home Affairs Committee, the Justice Committee and the Committee on Exiting the European Union.

75 See the Minister’s [letter](#) of 6 March 2018 to the Chair of the European Scrutiny Committee.

Full details of the documents

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

Background

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

7.13 Document (a)—the proposed Returns Regulation—would create a new alert category for third country (non-EEA) nationals who have been issued with a return decision under the procedures set out in the EU Return Directive. The new alert is intended to increase the detection of illegally staying third country nationals and support EU-wide enforcement of return decisions. The Government decided not to opt in to the proposed Regulation since it would also have to opt into the EU Return Directive and considered that this would “pose a risk to national control over how we remove people with no right to be here, and would place our returns process under the jurisdiction of the Court of Justice of the European Union”.⁷⁶

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

Models for UK participation in SIS II post-exit

7.15 In our earlier Report (agreed on 31 January), we examined the basis on which the UK might be able to retain the capability provided by SIS II following its exit from the EU. We noted that under existing EU rules, only EU Member States are entitled to participate in SIS II and data processed in SIS II cannot be transferred or made available to third countries.⁷⁷ Although four non-EU Schengen countries do participate in SIS II, there is no precedent for a third country outside the Schengen border-free zone to do so.

7.16 In its [Framework for the UK-EU Security Partnership](#), the Government says it can see “no insurmountable legal barriers” to its proposal to conclude a new internal security treaty with the EU which would “sustain cooperation on the basis of existing EU measures” and “provide the legal basis for ongoing cooperation”. Whilst it is doubtless possible for this

76 See the Minister’s [letter](#) of 20 July 2017 to the Chair of the European Scrutiny Committee.

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

treaty to establish bespoke structures and procedures to associate the UK with parts of the EU’s justice and home affairs rule book—including SIS II—without requiring changes to (or the addition of) third country provisions in EU secondary legislation, the Government will need to demonstrate why an exception should be made to allow the UK to continue to participate in SIS II post-exit once it is outside the EU and Schengen and no longer bound by EU rules on free movement.

Previous Committee Reports

Twenty-first Report HC 301–xx (2017–19), [chapter 9](#) (21 March 2018), Twelfth Report HC 301–xii (2017–19), [chapter 8](#) (31 January 2018), Sixth Report HC 301–vi (2017–19), [chapter 1](#) (13 December 2017), First Report HC 301–i (2017–19), [chapter 1](#) (13 November 2017) and Thirtieth Report HC 71–xxviii (2016–17), [chapter 1](#) (1 February 2017).

8 Marketing of fertilisers

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Proposal for a Regulation of the European Parliament and of the Council laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No.1069/2009 and (EC) No.1107/2009
Legal base	Article 114 TFEU; Ordinary legislative procedure; QMV
Department	Environment, Food and Rural Affairs
Document Number	(37625), 7396/16 + ADDs 1–4, COM(16) 157

Summary and Committee's conclusions

8.1 Fertilisers may only circulate freely in the internal market if they comply with a set of conditions relating to agronomic efficacy, nutrient content, packaging, identification and traceability. Such products receive the designation “EC fertiliser”.

8.2 At the moment, virtually all product types carrying the “EC fertiliser” designation are conventional inorganic fertilisers, whilst virtually all those produced from organic materials or recycled bio-waste are excluded. The Commission accordingly proposed a new Regulation establishing conditions with which all EC marked fertiliser products—including those made from recycled or organic materials—would have to comply in order to move freely on the internal market. These include limits on the presence of heavy metals, such as cadmium, and contaminants in fertilising products.

8.3 When we last considered this proposal, at our meeting of 13 December 2017,⁷⁸ we waived the scrutiny reserve in advance of potential Council agreement, requesting an update on the final agreement and identifying particular interest in cadmium limits.⁷⁹

8.4 The Minister of State for Agriculture, Fisheries and Food (George Eustice) has now [written](#) again,⁸⁰ explaining that the Council reached agreement and that negotiations with the European Parliament are at an advanced stage. As regards cadmium limits, the Council agreed a compromise limit of 60mg/kg of cadmium in inorganic phosphate fertilisers. This will apply eight years after entry into force of the regulation and will be reviewed 16 years after entry into force. The UK supported this as a good compromise. Further information on the UK's evidence base for the position on cadmium limits was set out by the Minister in a [letter](#) to the House of Lords European Union Committee.⁸¹

78 Fifth Report HC 71–v (2017–19), [chapter 6](#) (13 December 2017).

79 Cadmium in fertilisers can leach into food such as cereals and vegetables and can then be ingested by humans. Ingestion of cadmium can cause irritation to the digestive tract, with nausea and diarrhoea. Ingestion of large amounts may result in effects on metabolism, swelling of the face and a build-up of fluid in the lungs. (“[Cadmium—general information](#)”, Public Health England, 2014).

80 Letter from George Eustice to Sir William Cash, dated 24 May 2018.

81 Letter from George Eustice to Lord Boswell of Aynho, dated 23 May 2018.

8.5 The Minister reports that another change in the proposal related to the frequency of the detonation resistance testing of ammonium nitrate fertilisers. This amendment was proposed by the UK to bring the proposed EU regulation in line with current UK legislation, which contributes to the safety and security of such fertilisers on the market.

8.6 Negotiations are now underway between the Council and the European Parliament with a view to agreement under the Bulgarian Presidency by the end of June. The Minister asks the Committee to consider releasing the proposal from scrutiny to enable the Government to defend UK interests and to allow agreement at COREPER (the Committee of Permanent Representatives) without a scrutiny waiver in the very near future.⁸²

8.7 We note that the Government negotiated what it considered to be a good compromise on cadmium limits in the Council and we recognise that the Government is engaged in the Council negotiations with the European Parliament with a view to reaching a satisfactory final outcome. We are content to release the proposal from scrutiny on the basis that the Government will pursue the approach that it has taken thus far. We look forward to an update—which we expect to be clearly set in the context of the UK’s withdrawal from the EU—on the conclusion of the negotiations.

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No.1069/2009 and (EC) No.1107/2009: (37625), [7396/16](#) + ADDS 1–4, COM(16) 157.

Previous Committee Reports

Fifth Report HC 71–v (2017–19), [chapter 6](#) (13 December 2017); Fortieth Report HC 71–xxxvii (2016–17), [chapter 13](#) (25 April 2017); Thirty-second Report HC 342–xxxii (2015–16), [chapter 4](#) (4 May 2016).

82 The scrutiny reserve applies only to decisions made by a Minister of the Crown and so does not formally apply to decisions made by officials at COREPER. It is nevertheless good practice for Departments to endeavour to inform the Committee of likely decisions to be taken at COREPER on proposals that are subject to the scrutiny reserve.

9 Health and care in the digital single market

Committee’s assessment	Politically important
Committee’s decision	Cleared from scrutiny; further information requested; drawn to the attention of the Health and Social Care Committee
Document details	Communication from the Commission on enabling the digital transformation of health and care in the Digital Single Market; empowering citizens and building a healthier society.
Legal base	—
Department	Health and Social Care
Document Number	(39667), 6451/18 + ADD 1, COM(18) 233

Summary and Committee’s conclusions

9.1 Health and care systems across the EU face serious challenges and, argues the Commission, can be tackled—at least in part—through digital solutions, or “eHealth”.⁸³ The uptake of such solutions, however, remains slow and varies greatly across Member States and regions. The Commission proposes actions in three areas:

- secure access to electronic health records and the possibility to share these across borders;
- better data to advance research, disease prevention and personalised health and care; and
- digital tools for citizen empowerment and person-centred care.

Further details are set out below.

9.2 The Parliamentary Under Secretary of State for Health (Lord O’Shaughnessy) says that the Commission’s proposed areas of work align well with current digital health strategies in the UK, which he summarises in his [Explanatory Memorandum](#) (EM).⁸⁴

9.3 On data protection, the Minister notes that health data is specifically protected under Article 9 of the recently implemented [General Data Protection Regulation](#) (GDPR).⁸⁵ The UK has introduced a national data opt-out, allowing patients to opt out of their confidential patient information being shared for purposes beyond their individual care except where there is a mandatory legal requirement, overriding public interest or where an individual gives explicit consent to share their data for a specific purpose.

83 eHealth is the use of information and communication technologies (ICT) for health

84 Explanatory Memorandum from the Department for Health and Social Care, dated 14 May 2018.

85 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC

9.4 The UK is committed to implementing both the GDPR and the Network and Information Security (NIS Directive), both now and post-Brexit. Minor amendments may be needed to the NIS Directive, says the Minister, relating to the sharing of information and incident reports between the UK and EU.

9.5 The Minister highlights a number of Brexit-related issues which will affect the relevance of the policies set out:

- the extent to which the Government will want to ensure compatibility of the UK's digital health sector with the EU digital single market in the future—the Government is committed to finding a balance between access to Member State data and ensuring that the UK remains competitive in attracting investment to support the UK health tech industry;
- ongoing access to UK health and care both by EU citizens with settled status under the Withdrawal Agreement⁸⁶ and by other EU citizens⁸⁷—once arrangements for the post-implementation period have been agreed, indicates the Minister, there will be an ongoing need to align with operability and security standards for electronic health records and personal health data; and
- future collaboration in the area of research and innovation, to which the UK aspires as set out in its future partnership paper, "[Collaboration on science and innovation](#)".

9.6 The Minister concludes by highlighting the UK's strong history of collaborating with European partners through EU, pan-European and other multilateral and bilateral initiatives and notes that the UK has been a highly active and valued participant in EU research programmes. Further details of the Government's approach are set out in the EM.

9.7 The Government's analysis of the Brexit considerations is helpful and demonstrates the continued relevance of the EU's work in this area, even as the UK prepares to withdraw from the European Union. We take note of the Minister's view that there will be an ongoing need to align with operability and security standards for electronic health records and personal health data in the light of the provisional agreement already reached on citizens' rights and of the possible negotiation of further healthcare reciprocity in the future relationship agreement. We would be interested to know whether the Government intends to factor "eHealth" specifically into the negotiations on the future reciprocal healthcare relationship.

9.8 Regarding access to personal health data, we would welcome information on the position regarding access to, and the protection of, the data of third country nationals who enter the EU through the UK on temporary visas and subsequently benefit from reciprocal healthcare arrangements.

86 Those that have lived in the UK continuously and lawfully for a period of five years by 31 December 2020 will have settled status and will have the same access to healthcare in the UK as is currently the case

87 Arrangements for any reciprocal healthcare between the UK and the EU for all citizens post-implementation period will form part of negotiations on the future relationship

9.9 Both the Commission and the Government make reference to the need for the purpose of data use to be clear. We urge the Government, though, to emphasise this issue of purpose specification as discussions on the cross-border interoperability of data for both public health and research progress.

9.10 We note that the Commission specifically references the benefits of coordinated action on data to tackle major health challenges such as rare diseases where, notes the Commission, half the new cases are found in children. The Minister will be aware that, in our recent work on paediatric medicines, we highlighted our concerns in this area and emphasised the continuing need for UK paediatricians to be able to share and access data in relation to research on rare congenital diseases in particular.⁸⁸ We therefore concur with the Commission’s analysis and would welcome confirmation from the Minister of the UK’s commitment to this area.

9.11 More generally, the overall theme of the Communication is that better cooperation at the EU level will provide better health outcomes. It is our hope that the Government will make every effort to ensure that the UK can continue to collaborate and, in doing so, to maximise digital solutions to health challenges. Will the Government, for example, seek to ensure continued UK access to the eHealth Network, of which all EU Member States are Members and Norway is an Observer?

9.12 We clear this non-legislative document from scrutiny and look forward to a response to this Report by 3 July. We draw the document to the attention of the Health and Social Care Committee.

Full details of the documents

Communication from the Commission on enabling the digital transformation of health and care in the Digital Single Market; empowering citizens and building a healthier society: (39667), [6451/18](#) + ADD 1, COM(18) 223.

Background

9.13 On 8 December 2017, the Council adopted [Conclusions](#) on “Health in the Digital Society—making progress in data-driven innovation in the field of health “,⁸⁹ inviting Member States and the Commission to work together on a range of issues and seize the potential of digital technologies in health and care. The Conclusions also called specifically for the implementation in the health sector of existing EU legislation on the protection of personal data, electronic identification and information security.

9.14 To boost **citizens’ access to data and its interoperability**, the Commission will: clarify the role of the existing [eHealth Network](#)⁹⁰ in the governance of eHealth infrastructure; adopt a Commission recommendation on the technical specifications for a European Electronic Health Record exchange format; support the eHealth infrastructure to enable new services for people; and mobilise funds to encourage further collaboration between Member States and regions.

88 Twenty-fifth Report HC 301–xxiv (2017–19), [chapter 12](#) (25 April 2018).

89 Council conclusions 2017/C 440/05, OJ C 440 of 21.12.2017

90 “eHealth network” webpage, European Commission

9.15 In order to promote **better data to advance research, disease prevention and personalised health and care**, the Commission will: set up a mechanism for the voluntary coordination of authorities and other stakeholders to share data and infrastructure for prevention and personalised medicine research including genomics; support the development of technical specifications for secure access and cross-border exchange of genomic and other health datasets; launch pilot actions, pooling data and resources across the EU to demonstrate the benefits of data-enabled digital technologies; and mobilise EU research (Horizon 2020) and broadband (“Connecting Europe”) funds.

9.16 To test the benefits of the cross-border sharing of health data for research and health that will be facilitated by these proposed action, the Commission will initially focus on: faster diagnosis and better treatments for patients affected by rare diseases; detection of cross-border infectious threats and anticipation of epidemics; and the use of “real world data” (collected outside clinical trials).

9.17 The Commission argues that, by using digital solutions such as mHealth⁹¹ apps, citizens can assume more responsibility for their own health. To encourage the use of **digital tools for citizen empowerment and person-centred care**, the Commission will: support cooperation to stimulate the supply and uptake of digital health by promoting common principles for validating and certifying health technology; support the exchange of innovative and best practices, capacity building and technical assistance for health and care authorities; raise awareness about innovative procurement and investment possibilities; and promote knowledge and skills of citizens, patients and health and care professionals in using digital solutions.

Previous Committee Reports

None.

91 Mobile Health (mHealth) covers medical and public health practice supported by mobile devices. It especially includes the use of mobile communication devices for health and well-being services and information purposes as well as mobile health applications.

10 Europol: exchanging personal data with third countries

Committee's assessment	Legally and politically important
Committee's decision	Previously cleared from scrutiny (decision reported 28 March 2018); further information requested; drawn to the attention of the Home Affairs Committee and the Joint Committee on Human Rights
Document details	<p>(a) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Jordan on the exchange of personal data between Europol and the Jordanian authorities competent for fighting serious crime and terrorism;</p> <p>(b) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Turkey on the exchange of personal data between Europol and the Turkish authorities competent for fighting serious crime and terrorism;</p> <p>(c) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Lebanon on the exchange of personal data between Europol and the Lebanese authorities competent for fighting serious crime and terrorism;</p> <p>(d) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Israel on the exchange of personal data between Europol and the Israeli authorities competent for fighting serious crime and terrorism;</p> <p>(e) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Tunisia on the exchange of personal data between Europol and the Tunisian authorities competent for fighting serious crime and terrorism;</p> <p>(f) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Morocco on the exchange of personal data between Europol and the Moroccan authorities competent for fighting serious crime and terrorism;</p>

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

Summary and Committee's conclusions

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

10.2 Under the Europol Regulation, the transfer of personal data agreed after 1 May 2017 (when the Regulation took effect) must be based either on a so-called “adequacy decision” establishing that a third country (or processing sector within it) ensures an adequate level of protection of personal data or on an international agreement concluded by the EU which “adduces adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals”.⁹² Negotiating directives setting out the objectives to be achieved in the negotiations are annexed to each of the proposed Council Decisions.

92 See Article 25 of [Regulation \(EU\) 2016/794](#).

If approved, further Council Decisions will be needed once the negotiations have been completed to authorise the EU to sign the agreements. The Council will need to obtain the approval (consent) of the European Parliament before it can conclude the agreements.

10.3 The Minister for Policing and the Fire Service (Mr Nick Hurd) told us that he expected the Council to insist on the inclusion of a substantive justice and home affairs legal base to complement the procedural legal bases cited in the Commission proposals. This would bring the proposed Council Decisions within the scope of the UK’s Title V (justice and home affairs) opt-in Protocol, meaning that each Council Decision would only apply to the UK if the Government decided to opt in. In deciding whether to opt in, he made clear that the Government would need to be “fully assured that exchanges of personal data come with sufficient protections to ensure they are consistent with fundamental rights”.⁹³

10.4 With some reluctance, we decided to clear the proposals from scrutiny at the end of March after we were told that the Presidency was keen to bring them to the Council for formal adoption and that the UK was therefore “unlikely” to have the full three months provided for in its Title V opt-in Protocol to decide whether to participate.⁹⁴ The deadline for notifying the Council Presidency of the UK’s opt-in decisions expired on 30 April.

10.5 We noted that there were well-documented human rights violations or threats to democracy and the rule of law in some of the countries with whom the EU would be opening negotiations⁹⁵ and made clear that we would not usually be willing to clear the proposals from scrutiny without having a much clearer understanding of the safeguards that the EU would be seeking in its negotiations with each country. We recognised, however, that Brexit cast the proposals in a different light. As the agreements would be the first to be negotiated and concluded under the Europol Regulation, they were likely to establish the framework for future agreements on the exchange of personal data between Europol and third country law enforcement authorities. Whilst the Government intends to seek a “bespoke” relationship with Europol post-exit, it may yet have to fall back on the third country provisions set out in the Europol Regulation.⁹⁶ Given this possibility, we considered that the Government should have some involvement in overseeing the negotiations (through its participation in a specially constituted Council committee) and that it should be able to participate in the vote in Council if it decided to opt into some or all of the proposals.

10.6 We emphasised that the Minister should not interpret our decision to clear the proposed Council Decisions from scrutiny as approval of his handling of these documents and asked him to provide the following information at the earliest opportunity:

- the progress made in securing the addition of a substantive justice and home affairs legal base and a recital stating that the UK’s Title V (justice and home affairs) opt-in Protocol applies;
- the Government’s opt-in decision and the reasons for it;
- the text of any statement entered in the Council minutes by the UK if, as the Minister anticipated, the proposals were adopted before the expiry of the three-month opt-in period;

93 See the Minister’s [Explanatory Memorandum](#) of 26 January 2018.

94 See the Minister’s [letter](#) of 21 March 2018 to the Chair of the European Scrutiny Committee.

95 See the [Human Rights and Democracy](#) report published by the Foreign and Commonwealth Office in July 2017.

96 See the Government’s [future partnership paper](#) on *Security, law enforcement and criminal justice* published in September 2017.

- details of the human rights clause proposed by the Presidency and how it would operate in practice;
- a summary of the European Data Protection Supervisor’s Opinion and the safeguards he recommends; and
- details of the country specific safeguards that the Government would seek to include in each of the agreements during the course of negotiations.

10.7 In his [letter](#) of 30 May 2018, the Minister informs us of the Government’s decision to opt into all eight proposed Council Decisions.⁹⁷ He anticipates that the data sharing agreements could “help to increase the security of the UK through helping to improve counter-terrorism, organised crime and illegal migration efforts” in the MENA region and says that opting in “provides an opportunity for us to influence the negotiation of these agreements”. He undertakes to “continue to press for appropriate human rights and data protection safeguards throughout the negotiations”.

Our Conclusions

The proposed negotiating mandates

10.8 Whilst we are grateful that the Minister has informed us of the Government’s opt-in decisions, it is far from clear whether the Commission and Council accept that the UK’s Title V opt-in Protocol is engaged for two reasons. First, the Commission proposals do not cite a Title V (justice and home affairs) legal base or include a recital making clear that the opt-in applies. Second, the Commission may consider that it is acting in an area in which the EU has exclusive external competence under Article 25 of the Europol Regulation and that the UK’s participation in that Regulation means it is automatically bound by the Council Decisions and cannot decide *not* to opt in. We ask the Minister to clarify the position and tell us what progress the Government has made in securing a substantive justice and home affairs legal base and a recital stating that the UK’s Title V opt-in Protocol applies. We also ask him to provide details of any statement entered in the Council minutes by the UK if the Commission and/or Council contest the application of the UK’s Title V opt-in Protocol.

10.9 Despite the Presidency’s intention to expedite negotiations, the Minister tells us that the negotiating mandates have yet to be agreed. We ask him to explain the reasons for the delay and the obstacles the Presidency has encountered in reaching an agreement within the Council.

10.10 Since we last considered the proposed Council Decisions in March, the European Data Protection Supervisor (Giovanni Buttarelli) has published his [Opinion](#) on the proposed negotiating mandates. He recommends an in-depth assessment to “narrow down and differentiate the need for transfers [of personal data] based on the particular situation of each third country and the reality on the ground”. He also recommends carrying out impact assessments to “better assess the risks posed by transfers of data to these third countries for individuals’ right to privacy and data protection, but also for other fundamental rights and freedoms protected by the [EU] Charter [of Fundamental Rights], in order to define the precise safeguards necessary”.

97 See also the Minister’s [Written Ministerial Statement](#) of 24 May 2018 on *Europol: Personal Data*.

We ask the Minister whether he agrees with the EDPS and whether he will press for these assessments to be carried out before the Council agrees negotiating mandates for each country or (if too late) at an early stage in negotiations.

10.11 We remind the Minister that we await the information requested in our earlier Report chapter concerning:

- the human rights clause proposed by the Presidency and how it would operate in practice; and
- details of the country specific safeguards that the Government will seek to include in each of the agreements before negotiations begin or once they are underway.

Brexit implications

10.12 The EDPS Opinion has a wider relevance for the UK in the context of Brexit. Whilst the Government intends to seek a “bespoke” agreement with Europol that does not replicate any other third country model, we cannot at this stage exclude the possibility that future cooperation may have to be based on existing third country mechanisms. In his Opinion, the EDPS lists the “appropriate safeguards” that would need to be included in an international agreement authorising the transfer of personal data between Europol and a third country. They include:

- “full consistency” in the third country with Article 8 of the EU Charter of Fundamental Rights concerning the right to protection of personal data;
- a level of protection of personal data which is “essentially equivalent” to EU law;⁹⁸
- rules in the third country mirroring the specific data protection safeguards contained in the Europol Regulation; and
- the application of “essential guarantees in the context of criminal investigations” as well as safeguards addressing “foreseeable risks” to fundamental rights and freedoms that may be a consequence of personal data transfers.

10.13 We ask the Minister whether he accepts that these are “appropriate safeguards” for any future agreement enabling Europol and the UK to exchange personal data and whether he considers that the UK meets the criteria set by the EDPS.

10.14 We ask the Minister to respond by the end of June. We draw this chapter to the attention of the Home Affairs Committee and the Joint Committee on Human Rights.

Full details of the documents

(a) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Hashemite Kingdom of Jordan on the exchange of personal data between the European Union Agency for Law Enforcement

98 Including the data protection criteria contained in recital (71) of the [Law Enforcement Directive](#).

Cooperation (Europol) and the Jordanian authorities competent for fighting serious crime and terrorism: (39411), [5033/18](#) + [ADD 1](#), COM(17) 798; (b) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Turkey on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Turkish authorities competent for fighting serious crime and terrorism: (39412), [5034/18](#) + [ADD 1](#), COM(17) 799; (c) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Lebanese Republic on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Lebanese authorities competent for fighting serious crime and terrorism: (39413), [5035/18](#) + [ADD 1](#), COM(17) 805; (d) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the State of Israel on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Israeli authorities competent for fighting serious crime and terrorism: (39414), [5036/18](#) + [ADD 1](#), COM(17) 806; (e) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and Tunisia on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Tunisian authorities competent for fighting serious crime and terrorism: (39415), [5037/18](#) + [ADD 1](#), COM(17) 807; (f) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Kingdom of Morocco on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Moroccan authorities competent for fighting serious crime and terrorism: (39416), [5038/18](#) + [ADD 1](#), COM(17) 808; (g) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the Arab Republic of Egypt on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Egyptian authorities competent for fighting serious crime and terrorism: (39417), [5039/18](#) + [ADD 1](#), COM(17) 809; (h) Recommendation for a Council Decision authorising the opening of negotiations for an agreement between the European Union and the People’s Democratic Republic of Algeria on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Algerian authorities competent for fighting serious crime and terrorism: (39418), [5040/18](#) + [ADD 1](#), COM(17) 811

Background

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

10.16 Europol has already concluded operational agreements which allow it to exchange personal data with a wide range of third countries—Albania, Australia, Bosnia and Herzegovina, Canada, Colombia, the former Yugoslav Republic of Macedonia, Georgia, Iceland, Liechtenstein, Moldova, Monaco, Montenegro, Norway, Serbia, Switzerland,

Ukraine and the United States of America.⁹⁹ These agreements are based on an earlier Council Decision (now replaced by the Europol Regulation) and also required Council approval.¹⁰⁰

Previous Committee Reports

Twenty-second Report HC 301–xxi (2017–19), [chapter 9](#) (28 March 2018) and Thirteenth Report HC 301–xiii (2017–19), [chapter 3](#) (7 February 2018).

99 See the Operational Agreements listed on [Europol's website](#).

100 See Article 23 of [Council Decision 2009/371/JHA](#)

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

Department for Business, Energy and Industrial Strategy

(39708)
8985/18
COM(18) 292

Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast).

(39710)
8921/18
COM(18) 306

Communication from the Commission A renewed European Agenda for Research and Innovation—Europe’s chance to shape its future The European Commission’s contribution to the Informal EU Leaders’ meeting on innovation in Sofia on 16 May 2018.

Department for Environment, Food and Rural Affairs

(39701)
8532/18
+ ADD 1

Commission Delegated Regulation (EU) .../... of 30.4.2018 supplementing Regulation (EU) No 1143/2014 of the European Parliament and of the Council with regard to risk assessments in relation to invasive alien species.

—

(39800)
9282/18
+ ADD 1
COM(18) 352

Proposal for a Council Regulation amending Regulation (EU) 2018/120 as regards certain fishing opportunities.

Department for Exiting the European Union

(39648)
7068/18

Draft amendments to the Rules of Procedure of the General Court.

—

Department of Health

(39690) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Strengthened Cooperation against Vaccine Preventable Diseases.
8676/18
+ ADD 1
COM(18) 245

(39691) Proposal for a Council Recommendation on Strengthened Cooperation against Vaccine Preventable Diseases.
8679/18
+ ADD 1
COM(18) 244

Foreign and Commonwealth Office

(39848) Proposal of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a Council Decision amending Decision 2014/386/CFSP concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol.
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—

HM Treasury

(38860) Proposal for a decision of the European Parliament and of the Council on the mobilisation of the European Globalisation Adjustment Fund following an application from Finland—EGF/2017/002 FI/Microsoft 2.
10584/17
COM(17) 322

Department for Work and Pensions

(39582) Proposal for a Council Recommendation on access to social protection for workers and the self-employed.
7416/18
+ ADDs 1–3
COM(18) 132

Formal Minutes

Wednesday 13 June 2018

Members present:

Sir William Cash, in the Chair

Steve Double	Kelvin Hopkins
Richard Drax	Mr David Jones
Mr Marcus Fysh	Andrew Lewer

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 11 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Wednesday 20 June at 1.45pm.]

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

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

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

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

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Kate Green MP](#) (*Labour, Stretford and Urmston*)

[Kate Hoey MP](#) (*Labour, Vauxhall*)

[Kelvin Hopkins MP](#) (*Independent, Luton North*)

[Darren Jones MP](#) (*Labour, Bristol North West*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Andrew Lewer MP](#) (*Conservative, Northampton South*)

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

[David Warburton MP](#) (*Conservative, Somerton and Frome*)

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